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PANORAMA

INSIGHTS INTO ASIAN
AND EUROPEAN AFFAIRS

REFUGEES AND MIGRATION IN ASIA AND EUROPE



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Editor: Dr. Beatrice Gorawantschy
Sub-editors: Megha Sarmah, Patrick Rueppel

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Refugees and Migration in Asia and Europe



Konrad
Adenauer
Stiftung

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Preface

The world is facing the biggest humanitarian crisis of recent times. With more than 60 million refugees in the world now, the highest since 1945, the numbers of forcibly displaced people around the world have increased enormously. People across the globe are fleeing violence, persecution and poverty in large numbers. More than half the world's refugees come from just three conflict-ravaged countries—Syria, Afghanistan and Somalia. In Syria a most devastating civil war is responsible for the highest number of refugees worldwide.

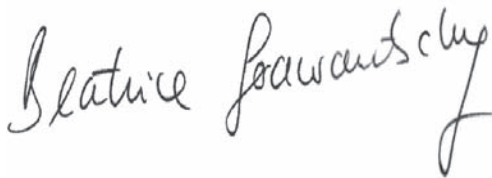
However, the topic of migration is probably one of the most contentious issues currently. Unless managed more effectively, it can have a grave impact on regions globally and imposes severe political, economic and social challenges on individual countries and regions. Europe, in particular is facing an unprecedented crisis, which developed an entirely new dynamic. The arrival of a rising number of people in 2015 and the imagery of sinking boats have captured the world's attention with scenes of desperate and heartbreaking tragedies. In 2015, more than one million asylum seekers—mostly from Syria, Afghanistan and Iraq—entered EU countries; this was more than double the number that entered in 2014. Travelling thousands of miles over land and water from across Asia, the Middle East and Africa, people are risking everything in search of safety and a better life. The European Union has taken numerous steps to grapple with the crisis, including announcing schemes for the relocation of a certain number of refugees from Italy and Greece to other Schengen states (non-binding quota regulation), forging an agreement with Turkey to manage the flow of refugees into Europe, and strengthening the competence of the European border management agency Frontex, the European asylum support office as well as their cooperation with Europol. But theory and practical implementation are still divergent and the crisis, nevertheless, is far from over. It has therefore become even more imperative for the European Union to achieve solidarity and a common coherent European policy to tackle the issue. With the linkages of various regions like Africa, Asia and the Middle East in this crisis as either recipients or senders of migrants, the refugee crisis has become a global problem and therefore needs a global solution.

The year 2015 also saw Asia face its own migration and refugee crisis. Long-running conflicts and crises, the escalation of violence, such as in Afghanistan and Pakistan, natural disasters like those in the Philippines, and ethnic conflicts in Myanmar have increased the number of refugees in Asia significantly. Boatloads of minority Rohingya Muslims fleeing from the Burmese state of Rakhine and Bangladesh were stranded across the Andaman Sea and Bay of Bengal, off the coasts of Thailand, Indonesia and Malaysia, triggering a humanitarian crisis. Like Europe, the countries in Southeast Asia were unprepared to handle the sudden influx of people hoping to seek shelter on their shores. The crisis compelled leaders in Southeast Asia to gather

together to discuss this long-standing issue within the region, including aspects such as irregular migration, human trafficking and the continued persecution of Rohingyas in Myanmar. The region has taken steps to overcome the crisis, including the new consultation mechanism on Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime adopted in March 2016, the creation of an ASEAN Regional Trust Fund to support victims of human trafficking, and the adoption of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in November 2015.

However, there is still need for a more robust institutional architecture to be implemented on forced migration and a comprehensive and systematic approach to manage irregular movements of people and international protection for those in need.

In this issue of *Panorama: Insights into Asian and European Affairs*, we have asked authors from various countries across Asia and Europe to analyse recent refugee-related developments in the two regions and the implications of refugee movements on societies in Asia and Europe. With the policies and recommendations presented in this publication as well as the inputs from issue-oriented seminar platforms organized in parallel, the Konrad-Adenauer-Stiftung hopes to contribute to fostering more dialogue, exchange and collaboration between Asia and Europe in addressing the migration and refugee crisis.



Dr. Beatrice Gorawantschy

Director

Regional Programme Political Dialogue Asia and the Pacific
Konrad-Adenauer-Stiftung, Singapore

Refugee Movements in South and Southeast Asia

*Alistair Boulton*¹

Refugee movements in South and Southeast Asia take place against the backdrop of forced displaced worldwide unseen since the Second World War. An estimated 60 million people are forcibly displaced on the planet today. If they were gathered together in one country it would be the 24th most populous in the world, just after Italy and, almost appropriately, before Myanmar. The high numbers have translated into a high profile for refugee and migrant issues, these regularly being the lead item on television news and the front pages of newspapers. The UN General Assembly and the President of the United States will both host events focused on refugees in the fall.

Compared to other regions, notably the Middle East, North Africa, Sub-Saharan Africa, Southwest Asia and Europe, the movements in South and Southeast Asia are small. Indeed there is only one significant movement indigenous to the region, that being the Rohingya from Rakhine State in Myanmar, who represent simultaneously the region's—and the world's—largest stateless population. With a bit of political will from all the states concerned, the situation could easily be managed. As the boat “crisis” in the Bay of Bengal and Anadaman Sea in May and June 2015 made clear, however, that bit of political will remains elusive.

This paper elaborates the six-slide PowerPoint presentation made by UNHCR at the Refugees and Migration in Europe and Asia Policy Conference in Manila on 4-5 April 2016. It describes the three major maritime movements involving refugees in the world followed by a focus on the refugee movements—maritime and otherwise—in South and Southeast Asia. It is primarily descriptive but does, where appropriate, provide suggestions on the responsibility-sharing measures and regional approach which if taken would improve the situation of existing refugees in South and South East Asia and help the region be better prepared for new or resumed movements.

¹ Every effort has been made for the paper to accurately reflect UNHCR's views on the matters discussed. Any errors in this regard or in the paper, however, are solely the responsibility of the author.

1. MIXED MARITIME MOVEMENTS

Maritime movements describe a means by which refugees seek safety. Mixed maritime movements describe a means by which refugees and others, i.e., those without international protection needs, such as migrants, travel. Journeys by sea are not the only and not even the predominant route to safety but they are the ones which recently have typified the flight—and the perils of flight—by today’s refugees. We need think only of the image of the Turkish police officer carrying the body of three-year-old Syrian Aylan Kurdi, who drowned in his family’s effort to reach safety on the Greek island of Kos in September 2015; similarly, the Bay of Bengal “crisis”—the term is put in quotation marks since it was not a crisis in terms of numbers, the total number of people disembarked being about 5,000—generated tens of thousands of media mentions in the few weeks of May and June 2015 when it occurred. Accordingly a comparison of the main features of three principal mixed maritime movements in the world today is instructive.

The Mediterranean

There are two maritime movements in the Mediterranean—one in the central Mediterranean from North Africa, primarily Libya, to Europe, mostly Italy, and one in the eastern Mediterranean, from Turkey to Greece. The movement in the eastern Mediterranean was, in 2015, five and a half times as large as the movement in the central Mediterranean, accounting for over 850,000 arrivals as opposed to a little more than 150,000. Together the movements produced 1,015,078 arrivals by sea in 2015. The pace has slackened somewhat in 2016 with the first quarter recording approximately 165,000 arrivals. On the other hand, January to March are the worst months weather-wise for crossings of the Mediterranean.

The scale of the movement into Europe is unfamiliar to Europe but still relatively modest compared to other regions of the world. Syria alone has produced nearly 5 million refugees (as well as 6.5 million internally displaced people). Lebanon hosts more Syrian refugees than all those arriving by sea in Europe in 2015. Turkey hosts three times as many. There is no question that Europe as a whole could absorb individuals in need of international protection in the numbers seen in 2015 but not if only two or three countries are playing ball. None of the existing arrangements for sharing out responsibility for refugees arriving in Europe has proved workable. The *ad hoc* EU-Turkey deal seems to have changed that. On the other hand, the movement through the central Mediterranean from Libya has picked up.

We will need to watch closely how the composition of the movements evolve. In 2015, 85 percent of the movement from Turkey was accounted for by just three major refugee-producing countries: Syria (46%), Afghanistan (24%) and Iraq (15%). This was primarily a refugee movement and a dangerous one, claiming the lives of 3,770 people

in addition to Aylan Kurdi's. The movement in the central Mediterranean is much more mixed though just as deadly, with hundreds of people having drowned already in 2016.

The Gulf of Aden

The movement across the Gulf of Aden is of long standing. It used to be composed of both refugees and migrants from Somalia and Ethiopia. Today it is 90 percent Ethiopian and, in the direction of Yemen, primarily a migrant movement. The destination for the Ethiopians in the movement is not Yemen but the Gulf states beyond, particularly Saudi Arabia. An estimated 92,000 people arrived in Yemen via the Gulf of Aden in 2015, making it the biggest maritime movement in the world after the two routes across the Mediterranean.

What is new and striking about the Gulf of Aden is that today the boats do not go back empty. A "reverse flow" has come into being as a result of the conflict in Yemen, which is particularly bad in the southern part of the country in and around Taiz, traditionally an arrival area for maritime movements across the Red Sea. Of the 168,000 Yemenis estimated to have fled the conflict in 2015, approximately half, about 85,000, left by sea. They travelled to Djibouti and, incredibly, Somalia, the very country from which most of the movement historically had departed.

Smaller than the Mediterranean crossings but three times bigger—in each direction—than the movement in the Bay of Bengal, the Gulf of Aden crossings receive almost no media attention. And as the fighting continues and spreads, the exceedingly good practices of reception, screening and protection developed in Yemen risk coming undone.

The Bay of Bengal and Andaman Sea

Like the routes across the Mediterranean and the Gulf of Aden, the maritime movement in the Bay of Bengal and Andaman Sea is of long standing. The typical route was by sea from departure points in Rakhine State, Myanmar, and Bangladesh, to smugglers' camps in the jungle in southern Thailand near the border with Malaysia and then overland into Malaysia. A small down payment was taken with the balance of funds being extorted from family members once those making the voyage had arrived in the smugglers' camps.

The risk of dying *en route* was three times higher than crossing the Mediterranean—not due to drowning but because of mistreatment by smugglers and disease, including beri-beri (resulting from a diet of white rice only). Use of the route spiked for Rohingya in the fall of 2012, following inter-communal violence in Rakhine State. At the same time a greater and greater proportion of the individuals making the voyage came from Bangladesh. Though the Bangladeshis had, at least formally speaking, legal migration options available to them, the irregular route via the Bay of Bengal was faster and

cheaper. The movement peaked in 2014 with an estimated 63,000 people, approximately evenly split between Rohingya from Myanmar and Bangladeshi nationals, making it.

The “crisis” came in May and June 2015 following the discovery of mass graves in the smugglers’ camps at the Thailand-Malaysia border.² The relevant states vowed to crack down on the trade. With traditional docking places eliminated and the risk of arrest increased, smugglers abandoned their charges. Boats drifted about, sometimes ping-ponged from one jurisdiction to another. Ultimately, a total of approximately 5,000 people were disembarked, the largest numbers in Indonesia (1,800), Malaysia (1,100) and Myanmar (940). Though most of the disembarkations had already taken place, the governments of Indonesia and Malaysia sought to condition their receipt of people onto their territories on repatriation or resettlement (to a third country) by the international community within a year.

With the cooperation of the Government of Bangladesh, almost all of the Bangladeshis have been repatriated. A small number of Rohingya from this movement remain in Malaysia (334) and Indonesia (296), in need of resettlement. A series of meetings during and after the “crisis” produced useful recommendations which have subsequently been picked up by ASEAN and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the two main regional fora for dealing with irregular migration. The movement itself, however, has never recovered. Despite widespread anticipation of a resumption of movements following the monsoon season in October 2015, neither Rohingya nor Bangladeshis are making the journey—at least not in significant numbers. UNHCR estimates approximately 1,500 departures since the end of the crisis in June 2015, nearly a full year ago.

2. REFUGEE MOVEMENTS IN SOUTH AND SOUTHEAST ASIA

At this point, let us shift gears and step back from a focus on how refugees are moving (i.e., by maritime routes) to who is moving in South and Southeast Asia. There are three main groups—one, the Rohingya, indigenous to the region, and two, Afghans and Pakistanis, exogenous to the region.

The Rohingya

The enormous changes taking place in Myanmar, including the installation this month of a civilian National League Democracy government, have so far not brought improvement in the situation of those who self-identify as Rohingya—the minority Muslim population of Rakhine State. Indeed, of the reasons given for NOT taking the Bay of Bengal maritime route by the more than 1,000 individuals interviewed by UNHCR’s

² Initially the graves were found on the Thai side of the border. Later, graves were also discovered on the Malaysian side. The smugglers’ camps had been on both sides.

Maritime Unit, very few cited hopes for improvement in Rakhine due to the new national government.³

The Rohingya in Myanmar are the largest stateless population in the world—a stateless person being defined as one who is not considered as a national by any state under the operation of its law. They remain stateless when they are displaced within Rakhine, as approximately 140,000 were, following the violence in 2012 (though as many as 25,000 returned home in 2015), or when they go abroad—as refugees. UNHCR has a mandate for both refugees and statelessness but in order to prevent double-counting it treats Rohingya abroad as refugees rather than stateless persons.

The largest population of Rohingya is undoubtedly in Bangladesh but only just under 32,000 of these individuals are registered as refugees with UNHCR. By the Government of Bangladesh's (GoB) estimation there are a further 200,000 to 500,000 individuals in the country whom the GoB refers to as *undocumented Myanmar nationals*. A “listing” exercise to ascertain this number more definitely was initiated by the GoB in 2016. Even at the low end of the estimated number of undocumented Myanmar nationals in Bangladesh, the total number of such persons is significantly greater than in the next largest host state, Malaysia.

There are more than 52,000 registered Rohingya refugees in Malaysia plus an unknown but possibly quite sizeable number of unregistered individuals. The Government of Malaysia lays stress on the total number of registered refugees not exceeding what it is currently so its appetite for new registrations without a concurrent diminishment in the number of other refugees is problematic. That said, the prospects for return of non-Rohingya refugees from Myanmar, who number nearly 90,000, is increasingly good, particularly ethnicities who have signed on to the national ceasefire.

The other two countries in the region with significant Rohingya populations are India (12,500) and Indonesia (1,000).

Going forward, it is anticipated that the situation in Rakhine will improve modestly over the next few years, including the resolution of the IDP situation in southern Rakhine State. This together with continued emphasis on law enforcement and the high cost of maritime departure (the cost of the journey has reputedly quadrupled from USD 2,000 to USD 8,000, which few Rohingya can afford, and which, for those who do have the means, is enough to pursue safer forms of travel, such as by air) will slow the departure of Rohingya abroad.

The key structural solutions to the situation of the Rohingya are some form of legal status (this could initially stop short of citizenship, perhaps some form of permanent residency), documentation allowing freer internal and two-way external travel (which

³ The reasons they did cite were (1) increased interdiction by Bangladeshi, Thai and other authorities, (2) the prolonged detention of Rohingya refugees arriving by boat during the crisis in Malaysia, frustrating family reunification and work objectives and (3) the discovery of the mass graves—many had not appreciated how brutally smugglers mistreated the people in their charge.

would open up legal migration pathways) and relaxation or elimination of the local orders constraining, among other things, Rohingyas' freedom of movement. This would need to be followed at some point by reform of Myanmar's nationality law.

Even if these things are achieved, the Rohingya situation will remain the pre-eminent refugee situation in the region for the foreseeable future, absent, as the adjective implies, the advent of unforeseen and massive new situations.

Afghans

Of the two most significant out-of-region refugee movements in South and Southeast Asia, the Afghans are of longer standing. The Afghans on the move in this region are overwhelmingly of the Hezara ethnicity, a minority Shia group with an extremely high recognition rate as refugees.

The main routes for Afghan Hezaras until 2012 were twofold: First, directly into India in a steady movement of approximately 1,000-2,000 persons a year, and second, into Indonesia via Pakistan, Thailand and/or Malaysia. Onward movement options from Indonesia to Australia, where there is a significant Afghan Hezara community, have largely dried up as a result of Australia's Operation Sovereign Borders. Since late 2013, the main destination has remained Indonesia, with a steadily increasing Afghan Hezara refugee population, but via India, Malaysia or Singapore.

Given the challenges in Afghanistan, no diminishment of this movement is foreseen in the short to medium term. UNHCR is deliberately de-emphasizing resettlement as a solution for the region due to the overwhelming needs for this solution elsewhere, the relative wealth and capacity of states in Southeast Asia to absorb refugees and the importance and fairness of sharing responsibility for solving refugee problems. That said, local stay solutions such as temporary residence and work rights are not immediately evident in Indonesia, the main host state for Afghan Hezaras, which is an exporter of labour.

Pakistanis

The other and more recent significant out-of-region refugee movement is Pakistanis. Claims are based primarily on the assertion of religious persecution, the main faith affiliations being minority Christian and Ahmadiyya Muslim populations. The recognition rate for refugee claims by Ahmadiyya Muslims is very, very high, up to 100 percent. For Christians, it is lower, in the high 30s, and varies somewhat by country of asylum.

The typical destination for Pakistani refugee claimants until 2012 was Indonesia or Malaysia, via Thailand or Sri Lanka. Since 2013, the destination has overwhelmingly been Thailand. It is not clear why this change occurred, whether the relative ease with which Pakistanis could (at that time) obtain visas, the prospect of resettlement

or both and other factors besides. What is clear is that Thailand now hosts the fourth largest Pakistani asylum-seeker population in the world, after Germany, South Africa and Italy. More than 5,000 Pakistani claimants await refugee status determination in Thailand. UNHCR, which for the time being continues to be responsible alone for the registration and adjudication of refugee claims in Thailand, will reinforce its resources in the summer of 2016 to address the unacceptable backlog of asylum applications in Thailand.

As with the Afghans, solutions for the Pakistanis are not obvious. Thailand is an upper middle income country and makes lawful work available to citizens of some neighbouring states based on the satisfaction of certain criteria. It is unclear whether similar rights can be extended to Pakistani and other urban asylum-seekers who are recognized as refugees. Resettlement will also play a part in the response but as it may have contributed to the influx and in light of the regional policy objectives described above, it will not be available for all Pakistanis recognized as refugees.

3. CONCLUSION

Rohingya, Afghans and Pakistanis are not the only refugees in Southeast Asia. In total the region (defined for present purposes as just Southeast Asia) hosts more than 315,000 persons of concern from 76 countries. All are entitled to UNHCR's attention and protection and its best efforts to help them achieve durable solutions. Temporary Stay Arrangements—also referred to as Temporary Protection or Local Stay—offer the most plausible and fair solution. There is no magic in the words. It is the content that matters. Temporary Stay Arrangements at a minimum include respect for the principle of non-refoulement⁴, non-detention and access to work, education and health. It is granted usually for a period of one to three years and in some circumstances can be renewed. The likelihood of states making temporary stay possible increases, UNHCR believes, with the involvement of the state in the registration and determination of refugee claims. Accordingly, as a practical priority, UNHCR is pursuing such arrangements with all the vigour it can muster.

Mr. Alistair Boulton is Assistant Regional Representative (Protection), Regional Coordinator's Office, UNHCR, Bangkok, Thailand.

⁴ Non-refoulement is the cornerstone of the 1951 Refugee Convention (Art 33). Only three countries in Southeast Asia have ratified the Convention—Cambodia, Timor Leste and the Philippines. Fortunately, non-refoulement is also a principle of customary international law meaning that it applies irrespective of a country's adherence to the Refugee Convention.

Managing Movements of People in Southeast Asia: The ASEAN Response

Moe Thuzar

1. THE REGIONAL CONTEXT

Migration as a topic has been largely viewed by members of the Association of Southeast Asian Nations (ASEAN) as a matter to be dealt with nationally or bilaterally between the source and destination countries. However, in the context of regional integration, it became a topic for ASEAN's regional agenda in 2003. At the 9th ASEAN Summit held in Bali, Indonesia in 2003 the ASEAN leaders signed the Declaration of ASEAN Concord II, underscoring their commitment to realise an ASEAN Community built on three key pillars of political/security, economic and socio-cultural cooperation amongst the ASEAN members. The end-goal of ASEAN economic integration envisaged "a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities" to be realised through several economic initiatives, including the ASEAN Framework Agreement on Services, which included measures to "*facilitate movement of business persons, skilled labour and talents*". The vision for an ASEAN socio-cultural community also emphasized that "*ASEAN shall continue existing efforts to promote regional mobility and mutual recognition of professional credentials, talents, and skills development.*" Thus, ASEAN governments have the political will to move ahead with liberalisation of skilled manpower movement across national borders, followed by a phased liberalisation of semi-skilled, and, finally, unskilled workers. This agreement is based on a recommendation to "facilitate movement of business persons and skilled labour and talents by 2005" as a first phase. Even so, sensitivities over the repercussions of unskilled labour (and often irregular) migration gave rise to the recommendation for a phased implementation, to avoid the social costs of displaced domestic labour (even though the largest national economic gains may well come from moving semi- and unskilled labour) (Winters et al., 2003).

The status of semi- or low-skilled migrant workers—mainly providing cheap and commoditised labour—and their social protection needs prompted the 2007 Declaration on the Promotion and Protection of Migrant Workers in ASEAN, and the move for a regional instrument to give effect to the Declaration. The annual ASEAN Forum on

Migrant Labour has also emerged as a good practice; it provides a platform for open discussion among representatives of government, international agencies, workers' and employers' organisations and civil society stakeholders. The Task Force on ASEAN Migrant Workers provides civil society input at the regional level.

Yet, the internal displacement of persons within an ASEAN member state, usually as a result of internal conflict, and any spill-over to neighbouring countries, are still within the realm of what is termed "internal affairs" of a member state. Any attempts at regional or bilateral responses are subject to ASEAN's non-interference principle.

Against this backdrop, this paper further explores the movement of people in Southeast Asia and ASEAN's responses to it through the main lens of movement across borders as a result of internal conflict, although related discussions of economic migration and internal displacement are provided in relevant sections of the paper. The paper also examines the case of the Rohingyas in Myanmar as an example of ASEAN's ability and/or limitations to respond effectively. Finally, some suggestions for practical solutions are provided.

2. WHO MOVES AND WHY?

For the purpose of this paper, the following working definitions serve as a broad reference for the terms "migrant", "refugee" and "displaced person"¹. ASEAN also discusses the issue in the context of trafficking in persons.

- A refugee is a person who flees his country because of persecution, conflict or war. If and when he crosses a national border and seeks refuge in another country, he will be classified as a refugee.
- If a person fleeing persecution, conflict or war seeks refuge in a safer part of his country, without leaving the country, then he is known as an internally displaced person (IDP).
- An economic migrant is neither a refugee nor a displaced person, but someone who leaves his home country in search of a better life. When this is done outside the legal bounds of movement across borders, the migrant gains an "irregular" or undocumented status.

¹ Professor Tommy Koh explains this in his essay of 7 July 2015 on "International Law and Refugees" posted on the website of Tembusu College, National University of Singapore. <https://tembusu.nus.edu.sg/news/2015/professor-tommy-koh-international-law-and-refugees>.

- As for trafficked persons, ASEAN has agreed to use the agreed definition in accordance with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children².

International law does not protect economic migrants except under the general law of human rights, and they can thus fall between the cracks of legal systems for protection of their rights. This is when the host and sending countries are required to resolve issues bilaterally.

What are the reasons for these movements? As most of the asylum seekers and refugees in this region come from Myanmar, it is worth examining the reasons behind their forced displacement, in order to identify workable solutions. According to the IOM, Myanmar has become the largest migration source country in the GMS or Greater Mekong Sub-region. This is mainly a result of people fleeing conflict between the armed forces and ethnic armed groups, as well as semi- and unskilled workers seeking what they perceive as attractive income in the labour-scarce, higher-income ASEAN economies. As such, there are refugee camps along the Thai-Myanmar border, which house people of different ethnic races from Myanmar, whose villages and livelihoods have fallen prey to armed conflict and whose status—if and when they return to Myanmar—is uncertain. Some of these persons have left the camps in search of better economic opportunities in the urban communities in and around Bangkok. In such cases, they join the ranks of Myanmar migrant workers who have no legal status as such.

The plight of migrant workers gained more prominence in the regional media after the adoption of the 2007 Declaration on migrant workers' rights. Even more so than their plight, the humanitarian emergencies caused by the flight of refugees, and the political and security implications surrounding the issue, have increasingly attracted more attention in the media. The situation in the Bay of Bengal in May 2015 is a stark illustration of this reality, even though the numbers of displaced persons involved were lower than those in previous incidences.

The situation in the Bay of Bengal in May 2015 essentially highlighted the Rohingya in a conflated position along the spectrum of displacement, refuge-seeking, and migration. Following the communal violence in 2012, the majority of the Rohingya affected by the violence and displaced from their residences were put in camps. The conditions of discrimination and ill-treatment in the camps then compelled the Rohingya to take their chances as illegal migrants to third countries. In doing so, some fell prey to trafficking networks, or, at the very least, unscrupulous middle men. The Rohingya's situation thus also highlights the complex and uncertain environment surrounding the issue, at all levels—national, sub-regional, and regional.

² The first-ever ASEAN Experts' Meeting to Study the Feasibility of Developing an ACTIP Meeting held in Manila on 13 July 2013 noted this agreed definition of TIP.

In the area covering Southeast Asia and Bangladesh, UNHCR estimates that there are some 2.7 million people of concern. These include 1.4 million stateless, over 700,000 IDP and some 525,000 refugees. A vast majority of these refugees (close to 500,000) come from Myanmar; a country which has undergone a protracted situation of internal insurgencies and conflict starting from the post-independence years, which in turn has caused refugees fleeing conflict areas over the past 30 years. Bangladesh, Thailand and Malaysia host the majority of refugees from Myanmar. In Bangladesh, approximately 32,000 Rohingya live in two official refugee camps and another estimated 200,000 are unregistered and residing in camps and makeshift sites in local villages. Another 130,000 refugees live in camps along the Thai-Myanmar border, and up to 150,000 live among urban communities in Malaysia³.

In Myanmar itself, there is silence on the Rohingya issue, and many euphemistic references are used, including “the registration issue” or “Rakhine Muslims”. Internal displacement as a result of conflict in Kachin State also does not seem to hit the headlines as much as the plight of overseas workers, who are usually domestic helpers and illegal migrants. Stories of these overseas workers lacking proper access to social protection and legal representation rights are widely circulated in both private print media and social media networks.

3. ASEAN’S ROLE AND RESPONSES⁴

In 2009, an exodus by sea of Rohingyas from Rakhine State and their plight of being turned away when seeking refuge in a third country was widely reported, prompting ASEAN to discuss it at an informal meeting of the foreign ministers prior to the ASEAN Summit. This was the first time that ASEAN extensively discussed it—albeit in an informal setting—and reflected the discussions in its public statement. This was also the first time that the Myanmar foreign minister, representing the military government of the State Peace and Development Council, stated that the Rohingya would be

³ Presentation by Ms Geraldine Ang, Private Sector Fund-raising Officer, Private Philanthropy Unit, UNHCR, at the Tembusu Forum of 28 September 2015 on the topic “Refugee Situation in Southeast Asia: What are the Solutions?”.

⁴ Parts of this section are drawn from earlier assessments by the author on media reactions to the migrant crisis and on the entrenched historical attitudes in Burma/Myanmar towards the Rohingya. Please refer to:

- Thuzar, M. (2015), “Media and the Migrant Crisis: A Call to Action?”. *Asian Politics & Policy*, 7: 659–664. doi: 10.1111/aspp.12211.
- Moe Thuzar, “Where History and Humanitarianism Collide: The Bay of Bengal ‘Migrant’ Crisis”, Middle East Institute, American University, March 2016. The essay was written as part of the Middle East Institute’s Asia Project, and can be accessed at: <http://www.mei.edu/content/map/where-history-and-humanitarianism-collide-bay-bengal-%E2%80%9Cmigrant%E2%80%9D-crisis>.

allowed to return only if they identified themselves as Bengalis⁵. This was also the first time that Myanmar's role (and responsibility) in the issue was discussed in an ASEAN setting.

As the issue did not involve all the ASEAN members, and in reference to the human trafficking and people smuggling dimensions of the issue, ASEAN found a convenient recourse in the Bali Process. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime had been created in 2002 to provide a regional—albeit voluntary—forum for governments and international agencies to discuss issues of people smuggling and trafficking in persons, and find practical responses⁶. ASEAN members participate in their individual capacity in the Bali Process, and officers of the ASEAN Secretariat are also invited to attend, to assist or to facilitate follow-up on issues pertinent to ASEAN's work on trafficking and transnational issues. This preference to deal with the issue in non-ASEAN regional processes, or sub-regionally among the countries affected, indicates how ASEAN views the issue and responds to it.

Yet, the aspirations and ideals that ASEAN has identified for its regional integration project indicate a contrast with the practical considerations behind current actions or responses to this issue.

The vision for an ASEAN Community is for an integrated community under the motto of “One Vision, One Identity, One Community”. In this Community, the political, security, economic, and socio-cultural strands are intertwined. ASEAN's descriptors for this linked nature of regional integration include “shared prosperity and social progress”, and “politically cohesive, economically integrated and socially responsible”. The ASEAN Socio-Cultural Community is also referred to as a caring and sharing community, harking back to the ASEAN Vision 2020 pronouncement for an integrated community. And, with the formation of the ASEAN Inter-governmental Commission on Human Rights (AICHR), ASEAN has also committed to “respect for and protection of human rights and fundamental freedoms”. The ASEAN Human Rights Declaration of 2012 further elaborates this broad commitment by stating that “every person has the right to seek and receive asylum in another state” but qualifies that this should be “in accordance with the laws of such State and applicable international agreements.”⁷

There are obvious constraints for ASEAN to take up a collective response to the refugee situation in the region. The ASEAN Way of consultation and consensus in reaching regional decisions, and the emphasis on the principles of sovereignty, equality, and non-interference in each other's internal affairs, means that bold action occurs only

⁵ The Irrawaddy reported that the Myanmar foreign minister had then stated that the refugees would be allowed to return but only if they identified themselves as “Bengalis” rather than Rohingyas (The Irrawaddy, March-April 2009, Vol. 17 No. 2, p. 19).

⁶ <http://www.baliprocess.net/>.

⁷ ASEAN Human Rights Declaration, paragraph 16.

when all the member states' interests are (directly) affected. The different positions of each ASEAN member country towards refugees or migrants are based on individual national interests and societal attitudes.

Thus, among the ten ASEAN members, only the Philippines (in 1981) and Cambodia (in 1992) have acceded to the 1951 Convention Relating to the Status of Refugees. There is as yet no collective ASEAN approach to dealing directly with refugees, asylum seekers, and stateless persons.

This may probably be due to some lingering concern from past experiences in dealing with the fallout from the conflict(s) in Indochina.

In the aftermath of the fall of the Saigon government in April 1975, there were efforts by neighbouring Southeast Asian countries such as Thailand, Malaysia, Indonesia and the Philippines (as well as the then British protectorate of Hong Kong) to accommodate the flows of Vietnamese asylum seekers. But the "boatpeople crisis", as it came to be known, deepened when the promises made by the governments of the United States, France, Australia and other nations to grant asylum to the refugees had the effect of 1) increasing the exodus of Vietnamese refugees who risked their lives on barely seaworthy vessels; and 2) compounding the problem when the rate of resettlement did not match the rate of refugee arrivals. For example, refugee arrivals jumped from an average of about 500 per month in 1975-77 to 1700 per month over April 1977 to May 1978. By July 1979, over 200,000 had reached the shores of the mentioned ASEAN countries and Hong Kong, but only 8,500 of the initial refugees (some 50,000) that had arrived in the first asylum countries (including the ASEAN nations) had been offered places of resettlement⁸. Thus, in a special meeting convened in January 1979 to discuss the issue, ASEAN foreign ministers expressed "grave concern" over the rising inflow of refugees and warned that the perpetuation of the refugee problem would not only seriously affect the peace and stability of the region but also would give rise to "serious economic and social dislocations among the ASEAN countries." They, therefore, appealed to the world community "to recognize the heavy burden borne by ASEAN countries which have been forced by circumstances to become countries of transit."⁹ There were even instances of ASEAN countries turning away the boat people even before they landed¹⁰.

⁸ A. Laksamana Chetty, *Resolution of the Problem of the Boat People: The Case for a Global Initiative*, in the ISIL Yearbook of International Humanitarian and Refugee Law database. <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html> (accessed 20 March 2015).

⁹ *Statements by the ASEAN Foreign Ministers at ASEAN Ministerial Meetings, 1967-1987*, (Jakarta, 1987), p. 318, and *ASEAN Documents Series 1967-1986* (ASEAN Secretariat, Jakarta, 1986), p. 120.

¹⁰ Chetty op. cit. states that during May-June 1979, Malaysia alone expelled about 25,000 boat people from its shores, citing Janelle M. Diller, *In Search of Asylum: Vietnamese Boat People in Hong Kong* (Washington D.C., 1988), p. 10.

More than a quarter of a century after a resolution was reached on the boat-people crisis, ASEAN was again faced with a humanitarian challenge in its ASEAN Community year of 2015. Malaysia, as the ASEAN Chair for 2015, convened a meeting among the foreign ministers of the countries affected, including Malaysia, Thailand and Indonesia (Myanmar did not attend) on 20 May 2015. This was followed by an international conference in Thailand on 29 May 2015, involving representatives from 17 countries (including Myanmar) and various United Nations agencies.

ASEAN's response can be said to be strongest in dealing with the trans-national nature of trafficking in persons and people smuggling. The main regional body tasked with this responsibility is the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) under the ASEAN Political-Security Community framework. The AMMTC's work plan includes priorities to deal with trafficking, with a working group under the AMMTC framework to address these regional priorities. Thus, Malaysia, as ASEAN Chair for 2015, convened an "Emergency AMMTC Concerning Irregular Movement of People in the West" in July 2015, following the May meeting of the foreign ministers of Malaysia, Indonesia and Thailand to discuss the issue of the people stranded at sea. The terms used by ASEAN give an interesting glimpse into the reluctance of ASEAN members to recognise the refugee issue at the regional level. Nevertheless, the Emergency AMMTC agreed on several new priorities related to trafficking in persons. These included commitments to:

- include people smuggling as one of the transnational crimes under the AMMTC;
- study the connection between the irregular movement of persons and people smuggling;
- establish a trust fund to support humanitarian efforts;
- consider setting up a Task Force to respond to crisis situations arising from the irregular movement of persons in Southeast Asia; and
- adopt the ASEAN Convention against Trafficking in Persons.

It seems more likely that an ASEAN response to deal with the issue at the regional level will be structured within the context of people trafficking. In fact, ASEAN efforts at dealing with irregular movements of persons across borders have largely been in the context of trafficking in persons, with initiatives starting as early as 2000, when the Australian Agency for International Development (AusAID) assisted ASEAN with a project identification mission to learn of and determine the scope of regional programmes or interventions on trafficking in persons, especially women and children. The law enforcement aspects of the issue were the focus of early projects and activities, which continued under the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), which ran from 2003 to 2006, and was succeeded by the Asia Regional Trafficking in Persons (ARTIP) Project. During the ARCPPT implementation,

ASEAN adopted its first document on trafficking in persons in 2004. Titled “ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children”, it was adopted at the 10th ASEAN Summit in December 2004, with primary implementation responsibility tasked to the Senior Officials Meeting on Transnational Crime (SOMTC) under the AMMTC framework. This was probably the first time that ASEAN formally and prominently placed trafficking as a priority for regional action, although the usual constraints to pursuing regional commitments still apply, as member states’ responsibilities are “to the extent permitted by their respective domestic laws”¹¹.

The AMMTC and their senior officials had been discussing the feasibility of an ASEAN Convention against Trafficking in Persons or ACTIP since 2007. The proposal was first mooted by Indonesia at the 6th AMMTC in November 2007. The AMMTC agreed in principle to develop the ACTIP. The Senior Officials Meeting on Transnational Crime (SOMTC) and its Working Group on TIP (SOMTC WG on TIP) were then tasked “to explore the possibility of developing an ASEAN Convention on Trafficking in Persons and whether it will add value”. Even though the SOMTC WG on TIP convened its first meeting in Kuala Lumpur the following year in 2008, it was mainly to agree that the complexity of the issue required further study “before proceeding further on any discussion of the need for a new Convention”, and “whether it would add value”. The SOMTC WG decision illustrates ASEAN’s usual incremental approach to addressing issues with political repercussions at the national level.

By 2009, ASEAN members had come round to the idea that an ACTIP was “acceptable in principle” but that more work was necessary to identify gaps that might impede the development of the document. At the same time, ASEAN members also felt the necessity to start with practical actions while discussions were ongoing for developing the ACTIP. Thus, the SOMTC WG on TIP also considered a Concept Paper on developing a Regional Plan of Action on TIP at its 7th meeting in April 2012 in Singapore. This led to the agreement at their 8th meeting in September 2012 in Thailand, to work in parallel on the processes for the ACTIP and a Regional Plan of Action on Combating Trafficking in Persons (RPA). The Philippines served as the lead shepherd for the further development and deliberation of the two documents.

From this long gestation period, the actual reviewing and deliberation of the two draft documents then took two years from 2013 to its clearance by the AMMTC, and adoption by the 27th ASEAN Summit in November 2015. The entry into force of the ACTIP will only require ratifications by six ASEAN members. This follows the example of the ASEAN Agreement on Transboundary Haze Pollution, which itself drew inspiration from the requirements for the 1995 Southeast Asia Nuclear Weapons Free Zone Treaty’s entry into force. To date, Cambodia and Singapore have been the first ASEAN members to deposit their respective instruments of ratification with the

¹¹ ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children, adopted by ASEAN heads of state/government at the 10th ASEAN Summit held in Vientiane, Lao PDR, on 29 December 2004.

ASEAN Secretary-General¹². The ACTIP will thus take effect within 30 days once the sixth ASEAN Member State deposits its instrument of ratification.

This has its pros and cons, as illustrated by the experience of implementing the transboundary haze pollution agreement. The agreement entered into force in 2003, one year after its adoption in 2002, and after the sixth ASEAN member had deposited its instrument of ratification with the ASEAN Secretary-General. Malaysia and Singapore were among the first to ratify the agreement, followed by Brunei, Myanmar, Vietnam and Thailand. Laos, Cambodia and the Philippines ratified the agreement in 2005, 2006, and 2010, respectively. Indonesia—long the source of transboundary haze pollution in archipelagic Southeast Asia—was the last ASEAN member to ratify the agreement in September 2014. Up to that point, ASEAN had no way of compelling implementation at the national level in the member states that had not yet ratified the agreement. Even in the present scenario, the central government in Indonesia is finding difficulty enforcing implementation at the local (provincial) levels.

The ACTIP implementation, once it enters into force, will need to draw from previous ASEAN experiences in enforcing its treaty or agreement provisions. Still, the ACTIP stands as a concretisation of ASEAN's long journey of deliberation to recognise trafficking in persons as a regional problem, and the commitment to find the most effective regional solutions for the problem. Hope for the ACTIP implementation lies in the fact that it is the first regionally binding instrument on trafficking in persons, with commitments for both punishment of traffickers as well as protection of the victims of trafficking “with full respect for their human rights”. It binds ASEAN members together—whether source, transit or destination—in implementation. ASEAN Secretary-General Le Luong Minh has observed that “the implementation of the ACTIP would serve as the legal basis for ASEAN Member States to fall back on when facing security challenges relevant to the problem of trafficking in persons.”¹³

However, the issue of the Bay of Bengal migrant crisis has further implications beyond addressing the trafficking dimension. The “Special Meeting on Irregular Migration in the Indian Ocean” convened in Thailand on 29 May 2015 as an initiative of the Thai Minister of Foreign Affairs, mainly with a view to discussing immediate international cooperation to rescue the Rohingyas still stranded at sea, and, in addition to developing comprehensive measures to prevent the smuggling of migrants, to discuss and address root causes of the issue at the country of origin.

Myanmar attended the conference in Thailand only on condition that the word “Rohingya” was not used¹⁴. Contrasted with the more focused or specific ambit of

¹² ASEAN Secretariat media release of 25 January 2016. <http://www.asean.org/cambodia-singapore-deposit-instrument-of-ratification-of-the-asean-convention-against-trafficking-in-persons/>.

¹³ Ibid.

¹⁴ Matthew Davies, 1 June 2015, “Rohingya crisis: nothing from nothing” for New Mandala online. <http://asiapacific.anu.edu.au/newmandala/2015/06/01/rohingya-crisis-nothing-from-nothing/>.

the AMMTC and the ACTIP, the two conferences convened in 2015 in the immediate aftermath of the May 2015 migrant crisis at sea were criticised for their inability to bring a solution to the crisis. However, it should be recognised that the conferences did result in agreements by the countries of destination to provide temporary shelter, and a role for ASEAN to coordinate responses to people trafficking across borders. Still, the Myanmar representative attending the 29 May 2015 conference in Thailand stated his country's position that denied sole culpability, citing serious internal challenges. Thus, discussions on addressing the root cause of the issue, and the more immediate priority of how to deal with the refugees in temporary shelters, were inconclusive¹⁵.

It is worth exploring the internal challenges that Myanmar often cites with regard to this issue, as it spans political, economic and social sectors; and any solution will inevitably impinge on national interests and national-level responsibilities. Additionally, there is an added security imperative that Myanmar needs to consider in the wider context of conflating the issue with religion, as further alienation of a community that is already marginalised may cause unwelcome radicalisation issues. Myanmar is in a uniquely delicate position today. It stands on the brink of transforming not only the government but also the way of governing towards more democratic and participatory practices. With the negotiations for a nationwide ceasefire and peace process still ongoing, Myanmar's leadership and its populace can ill afford an added threat of instability.

4. MYANMAR'S ROLE AND RESPONSES

The Rohingya issue has long presented a dilemma for successive administrations in Myanmar since colonial times, but especially so after post-independence. The issue at its bare bones can be described as periodic clashes between local communities of different social and religious backgrounds living in Rakhine (formerly known as Arakan) State, Myanmar's westernmost region, and the result of those clashes leading to periodic exoduses across land borders. Almost as soon as Burma gained independence, seeds of mistrust were sown over the issue of a separate state for the Rohingya. This was followed by an armed rebellion in the mid-1950s. There have been negative socialisation processes on both sides (Rakhines and Rohingya) over the decades, which have fed negative attitudes¹⁶. The situation was compounded in later years under the Burma Socialist Programme Party rule, as well as under military rule by the State Law and Order Restoration Council, later renamed the State Peace and Development Council. An auxiliary arm of the military, locally known under the Burmese acronym Na Sa Kha and comprising members of the police force, frontier forces and representatives of

¹⁵ Ibid.

¹⁶ Observation made by Kyaw Yin Hlaing at the Myanmar Forum 2016, 20 May 2016, Singapore. Summary report of the Forum is available at: <https://www.iseas.edu.sg/medias/event-highlights/item/3165-myanmar-forum-2016>.

the immigration department (then under the Ministry of Home Affairs), dealt with security issues in Rakhine State, which included monitoring the Rohingya communities there. Periodic crackdowns by corrupt Na Sa Kha officials led to cyclical exoduses of people¹⁷. In the past, responses to the exoduses were treated as an immigration issue to be dealt with internally by Myanmar, or bilaterally between Myanmar and neighbouring Bangladesh. This was the case for the exoduses of 1978 and 1991, which was settled bilaterally by the foreign ministers of Burma/Myanmar and Bangladesh in both instances. For the 1991-92 exodus, Myanmar agreed to accept returnees if they could state their village of residence and related residential particulars. UNHCR involvement was present in both 1978 and 1991. Even after Myanmar became an ASEAN member, the issue was not brought up at ASEAN's regional discussions until the 2009 exodus by sea met with difficulties seeking refuge in Thailand.

In June 2012, the Rohingya issue hit headlines again over the communal violence in Rakhine triggered by the rape of young Buddhist women by Rohingya Muslims. This quickly became conflated with race and religion issues, with rallying cries harking back to the Burman-Buddhist narrative of the pre-independence struggles, and also affecting Myanmar Muslims who are not Rohingya. Communal tensions and attendant violence spilled over to other parts of Myanmar in 2013 and even led to clashes between Malaysians and Myanmar migrant workers in Malaysia.

When news of a humanitarian crisis in the Andaman Sea first broke on 14 May 2015, comprehensive and sustained coverage of the issue by the media (outside of Myanmar) highlighted the complex and overlapping grey areas of responsibility across borders. This prompted a response by the then ruling Union Solidarity and Development Party (USDP) government in Myanmar as well as by the National League for Democracy (NLD), which was then the main opposition party. On 18 May 2015, USDP Minister U Soe Thein met with diplomats and the media on 18 May 2015, and the NLD issued a statement. U Soe Thein urged cooperation for socio-economic development in Rakhine State to address the roots of the problem, while the NLD called for conferring citizenship on the Rohingyas.

The reports on the role of people traffickers and human smugglers, and weak enforcement environments in border areas, have also highlighted how the Rohingyas' uncertain status have been exploited by various groups of perpetrators in not just Myanmar, but also Thailand and Malaysia. There was also an initial reluctance by these countries to accept the refugees, until this was shown up by the unilateral humanitarian actions of fishing communities in Aceh.

¹⁷ For a brief historical context of the issue, please refer to Tin Maung Maung Than and Moe Thuzar (2012), "Myanmar's Rohingya Dilemma", *ISEAS Perspective* #1/2012 (Singapore: ISEAS, July 2012). http://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_9July2012_Issue_1.pdf.

The inter-communal tensions between Rakhines and Rohingyas in 2012 led to some 140,000 people displaced in Rakhine State¹⁸, most of them without citizenship and living in fragile protection environments. UNHCR estimates that an additional 800,000 are also without citizenship in the northern part of Rakhine. These are mainly the Rohingyas, whom the Myanmar government consistently refers to as “Bengalis”. The USDP government started a phased project to grant citizenship to the Rohingyas (starting with 209 in September 2014) but there was controversy over the “verification process” to reflect the Bangladeshi origin of the Rohingyas¹⁹. Doubts among the community and anger among the Rakhines led to the stalling of this process. Under the NLD government, the process has started again. On 7 June 2016, a citizenship verification programme was launched at the state level in three predominantly Muslim townships in Rakhine, two of them IDP camps²⁰. This verification programme is a pilot project that picked up from the previous issuance of “green cards” under the 1982 Citizenship Law framework²¹.

As regards the situation of the displaced persons along the Thai-Myanmar border, most of them are in refugee camps or are undocumented workers in Thailand. To address the situation of undocumented workers, the governments of Myanmar and Thailand launched a process on 30 June 2014 to issue temporary registration cards for Myanmar workers in Thailand. This had the effect of thousands more entering Thailand in the hope of qualifying for registration, and the potential for legal work permits in future.

The Myanmar government’s responses to the various types of people movement are currently in a state of flux. The policies lacked coherence under the USDP government. The migrant worker issue is dealt with mainly by the Ministry of Labour, Employment and Social Security. Under the NLD government, immigration matters have recently been added to this ministry’s portfolio. However, it remains to be seen whether the ministry has jurisdiction over internally displaced persons (IDPs). With regard to labour mobility, the ministry provides inputs to the negotiations on liberalisation of skilled professionals which are led by the economic ministries in charge of ASEAN economic integration. Resettlement of IDPs comes under the mandate of the Ministry for Social Welfare, Relief and Resettlement, yet the political nature of the

¹⁸ Murray Hiebert and Phuong Nguyen, in an article of 9 June 2016, “*Aung San Suu Kyi Out to Find ‘Practical Solutions’ in Rakhine State, & The World Should Help*”, states that “about 125,000 Muslims were forced out of their villages into tightly controlled camps”. <https://www.csis.org/analysis/aung-san-suu-kyi-sets-out-find-%E2%80%9Cpractical-solutions%E2%80%9D-rakhine-state-and-world-should-help>.

¹⁹ Moe Thuzar, *Where History and Humanitarianism Collide: The Bay of Bengal “Migrant” Crisis*, Middle East Institute, American University, 28 March 2016.

²⁰ <http://www.dvb.no/news/citizenship-programme-launches-in-arakan/66863>.

²¹ <http://www.mmtimes.com/index.php/national-news/20746-pilot-census-lays-groundwork-for-citizenship-verification-in-rakhine.html>.

situation has occasioned multi-faceted interventions by different government-related organisations such as the Myanmar Peace Centre, which has now been dissolved and will be replaced by the NLD-led National Reconciliation and Peace Centre, and the Myanmar National Human Rights Commission, which is slowly recuperating after being rendered toothless during the USDP administration. The NLD government has taken over the ceasefire negotiations, and Daw Aung San Suu Kyi (hitherto referred as Daw Suu), in her capacity as State Councillor, has proposed a “21st century Panglong Conference”, echoing the spirit and commitment of the first Panglong Conference convened in 1947 by her father, General Aung San, who obtained the agreement of ethnic leaders in Burma’s move for independence by a commitment to provide autonomy to the ‘frontier states’²². International humanitarian organisations and related UN agencies have provided humanitarian assistance in conflict areas—and received some criticism—in assisting the work of the Myanmar government, as well as in responding to those in most urgent need among the affected communities.

5. WHAT POSSIBLE SOLUTIONS EXIST?

There is also an emerging hope that a national-level committee led by Daw Suu can start tackling the issue of re-establishing trust through much-needed socio-economic development in Rakhine State. A 27-member Central Committee for the Implementation of Peace, Stability and Development of Rakhine State was formed on 30 May 2016, with Daw Suu at the helm, comprising a high-level team of ministers from both union and state levels²³. The USDP government had attempted a similar high-level initiative in 2012 following the report of the investigative commission on the Rakhine communal violence.

The present Central Committee is supported by several working committees, including those involved in immigration and citizenship issues²⁴. Committee members including Union Ministers for the State Counsellor Office; Labour, Immigration and Population; Education; Health and Sports; Social Welfare, Relief and Resettlement; and the Rakhine State Chief Minister have undertaken an initial inspection visit to the IDP areas in Rakhine State and have also met with community leaders²⁵.

²² <http://www.mmtimes.com/index.php/national-news/20001-nld-leader-s-physician-tipped-to-take-part-in-peace-process.html>.

²³ President’s Office Notification 23/2016 issued 30 May 2016. <http://www.president-office.gov.mm/en/?q=briefing-room/notifications/2016/06/01/id-6378>.

²⁴ President’s Office Notification 24/2016 issued 30 May 2016. <http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/06/01/id-6379>.

²⁵ <http://www.myanmaritv.com/news/rakhine-dev%E2%80%99t-measures-union-ministers-met-locals-visit-idp-camps>.

Still, despite the domestic nature of where the issue originated, the situation requires a regional response. There is a transboundary dimension; what has happened in one country has spilled over to other countries with knock-on effects in these countries. Thus, ASEAN does have a role to play in mounting a regional response that will complement and support domestic moves.

Using the ASEAN framework does not necessarily mean having a group of officials sitting around the table dissecting semantics. It requires sitting down to look at the very real challenges and constraints in the country of origin, and working out coordinated, multi-pronged/multi-dimensional responses to engender lasting solutions. This may sound somewhat idealistic, given the decades-long nature of the problem. However, the process needs to start somewhere, and thus using current ASEAN arrangements and mechanisms as a starting point may well be as good an approach as any other. Despite the differing levels of comfort among the ASEAN members to deal with issues affecting sovereignty and national responsibility, it is important to emphasise the extent to which there is a shared interest to tackle this, and how regional consultations can help respond to this shared interest. The response to expedite the ACTIP formulation and adoption, with an attendant regional action plan, provides a good illustration.

ASEAN and Myanmar will not stand alone in coming up with solutions. The UNHCR's involvement—and indeed, those of other partners—will be important inputs to the process. While UNHCR's primary purpose and responsibility is to ensure and safeguard the rights and wellbeing of refugees, its ultimate goal is to find durable solutions that will allow them to rebuild their lives, in dignity and peace. To this end, UNHCR's role and responses are possible in working towards a situation where voluntary repatriation is finally possible.

Given the intractable nature of conflicts around the world, voluntary repatriation seems an increasingly difficult and even idealistic objective to work towards. However, in Southeast Asia, Myanmar could be an exception. Change has definitely begun in Myanmar; it has embarked on a massive democratic transformation process and there are more and more indications that this process is irreversible, as exemplified by the smooth transition from a military-backed to civilian government on 30 March 2016. However, while the USDP government and eight of sixteen ethnic armed groups have signed a nationwide ceasefire agreement in October 2015, negotiations with the remaining groups still need to continue. The socio-economic infrastructure is uneven at best, and tensions continue in Rakhine State. Therefore, the general situation in Myanmar is not yet conducive for repatriation, and much work is needed to bridge gaps in the socio-economic development as well as in perceptions and attitudes. This may have been one of the motivating factors for the formation of the NLD government's Central Committee to deal with the issue.

There may be some potential for building local civil society capacity to take on this bridging role in the context of post-conflict peace-building and reconciliation.

Myanmar has a long-standing history of social collective action to fill the gaps in areas that weak, ineffectual government responses (or authoritarian limitations) are unable (or unwilling) to deliver, and this has been demonstrated with local responses which were first observed in the field for the humanitarian relief of survivors in the 2008 Cyclone Nargis devastation. There are also opportunities to build on the nascent strengths of civil society groups which attempt to facilitate inter-faith dialogue and advocate against hate speech, as well as those which are already participating in national, bilateral and regional discussions on cross-border migrant labour issues.

The refugee/migrant issue in Southeast Asia brings forth some sobering thoughts. The different terms used to describe the situation all point to the politicised nature of this issue, and how different governments and stakeholders want to frame the situation. Migration occurs either for economic or political reasons; the latter also includes fleeing from conflict situations. In any situation, a response is required, and even more so a humanitarian response in crisis instances such as Southeast Asian countries have witnessed in 2015. Whatever the narrative, or the terms used to describe them, the people now in camps in third countries around the region are victims of mismanagement and mistrust. These are issues that require the country of origin to develop a national-level response, centred on trust-building. The tendency to conflate the issue with religion reflects that societal perceptions are a combination of how the topic has been discussed in the media, including the national narrative.

Emerging stories on brokers trying to cash in on the uncertain situation also point to the weak enforcement environment that currently exists. The ACTIP's adoption in November 2015 is to be welcomed but it has not yet entered into force, and, even when it does, ASEAN may still find it challenging to compel signatory states who have not yet ratified the convention to implement its provisions.

It will be naive to expect overnight or rapid changes in attitudes and responses to this issue. Because the issue is decades-long, and because there is a trust deficit, any response needs to take a long-term approach, and stakeholders will need to continue working on it long after public attention has moved on to the next headline. A glimmer of hope in this rather bleak situation can be found in the fact that the NLD government is aware of the importance of performance legitimacy—not only within the confines of national boundaries, but also as serious participants in regional and international affairs. As mentioned earlier in this paper, it has started taking steps to address the situation on the ground.

Myanmar's track record with ASEAN in dealing with humanitarian crises can provide a workable *modus vivendi* for all parties concerned. Looking at how the response to the 2008 Cyclone Nargis catalysed new ways of working for ASEAN to bring humanitarian assistance to Myanmar, ASEAN and Myanmar may need to now look beyond Nargis, building on what had worked in 2008, to find new ways of tackling multi-dimensional humanitarian crises. ASEAN's "quiet diplomacy" approach may

still prove workable, as it emphasises the consultative element and is sensitive to the constraints of sovereignty and non-interference.

Thus, working with Myanmar through the ASEAN mechanism on this issue will probably require an innovative approach to tackling difficult issues on the ground, including addressing negative attitudes ingrained over decades. The events of 2015 show that Myanmar—a newish entrant to the global community out of decades of isolation and against the backdrop of its political transition—will need to deal with this new dimension to its foreign policy which requires dealing with political challenges from neighbours who had been supportive through ASEAN’s “constructive engagement” policy. Daw Aung San Suu Kyi’s appointment to the foreign affairs portfolio is probably the best impetus for both ASEAN and the international community to dialogue with Myanmar through the ASEAN Way of quiet diplomacy.

They will not be dealing with neophytes. Through ASEAN mechanisms and the collaboration with different ASEAN member states, Myanmar has learned to manage the interests of different agencies and stakeholders in the country as well as interface with the international donor community and partners. However, as the ongoing tensions in Rakhine (and Kachin States) reflect, only time will tell whether opening up through ASEAN has truly facilitated Myanmar’s efforts for national reconciliation and change, and whether ASEAN mechanisms in managing movements of people will help secure a prosperous future for Myanmar.

Ms. Moe Thuzar is ISEAS Fellow and a key member of the Myanmar Studies Programme at ISEAS-Yusof Ishak Institute. She concurrently holds a position as Lead Researcher (socio-cultural) at the Institute’s ASEAN Studies Centre. Moe provides analyses (on ASEAN, Myanmar) for Channel News Asia’s news programmes. She was also involved in advising Myanmar’s ASEAN chairmanship in 2014. Prior to joining ISEAS in 2008, Moe headed the Human Development Unit at the ASEAN Secretariat, which assisted regional cooperation in labour, education, youth, women, social welfare, poverty and rural development, health, and civil service matters. As Lead Researcher (socio-cultural) at ASEAN Studies Centre at ISEAS since 2008, Moe assesses implementation of regional priorities in the areas under the ASEAN Socio-Cultural Community. Under her Myanmar research, Moe monitors the country’s transition, and its foreign policy.

Internal Displacement in the Philippines

Jose Jowel Canuday

Prospects for an immediate resumption of peace negotiations and cessation of hostilities between the government forces and a range of rebel groups in the Philippines are positive at the outset of the administration of President Rodrigo Duterte. In less than a week following the presidential elections on 9 May 2016 that he won by a wide electoral margin and before his proclamation as president-elect, Mr. Duterte and the leadership of various rebel factions touched base through informal but written communications¹ or by way of trusted emissaries.² The swiftness of these engagements is stunning compared to the more cautious but slow-developing peace initiatives that only gained steam deep into the six-year terms of the preceding five administrations from 1986 onwards.

Notwithstanding the extraordinarily robust peace overtures initiated by all sides of the armed divide in the early months of the Duterte presidency, the pattern of previous peace processes does not necessarily guarantee an end to internal civilian displacement in the conflicted parts of the country. Displacements induced by unabated episodes of armed conflicts unfolded even at a stage when government peace negotiations with any of the rebel forces were at their most productive. With the recent past as a gauge, the probability of continuing internal displacement events remains high especially when the contextual forces driving them are factored into the analysis.

1. SCALE AND VOLATILITY OF DISPLACEMENT EVENTS

Displacement monitoring in the country in the past five years illustrates a highly volatile state of affairs, characterized by a constantly shifting count of internally displaced persons (IDP). Every year, fresh episodes of armed conflicts and hazard-induced

¹ Carolyn O. Arguillas, “MILF’s Murad to Duterte: ‘We will partner with you and your administration’,” 15 May 2016, MindaNews. Accessed from <http://www.mindanews.com/peace-process/2016/05/15/milfs-murad-to-duterte-we-will-partner-with-you-and-your-administration/>.

² Agence France Presse, “Duterte meets Senior Communist Member,” 20 May 2016, <http://news.abs-cbn.com/nation/05/19/16/duterte-meets-senior-communist-leader>; National Democratic Front of the Philippines International Information Office, “Prospects Under a Duterte Presidency,” 15 May 2016, <http://www.ndfp.org/prospects-duterte-presidency/>.

disasters either add to the number of IDPs from previous events or replace those who have already returned home due to the prevalence of armed encounters and high frequency of disaster events precipitated by geological and weather related-hazards. On some occasions, conflict- and disaster-induced forced migration events intersect, revealing the complexity of the internal displacement situation in the country and the challenging roadblocks to implementing long-term solutions.

A string of insurgency-related armed encounters spurred the displacement of about 178,000 persons in 2012, increasing to 327,000 displaced persons in 2013³. These displacements unfolded even as government peace negotiations with the Moro Islamic Liberation Front (MILF), one of the major ethnic Muslim secessionist groups in Mindanao, was gaining ground following the historic signing of the Framework Agreement on the Bangsamoro (FAB) in 2012. While the sharp reduction of government and MILF armed confrontations helped precipitate a significant drop in the number of armed conflict-induced displacements to 123,000 persons in 2014, this backed up again to 207,000 displaced persons in 2015.⁴ The displacement upswing was recorded following a new round of heightened government anti-insurgency armed offensives in early 2015 against a group of rebels that splintered from the MILF in the summer of that year. In another illustration of the volatility of displacement events, the number of conflict-induced IDPs in the first quarter of 2016 alone has already reached 125,790, more than half the number of those displaced in all of 2015.⁵

Beyond conflict-induced forcible migration, the magnitude of displacements caused by disasters is far more considerable, numbering about 3.9 million persons in 2012⁶ and then rising further to 4 million persons in 2013⁷ following a succession of earthquakes, flooding, and typhoon events. The following year, the IDP count in the Philippines further increased to 5.3 million persons as a series of new calamities, triggered by a volcanic eruption and extreme weather events, swept through some parts of the country in the second half of the year.⁸ Disaster-induced displacements declined but remained uncomfortably high in 2015 with 2.2 million people displaced.⁹ There were

³ Internal Displacement Monitoring Centre, 31 December 2013, "Philippines: Internal displacement in brief," <http://www.internal-displacement.org/south-and-south-east-asia/philippines/summary>.

⁴ Humanitarian Country Team (HCT) in the Philippines, "Typhoon Haiyan (Yolanda) Final Periodic Monitoring Report November 2013 to August 2014," 31 August 2014, p. 12, <http://reliefweb.int/report/philippines/typhoon-haiyan-yolanda-final-periodic-monitoring-report-november-2013-august-2014>.

⁵ National Disaster Risk Reduction and Management Council, Update SiteRep No. 03: Internally Displaced Persons Due to Series of Armed Conflicts in Mindanao, 13 March 2016.

⁶ IDMC Global Estimates 2014: People Displaced by Disasters, Geneva: Norwegian Refugee Council, p. 22.

⁷ *Ibid.*, p. 19.

⁸ IDMC, Philippines IDP Figures Analysis, Accessed from <http://www.internal-displacement.org/south-and-south-east-asia/philippines/figures-analysis>.

⁹ IDMC, Global Report on Displacement May 2016, p. 16.

no fresh accounts of disaster-induced displacements in the first quarter of 2016 but past monitoring indicate that such a scenario substantially changes for the worse once the typhoon season starts in the second half of a year. The disaster that struck this period came in the form of a long dry-spell generated by the El Nino weather event. Towards the end of May 2016, lack of rains left a trail of agricultural destruction that affected some 285,000 farmers and devastated 379,000 hectare of farmlands across the country even as humanitarian groups warn of displacements from a projected extraordinarily higher amount of rainfall precipitated by the La Nina weather phenomenon.¹⁰

Conflict-induced and Disaster-induced Displacements in the Philippines.

	Conflict-induced	Disaster-induced
2012	178,000**	3,859,000**
2013	327,000*	4,100,000**
2014	123,000	5,787,000*
2015	207,000	2,221,000*
2016 (as of March)	125,790**	-

Sources: HCT Philippines, UNHCR, *IDMC, **Philippines Protection Cluster

Humanitarian groups working in the Philippines pointed to one peculiar characteristic of the local IDP experience in both conflict- and hazard-based disaster events. While a significant number of IDPs seek refuge at evacuation centres set up by the government and humanitarian networks, some of the displaced turn to host communities or relatives living outside the immediate zones of conflict or disasters. Other IDPs do the reverse, initially starting out from host families or communities before moving into the evacuation centres. As a result, several of these families were left unaccounted for¹¹ and on some occasions denied assistance by the government for not appearing on the initial displacement list. Based on limited accounting initiated by the United Nations Office for the Coordination of Humanitarian Affairs, some 3,400 IDPs in Maguindanao were tracked living with friends and relatives; some 7,700 IDPs in Zamboanga City sought shelter from host communities and families; while those who can afford to, rent homes.¹²

¹⁰ OCHA, Philippines: El Nino and La Nina Snapshot (as of 31 May 2016), <http://reliefweb.int/report/philippines/philippines-el-ni-o-and-la-ni-snapshot-31-may-2016>.

¹¹ IDMC, Philippines IDP Figures Analysis, accessed from <http://www.internal-displacement.org/south-and-south-east-asia/philippines/figures-analysis>.

¹² Figures: Maguindanao Displacement, Zamboanga Displacement. Philippine Humanitarian Bulletin, Issue 3, 1-31 March 2016. <http://ochaimphil.github.io/Humanitarian-Bulletin/HumBulletinMarch2016.html>.

2. CONFLICT-INDUCED DISPLACEMENT AND FRAGILE PEACE ACCORDS

Conflict-induced displacements in the Philippines are primarily concentrated in Mindanao where the government has stationed a significant portion of the Philippine military against a wide array of rebel forces in the past five decades. In the early 1970s, the government of President Ferdinand Marcos rolled out a larger share of military resources in an area currently referred to as the Autonomous Region in Muslim Mindanao (ARMM) where an array of ethnic Muslim secessionist forces had been operating. Documentation of the seventies' war was rather poor but a few published reports indicated that the number of persons displaced by fierce gun battles between government forces and the Moro National Liberation Front (MNLF) from the early 1970s to 1979 ranges from about 500,000 to 2 million people.¹³

Under the presidency of Fidel Ramos, the government and the MNLF struck a Final Peace Agreement (FPA) agreement in 1996 but a year later a theatre of war between state forces and the MILF opened up in Central Mindanao. As the implementation of the government-MNLF peace settlement gained headway, armed encounters between the government and MILF forces raged on, displacing some 75,000 persons¹⁴. Both sides finally committed themselves to a ceasefire agreement and on-and-off peace negotiations from 1997 that will be discussed later. Following the ascendance of Gloria Macapagal Arroyo to the presidency, the peace process with the MNLF itself unravelled in 2002, leading to a new decade of government hostilities particularly with a faction led by founding chair and then ARMM governor Nur Misuari whose followers seized but was repulsed from a government compound in Zamboanga City. Those events set the stage for fierce street gun-battles between a large contingent of government troops and a band of 200 MNLF rebels that encroached upon a densely populated Zamboanga settlement in 2013, displacing about 118,819 persons.¹⁵

The tense relationship with the MILF precipitated several episodes of armed confrontation, and forced migration, which include the evacuation of about a million

¹³ Aijaz Ahmed, "The War Against the Muslims," in *Rebels, Warlords and Ulama: A Reader on Muslim Separatism and the War in Southern Philippines*, 1999, Institute of Popular Democracy, p. 26.

¹⁴ Norwegian Refugee Council/Global IDP Project, Profile of Internal Displacement: Philippines: Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council (as of 27 March, 2001), Geneva: Norwegian Refugee Council, p. 12.

¹⁵ NDRRMC, Situational Report re: Emergency Management for the Displaced Persons Resulting from Armed Conflict in Zamboanga City and Basilan Province, 25 September 2013.

persons following the “all-out war” declaration by President Joseph Estrada in 2001¹⁶ and the displacement of 400,000 persons amid the “war on terror” unleashed by President Macapagal-Arroyo in 2003.¹⁷

Notwithstanding these twin violent events, the fragile government and MILF peace processes reached a breakthrough with the inking of a Memorandum Agreement on Ancestral Domain in 2008 during the Arroyo administration, only to be thwarted again by critical forces. A popular public backlash highlighted by formal constitutional challenges to the accord filed before the Philippine Supreme Court caught the government and MILF peace panels unprepared. Consequently, the judiciary’s decision to restrain the implementation of the pact on constitutional ground precipitated violent responses from some factions of the MILF, leading to renewed hostilities and the displacement of about 220,000 persons in Central Mindanao.¹⁸

Two years later, the peace process was yet again revived, leading to another breakthrough in 2012 with the signing of a Framework Agreement on the Bangsamoro. Both sides expanded the initial accord into a Comprehensive Agreement on the Bangsamoro in 2014 but at that point sharp internal MILF disagreement on the terms of the pact splintered the group, precipitating the emergence of Bangsamoro Islamic Freedom Fighters (BIFF). The split reconfigured the disposition of government forces in Central Mindanao from a force that essentially targets the MILF to a force that pursues the BIFF. In a matter of hours following the signing of a “Normalization Annex” to the Bangsamoro accord in January 2014, the Armed Forces of the Philippines launched “policing operations” into suspected enclaves of the BIFF.¹⁹ The incident resulted in waves of displacement throughout the year, resulting in the displacement of 25,000 civilians by government-BIFF conflicts in Maguindanao. Members of the BIFF carried on with the secessionist fight against government forces, leading to renewed episodes of civilian displacements. UNHCR and the Philippines Protection Cluster Mindanao aggregated the total number of persons displaced by various types of armed conflicts in 2014 to 123,779, with some 77,656 of them having been displaced since fleeing from hostilities in 2012, the year when the government and the MILF reached their historic accord.

¹⁶ Norwegian Refugee Council/Global IDP Project, Profile of Internal Displacement: Philippines: Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council (as of 18 November 2002), Geneva: Norwegian Refugee Council, p. 39.

¹⁷ Norwegian Refugee Council/Global IDP Project, Profile of Internal Displacement: Philippines: Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council (as of 13 August 2003), Geneva: Norwegian Refugee Council, p. 26.

¹⁸ Internal Displacement Monitoring Centre, Philippines: displacement increases as Mindanao’s peace process stumbles on, 19 August, p. 1.

¹⁹ Philippines Mindanao Protection Cluster and UNHCR, 2014 Annual Mindanao Displacement Dashboard, December 2014.

Not a single direct armed encounter between government and MILF forces occurred from the time that the peace accord was signed in late 2012 to December 2014²⁰ but displacements triggered by armed confrontations with other rebel forces and types of conflicts continued, underscoring the unevenness of the impact of the peace process. While peace is sustained with one rebel group actively talking with the government peace panels, Philippine authorities and other rebel factions carried on with shooting wars, generating new incidents of mass civilian displacements. The substantive gains of the Bangsamoro peace agreement hit a critical point following the slaying of 44 members of the Special Armed Forces of the Philippine National Police on January 25, 2015 in a three-way armed encounter that also included members of the MILF and the BIFF. The firefight spread out into the wetlands of Central Mindanao and its populated surroundings, displacing about 120,000 persons from February 2015 to June 2015.²¹ The aggregated total displacements around that period amounted to 220,000 persons, some of whom were displaced by other forms of violence in Mindanao.

On another front, government troopers and state-sanctioned paramilitary forces had launched offensives against suspected stronghold of the communist-led National Democratic Front (NDF) and its armed wing, the New People's Army (NPA), in the hinterland areas of the Caraga, Zamboanga, Davao, and Soccsargen regions.²² These insurgency and counter-insurgency wars, however, ended up displacing various groups of indigenous peoples who regard those regions' highland areas as part of their ancestral domain. While the displacement trend in NPA sites was relatively low at 1,045 persons in 2013, the number of displaced doubled to 3,345 persons in 2014,²³ and spiked sharply to 17,035 persons in 2015 with the advent of intensifying "police" operations.

Humanitarian groups characterized these counter-insurgency operations in NPA areas as low intensity, engaging mainly local indigenous peoples and peasant-based paramilitary, police, and limited military formations.²⁴ In 2015, areas more vulnerable to displacement induced by armed encounters between government soldiers and the NPA included the towns of Liangga and Marihatag in Surigao del Sur, one of the poorest areas populated by indigenous people in Mindanao.

²⁰ Carolyn Arguillas, Presentation: Media Round Table on the BBL, Cagayan de Oro City, 21 February 2015.

²¹ Autonomous Region in Muslim Mindanao Official Website, "Maguindanao IDPs Back to their Homes," 23 June 2015, <http://www.armm.gov.ph/maguindanao-idps-back-to-their-homes/>.

²² IDMC, Living in the Shadows: Displaced Lumads Locked in the Cycle of Poverty, <http://ochaimphil.github.io/Humanitarian-Bulletin/HumBulletinMarch2016.html>.

²³ Philippines Mindanao Protection Cluster and UNHCR, 2014 Annual Mindanao Displacement Dashboard, December 2014, p. 2.

²⁴ Ibid.

3. DISPLACEMENTS AND MASSIVE OFFENSIVES AGAINST KIDNAP FOR RANSOM GROUPS

Massive military offensives periodically launched against kidnap-for-ransom groups holed up in the jungles of Sulu and Basilan provinces also caused the displacement of the area's ethnic Muslim residents. Philippine military, media, and humanitarian network reports imply that these groups form part of a political force that banded into an internationally affiliated local network of terrorist organizations called the Abu Sayyaf despite the lack of clear grounded verifications of the nature of the group.

In recent years, the media and humanitarian groups echoed the military's claims of Abu Sayyaf links to Al Qaeda and recently to the so-called Islamic State in Iraq and Syria (ISIS). Moreover, humanitarian groups' reports picked up military and social media claims of the rise of an ISIS-supporting group called the Ansar Khalifa in Central Mindanao without clearer checks. While the identities of these armed groups remain unclear, military offensives against them have also induced massive displacements. In 2015, the Mindanao Protection Cluster reported that armed encounters between the military and suspected Abu Sayyaf members had displaced 20,421 persons in the island provinces of Sulu and Basilan.²⁵

4. DISPLACEMENT DUE TO FAMILY FEUDING

Feuds between heavily armed families, a conflict event locally known as *rido*, also spawned massive civilian displacements in areas already afflicted by secessionist violence. These types of feuds displaced 19,833 persons in the provinces of North Cotabato and Maguindanao in Central Mindanao, and Basilan in Western Mindanao in 2014. Rido displaced at least 11,000 more persons in Central Mindanao in 2015. Factors triggering a rido are varied, ranging from long-simmering but unresolved land disputes to political rivalries among others. Some feuds last for years, if not decades, passed on across generations of family warriors. Complicating rido-generated violence and displacements is the breakdown of cultural relationships among Moro ethnic groups and the Christian and Muslim religious divide. On some occasions, rido draw in and interplay with the operations of more organized armed groups such as the MILF, MNLF, BIFF, local military militias, the NPA, the police, and the Philippine Armed Forces.²⁶

²⁵ UNHCR and Philippines Protection Cluster Mindanao, Displacement Dashboard, Mindanao Philippines, Forced Displacement Annual Report, 2015, p. 5.

²⁶ Canuday, Jose Jowel, "Big and Small Wars: The Interplay of Large Scale and Community Conflicts in Central Mindanao," in *Rido: Conflict and Conflict Management in Mindanao*, 2014, Quezon City: Ateneo de Manila University, pp. 220-251.

5. DISASTER-INDUCED DISPLACEMENTS

The Philippines, China, the United States, Indonesia, and India form the top five countries frequently battered by disasters stemming from natural hazards within the last decade, according to the Centre for Research on the Epidemiology of Disasters (CRED) in a 2014 report. A 2016 Climate Change Vulnerability Index listed the Philippines on top of the more vulnerable countries in the world while the 2016 Global Climate Risk Index suggests a new classification for the Philippines as one of the countries, alongside Pakistan and India, continuously threatened by extreme weather events, being struck by an average of eight to nine typhoons a year.²⁷

Hazard-related disasters cut across coastal and riverside communities in the Philippines. During the past five years, the country's eastern seaboard and central islands, in particular the coastal cities and towns of Eastern and Central Visayas, Northeastern Mindanao as well as the central plains of Central Luzon, bore the brunt of hazard-related disasters. Informal settlements in low-lying communities were rendered most vulnerable to displacements and deaths by drowning from flooding.

In 2012, the country was battered by 20 hazard-related disasters,²⁸ with severe flooding and typhoons as the main drivers of displacements. Between June to August 2012, flooding brought about by monsoon and typhoon hazards displaced about 1.5 million people in the Visayas area and the national capital region of Metro Manila.²⁹ The Norwegian Internal Displacement Monitoring Centre ranked the event as the world's seventh largest incident of mass displacement that year, three notches higher than the displacement effects of Hurricane Sandy in the East Coast, Appalachians, and Mid-west regions of the United States.³⁰ Nearly four months later, in December 2012, Typhoon Bopha, known as Typhoon Pablo in the Philippines, affected about 6.2 million persons nationwide³¹ and displaced some 1.9 million persons in the Northeastern and Southeastern regions of Mindanao.³² IDMC recorded the incident as the world's fifth largest mass displacement event of the year, a notch lower than the monsoon-generated displacement events in Pakistan.

²⁷ Sönke Kreft, David Eckstein, Lukas Dorsch and Livia Fischer, "Global Climate Risk Index 2016: Who Suffers Most From Extreme Weather Events? Weather-related Loss Events in 2014 and 1995 to 2014," 2015, Bonn: Germanwatch, p. 8.

²⁸ Centre for Research on the Epidemiology of Disasters (CRED), 2012 Disasters and Numbers, Accessed from http://www.cred.be/sites/default/files/Confpress_2013.pdf.

²⁹ IDMC, The Largest Mass Displacement Events of 2012, p. 16.

³⁰ Ibid.

³¹ NDRRMC, Situational Report re: Effects of Typhoon Bopha (Pablo), 25 December 2013. Accessed from <http://www.ndrrmc.gov.ph/index.php/21-disaster-events/1344-situational-report-re-effects-of-typhoon-pablo-bopha>.

³² NDRRMC, SiteRep. No 38: Effects of Typhoon "Pablo" (Bopha), 25 December 2012.

Displacement events were far worse in 2013 with the country facing 16 but far more devastating hazard-related disasters. On October 15, an earthquake measuring a magnitude of 7.2 on the Richter scale devastated homes and historical churches, displacing 344,300 persons, with 80 percent living in makeshift tents in Bohol province and nearby populated island communities.³³ Less than a month later, Typhoon Haiyan (Yolanda), the strongest typhoon on record, hit landfall, displacing 4.095 million persons across the heavily populated cities, towns, and villages in the island provinces of Leyte, Samar, Cebu, and Ilo-ilo³⁴. The calamity was marked the single largest displacement event in 2013 based on comparative disaster records produced by IDMC.

In 2014, the eruption of Mayon Volcano in Albay province displaced about 43,872 persons³⁵ in September. A succession of two devastating typhoons in December, Hagupit (Ruby) and Janmi (Seniang), swept through several other parts of the country. On December 6, Typhoon Hagupit hit landfall, displacing a total of 100,264 persons in the Northern, Eastern and Western Samar provinces, areas that were partly affected by Typhoon Haiyan the previous year. Typhoon Hagupit also displaced people residing in the string of provinces in Laguna and Quezon provinces in the Southern Luzon region, and Agusan del Sur and Surigao del Sur provinces in the Caraga region of Mindanao. On December 28, a torrent of floods, landslides, sink holes and a storm surge unleashed by Typhoon Janmi displaced 69,133 persons mainly in the provinces covering the Caraga region as well as six other provinces in Northern Mindanao, Davao, eastern Visayas, and western Visayas regions.

In 2015, about nine of fourteen typhoons that swept through the Philippines made landfall and left a trail of devastation in various parts of the country.³⁶ Heavy rains spawned by a large but unusually slow-moving Category 3 typhoon, Typhoon Koppu, locally known as Lando, flooded and displaced about 1 million people in central Luzon on October 21.³⁷ The second most powerful typhoon, Melor (known locally as Nona), also precipitated severe flooding and strong winds, displacing 287,227 persons and devastating 279,000 houses after making a string of landfalls in the island provinces in

³³ Philippine Humanitarian Country Team, Philippines: Bohol Earthquake Action Plan October 2013.

³⁴ NDRRMC, Final Report re: Effects of “Typhoon Yolanda” (Haiyan), 6-9 November 2013.

³⁵ OCHA, Philippines: Mayon Volcano, 18 September 2014, http://reliefweb.int/sites/reliefweb.int/files/resources/PHL105_Volcano_Mayon%20AL3_A4_v3_P_20140919.pdf.

³⁶ OCHA, Philippines: 2015 in Retrospect Snapshot. <http://reliefweb.int/map/philippines/philippines-2015-retrospect-snapshot>.

³⁷ United Nations Office for the Coordination of Humanitarian Affairs, Emergency health assistance following Typhoon Koppu: Typhoon Koppu and Central Emergency Response Fund (CERF), Philippine Humanitarian Bulletin, Issue 3: 1 - 31 March 2016. Accessed from <http://ochaimphil.github.io/Humanitarian-Bulletin/HumBulletinMarch2016.html#sthash.IPMKb13B.dpuf>.

the Visayas starting on December 14. An United Nations Office for the Coordination of Humanitarian Affairs (OCHA) report noted that Philippine authorities were still in the process of assessing the damages wrought by Mevor when Tropical Depression Onyok dumped heavy rains across wide swaths of areas in Mindanao. The government pre-emptively evacuated some 18,481 persons from the flood-prone areas of Northern Mindanao, Southern Mindanao, and the Caraga regions on December 18. While no typhoon, heavy rainfall, or flooding has cut through the country in the early months of 2016, some provinces in Mindanao began to feel the effects of the El Niño phenomenon with below-normal rainfall as drought and dry spells set in.³⁸

6. INTERSECTING DISASTERS

In some parts of the Philippines, displacements induced by armed conflicts and disasters intersected, complicating interventions on the ground. The 2012 Typhoon Bopha, known in the Philippines as Typhoon Pablo, crossed hinterland areas that were considered as a hotbed of communist insurgency in the provinces of Davao Oriental and Compostela Valley. Typhoon Hagupit in 2014 also swept through areas where communist rebels operate in the provinces of Eastern and Northern Samar. Furthermore, flooding inundated the makeshift tents set up by IDPs hardest hit by armed conflicts in Mindanao.

In 2014, IDPs who fled from the Zamboanga City violence in October 2014 had to move as floodwaters swept through their temporary shelters. In April 2016, some 23,000 more IDPs who remained in temporary shelters were forced into “the position of competing for water they need” as the effects of the long dry spell triggered by the El Niño phenomena were felt widely across 32 percent of the country’s 81 provinces.³⁹

The onset of the rainy season in June 2015 yet again affected residents returning from the January and February three-way armed confrontation between government forces, the BIFF, and the MILF in the low-lying areas of Maguindanao and nearby provinces. UNHCR noted that yearly floods inundating these conflict zones displaced up to 100,000 persons.⁴⁰

³⁸ OCHA, Philippines: El Niño Snapshot (as of 29 February 2016), 1 March 2016, <http://reliefweb.int/report/philippines/philippines-el-ni-o-snapshot-29-february-2016>.

³⁹ OCHA, “Sarangani Farmers Go Hungry in Drought”, *Humanitarian Philippines*, Issue 4, 1 to 30 April 2016. Accessed from <http://reliefweb.int/report/philippines/philippines-humanitarian-bulletin-issue-4-1-30-april-2016>.

⁴⁰ United Nations High Commissioner on Refugees and Philippines Protection Cluster, 2015 Mid-year: Displacement Dashboard.

The intersection of conflict-induced and hazard-related disasters complicates recovery and reconstruction, exposing IDPs to increased risk and vulnerability. In areas hit hardest by an intersection of disasters are impoverished IDPs who are already underserved by humanitarian assistance, frequently affected by armed conflicts and devastating hazard-related disasters, and seeking refuge in remote areas with poor access to information and emergency relief.

7. COMPLICATING ISSUES: RELIEF, RETURN, AND DURABLE SOLUTIONS

Government action on displacement events induced by conflicts and hazard-related disasters are underpinned by two intervention systems: a national disaster response network coordinated by the National Disaster Risk Reduction and Management Council (NDRRMC) and local government units. Depending on the scale of displacement, the national disaster response team intervenes by mobilizing the Department of Social Welfare and Development as well as the police and the military. Local government councils are also empowered to declare a state of emergency that would authorise local executives and aid workers to tap into a reserved emergency fund for swift distribution of relief to the displaced and other affected persons.

The government's national and local disaster risk reduction and emergency response system, however, failed spectacularly in areas hardest hit by Typhoon Haiyan. Local first responders were inundated while assistance coming from the national government was in disarray. Post-disaster analysis noted that disaster relief and subsequent recovery efforts had not only faltered but were "highly politicized," stained by electoral rivalries and political ambitions.⁴¹ Nonetheless, a contingent of international humanitarian groups linked to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) intervened in areas most prone to conflict and hazard-related disaster-induced displacement.

Some cities affected by the displacements adopted an inter-agency committee approach that included not only the local government agencies but also representatives from international humanitarian groups, upon strong lobbying by UN agencies and independent bodies such as the Global Protection Cluster. In Zamboanga City, for instance, the mayor appointed key city executives and invited local legislators, the police, the military, and civil society groups, and allowed international humanitarian groups, particularly the OCHA, UNHCR and the International Organization on Migration, to comprise the inter-agency group.

⁴¹ Angela Sherwood, Megan Bradley, Lorenza Rossi, Rufa Guiam and Bradley Mellicker, *Resolving Post-Disaster Displacement: Insights from the Philippines after Typhoon Haiyan (Yolanda)*, 2015, p. 27.

Notwithstanding these inclusive set-ups, other humanitarian groups continue to express concern over repeated Philippine government failures in delivering durable solutions to risk-exposed and more vulnerable persons who remain in temporary shelters months and years after displacement. IDMC reported that six months after the Yolanda disaster, about 200,000 persons were still living in temporary shelters⁴². OCHA also observed a similar trend in Zamboanga where, about a year after the conflict, 65,000 persons remained in overcrowded and squalid evacuation centres and temporary shelters.⁴³ Reports also noted that some IDPs have died in Zamboanga's overcrowded⁴⁴ and cramped evacuation camps while children were made more vulnerable to various forms of illness.⁴⁵

Complicating the prospect for the immediate return and swift recovery of displaced residents are government executive decisions tying up post-conflict and post-disaster reconstruction with the complex procedural requirements for public engineering projects.⁴⁶ In Haiyan affected areas, for instance, the government imposed long-standing but unevenly implemented national codes on water, forest, and land survey regulations banning the building of structures within a range of 20 to 40 meters from shorelines and river banks. As a result, displaced residents in Tacloban were barred from returning to their communities, leaving them with no option but to stay far longer in evacuation centres and temporary shelter sites farther away.

In Zamboanga City, local executives initially blocked the IDPs from returning to their devastated homes, preferring instead their relocation. City executives also arranged for the immediate transfer of people from the evacuation camps to relocation sites located mainly in the outskirts of the city, far from the original residences of the displaced. Their stance prompted IDPs to hold protest actions while international humanitarian groups such as the UNHCR, OCHA, and IOM stepped up pressure on the government to relent to IDP demands and facilitate their return in accordance with UN guidelines on internal displacements. City executives eventually conceded but imposed a policy that limits the number of persons who can return to their original residence

⁴² IDMC Global Estimates 2014: People Displaced by Disasters, Geneva: Norwegian Refugee Council, p. 21.

⁴³ Philippines Mindanao Protection Cluster and UNHCR, 2014 Annual Mindanao Displacement Dashboard, December 2014, p. 2.

⁴⁴ OCHA, "Philippines: Zamboanga, a Forgotten Crisis in the Shadow of Haiyan," Consolidated Appeal Process. Accessed from: <http://www.unocha.org/cap/philippines-zamboanga-forgotten-crisis-shadow-haiyan>.

⁴⁵ OCHA, Philippines: Zamboanga and Basilan Emergency Situation Report No. 5 (as of 30 September 2013), p. 4.

⁴⁶ Office of the DENR Secretary, See the Department of Environment and Natural Resources at <http://r8.denr.gov.ph/index.php/86-region-news-items/320-denr-delineates-20-and-40-meters-easement-of-coast-lines-affected-by-typhoon-yolanda>.

in accordance to the site’s “estimated capacity” for housing⁴⁷. IDPs not considered for return will be transferred to government-acquired relocation sites elsewhere provided that they appear in an official list that city officials keep. Furthermore, local executives insisted on screening out households that were not listed in a pre-displacement city government-sponsored census and mapping survey to expose people who were not real IDPs but taking advantage of government relief and housing assistance. The screening process, coupled with a slow pace of housing construction, forcibly extended the stay of the more vulnerable IDPs in the evacuation camps and far-away transition housing sites for years.

In stark contrast to the government’s post-conflict and post-disaster reconstruction approach, a more common IDP recovery strategy is to return or reposition them near their original homes so that they can retrieve or protect salvageable properties, re-institute the social network broken by displacement, re-establish original sources of income, and keep themselves abreast of information about the possible influx of external assistance.⁴⁸ On its part, the government effectively shifted its engagement with the displaced from complex emergency intervention to the institutionalization of regular but more cumbersome administrative procedures for delivering public works to zones of emergency. Partly driving this decision is a Philippine public works and auditing law that requires the building of infrastructure projects to go through a relatively long-winding procurement process for the acquisition of relocation sites and the commissioning of engineering works through transparent bidding.

In Zamboanga, city officials spent about ten months negotiating with the owners of an empty 38-hectare mangrove-covered coastal swampland that was identified as a relocation site. Housing construction was not completed until early 2015, leaving IDPs in the camps and transition sites with uncertainty regarding achieving a more durable solution to their plight. A combination of factors delayed the construction of IDP houses, among which were: requirements of going through proper procurement procedures to ensure government transparency, delay in land acquisition due to protracted negotiations, and inefficiency of the private contractors awarded the project.

Post-disaster assessments in the Haiyan affected areas also reported problems with the contrasting expectations between humanitarian groups’ focus on needs assessment and identification of vulnerabilities on the one hand, and IDPs’ concern of re-establishing their social networks and valuing family ties as a recovery strategy on the other hand.⁴⁹ To achieve this, the IDPs’ priority is their immediate return and assistance for the rebuilding of their devastated communities in their original places. The IDPs’ dis-

⁴⁷ Department of Public Works and Highways and the City Government of Zamboanga, Zamboanga City Roadmap to Recovery and Reconstruction (Z3R) Conceptual Layout Plan, January 2014.

⁴⁸ IDMC Global Estimates 2014: People Displaced by Disasters, Geneva: Norwegian Refugee Council, p. 19.

⁴⁹ Angela Sherwood, Megan Bradley, Lorenza Rossi, Rufa Guiam and Bradley Mellicker, *Resolving Post-Disaster Displacement: Insights from the Philippines after Typhoon Haiyan (Yolanda)*, 2015, p. 28.

content is evident in their initial resistance to government recovery and reconstruction plans, which tend to prefer the construction of infrastructure over the rebuilding of social and family networks in their original homes.

The cases of recovery and reconstruction delays in Zamboanga and Leyte illustrate the challenge of implementing durable solutions to displacement situations in the Philippines. The prospects of realising a durable solution to IDPs can hardly be separated from the problems of land tenure and income distribution at the communities where the more vulnerable section of the displaced originate. IDPs not granted immediate access to the devastated zones are also people with limited or no security of land and livelihood tenure at all. Similar problems were also documented in areas severely affected by the 2009 Typhoon Ketsana (locally named Ondoy) in Metro Manila. Follow-up studies simulating a Ketsana-related disaster using the framework of climate change adaptation noted that the National Capital Region is facing heightened vulnerability, including that of displacement events, as a significant number of the displaced are without security of tenure in terms of housing, jobs and other sources of income.

Implementation of IDP assistance and recovery in villages ripped apart by clan feuding were more challenging. In some areas, displaced persons regarded as members or associates of rivals by a feuding family which coincidentally held local government office have claimed to have been passed over for assistance.⁵⁰ Moreover, the prospects of returning communities to areas wrought by clan-related strife are more complicated as feuds tend to linger for a long period, normally for years and even decades.

8. POSSIBLE DIRECTIONS

A robust civil society, community, and local and international engagement in humanitarian interventions in the Philippines helped produce an IDP rights bill patterned after the 1997 United Nations Guiding Principle on Internal Displacement. The bill, the Rights of Internally Displaced Persons Act of 2013, passed Congress but was vetoed by then President Benigno Aquino on the grounds that the measure as written includes provisions that are in “conflict with the Constitution”⁵¹. Aquino’s veto message, however, deserved to be further studied with the aim of understanding how international IDP rights standards can be integrated into Philippine statutes without raising constitutional questions.

The Aquino veto message details four problems with the bill, starting from the “provision on damages” that “unlawfully differentiates” displacements caused by state agents and other types of forces. The veto message also raised concerns over a possible

⁵⁰ Based on a long-term ethnographic fieldwork and interviews I conducted in Maguindanao in 2004 and 2005.

⁵¹ President Aquino vetoes rights of Internally Displaced Persons Act of 2013, <http://president.gov.ph/news/president-aquino-vetoes-rights-of-internally-displaced-persons-act-of-2013/>.

impingement of the exclusive powers of the judiciary, which is a co-equal branch of government, in favour of the Commission on Human Rights, an independent constitutional body, on the determination of displacement damages and the awarding of IDP claims. Moreover, the veto message also pointed to a possible constitutional complication with a proposed expansion of the powers of the human rights commission beyond the limited investigative and recommendatory powers that the Philippine Constitution specified. Finally, Aquino's veto message suggests that by implication the bill's provision granting an individual the right to claim financial assistance and compensation over displacement will expose the government to a "slew of claims or cases" in ways that potentially violates the state character of "non-suability".

While Mr. Aquino cast doubts on the constitutional integrity of the indemnification provisions of the IDP rights bill, his veto message left other provisions without substantive commentaries. On this end, the strong pronouncement of the conflicting parties to immediately return to the negotiations table under the Duterte administration presents an opportunity for the revival of the IDP bill in the legislature but with a clearer remedy to the constitutional questions raised against it. A revision of the bill, however, had to be tied to the peace process and presented as part of the critical path towards the completion of the so-called "Road Map" to a peace settlement, though not necessarily as an outcome of it. Moreover, the body of evidence illustrating the lack of correlation between the productivity of peace negotiations and end to civilian displacements had to be asserted as a crucial reference point for future agreements on the cessation of hostilities and in productively dealing with armed non-state groups not engaging with the government peace processes.

A possible way of going forward is revisiting parts of the bill specified as potentially unconstitutional by President Aquino. The new IDP bill also has to carefully take into account existing local compensatory laws and ensure that they complement rather than contradict measures already established by the Philippine judiciary and constitutional bodies like the Commission on Human Rights to avoid the overlapping and confliction of laws.

Moreover, an IDP rights bill has to factor in its provisions the broader legal frames underpinning social, political, and economic rights as well as socialized housing, relocation, property, environmental, and development laws in the Philippines. Framers of a new IDP law need to diligently study ways in reconciling these rights and laws with the aim of establishing stronger provisions protecting IDP rights to a more secure land and income tenure. To further strengthen such provisions, an IDP rights law would have to articulate provisions mandating stricter adherence to international standards and instruments for the establishment of durable solutions and better building back of communities, including guaranteed IDP participation in post-conflict and post-disaster reconstruction and recovery programmes. Additionally, the new IDP rights law should include the establishment of mechanisms for the expression of grievances and the right

to contest the identification or exclusion of beneficiaries for housing and other forms of assistance.

Finally, but beyond the question of the IDP rights bill, appropriate mechanisms for monitoring and robust intervention with regard to displacement events generated by clan and militia violence have to be devised. On this matter, a specialized programme for emergency relief, recovery and reconstruction has to be studied to ensure that rival clans are not turned away from relief and other forms of assistance.

Dr. Jose Jowel Canuday is an assistant professor at the Ateneo de Manila University in the Philippines. He holds a doctoral degree in Social and Cultural Anthropology from Oxford University and was a Southeast Asian Visiting Fellow at the Refugee Studies Centre in Oxford. He authored the book *Bakwit: The Power of the Displaced* (2009), which tackled the creativity and resiliency of displaced communities in dealing with the socio-cultural impact of on and off secessionist warfare in Central Mindanao.

Migratory Flows in Bangladesh in the Age of Climate Change: Sensitivity, Patterns and Challenges

Mohammad Towheedul Islam and Tasneem Siddiqui

1. BACKGROUND

Migration has all along been an important feature of people's life and livelihood in Bangladesh (Siddiqui, 2003). Recent empirical studies demonstrate that climatic changes are affecting the agro-based livelihoods of the rural population in Bangladesh and thus influencing their migration behaviour (Mallick and Etzold, 2015). Migration, in this context, may take a myriad of forms—ranging from displacement to permanent family migration to temporary labour migration both within and beyond the national border. Accordingly, the implications of different forms of migration for the people's survival and adaptations to the changing climate also vary. This chapter therefore highlights how different forms of contemporary migration flows in Bangladesh are being influenced by climate change and how relevant policies should be (re)framed to better manage such diverse flows.

Topographically, Bangladesh is a riverine country with an average elevation of about 7.62 meters above the mean sea level (Sarwar, 2013). Due to these geographical features coupled with its poor socio-economic profile, this deltaic country suffers from regular natural hazards, including floods, tropical cyclones, storm surges and droughts. With the exacerbation of climate-related hazards in coming years, the volume of different migratory flows are likely to increase in Bangladesh.

Based on an analysis of the population censuses of Bangladesh of 2001 and 2011, a RMMRU and SCMR study (Kniveton, Rowhani, and Martin, 2013) estimates that from 2011 to 2050, as many as 16 to 26 million people will move from their places of origin in Bangladesh due to a number of climatic hazards. These movements will predominantly consist of internal displacement and internal migration. Such trends are further corroborated by a UNDP study (Marshall and Rahman, 2013) that found that environmentally fragile districts in Bangladesh have been experiencing low population growth. For instance, it shows that the population growth rate in the vulnerable

coastal districts during a period of twenty years (1991-2011) was 20% as opposed to the average national growth rate of 29%.

Drawing on recent studies conducted on Bangladesh by the Refugee and Migratory Movements Research Unit (RMMRU) and the Comprehensive Disaster Management Programme II (CDMP-II), this chapter argues that environmental/climatic change is fundamental to understanding contemporary migration flows in Bangladesh. It further argues that climate change does not only affect displacement but also other forms of migration especially internal labour migration. As a corollary, some forms of migration are being used as an integral part of households' adaptations to the changing climate.

The chapter is divided into five sections. Section I discusses major theoretical debates on climate change and migration in order to interpret the empirical findings while Section II to Section IV highlight different forms of migratory flows and their sensitivity to climate change. Section V draws major conclusions and recommendations for policy reorientation.

2. LINKAGE BETWEEN CLIMATE CHANGE AND HUMAN MIGRATION—THEORETICAL DISCUSSIONS

This section reviews major theoretical debates on climate change and human migration in the contemporary global literature. It shows that there are two important debates on climate change and migration—(i) environmental determinism versus multi-causality and (ii) whether migration can be used as an adaptation tool or not. The first debate focuses on the causality of migration in the context of environmental/climatic change while the second on the purposes/benefits of migration. The essence of these theoretical debates provides us with important conceptual tools to understand and interpret the empirical findings reported by major studies on climate-related migration in Bangladesh.

Environmental Determinism versus Multi-Causality Debate

Human settlements and their migration decisions have more often than not been influenced by physical and climatic conditions since time immemorial (McLeman, 2014). Having been long neglected by academics, this sub-field of migration studies has attracted new interest since the early 1990s, when the climate change issue came under the global spotlight. Policy discussions and quantitative studies at that time mostly treated the relationship between the environment and migration in a linear way, highlighting environmental or climatic changes to be the sole independent variable driving household migration from ecologically vulnerable areas (Hunter, Luna, and Norton, 2015). Influential works, especially by Myers (2002) and Stern (2007), fall in this category, which is often labelled as the maximalist camp.

Social scientists and human geographers criticize such claims to be naïve, lacking sufficient evidence (Black et al., 2011). They go on to argue that migration is a

more complex phenomenon. In the literature, this group of scholars is often labelled as the minimalist camp. Because of the sustained interests of these minimalist scholars, understanding of the complexity of migratory decisions has been a major focus of the recent scholarship on environment and migration that has fortunately moved on from apocalyptic narratives of “climate refugees” or “environmental determinism” (Hunter et al., 2015). Now it is argued that environmental migration/climate-related migration is a multi-causal phenomenon. Environmental/climatic changes do not occur in a social vacuum. People’s migratory behaviours are often shaped by different factors operating at macro-, meso- and micro- levels (Black et al., 2011). In other words, environmental/climatic changes influence and interact with different structural and agency-related factors.

Insights from different migration theories, such as historical structuralism, rational choice theories, and theories of new economics, have broadened such a multidimensional understanding by focusing on household decision-making models, and migration as a risk-minimization strategy, among other issues (Hunter, 2005; M. T. Islam, 2012; Siddiqui and Billah, 2014). Therefore, the Foresight Report (2011) stressed that environmental/climatic changes are likely to influence five key drivers of migration—political, social, economic, environmental, and demographic—in different ways. Complex interactions between these drivers and other meso- and micro- level factors, then, determine who would migrate and who would not. A decrease in rainfall in Sub-Saharan Africa, for example, caused an increase in rural-urban migration (Kniveton, Schmidt-Verkerk, Smith, and Black, 2008) while droughts in Mali did not trigger such a response because of the financial inability of the affected households (Foresight, 2011). This chapter appreciates such non-linear relationships between environmental/climatic changes and human migration in the context of Bangladesh and illustrates the conceptual linkages in Figure 1.

Migration and Adaptation Debate

Another long-standing debate in the contemporary literature is whether migration can be used as a tool for climatic change adaptation or not. In other words, the debate examines if migration can bring any adaptation benefits to households through enhancing financial, human and other forms of household capital or if people simply migrate as they can no longer adapt at the local level. As earlier works and policy discourses mostly focus on environmental determinism, they assume that migration is the manifestation of the failure of local-level adaptation. Therefore, they tend to consider migration as a problem and treat it with fear (Hartmann, 2010). This one-sided understanding has serious policy implications. For instance, guided by such an understanding, Bangladeshi policymakers often frame climate change-related policies in a way that discourages or restricts internal migration from climate-stressed areas, as evidenced in the 2005 National Adaptation Programme of Action (Siddiqui and Billah, 2014).

Recent scholarship on environment/climate-related migration has moved from such a myopic view of the relationship between adaptation and migration. Recent empirical case studies demonstrate a more nuanced understanding of this relationship, highlighting that migration is an important tool for environmental/climatic change adaptation (Hunter et al., 2015; McLeman and Smit, 2006; Tacoli, 2009). Barnett and Webber (2010) demonstrate that by migrating from climate-stressed areas, people can reduce their vulnerability and ensure access to such income sources as are unlikely to be affected by a disaster. They further note that in the post-disaster phase, remittances from relatives help households to recover from losses. Tacoli (2009) shows that remittances from migrants facilitate agricultural adaptation in vulnerable communities in Bolivia, Senegal and Tanzania, while Ezra (2001) demonstrates that families with access to remittance better adapt to livelihood crises than those with no access to remittances. Moreover, Kothari (2003) notes that migration often helps reduce pressures on local ecology and natural resource dependence, such as forests in sending regions. Such migration often takes place in the form of labour migration, which is labelled as environmentally induced labour/economic migration (Afifi, 2011; Siddiqui and Billah, 2014).

The complexity of this relationship has been further investigated by Warner and her colleagues (2014). They demonstrate that whether migration can enhance resilience/adaptation or not depends mostly on household characteristics—whether they are poor or landless; educated or illiterate; young or aged; and remit or not. Understandably, the relatively less poor, more educated and young will be able to use migration for adaptation while others cannot.

Conceptual Framework for Bangladesh

The theoretical discussion above highlights that migration is a complex phenomenon. Therefore, both the causal processes and impacts of migration vary and so do its forms. Based on the insights of these debates, this section develops the following model to better understand the empirical evidence in the context of Bangladesh. It demonstrates that there are multiple factors at three different levels—macro, meso and micro—that shape three different migratory outcomes which sometimes manifest local adaptation failure, such as displacement, or sometimes enhance adaptation/resilience for the households, such as internal labour migration; more importantly, the model captures the fact that due to the lack of policy and adaptation support, migration may spill over beyond the national border.

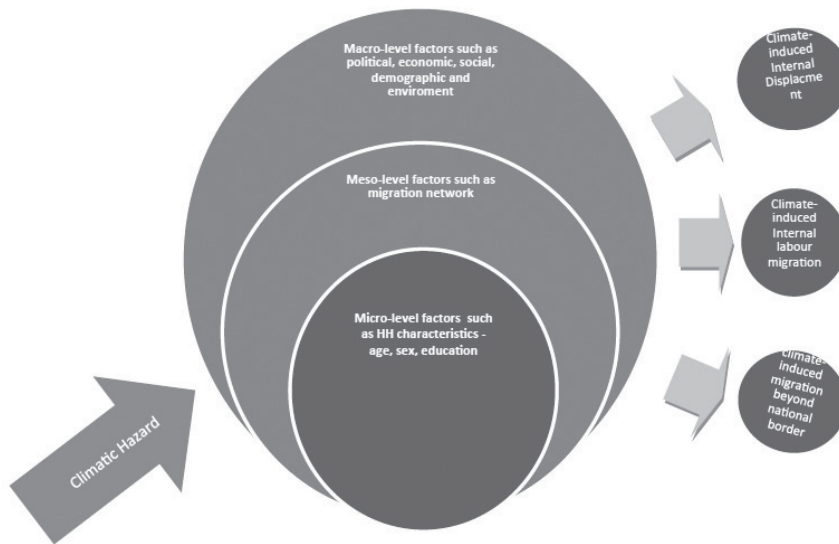


Figure 1: Schematic Diagram of Climate Change and Migration in Bangladesh¹

The schematic diagram shows that climatic hazards may directly impact the five different drivers of migration at the macro-level—economic, social, political, environmental and demographic. Employment opportunities both at the local and possible destination areas, agricultural production and profitability etc. are regarded as the economic driver; family obligations and educational prospect as the social driver; issues such as food security, water issues and other ecosystem services as the environmental driver; political marginalization and governance structures as the political driver; and last but not least, population size, density etc. as the demographic driver. For understanding Bangladesh’s case, both the environmental and economic drivers are the most important factors and they often work in tandem in climate-stressed areas.

At the meso-level exist intervening obstacles and facilitators such as social networks, cost of moving etc. In the following section, we will see that thanks to the decreasing cost of transportation and presence of trustworthy migration social networks, people often move for short-term employment in the urban areas. At the micro-level, household characteristics are crucial for determining the outcome of migration. Such characteristics often include age, educational status, access to resources, and gender.

Complex interactions among these factors, finally, bring about three different types of migration in the context of climatic change in Bangladesh. They are: (i) climate-induced internal displacement, (ii) climate-induced internal labour migration and (iii) climate-induced migration beyond the national border. The subsequent sections of this

¹ The diagram has been developed following the conceptual framework for the “drivers of migration” by Black et al. (2011).

chapter will explain these three categories of flows. In describing them, the sections also shed light on what household characteristics matter, what role social networks and transportation systems play and how the environmental driver and the economic driver interact and define the migration outcomes.

3. CLIMATE-INDUCED INTERNAL DISPLACEMENT

Climate-induced internal displacement is one of the most sensitive and dominant flows of migration in Bangladesh. Displacement, in general, is a perennial problem in Bangladesh. The Internal Displacement Monitoring Centre (IDMC) (Yonetani, 2015) estimates that more than 4.7 million people were displaced due to disasters in Bangladesh between 2008 and 2014. This section discusses the important climatic/environmental drivers and patterns of displacement and the socio-economic profile of the displaced households.

The impact of climate-related natural hazards such as cyclones, floods, riverbank erosion and salinity on population displacement in Bangladesh has been extensively studied (CDMP-II, 2014; DS, 2012; Paul, 2005; Penning-Rowsell, Sultana, and Thompson, 2013; Walsham, 2010; Koko Warner, Ehrhart, Sherbinin, Adamo, and Chai-Onn, 2009). A study by the Displacement Solution (2012) found that increasing tidal water height (leading to tidal flooding) is the most significant environmental driver of internal displacement in coastal Bangladesh, followed by tropical cyclones and storm surges. On the other hand, riverbank erosion and river flooding are the major drivers of internal displacement in mainland Bangladesh. Put simply, internal displacement is primarily caused by sudden-onset events and also by those slow-onset processes that render livelihood unsustainable, such as salinity ingress. Empirical case studies on Bangladesh sufficiently indicate that internal displacement is one of the migratory flows that are highly sensitive to climate change.

In 2014, the Comprehensive Disaster Management Programme II (CDMP-II) of the Government of Bangladesh (GoB) conducted a nationally representative baseline survey to assess the magnitude and patterns of climate-induced displacement in Bangladesh (CDMP-II, 2014). The report assessed the impact of four types of environmental hazards—floods, riverbank erosion, salinity and water-logging—on displacement in nine districts belonging to both the coastal and non-coastal zones. It divided the survey respondents into the following four categories based on the length of their experience as displaced persons: (i) never displaced, (ii) temporarily displaced, (iii) in-between

temporarily and permanently displaced; and (iv) permanently displaced². Overall, the survey (n = 926 HH) shows that the rate of permanent displacement due to climate change is about 12%. It further shows that about half of the population (46%) had experienced temporary displacement while more than a quarter (29%) of households swung between temporary and permanent displacement. Only 13% of households in those districts had never experienced any form of displacement. In other words, more than 85% of the surveyed population in environmentally fragile areas/districts had experienced some form of displacement.

People living in close proximity to rivers and *chars* often face displacement due to the erosion of riverbanks. In Bangladesh, riverbanks erode on a regular basis due to the river morphology, with 2,000 to 3,000 kilometres of bank eroding annually (Martin, Kniveton, Siddiqui, and Islam, 2013). Since 1973, over 158,780 hectares of land have been eroded (Mallick and Etzold, 2015). Abrar and Azad (2004) found that households in the northwest region of Bangladesh experience erosion-related displacement 4.46 times on average. Annually about one million people in Bangladesh are affected by such erosion (Islam and Rashid, 2011).

The CDMP-II's baseline survey (2014) shows that among the four major environmental hazards, riverbank erosion was found to cause more permanent displacement than other hazards. Permanent displacement mostly occurs when people become landless due to erosion. Overall, 99% HH in four erosion-prone districts—Sirajganj, Nawabganj, Shariatpur, and Munshiganj—were found to have experienced some forms of displacement due to riverbank erosion. Erosion, like other disasters, triggers short-distance movements, often within the same district.

Floods are a common feature in rural Bangladesh. However, excessive floods may turn into disasters, damaging standing crops, infrastructures and human lives. From its birth in 1971 till 2010, Bangladesh experienced six major floods that caused 34,989 deaths (Penning, 2013) and displaced millions of people. For example, the floods of 1988 and 1998 displaced as many as 45 million people and 30 million people respectively (MoEF, 2009). However, floods do not cause permanent displacement as such. The CDMP-II study (2014) reveals that people mostly experience temporality displacement due to floods. During their temporary displacement, they take shelters in their

² “The temporarily displaced category includes those households that tend to be displaced during the onset of disasters. These households are displaced temporarily to neighbours’ and relatives’ houses, adjacent elevated roads, preferably on embankments, nearby shelters and other sustained structures, and return to their original habitat when the situation improves. The maximum staying duration of this category is 6 months in a year. The category in-between temporarily and permanently displaced includes those households that were displaced to adjacent areas but are not settled permanently; rather they tend to be displaced again and again. On the other hand, the permanently displaced category includes those households that are displaced permanently to distant locations presumably safe from the selected disasters. These households have little or no chance of becoming displaced further.”

neighbours' and relatives' houses or go to the nearby embankments or cyclone shelters for physical protection. They mostly return once the water level recedes.

In coastal areas, people are often displaced due to cyclone and storm surges. Bangladesh's coastal areas are hit by tropical cyclones every three years on average (Mallick and Etzold, 2015). Super cyclones often damage properties and crops; kill thousands of people and displace millions. For example, Sidr (2007) and Aila (2009) displaced 650,000 and 842,000 people respectively. Apart from such sudden-onset events, slow-onset processes such as water-logging and salinity in the coastal areas is increasingly reported to temporarily displace people. The CDMP-II survey (2014) found that in the waterlogged areas, 84% of respondents reported that they were temporarily displaced while in salinity-prone areas, 82% of respondents experienced such temporary displacement.

The empirical evidence indicates that displacement in Bangladesh is often determined by macro-level processes (the political and economic drivers) and micro-level household characteristics. As far as the economic driver is concerned, people are more likely to be displaced from places where major economic/livelihood systems are climate-sensitive, such as agriculture and fisheries. In terms of household characteristics, small and landless farmers tend to be displaced more. For instance, the CDMP-II (2014) survey shows that approximately between 60-80% of the households own less than 50 decimals of land. It is understandable that small farmers often find it very difficult to recover from losses caused by floods and other disasters and become displaced or opt for seasonal migration (Siddiqui and Billah, 2014). Other household characteristics, age and gender matter less in understanding the displacement dynamics. Nonetheless, the lived experiences of male and female, aged and young do vary. For example, women often report more insecurity—both physical and sexual—because of the predominantly gendered structure of society during the displacement phase (Alam and Rahman, 2014).

Another important factor for understanding the causes of internal displacement is the issue of governance and adaptation planning, which can be labelled as the political driver. For instance, as the CDMP-II study reveals, riverbank erosion induces more permanent displacement than other hazards. One of the reasons for this lies in the complex legal and corrupt bureaucratic procedures of claiming accreted lands/*khas* land. Faced with multiple barriers in the legal and bureaucratic systems, the poor displaced people often fail to claim their accreted lands or *khas* land and thus become landless and permanently displaced. These landless displaced people often end up in urban slum areas. Mutton and Haque (2004) found that in 1998 a total of 5,500 out of 300,000 who were residing in Sirajganj slums were displaced by such erosion.

People's vulnerability to erosion, cyclones and other disasters in Bangladesh is not only influenced by the physical aspect of the hazards but more importantly by the socio-economic factors. Therefore, proactive adaptation planning is important for preventing and managing these flows especially with regard to land management.

4. CLIMATE-INDUCED INTERNAL LABOUR MIGRATION

The empirical evidence suggests that like internal displacement, internal labour migration is also highly sensitive to climate change (Martin et al., 2013). Based on a qualitative study done by RMMRU and SCMR (2013)³ (see, for details, Siddiqui and Billah, 2014) in three climate hotspots—Chapai Nawabganj, Satkhira and Munshiganj—this section analyzes how people are using migration to adapt to droughts, cyclones and riverbank erosion both reactively and in anticipation of environmental risks. It further highlights that macro-level factors (the economic driver); meso-level factors (social networks and transportation networks) as well as household characteristics are important factors for understanding such migratory patterns.

The volume and magnitude of internal migration in Bangladesh has increased manifold in the last few decades. Among other issues, massive macro-economic restructuring in Bangladesh, rapid economic growth in the readymade garments sector (RMG) and other manufacturing sectors, growth of service and informal sectors pull streams of low and semi-skilled workers from rural to urban areas, particularly to Dhaka and Chittagong metropolitan cities (Afsar, 1999, 2003). Now these flows of internal migration are increasingly being influenced by slow-onset events—droughts, floods, water-logging and salinity etc. and also by the long-term effect of sudden-onset events such as cyclones.

When the basic foundation of the agro-based economy is regularly affected by increasing drought, water-logging, salinity etc., agriculture often become less sustainable and profitable as a livelihood option. In such contexts, poor villagers take migratory decisions to diversify livelihoods. For instance, in a post-flood situation, R. A. McLeman (2014) notes, young males from flood-affected households often migrate to nearby urban centres in search of work as part of the livelihood strategy. Thus, primarily by affecting the economic driver of migration, climatic stresses influence internal migration in Bangladesh.

Generally, pre-existing migration networks have important implications for future migration from climate-stressed areas. Our fieldwork shows that pre-existing mobility patterns shape migration from these areas in a number of ways—often diversifying the destination areas, increasing the length of stay as well as inflating the volume of the migratory flows. More importantly, these trustworthy migration networks—a meso-level factor—help facilitate migration of the poor.

In Satkhira, a district severely exposed to tropical cyclones, water-logging and salinity ingress, our research found that many villagers have shifted from agro-based occupations over the last two decades. The change in traditional occupations is mainly

³ The fieldwork was administered under the project “Climate Change Related Migration in Bangladesh”. It was jointly conducted by the Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka, and the Sussex Centre for Migration Research (SCMR), University of Sussex, and funded by the CDKN.

due to salinity ingression into the rice fields. The introduction of shrimp cultivation in the 1980s and repeated cyclones and inundation worsened the salinity ingression in the rural areas of the district. Faced with dwindling livelihood options at the local level, people often see seasonal migration as a way to adapt to both the changing economy and the environment. Low cost of transport and established social networks facilitate their labour migration to Dhaka, Khulna, and Gopalganj.

Persistent loss of land due to river erosion, low availability of arable lands, proximity to business centres, the scope of internal and international migration make agriculture a less viable option for the people of Munshiganj. The people of this district often depend on both internal as well as international labour migration for their livelihood. Employment opportunities in the RMG sector and in small-medium enterprises in Dhaka work as major pull factors for low and semi-skilled workers from Munshiganj. Men mostly participate in the international labour market and both men and women participate in the internal labour market from this district.

Declining groundwater level make villagers in Chapai Nawabganj worried about the viability of agricultural production. Villagers in this drought-affected district reported during the focus-group discussion that groundwater level declined sharply over the last two decades—from 60-70 feet in the 1980s to 140-160 feet in the early 2010s. The ever-decreasing water level coupled with erratic rainfall often make it very expensive for the poor villagers to irrigate the rice field. Against this backdrop, households often decide to send young male members to work as migrant labour in other districts. Thus, short-term inter-district migration has become an important livelihood option for the villagers. They work as either agricultural labourers in other rural areas or as construction workers and day labourers in other urban areas. The construction of the Jamuna Multipurpose Bridge has facilitated migration from this district to Dhaka by lowering transportation costs.

Instead of permanent migration, villagers in climate-stressed areas prefer seasonal or temporary migration both for social and economic reasons. Temporary migration of one or a few members of the household is often a better strategy for them. By keeping the family in the area of origin, they ensure access to basic education for their children and access to other rural development schemes, i.e., vulnerable group feeding (VGF), and cash for work for their family members. This is especially important because in urban areas, the poor are less likely to receive government support compared to their counterparts in rural areas since the social safety programmes and NGO-led developmental programmes in Bangladesh have inherent rural biasness (GED, 2015).

The empirical evidence presented above demonstrates that faced with different climatic stresses households often use migration to diversify their livelihood and thus adapt to the changing environment. Such migration is mainly pulled by macro-economic demand for industrial labour in the urban areas (Etzold, Ahmed, Hassan, and Neelormi, 2014). The nature of such migratory flows is mainly determined by

household characteristics—age and gender and resource endowments. As the evidence suggests, from both Satkhira and Chapai Nawabganj, it is the young males who are likely to participate in such adaptive migration. Generally, people from both the lower-middle income group and the poor take part in such migration but often the ultra-poor cannot make such moves (Etzold et al., 2014).

5. CLIMATE-INDUCED MIGRATION BEYOND THE NATIONAL BORDER

The volume of migration across the national border from climate-stressed regions is very low compared to internal migration and internal displacement. Therefore, such migration is often found to be less sensitive to climate change (Martin et al., 2013). Systemic studies on international, cross-border and maritime migration from climate-stressed regions are, in general, very rare. Nonetheless, this section reviews available recent evidence to assess how climate change shapes these migratory patterns.

During the qualitative study done by RMMRU and SCMR (Siddiqui and Billah, 2014) in three climate hotspots, it was found that very few households have international migrants in their family. This might be partly because the financial cost of international migration is prohibitive for poor villagers and also because of the absence of creditable social networks for such migration. Traditionally, social networks through which short-term international labour migration and permanent migration to the West are facilitated are strong in a number of specific geographical pockets, such as Chittagong, Comilla, and Sylhet, and they do not necessarily correspond to the climate-stressed regions. This is not to argue that international labour migration does not take place from these regions. In fact, during the fieldwork, it was found that male members of economically solvent rural families in Chapai Nawabganj and Munshiganj districts have been taking part in such international labour migration.

Cross-border mobility between Bangladesh and India predates the creation of these countries. People sometimes move from both sides across the national borders due to their historical links and kinship ties (Martin et al., 2013). In recent years, different border control measures by India, such as border fencing, have reduced irregular migration from Bangladesh. For instance, during the fieldwork, some villagers in Chapai Nawabganj district informed that they used to go to neighbouring villages in India to work in the past but the imposition of strict border controls since 1995 has stemmed such flows (Siddiqui and Billah, 2014). Eighty percent of the working-age men of the study village now go to Dhaka to work in the construction sector and to pull rickshaws. The fieldwork in coastal Satkhira, however, revealed a different story. Villagers reported that after Aila, a number of families which had previous kinship ties in West Bengal migrated to India permanently. Penning-Rowsell et al. (2013) also found examples of such cross-border mobility from Satkhira during their fieldwork.

A new mobility pattern—irregular maritime migration—from climate-stressed regions has been unfolding since 2012. According to UNHCR’s estimates, as many as 87,000 irregular maritime departures took place across the Bangladesh-Myanmar border between June 2012 and July 2014 (Edwards, 2014). Migrants who move through maritime routes are mostly from climate-stressed areas, namely: Satkhira, Khulna, Bagerhat, Bhola, Sirajganj, Kurigram, Rangpur and Barisal (Siddiqui, Anas, and Sultana, 2015).⁴ Five out of these eight districts are coastal, vulnerable to tropical cyclones, salinity and water-logging, whilst the three non-coastal districts are also vulnerable to natural hazards such as riverbank erosion. More surprisingly, these are not the districts from where usually international migration takes place.

The evidence in this section indicates that cross-border migration and international migration are not the dominant migratory flows originating from the climate-stressed regions. Macro-level political factors and economic factors—border regulation (in the case of cross-border migration) and high cost of migration (in the case of international labour migration)—can partly explain why these flows are not dominant. Nonetheless, international labour migration from these areas is age- and class-specific and highly gendered. Only relatively rich young males take part in such migration. Besides, established social networks—a meso-level factor—is also important in facilitating and hindering migration through the legal process. It is understandable that in the absence of any trustworthy social networks for international migration, predatory brokers sometimes lure potential migrants from these vulnerable regions to embark on risky irregular maritime journeys.

6. CONCLUSIONS AND POLICY RECOMMENDATIONS

In the climate change-related migration literature, Bangladesh is often portrayed as a poster child (McLeman, 2014) because of its hydra-headed nature of vulnerabilities. Climatic changes are influencing the livelihoods and well-being of rural communities across Bangladesh in a myriad of ways. One of the major impacts of such changes is being felt on human mobility. Even though (forced) migration from climate-stressed areas is not like what apocalyptic narratives often portray—staggering numbers of “climate refugees” (Penning-Rowsell et al., 2013)—yet there are real challenges for policymakers to manage different types of climate-induced migratory flows in Bangladesh.

As shown by Dominic Kniveton et al. (2008), the relationship between climate change and migration in Bangladesh does not reflect a liner process. Interacting with other drivers, climatic stresses and shocks are very likely to influence both internal displacement and internal labour migration. Therefore, it is not appropriate to associate climate change with only forced migration. In order to better manage climate

⁴ The RMMRU team made this analysis based on the published newspaper reports.

change-related migration, policymakers should take into cognizance various types of human migration. Migration in general should not be seen as a threat. Voluntary labour migration, both internal and international, has the potential to improve the resilience of climate-vulnerable communities and it should be recognized as one of the many strategies for climate change adaptation. The mindset of equating internal migration with crime or looking at the migrants as welfare targets has to be changed.

On Internal Displacement

Temporary displacement is a perennial problem in the climate-stressed regions. Therefore, the government should adopt a coherent policy in this regard. An integrated Displacement Management Framework (DMF) is warranted to deal with climate-induced internal displacement in Bangladesh. The DMF should be based on the rights-based approach and the disaster risk reduction (DRR) approach in order to reduce the vulnerability of the potential displacees and to protect their rights (Siddiqui, Islam, and Akhter, 2015). The DMF should consist of four strategic responses—Preventing, Preparing, Managing and Addressing.

As far as strategic responses are concerned, “prevention” should aim to stop displacement by reducing vulnerability and enhancing the resilience of the community concerned through disaster management and climate change adaptation while the second strategic response should aim to “prepare” the vulnerable people for potential migration and/or relocation/resettlement in a context where local adaptation and prevention is no longer a viable option, for instance, in the context of projected sea-level rise. The third strategic response will be to “manage” the migratory flows when displacement occurs through emergency humanitarian assistance and recovery. The fourth strategic response should aim to “address” displacement through durable solutions—(i) return; (ii) local integration; and (iii) resettlement. Such an integrated framework should ideally focus on climate change adaptation at the local level in the pre-displacement phase and on return in the post-displacement phase. It, however, needs to facilitate labour migration from local households in order to make vulnerable households more self-resilient and to avoid protracted displacement scenarios.

On Internal Migration

At present, Bangladesh does not have any internal migration policy. Since internal migration is likely to increase, thanks to climatic changes, a comprehensive policy needs to be developed to protect the rights of internal migrants. Wage and work conditions of the construction, garments, and brick kilns workers, minimum age of domestic workers, reduction of scope of exploitation and abuse—all should be part of the internal migration policy.

On Migration beyond the National Border

The evidence on the impact of climate change on international labour migration, cross-border migration and maritime migration is scanty. This is a potential area for future research. It has, however, been observed that people from climate-stressed regions are now embarking on irregular maritime journeys because of unscrupulous agents. In order to stem such migration, potential migrants should be provided with necessary information about and access to the regular migration process. Therefore, the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE), which manages short-term international contract migration, should establish offices of its line agencies in the climate-stressed areas.

International short-term labour migration requires access to substantive financial resources. In 2011, the GoB established the Prabashi Kallyan Bank (Expatriates' Welfare Bank) to provide migration finance loans to poor potential migrants. To ensure access, branches of this bank should be established in climate-stressed areas.

Bangladesh has an environmental policy, but does not yet have a comprehensive climate change policy. The GoB should frame a comprehensive climate change policy, targeting climate-resilient development. The policy should duly appreciate the role of voluntary migration in the context of climate adaptation and adequately address the hardship of the displaced population. Land reform measures are required to establish the rightful claims of the displaced in the government's *khas* land and *diluvion* land.

Mr. Mohammad Towheedul Islam is Assistant Professor, Department of International Relations, and Research Fellow, Refugee and Migratory Movements Research Unit, University of Dhaka, Bangladesh. He is also a PhD Candidate at the Australian National University.

Dr. Tasneem Siddiqui is Professor, Department of Political Science, and Founding Chair, Refugee and Migratory Movements Research Unit, University of Dhaka.

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Turkey's Role in the Syrian Refugee Crisis

O. Can Ünver

1. INTRODUCTION

The so-called “Arab Spring” that turned out to be a *nightmare* for certain countries began in 2010. It should have paved the path to real democracies with fundamental rights and freedoms in Arab countries. There was obviously high demand for more democracy among the peoples of the countries in northern Africa and in the Arab peninsula, who suffered so long under the autocratic regimes they have lived under since independence was achieved from foreign yokes of the past. However, the popular jubiliations at Tahrir Square and in Libyan Tripoli were alarming signals of a chaotic future for various peoples. The ongoing civil war in Libya that has divided the country into two, the military regime in Egypt and, especially, the tragic civil war in Bashar Assad's Syria are the tragic consequences of the “Arab Spring”.

The failure of the ruling classes in various Arabic countries to carry out democratic transformation peacefully and to comply with the demands of the masses changed regimes and governments in the Maghreb. A similar process, however, ended up in a tragic civil war in Syria. Syria has a long border with its northern neighbour Turkey and also with Lebanon and Jordan. Turkey became the first destination of Syrian refugees who fled the devastating civil war. The inflow of Syrian citizens began in 2011 and has not stopped since. The previous estimations of the Turkish government authorities that the crisis would not last more than a few weeks proved to be miscalculations and hindered the political authorities from taking serious measures at the outset of the crisis.

The refugees were accommodated primarily in camps in provinces near to the border. However, the increase in inflows obliged the Turkish government to divert them to different parts of the country. Today, one can meet Syrian groups in almost every single town in the country. They try to survive to a great extent through the government's social aids and many are also employed in different jobs with somewhat bad working conditions.

In summer 2015, refugees started arriving at Greek islands across the Aegean Sea in overloaded rubber boats and fake life vests. Some drowned in tempestuous waters; many were, however, able to reach the shores, with a big desire to go especially to

Germany by using the Balkan route. The tragedy of the Syrian refugees and asylum seekers from other countries who were accepted by Turkey under the condition of “temporary protection” was recognized by European countries only when the corpse of a little Syrian child, *Aylan*, was dragged to a beach at the Turkish Aegean coast.

Aylan’s photo in the media made an enormous impact on the public opinions of European countries. The unexpected *outflow* of refugees from Turkey to Europe concerned the EU member states intensely so that a search for methods and measures to stop them was prioritised immediately at the top of the political agendas. EU members declared one by one that their political, economic and social conditions would not allow them to accept large numbers of refugees. However, Germany, the wealthiest and most powerful country in the EU, had already declared that it would receive 800,000 refugees in 2015. The recent paradigmatic change in Germany with respect to migration and integration was presumably the reason behind its liberal stand (Steller 2014). But the real number would even run up to 1.5 million if appropriate measures were not taken immediately. Consequently, the EU commenced talks with Turkey, the principal destination as well as the main country of origin for the Syrian refugees, to maintain the permanent-stay of Syrian—and other—refugees in Turkey and for the readmission of the irregular migrants who were able to reach irregularly the Greek islands across the Aegean Sea.

In the following part of this paper, the changing parameters of the recent Turkish migration policy with regard to the current refugee crisis will be discussed. After a short review of Turkey’s past migration experience, the current deal with the EU with respect to the readmission agreement will be examined, taking the exerted criticisms from different international organizations and other international migration-related observers and institutions into account. The inner-Turkish voices for and against the EU-Turkey deal will also be a part of this paper. Finally, some ideas on the core role that Turkey has assumed in international migration with its future prospects, standards and norms will be presented for future discussion.

2. TURKEY’S MIGRATION EXPERIENCE AND ITS POLITICAL OUTCOMES

Geographically, Turkey has always been a country of origin and destination for population movements throughout history. The Ottoman history was in fact a history of displacements, readmissions and mass migration movements. The first wave of refugee influx goes back to the 15th century, when the Jews in Spain had to flee to the Ottoman Empire. A good portion of them settled in Salonica after 1492, when the Ottoman Sultan Bayezid II compensated the Spanish queen Isabella to free the Sephardim Jews from the Spanish yoke after Reconquista. Especially in the last two or three centuries of the Ottoman Empire, native Turks and Moslems from the “lost” territories immigrated

to the heartland of the Empire. Turkey has thus established a long experience of welcoming migrants (Erdoğan and Kaya 2015). Most of these migrants happened to be of Turkish origin, so that a problem of amalgamation or integration was never or seldom an issue on the Ottoman political agenda. As a matter of fact, Turkey's geographical location alone, beyond the political developments throughout the centuries, made it a country of immigration, emigration and transit. The menaces that human beings suffered should nonetheless be left unmentioned during these resettlements. Migrating as such is not and has never been an easy undertaking for human beings for human character habitually postulates for living in the home country. Only when certain conditions—willingly or compulsorily—push individuals to leave their country of origin does migration takes place. The above-mentioned population movements belong in fact to the category of forced migration.

The most exceptional population movement in the early years of the Republic of Turkey was the exchange of Moslem and Greek groups between Greece and Turkey in accordance with the Lausanne Treaty in the aftermath of the Turkish War of Independence. A political and understandable step for the construction of the nation state, this phenomenon left behind emotion-loaded memories, since “forcing to migrate” is something that we, with today's understanding, would not accept automatically, even if there is a political legitimacy and practical necessity behind it. But the first decades of the troubled 20th century affected the nation building after the prospect of homogenous ethnic belonging. The 1934 “Settlement Law” was developed also with the view of encompassing ethnic Turks and Moslems in former Ottoman territories who looked for admittance into the new Turkish nation. Immigration agreements were signed with Bulgarian and Yugoslavia and hundreds of thousands of Turks immigrated to Turkey. It was unsurprisingly not difficult for Turkey to integrate them, since there existed no cultural gap.

During the republican era, immigration of ethnic Turks from the former Ottoman territories in the Balkans continued almost without interruption. The Turks of Bulgaria and Turks and Moslems from former Yugoslavia immigrated to Turkey in the fifties and sixties within the framework of bilateral agreements. The mass displacement of Bulgarian Turks towards the end of the Cold War was another milestone in Turkey's migration experience. Those immigrants were mostly ethnic Turks and the problems that arose from this migration were negligible.

In the beginning of the nineties, just after the first Gulf War, there was an immediate and serious refugee problem from northern Iraq. Approximately 500,000 Kurds looked for asylum in Turkey, to save themselves from being massacred by Saddam Hussein. Those refugees were accepted by Turkey; nevertheless, their stay was not permanent. They returned to their homes after security measures by military means were taken in northern Iraq. So, this happened to be a temporary refuge without further consequences.

The end of the Cold War brought a new wave of influx, mainly from the former Soviet republics. This type of what is effectively individually initiated migration was the target of human trafficking and consequently, constructed the roots of different dimensions of exploitation in Turkey and similarly in western European countries. Abuses of female migrants from different countries, i.e., forced prostitution, as well as undocumented employment became for the first time a topic on the Turkish migration agenda, a challenge that was not easy to deal with. Turkey then realized that in the new era, migration with all its side effects and consequences would be a pivotal issue on its agenda. Consequently, new approaches and appropriate legislations for applicable solutions should be innovated without any delay (Ünver 2016). The Turkish political agenda now became acquainted with migration issues more than before.

3. SYRIAN REFUGEE CRISIS—A MASS INFLUX WITH VAST CHALLENGES

In March 2011, when the first demonstrations against the authoritarian regime of President Bashar Assad in Damascus took place, even the most serious observers were sure of a rapid collapse of the government and that a new political system would be announced soon in this significant Middle Eastern country. Syria, a close ally of the former Soviet Union in the past and of the Russian Federation today, was in fact vulnerable on the grounds of its ethnic and religious/confessional composition. Even in the past, during the reign of Hafez Assad, the father of Bashar Assad, there had been violence against perturbed ethnic and confessional minorities, who were all subject to persecutions. Although the upheavals in 2011 started rather unexpected and seemingly as a result of the Arab spring, their causes could be found in the past practices of the Syrian regime. The escalation of the internal conflict generated a massive mobilization of people who lived in the battle regions. They escaped from their towns and villages to the nearest neighbouring countries. According to disaggregated data disseminated by the Turkish authorities recently, the registered Syrian population under temporary protection has the following composition in Turkey as of 21 April 2016¹:

¹ General Directorate for Migration Management, http://www.goc.gov.tr/icerik3/uluslararasi-koruma_363_378_4712 (accessed 1 May 2016).

Total Syrian Population:	2,750,059
Male:	1,463,313
Female:	1,286,746
Children (0-14):	900,404
Accommodated in 26 camps in 10 provinces:	267,837
Outside of the camps:	2,482,222 (Whole of Turkey)
Major hosting cities with Syrian population:	
Şanlıurfa	401,102
Istanbul	394,587
Hatay	386,106
Gaziantep	325,165
Adana	150,125
Mersin	138,669
Kilis	129,133
Bursa	96,859
Ankara	59,295

There are estimations that the real number of Syrian refugees who have looked for shelter in Turkey since the beginning of the crisis runs up to approximately 3 million. Together with the Afghan and Iraqi refugees, Turkey presumably hosts more than 3.5 million migrants, thus being the biggest refugee-receiving country in the world today, with a series of vast challenges (İçduygu 2015). As long as the crisis lasts and military interventions are carried out, including those by the closest ally of the Syrian regime, the Russian Federation, and if the terrorist activities of the ISIL (DAESH) cannot be stopped by military means, it will not be unexpected that new waves of refugees from the Syrian territory will inevitably look for shelter in the neighbouring countries. This will surely aggravate the present conditions, which have already instigated relatively unbearable burdens on all refugee-receiving countries.

To argue about the *burdens* in a human tragedy could seem disconcerting to certain minds. However, limited resources and the unpreparedness of the governmental bodies for such an unexpected flow of refugees inevitably caused new and severe problems. These difficulties, which are interconnected to each other, may be classified as economic, social, cultural/educational, political and security issues. The responsibility to find appropriate solutions for this human tragedy lies with the receiving countries as well as with the international community. In terms of developing solutions, the ego-centric standpoints of nation states in the designation of appropriate policies should be avoided wherever possible.

For the Syrian citizens under temporary protection, the Turkish government has spent more than USD10 billion in the past five years. Daily expenses in each refugee camp are approximately USD 2 million. Healthcare and other lump sum benefits for all the refugees who live outside of the camps, like fundamental social expenditures for housing, heating and clothing as well as for education and vocational training, have been the major items in the substantial list of Turkey's burden. Financial support from

the international community remained, however, within limits. According to Turkish government institutions, this financial support was about USD 455 million throughout the years since 2011².

The strained Turkish labour market does not have the capacity to integrate the additional workforce from the vast reservoir of refugees. According to a World Bank report unqualified jobs on a daily basis in the refugee-hosting towns were mostly occupied by Syrians and this created exploitation on the one hand and unemployment of Turkish workers on the other (Del Carpio and Wagner 2015). Consequently, in some border provinces, like Gaziantep, Şanlıurfa, Kilis and Hatay, informal employment flourished. This might improve capital accumulation by the employers to some extent and possibly increase employability, for costs could be decreased due to low wages. According to the World Bank, employers in certain sectors reported that they could even recruit supplementary qualified personnel as a result of low wages for unqualified asylum seekers. However, this phenomenon precipitates a definite tension between the “low-wage groups” of different nationalities, i.e., Turks and Syrians.

Some Syrians started a new life in Turkey as entrepreneurs. In certain neighbourhoods Syrians have already built networks and created almost ghetto-like conditions with their own shops, locals and some other businesses. Most of these businesses were opened with a Turkish partner or without any legal permission from the local authorities. This situation caused immediate complaints by local Turkish businessmen as the Syrian businesses became their competitors. There exists, however, a certain tolerance towards the Syrians among the population and they are somehow accepted as aggrieved persons who deserve support.

Another area of strain seems to be in the housing sector of the major receiving cities. The rentals in these cities increased with the immense inflow of Syrian asylum seekers. Syrian citizens with relatively better financial positions—or two or more families together—preferred to rent apartments instead of being accommodated in refugee camps and these newcomers consequently tightened the rental market.

Since the beginning of the crisis, many observers have asserted that the Syrians would cause social and intercultural tensions in the society since they belonged to another—Arabic—culture and would not be compatible with the Turkish secular way of life. Belonging to the same faith would not play a major role since social problems usually preponderate. Apparently, there have been claims that, for instance, polygamy, which is illegal in Turkey, was practised among the Syrians and this caused, at least, exploitation of girls and women. Living under austere conditions in a foreign country is ostensibly not easy and most of the female refugees were already vulnerable as their husbands and other members of their families had been killed or were missing in the battlefield or in the bombed townships. They were able to escape to Turkey, usually

² <https://www.afad.gov.tr/IcerikDetay1.aspx?IcerikID=747&ID=16> (accessed 26 April 2016).

unaccompanied, but their situation was very much vulnerable to different types of abuses. Similarly, unaccompanied minors are the most disadvantaged subjects of the refugee crisis; they are the real victims.

It had been an incorrect assessment in the initial phase of the crisis that only a limited number of refugees would seek asylum in Turkey. It was believed that the Syrian regime would not be able to resist the oppositional forces in Syria. These false assumptions influenced the Turkish policy towards Syria and Syrian refugees. Administrative measures to be taken in this phase were not accomplished and the growing number of refugees caused further problems. The camps that were set up for Syrians were not sufficient to encompass larger numbers and the vast majority of Syrian refugees tried to find a place to stay in almost every town in Turkey. Although this development gave rise to certain criticisms from different political circles, it caused, however, no or little xenophobic sentiments inside society, which is encouraging for possible future integration efforts, if their stay were to last in the visible future.

In the international arena, Turkey's "open door policy" towards asylum seekers has been highly recognized. As the biggest refugee-receiving country, Turkey's legislation not to recognize asylum seekers from non-member states of the Council of Europe is at the same time highly debated. The 1951 Geneva Convention on Refugees, of which Turkey is a ratifying state with the above-mentioned reservation, requires Turkey only to grant a status of "temporary protection" to asylum seekers from Syria, Iraq, Iran, Afghanistan, Pakistan, Bangladesh and other non-member states of Council of Europe from Asia (İçduygu 2015). The discussion on the withdrawal of reservations from the Geneva Convention has abated since the Law on Foreigners and International Protection came into force in 2013 (Republic of Turkey Ministry of Interior Directorate General of Migration Management 2014). It is now estimated by many observers that the status of "temporary protection" for asylum seekers could be an operational measure in the absence of refugee recognition. Some observers have put forward that the system of temporary protection is even more operative than the internationally acknowledged asylum system. This opinion could actually be arguable, but in the current situation, the temporary protection system is apparently quite applicable for the immediate solution of the problem.

The growing intensity of the refugee crisis internationalized the problems only in the summer months of 2015 and the international community, mainly the EU, started the search for a solution against a mass influx into Europe. It was only after the problem arrived at the threshold of Europe that awareness and inclination were raised for appropriate solutions. At this point, the Turkish government's complaints were eventually heard and promises for international support started to be discussed in this highly politicised crisis, which is indeed a human tragedy.

4. TURKISH EFFORTS TO MANAGE THE CRISIS

Before discussing the so-called “refugee deal” between Turkey and the EU, it will be relevant to reflect upon Turkey’s own efforts to manage the crisis. It goes without saying that accepting more than 3 million individuals into its territory has been a very difficult decision for the Turkish government. The Turkish administration did not foresee such a big group of asylum seekers and the government institutions were not well equipped to tackle this immense problem. The new law on foreigners came into force in 2013 and the General Directorate for Migration Management started functioning in April 2014. The effectiveness of the Disaster and Emergency Management Authority (AFAD) could be enhanced only gradually in the last two or three years. Official registration could begin only two years after the first asylum seekers from Syria arrived in Turkey. In the meantime, the majority of the Syrian population were already settled in almost every town in Turkey (Erdoğan 2015). Over the course of time, the unregistered persons have also been enrolled by the Turkish authorities, who issued identity cards and temporary residence permits.

Government efforts to avoid manipulation of the Syrians, who are in need of jobs to survive, were likewise not effective in the years before 2015, because work permits could be issued only for a limited number of the asylum seekers. The legislation was then amended to enhance legal employment, thus generating social protection prospects for the Syrians under temporary protection (Erdoğan and Ünver 2015; Özpınar, Satır and Taşöz 2016). Beyond the legal employees in Turkish enterprises, the number of self-employed increased in the last few years too. Syrian citizens who are in a position to realize small-scale investments tended to open shops and small service companies, either on their own or together with a Turkish partner, and local Turkish authorities showed a great deal of tolerance toward these entrepreneurs in issuing the relevant permits and with other bureaucratic obligations.

Syrian citizens under temporary protection enjoy gratis healthcare without any health insurance and their children are entitled to go to school. Furthermore, they may receive social support in-kind and cash from the official social fund of the local authorities, even without legal personal records. These authorities grant necessary support to all who are in need. On the other hand, the high expenditure the Turkish government has had to bear since the beginning of the crisis prevented it from developing more opportunities for an appropriate integration programme until today. Despite the huge burden it has assumed, almost without any worthwhile backing from the international community, Turkey’s struggle for its Syrian guests was highly admirable, even though there are still shortcomings in the administrative and political fields. These shortcomings are now intended to be overcome in a cooperative manner with the international community.

5. THE “REFUGEE DEAL” BETWEEN TURKEY AND THE EUROPEAN UNION

Turkey and the European Union signed a new bilateral agreement on 16 March 2016 for the readmission of refugees who left Turkey to seek asylum in the EU through irregular ways. Turkey commits to accepting the return of all migrants that may have travelled irregularly from Turkey to Greece—since 20 March 2016—as well as asylum seekers and refugees from Syria. The EU will then accept for each irregular refugee that Turkey accepts, one refugee from the refugee camps in Turkey and provide financial support to be used solely for the asylum seekers in Turkey, for their integration into society and their fundamental needs like healthcare and education.

The implementation of the agreement started on 4 April 2016. Before the completion of the agreement, thousands of Syrians and other nationals crossed the Aegean Sea and reached a Greek island. Approximately 700 people drowned in the sea in the span of one year. The journey of the refugees continued after they stepped onto the Greek mainland and headed toward middle and western Europe through the Balkan route. Their misery during their march, under severe climatic conditions and ill treatments by the security forces at some state borders that they were trying to pass, were shown daily on the television. Turkey’s struggles to stop the outflow of the refugees, who envisaged reaching better living conditions in Europe, were only partially successful.

The EU-Turkey Agreement relies on the implicit assumption that Turkey is a safe third country, because it suggests that not only irregular migrants and rejected asylum seekers can be returned to Turkey, but also that Syrians under temporary protection and other asylum seekers can safely stay and find protection in the country. The “refugee deal” between Turkey and the EU has been strongly criticized by some international bodies and institutions, such as the UN Human Rights High Commissioner (OHCHR), UN High Commissioner for Refugees (UNHCR) and Amnesty International, who claim that Turkey should not be considered as a “safe third country”, because Turkey does not apply the 1951 Convention to non-Europeans. It has been argued in these criticisms that a “safe third country” has to offer asylum to persons who flee persecution and states can be considered safe countries of origin if it can “clearly be shown, in an objective and verifiable way” that the state does not produce refugees³. Nevertheless, the status of “temporary protection” and its application in Turkey does not give rise to any concern in terms of refugee protection. The criticisms are premised on some political and theoretical arguments rather than logical reasoning taking into consideration the current situation with respect to nearly 3 million Syrians under temporary protection in Turkey. It must be borne in mind that the EU is very much interested that the inflow of migrants into its territory is prevented. On the other hand, these criticisms do

³ Council of the European Communities, Conclusions of the Ministers Responsible for Immigration, Conclusions on Countries in which there is Generally No Persecution, London, 30 November-1 December 1992.

not take into consideration that Turkey, being currently the biggest refugee-accepting country, has tried to adjust its legislation to the changing migration situation, revised and modernized its administration bodies, started to implement elaborate action plans to integrate the temporary protected into society and provided huge resources to the refugees.

The Syrian refugee issue is also being debated in Turkish politics with different sentiments and ideas. Political opposition parties blame, for instance, the government for not being able to manage the crisis from the very beginning. According to these circles in Turkish politics, the government's miscalculations as well as the strategic failures in the Syrian conflict caused the unacceptable mass influx of refugees, a phenomenon that was not managed in a proper manner. Turkey lost control over the crisis and was not able in the first couple of years to initiate principal solutions. It was only after the level of awareness had risen that effective measures were taken. Another complaint or criticism can be found in the worries that the Syrians could claim for themselves already scarce—unqualified—jobs for themselves and cause in some sectors unemployment of Turkish workers. This standpoint could easily get out of control and be a justification for xenophobic ideas and behaviours⁴.

Beyond these xenophobic ideas, which are not so extensive within the public, some local governments recently started to take measures for the incorporation of the Syrians into society and community centres at municipal level are being established. In Kilis, Gaziantep and Şanlıurfa, the provinces where numerous Syrians are hosted, successful efforts have been initiated. Through these undertakings, it is expected that possible xenophobic emotions and behaviours in society, which are still rare, can be avoided.

Another issue of discussion has been the abolition of the visa obligation for Turkish citizens who travel to the Schengen area. The visa issue was debated within the framework of the readmission agreement and it was recognized somehow as being out of place by some observers. The criticism was that Turkey should not make the visa issue part of the Syrian refugee crisis⁵. The bargain on visa freedom should not be brought in line with the Syrian refugees as Turkish citizens should already have the right to visit the Schengen countries without visas. It was believed that this right was already part of Turkey's accession procedure in the EU. Actually, these deliberations are currently continuing in the Turkish public and will possibly linger in the future too.

⁴ The leader of the social democratic *Republican People's Party*, Kemal Kılıçdaroğlu, said: "The Syrians will threaten our order", 12 March 2016, <http://www.haberturk.com/gundem/haber/1208609-kemal-kilicdaroglu-suriyeliler-butun-duzenimizi-bozacak> (accessed 26 April 2016).

⁵ <http://www.21yite.org/tr/arastirma/milli-guvenlik-ve-dis-politika-arastirmalari-merkezi/2015/12/03/8353/ab-turkiye-ve-yalanci-bahar-yozlasmis-iliskiler-perspektifinden-multeci-pazarligi-ve-geri-kabul-anlasmasi> (accessed 26 April 2016).

6. PROMOTING THE GOVERNANCE OF MIGRATION— AN OPPORTUNITY FOR A GLOBAL SOLUTION?

More people are on the move than at any time in history. There are about 150 million migrants who live permanently or temporarily in a country other than their own. As long as there are wealth and prosperity discrepancies between regions and societies and as long as political and climatic problems compel people to move, the world will continue to face problems caused by migration. To overcome these difficulties, the international community should revise the policies and regulations currently in place, so as to achieve profound and rights-based solutions. International conventions pertaining to migrants and migration, without any distinctions between migrant groups and migration types, should be considered as appropriate tools for dialogue and settlement of the migration issues globally. This fact and necessity is already evidenced by the recent flow of refugees from troubled areas to Europe.

All actors of the migration phenomenon, in the front line, the sending and receiving states, as well as the migrants themselves and the societies at both ends, should also know that all rights and obligations go hand-in-hand (Inter-Parliamentary Union/International Labour Organization/United Nations Office of The High Commissioner for Human Rights 2015). Having accepted this principal obligation in designing innovative legislations and applications in the future, both at the national and international levels, all actors should be aware of the upcoming unavoidability of migration flows and take action to implement humanitarian solutions (Sazak 2015). However, the current situation, especially at different epicentres of the crisis, seems to be hardly manageable, as governments are not well prepared to tackle the unforeseen problem of large numbers of refugees. Crossings in the Mediterranean from south to north that increased heavily in 2015 alerted the European governments and they recognized that the Dublin Agreement was no longer adequate as appropriate solutions for the refugee influx into Europe. Members of the European Union were reluctant to accept large numbers of refugees into their territories. Only Germany and Sweden affirmed their cautious willingness to receive limited refugee contingents, whereas other EU countries were somewhat unwilling to accept Syrian refugees. The declared justification by the rejecting countries gives rise to concerns about the already rising xenophobia in Europe.

It must be acknowledged that Turkey is currently hosting more than 3 million foreign nationals, mainly from Syria and other interior conflicts-plagued regions, and that it has been providing emergency response assistance to them for more than five years, which has put a huge strain on the resources and infrastructure of the country. In this world's largest humanitarian crisis since World War II, triggered by the tragic conflict in its southern neighbour, Turkey's role and its methodology in dealing with this humanitarian crisis with its open door policy must be acknowledged as a standard-setting approach to the global migration crisis. For example, only a small number of

the refugees are hosted in refugee camps and the vast majority live dispersed all over Turkey. It is a matter of complaint for comprehensible reasons; however, it might be an innovative approach to settle them not in the camps but in the communities, so as to enhance their integration into society (Beehner 2015). Finally, the current crisis showed that migration, which is more pivotal in today's world, should be handled with dialogue and co-operation. Only a rights-based approach to this humanitarian issue can enhance the dialogue and good governance with mutual understanding. The migration crisis will then not be a misfortune for all participants, but possibly an opportunity for peace in the world.

Assoc. Prof. Dr. O. Can Ünver is a member of the UN Committee on Migrant Workers (CMW). His opinions in this article do not necessarily reflect the Committee's standpoints.

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The EU Answers to the Refugee Crisis: A Challenge to EU Solidarity

Joanna Pétin

Article 80 of the Treaty on the Functioning of the European Union (TFEU) states that policies on border checks, asylum and immigration “and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States”. EU Member States should deal with asylum issues in a spirit of solidarity. Such a statement echoes the ideal of solidarity stressed in the Geneva Convention of 1951.¹ The refugee crisis undermining EU integrity should have been thus a principal ground for experimentation.

The EU is facing one of its biggest migratory crises since World War II. Because of the destabilisation of the Middle East, due in particular to the Syrian civil war and to the threat of the Islamic State (ISIS), millions of persons have been forced to flee from their countries of origin. The EU is therefore seen as the Promised Land for a great number of these forced migrants.

In 2015, Frontex, which is the EU Agency for the Management of Operational Cooperation at the External Border of the Member States, registered 1,822,337 detections of illegal border crossing at the external borders of the EU.² Compared to 2014, when only 282,962 detections were identified,³ 2015 is an exceptional year. Most of the detections were registered on the Eastern Mediterranean route (885,386) and on the Western Balkan route (764,038). This remarkable pressure was principally borne by two Member States that are particularly exposed due to their geographical situation—1.037 millions of migrants arrived in Greece (880,000) and Italy (157,000) in 2015.⁴

¹ See, for example, point D of the final act of the UN Conference of the Plenipotentiaries on the Status of Refugees and Stateless Persons and recital 4 of the preamble of the Convention. The French version of the Convention is even more explicit than the English one, as the term “solidarity” is expressly used.

² Frontex, *Annual Risk Analysis for 2016*, 5 April 2016, see table 1.

³ Ibid.

⁴ Frontex, *Greece and Italy continued to face unprecedented number of migrants in December*, Press Release, 22 January 2016.

Among these migrants, most of them, if not the great majority of them, are applicants.⁵ According to Eurostat, in 2015, 1,255,685 asylum claims were registered in the EU as first-time applications.⁶ 61% of these applications were concentrated within three Member States, namely Germany (441,800), Hungary (174,435) and Sweden (156,110).⁷ The data collected at the beginning of 2016 underline that this trend will continue. Indeed, 83,390 asylum claims were identified in January 2016 as first-time applications, most of them lodged in Germany (50,530).⁸

Given that the EU boasts of having a Common European Asylum System (CEAS), a comprehensive, coordinated and collective response to this pressure was expected. During spring 2015, the head of the European Commission, Jean Claude Juncker, indeed called for an immediate reaction to the migratory crisis and invited EU Member States to “work together in an effective way, in accordance with the principles of solidarity and shared responsibility”.⁹ On 4 May 2016, Frans Timmermans, first vice-president of the European Commission, stressed again that “whenever a Member State is overwhelmed, there must be solidarity and a fair sharing of responsibility within the EU”.¹⁰

But if one looks at the actions undertaken in the year since then, one observation must be made: the one of a failure. EU answers to the refugee crisis, whether they materialize in internal or external actions, are desperately short of solidarity. EU Member States have been totally unable to stand together. It is therefore interesting to assess the results of the immediate actions undertaken by the EU and its Member States. But it is also the occasion to analyse the EU asylum policy with a view to identifying the reasons that may explain the failure of the EU Member States to stand together, before trying to suggest some ways forward to improve the EU’s ability to cope with future migratory pressures.

⁵ It is important to make a clear distinction between economic migrants and forced migrants, the latter category being what we can call “refugees”, or more precisely “asylum seekers”. The EU distinguished between these two groups, as they fall under two different legal frameworks. For economic migrants, the only solution is to organize their removal to their country of origin or their country of residence; whereas for asylum seekers, the EU is under an international and European obligation to welcome them until the end of the examination of their asylum claim in respect of the principle of non-refoulement.

⁶ <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>. In 2014, which was already an important year, there were 562,680 applications lodged in the EU as first-time applications.

⁷ Ibid.

⁸ <http://appsso.eurostat.ec.europa.eu/nui/show.do>.

⁹ European Commission, “A European Agenda on Migration”, COM(2015)240 final, 13 May 2015, p. 2.

¹⁰ European Commission, Towards a sustainable and fair Common European Asylum System, Press release, IP/16/1620, 4 May 2016.

1. COPING WITH THE CRISIS: THE IMMEDIATE AND CONTROVERSIAL ACTIONS

In order to solve the refugee crisis that has weakened its stability, the EU decided to rely on internal (1.1.) and external actions (1.2.), which are deemed to be controversial and quite ineffective.

1.1. EU internal action: The temporary relocation mechanisms

During the spring and summer of 2015, the migration flows tended to be more and more substantial at the external borders of the EU, at first on the Italian and the Greek territories, and then, in Hungary. Dramas occurred almost daily on the Mediterranean Sea and the humanitarian situation was becoming alarming on the Balkans route. Urgent actions needed to be taken. In accordance with the European Agenda on Migration published by the European Commission on 13 May 2015,¹¹ immediate responses were urgently expected in order to relieve Greece, Hungary and Italy of their burden. It was time to give meaning to the solidarity clause contained in Article 80 TFEU.

Pursuant to the Dublin III Regulation,¹² only one Member State can be responsible for the examination of an asylum claim lodged in the EU. The Dublin Regulation had not been designed to ensure a sustainable sharing of responsibility between the EU Member States. The Dublin system is a real source of concerns, as its functioning often conflicts with international and European human rights requirements.¹³ The recent proposal for a Dublin IV Regulation, published on 4 May 2016,¹⁴ should thus be welcomed, as the actual system is not sustainable in the long term.

The most used criteria for determining the responsibility is the one regarding irregular entry into EU territory.¹⁵ In this respect, Greece, Hungary and Italy should have been responsible for the examination of the largest number of applications lodged by newcomers. But these three Member States were totally overwhelmed, which created a real threat for the Schengen area, which was progressively collapsing as various

¹¹ COM(2015)240 final, op. cit.

¹² Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), OJ L 180, 29 June 2013, p. 31.

¹³ See, for example, ECtHR, G.C., 21 January 2011, *M.S.S. versus Belgium and Greece*, n°30696/09; CJUE, G.C., 21 December 2011, *N.S. and M.E.*, C-411/10 and C-493/10.

¹⁴ Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2016)270 final, 4 May 2016.

¹⁵ See Article 13§1 Dublin III Regulation.

Member States decided to restore controls at their national borders.¹⁶ Urgent and effective solidarity was duly needed.

After negotiations conducted amidst a tempestuous background, with clear opposition from the Member States of the Visegrad group,¹⁷ two temporary relocation mechanisms for the benefit of Italy and Greece¹⁸ were adopted in September 2015.¹⁹ Relocation is a sort of intra-EU resettlement mechanism.²⁰ It means “the transfer of an asylum applicant from the territory of the Member State [responsible for the examination of his claim under the Dublin III Regulation] to the territory of another Member State”.²¹ These temporary mechanisms²² allow compensating for the inadequacy of the Dublin system in times of exceptional migratory pressure.²³

The objective of these mechanisms is to relocate 160,000 asylum-seekers over a period of two years, that is to say, until September 2017. Applicants who should benefit from these mechanisms are the ones who have a more than 75% chance of being granted international protection in the first instance.²⁴ The criteria for such a classification are based on the nationality of the applicants. Without being directly mentioned, it can be easily concluded that Syrians are the first category of citizens who are targeted.

¹⁶ The Schengen area is characterised by the principle of free movement. There are no border controls within the EU territory, as Member States agreed to abolish their internal borders. It is one of the biggest achievements of the EU.

¹⁷ The Czech Republic, Hungary, Poland and Slovakia.

¹⁸ Due to its opposition to the principle of these instruments, Hungary has been excluded from its benefits.

¹⁹ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15 September 2015, p. 146; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 248, 24 September 2015, p. 80.

²⁰ It has to be clearly distinguished from “resettlement”. Resettlement is defined as “the transfer of individual displaced persons in clear need of international protection, on request of the UNHCR, from a third country to a Member State, in agreement with the latter, with the objective of protecting against refoulement and admitting and granting the right to stay and any other rights similar to those granted to a beneficiary of international protection”. See Commission Recommendation on a European resettlement scheme, C(2015)3560, 8 June 2015, p. 4.

²¹ Article 2 point e) Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601.

²² On 9 September 2015, a proposal for a permanent relocation mechanism supplementing the Dublin III Regulation was published but it is still under discussion. See COM(2015)450 final. On 4 May 2016, a proposal for a Dublin IV Regulation has also been published. This proposal does not suggest an in-depth reform of the Dublin system, but it foresees a fairer system based on solidarity, called “the fairness mechanism”. It is conceived as a corrective allocation mechanism when it is established that a Member State is handling a disproportionate number of asylum claims, with regard to its size and wealth. See, COM(2016)270 final.

²³ Article 1§1 Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601.

²⁴ Article 3§2 Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601.

During the negotiations, it quickly became evident that these mechanisms would not work on a mandatory basis.²⁵ Each Member State has indeed communicated the number of asylum seekers that it formally pledges to take responsibility for. After six months of implementation, it is timely to examine the results of these mechanisms, which were adopted as the flagship solution to the crisis.

Whereas on 16 March 2016, the European Commission underlined, in a politically correct way, that it was a “slow implementation revealing first signs of a positive trend”,²⁶ with only 937 asylum-seekers effectively relocated, one month later, the statement was more caustic. On 12 April 2016, for the publication of the second report on relocation, Dimitris Avramopoulos, European Commissioner for Migration, affirmed that “we cannot be satisfied with the results achieved so far. Relocation efforts have to be increased dramatically”.²⁷ Only 208 applicants had been relocated since the first report one month previously, increasing the total number of effective relocation to 1,145.

The effectiveness of these mechanisms is clearly an illusion. Their implementation is desperately short of solidarity. This observation is also strengthened by the applications submitted by several Member States, namely Austria²⁸ and Sweden²⁹, asking for the temporary suspension of their obligations under these mechanisms.

EU Member States appeared totally unable to reach a consensus on the necessity to effectively relieve Italy and Greece of their burden, but they also appear unable to stand together now that a solution has been adopted. Their lack of solidarity is therefore creating an alarming situation in Greece where the refugee crisis has now been aggravated with a humanitarian crisis.³⁰ Solidarity is unfortunately only a pious wish in the EU.

²⁵ The initial two proposals for Council Decisions were built upon a mandatory mechanism based on a specific distribution key: the size of the population (40% weighting), the total GDP (40% weighting), the average number of spontaneous asylum applications, the number of resettled refugees per one million inhabitants over the period 2010-2014 (10% weighting) and the unemployment rate (10% weighting).

²⁶ European Commission, First report on relocation and resettlement, COM(2016)165 final, 16 March 2016, p. 5.

²⁷ European Commission, Relocation and Resettlement: EU Member States urgently need to deliver, Press release, IP/16/1343, 12 April 2016.

²⁸ Proposal for a Council implementing Decision on the temporary suspension of the relocation of 30% of applicants allocated to Austria under Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, COM(2016)80 final, 10 February 2016.

²⁹ Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Council Decision (EU) 2015/1523 and Article 9 of Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, COM(2015)677 final, 15 December 2015.

³⁰ Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union, OJ L 70, 16 March 2016, p. 1.

1.2. EU external action: The EU-Turkey Agreement

Although no consensus appeared at the internal level, a consensus emerged on the necessity to trigger the EU's external dimension. At the beginning of 2016, fully aware of its inability to cope with the refugee crisis on its own, the EU decided to display great diplomacy to rely on the help of an external partner. Building its action on the fact that "the ability to effectively control irregular inflows at the external border is to some extent dependent on cooperation with third countries",³¹ the EU concluded an agreement with Turkey on 18 March 2016. As Greece is the principal gateway to Europe, the EU decided to turn to close collaboration with the Turkish authorities in order to manage the migration flows. The stated objective is clear: "the EU and Turkey today decided to end the irregular migration from Turkey to the EU".³² To some extent, the EU has subcontracted the management of its external border to Turkey, which becomes the watchdog for the EU territory, as it "will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU".³³

Based on various counterparties, including financial compensations,³⁴ the functioning of this agreement is based on the principle of "one for one". All new irregular migrants entering the Greek territory will be returned to Turkey, and among this group, for every Syrian being returned, another Syrian accommodated in Turkey will be resettled in the EU. The agreement specifies that this scheme will only focus on the resettlement of 72,000 individuals. As a first step, 18,000 individuals will be resettled under the EU resettlement programme agreed on 20 July 2015,³⁵ and then, "any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54,000 persons".³⁶ This quota of 54,000 represents the number of relocation places left under Council Decision 2015/1601 on relocation. The Commission published therefore a proposal amending this Council Decision in order to ensure that any resettlement commitment undertaken in the framework of this arrangement will be deducted from non-allocated places of relocation.³⁷

³¹ European Commission, Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016)197 final, 6 April 2016, p. 4.

³² Council of the EU, EU-Turkey statement, Press release, 144/16, 18 March 2016.

³³ *Ibid.*, point 3.

³⁴ *Ibid.*, point 6.

³⁵ See Commission Recommendation (EU) 2015/914 of 8 June 2015 on a European resettlement scheme, OJ L 148, 13 June 2015, p. 32.

³⁶ *Ibid.*, point 2.

³⁷ Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, COM(2016)171 final, 21 March 2016.

Three brief remarks may be highlighted with regard to this agreement. On the one hand, even if the agreement carefully specifies that returns to Turkey “will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion [...] and in respect of the principle of non-refoulement”,³⁸ doubts may be clearly expressed. First, Turkey seems to be considered *de facto* as a safe third country. But some criticisms may be drawn on this point. The protection offered in Turkey is not equivalent to the international protection offered in the EU. For instance, Turkey still applies a geographical limitation to the Geneva Convention.³⁹ In addition, and more generally, Turkey still remains one of the occidental countries where the respect of fundamental rights is a source of concern. In addition, in order to fully respect the principle of non-refoulement, the agreement requires that all individuals willing to lodge an asylum application in Greece will be effectively granted the possibility to do so. Therefore, it will require a huge administrative and logistical machinery in practice, and in a country such as Greece, where the national asylum regime is already overburdened, one can surely express doubts about the efficiency and the capacity of the Greek authorities to adequately deal with this.⁴⁰

On the other hand, this agreement does not place any demand on the EU in terms of reception capacity. The quota of 72,000 Syrians that will benefit from resettlement is purely and simply a quota that was already set under other instruments. It does not represent any complementary efforts from the EU and its Member States. In addition, the resettlement mechanism under this agreement is strictly limited to these 72,000 persons. Furthermore, the 72,000 Syrians benefiting from this resettlement scheme represents a droplet among the 2.5 million Syrian refugees that Turkey already accommodates.⁴¹

Finally, recent figures relating to the implementation of this agreement strengthen this critical analysis. Since the entry into force of the arrangement on 4 April 2016, till 20 April 2016, 325 individuals have been returned to Turkey, whereas only 103 Syrians have been effectively resettled in the EU.⁴² Therefore, the EU-Turkey agreement definitively questions on its usefulness, its legality and its practical implementation.

³⁸ Council of the EU, EU-Turkey statement, Press release, 144/16, 18 March 2016, point 1.

³⁹ H. Labayle and P. De Bruycker, “L’accord Union européenne—Turquie: faux semblant ou marché de dupes?”, 23 March 2016, <http://www.gdr-elsj.eu/2016/03/23/asile/laccord-union-europeenne-turquie-faux-semblant-ou-marche-de-dupes/>.

⁴⁰ Y. Pascouau, “EU-Turkey Summit on the refugee crisis—Law and (dis)order?”, 21 March 2016, http://www.epc.eu/pub_details.php?cat_id=4&pub_id=6418.

⁴¹ M. Jégo, “La Turquie confrontée à une nouvelle vague de migrants syriens”, 8 February 2016, http://www.lemonde.fr/europe/article/2016/02/08/la-turquie-confrontee-a-une-nouvelle-vague-de-refugies-syriens_4861350_3214.html.

⁴² European Commission, First report on the progress made in the implementation of the EU-Turkey Statement, COM(2016)231 final, 20 April 2016.

2. AVOIDING FUTURE CRISIS SITUATIONS: WAYS FORWARD

As far as the inability of the EU to effectively cope with this crisis reveals a lack of solidarity, it also highlights other important gaps in the CEAS itself, illustrating that solidarity is clearly absent. It is now time for the EU to explore the ways forward.

2.1. An ambitious solution: Rethinking the CEAS

The CEAS aims to harmonize asylum rules in the EU. Each Member State is deemed to apply the same rules in terms of reception of asylum seekers,⁴³ procedural safeguards⁴⁴ and standards for qualification of a third-country national as a refugee or as a beneficiary of subsidiary protection.⁴⁵ Wherever an application is lodged, the chances to be granted international protection and the conditions of reception should be equivalent. The functioning of the CEAS is based on this theoretical presumption. But the harmonisation is far from effective in practice. Great disparities between Member States still exist. Instead of being a real common policy, it is more a fragmentation of national regimes.

Asylum is at the heart of the tension between a will to go further into the EU integration process and a strong claim for Member States to keep their national sovereign power on that issue. This tension explains why the actual CEAS is weak and unsustainable in times of crisis. The European Commission does acknowledge this weakness, calling in May 2015 for “a strong common asylum policy”.⁴⁶

This tension resulted in an asylum policy in which rules flow from the EU and their implementation remains in the hands of national authorities. With each Member State having its own conception of immigration issues, transfer of competences to the EU has been limited. The weakness and the ineffective harmonisation of the CEAS result also from the type of instruments adopted in order to issue the common rules. Since 1997, when the EU started to communitise the asylum norms,⁴⁷ directives were adopted to implement the future CEAS. Due to the use of this type of EU instrument, Member States have an obligation to achieve the results stressed in the directives, but

⁴³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29 June 2013, p. 96.

⁴⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29 June 2013, p. 60.

⁴⁵ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20 December 2011, p. 9.

⁴⁶ COM(2015)240 final, op. cit., p. 12.

⁴⁷ Article 73K of the Amsterdam Treaty. Now, see Article 78 TFEU.

are free to determine the means to reach them.⁴⁸ Such a margin of appreciation left to Member States results in great disparities within the EU. The only EU legislative instrument that allows the imposition of an obligation of results and means on Member States are indeed regulations.⁴⁹

The refugee crisis has been the trigger for the growing awareness of the necessity to rely on regulations instead of directives in order to ensure a “standardisation” of asylum rules within the EU. On 6 April 2016, the European Commission thus proposed to replace the existing directives with regulations,⁵⁰ and this initiative must be clearly supported.

Finally, apart from this need for “standardisation” of asylum rules, another way forward should be fully explored. The EU really needs to think about the opportunity to create a centralised EU asylum system. It is time now to aim for an in-depth reform of the CEAS. Member States should accept the necessity to abandon their conservative vision of their sovereign power on migration. The EU can no longer be satisfied with this institutional system of shared competences.

As Ms Metsola, member of the European Parliament, stated: “there is no quick fix for migration, no magic silver bullet. We do not need more emergency solutions, we need a sustainable approach for the future”.⁵¹ An EU centralised system is indeed a more adequate solution in order to ensure a clear, fair and coherent asylum system. One can imagine a system in which all applications lodged within the EU are examined by an EU Agency, based on the model of a “one-stop shop”. The European Asylum Support Office⁵² (EASO) could be in charge of this. Subsequently, if international protection is granted, a relocation mechanism would distribute the beneficiaries among all the Member States following a clear distribution key. The European Commission seems interested in developing such a system on a long-term basis. It noted on 12 April 2016 that “consideration could be given to the possibility of transferring responsibility of processing of asylum claims from the national to the EU level, for instance by transforming EASO into an EU-level first-instance decision-making Agency, with national branches in each Member State, and establishing an EU-level appeal structure”.⁵³

⁴⁸ Article 288 indent 3 TFEU.

⁴⁹ Article 288 indent 2 TFEU.

⁵⁰ European Commission, Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016)197 final, 6 April 2016. The EU will propose a new regulation relating to the asylum procedure, a new regulation relating to the standard for being granted international protection and will target some modifications in the Reception Conditions Directive.

⁵¹ European Parliament, Parliament advocates a centralised EU asylum system and legal ways to migrate, Press release, 20160407IPR21773, 12 April 2016.

⁵² Regulation (EU) 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29 May 2010, p. 11.

⁵³ COM(2016)197 final, op. cit., pp. 8-9.

However, in the meantime, as a centralised EU asylum system still remains an unattainable goal, the European Commission carefully suggested on 4 May 2016 the possibility of giving a new mandate to EASO to reinforce its role of coordination.⁵⁴ In this regard, it is suggested that EASO could be in charge of ensuring a greater convergence in the assessment of asylum applications across the EU by publishing, for instance, detailed and regular guidelines.

But, if a real change of paradigm in the conception of the EU asylum policy does not seem to be conceivable in the short term, other “less invasive” ways forward need to be explored by the EU in order to avoid situations of deadlock such as that experienced during the refugee crisis. It is well known that he who can do more, can do less.

2.2. A low-cost solution: Specifying the Temporary Protection Directive

Whether it is the reform of the Dublin system, integrating at least a permanent relocation mechanism, or the establishment of a centralised EU asylum system, all these proposals imply the creation of new instruments. One can thus conclude that the EU did not have sufficient tools to cope with the refugee crisis in an expeditious way. But this is not the case.

Indeed, the refugee crisis should have been the right time to activate the Temporary Protection Directive, which was specifically designed to deal with a situation of a massive influx of displaced persons into the EU territory.⁵⁵ This directive establishes “a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation”.⁵⁶

If one looks at this statement, in 2015, the EU was clearly in a position of a massive influx of Syrian and Iraqi citizens, fleeing from Syria and Iraq, where the Syrian civil war and the ISIS were threatening their lives, preventing them from returning in their countries of origin. But paradoxically, the Temporary Protection Directive, which should have represented the best and the quicker way to react to the escalating crisis, has not been activated. On 12 April 2016, the European Parliament deplored this lack of

⁵⁴ Proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) 439/2010, COM(2016)271 final, 4 May 2016.

⁵⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7 August 2001, p. 12.

⁵⁶ *Ibid.*, Article 2 point a).

initiative. It noted indeed that “the Temporary Protection Directive should—under its own logic—have been triggered”.⁵⁷

This passivity of the EU to activate this directive may appear surprising, given that the European Commission stressed in 2011 its intention to make use of this directive when the criteria and situations are met.⁵⁸ But the reason of this non-activation may, however, be found in the imprecision of the directive. The central notion of this text is the one of “mass influx”. But it is only defined in general terms. It means “arrival in [the EU] of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival [...] was spontaneous or aided”.⁵⁹ No specific and objective criteria are established. This legal uncertainty is therefore an impediment to the effective implementation of the directive. A clear definition of the criteria characterising a massive influx of displaced persons is therefore duly required in order to activate the Temporary Protection Directive in emergency cases, as was definitely the case during the refugee crisis. This clarification is indeed a costless solution in time of crisis.

Finally, one statement sums up the situation: the EU has the solutions at hand, it must be given the means to do so.

Ms. Joanna Pétin is a Ph-D researcher at the CDRE (Centre de Documentation et de Recherches Européen), located in Bayonne (France). She is also a legal consultant specialised on EU immigration and asylum issues.

⁵⁷ European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, P8_TA-PROV(2016)0102, point 42.

⁵⁸ COM(2011)835 final, op. cit., p. 10.

⁵⁹ Article 2 point d) Council Directive 2001/55/EC.

The European Refugee Crisis and the Southeastern Route in 2015-16

Angelos M. Syrigos

1. AN AGE-OLD PROBLEM: REFUGEES AND ECONOMIC MIGRANTS IN THE EU

The problem regarding refugees and migrants in Europe is not a new one. Both World Wars were followed by mass movements of populations across the European continent. The situation stabilized during the Cold War due to the fact that it was very difficult to cross borders due to very strict controls. With the exception of some 180,000 Hungarians who fled to Austria in 1956 after the failure of the Hungarian Revolution, the number of people seeking refuge in the individual European states was limited to a few hundreds per year. Following the end of the Cold War, Europe witnessed a mass flow of people coming mainly from the countries emerging from the ruins of the defunct Soviet Union. These people were mainly economic migrants and were entering the European Union (EU) through all possible ways in Eastern and Southern Europe. In addition to the economic migrants there were also refugees coming mainly from the belligerent ex-Yugoslav territories. Despite the fact that the Yugoslav wars were particularly violent (as is often the case with civil wars), the impact of refugees to the EU was comparatively limited.

Circumstances changed dramatically during the first days of the 21st century. US-led military invasions in Afghanistan (2001) and Iraq (2003) created a mass flow of people fleeing their countries due to war or persecution. For example, Christians of Iraq who have lived there long before the Muslim conquest in 634 A.D., are currently on the verge of extinction. In spite of the distance between the war-torn Middle East countries and Europe, many of these people managed to arrive in the EU where they claimed refugee status. The situation deteriorated after the Arab Spring. A series of riots and civil wars started in 2010 in Tunisia and spread throughout the Arab world. The difference with Iraq and Afghanistan was that many of the countries affected by the Arab Spring uprisings were in the Mediterranean basin, some tens of miles off the coasts of the southern EU member states.

The most severe of these events took place in Syria in the second half of 2011. The conflict in Syria is better described as a proxy war rather than a civil war. Saudi Arabia,

the Gulf states and Turkey are supporting the Sunni militants who are fighting against the governing Assad regime assisted by Russia and Shiite Iran. The Syrian Kurds have the backing of the US and the West and all of them are fighting against the terrorist organization “Islamic State” (also known as ISIS or Daesh). There are no reasonable reasons to believe that the conflict in Syria will end soon. The continuous fighting since 2011 has led to 6,600,000 internally displaced people and 4,840,000 refugees.

Table 1: Syrians registered as refugees in neighbouring countries¹

Turkey	2,744,915
Lebanon	1,048,275
Jordan	651,114
Iraq	246,589
Egypt	120,491
North Africa	29,275
Total	4,840,569

Many of these Syrians, desperate of the situation in their country, are looking for refuge in the EU. Nevertheless, the great wave of migrants moving towards Europe has never been composed solely of Syrians.

Tens of thousands of Iraqis and Afghans are joining the growing number of Syrian refugees. In addition to the people fleeing their country out of a well-founded fear for their lives, there are many other people who are simply looking for better economic conditions. These are the economic migrants.

2. EU: ECONOMIC MIGRANTS, ASYLUM SEEKERS, REFUGEES AND ABUSE OF ASYLUM SYSTEM

In order to better understand the problem, it is important at this point to elaborate on the terminology used in the EU concerning economic migrants, asylum seekers and refugees.

Economic migrant: This is a person who is fleeing from his impoverished country to find employment in another country that he enters lawfully or unlawfully. The term does not constitute a legal term. In principle an economic migrant is deported to his country of origin.

Asylum seeker: This is a legal term that describes a person who has applied for asylum in the EU and is waiting for a decision on his application. An asylum seeker has the right to move freely around the country; he is generally entitled to food or money to buy it and to medical attention and he may ask to be hosted at reception centres. Depending on the EU country, he may be able to work under conditions set by national law, having the same social security rights and obligations as nationals. A person

¹ Source: UNHCR, Syria Regional Refugee Response, as of 19 May 2016.

remains an asylum seeker as long as his application or an appeal against the refusal of his application is pending. Each application is examined separately on its own merit.

Refugee: Upon acceptance of an asylum seeker's application, he is considered to be a recognized refugee. An application is accepted if there are sufficient grounds to believe that the asylum seeker is fleeing from a war-torn country or that if he is returned to his country of origin, is going to be persecuted on account of race, religion, nationality, political belief or membership of a particular social group. Although the notion of *refugee* in the EU mainly follows the principles first recognised by the 1951 Geneva Convention on the Status of Refugees, the EU states are following the so-called "Common European Asylum System". This system goes beyond the 1951 Geneva Convention since it protects a person fleeing by reason, for example, of civil war or natural disaster but not necessarily fearing persecution as defined by the 1951 Geneva Convention. The term *refugee* is a legal notion. Nevertheless, in everyday life when we refer to refugees we are often referring to people who have not applied yet for asylum but are considered as *quasi* refugees since they come from countries severely damaged by war.

Confusion of the two terms: Quite often the two notions of economic migrants and refugees are confused. There are several reasons for this; the most important ones being the following:

- Economic migrants and refugees are using the same illegal ways to enter the EU. Before their asylum applications are examined it is difficult to tell whether they are refugees or not.
- Leftist movements in Europe as well as many NGOs blur on purpose the two notions and claim that there are no differences in practice between these two groups since economic migrants are about to starve to death and in reality they are in the same, or even worse, situation as people who face persecutions.

Abuse of the asylum system: During the last two decades, many economic migrants are applying for asylum and relying on the lengthy procedures for the examination of their claims in order to secure entry and have a legal status in an EU country and to enjoy the asylum-seeker status and the benefits deriving from it longer.

3. WHAT HAPPENED IN 2015 IN EUROPE?

In 2015 the number of people who entered illegally into the EU almost tripled in comparison with 2014. The vast majority (99%) crossed the eastern and central Mediterranean Sea on unseaworthy boats and cheap dinghies. The most frequent crossing in 2015 and 2016 (up to May) proved to be in the areas between the Turkish coasts and the eastern Greek islands in the Aegean sea. Distances between the two coasts are relatively short, not exceeding 10-12 nautical miles. In 2014 the most frequent crossing

was in the central Mediterranean Sea between the African coasts and the Italian island of Lampedusa, which lies some 70 miles from the Tunisian coast and further south than Malta.

Table 2: Sea arrivals to Greece and Italy and total entries into Europe²

	Greece	Italy	Europe
2014	45,432 (16%)	171,230 (60%)	283,532
2015	872,881 (84%)	153,842 (15%)	1,034,098
2016 (May)	156,261 (79%)	40,532 (20%)	197,696

An important question is where the causes of this record movement of people into Europe in 2015 lie. Most of the (very few) relevant analyses focus on the situation in Syria. This seems to be logical since the mass movement of refugees and migrants has largely been driven by Syrians. The basic arguments are the following:

- Many Syrians were fleeing directly from the war zones. After June 2014 the “Islamic State” managed to take under its control vast landlocked territories in Syria. Sharia law was imposed in these territories and many civilians were ill-treated or were targeted on the basis of their religion or ethnicity. Apparently, many amongst them decided to escape. Moreover, in September 2015, the Russians started conducting air strikes in north-western Syria against various jihadist groups following an official request by the Syrian government for military help. Thus, a number of people left these areas and went to Turkey.
- Many Syrians had already been refugees in neighbouring countries for several years. The conditions in the refugee camps; the legal limbo that Syrians were experiencing for several years; the fact that most of them were not given the right to work; and the sense that the Syrian conflict would not end soon were the reasons that convinced Syrians to come to Europe “*to claim the rights bestowed on them by the 1951 UN refugee convention*”³.

Although these arguments are partially valid there are two problems:

- (a) Although Syrians were by far the largest group among the refugees/migrants entering the EU in 2015-16 they never accounted for more than 41% of the total number of entries. Thus, explanations deriving from the Syrian conflict cannot really describe what the main driver of migration for all the other ethnic groups, which amounted to 59%, was. Syrians were followed by Afghans (21%), Iraqis (13%), Pakistanis (3%) and Iranians (2%). Although there is violence in Af-

² Source: UNHCR, data for 2016 as of 30 May 2016. Data on the number of entries into Greece derives from Greek Police.

³ Kingsley, P., “Over a million migrants and refugees have reached Europe this year, says IOM”, *The Guardian*, 22 December 2015.

ghanistan and Iraq, this has been an ongoing situation in these two countries for many years.

- (b) Conflicts, violence, and poverty in the Middle East countries do not explain why these people decided to come into the EU via Greece in 2015-16 and not via Italy, as happened in 2014, or even via Bulgaria, which shares an extensive land frontier with Turkey. Since most of the refugees/migrants have never entered a boat in their lives, it would have been easier to cross the terrestrial frontier between Turkey and Bulgaria instead of risking drowning because of unseaworthy dinghies in the Aegean. During 2015 the flows in Bulgaria increased only by 20% in comparison with Greece where the flows increased by 1,820%.

The explanation of the record movements in 2015 lies in two messages; the one coming from the Greek government and the second coming from the German government. Both messages reached hundreds of thousands of refugees and economic migrants who are scattered throughout the Mediterranean and looking desperately for the appropriate path that would bring them into northern Europe. The other recipients of the messages were the smugglers. Their interests seem to coincide with those of illegal migrants but for different reasons.

(a) The first message from Greece

Following the January 2015 general elections in Greece, the leftist Syriza party was forced to form a coalition with the populist right wing party Independent Greeks (ANEL). Ministries were shared between the two partners. The Ministry of Interior was allocated to Syriza. A group of people known for supporting the opening of borders to all refugees and migrants became responsible for the new Greek migration policy. In theory, their aim was to “produce a balanced policy on migration and illegal migration, cultivating solidarity with Asians and Africans, instead of hostility and civic conflict”⁴. The official position of Syriza on migration was as follows:

[M]igration flows are a result of the neoliberal, capitalist globalization that uproots people from their hearths, either because it makes them victims of war or because it deprives them of the basic means of survival. Economic and political migrants or refugees are today’s “damned of the Earth” ...

The European migration policy has to change immediately, with main criteria the European shared responsibility, the reception capacity of each country, and the prevention of underpaid work and exploitation of migrant workers. The Dublin II Regulation and the European Pact on Immigration and Asylum must be cancelled

⁴ Fouskas, V., “Why Syriza is good news for Greece and Europe”, Open Democracy, 31 December 2014, <https://www.opendemocracy.net/can-europe-make-it/vassilis-k-fouskas/why-syriza-is-good-news-for-greece-and-europe>.

so that refugees or immigrants will be free to go to another country if they do not wish to stay here. Furthermore, it is necessary to humanize the institutional framework for legalization, for asylum granting, and for giving travel documents to immigrants and refugees. ...

We will close down today's inhumane detention centers and set up open centers where immigrants will be able to live with dignity.⁵

What was generally described as the Greek chance to move the EU towards a more humane migration policy, in practice meant the following:

- A new policy of “open borders” with Turkey was adopted. People who were entering Greece were allowed to continue their trip to northern Europe. For several months Greece was just a transit corridor for refugees and migrants.
- Channelling of the migrants to the other EU countries rather than repatriation was preferred.
- The distinction between refugees and economic migrants was blurred. Everybody was considered as a *quasi* refugee. Moreover, the government asked the media and the public to cease using the term “economic migrants” since all the incoming people were refugees. It was obvious that the Greek government was unaware of the fact that many economic migrants were using forged documents claiming that they were Syrians. Due to the poor identification conditions at the entrance points, the forged documents were passing unnoticed.
- The way that the Schengen area functions was ignored. The Schengen zone member states have abolished checks at their borders with other member states (internal borders), because the member states that have borders with third countries (external borders) are carrying out tightened controls. Between March and August 2015 most of the illegal border-crossers were not fingerprinted. According to EU rules, all people over the age of 14 who are entering illegally into the EU (as well as asylum seekers) should be identified and have their fingerprints taken. Data is sent digitally to a European fingerprint database known as EURO-DAC where an automatic check reveals whether an asylum seeker has already applied for asylum in another EU member state or has illegally being transited through another EU member state.
- Neglect of all the measures intended to prevent illegal migration.

The result of this policy was that the number of refugees/migrants increased during the first half of 2015 from 1,800 people in January to 52,000 people in July.

⁵ Point 13.23, Political Resolution of the 1st congress of SYRIZA, July 2013.

Table 3: Number of illegal entries into Greece after the first (Greek) message

	2014	2015
January	1,062	1,805
February	1,154	3,007
March	1,437	8,162
April	1,483	14,009
May	2,007	18,444
June	3,751	30,938
July	4,850	51,951

(b) The second message from Germany

In August 2015 the Greek government was reshuffled and the leadership of the Ministry of Interior was replaced. The registration system for refugees and economic migrants entering into Greece gradually re-operated. In spite of the fact that controls started becoming tighter, the flow of illegal entries climaxed. The reason for this was that the second message which came; this time from Germany. On the 19th of August the German Minister of Interior, Thomas de Maizière, announced that his government estimated “that up to 800,000 people could request asylum in the country by the end of the year”⁶. This was nearly double the number that had been forecast only a few months before and almost four times larger than the previous year’s total. This statement was repeated by the German Chancellor, who said that “the right to political asylum has no limits on the number of asylum seekers.”⁷

There may be several explanations for this statement:

- It could simply be a statement of a fact: Germany expects 800,000 asylum seekers.
- With the number of deaths outstripping births, the working-age population in Germany was estimated to shrink by 6 million people by 2030. The refugees could help ease Germany’s skills shortage.⁸
- The German government was alarmed over growing hate speech and racist attacks against migrants and wanted to show its firm stance and express its tolerance towards asylum seekers.⁹

⁶ “Germany raises estimate on refugee arrivals to 800,000 this year”, *The Guardian*, 20 August, 2015, <https://www.theguardian.com/world/2015/aug/20/germany-raises-estimate-refugee-arrivals-800000>.

⁷ The German Chancellor speaking to the Funke consortium of newspapers, Friday, 11 September 2015.

⁸ Smale, A., “Needing Skilled Workers, a Booming Germany Woos Immigrants”, *New York Times*, 18 July 2014; Daley, S., and Kulish, N., “Germany fights population drop”, *New York Times*, 13 August 2013.

⁹ “Europe’s migrant crisis: Merkel the bold; On refugees, Germany’s chancellor is brave, decisive and right”, *The Economist*, 5 September 2015.

- Germany was trying to empower the European ideal, which had been severely damaged during summer 2015 following the negotiations with the Greek government to tackle the economic crisis.¹⁰
- There are memories from the late 1980s when tens of thousands of East Germans fled through Hungary to the West which might have driven this response.

Whatever the reason was, the fact is that this policy towards the refugees had a significant impact on the number of illegal entries into the EU. In the following weeks and months the EU witnessed fast growing numbers of persons seeking protection and moving through Greece and the Western Balkan countries to Austria and onwards.

In October 2015, Greece witnessed 214,000 illegal entries via the eastern Aegean islands.

Table 4: Number of illegal entries into Greece after the second (German) message

	2014	2015
August	7,544	107,843
September	8,096	156,457
October	8,061	213,886
November	3,956	154,852
December	2,231	111,487

The impact of the German statements was also shown in the numbers of Syrian refugees in the Middle East. For the first time since 2011 the number of refugees in Lebanon reduced. In contrast, the number of Syrians in Turkey increased by some 700,000 people between May and December 2015.

Table 5. Movements of Syrian refugees before and after the second (German) message¹¹

Syrian refugees	in Turkey	in Lebanon
January 2015	1,153,000	1,156,000
May 2015	1,761,000	1,183,000
December 2015	2,504,000	1,069,000

Everyone wanted to go to Germany where “they expected them”. The road was tested. A high price to pay the smugglers to cross from Turkey to the Greek islands; the normal ticket price to travel by ship to the port of Pireaus; a bus ticket to the borders with FYROM; a train ticket to the borders with Serbia and then either a train or a bus ticket to enter the EU countries of central Europe. Somebody could travel in a few days from Turkey to Germany at an affordable cost with the exception of the fee for the smugglers

¹⁰ Nardelli, A., “Angela Merkel’s stance on refugees means she stands alone against catastrophe”, *The Guardian*, 8 November 2015; “Mother Angela: Merkel’s Refugee Policy Divides Europe”, <http://www.spiegel.de/international/germany/refugee-policy-of-chancellor-merkel-divides-europe-a-1053603.html>.

¹¹ Source: UNHCR-Syria Regional Refugee Response Inter-agency Information Sharing Portal.

to cross from the Turkish coasts. Thus, it became then irrelevant whether Greece had begun identifications and fingerprinting again.

The result was that due to the two messages, Greece became in 2015 almost an exclusive gateway that refugees and migrants were using to enter into the EU.

Table 6: Number of illegal entries into Greece in 2014-2015

	2014	2015	% Change
January	1,062	1,805	+70 %
February	1,154	3,007	+161 %
March	1,437	8,162	+468 %
April	1,483	14,009	+845 %
May	2,007	18,444	+819 %
June	3,751	30,938	+725 %
July	4,850	51,951	+971%
August	7,544	107,843	+1,330%
September	8,096	156,457	+1,833%
October	8,061	213,886	+2,553%
November	3,956	154,852	+3,814%
December	2,231	111,487	+4,897%
Total	45,452	872,881	+1,820%

4. THE PARADOXES OF THE EUROPEAN MIGRATION POLICY

The flood of refugees and immigrants of 2015 brought to the surface all the paradoxes of the European immigration policy. The first paradox concerns the EU rhetoric to protect and assist refugees in general. Nevertheless, there is no legal way for mass refugee entries into the EU. The responsibility belongs exclusively to the member states, which are extremely tight-fisted in giving visas. But while the main (legal) route is closed, the back door of illegal entry is wide open. Anyone who manages to arrive into the EU illegally is accepted, as long as he can be considered a refugee. The paradox of the member states' attitude is that they are ready to assist only those who decide to travel (with the risks which are inherent in such a trip) and to enter illegally into the Schengen area. The European stance ultimately works as an incentive for many to opt for the illegal route into the EU.

Another question is whether those managing to arrive in Europe are those who are really in the greatest need. The reply is negative. The refugees and economic migrants who arrive in the EU are the people who can afford to pay for their trip (which obviously includes payment to smugglers). The poorest and the most vulnerable are left behind in the camps of Turkey and Lebanon since they lack the cash to head to Europe. When the EU has to choose between a child dying in Darfur or a young Syrian engineer, the choice is in favour of the latter. This policy deprives poor countries of the only people who can help them in the long term. For example, when the conflict in Syrian eventually ends, the most wealthy and educated part of the society will be out of the

country. Once they are settled in Europe, their return is highly unlikely. Over time this situation will have serious consequences for the country abandoned since it will stand in the way of its reconstruction.

Another feature of European policy is that the EU member states have a myopic view of the problems associated with refugees in their immediate vicinity. A good example is the case of Syria. Since 2011, Turkey, Lebanon and Jordan have been flooded by four million refugees in a period of two years. European states were very reluctant to offer generous financial assistance to these three countries. It is indicative that between 2011-14 (non-EU) Norway has offered 150 million euros, and was second only to Germany as a donor country. Norwegian assistance was almost equal to what France, Sweden and Denmark offered together. It is obvious that the Syrians (and other refugees) become a European problem only when they arrive in the EU territories. During the 2015-16 refugee/migrant crisis the prevailing concept of all the EU states that were part of the infamous southern corridor was “it is better not to reach us”. Each country blamed the previous, all together blamed Greece and Greece blamed Turkey.

Last but not least, very few in the traditional parties officially talk about protection of the cultural identity and values of the aging, post-Christian and secular Europe in spite of the fact that the vast majority of the newcomers are young Muslims. This is very serious because it offers the opportunity to the extreme right and anti-establishment/anti-systemic parties to fill the gap. At the same time, European intelligence agencies closely monitor the mosques in every EU country and know with precision the names of some 4,500 European citizens who have gone as “foreign fighters” since 2011 to fight for ISIS in Syria and Iraq.

This situation is very worrying. After the euro crisis, migration threatens the foundations of the European project.

Dr. Angelos M. Syrigos is Assistant Professor of International Law and Foreign Policy, Panteion University of Social and Political Sciences, and former Secretary General of the Greek Ministry of Interior (2012-14) responsible for migration and integration.

Migrants and Refugees En Route Across the Mediterranean

Gian Carlo Blangiardo and Roberto Cortinovis

In 2015, the number of migrants smuggled across the Mediterranean into the European Union (EU) was more than one million, a figure that eclipses the previous peak of 216,000 recorded in 2014. While conflicts and political instability spreading throughout the Middle East and sub-Saharan Africa contribute to a significant extent in explaining the scale of current migratory movements, the impact of socio-economic and demographic variables in some of the main countries of origin should not be neglected. After a general overview of the main trends and dynamics that shaped Mediterranean flows in the years 2014-2015, this contribution highlights some of the specific features that characterize African migratory movements. The remaining section provides an overview of the initiatives adopted by the EU to manage migration in cooperation with African countries and points to some issues that have been left unaddressed by the current policy response.

1. TRENDS AND DYNAMICS OF MIGRATION FLOWS ACROSS THE MEDITERRANEAN

Migration across the Mediterranean Sea is anything but a new phenomenon. During the early 1990s, for example, Italy experienced the sudden arrival of tens of thousands of migrants from Albania as a consequence of the collapse of the communist regime in that country. In the same period, the Spanish government introduced visa requirements in order to halt migration from North Africa, a phenomenon dating back to the 1960s (Fargues and Bonfanti, 2014). A 2013 study collecting the statistical data provided by the European countries overlooking the Mediterranean estimates a yearly average of about 44,000 landings on European southern shores from 1998 to 2013 (Fargues and Bonfanti, 2014). The years 2014 and 2015, however, marked an unprecedented increase of trans-Mediterranean flows: 216,000 landings occurred in 2014 according to the UN High Commissioner for Refugees (UNHCR, 2015a). That is a number three times higher than the previous peak recorded in 2011 in conjunction with the Arab Spring events. The data regarding 2015 show a further steep increase in sea arrivals, which reached the impressive figure of more than one million at the end of the year (UNHCR, 2015a).

When focusing on the evolution of migratory routes across the Mediterranean during the past two years, we can observe the strong pressure experienced along the so-called Central Mediterranean route, which originates in Libya and ends on the Italian shores, and the East Mediterranean route, which starts from Turkey and reaches the Greek islands in the Aegean Sea. The Central Mediterranean route, in particular, was the main channel used by migrants to reach Europe in 2014, with over 170,000 arrivals on Italian shores recorded during the year. In 2015, some 153,000 migrants landed on the Italian coasts, mainly nationals of Eritrea, Nigeria, Somalia, and Sudan. The Central Mediterranean route proved to be also the most tragic in terms of the number of people who perished at sea, with 2,892 estimated in 2015 (for the sake of comparison, 806 deaths were recorded on the East Mediterranean route in the same year) (IOM, 2015).

At the same time, the East Mediterranean route gained increased relevance over 2015. While during 2014 about 44,000 migrants landed in Greece, over 850,000 arrivals were recorded in 2015. These figures highlight the centrality acquired by this route as a privileged access to Europe for migrants that come from the Middle East and South Asia, mainly Syrians, Afghan, Pakistani, and Iraqis (UNHCR, 2015a).

According to Monzini (2007: p. 180), there are three interdependent variables that play a key role in shaping migration dynamics in the Mediterranean: the migration pressure in the countries of origin of migrants; the management and control policies adopted by transit and destination countries; and the strategies operated by organizations involved in migrant smuggling (which are, in turn, influenced by the effects produced by the first two variables).

Regarding the first variable, the perpetuation of the war in Syria, the expansion of the Islamic State (IS) in Iraq, the unresolved conflicts in several African countries (such as in the case of Somalia, the Central African Republic, the Democratic Republic of Congo, and South Sudan) and the worsening of the repression in Eritrea have substantially increased the “forced” component of Mediterranean flows. In fact, the increase of flows across the Mediterranean has been accompanied by a parallel increase in asylum demands in the EU: in 2014, 626,960 asylum requests were lodged in the EU Member States, a 43 per cent increase compared to 2013, when 431,090 demands were presented. In 2015, the surge in asylum demands continued unabated: at the time of writing, provisional data from Eurostat report a total number well beyond one million applications (Eurostat, 2015). Looking at the main nationalities of asylum seekers in the EU, the nexus between migration and asylum becomes clear: Syrians, Iraqis, Afghan, Eritreans and Somali feature prominently both among asylum applicants in the EU and among migrants smuggled onto the Italian and Greek coasts (Eurostat, 2015; UNHCR, 2015a).

The Syrian civil war, which began in 2011, can be singled out as the event that produced the most relevant impact on the dynamics of migration flows across the Mediterranean. According to the UNHCR, the number of people who needed humanitarian aid because of the conflict exceeded 12 million in 2015, out of which 7.5 million are internally displaced within Syria and more than 4 million remain hosted in the neighbouring countries, mainly Turkey, Lebanon, and Jordan. Compared to the magnitude of the phenomenon, it is important to remember that EU states have welcomed so far only a limited quota of Syrian refugees, just over 10 per cent of the total by the end of 2015 (UNHCR, 2015b).

North Africa and specifically Libya was the main point of departure chosen by Syrians to reach Europe in 2014, when 42,000 arrivals were recorded. However, in the last part of 2014 and during 2015, the majority of Syrians migrants were recorded along the East Mediterranean route, where they became by far the most represented nationality (UNHCR, 2015a). The large part of Syrians arriving in Greece did not stop there but continued the journey along the so-called “Western Balkan” route, through Macedonia Serbia and Hungary, in order to finally reach a northern European country, Germany and Sweden being among the most favoured destinations.¹

The evolving role of Libya as a hub for migrants from different regions headed to Europe draws attention to the role of migration policies (or the lack of) enacted by transit and destination countries. Accordingly, several policy-related factors can be brought to account for the shifting relevance, in numerical terms, between the Central and the East Mediterranean routes, even if it is currently difficult to assess the relative importance of each of these factors.

First, while in early 2014 the lack of effective state authority able to assure control of external borders acted as a pull factor towards Libya, the deterioration of the security environment in the country during 2015, along with repeated accounts of violence and exploitation perpetrated by armed militias and unaccountable police officers towards migrants, contributed to shifting migratory pressure towards other safer routes (Monzini, Pastore, and Abdel Aziz, 2015: p. 28). Second, the imposition of visa requirements for Syrian passport holders by neighbouring countries such as Algeria and Egypt made it increasingly difficult for Syrians to reach Libya in the first place (Altai Consulting, 2015: p. 102). Finally, another central factor that has to be taken into consideration when accounting for the redefinition of migratory movements towards Europe in 2015 is the deterioration of the living conditions of the more than two million Syrians refugees hosted in Turkey (Monzini, Pastore, and Abdel Aziz, 2015: p. 28). More generally, the shrinking of the “asylum space” across the main countries of first asylum, which usually implies restrictive residence policies as well as limited

¹ According to the European Agency Frontex (2015), about 760,000 migrants transited along the Western Balkan route in 2015. Among them, Syrian and Afghan were the two most represented nationalities.

possibilities for socio-economic integration, is a circumstance that is likely to push an increasing number of refugees to consider reaching Europe, where they can usually be recognized with the full set of rights associated with refugee status (Aleinikoff, 2015: p. 4).

The evolution of the Mediterranean routes used by immigrants is strictly connected to the third variable mentioned above, which points to the activity of the smuggling organisations that operate along these routes.² This aspect acquired central relevance in the agenda of the European leaders in 2015, as testified by the launch of the military operation “EUNAVFOR Med”, whose objective is to disrupt the “business model” connected with the human smuggling and trafficking in the South Mediterranean Sea (Mananashvili, 2015). However, empirical evidence on the smuggling organizations active along the Mediterranean routes reveals that those organisations rely on informal and flexible networks that are deeply embedded in the local economies of the countries of origin and transit (Monzini, Pastore, and Abdel Aziz, 2015: p. 34).³ Thus, while increasingly restrictive policy responses and the persistent demand for crossings are likely to contribute to the professionalization of the smuggling business, the pervasive character of such business challenges the validity of a mere restrictive approach to the problem. Instead, as pointed out by several analysts, it would be beneficial to tackle the root causes of migration by means of comprehensive partnerships with the countries of origin and, at the same time, to envisage legal channels for entering EU territory, first and foremost for migrants in need of international protection (de Haas, 2015).

2. AFRICAN MIXED FLOWS: A LONG-TERM CHALLENGE FOR EUROPE

Migration flows across the Mediterranean are usually characterized as mixed, which means that refugees and other categories of migrants (economic migrants, unaccompanied minors, other vulnerable people) move alongside each other, making use of the same routes and means of transport and engaging the services of the same smuggling networks (UNHCR, 2007). While the mixed nature of flows is an attribute that relates to some extent to all the major regions of origin of migrants transiting through the Mediterranean, it is nevertheless a particularly prominent feature of sub-Saharan flows,

² A clear conceptual distinction should be made between smuggling of migrants, which requires the consent of the individuals concerned, and trafficking in human beings, which implies transporting migrants by coercive means and for the purpose of exploitation. It is, however, important to remember that, in many real situations, these two forms of illegality are often connected and not easy to distinguish (Monzini, Pastore, and Abdel Aziz, 2015: p. 11).

³ In a news story on human smuggling in Libya, the British newspaper *The Guardian* reports the following account recorded in the city of Zuwara: “No one has the name ‘smuggler’ written on their chest. Anyone here who has no money can sell their apartment, buy a boat, and organise a smuggling trip. By the time of the next trip you’d already have regained half the cost of the apartment. It’s a very easy formula.” (Kinsley, 2015)

in particular of the countries of the Sahel region and the Horn of Africa (Fargues and Bonfanti, 2014). Moreover, a more fine-grained analysis of the socio-economic and political context in some of the main countries of origin reveals how the characterization of those flows as “mixed” extends beyond the presence of different categories of migrants as defined by the legal regimes of destination countries. In particular, migrants may be impelled to leave by a plurality of reasons (both of economic and non-economic nature) that may be difficult to disentangle in practice. This circumstance calls into question the dichotomous distinction between refugees and voluntary migrants that is often assumed in policy discourses (Van Hear, 2011: p. 6). Indeed, while current asylum legislation in the EU assigns the right to be granted international protection only to individuals fleeing state persecution or other serious violation of their human rights, a number of migrants transiting through the Mediterranean may nevertheless have been “forced” to move due to economic and political collapse. In addition, as stressed by Betts (2013), the weak or almost non-existing governance system that characterizes many countries of origin of forced migrants, such as Somalia and the Democratic Republic of Congo, exacerbates the impact on population displacement of a range of environmental factors, such as water scarcity, food insecurity, drought, environmental degradation, natural disasters and climate change.

The challenges posed by African flows are further compelled by demographic trends that characterize the countries in the region, which predict a sustained migratory pressure from that area towards Europe in the following decades. While currently about 962 million people live south of the Sahara, this number will become 1.2 billion in the next 10 years and 1.6 billion in the next twenty years. According to the latest United Nations estimates (United Nations, 2015), the population aged 20-39 in that area will grow by 203 million within the next two decades. It seems, thus, reasonable to predict that if that large population of young people won’t be able to find adequate job opportunities in their native country or in the neighbouring region, they will consider migrating to Europe as the only feasible alternative to escape dire economic and social conditions (Blangiardo, 2015).

3. THE EU RESPONSE: IN SEARCH OF COMPREHENSIVE SOLUTIONS

In light of the dynamics outlined in the previous section, it appears clear that the effective management of migration flows in the Mediterranean Sea, and specifically from the African continent, is related to the further development and coordination of various interconnected policy areas. Necessary components of a comprehensive approach to the challenges posed by migration flows include well-functioning asylum and reception systems, admission policies that can maximize immigration benefits for both countries of origin and destination, and policies to tackle illegal immigration, which, at the same

time, can guarantee the respect of the human rights of migrants. This section aims to explore a specific component of EU migration governance, the so-called “external dimension” of migration policies, with a specific focus on initiatives addressed to the African continent.

The external dimension includes all those EU initiatives aiming to expand the scope of migration policies outside EU borders by ensuring the cooperation of the countries of origin and transit of migration flows. Since the inception of EU action in this field in the early 1990s, and in line with the preferences of the Member States of the EU, priority was accorded to tackling irregular migration, and EU action was thus geared towards the establishment of cooperation with third countries on readmission and joint border controls (Boswell, 2003). Moreover, initiatives undertaken at the EU level were generally meant to complement rather than replace the pre-existing dense web of bilateral agreements between EU Member States and African countries, which touch upon a multiplicity of other issues such as labour migration, trade and development (Betts, 2011: p. 37).

In recent years, under the steer of repeated external shocks, such as the migration inflow that followed the Arab Spring events in 2011, action was taken to expand the reach of EU external action, by integrating into the EU strategy the so-called “root causes approach”, which aim at tackling the push factors of migration flows in countries of origin. In particular, the Global Approach to Migration and Mobility (GAMM), first adopted in 2005 and then substantially revised in 2012, lays down a comprehensive strategy for the development of the external dimension of EU migration policy (Council of the European Union, 2012). The main goal of the GAMM is to face all relevant aspects of migration in a balanced and comprehensive way, in partnership with third countries. To achieve that aim, the GAMM is structured on four pillars: i) legal migration and mobility; ii) irregular migration and trafficking in human beings; iii) international protection and asylum policy; iv) maximizing the development impact of migration and mobility (European Commission, 2011).

The comprehensive approach laid down in the GAMM is also the basis for the European Agenda on Migration adopted by the European Commission in May 2015, which aims to define the main lines of action in the field of migration to be adopted by the EU in the coming years. The Agenda, which is strongly influenced by the dramatic situation unfolding in the Mediterranean Sea, emphasizes: “To try to halt human misery created by those who exploit migrants, we need to use the EU’s global role and wide range of tools to address the root causes of migration” (European Commission, 2015: p. 2).

With specific regard to the African continent, the Agenda underlined the importance of strengthening existing regional dialogues, such as the Rabat and Khartoum processes, and announced the organization of a dedicated summit with partners of the African Union to be held the following autumn. The summit, which was then held in La Valletta, Malta, on 11-12 November 2015, resulted in the approval of an Action Plan (AP), structured around five priority domains: i) the development benefits of migration; ii) legal migration and mobility; iii) protection and asylum; iv) prevention and fights against irregular migration and migrant trafficking; iv) return, readmission and reintegration.⁴ The implementation of the Valletta AP is backed by the EU Trust Fund for Africa, launched in September 2015 and initially endowed with €1.8 billion. The rationale for the creation of this financial instrument is that of gathering resources from both the EU budget and Member States' donations, and setting in place a comprehensive strategy aimed at managing the plurality of migration challenges that originate in the African continent (D'Alfonso and Immenkamp, 2015).

The outcome of the Valletta Summit has been criticized by European and African civil society organizations due to its "asymmetry": in other words, for putting excessive emphasis on readmission and irregular migration compared to the other domains included in the AP, notably legal migration. So, the most concrete initiative in the legal migration and mobility basket is the doubling of the number of scholarships for students and academic staff supported by EU funding. Instead, the objective of launching pilot projects that pool offers for legal migration by some EU Member States or associated countries to selected African countries is stated in quite vague terms in the AP and is not backed by any specific commitment. In the field of asylum, the EU strategy centres on strengthening the capacities of the countries of first asylum in dealing with refugee communities, including through a targeted use of development assistance. No reference, however, is made to opening new channels for asylum seekers and refugees to reach Europe safely, except for the confirmation of the commitment to resettle 22,000 refugees from priority regions taken by Member States in July 2015.

Besides an analysis of the programmatic statements laid down in the Valletta Summit AP, an assessment of the potential impacts of EU action towards African partners requires considering the "operationalization" of that strategy, which implies taking into consideration the governance instruments, financial resources, and the actors that concur with their implementation. In this regard, two frameworks of cooperation developed at the EU level are mentioned in the Valletta AP: Mobility Partnerships and Regional Development and Protection Programmes.

⁴ See "Valletta Summit, 11-12 November 2015. Action Plan", online: <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>.

The Mobility Partnerships (MPs) were launched in 2007 and, according to the Commission, represent one of the privileged tools to translate the GAMM into practice (European Commission, 2009). The goal of MPs is to establish partnerships with the countries of origin and transit of migration flows through concrete initiatives in the field of legal immigration, the migration and development nexus, international protection and illegal immigration. MPs have been signed so far with three African countries: Cape Verde, Morocco and Tunisia.

The MPs are concluded as non-legally-binding political declarations between the European Commission, the concerned third country and those EU Member States that have voluntarily agreed to take part. Besides the Joint declaration, each of the partnerships includes an “Annex” that lists the concrete projects that the parties commit themselves to carrying out in the different areas of cooperation. In spite of what their name would suggest, MPs concluded so far include only limited initiatives aimed at increasing mobility in the EU, in particular through the creation of new labour migration channels. On the other hand, following the long-standing conditionality approach adopted by the EU towards its neighbourhood, the partnerships commit the parties to strengthening their cooperation on readmission, usually in exchange for visa facilitations to the benefit of the citizens of the third country concerned (Lavenex and Stucky, 2011).⁵ Regarding asylum, in 2005 the EU launched the Regional Protection Programmes (RPPs), which are conceived as flexible and multi-dimensional frameworks of cooperation with the main regions that host refugees (European Commission, 2005). In the framework of RPPs, a series of projects have been implemented with a view to strengthening the asylum systems of target countries, in particular by creating new infrastructure and training public officials and NGOs’ personnel dealing with refugees. In the following years, RPPs were launched in the Great Lakes region (Tanzania), the Horn of Africa (Kenya, Yemen and Djibouti), and North Africa (Egypt, Libya and Tunisia) (Papadopoulou, 2015).

In 2013, the EU initiated a Regional Development and Protection Programme (RDPP) in the Middle East targeting Lebanon, Jordan, and Iraq, with the objective of supporting those countries in coping with the high number of Syrian refugees they host. This last programme is different from the former programmes because of its focus on development: in particular, the initiatives therein-envisaged aim to benefit both refugees and the host communities by targeted use of development assistance

⁵ The fact that the link between readmission and visa facilitation constitutes the main bargaining chip played by the EU on the negotiating table of MPs is confirmed by the introduction of a lighter framework of cooperation, called Common Agenda on Migration and Mobility (CAMM), which is proposed to those countries that are not considered ready to embrace the readmission and visa commitments foreseen in a MP. CAMMs have been concluded so far with Nigeria and Ethiopia. For an overview of MPs and CAMMs currently in force, see the EU webpage: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/index_en.htm.

(Papadopoulou, 2015: p. 14). The European Agenda on Migration mentioned above includes among its objectives the establishment of RDPPs also in North Africa and in the Horn of Africa and provides additional resources to this aim (European Commission, 2015, p. 5). The aim of the Commission is thus that of trying to address some of the issues that were identified in previous programmes, in particular the lack of coordination between development, humanitarian and refugee policies and the limited financial resources provided for their implementation (Papadopoulou, 2015: p. 15). In this regard, as stressed by some observers, it will be of paramount importance to assure increased support to RDPPs from available financial instruments, first of all the Trust Fund for Africa (Collett, 2016).

More broadly, the further development of both MPs and RDPPs into substantive partnerships with countries of origin and transit is linked to two essential conditions. First, the successful integration of the expanding development-oriented activities financed in the fields of asylum and migration into the larger development programmes that the EU and its Member States operate in the African continent. Second, the strengthening of the mobility component of those instruments, in particular by envisaging new schemes allowing citizens of partner countries to enter the EU for work, study, or for seeking international protection.

4. CONCLUSION: A TRULY GLOBAL APPROACH?

The aim of this contribution was to describe some of the main geopolitical and socio-economic dynamics that characterize the migration scenario in the Mediterranean Sea. In particular, attention was paid to the effects of three interdependent variables: the push factors in countries of origin; the migration and asylum policies implemented in countries of transit and destination; and the strategies of smuggling organizations that operate along the Mediterranean routes. Focusing specifically on migration from Africa, it was argued that protracted political instability in many African countries together with long-term demographic trends that characterize, especially, the sub-Saharan region are likely to sustain migratory pressure towards Europe and to reinforce the “mixed” character of migration flows. This circumstance highlights the necessity of creating appropriate governance instruments in order to face the inherent complexity of those flows.

In this respect, the EU has committed itself to developing the GAMM, whose aim is to create long-term partnerships with the countries of origin and transit of migrants. When looking at the concrete trajectory taken by this approach by analysing the outcomes of regional dialogues, such as the Valletta Summit AP, and policy tools such as MPs and RDPPs, however, a basic asymmetry becomes evident. In fact, EU priority has so far been accorded to initiatives aiming to limit migration and combat irregular migration. In contrast, less effort has been taken to maximize the impact of

migration on development and, possibly even less effort, to create new channels of legal access to the EU, for both asylum seekers and other categories of migrants. However, a long-term strategy to manage migration in the Mediterranean requires balancing this asymmetry by adequately covering all the main dimensions involved in the governance of migration.

Professor Gian Carlo Blangiardo is Full Professor of Demography and former Director of the Department of Statistics at the University of Milano-Bicocca. He is member of the Government Expert Group on Demographic Issues of the European Commission and of the Scientific Committee of the ISMU Foundation (Milan).

Mr. Roberto Cortinovis received a Doctorate in Political Science from the Catholic University of Milan (Italy) and a MA in European Politics from the London School of Economics and Political Science (UK). He is currently a Researcher at the ISMU Foundation in Milan and a Postdoctoral research assistant at the Catholic University of Milan.

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The Refugee Crisis in Germany: How to Cope with Large Irregular Migration Movements of Asylum Applicants into the European Union and Germany?

Kay Hailbronner

1. THE PRESENT SITUATION—FACTS AND FIGURES

Approximately more than one million migrants immigrated as “refugees” into Germany in 2015¹. In the period between 5 to 29 September 2015, approximately 247,000 third country nationals entered Germany irregularly. The large increase in 2015 of migration flows as compared to 2014 (approximately 200,000) results primarily from an escalation in the Syrian civil war, a breakdown of public security in Iraq and Afghanistan and economic disaster and unemployment in the Balkan states Albania, Serbia and Macedonia. Increasingly, nationals from Iran, Pakistan, Nigeria and Eritrea are also seeking asylum in Germany and other EU Member States.

Migration movements into the EU have in fact been movements to specific EU Member States of first choice. Primary destinations in 2015 were Germany, Sweden and Austria, while EU Member States with high numbers of registered asylum seekers were considered as transit states, such as Greece, Italy, Hungary, Romania and Bulgaria. A majority of EU Member States were hardly affected by the new inflow of

¹ The official number of 476,640 registered asylum seekers out of 1.2 millions registered asylum seekers in the entire EU does not reflect the true immigration situation since the bulk of asylum seekers with or without proper registrations move irregularly into other EU Member States. Due to a partial breakdown of the border control systems in the EU Member States with external frontiers a large number of asylum seekers have illegally and without proper registration and identification entered Germany via EU Member States Greece, Italy, Slovenia and Hungary, until Germany reintroduced internal border controls at its Schengen border to Austria on 13 September, in exercise of an exceptional power to reintroduce temporarily border controls in order to ensure a procedure for registration and screening of third country nationals. For details, see Commission Opinion of 23.10.2015, C(2015)7100. It is estimated that up till now (April 2016) up to 400,000 persons have not, due to lack of cooperation or administrative problems, formally registered an asylum application at the branches of the Federal Office for Migration and Refugees.

refugees, either due to high unemployment rates and a relatively modest standard of living or a firm restrictive admission policy.

When the situation at the external borders of the EU became critical in August 2015, the German government announced that it would take over 40,000 Syrian refugees stuck in Hungary, supported by the “welcome refugees policy” of the media and German public opinion. Numbers quickly rose to a dimension creating large problems of accommodation and social services and an increasing concern about economic and social integration, culminating at the turn of the year in a series of criminal offences in Cologne which was attributed to the influx of refugees. When the official German request at the EU level for a fair distribution of refugees within the whole EU received a rather negative response, the climate changed towards a policy of reducing the influx. The Bavarian government, carrying the bulk of the administrative burden, urged for a change of the “open border policy”. A majority of EU Member States took a rather firm stand against an increase of immigration into their countries. Germany only succeeded in persuading a majority of other EU Member States into adopting “relocations decisions” of some 140,000 asylum seekers in support of the “front states” Italy, Greece and Hungary, which turned out largely as a failure. In the end, approximately 1,000 asylum seekers were relocated to other EU Member States.

In January 2016, approximately 91,000 new asylum seekers were registered in Germany, and more than 181,000 up till March 2016². The influx was reduced only when Hungary, Macedonia and Austria closed their borders, thus cutting off the “Balkan route”. Austria, receiving close to 90,000 asylum applications in 2015, declared—contrary to the official EU policy—a maximum limit of 37,500 refugees in 2016, and Sweden announced that its refugee admission capacity has been exhausted.

2. WHO IS A REFUGEE? THE LEGAL SITUATION

Generally speaking, migration flows are caused by mixed motives although it seems difficult to draw sharp lines between those who are entitled to international protection, where there is an individual danger of persecution on account of political opinion, religion, race, and ethnic affiliation, and “economic migrants” who are not entitled to protection but have access to an asylum procedure and additional procedures and judicial remedies. The legal situation is further complicated by the enlargement of the international protection concept by EU law to persons who can claim “subsidiary protection”. Subsidiary protection grants a temporary protection status to persons facing “a serious and individual threat to a civilian’s life or person by reason of indiscriminate

² Federal Office for Migration and Refugees, press communication of April 8, 2016.

violence in situations of international or internal armed conflict”³, as well as to potential victims of torture or inhuman or degrading treatment or punishment.

The original expectation of framing the provision so as to exclude a general claim for “civil war refugees” and victims of poor living conditions, unemployment and natural disaster was soon proven to be an illusion when the European Court of Justice (ECJ), responsible for interpreting EU law, and the European Court of Human Rights (ECtHR), responsible for interpreting the European Convention of Human Rights, applied the provisions in an extensive human rights-orientated manner. The requirement of individual threat was interpreted as covering the population at large provided there is a high level of general violence⁴ and the term “inhuman treatment”, which was copied from the European Convention of Human Rights, was understood as covering also extremely bad living conditions to which no government must even be held responsible⁵. Although the European Court had to backtrack, facing a veritable flood of appeals, by stating that it had meant its jurisprudence on inhuman treatment only under very exceptional circumstances⁶, the pull effect of using the asylum procedure as a backdoor to immigration did not diminish substantially since by that time the general message had been spread that the journey to Europe—though costly and not seldom highly dangerous if not fatal—is worthwhile, as a means to improve substantially one’s living conditions, especially for younger people who did not see a real chance any more in their home countries, ruined by corrupt elites and inner strife.

Frequently the systematic use of all procedures and remedies obstructing a deportation decision have eventually led to some kind of “legalization” either in the form of toleration (suspension of execution) or a humanitarian residence permit or an exceptional residence permit recommended by a hardship committee. Compared to the number of foreigners obliged to return on the basis of a final deportation order, less than 20% leave either voluntarily or are deported. Deportation is highly unpopular in the media and therefore interior ministers in the German Länder who are responsible for executing return decisions usually do not wish to be associated with “tough” deportation policies, particularly if children are involved or if integration efforts have been made.

³ EU Directive 2011/95, Art. 15 (c).

⁴ ECJ of 17.2009, Case C- 465/97, Elgafaji.

⁵ ECtHR of 25.9.1997, D v.UK, No. 30240; ECtHR of 21.Jan. 2011, M.S.S. v. Belgium and Greece, No. 30696/09, mn. 254 Italy.

⁶ ECtHR of 2.4.2013, No.27725/10, Hussein v. The Netherlands and Italy.

3. WHO IS RESPONSIBLE IN EUROPE TO PROCESS ASYLUM CLAIMS?

The European Asylum System is based on a system of exclusive competence. Any third country national applying for asylum at the border of a Member State is entitled to an asylum procedure. The competent state is determined by the Dublin rules, determined in the Dublin III Regulation No. 604/2013 directly applicable in the Member States and Dublin Associated States like Switzerland or Norway. The state which is exclusively competent to examine an asylum request is basically the state of first entrance into the European Union unless a Member State has granted a residence permit or visa. The Dublin Regulation provides for a number of exceptions (family relationship etc.). The idea is that the competent state examines an asylum request and returns an unsuccessful asylum seeker. There is no right of moving on to another Dublin State during or after an asylum procedure has been terminated. The competent Dublin state is required to admit or readmit an irregularly moving asylum seeker according to a transfer procedure. The proof that another Member State other than the Member State in which an asylum seeker actually seeks asylum is a competent state of first entry is provided by a check with the Eurodac data system, which according to the Eurodac Regulation of 2013, obliges all Member States to register illegal entries and asylum applications.

The system has never worked fully satisfactorily, partly due to the bureaucratic requirements of transfer requests, to the unwillingness of the “front states” with external borders and to the political and legal impediments to pursuing a policy of enforcing the rule that a third country national does not have an option to choose his or her country of destination. In Germany, which is surrounded by safe third states, asylum seekers were frequently admitted for humanitarian considerations in spite of the exclusive competence of another Dublin State, partly because of an extensive use of techniques preventing deportation (for instance, by no show at the date of a previously announced date of deportation—so-called “run away order”). Out of approximately 25,000 formally agreed transfers by the competent Dublin State, only approximately 4,500 persons were actually deported in 2014 from Germany to a competent Dublin State.

The system came to a partial breakdown when some “front states” like Italy, Hungary and Greece openly or indirectly boycotted Dublin rules by not registering asylum seekers and sending them on to other EU Member States like Austria and Germany. A fatal blow to the system was the non-compliance by some states with basic reception conditions laid down in an obligatory EU directive on reception conditions. The European Court of Human Rights, followed by the European Court of Justice, decided that transfer under Dublin rules to Greece violates the European Convention of Human Rights (Art. 3 Inhuman Treatment). Subsequently a legal regime was set up in the EU law to suspend Dublin in case of “systemic failures”.

When the numbers were increasing but still modest in comparison to the current situation, public opinion in Germany and elsewhere was very much against maintaining

Dublin transfers. It became very popular for politicians, supported by the media and the “civil society”, to declare an open reception policy irrespective of Dublin. Social benefits were raised, restrictions on free movement lifted, and access to the labour market and professional formation for asylum seekers facilitated.

4. THE EXISTING LEGAL FRAMEWORK—THE COMMON EUROPEAN ASYLUM SYSTEM (CEAS)

The legal framework of the German asylum system is largely determined by a comprehensive set of binding EU regulations (directly applicable) and directives (requiring national implementation).

The CEAS consists of a series of directives and regulations providing i.a. for

- uniform rules on reception conditions
- recognition criteria for refugee protection (basically Geneva Convention reasons) and subsidiary protection (serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of armed conflict, plus inhuman treatment or punishment)
- Common asylum procedures—Procedures directive 2013/32
- Exclusive competence system (Dublin III Regulation)
- Common return rules for third country nationals obliged to leave

At face value, the rules are highly elaborated, yet they frequently leave different options and open the way for different interpretations by national administrations and courts (which is one of the reasons why there are very different recognition rates and practices with regard to the nationals of different countries of origin). Although there is basically an agreement that a large number of asylum seekers from the West Balkan states (Albania, Serbia, Macedonia, Kosovo, Bosnia-Herzegovina) are not entitled to international protection, it has not been possible to establish a common EU list of safe countries of origin. EU law, including border control and processing, is applied by national law and therefore influenced by national preferences and concepts. The EU is assisting through the newly established European Asylum Support Office (EASO), which may train and cooperate with national authorities, and provide guidelines for interpretation, but does not perform the function of a EU supervisory body for the application of EU asylum law. The European Commission plans to entrust EASO with the function of a EU asylum authority⁷. The chances, however, of convincing EU Member States to change the Treaty are somewhat doubtful.

⁷ Communication on reforming the Common European Asylum System of April 6, 2016, COM (2016) 197 final.

Basically the same pattern exists with border control. There is somewhat more engagement by the involvement of Frontex, which coordinates and assists national border guards in supervising the external borders of the EU. Yet, the maritime rescue rules adopted by a EU Regulation of 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex leaves somewhat unclear the aims of the sea operations. The principle of fundamental rights and non-refoulement is emphasized but it is not sufficiently made clear that non-refoulement is not equivalent to asylum within the European Union. Frontex is also supposed to take a much stronger role than present in ensuring the effective control of external borders in order to maintain the Schengen System of the freedom to move freely within the EU without internal border controls.

The essential shortcomings of the system are: it is a highly complicated and over-detailed set of rules that does not fulfil the essential function of giving a clear and transparent picture as to who is entitled to stay and who will have to leave. A potential irregular migrant or for that matter a human trafficking organization is given the signal that the system is highly complicated and deportation is an unlikely option irrespective of economic or other flight reasons. This assumption is clearly supported by national deportation policies, in particular those of Germany, which has a deportation rate of approximately 10,000 in 2014 out of approximately 120,000 persons who, after exhaustion of all remedies, are in principle subject to deportation.

Another major shortcoming is that the rules were basically drafted between 2002 and 2004, and redrafted in 2013, when the number of asylum seekers was still quite limited. The rules are basically “fair weather” law, not adequate for coping with large irregular migration movements.

Nevertheless there are some provisions, particularly in the Procedures Directive, which enable—if properly applied—more effective ways to control and restrict migration movements.

5. INSTRUMENTS OF RESTRICTING THE NUMBER OF PERSONS RELYING UPON ASYLUM IRRESPECTIVE OF A LEGITIMATE CLAIM TO INTERNATIONAL PROTECTION

5.1. Safe country of origin concept

The Procedures Directive allows for an accelerated procedure when asylum seekers are nationals of a state designated by national law as a safe country of origin (Art. 36 and 37). A country may be designated as a safe country of origin where on the basis of the legal situation, the application of the law within a democratic system and the general political circumstance, it can be shown that there is generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat

by reason of indiscriminate violence in situations of armed conflict. If a third state (non-EU state) is declared as a safe country of origin, the examination may be limited to reasons refuting a general presumption of safety.

So far the practice in the EU Member States varies. But there is basically nothing which would preclude shorter procedures. In March 2016, Germany introduced a special accelerated asylum procedure of one week in special reception centres for asylum seekers from safe countries of origin and those not cooperating with the authorities by using falsified documents or disguising their identity. In case of rejection, special rules apply with regard to access to social benefits, restrictions of free movement etc.. An accelerated procedure has also been in place since 20005 for asylum seekers arriving at airports. Applicants from safe countries of origin or undocumented asylum seekers are examined prior to a decision on entry into Germany within two days after applying for asylum at the border (extension possible for up to two weeks) and judicial protection proceedings within a maximum of two weeks. In case of a negative decision on the asylum application, entry is rejected and the applicant is returned to the country of origin.

The safe country of origin procedure has a potential for further acceleration if the requirements for refuting the assumption were interpreted more strictly, allowing only such arguments which provide special circumstances which are not covered in the safety concept.

At present the safety concept only applies to a safety determination in general, rather than to a specified group of persons, like persons of a particular ethnic or religious group. However, outside the scope of application of the EU Directive, one may well argue that all the Geneva Convention requires is protection against refoulement. Thus a general presumption of safety may well differentiate between different categories limiting the application of the concept, for instance, to males or women of a specified group of persons.

Germany, following the lead of a number of other EU Member States, has passed legislation to add some of the top ten countries of origin from the Balkan, Albania, Kosovo and Montenegro, in addition to Serbia and Bosnia-Herzegovina, to the list of safe countries of origin. An extension to the North African Maghreb states of Morocco, Tunisia and Algeria is a matter of a highly political debate. At the present moment it cannot be seriously evaluated whether the listing is effective. Only a publicly visible and effective deportation policy may reduce the incentives to illegally enter Germany for primarily economic reasons.

5.2. Safe third country

The concept of safe third country may be applied by any competent Dublin State whether at the border or within the territory. The determination as a competent Dublin State therefore does not imply that every Member State is obliged to examine an asylum

application in substance. National designation may be made individually or on the basis of a general declaration by law (such as the German Basic Law declaring as safe third countries all EU Member States and third states declared as safe by parliament).

Therefore a Dublin State may always reject an application as inadmissible and return the applicant to a safe third country—always provided that the safe third state will accept the applicant. There are a number of criteria in the directive (Art. 38) which have to be fulfilled, including observance of the principle of non-refoulement in accordance with the Geneva Convention and the possibility to request refugee status and if found, to be a refugee to receive protection in accordance with the Geneva Convention.

The directive requires that an applicant must have the chance to challenge the safety assumption in his/her particular case on account of his/her particular circumstances. German asylum law draws a clear distinction between safe country of origin and safe third country. In the case of arrival from a safe third state the applicant may be rejected at the border without any further examination.

The safe third country concept in both variations has not yet played a substantial role in the debate on restricting access to an asylum procedure. It is assumed, however, that under the pressure of an unprecedented number of asylum seekers, of which a large number has arrived via safe third states, efforts will be increased to get into cooperation agreements with transit states to provide access in such states to protection procedures and thereby reduce substantially the incentives to reach a particular EU state in order to improve general living conditions.

Under the German Basic Law (Art. 16a para. 2) and the corresponding provisions of the Asylum Act, asylum seekers are prevented from receiving asylum when they arrive from a safe third country. Asylum seekers are refused entry when arriving from a safe third country or when a third state is competent on the basis of an international treaty or Union law to deal with an asylum claim. These provisions became partly obsolete with the entry into force of the Dublin rules, since the Dublin rules provide for a comprehensive system of exclusive competence. Therefore, as a rule Germany is obliged to apply Dublin rules on determination of the competent Dublin State and transfer to such states, even in the case of asylum seekers who move in an irregular manner from a competent EU Member State to Germany. With the partial collapse of Dublin the question arose as to what extent the national regime that would allow rejection at the border, since all states surrounding Germany are safe third countries, can be revitalized in connection with the reintroduction of border controls at the internal borders according to the Schengen Border Code, which allows under exceptional circumstances of a threat to public order and security, a reintroduction of border controls at the internal borders. At present the favoured political option seems to be to stick as much as possible to the rules of the Asylum Procedure Directive and pursue alternative methods, in order to maintain the Schengen idea of abolition of internal border controls, rather than openly declare that Germany's obligations from Dublin will not be complied with any more

and that the CEAS is a failure (see border procedures). Great expectation is placed on the EU-Turkey return agreement, which is considered as a potential model to cope with large migration movements in cooperation with transit states on providing protection alternatives and securing border while maintaining at the same time the European “values” of humanitarian admission.

5.3. Accelerated asylum procedures

The Asylum Procedures Directive 2013/32 provides for accelerated procedures in case of manifestly unfounded applications (described in detail in Art. 31 para. 8a to j) including safe country of origin. There are basic principles and procedures (individual hearing etc.) which apply in the case of such accelerated procedures. The provisions leave some scope of interpretation, yet they cannot be used to decline access to an asylum procedure as such or to judicial protection following a negative decision. The directive grants a right to remain “for the sole purpose of the procedure” (Art. 9) thus making clear that the right to remain during the examination is not a quasi residence permit but only a functional right not to be removed for the duration of the examination procedure—although the practices in the various Member States are different. The directive also allows the rejection of applications as inadmissible if a Member State has already granted international protection or if a third country is considered as a first country of reception (if the applicant has received sufficient protections and will be readmitted) or if the country is considered as a safe third country, or in case of subsequent applications (Art. 33).

5.4. Border procedures and transit zones

A provision which until now has not received much attention deals with border procedures (Art. 43). Member States may provide for border procedures, in order to decide at the border or transit zones on the admissibility of an application according to Art. 33 (see number 3) and in case of a manifestly unfounded asylum application. Member States may make rules on ensuring that the decision is taken within a reasonable time frame. The important clause is contained in para. 3: In the event of arrivals involving a large number of third country nationals lodging applications for international protection at the border or in transit zones which makes it impossible in practice to apply the basic rules and procedures of Ch. II of the directive, a border procedure may also be applied where and for as long as these third country nationals are accommodated normally at locations in the proximity to the border or transit zones.

Whether Art. 43 applies only to border procedures at the external borders of EU Member States or to internal borders as well (which normally within Schengen are not controlled) is a matter of controversial debate. There are good arguments to apply

the provision at least in such cases in which according to the Schengen Border Code (Regulation 562/2006) a reintroduction of border controls for reasons of maintaining public order and security is possible.

Therefore accelerated border procedures could be introduced at the EU external borders by the responsible EU Member States and assisted by the European Asylum Support Office, obliging all refugees from safe countries of origin and other refugees who present manifestly unfounded claims to stay in reception centres at the border or in transit zones until their asylum claim has been decided. Judicial protection could be provided in an abbreviated procedure for temporary injunction within a relatively short time frame. In order to apply the system effectively the applicants would have to be kept in closed reception centres to prevent illegal entry.

The German Constitutional Court ruling on the German airport procedure in 1996, which provides for a closed accommodation in the airport transit area for the duration of the airport procedure, has decided that the accommodation in the transit area does not amount to a deprivation of liberty in the sense of Art. 104 para. 1 and 2 (requiring judicial authorization) since applicants were only prevented from entering Germany at the border. Legal and factual impediments to crossing the border could not be considered as a deprivation of liberty (Vol.94, 166, 198).

On the European level the European Commission has announced the establishment of registration centres at “hot spots” designed to identify asylum seekers by taking fingerprints and examining them for potential relocation according to the Council decision on relocation. The ministers agreed to relocate 120,000 people “in need of international protection from Greece, Italy and Hungary to other Member States”. EASO support teams are sent to help the Member States to process asylum cases based on the respective agreements. EU Member States willing to use the assistance of the EU and EASO are requested to submit a plan for first reception, accommodation, increase of capacity and quality of asylum procedures and organizational measures for relocation.

5.5. EU coordination and cooperation with third countries

On April 18, 2016 the EU and Turkey—on the initiative of Germany—closed an agreement providing for a quick return of all irregular migrants crossing from Turkey to the Greek islands (where they would usually continue to move on to Austria and Germany). For every Syrian being returned to Turkey from the Greek islands, another Syrian would be resettled from Turkey to the EU on the basis of a EU internal voluntary admission scheme. Return will be accomplished following an individual examination of each application, which, however, should be concentrated upon particular circumstances based on the generally assumed safety of Turkey. Turkey will take any necessary means to prevent new sea or land routes for irregular migration into the EU—with the support of EU institutions like Frontex and NATO military supervision of irregular

boat movements. In compensation, the EU promised visa liberalization, acceleration of the negotiations on Turkey's access to the EU and another three billion Euro fund for financing support to refugees. The basic idea is to discourage asylum seekers from taking the costly and dangerous sea route to Greece by reducing incentives since organized smuggling into the EU would hardly be worth the price if the chances of reaching the EU country of destination are low.

The EU also intends to achieve concrete operational measures with African states on effective return and readmission and explore possibilities for developing safe and sustainable reception capacities in the affected region and providing lasting prospects and adequate procedures for refugees and their families, until return to their country of origin is possible⁸.

With regard to return it is intended to enlarge the Frontex mandate on return to include joint return operations, promote the acceptance by third countries of an improved laissez-passer document for returnees, implement readmission agreements, and increase leverage in the fields of return and readmission by providing stronger incentives to third states.

5.6. Border control at external EU borders

It is generally recognized that the control of external EU borders is insufficient. To increase effectiveness, Frontex joint screening teams assist Member States in registration and identification. Joint debriefing teams carry out interviews to collect information for the purpose of risk evaluation and criminal investigations. Frontex, together with EASO, Europol and Eurojust have developed the concept of a European Regional Task Force coordinating EU assistance to the national authorities in identification, registration and return. There is definitely more scope for effective border protection. It is doubtful, however, whether the necessary effectiveness can be achieved in the “multi-layer” system of EU and its Member States.

6. OPTIONS FOR THE EU AND GERMANY— PRELIMINARY ASSESSMENT

Although the “hot spot approach” points in the right direction to grapple with the irregular migration flows at the external borders, it is doubtful whether the measures proposed or announced will effectively respond to the influx of refugees in Europe and ensure rapid return of those applicants who do not qualify as persons entitled to international protection. If the proposed measures will not work as envisaged, some of the Member States most affected by the inflow will have to introduce border control at internal borders (which on a temporary basis is already the case) and try to reduce

⁸ See Conclusion No. 2d European Council of October 15, 2015.

incentives to move to the destination country by reducing social benefits and access to the labour market⁹. At this stage, EU neighbouring states will not necessarily be affected as long as refugees either remain in Germany or are returned to their country of origin. It is fairly clear that no EU Member State will be able to organize large deportation operations. The expectation is that through the reduction of incentives, and in particular the incentive for irregular migration within the EU to the asylum country of first choice within the EU where social benefits are generous, recognition rates above average and the chances of finding employment in the labour market high, the number of highly organized and expensive flight undertakings will be reduced.¹⁰

A more severe conclusion in a second stage would be a more permanent reintroduction of border controls at the internal borders (which at present is only allowed on a temporary basis) coupled with a restriction of admission of transiting refugees entering from a safe third state (all neighbouring states are such safe third states). This will inevitably have repercussions on other EU Member States, which will be severely affected by rejection and finally eventually forced to close their external borders—unless agreements such as the agreement with Turkey results in a sustainable reduction of illegal migration inflows. The German government thus may be facing hard choices between a growing loss of support in the German population and increasing support of restrictionist political groups and Europe's friendly pursuance of humanitarian admission of refugees, which a majority of EU Member States is refusing to accept, arguing that the development of the refugee crisis is primarily the result of the open border policy of the German government.

At this stage the EU will not have many options left other than taking over the management of asylum processing and border control—which eventually could produce a true European asylum procedure that is restricted to application of European recognition criteria and that would preclude any recourse to a multitude of European and national humanitarian residence titles, tolerations etc.. This system would have to be combined with a distribution key for (only) properly recognized refugees, which would allow Member States, based on a political decision taken by parliament, to admit additionally within certain numerical limits refugees on a humanitarian basis (no individual enforceable rights, no individual procedure, no asylum seeker status, no judicial protection). It would also in the long run imply a revision of the “fair weather legislation”, which may have neglected the legitimate interests of states to control immigration and cope with mass migration movements in an orderly way.

⁹ As provided for in two packets of law on acceleration of asylum procedures of October 20, 2015 and March 2016 (Official Journal Bundesgesetzblatt 2015, I, P1721; 2016, I, p. 390).

¹⁰ Sanctions against irregular movement within the EU are therefore ranking high on the reform agenda of the European Commission Communication of April 6, 2016, COM (2016), 197 at p.13 f.

If such measures will not be taken or if they prove to be unsuccessful, the EU Member States and Germany in particular will have no other option than regaining control over their borders by re-establishing internal border controls and rejecting irregular asylum seekers trying to enter from other EU Member States under the safe third country concept.

Prof. Dr. Kay Hailbronner is Professor Emeritus in the University of Konstanz, Germany.

Refugees, Minorities and International Law

Geoff Gilbert

1. INTRODUCTION

It is singularly appropriate to consider the protection of refugees and minorities in international law. These two sub-branches of international law converge in so many respects. The end of the First World War is a significant moment for both. With the break-up of the old European empires along with the related creation of so many new states, plus the birth of the Soviet Union, the international community was faced with many new minority groups in those states and massive population displacements. The establishment of modern minority rights law and the appointment of the first High Commissioner for Refugees, Fridtjof Nansen, are coterminous and there is a strong interrelationship between the two sub-branches in practice.

The various minority treaties¹ that were promulgated in the wake of the First World War generally provided for three main responses to new borders and new states: that minorities with a kin-state could either opt to resettle in that kin-state or remain where they were and take the nationality of the new state;² that persons belonging to a mi-

¹ See, for example, the Treaty of Versailles with respect to Poland, UKTS 8 (1919), Cmd 223 (including a letter from Clemenceau to Paderewski); the Treaty of St Germain with Czecho-Slovakia (*sic.*), 1919 (UKTS 20 (1919), Cmd 479); the Treaty of St Germain with the Serb-Croat-Slovene State, 1919 (UKTS 17 (1919), Cmd 461); the Treaty of Trianon with Hungary, 1920 (UKTS 10 (1920), Cmd 896); the Treaty of Sèvres with Greece, 1920, UKTS 13 (1920), Cmd 960; and the Treaty of Lausanne with Turkey 1923 (UKTS 16 (1923), Cmd 1929). For a full list, see the Commission on Human Rights, *Study of the Legal Validity of the Undertakings Concerning Minorities*, E/CN.4/367, 7 April 1950, at pp. 2-3. For pre-WWI agreements, see Gilbert, *Religio-Nationalist Minorities and the Development of Minority Rights Law*, 25 *Review of International Studies* 389 (1999).

² For example: Articles 3-6 of the Treaty of St Germain with Czecho-Slovakia, *supra* n2. Minority rights were for nationals of the new States—all the rights, including autonomous self-government where it was granted, were to be balanced by loyalty to the State. See also, Badinter Commission, *Opinion No. 2*, Arbitration Commission, European Community Conference on Yugoslavia, 11 January 1992, 92 ILR 167, paragraphs 3 and 4(ii); Eide, Working Paper for the United Nations Working Group on Minorities, *Citizenship and the Minority Rights of Non-Citizens*, E/CN.4/Sub.2/AC.5/1999/WP.3. In spite of the guarantee of a nationality, it proved possible to create stateless persons in the new states formed out of the old Austro-Hungarian Empire and, inevitably, these persons tended to belong to minority groups—Macartney, *National States and National Minorities*, 1934, at pp. 507-09.

minority group were given rights to protect their cultural identity;³ and, in some cases, the minority group *qua* group was given a degree of self-governance. In some cases, however, the treaties provided for special rights for a particular minority population, including territorial autonomy:

Article 10: Czecho-Slovakia undertakes to constitute the Ruthene territory south of the Carpathians ... as an autonomous unit within the Czecho-Slovak State, and to accord it the fullest degree of self-government compatible with the unity of the Czecho-Slovak State.⁴

The subsequent treaties established by the League of Nations would protect minority groups better than those of 1919,⁵ but the Treaty of Lausanne 1923 with Turkey⁶ was effectively a programme to resettle Pontic Greeks back to Greece and Slav Muslims in the new Turkey, a policy that was to be overseen by the newly appointed High Commissioner for Refugees.

While Fridtjof Nansen was the first High Commissioner for Refugees, it would be inaccurate to simply try and see the work of his office as the direct forerunner of the modern UNHCR. The 1951 Convention⁷ and its 1967 Protocol⁸ are a far remove from the approach taken in the inter-War period. At that time, refugee protection was group focused, such that membership of a specified class of persons would be sufficient to presume the need for protection: the League of Nations High Commission for Refugees had started out in 1921 protecting Russians leaving the USSR, in part because of the famine, but moved on to include Armenians, Assyrians, Assyro-Chaldeans, Syrians,

³ For example: Articles 7 & 8 of the Treaty of St Germain with the Serb-Croat-Slovene State; Article 2 of the Treaty of Versailles with Poland; Article 58.5 of the Treaty of Trianon with Hungary; and Article 7 of the Treaty of St Germain with Czecho-Slovakia, *supra* n2. See also, *Advisory Opinion of 6 April 1935 on Minority Schools in Albania*, PCIJ Series A/B, No.64, at 17. See also, Taylor, *The Politics of Recognition*, in Taylor and Gutmann, *Multiculturalism: Examining the Politics of Recognition*, 1994, pp. 25-73, at p. 32.

⁴ Treaty of St Germain, *supra* n2. NB. The Ruthenians never enjoyed that autonomy, the Prague government deciding that the population was “backward”; a contemporary commentator described them as “amiable”, but “both ignorant and superstitious”—Macartney, *supra* n3, at p. 519; See also, Leigh Fermor, *Between the Woods and the Water*, 1986, p. 204. The inter-War Czech authorities also reneged on their promises to the Slovaks, giving rise to a sense of resentment that played its part in the 1993 division of CSFR.

⁵ Resolution of the Council of the League of Nations, 27 June 1921, approving an Agreement between Sweden and Finland, Preserving the Language, Culture and Local Swedish Traditions of the Population of the Aaland Islands, LN Doc. C.L.110 1927 I Annex, p. 16.

⁶ *Supra* n2.

⁷ 189 UNTS 150.

⁸ 606 UNTS 267.

Kurds and some Turks.⁹ The crisis of democracy in Europe in the 1930s saw the protection of refugees by the League ever more restricted; the same was true of the work of the League of Nations for minorities.¹⁰

2. MINORITIES AND INTERNATIONAL REFUGEE LAW TODAY

Before exploring mechanisms to protect minority groups and persons belonging to such groups in order that fewer triggers for displacement arise, it is worth looking at the definition of refugee status under the 1951 Convention to disclose the very clear connections to minority protection. While the inter-War protection regime was, by and large, based on membership of a minority group, modern refugee status has been interpreted in a very individualistic, atomised fashion. The requirement in Article 1A.2 that a refugee is someone who is outside her/his country of nationality or, if stateless, country of habitual residence¹¹ and has a well-founded fear of persecution has meant that the judicialised approach to according status has looked at whether this applicant has personal and, in some ways, enhanced threat. In fact, the language of Article 1A.2 of the 1951 Convention does not demand such an interpretation. Indeed, in situations of mass influx when *prima facie* status is accorded, no such individualised approach is possible.¹² In such circumstances, it is the five grounds for persecution set out in Article 1A.2 that are much more to the fore and where one can readily observe the group focus of refugee protection: race, religion, nationality, membership of a particular social group, and political opinion. It is next to impossible to conceive of any of those five without recognising the individual must belong to an identifiable group of some sort. Moreover, those grounds are directly related to the types of group recognised by international human rights law as warranting minority protection: Article 27 of the International Covenant on Civil and Political Rights refers to ethnic, religious or linguistic minorities.¹³ One can rely on the definition of race in Article 1 of the

⁹ See Jaeger, "On the history of the international protection of refugees", 83 IRRC 727 (2001); Nansen International Office for Refugees - History, http://www.nobelprize.org/nobel_prizes/peace/laureates/1938/nansen-history.html.

¹⁰ See TH Bagley, *General Principles and Problems in the Protection of Minorities*, (Geneva: University of Geneva, 1950) at pp. 126-27. See also Macartney, *supra* n3, at pp. 420-21. And see de Azcárate, *League of Nations and National Minorities: An Experiment*, 1945, p. vii:

[The] 'problem' of minorities ... [is not] as susceptible of solution as those of physics and mathematics!

¹¹ Stateless persons often belong to minority groups who have been denied a nationality to which they ought to be entitled.

¹² See Durieux and McAdam, "Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies", 16 IJRL 4 (2004).

¹³ UNGA Res.2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171.

1965 Convention on the Elimination of All Forms of Racial Discrimination,¹⁴ which includes “national or ethnic origin”; there is an obvious and direct correlation between persecution on grounds of religion and religious minorities; and nationality as set out in the 1951 Convention, again refers to ethnic origin.¹⁵ The other two grounds require a slightly fuller discussion in the context of minority protection through refugee status. To start with political opinion, it may seem unconnected with ethnicity, religion or language, but in the context of minorities claims to self-governance and secession may well lead to repression and persecution due to the adherents’ politics. Without wishing to engage at all deeply in this sociological debate, the personal is political, such that to express difference is inherently a political act and that is what persons belonging to minorities do. Membership of a minority is a matter of choice, so to claim to be a person belonging to an ethnic, religious or linguistic group is fundamentally to assert a political opinion for which, in some cases, persecution might be the unwished-for consequence.¹⁶ As for membership of a particular social group, it may seem unnecessary to expand on this ground for persecution at all, since self-evidently it should include minority groups. What is worthy of note here is the way that this ground has been interpreted. The Supreme Court of Canada in *Ward*,¹⁷ held that one ought to interpret membership of a particular social group as follows:

The meaning assigned to ‘particular social group’ ... should take into account the general underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative ...:

¹⁴ 660 UNTS 195. Although subsequent to the 1951 Convention, one should rely on Article 30.4 Vienna Convention on the Law of Treaties, 1155 UNTS 331.

¹⁵ There is scope for confusion here, since a refugee has to be outside her/his country of nationality in the first place and, hence, would have had to have fled for having the nationality of the very state of which s/he now cannot or will not avail herself/himself of its protection. Of course, it could include the case where a person has refugee status in one state, but then has to flee again because nationals of that state, even refugees, face persecution in what had formerly been the hosting state.

¹⁶ On voluntary membership of a minority group, see Capotorti, 1977, “Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities”, ¶568 (1991):

[A] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population *and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.* (Emphasis added)

See also, Article 3 of the Framework Convention for the Protection of National Minorities, ETS 157 (1995):

Article 3.1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

¹⁷ *Canada (Attorney-General) v Ward* [1993] 2 SCR 689, available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1023/index.do>.

- (1) groups defined by an innate or unchangeable characteristic;
- (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and

...

The first category would embrace individuals fearing persecution on such bases as gender, *linguistic background* and sexual orientation, while the second would encompass, for example, human rights activists (Emphasis added)

Therefore, with respect to refugee protection, although Article 1A.2 has been interpreted in an individualised fashion, at heart it is underpinned by a group focus that applies directly to the protection of minority groups.

3. THE PROTECTION OF MINORITY RIGHTS

Given that prevention is better than resettlement or local integration, as the High Commissioner's Dialogue for 2015 made clear, guaranteeing appropriate rights within states at risk of giving rise to displacement can reduce the drivers and triggers.¹⁸

When considering minority rights, a distinction must be drawn between the rights of persons belonging to the minority group and those of the group *qua* group. By and large, as one would expect, international human rights law focuses on the former, but there are examples of protection for the group that in some ways would, where observed, lead to a more cohesive society less prone to forced migration.

The principal guarantee of minority rights in international law is to be found in Article 27 ICCPR:¹⁹

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

It sets out rights for members of the minority group, not for the group *per se*. In some ways, the rights to freedom of religion (Article 18), freedom of expression (Article 19) and freedom of association (Article 21), along with various rights to culture in the

¹⁸ High Commissioner's Dialogue on Protection Challenges 2015, Understanding and addressing root causes of displacement, <http://www.unhcr.org/pages/55e4506b6.html>. See also, iDMC Briefing paper, Understanding the root causes of displacement: towards a comprehensive approach to prevention and solutions <http://www.unhcr.org/56684ce89.html>.

¹⁹ *Supra* n14.

International Covenant on Economic, Social and Cultural Rights,²⁰ already establish these rights for individuals. However, if persons belonging to the group are to be able to enjoy the rights in community with other members, then it is beholden on the state to protect and promote the group's identity. In *Lovelace v Canada*,²¹ the Human Rights Committee opined that

... [Article] 27 of the Covenant requires States parties to *accord protection to ethnic and linguistic minorities* and the Committee must give due weight to this obligation. (Emphasis added)

Thus, although the Committee cannot hear complaints by the group *qua* group, it does have the capacity to receive communications by individuals that call for action by the state so as to uphold the group's identity for the benefit of persons belonging to the minority.²² In its General Comment 23(50), the Committee went further:²³

6.2. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group.

Furthermore, in states that uphold the rule of law, then minority rights are situated in the prevention of discrimination and the right to participate in the governance of the state.

Turning to Europe, there are several treaty-based regimes that guarantee minority rights. Separate therefrom, within the Organization for Security and Co-operation in Europe (OSCE), there is also a High Commissioner on National Minorities (HCNM).²⁴ The remit of her/his office is conflict prevention and while that might prevent situations arising that would give rise to displacement, it is not a rights-based regime for either the group or persons belonging to the minority. That said, as a parallel system that operates at the political and diplomatic levels to ensure that minority populations are not ignored

²⁰ UNGA Res. 2200A (XXI), 21 UNGAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3. See also, Gilbert, "Expression, Assembly, Association", for Weller and Moucheboeuf, *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies* (2007), pp. 149-77.

²¹ *Sandra Lovelace v Canada*, Communication No. 24/1977 (30 July 1981), UN Doc. CCPR/C/OP/1 at 83 at paragraph 7.2 (1984).

²² Compare *Chief Bernard Ominayak and the Lubicon Lake Band v Canada*, Communication No. 167/1984, UN Doc. CCPR/C/38/D/167/1984 (1990), with *Apirana Mahuika et al. v New Zealand*, Communication No. 547/1993, UN Doc. CCPR/C/70/D/547/1993 (2000).

²³ Human Rights Committee General Comment No. 23(50) (Article 27) (Fifteenth Session, 1994), UN Doc. CCPR/C/21/Rev.1/Add.5, 1994.

²⁴ See <http://www.osce.org/hcnm>.

by the state and can participate in its governance—in terms of providing the proper framework for a rule of law state that should not trigger displacement, those two are the foundational building blocks on which all other aspects of good governance are based. The HCNM is unique to Europe, but some elements of the work of that office find parallels in the organs of the United Nations²⁵ and the Charter-based Special Procedures.²⁶ Because of the broad and flexible remit of the HCNM, it cannot be considered further in this short paper.

The Council of Europe has two main treaties that guarantee rights to minority groups: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)²⁷ and the Framework Convention for the Protection of National Minorities (FCNM).²⁸ The ECHR has no equivalent to Article 27 ICCPR. Nevertheless, by combining individual rights with non-discrimination²⁹ and with the broader conception of victim set out in the ECHR,³⁰ minority rights have been upheld. In some ways, indeed, the European Court of Human Rights has gone much further in protecting minorities than the Human Rights Committee. With respect to discrimination itself, the European Court of Human Rights has developed its understanding of the concept in a way that enhances the freedom and which could be adopted by all courts and treaty bodies looking to combat differences in treatment. Clearly, treating two groups that are equivalent in a different fashion would be discriminatory.³¹ However, treating two groups that are different in character as if they were the same is just as discriminatory, something that can reinforce the dominance of a majority while appearing to favour

²⁵ The Security Council has the task of maintaining international peace and security, which is threatened when there is unrest within a state, especially when it is sufficient to trigger mass displacement.

²⁶ See <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>. There are Special Rapporteurs on Minority Issues and on the Rights of Indigenous Peoples.

²⁷ ETS 5 (1950).

²⁸ *Supra* n17.

²⁹ See Article 14 ECHR:

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, *association with a national minority*, property, birth or other status. (Emphasis added)

³⁰ See Article 34:

Individual applications

The Court may receive applications from any person, non-governmental organisation or *group of individuals* claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. (Emphasis added)

³¹ *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (Merits)*, Judgment of 23 July 1968, Series A, Vol. 6.

equality of treatment.³² Moreover, generic rules that apply to everyone within a state can also discriminate if they adversely affect one group more than another, so-called indirect discrimination: quite often in such cases, the discrimination only becomes apparent after careful statistical analysis based on thorough fieldwork. There may be a vicious circle of poverty, poor education, lack of understanding from the majority due to lack of knowledge leading to prejudice. In the Czech Republic, Roma children had been educated in special schools for those with learning difficulties for decades, a practice that the Second Section of the European Court of Human Rights held on the evidence did not violate Article 14 of the ECHR taken together with Article 2 of Protocol 1.³³ The Grand Chamber, on the other hand, found that there was discrimination based on race contrary to Article 14 read with Article 2 of Protocol 1.³⁴ The Grand Chamber held there was indirect discrimination, having shifted the burden of proof on to the respondent State after the applicant had produced *prima facie* evidence in the form of statistics that appeared “on critical examination to be reliable and significant”.³⁵ However, while acknowledging that it was not limited to awarding only monetary damages, the Grand Chamber declined to ask the Committee of Ministers under Article 46 ECHR to monitor the progress of the Czech government in integrating Roma children in ordinary schools. This failure indicates one of the limits of minority rights protection by treaty bodies when the objective is to effect change in the society so as to reduce the triggers and drivers for displacement. In that regard, some of the earlier case law of the Strasbourg organs held greater promise. While the minority group might not be able to claim rights *qua* group, where the State has granted rights in the past, there would appear to be a legitimate expectation that they will continue and that they might be asserted before international bodies. Strasbourg has recognised that nondiscrimination assumes a level playing field for all groups in society. To that end, positive measures by the State that favour the minority are sometimes held to have a reasonable and objective justification and, as such, Strasbourg would refrain from interfering on behalf of a majority where the State took steps to promote the interests of the minority group, par-

³² See *Thlimmenos v Greece*, 34369/97, European Court of Human Rights (Grand Chamber), 6 April 2000:

44. The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

³³ *DH and Others v Czech Republic*, 57325/00, European Court of Human Rights (Second Section), 7 February 2006.

³⁴ *DH and Others v Czech Republic*, 57325/00, European Court of Human Rights (Grand Chamber), 13 November 2007.

³⁵ Paragraph 188.

ticularly where this would allow the minority to express its opinion in elections more freely—Article 3, Protocol 1:

Rather on the contrary, a system taking into account the specific situation as to majority and minority ... must be seen as making it easier for the people to express its opinion freely.³⁶

Finally with respect to the ECHR, as shown, Article 34 does not limit claims to individuals. The Turkish Communist party has succeeded in a case where it was subjected to restrictions after it had supported the Kurdish minority,³⁷ while in *Sejdic and Finci*³⁸ the Court held that the Bosnian Constitution violated political participation by members of the Jewish and Roma minorities. Therefore, it is possible for human rights treaty bodies to have a direct effect on the governance of the state in a way that protects minorities. The Court's use of a declaration as the remedy in certain cases should be explored. Often, the national minority will want the European Court of Human Rights to rule on the compliance of a state's constitution or legislation as it affects the persons belonging to the national minority as a whole, a community right if not a group right. To that end, a declaration that the domestic laws fail to meet the obligations set out in the ECHR might suffice,³⁹ so long as one could rely on the state to then implement any changes necessary to correct the violation, but strategic litigation is a long and drawn-out procedure, dependent on a case with appropriate facts, and it is not suited to interventions aimed at reducing the risk of displacement. Further, leaving the state in control of choosing how to put into effect the remedy for the violation may be more appropriate when seeking to bring about changes to the internal structures of the state. Moreover, it may be questioned whether judges have the necessary skills to design constitutional amendments for any given state—such developments may best be undertaken with the technical assistance of non-confrontational institutions, such as the Advisory Committee of the Framework Convention for the Protection of National Minorities, discussed below, or the OSCE's High Commissioner on National Minorities.

The FCNM does not provide a system by which persons belonging to a minority group can assert their rights, although most of its provisions are set out as a series of rights for such persons. The Convention operates as a framework for states parties to implement and then report to an advisory committee to the Committee of Ministers

³⁶ *Lindsay et al. v United Kingdom*, 8364/78, [1979] 3 CMLR 166 at 170-71. See also, *The Liberal Party et al. v United Kingdom*, (1982) 4 EHRR 106.

³⁷ *United Communist Party of Turkey (TBKP) v Turkey*, European Court of Human Rights, 133/1996/752/951, 30 January 1998.

³⁸ *Sejdic and Finci v Bosnia and Herzegovina*, 27996/06 and 34836/06, European Court of Human Rights (Grand Chamber), 22 December 2009.

³⁹ See McGregor, "Are Declaratory Orders Appropriate for Continuing Human Rights Violations? The case of *Khadr v Canada*", [2010] HRLR 1.

of the Council of Europe.⁴⁰ At one level, such a procedure could have been no more than a paper tiger that would have provided only a window dressing of rights that have little or no effect for the protection of the minorities. In practice, due to mechanisms adopted by the Advisory Committee, the Framework Convention has held states parties to account for the ways that minority groups are treated.⁴¹ As has been shown, groups and organisations can bring claims under the ECHR, but they must be victims in their own right. Although the complaint was declared inadmissible and it was found that the cultural association, DOMOWINA, was not a victim and thus had no standing, *Noack*⁴² does recognize that the interests of a minority group to preserve its way of life are relevant within ECHR jurisprudence. Part of the Court's reasoning in declaring the application inadmissible was that the Sorb identity would not be destroyed even though the villagers would be displaced by the mining venture:

A further decisive factor for the Court is that the inhabitants of Horno will be transferred together to a town approximately twenty kilometres from their village of origin and within the area where the Sorbs originally settled. A majority of the inhabitants opted for that town after being consulted on their choice of destination. Even though the transfer means a move and reorganising life in the resettlement area, the inhabitants will continue to live in the same region and the same cultural environment, where the protection of the rights of the Sorbs is guaranteed by Article 25 of the Constitution of the Land of Brandenburg (...), where their language is taught in the schools and used by the administrative authorities, and where they will be able to carry on their customs and in particular to attend religious services in the Sorbian language.

Noack is a good example of how minority rights ought to be effected within the state under the ECHR and that there is necessarily a balancing exercise, on condition that the minority group has a voice in the decision-making process. That having been said, however, in relation to Article 5 of the Framework Convention,⁴³ the Advisory Committee obviously felt that Germany had not fulfilled its obligations despite the ruling of the

⁴⁰ See Articles 24-26 FCNM, *supra* n17.

⁴¹ See generally <http://www.coe.int/en/web/minorities/home>. And see Gilbert, "The Cultural and Political Autonomy of Minorities", *L'Observateur des Nations Unies*, 2007-2, vol. 23, 225-50 (March 2008).

⁴² *Noack v Germany*, 46346/99, European Court of Human Rights (Fourth Section), 25 May 2000.

⁴³ Article 5:

- 1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
- 2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

European Court of Human Rights. In its opinion in response to Germany's Article 25 Report,⁴⁴ the Committee found as follows:

32. The Advisory Committee recalls that Article 5 of the Framework Convention requires the Parties to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity. As the forced dissolution of municipalities in which members of national minorities traditionally reside is undeniably likely to make the preservation of their identity more difficult, it is essential, for such an action to be compatible with Article 5 of the Framework Convention, that it is taken only as a last resort, when there is no alternative. ... The Advisory Committee expects that the German authorities will pay due heed to Article 5 of the Framework Convention when weighing any public interest against the legitimate aspirations of the Sorbian people to maintain their culture and preserve their identity.

While the Advisory Committee does not have the same authority to effect compliance with respect to the Framework Convention as the European Court of Human Rights has in relation to the ECHR, it does address those areas where there is overlap—given that there is no minority rights provision in the ECHR, it is not fanciful to say that issues concerning the group *qua* group will be more directly addressed by the reasoning of the Advisory Committee re Article 5 of the Framework Convention. No consideration of the protection of minorities and displacement would be complete without regard to international criminal law. The Genocide Convention 1948 is the most obvious example of how this branch of international law protects minority groups, but given the inherent difficulty of proving that crime,⁴⁵ then it should be remembered that persecution is also a crime against humanity within Article 7 of the Rome Statute.⁴⁶ While persecution in Article 1A.2 of the 1951 Convention has a different interpretation appropriate to the humanitarian character of international refugee law, it highlights how the various branches of international law have to be understood as forming a dynamic whole that

⁴⁴ ACFC/INF/OP/I(2002)008, adopted 1 March 2002. See also, the opinion of the Advisory Committee re Finland, ACFC/INF/OP/I(2001)002, adopted 22 September 2000, at paragraph 22.

⁴⁵ See, for example, the judgment of the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v Karadžić*, IT-95-5/18-T, 24 March 2016.

⁴⁶ Rome Statute of the ICC circulated as document A/CONF.183/9 of 17 July 1998 and corrected by *procès-verbaux* of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002:

Article 7

1(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law

2(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

together ensure rule of law and the protection of all persons, which should thereby prevent forced displacement.

4. CONCLUSION

Refugee status is accorded to individuals, but only because the persecution they face turns on some group-based characteristic they possess: persons belonging to minority groups face discrimination simply because they identify themselves as a member of that group. The linkages and overlaps are self-evident between these two branches of international law. Thus, improving the protection accorded to minority groups within states will inevitably reduce the likelihood that members of the minority will need to flee and seek international protection as refugees.

Professor Geoff Gilbert is Professor of International Human Rights and Humanitarian Law, University of Essex.

Climate Change and Migration—Dimensions, Concepts and Policy Responses from a Human Rights Perspective

Monika Mayrhofer

1. INTRODUCTION

Environmental causes of migration have increasingly become the centre of attention in the context of discussing the impact of climate change. Already in 1990, in its first assessment report, the *Intergovernmental Panel on Climate Change*¹ noted that “[m]igration and resettlement may be the most threatening short-term effects of climate change on human settlements. People may decide to migrate in any of the following cases: loss of housing [...], loss of living resources [...], loss of social and cultural resources [...].” (IPCC, 1990: 5-9). Twenty-four years later, the IPCC states that “[c]limate change over the 21st century is projected to increase displacement of people [...]. [...] Changes in migration patterns can be responses to both extreme weather events and longer-term climate variability and change, and migration can also be an effective adaptation strategy. There is *low confidence* in quantitative projection of changes in mobility, due to its complex, multicausal nature” (IPCC, 2014a: 73). It is striking that the second quote is formulated in a more cautious way, due to the fact that there has been an extensive discussion on the relationship between climate change and migration, drawing from tremendous multi- and interdisciplinary research carried out during the last few decades. The results of this huge body of research repeatedly pointed out that the interrelation between climate change and migration is a multi-faceted and complex phenomenon, where causal relationships are hard to establish and possible future

¹ The IPCC is an intergovernmental body entrusted with the assessment of the science related to climate change. The IPCC is composed of scientists from all over the world and was established by the World Meteorological Organization (WMO) and United Nations Environment Programme (UNEP) in 1988 to provide policymakers with regular assessments “on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation” (Principles Governing IPCC Work, Art. 2).

developments and forecasts are difficult to project (see, e.g., Geddes, 2015; Hugo, 2010; Kälin, 2010; Piguet, Pécoud and Guchteneire, 2011).

Climate-induced migration, thus, is “an essentially contested concept” (White, 2011: 13), which is also apparent in the ongoing debate on finding an appropriate term for this type of migration. Although it has been acknowledged that climate change will have increasing repercussions on migration, there is still no agreed terminology, concept and definition of migration in the context of environmental and climate change. Some terms, such as climate-induced or environment-related migration, suggest rather “voluntary” forms of movement while others, such as climate- or environmentally displaced persons, indicate forced migration. However, the “line between movement that is ‘voluntary’ and ‘forced’ is also very blurred, and people’s decisions will involve a delicate mix of both elements in different proportions” (McAdam, 2010: 2). The term “climate refugee” is highly contested as it refers to a legal concept defined by international law which does not include environmental reasons.² In addition, terms such as “climate-migrants” or “climate-refugees” have been criticized for “implying a monocausal relationship between environmental factors and human mobility” (Piguet, Pécoud and de Guchteneire, 2011: 17) and, thus, neglecting the multicausal nature of the issue.³ The discussion is complicated by the fact that it is not a new phenomenon that people move in the context of environmental threats; instead, environmental hazards have always been closely connected with the movement of people, e.g., desertification or droughts (see Hugo, 2010: 9; Leighton, 2011: 331-340; Piguet, Pécoud and Guchteneire, 2011: 2). Yet, climate change will have an effect on the environment and, thus, also on the human being. The IPCC notes in its last report:

Climate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development. (IPCC, 2014b:13)

Due to the complexity of the issue and the difficulties in understanding and capturing the problem, attempts to politically address the problem are challenging. This article argues that in order to tackle the problem and to provide protection for people affected it is crucial to apply a human rights approach. That means not only that the analysis of the issue should take the guarantee of human rights as a starting point for the assessment of the problem—for example in the concept of vulnerability—but also that human rights

² According to the 1951 Convention relating to the Status of Refugees a refugee is a person leaving his or her country of residence due to “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (Art. 1). For a discussion of this issue see, e.g., Cournil (2011: 365-368) and McAdam (2012: 39-51).

³ For a discussion of different terms and categories see, for example, Stojanov, Kelman, Shen, Duži, Upadhyay, Vikhorov, Lingaraj and Mishra (2014).

should be integrated as a benchmark in all policy and legal responses. Using a human rights approach means referring to an internationally well-established normative, legal and institutional framework which has the advantage that it relies on internationally acknowledged basic norms and values but also has the potential to connect different policy fields which are relevant in this context (e.g., environmental, migration and development policies) and to define a common ground and globally accepted basis for action. In the following, there will be a short outline on the effects of climate change with a specific focus on Asia. Subsequently, the question how climate change might impact on migration and what are the most important dimensions of the problem will be addressed. In a second and concluding step, it will be discussed why it is useful to include human rights concepts into the basic concepts of vulnerability and adaptation in the context of climate-related migration and what might be appropriate policies to comprehensively address this issue and to guarantee the protection of people moving in the context of environmental and climate change.

2. OUTLINING THE MOST IMPORTANT ASPECTS OF THE DEBATE ON MIGRATION AND CLIMATE CHANGE

a. The Effects of Climate Change with a Specific Focus on Asia

As already indicated environmental hazards have always constituted a reason for people to move. However, climate change will presumably intensify environmental threats. The Climate Change, Environment and Migration Alliance states:

Climate change is likely to exacerbate (a) the frequency and intensity of extreme weather events (e.g. tropical storms, floods, heat waves) (b) gradual processes of environmental degradation (e.g. desertification, soil and coastal erosion). These effects of climate change as well as its adverse consequences for livelihoods, public health, food security, and water availability will have a major impact on human mobility, likely leading to a substantial rise in its scale. (CCEMA, 2010: 1)

Also the IPCC stresses that the human influence on the climate system is evident, the anthropogenic emissions of greenhouse gases are the highest in history and the warming of the system is unequivocal and unprecedented over decades to millennia (IPCC, 2014b: 40). The observed impacts attributed to climate change include:

- Changing precipitation or melting snow and ice are altering hydrological systems, having a qualitative and quantitative effect on water resources
- Negative impacts on crop yields
- Changes in extreme weather and climate events

- Decrease in the number of cold days and nights and increase in the number of warm days and nights
- Increase in heavy precipitation events
- Increase in extreme sea levels
- Impacts from climate-related extremes such as heat waves, droughts, floods, cyclones and wildfires on some ecosystems and many human systems
- Direct and insured losses from weather-related disasters have increased substantially in recent decades (IPCC, 2014b: 49-53).

For Asia the IPCC observes that warming trends and the rise in temperature have been noticed across most of the Asian region over the past century, that water scarcity will be a major challenge, that, although the effect of climate change on food production and food security will vary across the Asian continent, many regions are likely to face a decline in productivity and coastal and marine systems will be under increased pressure. In addition, many problems caused by rapid urbanization, industrialization and economic development will be exacerbated by climate change and “extreme climate events will have an increasing impact on human health, security, livelihoods, and poverty, with the type and magnitude of impact varying across Asia” (IPCC, 2014a: 1330-1331).

Despite growing scientific evidence that climate change will have severe consequences for human beings and “[t]he impact of environmental change on migration will increase in the future”, the question of how many people are likely to move is very difficult to answer (see, e.g., Brown, 2008; Martin, 2015). Initially, there were huge numbers circulating on how many people will migrate or will be displaced due to various impacts of climate change. Recently, the estimates seem to be more cautious because it has become clear that the interrelation between climate and environmental change and migration is quite complicated and very often the impact on migration is indirect. In addition, different regions of the world will be affected in different ways depending on factors such as exposure, wealth, population density and others.

Thus, climate and environmental change not only impacts on a certain social, economic, cultural and political context—very often grasped with the term “vulnerability” (see, for example, Adger, 2006)—it also interacts with other social, economic, cultural and political factors and, hence, affects the lives and livelihoods of different groups and individuals in diverse and different ways. The impact of climate change often is only one among other factors leading to the decision to migrate. The “multi-causality” (Boano, Zetter and Morris, 2008: 9) or “multiple determinants of migration” (Piguet, Pécoud and Guchteneire, 2011: 12) or multiple “drivers of migration” (Black, Bennett, Thomas and Beddington, 2011: 448) are closely interlinked; hence, it is pointless to scrutinize one of them without taking into consideration the others. Black, Bennett, Thomas and Beddington (2011: 448) have identified five drivers of migration: social

drivers (e.g., education, family), political drivers (e.g., discrimination, persecution, governance, conflict, policy incentives), demographic drivers (e.g., population size and structure), economic drivers (employment opportunities, income, producer and consumer prices) and environmental drivers (exposure to hazard, ecosystem services, habitability, food/energy/water security).

b. Migration Responses

There is a broad range of migration responses and strategies which are associated with environmental and climate change. In general, there are several ways to distinguish between different forms of migration in this context. The first has already been discussed above and locates the movement of people in the context of environmental and climate change on a continuum between voluntary and forced forms of migration. The latter is also very often referred to as displacement while forms of “voluntary” movement are also discussed under the label of adaptation. Understanding migration as a form of adaptation refers to the fact that migration might be a strategy to adjust to environmental changes in order to reduce vulnerabilities or enhance the resilience of a community, of certain groups or families, for example, through remittances sent back to the people staying behind. Thus, migration can contribute positively to strengthening the adaptive capacities of the population or families in the countries of origin. “Migration may be the most effective way to allow people to diversify income and build resilience where environmental change threatens livelihoods” (Black, Bennett, Thomas and Beddington, 2011: 448).

A second distinction is commonly made concerning the duration of migration or displacement, including permanent, temporary, circular or seasonal movements. A third difference which is very important with regard to the (legal) “protection”⁴ of people affected is movement or displacement within a country or with crossing international borders. The protection of people moving in the context of climate change is generally diagnosed to be inadequate. “Today, no legal instrument defines or offers *direct*, clear and relevant protection to all ‘environmental refugees’: it remains to be constructed” (Cournil, 2011: 364). Especially when it comes to displacement across international borders there is a serious “protection gap”.⁵

⁴ In accordance with the Nansen Initiative the term protection is used “to refer to any positive action, whether or not based on legal obligations, undertaken by States on behalf of disaster displaced persons or persons at risk of being displaced that aim at obtaining full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law” (The Nansen Initiative, 2015: 3).

⁵ The protection gap was also acknowledged in the Nansen Principles (Principle No. ix stresses that “[a] more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters” and that states “[...] could develop a guiding framework or instrument in this regard.”).

Another differentiation, which will be elaborated a bit more closely in the following paragraphs, is frequently drawn with regard to the nature of disasters. The most striking category constitutes *sudden-onset disasters* including tropical cyclones, heavy rains and floods. They very often cause short-term internal displacement and movement but may also cause displacements for longer periods (“protracted” displacement), for example due to uninhabitability of houses and settlements as a result of a disaster. According to estimates of the International Displacement Monitoring Center (IDMC) 17.5 million people were displaced by weather-related disasters in 2014. At an average, 22.5 million people have been displaced each year as a result of climate or weather-related disasters in the last seven years— that is equivalent to 62,000 people every day. When it comes to historical trends, the IDMC says that reviewing data from 1970 to 2014 suggests that “the likelihood of being displaced by a disaster today is 60 percent higher than it was four decades ago” (IDMC, 2015: 8). Due to its size of population Asia is the continent most affected by various forms of disaster. The IDMC estimated that in 2014, “16.7 million people were forced to flee their homes, accounting for 87 per cent of the global total [...]. The region was also disproportionately affected relative to its population size” (2015: 30; see also IPCC, 2014a: 1346). China, India and the Philippines were the worst affected countries worldwide in 2014. They not only had to cope with the highest number of displaced people in 2014 and during the period between 2008 and 2014 but also suffered from 15 of the 20 largest events in 2014 (Ibid.: 36). Floods and storms constituted a significant part of these events. The IDMC also emphasizes that the common assumption that sudden on-set events only cause short-term displacement cannot be sustained. Although there is a lack of data there is quite a high number of people displaced by a disaster for several years up to several decades. Concerning Asia, the IDMC refers to Pakistan, Bangladesh and Indonesia, where thousands of people have been displaced due to floods, landslides or cyclones for up to ten years, including “people whose former homes have become permanently inaccessible or unsafe, informal settlers, poor tenants and people who face discrimination based on their class, ethnicity, gender or age” (IDMC, 2015: 47).

Another category refers to different patterns of migration due to *slow-onset processes* such as degradation of the environment, de- or increase of precipitation, increase in droughts or rise of sea levels. This kind of migration is difficult to grasp—also in terms of statistical data—as the impact of climate change on the decision to migrate is very often an indirect one. The impact of rising sea levels on coastal systems and low-lying areas and, thus, on human settlement in these regions will be serious. Without taking into consideration future adaptation measures to protect the population residing in these areas it is estimated that “72 to 187 million people will be displaced due to land loss due to submergence and erosion by 2100” (IPCC, 2014a: 382). The IPCC further highlights that Asia will be particularly affected by this kind of environmental threat as cities “identified for both population and asset exposure” are concentrated in Asia

(Ibid.: 555). However, it has to be emphasized that these numbers are estimates not taking into consideration adaptation measures to protect cities and settlements. That means, it does not say anything about the actual number of people who are going to migrate from these areas due to the rise of sea levels.

The degradation of the environment, de- or increase of precipitation, desertification and increase in droughts are examples of other slow-onset processes where the effect on migration is difficult to ascertain as those forms of movement are closely interlinked with or are having an effect on social, economic, political or other factors which have an impact on the decision to migrate. The Climate Change, Environment and Migration Alliance states:

Although slow-onset environmental processes are less visible than extreme events, over longer timescales, they tend to have a greater impact on the movement of people than natural disasters. Slow-onset events can produce a wide spectrum of migration flows, including cross-border as well as rural to rural and rural to urban, with the majority of movements likely to take place either internally or cross-border to neighbouring countries. (CEEMA, 2010: 2)

Although researchers are generally agreeing on the thesis that slow-onset processes of the environment have an effect on migration and that migration is often used as an adaptation strategy in this context (see above), the prognosis on how many people will do so are very cautious. Studies suggest that environmental degradation especially has an effect on economic drivers, thus, impacting on household wealth and income. The Foresight Report states that environmental change “is likely to lead to an increase in short term, rural-rural migration as households look to diversify incomes and secure livelihoods. It is also likely to reduce longer-distance migration, which requires economic assets” (Foresight, 2011: 71, see also Geddes, 2015: 481; Hugo, 2010: 25-26). The thesis that environmental changes have indirect effects on migration through their negative impact on income and wages has been confirmed by various studies (e.g., Coniglio and Pesce, 2015; Beine and Parsons, 2013). In addition, environmental change can also interact with social drivers, which, for example, means people are more likely to migrate if they have social networks which help them in moving to another place, finding a job or an apartment etc. Such “migration networks” constitute an important social resource (Hugo, 2010: 24-25). Political factors such as conflict may also exacerbate movement, or, on the contrary, “interaction of environmental change with conflict and poverty means that planned, safe migration may not be an option and consequently people can become extremely vulnerable and ‘trapped’ in dangerous circumstances” (Foresight, 2011:73). The issue of “trapped populations” refers to people who cannot move although the environment is deteriorating and becoming a serious threat because they don’t have the means to do so. Migration needs financial and social resources and people who do not “possess the assets to migrate will be trapped in increasingly

precarious environments” (Geddes 2015: 486). Thus, environmental change can increase the incentive to move, but it can also limit the capacity to do so. “The greatest risks will be borne by those who are unable or unwilling to relocate, and may be exacerbated by maladaptive policies designed to prevent migration” (Black, Bennett, Thomas and Beddington, 2011: 447). Limits to movement might comprise financial barriers such as costs of transport or subsistence on arrival, information barriers such as a lack of education and knowledge as well as legal barriers, including a lack of legal possibilities to migrate (see Barnett and Webber, 2010: 41-42).

The interrelation between migration as a consequence of sudden- and slow-onset disasters is quite complex. Sometimes sudden-onset disasters can exacerbate slow-onset disasters (Martin, 2015: 12) or—also due to the degradation of the environment—people may move towards areas, mostly cities, prone to disasters (IDMC, 2015: 8 and 24):

Most modern urban centres were founded centuries ago based on considerations of defence, agricultural viability and transport. These factors drove humans to settle in areas prone to hazards, along coasts and rivers, on flood plains and in seismically active areas. When urban growth in such areas is well managed, the risk of displacement may increase only modestly. In many developing countries, however, urban growth has been rapid, unplanned and poorly governed, leading to high exposure and vulnerability. (IDMC, 2015: 24)

Another dimension of climate change-related movement should be briefly mentioned in this context, namely, migration or displacement as a result of climate change policies or measures. These very often problematic movements are usually closely related to development-induced displacement/migration, such as the eviction or resettlement of people in the course of building hydro plants (Barro Blanco dam in Panama, Bujagali dam in Uganda).

3. VULNERABILITY, ADAPTATION, MIGRATION— CONCLUDING THOUGHTS ON INTEGRATING HUMAN RIGHTS INTO POLICY RESPONSES

The concept of vulnerability, as indicated above, is an important analytical tool for grasping the complex interrelation between social and natural systems which not only provides the context for responding to the effects of climate change but also the decision to migrate. The IPCC has defined vulnerability as “the degree to which a system is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the character, magnitude, and rate of climate change and variation to which a system is exposed, its sensitivity, and its adaptive capacity” (IPCC, 2008: 883). Vulnerability has increasingly been used

in the field of human rights as the concept is compatible to integrate a human rights language. Most of the issues which make an individual person, a community, a region or a state susceptible to negative effects of climate changes are human rights issues such as poverty, discrimination and political hardships or other socio-economic characteristics described in the following quote:

Our analysis also point out the importance of the socio-economic characteristics of the origin country (such as the level of development and the vulnerability of the agricultural sector) in shaping the nexus between climate shocks and international migration flows. In general, countries with a lower level of development and a relatively larger agricultural sector are more sensitive to climate shocks. (Coniglio and Pesce, 2015: 436)

Thus, climate change will not only have “a profound effect on the enjoyment of human rights for individuals and communities across the planet” (UNEP, 2015: VIII), climate change will affect those people most whose human rights, especially social and economic rights, are precarious or even infringed in the first place. Guaranteeing the rights of the people affected would decrease their vulnerability and increase the capacity to adapt to climate change in profound ways.

This leads to another concept which is important in this context, the concept of adaptation.⁶ Adaptation means the reduction of vulnerabilities of communities to impacts of climate changes and may involve migratory as well as non-migratory responses. In the following and in conclusion to this article, some basic ideas will be outlined regarding what policy measures are needed and in what way human rights should be integrated into policy responses addressing the complex issue of migration in the context of climate change.

Conceptualizing *migration as an adaptation strategy* means recognizing the fundamental understanding that migration is not a failure to adapt to climate change but part of the solution. From a human rights perspective, this understanding would involve the objective of ensuring the respect of human rights of migrants in all phases of movement as well as providing legal ways of labour migration. This would have the effect that migrants do not have to resort to unsafe ways of movement, such as trafficking

⁶ The Fourth Assessment Report of the Intergovernmental Panel on Climate Change (2007) (AR4) defines adaptation as follows: “Adaptation to climate change takes place through adjustments to reduce vulnerability or enhance resilience in response to observed or expected changes in climate and associated extreme weather events. Adaptation occurs in physical, ecological and human systems. It involves changes in social and environmental processes, perceptions of climate risk, practices and functions to reduce potential damages or to realise new opportunities. Adaptations include anticipatory and reactive actions, private and public initiatives, and can relate to projected changes in temperature and current climate variations and extremes that may be altered with climate change. In practice, adaptations tend to be on-going processes, reflecting many factors of stresses, rather than discrete measures to address climate change specifically” (IPCC, 2007: 720).

or smuggling, which not only endangers their lives but also makes them vulnerable to various forms of exploitation. In order to guarantee the human rights of migrant workers, it is advisable that all states adopt the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

Furthermore, it is important to ensure the protection of internationally as well as internally displaced persons due to extreme weather events. The Nansen Initiative⁷ has collected valuable practices and recommendations in this regard (The Nansen Initiative, 2015). In general, the Initiative calls on states to ensure “increased preparedness, solidarity and cooperation by States, (sub-)regional organizations and the international community to prevent, avoid, and respond to disaster displacement and its causes” (Ibid.: I-II). Concerning the protection of internally displaced persons the Nansen Initiative refers to the UN Guiding Principle on Internal Displacement as the most important framework for the protection of IDPs. With regard to internationally displaced persons the Initiative recommends a range of measures involving the admittance of such persons into the territory of other states or refraining from returning persons to a disaster-affected country.

In addition, it would be important to integrate migration considerations and strategies in international climate change policies.

There are a broad range of non-migratory adaptation strategies. From a human rights perspective it would be recommendable to address and decrease vulnerabilities by enhancing and ensuring all human rights (particularly social and economic rights). Measures in this regard might include poverty-reduction programmes, education and training programmes, development policies aiming at the strengthening of people particularly vulnerable to the impact of climate change and, in general, information campaigns on potential risks and ways of capacity building.

In addition, it would be vital to integrate human rights obligations and safeguards in National Adaptation Plans and Disaster Management Plans, while guaranteeing the participation of affected persons as well as civil society organisations at all levels. At an international level, it is vital to acknowledge the importance of human rights for all climate change policies and integrate human rights safeguards in the international climate change regime.

This article has repeatedly emphasized that the relationship between climate change and migration is a multi-faceted and complex issue, posing new and unprecedented challenges to the international system and requiring complex, multi-layered

⁷ The Nansen Initiative is a government-funded process “intended to identify effective practices and build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters, including the adverse effects of climate change” (The Nansen Initiative, 2015: I).

and global policy responses. Integrating human rights in all these policies would not only mean a step to actually protect people affected by and migrating in the context of climate change, it would also signify adopting comprehensive and sustainable solutions in order to tackle the challenges of climate change.

Dr. Monika Mayrhofer is a senior researcher at the Ludwig Boltzmann Institute of Human Rights in Vienna, Austria. She graduated from the University of Vienna with a Master and a PhD in political science and is specialised in the fields of anti-discrimination, (environment-related) migration and European Human Rights System. At the moment, Monika is working as a researcher in two major projects. She is the leader of work package 4 on “Protection of Human Rights: Institutions and Instruments” of the FP 7 project “Fostering Human Rights Among European (external and internal) Policies”, a research project funded by the European Commission. She is also the leader of the project “ClimAccount: Human Rights Accountability of the EU and Austria for Climate policies in Third Countries and their possible Effects on Migration”, funded by the Austrian Climate Fund. Monika regularly teaches at the University of Vienna and at the Ramkhamhaeng University in Bangkok.

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CONTRIBUTORS

"Refugee Movements in South and Southeast Asia"

Alistair Boulton

"Managing Movements of People in Southeast Asia: The ASEAN Response"

Moe Thuzar

"Internal Displacement in the Philippines"

Jose Jowel Canuday

"Migratory Flows in Bangladesh in the Age of Climate Change: Sensitivity, Patterns and Challenges"

Mohammad Towheedul Islam and Tasneem Siddiqui

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O. Can Ünver

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Joanna Pétin

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Angelos M. Syrigos

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Kay Hailbronner

"Refugees, Minorities and International Law"

Geoff Gilbert

"Climate Change and Migration – Dimensions, Concepts and Policy Responses from a Human Rights Perspective"

Monika Mayrhofer