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**Colloque France terre d'asile « Migrations: réalités, chances et défis » / « Migration: realities, opportunities and challenges »**

Table ronde 1: ***LA MONDIALISATION ET LES NOUVEAUX DÉFIS DE LA PROTECTION INTERNATIONALE***

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Professor Zetter, recently retired as Director of the Refugee Studies Centre, University of Oxford. He has over 30 years international experience in research, publication, teaching and consultancy in forced migration, refugee and humanitarian issues. He was Founding Editor of the Journal of Refugee Studies published by Oxford University Press.

His research and consultancy focuses on governance and policy dimensions of the refugee regime, and the impacts of humanitarian assistance and government policies on refugees and asylum seekers. His work includes all stages of the 'refugee cycle' from exile to reception and re-settlement, the experience of protracted exile and integration, repatriation and post-conflict reconstruction. Recent research themes in Europe concern the associational life of refugees and migrants, integration, social cohesion and social capital.

He has research/consultancy experience with many UN agencies, the World Bank, the European Commission, many national governments as well as research councils, trust, foundations and charitable organisations.

***Introduction***

In the present era we are experiencing unprecedented changes in the causes and consequences of forced migration which result from conflict, violence and persecution. The international community has struggled to respond to these new processes and modalities. Moreover, in recent decades we have witnessed the increasing reluctance of countries to deal with these new modalities and to provide asylum and protect refugees, above all in Europe but equally in the global south. Nobody wants refugees: deterrence, regulation and marginalisation constitute the main political rhetoric and practice in most countries.

This problematic situation poses many new challenges for the international protection of those forced to flee and how their human rights can be secured with dignity and equity. The concepts of the 'protection gap' and 'protection space' (as both a metaphor and physical commodity) are symptomatic of these new challenges which are very different from the conditions envisaged in the 1951 Geneva Convention and the 1967 Protocol. Of course, although international law makes reference to protection it does not define its meaning. But arguably, today, the concept and practice of protection, enshrined in the 1951 Convention and developed through jurisprudence, norms, principles and standards over the last 60 years, is strained to the limits. The classical model no longer seems appropriate. Significantly we have seen how the discourse on human rights protection has expanded, since every human right is impacted by forced migration. And yet the Convention is the principal instrument in international law for protection.



It has been adaptable to changing circumstances of forced migration and the political interpretations of how protection should be provided. In the absence of other instruments to tackle new forms of displacement, and given the unwillingness of the international community to contemplate new international conventions to handle migration and forced migration, we have to look to adaptation and innovative modalities within existing frameworks.

In this new environment, what are the principal challenges and the prospects for protection? The protection agenda is inevitably large – violence and displacement by non-state actors, complex emergencies, protracted exile, urban humanitarian crises and displacement, climate change and environmental displacement, statelessness, unaccompanied asylum seeker children, human trafficking, the blurring of migration categories and ‘mixed migration’ flows, fortress Europe and securitisation. Each of these situations poses a complex array of protection issues. In the limited time available I want to focus on four. This is a personal selection, made from the perspective of an academic, not a policy maker, practitioner or advocacy organisation. It reflects many of my research interests in recent years but hopefully also captures the ‘real’ world that confronts these other stakeholders.

### ***Protracted displacement***

The majority of the world’s refugees and IDPs live in conditions of protracted displacement – refugees from Afghanistan, Somalia (2.5m refugees and IDPs), Iraq (over 4.5m refugees and IDPs). More than half the world’s 10 million refugees are currently in protracted exile. The average time period of refugee displacement is almost 20 years. Enduring conditions of internal displacement persist in over 40 countries including three (Colombia, DRC and Sudan), each with over one million IDPs throughout the decade ending in 2010. Only some 25% of IDPs in the Balkan’s have returned after almost two decades of displacement. Orthodox conceptual tools and policy frameworks have failed to provide adequate protection. Nor have resolved existing or prevented more recent crises. The impact on the lives, security and access to protection (the ‘protection gap’) of millions of displaced people represents a significant and enduring loss of economic and social wellbeing and dignity. It is also a symptom of state fragility and regional insecurity which further undermines the situation of those most in need of effective protection. And developed countries further afield perceive these refugees to be a security threat and increasingly resist providing them with protection.

What can be done to increase protection for those in protracted exile? The UNHCR has been proactive in raising awareness in the High Commissioner’s Dialogue on Protection Challenges in 2008 and the ExCom Conclusion in December 2009.

Amongst the factors which policy makers and international actors might adopt to better protect those in conditions of protracted displacement are: better access to social and economic rights and protection in host countries by more flexible legal regulation (temporary citizenship or other forms of more secure residency, more flexible work permits, internal freedom of movement); securing and protecting the longer term livelihood needs of refugees and IDPs by new economic and livelihood development policies (sustained development programmes and projects for the displaced and local host populations; more inventive and flexible forms of integration; recognise and facilitate the significance of multiple migration strategies of those in protracted exile; reducing international perceptions of refugees as a security threat and expanding refugee protection and resettlement opportunities in the ‘west’; addressing the protection failures in the countries of origin - justice, governance and human rights protection.

### ***Fortress Europe and securitising asylum***

In the last two decades, Europe has turned from being a continent of asylum and refuge to a continent of rejection and



deterrence for refugees and asylum seekers. Huge political and institutional capital has been invested in constructing 'Fortress Europe' at national and EU levels – Common Asylum and Immigration Policy, Schengen, Dublin II, Qualification Directive, Frontex, off-shore processing, six major pieces of legislation in 15 years in the UK. But it is protection and the protection needs of those who most need it that have been the main casualties.

Immigrants in general and the 'identity' of asylum seekers and refugees in particular have been symbolically expropriated and institutionalised to exploit anxieties and the perceived (but not real) threat of an existential danger to European 'identity' and socio-economic cohesion. The legitimacy of securitising asylum has been reinforced by 9/11, the Madrid and London bombings in 2004/2005 and civil disorder involving ethnic minority migrant communities in for example the UK, France, the Netherlands and Italy at various times during the present decade. This violation of physical security is reinforced by an imprecise but a far more insidious construction of an existential threat from different value systems, religions and ideologies. In this context it is significant that nearly a quarter of asylum claims in Europe come from just three countries – Afghanistan, Iraq and Somalia – and equally significant we do not want to protect them because rejection rates are amongst the highest of any countries of origin. These are countries whose religious affiliations and 'lack of security' are identified as being the most threatening to national security in Europe. Yet ironically, it is precisely these same challenges to human security - fragile governments and a limited ability to protect the rights of individuals from persecution and violence - which constitute the normative basis for a well founded claim for protection through refugee status.

We welcome the 'Arab spring' in Europe – now an Arab autumn and winter – because it seems to reflect our value systems. Yet the migrants and refugees from the Magreb exposed the fault lines in Europe's so called common immigration and asylum policy. The process propels increasing numbers of refugees, asylum seekers and temporary migrants whose claims for protection we reject. Again, there are profoundly mixed messages about our political interests in for a more secure world.

By making it almost impossible to seek refuge in Europe through tightening entry routes, visa requirements and the machinery of deterrence we have created conditions where even those who have a powerful claim for protection risk being identified as 'bogus asylum seekers' or economic migrants or illegal migrants. Those seeking refuge no longer conform to the stereotypical refugee victim and so we designate them as 'illegals', clandestine and criminalised opportunists with no call on our moral obligations. These perceptions resonate powerfully with a public rhetoric which politicises migration and asylum seeking as a threat not a question of moral conviction.

As Europeans we have to tackle the contradictions evident in this very problematic diagnosis in which protection needs are subverted by political expediency. The advocacy agenda is vast and we need to be creative. We have to advocate far more strongly for the restitution of international refugee law, norms and principles and standards of protection which have been increasingly undermined and rejected by the EU and Member States. Beyond refugee law we need to rethink and reinvent policies of temporary protection invoked for refugees from the Balkans in the 1990s. We need to consider how the doctrine of complementary protection under international legal obligations can be developed and extended to protect those at risk of serious ill-treatment such as torture, cruel, inhuman and degrading treatment or punishment.<sup>1</sup> We need to be more proactive both within Europe, and in supporting the main

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<sup>1</sup> 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights (ICCPR)



host countries, in developing the machinery of protection of fundamental human rights for forcibly displaced persons.<sup>2</sup>

### ***Urban displacement and humanitarian crises***

The refugee camp – the iconic symbolic of refugee exile – persists but is less significant now. The majority of the world's refugees and IDPs are now located in urban areas where they settle informally and de facto integrate - Iraqi refugees in the cities of Jordan and Syria, Somali refugees in Nairobi, Afghan refugees in Pakistan's cities, over 3 million IDPs reside in the cities of Colombia. This process occurs despite strong legal constraints, political resistance and other tactics such as intimidation and threat of deportation, designed to prevent the urbanisation of displacement.

Within cities urban humanitarian crises and forced displacement are becoming more prevalent compounded by severe social and physical deprivation, inequality and exclusion – e.g. the post election violence in Kenya in 2008, endemic violence by armed groups and drug cartels or crime syndicates.

These phenomena of urban refugees and urban violence and displacement raise many challenges for the international community and humanitarian actors. Amongst these challenges protection is critical because these conditions can generate insecurity if civil protection is not effectively in place, making cities, and social groups such as women and children, particularly vulnerable.

Identifying refugees and other people who are forcibly displaced in urban areas and targeting their protection needs are particularly problematic. Out of fear of harassment, detention and possible *refoulement* these displaced populations live in precarious legal status, reducing and often impeding their access to official mechanisms of protection (police, courts and ombudsmen). For these reasons, these populations are hidden and want to remain hidden, unregistered and undocumented. In contrast to encamped refugees in rural areas. Many IDPs who become dispersed in urban areas or wish to remain anonymous may also miss out on registration for assistance and protection.

How can we tackle these protection needs? Evidence suggests that community-based practices and working with local civil society partners are the most effective way forward. This can help to reinforce access for the most vulnerable to protection mechanisms that safeguard individual or community rights at the municipal level. Ground-breaking work by the UN Humanitarian Country Team in Kenya, in close partnership with national, municipal and civil society partners such as the Kenyan Red Cross has developed urban vulnerability indicators. It is important to engage national authorities and local enforcement agencies on their obligations under human rights or refugee law in these situations. The UNHCR has recently reviewed its own Policy on Refugee Protection and Solutions in Urban Areas (2009) which provides many new initiatives for protection. And the UN's Inter Agency Standing Committee for emergency responses is strengthening tools for vulnerability assessment including protection needs.

### ***Environmental displacement and climate change***

Population displacement is increasingly associated with changing environmental and climate conditions. The

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<sup>2</sup> 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1981 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child



principal drivers are the increasing incidence of rapid-onset conditions, such as extreme weather events, and the slow-onset impacts of desertification and rising sea levels. The overwhelming majority of the people moving for environmental reasons will be in the Global South: a significant proportion of them will migrate within their own countries. The loss of territory and potential statelessness of Pacific islanders has captured public imagination but far more people will be displaced in countries like Bangladesh and Vietnam.

However the precise causal link between environmental factors and migration is both conceptually and empirically very difficult to prove and therefore contentious. Accordingly, predictions vary enormously on the numbers involved from 50 million to several hundred million. Nevertheless, these phenomena will probably constitute the principal drivers of migration for many decades to come. Like other forms of forced and voluntary migration, environmental displacement will take different forms and require diverse responses at national, sub-regional, regional and international levels.

A major problem for national governments and the international community is that there are no international norms, standards or law that deal specifically with the protection challenges of migrants displaced by environmental or climatic factors, either internally within a country or internationally. This lack of effective norms and the uncertainty of legal protection places at risk a potentially large number of people according to whether the displacement is temporary or permanent and how protection needs differ between internal and cross-border displacement for example by nomadic and pastoral communities.

How can these protection challenges be met? The UNHCR and the IOM have been actively developing policies which ensure that responses are guided by fundamental principles of humanity, human dignity, human rights and international cooperation. However, the 1951 Convention provides only very limited protection for 'environmental migrants'. The need to develop a global guiding framework to apply to external displacement other than refugees, especially resulting from sudden-onset disasters, is pressing. My research shows that the 1998 Guiding Principles on Internal Displacement and new instruments such as the African Union 'Kampala' Convention of 2009 (*African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa*), provide a framework for protection in emergency

situations. But these instruments need significant development with respect to rights protection for people threatened with displacement because of changing environmental conditions and after displacement has occurred in relation to longer term resettlement and adaptation. The response of Nordic European countries in developing new legal instruments to provide temporary protection for environmental displaced people is to be welcomed.

## **Conclusions**



I have not had time to deal with other pressing protection challenges - non-state actors, complex emergencies, statelessness, unaccompanied asylum seeker children, human trafficking, blurring of migration categories and mixed flows. There are two key conclusions.

*First we must protect protection.* In this context, the advocacy role of civil society organisations like *France Terre d'Asile* and their counterparts in many other countries remains more vital and essential than ever, given the anti-refugee, anti-migration sentiments and the diminution of protection which now dominate the political discourse across the globe. The fundamental human right of protection from persecution, violence and *refoulement*, whether perpetrated by state or non-state actors, is under increasing threat: it is the duty of these organisations to protect protection.

*Second we must ensure that protection is much more people-centred.* Whether in French cities, Colombian cities, or in Syria or Kenya, forced displacement generates new dynamics of survival and modes of resilience amongst these communities. Protection of civil, human economic and social rights is a crucial precondition to these aspirations and the dignity with which refugees and IDPs should be treated. But we need to listen the voices of the displaced and to understand how their protection can be most effectively provided, rather than imposed or, worse still, denied.