

Promoting sustainable peace through the protection of people displaced by climate change, disasters, and conflict

A personal view

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December 2024

Abstract

This paper discusses the protection of individuals displaced by climate change, disasters, and conflict, emphasizing the importance of international cooperation and human rights in managing migration and border control. It addresses the challenges faced by refugees, asylum seekers, and migrants, highlighting the need for a shift towards a protection-focused approach, rather than a security-centric one. The paper touches on the role of organizations like UNHCR and OHCHR, as well as of international agreements such as the 1951 Convention on Refugees and the Global Compacts on refugees and migration. It considers new and ongoing work into the role of borders, and stresses the duty of States to cooperate, to protect human rights, and to provide safe and legal pathways for those in need of refuge. The paper advocates for a more inclusive and rights-based approach to migration governance, urging the adoption of policies that prioritize protection, dignity, and respect for all individuals regardless of their migration status.

Keywords: refugees, climate change, disasters, conflict, borders, human rights, *non-refoulement*, international cooperation.

1. Introduction

The title of this presentation, it must be admitted, makes many assumptions. The most obvious is that protecting those displaced by climate change, disasters and conflict is a good in itself, and that by doing good in this regard, States, governments and peoples will contribute to sustainable peace. Faced with this assumption, the actual and potential

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numbers of the displaced appear daunting, and the question of how to provide for protection is high on the agenda in a world dominated by sovereign States, each of which appears to be struggling to manage movement across their borders

In its latest *Global Trends* report, the UN High Commissioner for Refugees (UNHCR) estimated that in 2023, ‘117.3 million people worldwide were forcibly displaced due to persecution, conflict, violence, human rights violations and events seriously disturbing the public order’, including 43.4 million refugees, 68.3 internally displaced, 6.9 million asylum seekers and nearly 6 million others in need of protection, including the stateless. UNHCR also noted that forced displacement continued to increase and by the end of April 2024 would likely exceed 120 million.¹ Earlier, in 2021, the World Bank had predicted that, ‘without concrete climate and development action, by 2050 as many as 216 million people could be internally displaced by climate change’.² Closer to home in the United Kingdom, the number of cross-Channel arrivals between 1 January and 11 November 2024 was 32,900, while during 2023, some 29,437 people arrived in 2023 and 45,755 crossed in 2022.³ People are still crossing the Mediterranean, although their prospects are frequently in doubt where rescue and then disembarkation are in dispute.⁴ Meanwhile, the EU makes deals for migration control, and plans to spend up to €164.5 million over three years for Tunisian

¹ UNHCR, *Global Trends: Forced Displacement in 2023*, Geneva, June 2024, 6. In his address to the Third Committee of the General Assembly on 6 November 2024, the UN High Commissioner for Refugees cited 123 million people who have had to flee violence, persecution and conflict.

² World Bank, *Groundswell Part 2: Acting on Internal Climate Migration*, Washington D.C., 2021, xxiii. See also World Bank, *Migrants, Refugees, and Societies*, Washington D.C., 2023, 69, 77–88.

³ BBC, ‘How many people cross the Channel in small boats and how many claim asylum?’ (20 November 2024). See also, Rajeev Syal and agencies, ‘Record number of people have crossed Channel in small boats since January’, *The Guardian*, 24 June 2024; Migration Observatory, ‘People crossing the English Channel in small boats’, 28 June 2024; Diane Taylor, “‘We can live or die, but we are going to the UK’: the Calais refugees clinging desperately to a dream”, *The Guardian*, 29 November 2024.

⁴ European Parliamentary Research Service, ‘Search and rescue efforts for Mediterranean migrants – Briefing’, 24 October 2022; International Organization for Migration (IOM), ‘Missing Migrants’; 30,898 migrants were recorded as missing in the Mediterranean since 2014 (29 November 2024).

security forces, with about two-thirds of a projected €278 million allocated to security and border management.⁵

In these and other ‘arrangements’ around the world, governments appear to have forgotten both principles and obligations in their desire to push their borders farther away, to prevent migration and the movement of people, and to disregard the oppressive manner of enforcement. For example, on the land routes between Bulgaria and Turkey, or Greece and countries to the north, including Serbia and Hungary, systematic brutality by the authorities is only too common,⁶ with little space for the protection of human rights – rather, it is ‘protection’ of the EU’s external borders that is the paramount consideration, with Frontex (the EU’s border control agency) playing a major role. As the United Kingdom Supreme Court remarked in its November 2023 landmark decision on the illegality of proposed removals to Rwanda, the various deficiencies highlighted in the evidence illustrate ‘a culture of, at best, insufficient appreciation’ of obligations under the 1951 Refugees Convention and, ‘at worst a deliberate disregard for those obligations’.⁷

2. The borders issue

How did we get here? The concept of ‘border protection’ originated, one should not be surprised to learn, in the United States in the late 19th century, but border control really came into fashion during the First World War and it was continued, enthusiastically by some, with regret by others, in the years that followed. Still, exceptions were recognised, particularly for the refugee and the stateless person, and although admission was not addressed, States then working within the League of Nations agreed from the start that the

⁵ ‘EU External Partners’, European Council on Refugees and Exiles, ‘Weekly Bulletin’, 29 March 2024. Ahead of a €7.4 billion cash for migration control agreement with Egypt, the European Council for Refugees and Exiles reported that the European Commission President, Ursula von der Leyen, appeared to be attempting to sideline the European Parliament’s scrutiny role in transferring the first slice of €1 billion: *ibid.* ECRE later reported that the European Ombudsman had found maladministration in the European Commission’s handling of documents relating to the EU-Tunisia agreement: ‘Weekly Bulletin’, 28 November 2024.

⁶ ‘Balkan Route’, European Council on Refugees and Exiles, ‘Weekly Bulletin’, 29 March 2024.

⁷ *R (AAA (Syria) and Others) v Secretary of State for the Home Department* [2023] UKSC 42, paras. 88, 91.

refugee should not be sent back but, on the contrary, was to be assisted in settling in and finding work.⁸

But what has happened since then? Over the past 20 to 30 years, the notion that migration in all its forms is a threat to ‘national identity’ or even to ‘national security’ has dominated the political discourse, attracting right and left.⁹ Border control, in turn, has been effectively hijacked by Ministries of the Interior, of Home Affairs, of Homeland Security. National security has become their mantra, and their daily practice too often signifies the denial of accountability and a refusal to countenance objection. In the United Kingdom, the hostile environment initiated by Theresa May was clearly buttressed by subsequent negative policies driven, in part, by the Brexit clamour for sovereignty, although the reliance on national security as an essential policy dimension to control over admission has been replicated in many other countries, including Australia, Hungary and the USA.

In a particularly impressive, alternative vision of borders presented in her Hersch Lauterpacht Memorial Lectures in March 2024,¹⁰ Beth Simmons noted the role they play in a ‘territorialised world’, and she called attention to the rise of ‘border anxiety’ since the 1970s and the difficulty of seeking to secure compliance with human rights, such as the prohibition of torture and inhuman treatment, whenever ‘border enforcement’ is announced in law or policy. Independent of citizenship, fundamental human rights have the anti-utilitarian consequence that they may not be denied by governments, even in the general interest. Such rights stress security and autonomy and are founded on human dignity and an equal right to equal concern and respect; can it be said today that the asylum seeker and the migrant are treated as individuals, entitled to dignity and integrity

⁸ Guy S. Goodwin-Gill, ‘A Short History of International Refugee Law: The Early Years’, SSRN, 2020.

⁹ Gaia Vince, ‘Leaders should finally tell us the truth about migration: it’s here for good’, *The Guardian*, 7 June 2024; Gaby Hinsliff, ‘Keir Starmer is keen to tell you that there are no easy answers on immigration. Well, here’s one’, *The Guardian*, 28 November 2023.

¹⁰ Beth Simmons, ‘International Borders in an Independent World’, Hersch Lauterpacht Memorial Lectures, 12–14 March 2024. See also, ‘(B)OrderS: Centre for the Legal Study of Borders, Migration and Displacement’, set up in 2022 at Queen Mary University of London Law School to study ‘bordering, ordering and othering processes through law’. For an historian’s perceptive view of the origins and functions of borders, see James Crawford, *The Edge of the Plain: How Borders Make and Break Our World*, New York: W.W. Norton, 2022.

and worthy of equal respect? For some, however, the border is seen as a sort of national security trip wire, trumping the call for review or remedies when things go wrong, as they invariably do.

A measure of protection can be found in the 1951 Convention and 1967 Protocol relating to the Status of Refugees, where the limited definition of the refugee as one with a well-founded fear of being persecuted on certain grounds has been adopted by many States and by the EU as the criterion for entry and asylum. However, this definition adopts an individualised approach to the criterion of refugee status, which is a strength, insofar as it recognises the notion of individual human rights, but a weakness also, insofar as it not only imposes a significant cost on States making the *triage*, but also because it fails to encompass less well-defined, generalised situations of need, such as climate change, famine, drought, war, trafficking, modern slavery, or civil strife. It must therefore be adjusted in the light of the realities of displacement and distress, and so responses are cobbled together to deal with unexpected and often large-scale involuntary movements of people in need of protection.

Over the past 40 or so years, one can see how standards of admission and assistance have nevertheless developed around one legal obligation in particular – the principle of *non-refoulement*, of non-return to danger.¹¹ Considered as operating through time, the only real question arising is that of risk to those in search of refuge – risk of harm to fundamental human rights that is foreseeably likely to result if admission and protection are not granted.

Non-refoulement through time is a critical component of the principle of refuge, but what use is such a general principle of customary international law, if compliance is not there? In the case of flight from conflict, the duty of *non-refoulement* can appear qualified by other competing principles, including claims of national security. The resulting dilemmas were evident in the former Yugoslavia in the early 1990s, when UNHCR

¹¹ The obligation of *non-refoulement* today is generally accepted as a principle of customary international law; see Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law*, Oxford: Oxford University Press, 4th edn, 2021, 300–306; UNHCR, ‘The Principle of *Non-Refoulement* as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93’, 31 January 1994.

attempted in vain to provide ‘preventive protection’ in support of the ‘right to remain’ and the right not to be forced into exile, notwithstanding a clear military objective of ‘ethnic cleansing’.¹² As Tadeusz Mazowiecki, the Special Rapporteur of the Commission on Human Rights in the former Yugoslavia noted in 1992, ‘Safe havens abroad must be found for those whose lives are in acute danger... The argument that providing refuge for such people is to conform to the policy of ethnic cleansing cannot override the imperative of saving their lives.’ He added as an important corollary that the right to return must be protected, lest providing refuge contribute to the goal of ethnic cleansing.¹³

A similar ‘dilemma’ is clear in the plight of Palestinians in Gaza, also facing ethnic cleansing¹⁴ and the possibility of genocide as a result of Israeli military action following the terrifying attack by Hamas on 7 October 2023.¹⁵ Much as elements in Israel would like to see Palestinians leave Gaza, Egypt and Jordan have made it clear that they will not accept further Palestinian refugees, recalling Israel’s consistent refusal to allow returns since 1948,¹⁶ and the commitment of the international community to a two-State solution.¹⁷

¹² On the right to remain and not to be forced into exile, see UNHCR, ‘A Comprehensive Response to the Humanitarian Crisis in the former Yugoslavia’, HCR/IMFY/1992/2, 24 July 1992, paras. 7–9; also, the statement of UN High Commissioner for Refugees, Sadako Ogata, to the UN Commission on Human Rights on 5 March 1993: UN doc. E/CN.4/1993/SR.50, 28 June 1993, paras. 5, 16–18. On ethnic cleansing as the goal of the war in the former Yugoslavia, see Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, ‘Report on the situation of human rights in the territory of the former Yugoslavia’, UN doc. E/CN.4/1992/S-1/10, 27 October 1992, paras. 1, 6. See also, ‘Making the UNHCR Relevant and the Failure of Preventive Protection in Bosnia’, in Gil Loescher, *The UNHCR and World Politics: A Perilous Path*, Oxford: Oxford University Press, 2001, 295–301; Guy S. Goodwin-Gill, ‘Refugee Identity and Protection’s Fading Prospect’, in Frances Nicholson & Patrick Twomey, *Refugee Rights and Realities: Evolving International Concepts and Regimes*, Cambridge: Cambridge University Press, 1999, 220, 226–28.

¹³ ‘Report on the situation of human rights in the territory of the former Yugoslavia’, UN doc. E/CN.4/1992/S-1/10, 27 October 1992, para. 25(a)

¹⁴ See Human Rights Watch, *“Hopeless, Starving, and Besieged”: Israel’s Forced Displacement of Palestinians in Gaza*, November 2024, 9–12, 147–49.

¹⁵ See Amnesty International, ‘“You Feel Like You Are Subhuman”: Israel’s Genocide Against Palestinians in Gaza’, December 2024; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* [2024] ICJ Reports.

¹⁶ Israel, of course, not only owes its existence to decisions of the United Nations General Assembly, but when seeking UN membership formally declared that it ‘unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a member of the United Nations’: UN doc. S/1093, 29 November 1948. At the time, many States doubted that Israel met the peace-loving criteria of Article 4 of the UN Charter and whether it was ready and willing to abide by international law and the decisions of the United Nations, including on refugees, Jerusalem, and the Holy Sites, or to investigate and prosecute the terrorists who had murdered Count Folke Bernadotte and Colonel André Sérot. Israel’s application for membership was discussed in the Security Council in December 1948 and again in March 1949; see UN docs. S/PV.383, 2 December 1948; S/PV.384, 15 December 1948; S/PV.385, 17 December 1948; S/PV.386, 17 December 1948; and S/PV.413, 3 March 1949; S/PV.414, 4 March 1949. A draft resolution recommending admission submitted by the United States

Simply preventing the movement of those in need of protection without dealing with causes is no solution, and leads inevitably to further human rights violations. There comes a point when the degree of violence inflicted, in whatever name or cause, has to be acknowledged and taken into account, together with credible evidence of war crimes, and those in search of refuge must be admitted. Unfortunately, as in Gaza and the former Yugoslavia, the necessary action is too often too late. It depends, not on words, but on a clear international commitment to deal with causes, to bring an end to violence, to ensure the right of return, and to promote peaceful solutions; regrettably, in the case of Palestine and Israel, the necessary political will is just not there.

3. The international dimension to international borders: the protection imperative

And yet the international community has a clear interest in the consequences of ‘bordering’ and in the issues that need to be managed. The enforcement of borders is *not* exempt from international law but, as Beth Simmons argues, borders should be areas of cooperative endeavour, where they can be seen as preservers of territorial peace and stability. They are special, not liable to unilateral termination, and have an *erga omnes* effect. In practice, people try to live with them and across them in foreseeable ways, and in her view, like property in general, borders should be subject to a regime of good neighbourliness.

To get to this point means taking a major step, and reversing the presumption of borders as an essential line between ‘us’ and ‘them’; it means interrogating national security, decriminalising simple border crossing, ditching deterrence (in the form of threats to violate rights), rejecting exceptionalism, coming up with credible alternatives, integrating

to the Security Council (UN doc. S/1276, 4 March 1949) was adopted by 9 votes to 1 against (Egypt), with the United Kingdom abstaining. Thereafter, the General Assembly decided to admit Israel; 37 States voted in favour, 12 against, and 9 abstained; see UNGA res. 273 (III), 11 May 1949, referring expressly to the above undertaking by Israel.

¹⁷ See Jane McAdam & Guy S. Goodwin-Gill, ‘Israel – Hamas 2023 Symposium – Refugee Law’, 17 November 2023.

human rights into border governance, and investing in rule-based systems for deciding entry and providing protection.

The efficacy of deterrence, so dear to the supporters of the Rwanda and other like ‘solutions’, has yet to be proven, while in research conducted 30 years ago, various policies of ‘dissuasion’ of all who sought asylum (or perhaps just a better life) in order to stem arrivals were shown to be either largely ineffective, or simply had a sideways effect. While regional cooperation can play a role, ‘if the directly causative factors are not dealt with the pressure to move and actual movements will persist.’¹⁸

Taking up Beth Simmons’ call for border governance on the basis of good neighbourliness, what is needed is management in the common interest, not control in the national interest alone, and international cooperation will be essential to that aim. For there is an international dimension to what goes on at borders, and general recognition that there are certain things that no State should do. Killing and physically abusing people are wrong – migrants do not constitute an invasion, as Texas has recently argued, and do not justify engaging in war or in the use of lethal force.¹⁹ Similarly, the separation of children from their families in the exercise of border control cannot be upheld in the face of obligations to ensure that proper account is taken of the best interests of the child.²⁰ There are also clear limits, and a host of rules that stand to be violated, through any ‘go it alone’ policy that would see wholesale deportations of so-called irregular migrants to their country of origin. The United States, for example, ‘cannot by itself dictate what happens at the border.’²¹ Diplomatic pressure is one thing, but results often depend not just on inter-State relations, but also on the internal politics and capacity of others and on intra-community dynamics.

¹⁸ I examined the failure of deterrence and dissuasion in the second edition of Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford: Clarendon Press, 1996, ‘A decade of disillusion: 1986–95’, 185, 195.

¹⁹ Ilya Somin, ‘Immigration is not invasion’, Lawfare Institute, 25 March 2024; Frank Bowman, ‘Immigration is not an “invasion” under the Constitution’, Just Security, 29 January 2024; S. C. Cornell, ‘Death in Nogales’, *New York Review of Books Online*, 16 November 2024.

²⁰ Article 3, 1989 Convention on the Rights of the Child.

²¹ Muzaffar Chishti & Colleen Putzel-Kavanaugh, ‘The Limits of the Go-It-Alone Approach: U.S. Migration Management Increasingly Requires Other Countries’ Cooperation’, Migration Policy Institute, 27 March 2024.

How, then, are claims to protection from people displaced by climate change, disasters, and conflict to be determined? An individual approach, such as that driven by the refugee determination and asylum process, is extremely costly, and will likely lead to backlogs and a cohort of people who, for various reasons, become irremovable. Protection, however, remains paramount and the obligation of *non-refoulement*, of refuge, goes far beyond the defining limitations of Article 33 of the 1951 Convention and the guarantees of the 1966 International Covenant on Civil and Political Rights or its regional counterparts.

In 1986, I argued that the duty of protection extended also to those fleeing civil war or inter-communal strife as well as to those – and here I drew on the plight of ships under *force majeure* or stress of weather – who are driven to enter another country by urgent distress, by grave necessity.²² Of course, there are issues of priority to resolve (one community in search of refuge, the other in search of domestic security), but internationally many measures can be taken or attempted to resolve distress (such as by bringing conflict to an end, or facilitating adaptation to distress occasioned by disasters or climate change), while locally much can be done to facilitate accommodation with new arrivals (such as by opening some or all of the labour market).

What is needed is a collective response based in principle (they *are* worth special consideration as human beings, endowed at birth with dignity, entitled to respect for their inherent integrity), but which is coordinated internationally with agreement on both causes and consequences. It must also recognize that there will *always* be a market, even where regular pathways are laid down, for the smuggler (who responds to the demand for labour), and the trafficker, whose criminal conduct will always require special measures.

Thirty years later, in 2016, I proposed that the UNHCR Statute be amended and extended by the General Assembly in order to reflect the day-to-day realities of protection

²² Guy S. Goodwin-Gill, 'Non-refoulement and the New Asylum-Seekers', (1986) 26 *Virginia Journal of International Law* 897; see also, 'Non-Refoulement, Temporary Refuge, and the "New" Asylum Seekers', in David Cantor & Jean-François Durieux, eds., *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, Leiden: Brill Nijhoff, 2014, 433.

in practice.²³ After 2016, however, the European Union and its neighbours, and other countries too, proved to be a mess of dislocated, dysfunctional sovereign States. In Greece, Turkey, Hungary, Croatia, Serbia and Bulgaria, among others, a blind eye was and is turned to push backs, assaults, abandonment, and denial of access, all in order apparently to send a message to the refugee and the migrant that they are not welcome. But still they came and still they come, meeting governments that just do not know what to do.

States want control of their borders. But being in control, is not the same as closing borders and pursuing arbitrary detention and arbitrary expulsion. Being in control means developing and maintaining legal migration channels and investing in effective procedures that not only contribute to the achievement of policy goals, but also reflect a commitment to the rule of law and respect for fundamental rights.²⁴ What the public needs, is not closed borders, but confidence in government that it can manage migration in all its aspects; everywhere, however, there is evidence of failure.

3.1 The duty to cooperate and the development of political will

The international movement of people is not the responsibility of individual States alone. Responses and solutions depend on cooperation, which is required by the UN Charter, by the UNHCR Statute, by the 1951 Convention, by the 2016 New York Declaration for refugees and migrants, by the 2018 Global Compacts on refugees and migration, among others.²⁵ Protection is paramount, however, and while international law can provide a

²³ Guy S. Goodwin-Gill, 'The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change', (2016) 28 *International Journal of Refugee Law* 679. The revised Statute should include refugees in the 1951 Convention sense (expanded to include references to gender and sexual orientation); refugees with a fear of torture, cruel or inhuman treatment or punishment; refugees who flee internal or international armed conflict, events seriously disturbing public order, generalised violence, or massive violations of human rights; internally displaced persons; the stateless; and migrants without the protection of their government.

²⁴ Like the wilful disregard of international obligations, 'backlogs' of undecided cases are often the result of a conscious political decision not to allocate funds and other resources.

²⁵ See the Charter of the United Nations, as amended; UNGA res. 428 (V), 14 December 1950; 1951 Convention and 1967 Protocol relating to the Status of Refugees; UNGA res. 71/1, 19 September 2016; UNGA res. 73/195, 19 December 2018; UNGA res. 73/151, 17 December 2018; UN GAOR, 73rd Session, Supp. No. 12, UN doc. A/73/12 (Part I) and UN doc. A/73/12 (Part II). Amazingly, the UK government did not even bother to talk to UNHCR before it decided on its Rwanda plan; had they done so, they would have heard the cogent evidence that convinced the UK Supreme Court that Rwanda was not safe,

framework for thinking and action, human rights are not something to be tacked on as an afterthought to some legislative proposal to curb this or manage that.

The development of principles of protection has been greatly contributed to by the Office of the United Nations High Commissioner for Refugees. Created in 1950, UNHCR has a recognized role under its General Assembly Statute to supervise the application of the Convention and other treaties, but it has also been requested, in the exercise of its extensive activities (present in more than 130 countries), to protect and assist those refugees who may fall outside its limited definitional criteria.²⁶ Thus, UNHCR's operational role has extended, together with States, to 'people of concern', including the internally displaced and others compelled to move across borders by conflict, disasters and the effects of climate change.²⁷ UNHCR has been joined by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which has likewise actively promoted basic protection standards for all those who move, that ought to govern States in the exercise of border control functions.²⁸ Additionally, in December 2023, the Platform of Independent Experts on Refugee Rights (PIERR) was announced, which brings together UN and regional human rights experts to 'coordinate joint advocacy initiatives that will enhance the protection and promotion of human rights of refugees and asylum-seekers.'²⁹

and that there were substantial reasons to believe that anyone sent there would face a real risk of *refoulement*. UNHCR first became aware of the Arrangement when it was announced on 14 April 2022: Home Office, Country Information Note, Rwanda: Annex 2 (UNHCR evidence), December 2023, 213.

²⁶ At the doctrinal level, UNHCR has assisted States in protecting those in need through the publication in 1979 of a *Handbook on Procedures and Criteria for Determining Refugee Status* (last re-issued 2019), and a series of guidelines that together have influenced not only its own practice in providing international protection, but also the practice of States applying the 1951 Convention/1967 Protocol. See Guy S. Goodwin-Gill, 'The Office of the United Nations High Commissioner for Refugees and the Sources of International Refugee Law', (2020) 69 *International and Comparative Law Quarterly* 1.

²⁷ See, for example, UNHCR, 'Climate change impacts and cross-border displacement: international refugee law and UNHCR's mandate', 12 December 2023.

²⁸ See, for example, OHCHR, 'Principles and Guidelines on the human rights protection of migrants in vulnerable situations', 2018.

²⁹ Supported by OHCHR and UNHCR, the Platform currently includes the United Nations Special Rapporteurs on the human rights of migrants and on trafficking in persons, especially women and children, the Working Group on arbitrary detention, the UN Committee against torture, the Commissioner and Special Rapporteur on refugees, asylum seekers, internally displaced persons and migrants in Africa of the African Commission on Human and Peoples' Rights, and the Commissioner and Rapporteur on the rights of migrants of the Inter-American Commission on Human Rights. UNHCR Press Release, 'UN and regional human rights experts launch platform to coordinate advocacy on rights of refugees and asylum-seekers', 4 December 2023.

We know, too, that cooperation at the international level can achieve some things; for example, the General Assembly could indeed revise the UNHCR Statute to enable it to prepare for what is to come – to be ready to provide protection for the broader class of refugees, the stateless, and those who, displaced by climate change, conflict and disasters, lack the protection of their own governments. International cooperation can likewise strengthen the Office of the High Commissioner for Human Rights and enable it both to develop border management and provide monitoring and practical guidance.³⁰

Meanwhile, at the regional level, a wider definition of the refugee has long been adopted in Africa, in Latin America, and in Europe,³¹ and the human rights of the migrant has been expressly promoted, for example, in the 2023 African Guiding Principles³² and the 2019 Inter-American Principles on the Human Rights of All Migrants.³³ They provide that every migrant has the right to equality before the law, to respect for the dignity inherent in every human being, to recognition as a person before the law, and to due process. Each instrument, in its own way, seeks to protect the migrant caught up in armed conflict, or needing protection and assistance at the border, including at points of entry or disembarkation.³⁴

³⁰ It could also provide for careful monitoring of the activities of the International Organization for Migration (IOM), which claims a special role in all aspects of the movement of people; given its past behaviour in implementing the policies of States, external monitoring will need to ensure that it acts in the interests of those who move. See Megan Bradley, Cathryn Costello, Angela Sherwood, eds., *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, Cambridge: Cambridge University Press, 2023; Younes Ahouga, ‘The International Organization for Migration as a Counterweight to States? The 2030 Agenda, the GCM, and the Strategic Vision of IOM’, (2023) 29 *Global Governance* 511; International Organization for Migration, ‘IOM Strategic Plan: 2024–2028’, Geneva, 2024; Guy S. Goodwin-Gill, ‘A Brief and Somewhat Sceptical Perspective on the International Organization for Migration’, Refugee Studies Centre Workshop, ‘IOM: The UN Migration Agency?’, Oxford, SSRN, 2 February 2019.

³¹ See the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; the 1984 Cartagena Declaration on Refugees; and the European Union’s provisions on ‘subsidiary protection’ in 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).

³² African Commission on Human and Peoples Rights, African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers, 2023.

³³ Inter-American Commission on Human Rights, Inter-American Principles on the Human Rights of Migrants, Refugees, Stateless Persons and Victims of Trafficking, 2019, Res. No. 14/19, 7 December 2019.

³⁴ Rights at the border have also been upheld in various opinions of regional courts; see, for example, Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September 2003, *Juridical Condition and Rights of Undocumented Migrants*. The Court is presently considering ‘The Human Rights of People on the Move due to the effects of Climate Change’, on a request submitted by Colombia and Chile.

The protection of those in flight or simply moving between States is thus a paramount obligation. It is a duty that transcends borders as well as formal categories, such as status as a refugee under the 1951 Convention/1967 Protocol, or status as a stateless person under the 1954 Convention relating to the Status of Stateless Persons, or as a beneficiary of complementary or subsidiary protection, or someone entitled to humanitarian consideration, or someone deemed excluded for reasons of criminality or national security, or someone otherwise extraditable, or one who is trafficked, or the victim of modern slavery, or one who flees famine or drought, or one who is, quite simply, without the protection of their own or any State.

International cooperation has indeed led to some progress in ensuring that certain types of mobility are kept under review. The UN Climate Change Conference, COP27, which met in Sharm el-Sheikh in November 2022, decided to establish a fund to assist developing countries in responding to loss and damage;³⁵ and at the December 2023 meeting of COP28, held in Dubai, human mobility was mentioned as one of the greatest impacts of climate change on people and communities. Participants called on governments and relevant institutions to make progress in averting, minimizing and addressing loss and damage, including through measures related to displacement, relocation and migration.³⁶ It was agreed to operationalise the Loss and Damage Fund and to include displacement and displaced people in its scope. The extent of displacement to come is still unknown, of course. ‘The problem with climate change’, as Camille Parmesan has said, ‘is that there is no end in sight... If we knew when the climate would stabilize, we could prepare for that.’³⁷ There is still much to be done.

³⁵ UN Climate Press Release, ‘COP27 reaches Breakthrough Agreement on new “Loss and Damage” Fund for Vulnerable Countries’, 20 November 2022; Fazal Issa, ‘COP27 outcome: Reflections on the progress made, opportunities missed’, United Nations Africa Renewal, 15 December 2022.

³⁶ Brookings Institution, Commentary: The successes and failures of COP28’, 14 December 2023; Alice Baillat, ‘COP28: What did it say about displacement and climate change?’, Internal Displacement Monitoring Centre, 13 December 2023.

³⁷ Ecologist Camille Parmesan, quoted by Bill McKibben, ‘Where Will We Live?’, *New York Review of Books*, 6 October 2022, Vol. LXIX, No. 15.

At COP28, the Global Network on Migration called on States to live up to their commitments, confirmed in the 2018 Global Compact, to safeguard the human rights of those affected, enabling them to make safe and informed decisions about the risks and whether to move. The human security risks posed by traffickers and smugglers must be understood and rights based migration governance must be secured.³⁸

Political will is thus essential if an effective policy on managed migration and refugee protection is to be adopted, but what if there is no political will? How, anyway, is political will to be defined? Where do you get it? How do you mobilise it? We know that political will cannot be imposed from outside, and commitment and support must come also from the public and non-State actors – a whole of society approach. Civil society organisations in Europe, Australia, the United States, Latin America and around the world, have illustrated in ways that have influenced public opinion, how the lives of men, women and children have been impacted by government policy and indifference. They have shown time and again the physical and psychological damage caused when refugees and migrants are detained in inhuman conditions, pushed back, denied access to territory and procedures, their lives often lost in inter-State squabbles about disembarkation, or where their protection is denied in unseemly debates on externalisation.³⁹

On the more or less plus side, the Los Angeles Declaration on Migration and Protection, signed by the United States and 21 other States in June 2022, is a potentially significant step in developing collaborative approaches, although whether it will survive the incoming administration remains to be seen.⁴⁰ Although non-binding, it proposed the

³⁸ United Nations Network on Migration, ‘COP28: There won’t be efficient climate action without listening to peoples’ voices’, Statement (n.d.). On the need for a legislative distinction between facilitation of migration and smuggling, better data collection and transparency, see Gabriella Sanchez, Luigi Achilli & Federico Alagna, ‘The EU’s new counter-smuggling directive proposal: persisting challenges and recommendations towards implementation’, Migration Policy Centre, Policy Brief, European University Institute, Policy Paper, January 2024. See also, United Nations Office on Drugs and Crime, ‘Links Between Smuggling of Migrants and Other Forms of Organized Crime Along the Central and Western Mediterranean Routes’, Vienna, 2024.

³⁹ See, for example, Anthony Faiola, Imogen Piper, Joyce Sohyun Lee, Klaas van Dijken, Maud Jullien & May Bulman, ‘With Europe’s support, North African nations push migrants to the desert’, *Washington Post*, 20 May 2024; Kevin Appleby, ‘How Europe is slowly closing its doors to asylum-seekers’, Center for Migration Studies, New York, 30 April 2024; Amnesty International, ‘EU: Migration Pact agreement will lead to a “surge in suffering”’, 20 December 2023.

⁴⁰ Los Angeles Declaration on Migration and Protection, 20 June 2022.

establishment of migration management systems, including by providing for communities hosting displaced populations, expanding legal pathways, strengthening protection, and improving data sharing. ‘Safe Mobility Offices’ (SMOs) have been set up in Colombia, Costa Rica, Ecuador and Guatemala, bringing services closer to people’s origins and removing the necessity for risky onward travel to the US border. The US is the chief participant, with Canada and Spain also involved. Each SMO is operated jointly by UNHCR and IOM and serves specific populations (for example, the Colombia SMO serves Cubans, Haitians and Venezuelans).

Another potentially significant recent development is the Falepili Union Treaty signed by Australia and Tuvalu in 2023. Concluded in response to a request from Tuvalu to Australia to help safeguard the future of the country, which mostly lies that three metres above sea level and is thus vulnerable to the effects of climate change. The Treaty entered into force in August 2024 and provides, among others, for the migration each year of up to 280 Tuvalu citizens.⁴¹

In contrast, the EU Pact on Migration and Asylum, approved by the European Parliament on 10 April 2024 and by the EU Council on 14 May 2024, has been criticised for seeking to prevent asylum seekers and others in distress from ever arriving in Europe, essentially by moving border control farther and farther outwards.⁴² It will likely lead to an increase in suffering, increased detention at the borders, reduced safeguards for asylum seekers through sub-standard procedures, increased flexibility for States to determine which country is safe for those deemed ineligible for asylum, and with opportunities for States to opt out in times of perceived crisis.⁴³ But one look at who is moving and why

⁴¹ See Prime Minister of Australia, Media Release, ‘Entry into force of historic Australia-Tuvalu Falepili Union’, 28 August 2024; Catherine Wilson, ‘The Tuvalu-Australia Climate Migration Pact Could Set a Global Precedent’, *World Politics Review*, World Politics Review, 13 November 2024; Alex Green & Douglas Guilfoyle, ‘The Australia-Tuvalu Falepili Union Treaty: Statehood and Security in the Face of Anthropogenic Climate Change’, (2024) 118 *American Journal of International Law* 684.

⁴² European Council, ‘Migration and asylum pact’, 14 May 2024. For comments, see Amnesty International, ‘EU: Migration and Asylum Pact reforms will put people at heightened risk of human rights violations’, 4 April 2024; Odysseus Network, ‘Special Collection on the EU Asylum and Migration Legislation after the Pact’, October 2024.

⁴³ Catherine Woollard, ‘All Pact-ed up and ready to go: EU asylum law reforms’, Editorial, European Council on Refugees and Exiles, ‘Weekly Bulletin’, 16 February 2024.

shows how the focus misses the big picture, and that what is needed are opportunities – substantial safe, legal access to Europe, through resettlement, family reunion, humanitarian visas, and temporary protection, coupled with greater protection capacity along the way and real solidarity between north and south. Moreover, Europe has special responsibilities given its assertion of an entitlement to monitor and control the movement of people across the Mediterranean. That responsibility, and the complex of protection obligations that go with it, arises because of a combination of context, circumstance, knowledge, and engagement. The legal interests of States of origin, transit, and intended or actual destination are all engaged, and only a rights-based approach is likely to have any impact.⁴⁴

4. Some conclusions

I recognize the reality of the border and the power that States exercise there, but the issues are in urgent need of re-framing, wherever the State exercises its authority and control, away from its present arbitrary focus on national security, and towards international protection. This in turn requires a seismic shift of attitude. We need to accept that the movement of peoples is not going to stop, and that borders offer effectively little or no control over such movements.⁴⁵ States tend to ignore the very real harm done by their policy and practice, which denies to those who must move the ability to access the minimum conditions of material support, autonomy, and security, and which exposes them to abusive treatment.

There are other ways to construct policy, by thinking first about protection, and seeing what can be achieved in light of that principle, rather than despite it.⁴⁶ Instead of

⁴⁴ Guy S. Goodwin-Gill, 'The Mediterranean Papers: Athens, Naples, and Istanbul', (2016) 28 *International Journal of Refugee Law* 276.

⁴⁵ Cf. Hein de Haas, 'Everything politicians tell you about immigration is wrong. This is how it actually works', 29 December 2023.

⁴⁶ For examples additional to those already mentioned, see Kate Jastram, 'Climate Change and Cross-Border Displacement: What the Courts, the Administration, and Congress Can Do to Improve Options for the United States', (2024) 56 *Case West Reserve Journal of International Law* 309; Catherine Woollard, 'Do's and really just Don'ts on Asylum and Migration', Editorial, European Council on Refugees and Exiles, 'Weekly Bulletin', 5 December 2024; Pauline Endres de

reception centres at borders, without access to a fair procedure or any procedure and with the constant risk of *refoulement*, think about compliance with international law, about solidarity and cooperation with other States and with civil society, about inclusion not exclusion, about safe and legal pathways – about what the refugee and the migrant can and will do for us.

Of course, check for health as for everything else, but above all, think about treating the refugee, the migrant, the asylum seeker, as *another one of us*—about non-discrimination in the common interest. It is time, too, to think beyond the temporary, and to recognize that refugees remain refugees longer now than might be imagined. This has implications for family life, housing, employment and training, education, and infrastructure. But it is also about promoting sustainable peace and development goals, about leaving no one behind, about disaster risk reduction, about climate change adaptation, and, central to the lives of refugees, about ensuring that they are allowed to contribute to the society which now helps them.

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UNHCR documents (and many others) are available at UNHCR’s Global Law and Policy Database, Refworld: <https://www.refworld.org/>

Documents relating to humanitarian relief, assistance and protection are available at ReliefWeb, the humanitarian information service provided by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA): <https://reliefweb.int/>

Many treaties can be found in the United Nations Treaty Collection:

<https://treaties.un.org/>, in the Treaty Office of the Council of Europe:

<https://www.coe.int/en/web/conventions/home>, in the Treaties and

Agreements section of the Organization of American States website:

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International courts and tribunals

Judgments and Advisory Opinions of the International Court of Justice, as well as the progress of current litigation, are available at <https://www.icj-cij.org>.

Judgments and Advisory Opinions of the Inter-American Court of Human Rights are available at <https://www.corteidh.or.cr/index.cfm?lang=en> and the work of the Inter-American Commission on Human Rights can be found at <https://www.oas.org/en/iachr/>

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