

# Introduction

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*Certain events divide moments in time into 'before' and 'after'. Hiroshima ushered in the age of the nuclear threat; the fall of the Berlin Wall marked the end of the Cold War.*

It is perhaps too soon to define the broad historical significance of 11 September 2001. It may eventually be seen as the start of a new period of transition from the post-Cold War era to a 'Grey War'. However, for refugees and internally displaced persons, as for those who work with them or who study forced migration, it is already clear that the terrorists' strikes on the United States on 11 September hit hard at certain fundamentals. There is a new sense of vulnerability in the West, and the ensuing 'war on terrorism' has caused new obstacles to be put in place for people seeking asylum outside their own countries, tempting governments into labelling any forceful opposition as 'terrorism'.

In the first instance, attention has been focused on the initial phase of the international war against terrorism: the US-led attack on the al-Qa'ida and Taliban forces in Afghanistan. No matter how the war against 'terrorists with global reach' unfolds, individuals in many countries will almost certainly be displaced as a result of this 21st century war. In some cases these will be displacements from countries that have produced hundreds and thousands, even millions, of refugees and IDPs in the last decades, as has been the case of Afghanistan. In other cases there might be brand new displacements from more unexpected places. For all of the newly displaced, however, the political environment surrounding their reception as seekers of refuge and the protection and assistance offered to them are likely to be at the very least tinged by the seemingly new political realities. Those realities make this a James Bond-like world in which nationality alone is no longer a tool to define 'enemies' but in which an array of factors could cause almost everyone to be a possible suspect in the new 'with us or against us' world.

## Old issues: new dimensions

However realities have changed and will continue to change, the debates about various features of protection will be set in the context of policy programmes and legal discussions of the post-Cold War era. In the 1990s, many people were discussing the movement of people in 'security' terms. We can expect to see this framing of the forced migration debate to be intensified, with two key features:

- i. a focus on the potential arrival of individuals who abuse the asylum system and may pose security threats to the country in which they seek asylum
- ii. an increased preoccupation with the security dimensions of mass exoduses and influxes, and the international management of such refugee flows

With an increased fear of 'terrorists with global reach' there will be increased focus on the need for careful screening and perhaps the exclusion of certain individual asylum seekers from refugee status due to suspected involvement in terrorist activities. Mass exoduses of refugees and influxes into neighbouring states become likely when the response to terrorist acts on a global scale involves (more or less) conventional interstate warfare. Mass displacements bring with them significant security challenges linked to screening. The individual and group dimensions of this problem become linked: where recent crises such as those in Bosnia and Kosovo gave rise to prima facie-based temporary protection systems, the experience of the Great Lakes in particular indicated that among the displaced, alongside those victims of conflict and unrest we would call refugees, are also fighters and

criminals who may seek to use the country of asylum as a platform from which to continue their fight.

The imperative to screen adds impetus to the need to ensure that equitable and adequate systems are established for burden sharing in various ways with countries of asylum. It is essential when considering both burden sharing and screening that states ensure that civilian populations displaced within their country of origin are adequately assisted and protected. This must be carried out in such a way that the principle of asylum is not compromised – the so-called IDP/refugee tension.

## Afghanistan: a crisis in context

A wide range of issues will need to be drawn out in order to start to understand the implications of the post 11 September context for responses to forced migration. We can start to understand those implications by assessing, for example, the plight of Afghans displaced by decades of fighting and by Operation Enduring Freedom and the situation of people detained or suspected of potential involvement with terrorism when simply filing immigration documents or asylum claims. Such an assessment should be made within the context of developments in refugee protection that were already underway prior to September 2001, and most particularly by analysing whether the tools with which states and international organisations are already equipped are sufficient to allow them, albeit in some cases with altered means of implementation, to deal with the seemingly new situation. This special issue of *Forced Migration Review* will therefore focus specifically on the responsibilities of a range of actors who respond to displacements, the existing tools available to those actors and the usefulness of these tools in an increasingly security-conscious world.

## Where were we on September 10?

It is important, in considering the impact of 11 September on issues of

forced migration, that we recall the international political climate with regard to refugees and asylum seekers that was already in place. UNHCR's Global Consultations to mark the 50th anniversary of the 1951 Convention relating to the Status of Refugees were in full swing and building up to the defining moment when, on 12 December, the signatories would come together and reaffirm their commitment to the Convention. These activities were taking place in a climate that, for more than a decade, had been marked by increasing scepticism, most notably in Europe and Australia, about the inappropriateness of the Convention in the current times.

The subjects of discussion in tracks two and three of the Global Consultations indicate those areas of concern to governments and activists: cessation; exclusion clauses; supervision of application of the Convention; *non-refoulement*; internal flight alternatives; gender; family unity; detention; responsibility and burden sharing; registration; mass influxes; access to procedures; safe third countries and safe countries of origin; reception modalities; capacity building and complementary forms of protection. All of these issues have remained subjects of concern during and since the US campaign in Afghanistan. The papers written for the meetings of the Global Consultations may have been able to draw on another case study but the issues they raised may not have been much altered by the 'new world' of a superpower awakened to the challenge of terrorism. As such, the question raised in the title of this special issue is pertinent: has anything changed?

### Organisation of this Special Section

This special section is split into three parts. This first part involves some setting of the scene. Following this introduction, two articles will set out the history of war and conflict in Afghanistan - which has led to the uprooting of millions of victims in more than two decades of international and civil fighting - and the situation on the ground in that country in early 2002. Hiram Ruiz, who has followed developments in the Afghanistan region for many years, examines the decades of conflict that

left the country vulnerable to abuse by both the Taliban regime and the al-Qa'ida fighters harboured by that regime. The role of UNHCR in protecting returning refugees and IDPs is thoroughly examined in a field report by the organisation's representative in Afghanistan, Filippo Grandi.

The two subsequent parts will shed light on issues of 'responsibility sharing' and on the existing tools of protection and the usefulness of these tools in scenarios that bring new security dimensions to displacement situations. The articles variously touch on a number of different layers of policy response, namely the field; regional; linked regional-global and global levels. This separation has the goal of structuring the discussion towards policy options available to states and humanitarian agencies. Recurring themes will include the relations between states, inter-agency cooperation and the relations among UN agencies, NGOs and states. The thinking in commissioning these articles is as follows.

### Responsibility sharing

In this context, responsibility sharing is not linked directly to the discussions about burden sharing and solidarity in the sense of apportioning refugees, which have been a major feature of all massive displacement crises (Indo-China, the Balkans and others). Rather, we examine different ways in which different actors partake in a collective responsibility for the whole chain of management in forced migration situations, and how those actors (states, NGOs, international organisations, the military, etc) relate to one another.

At the field level, agency coordination and the sharing of tasks and responsibilities between NGOs and international organisations are the subject of the first paper. Civil-military relations have been a major problem on the ground during this crisis. Both NGOs and the military have responsibilities during such a conflict situation; the content of those responsibilities is distinct. One responsibility of both could be said to be to maintain clarity in the distinctions between their operations, for their own sakes as well as for the population's sake. Taking the issue of responsibility sharing to an interna-

tional level, it is important to assess the role of foreign policy and diplomacy in a crisis in which all states have multiple interests. As well as multiple interests, states have different, and perhaps competing, responsibilities within a single crisis, for example both to conduct meaningful and appropriate foreign policy, and to live up to international protection obligations. What is more, states behave differently on the same issues in different crises. Our second article in this section contrasts the closures of the Pakistan border with that of the Kosovo-Macedonia border in 1999.

Finally, we look beyond Afghanistan to the countries that have received Afghan asylum seekers during the last decades, and their reactions to those asylum seekers in the changed situation in Afghanistan. Two articles consider the means of arrival of Afghan refugees in destination countries, the reception these asylum seekers receive, their frequent rejection, and the impetus towards their return. The first of these papers looks at Australia's response to the Tampa incident in late August 2001 and other such smuggling incidents after that date. It draws attention to the formal rejection of a high percentage of Afghan asylum claims in the last decades. This same situation pertains in the EU, where attention is now turning to the removal of Afghans to a so-called safe new situation in their country of origin.

The issue of internal displacement is one that cuts across our two themes of responsibility sharing and the existing tools of protection. A number of institutions are attempting to provide assistance to the world's IDPs but clear means of coordination, of sharing the responsibility, have not yet been satisfactorily developed. In Afghanistan in autumn 2001, IDPs became the focus of intense international attention, not least because, as referred to in the context of foreign policy above, states did not envisage that these IDPs would become refugees as they had in many high-profile cases of large internal displacement in the past (even if UNHCR was preparing for them). In addition, while legal tools for protecting refugees had been developed, no such strong instruments exist for the protection of IDPs. The question in the case of IDPs is thus whether the

lack of an (accepted) international mechanism for IDP protection is satisfactory for a changing world where the nature of sovereignty is ever shifting.

### Existing tools: new dimensions

The existing tools of protection for refugees and displaced persons are thought by many to be sufficient to deal with any new refugee crises, and indeed to deal already with many of the circumstances (eg terrorists seeking asylum 'under cover') which might be thought of as somehow 'new'. Most of the existing tools are indeed sufficient; their application and use by states, however, might not be sufficient - hence we suggest that new dimensions may need to be brought to those tools.

The US, Australia and Canada are among those states that seek to manage their refugee immigration through resettlement programmes. The European states have limited such organised resettlement in general terms but employed a humanitarian evacuation programme during the Kosovo crisis, effectively creating a precedent of short-term 'resettlement'. Whilst such an approach was never a consideration during the Afghan crisis, the first article in this section explores the potential use of resettlement as a policy tool to allow states to deal with mass exoduses in an effective way. The reality remains, however, that in the aftermath of 11 September, traditional countries of resettlement such as the US suspended and/or re-assessed their resettlement programmes. The human cost of this policy decision is explored in an additional case study.

An existing tool likely to take on increased significance in the post 11 September era is Article 1F of the 1951 Refugee Convention; these so-called exclusion clauses are an important means by which to ensure that the system of refugee protection is not abused by terrorists and those who may have committed war crimes or crimes against humanity. Nevertheless, as states turn their attention to these clauses it is important to ensure that they are applied in a fair and rights respecting manner. Guidance is needed as to the scope of crimes envisaged by Article 1F and the procedural safeguards that need

to be present in any application of the exclusion clauses. Screening in refugee camps, in an effort to apply the exclusion clauses at the field level in situations of mass influx, takes the challenges to another level. In a situation where combatants, declared and undeclared, may be mixed in with bona fide refugees, as well as those who may have committed serious international crimes, there are added difficulties. Drawing on comparative experiences, an article on screening reflects on the legal and practical dilemmas, including the division of inter-agency responsibility in this area, which would probably be faced in any such exercise in the Pakistan context.

While there is no single model for an 'existing tool' to use in reconstruction, there are experiences and lessons to be drawn upon. These may help in trying to ensure not only that reconstruction is successful in Afghanistan and the return of the displaced is truly a durable solution but also in ensuring that the country ends its cycles of civil war and ceases to be a place where terrorists can train and plot at leisure. Precedents have been set for international involvement in post-conflict reconstruction, most recently in Kosovo and East Timor. At the same time, concerns have emerged from past experiences that international involvement can hamper the development of local capacity for political, societal and economic development beyond a conflict situation. The discussion surrounding the post-conflict potential for Afghanistan began even before the US and its allies began their military action.

Finally, our thoughts turn to the normative framework within which asylum and security are related. Again, there are no clearly definable ethical 'tools' as such but there is a body of thought, literature, work and experience on which we can draw to analyse both how refugee protection has arrived at its current state and what the future might hold, and should hold.

### Policy directions

Many of the articles commissioned by MPI point to policy conclusions. The conclusions that follow are stimulated by, but do not draw directly on, the articles and are not indicative of any

agreement among the authors. Among important points are:

1. The coalition of states engaged in a war on terrorism have taken upon themselves additional, implicit and explicit responsibilities through this act. Primary among these is that the international community cannot again leave any state isolated simply because other states do not have the political will to be involved. Every state that produces massive flows of refugees or displaced persons, and every state that shoulders a significant refugee burden, is now understood to represent a foreign policy interest to any government with a lively sense of rational self-interest in a highly integrated world.
2. In sharing responsibilities within a displacement-inducing conflict situation, participating states and non-state bodies need clearly defined mandates, areas of operation, and understanding of where their duties and obligations overlap. Coordination often seems an elusive goal - though an obvious goal of all. The issue of coordination, which is most often problematic within the humanitarian assistance community, is even more complex when the military becomes involved, both in conflict and in assistance operations. When military involvement is essential, governments need to distinguish clearly between military operations and civilian operations (eg supported through the UN or NGOs) and realise the benefits coordination can bring to all involved.
3. In dealing with population exoduses, states need to weigh many concerns: the protection capacity in neighbouring states; the security consequences of both an exodus and an influx in the place to which the population moves; alliances with states neighbouring a conflict situation. However, the primary factor must be to balance those concerns with humanitarian obligations, including guaranteeing that those who need protection can achieve their right to seek that protection outside their country of origin, and that they are not returned to a situation of danger.

4. Short-term domestic political goals should not be the cause of governments reneging on long-term international obligations and responsibilities. In particular, in entering the debate on the subject of refugees and asylum, governments should be aware that their rhetoric is heard not only by the voting public but also by refugees and asylum seekers themselves. Derogatory public statements that discriminate against asylum seekers and refugees can cause unrest among refugee communities, as well as appearing to condone discrimination. This is counter-productive for all concerned and is at odds with the actions of those governments that do live up to their international protection obligations.
5. European governments, in particular, should guard against seeing every conflict successfully resolved as a situation to which those who have been refugees can return. The security of the country in which intervention has taken place cannot be maximised in the short term by forcing or over-stimulating immediate return by exiles. Rather, for the sake of the country of origin, the refugees and the host country, attention must be paid to individual circumstances, including the length of the period of refuge, and to allowing and facilitating short-term visits with an eye to ultimate return, without insisting that the latter take place. Giving people the personal security that comes with the right to remain in or return to the country of refuge can often be a factor in stimulating a willingness to return, at least on a trial basis.
6. The provision of assistance alone is not sufficient to live up to international obligations. For both refugees and IDPs, alongside the provision of aid, it is essential that governments explore and develop means to guarantee security and protection where such means are not yet established, and that they live up to their protective obligations where such already exist.
7. In providing protection and security, states need to maximise their development of useful tools of management in both the migration and displacement scenarios. Registration, for example, needs to be improved on the ground. And tools – such as resettlement programmes – that permit optimal, durable protection need to be positively re-considered.
8. In assessing protection needs, for the security of genuine refugees as well as for the security of states, authorities should make appropriate use of the existing tools at their disposal to exclude certain people from refugee status, and to screen camp dwelling populations in situations of mass influx, where individual application of the exclusion clauses may not be appropriate.
9. In learning from past mistakes, the international community needs to ensure that the reconstruction of Afghanistan is a project for and by Afghans. However, recalling the first conclusion listed here, that does not mean ignoring the process of reconstruction or withdrawing from it quickly. Rather it means a process of partnership, of state and society building for a state that needs to be strong and secure for itself and its people but that also needs to be strong for and within the international community of states.



The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think-tank in Washington, D.C. dedicated to the study of the movement of people worldwide. MPI provides analysis, development and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and

thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world. MPI's work is organised around four research pillars:

- Migration Management
- North American Borders and Migration Agenda
- Refugee Protection and International Humanitarian Response
- Immigrant Settlement and Integration

Founded in 2001 by Kathleen Newland and Demetrios G Papademetriou, MPI grew out of the International Migration Policy Program at the Carnegie Endowment for International Peace. The think-tank's policy analysts seek to bridge the worlds of migration research and policymaking, by translating research findings into policy recommendations for politicians, business leaders and journalists around the world.

A central focus of MPI's refugee protection work in 2002 is the issue of internal displacement. MPI is collaborating with the newly established IDP unit within the UN Office of the Coordinator for Humanitarian Affairs (OCHA) to explore some of the continued challenges of providing effective protection and assistance to the internally displaced. The results of this study will be published in September 2002. A second collaborative effort, with the Brookings Institution-CUNY Project on Internal Displacement, analyses the complex relationship between the international refugee protection system and evolving IDP protection mechanisms, with a view to progressing towards the development of a comprehensive protection regime for these two groups.

In late Spring 2002, MPI is launching the Migration Information Source ([www.migrationinformation.org](http://www.migrationinformation.org)), a new website that offers current and authoritative data on international migration, as well as analysis from migration experts and dispatches from foreign correspondents around the world.

**For more information on the Migration Policy Institute, visit our website at [www.migrationpolicy.org](http://www.migrationpolicy.org).**