

**THE VICTORIAN FOUNDATION FOR SURVIVORS OF TORTURE INC.**

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**THE CHALLENGES OF GLOBAL FORCED DISPLACEMENT IN THE  
CURRENT ERA**

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**The hardest part of any overview presentation about a global phenomenon is knowing where to start. The temptation is to do so at home, here in Australia, where the asylum issue has taken on such a high and contentious profile over recent years. Even my brief and relatively superficial association with the debate here tells me, however, that this would be a mistake.**

**-So many commentators in Australia, not to mention practitioners, are trapped in an insular and parochial approach to the problem and how to deal with it. There will be no progress on this score, in my view, without a more broadly-based and empirical understanding of why people leave their countries, where they go, how other countries receiving boats are responding and what works and what doesn't in this regard.**

**-Australia's difficulties with boats do have a broader context which arguably has not been given sufficient attention in the over-heated debates which have been playing out over many months in Parliament, the press and civil society. This debate has badly served an Australian public struggling to understand the problem and what can and should be done about it.**

**-I am alarmed by the failure of the debate in Australia to better reflect refugee realities on the ground – to properly and compassionately take into account the problems of refugees, rather than the refugee problem as such. Hence I have chosen to go global from the beginning, in the hope of contributing to this broader understanding and promoting thereby a more humane and collaborative response to the so-called boat problem in this country.**

## **KEY CHALLENGES**

**-The global displacement challenges are dauntingly complex. My presentation today will focus only on those I know best through my many years of work in the humanitarian area with UNHCR. For the sake of simplicity, I have narrowed these down to three main ones:**

- (1) At its most basic is the challenge of numbers and needs: the huge number of persons variously displaced by violence, war, persecution, human rights violations, disasters of various sorts or desperate personal circumstances, and needs which far outmatch the response capacity.**
- (2) Then there is the challenge of deterioration in the conditions for humanitarian aid and assistance (the so-called humanitarian space), coupled with a narrowing of the asylum space, including in the world's most prosperous countries.**
- (3) Finally, there is the insufficiency of response tools, in the face of changing patterns of violence and migration.**

## **THE NUMBERS AND NEEDS**

**-I turn first to the numbers, but in so doing I have to stress that refugees are, of course, people, not statistics and global trends. Their protection is a human necessity not a policy choice. The statistics should be used to illustrate this, not mask it.**

**-According to the Office of the United Nations High Commissioner for Refugees, the world is witnessing the highest levels of displacement since the Second World War. A recent publication ("Wars' Human Cost" of 22 June 2014) of the Organisation records displacement by the end of 2013 as having reached some 51.2 million individuals. Were all these people to be grouped together, within one enclosing border, they might constitute the 26<sup>th</sup> largest "nation" in the world.**

**-Further breaking down this figure, over 16 million were refugees classically defined, while some 33.3 million were displaced internally,**

**i.e. inside their own countries. The global figure includes 1.2 million asylum seekers, of whom over 100,000 lodged their claims to protection with Germany, making it the largest recipient of asylum seekers {followed by the US (84,00) and South Africa (70,000)}. Disturbingly, as numbers leaving go up, those returning go down. The HCR report recorded for 2013 the 4<sup>th</sup> lowest number of returns in over 25 years (414,600).**

**-Delving into the figures a bit, people do not return for many reasons, chief among them that the causes of their departure persist. Just a decade ago, an average of one million refugees returned home each year with the help of UNHCR. This number has dropped by 80% as continued conflict, insecurity or lack of livelihoods discourages return. In addition, having lived so many years in exile, the refugees' links to their home country may become progressively weaker than the links to their adopted asylum state, or they may have become urbanised [an growing phenomenon] and reject the prospect of returning to remote villages and a rural existence, without any amenities. Indeed, many lose their coping skills in this regard, so return is not sustainable. Or they may have come to embrace attitudes or values at odds with those of their home communities.**

**-If people are not returning, what then is happening to them? The vast majority are certainly not in any queue for solutions accessible in the foreseeable future. Despite a growing number of countries admitting refugees through organised resettlement programs, the number of resettlement places made available accommodates less than 1% of the global refugee population. Clearly resettlement would only ever be pursued for a restricted minority of refugees, but even for those for whom it is sought, the need far outstrips the opportunities (up to about 88,000 places annually).**

**-They are not being resettled, but neither are they being fully locally integrated in meaningful numbers. Refugee hosting countries in the developing world are broadly disinclined to facilitate the local integration for reasons which they believe are fully defensible. These countries may have to deal simultaneously with refugee influxes and large numbers of their own people displaced internally by conflict or**

violence (Pakistan, Chad, Yemen, or Sudan). Refugees often arrive in remote parts of a country where the facilities are few and where they must compete with host communities for scarce resources like water, food, firewood or grazing land, or for such education, health and infrastructure services as may exist. This can spark serious community unrest. The presence of large numbers of refugees may contribute to denuding the local forests or to upsetting sensitive local eco-systems. The refugees may move in large numbers to towns or urban settlements where they swell the ranks of the marginalised, urban poor. Inevitable tensions in such circumstances may be further exacerbated should the refugee communities become a safe haven for armed elements of various sorts. They are then seen as security threat by the host government. This is, for example, how the Kenyan Government is coming to view the Somalis living in Dadaab refugee camp, or more importantly in Nairobi suburbs, following the recent and serious security incidents in that country.

-With the prospect of durable solutions a remote possibility for so many refugees, the numbers of those living a life of protracted exile, in camps or urban settings, is swelling. There are over 7 million such persons on UNHCR's books, from Pakistan to Kenya, from Eastern Sudan to Bangladesh, to name just several countries. In practice what this can mean is generations being born, growing up, founding their families and dying, always in exile, most often in sub-standard conditions in host countries. Most often they cannot move around freely and are denied other rights, including access to legal work. Exploitative employment and engaging in illicit activities to make ends meet, such as alcohol brewing, or survival sex, are often features of the refugee experience. Young people are variously exposed to militia recruitment, people trafficking and human smuggling. Gender-based violence is widespread, with support to victims inadequate and their access to justice sadly limited, in tandem with a high level of impunity for the perpetrators.

-Assisting and protecting refugees under such circumstances is never an easy task. It is also very costly. One measure of how costly is the current budget of UNHCR, which has grown exponentially over recent years. It currently stands at around 3 billion dollars, and this is to

**cover only those more pressing operations settled through a rigorous process of discussion and whittling down submissions from offices in the field. These offices have collectively identified the global needs more broadly as requiring at least 5 billion dollars. And this 2013 assessment is quite probably already outdated as, 6 months into 2014; there have been substantial new movements, from the CAR, South Sudan, Syria and Iraq. On top of this, UNHCR's budget caters primarily to those found to fall under its mandate (currently around 43 million) forced to flee by war, human rights violations and persecution. These do not include the many millions displaced by other causes, for example by natural disasters, which could swell the numbers by an additional 30 million (Displacement Monitoring Centre Geneva). Displacement triggered, or compounded, by factors such as natural disasters, desertification, population growth, rapid urbanization, food insecurity, water scarcity, and violence related to organized crime, is growing. Climate change may well prove a major exacerbating factor in the decades to come.**

**-In short, the needs are great and the response capacity of the humanitarian donors is outstripped. As a result, many of the refugee and IDP operations are seriously underfunded. This is unfortunately quite usually the case with situations which have become protracted and cease to be the strategically important operations preferred by donors. Under-funding is, though, also now affecting even those operations with a high international profile.**

**-To illustrate the funding crisis with a few figures, as at 27 June an estimated 1.2 million Iraqis had been displaced by the current fighting. HCR is seeking \$64.2 million for shelter and protection (in the context of the existing \$312 million appeal launched recently) but by end June had commitments of only 5.1 million, i.e. 8% of the assessed amount. As of 20 June, more than 139,000 from the CAR had sought refuge in Cameroon, DRC, Chad and the Republic of the Congo, with over 500,000 displaced inside that country. The needs at that point were only 20% funded. A dramatically worsening crisis at the moment is the outflow from South Sudan. An appeal was launched on 11 July for US\$658 million, to help as many as 715,000 refugees expected by end 2014 to arrive in Ethiopia, Kenya, Sudan and Uganda. It was only 24 per cent funded.**

## **THE WORSENING OPERATING ENVIRONMENT AND THE BLURRING OF THE LINES**

**-The reality is that forced displacement affects more people for longer periods than a decade ago and is growing in complexity. Lack of funds is not the only constraint.**

**- Conflicts today are fought by a multiplicity of actors, many of whom have no respect for the fundamental principles of humanitarian law or human rights law. There is scant regard for civilian life; civilians indeed are becoming part of the war strategies. If they represented 50% of the WWII casualties, in today's conflicts they account for 80%. The safety of humanitarian staff is also of little concern to the hundreds of different types of armed groups, from paramilitaries, to militias, to ad hoc vigilantes, today encountered. Many of these groups operate outside any regular political structures, have unclear or diffuse chains of command within and may work with mercenaries. This means no accountability and in effect full impunity for actions. Conflicts are hence ever more difficult, unpredictable and dangerous working environments over which the humanitarian agencies have little or no leverage or control.**

**- Refugee work is certainly not immune to the highly political nature and context of modern displacement problems. At times it becomes part of the politics and the economy of war. Manipulation of aid, its appropriation or diversion, is becoming ever more difficult to prevent. Where and how aid is delivered, and to whom, can for example mean substantial financial gain for the authorities, de facto or otherwise, and can make the difference for them between legitimacy or rejection with their constituencies. Or the authorities may see a properly functioning independent relief effort not to be in their political interests, so sabotage it. They may refuse to allow humanitarian agencies in, or they expel them with relative impunity, in disregard of any consequences for beneficiaries.**

**- A final concern when it comes to shrinking humanitarian space that I do want to mention is the blurring of the line between the civilian**

**and non-civilian spheres of activity. It is a conundrum which deserves much greater analysis than time now allows. In short, with the deterioration in the operating environment, humanitarian actors increasingly have to depend, for their safety and that of their operations, on military entities of various sorts, including national armed forces or the UN blue helmets. While necessary, this dependence is making it harder and harder to maintain the perception of the neutrality and impartiality of humanitarian action. This carries with it the real danger that aid workers and their beneficiaries will be mischaracterised as party principles to a conflict and become legitimate targets of it. For the longer term, it is playing into the further politicisation and instrumentalisation of humanitarian work.**

**- For all these reasons, humanitarian space has been getting smaller. In tandem, asylum space, or options for refugees to access asylum on proper and generous enough terms, have also shrunk. I have already explained how and why enjoyment of rights can be a relative concept in the context of camps and settlements in first asylum developing countries. Access to basic asylum in the developed world has become more problematic as well. Why?**

**-Abuse of asylum procedures and difficulties in returning unsuccessful asylum seekers have contributed to a growing negativity about asylum. Protection systems in some countries are groaning under their own costs. Generosity when it comes to receiving and protecting refugees has had to contend, variously, with the global economic crisis, available jobs in decline, terrorism and transnational crime on the rise, distinctions between refugees and migrants blurring, a heightened sense of general insecurity on the part of civil society in many countries and the accompanying rise of populist politics.**

**-Political will is, as a result, rather weak when it comes to insulating and protecting refugee rights in irregular, mixed migration situations. When borders are closed to asylum-seekers fleeing persecution or conflict, the reasons one hears are various: the people have been brought by smugglers; other countries are more responsible to receive them; the conflict is not a recognized one; security of the state, however defined, takes precedence.**

**-It is of particular concern how international crime and terrorism have impacted the openness of States to receiving refugees. Asylum seekers, many of whom are or may be refugees, can find themselves in a sort of legal limbo where protection of legal rights takes second place to harsh migration controls, outside regular legal scrutiny (witness the return of 41 Sri Lankans from an Australian coastguard vessel in early July 2014 after enhanced shipboard screening). The increasing number of “virtual” or offshore border controls (visa requirements, interception practices, carrier sanctions) is prevalent when it comes to sea borders and these often fall outside national legal frameworks. Foreign search and rescue zones are becoming a new point of reference for deciding where disembarkation of boat people should come about. This is starting to compete with the more traditional criteria of flag state and coastal state responsibilities.**

**-On shore, one sees more often asylum systems being deliberately structured to offer asylum opportunities only to a restricted few. Some such systems are in purposeful decline, to serve as a deterrent. Many are not made child-friendly, take little or no account of the special circumstances of child applicants, and legitimate the automatic repatriation of children, without any review of their best interests. Detention, periodically arbitrary and often of children, is prevalent in some countries, with possibilities to challenge this through, for example, judicial review, not always present. Where detention is resorted to, it is often in a deterrent context so that the conditions are unduly or unacceptably harsh, the duration over-long and the possibilities for oversight review very limited. Penal conditions, including handcuffs, shackles and plexiglass interviews are not uncommon. In some cases, impossible conditions for release condemn people to arbitrary prison stay well beyond the expiry of their terms, without the possibility of legal challenge. They may even have to pay a fine to cover their detention period which, when they cannot pay (as is often the case) leads to more months in prison.**

## **THE NEED FOR REFINED APPROACHES AND TOOLS**

**-One hears with alarming frequency the rationale for ever tougher government approaches linked to perceived failures of the basic refugee protection tool, the 1951 Convention relating to the Status of Refugees. It is said that the Convention is an outdated relic of the Cold War era, a text out of step with the displacement challenges of the**



**times. Such commentary is at best ill-informed. I agree that the Convention does not hold all the answers. It is a huge step too far, however, to argue, as some do, that countries should withdraw their membership and that the Convention should either be radically re-drafted or scrapped.**

**-The 1951 Refugee Convention is not responsible for the policy failures of Governments. It is a rights protection instrument. It was never drafted as a migration regulatory instrument, and should not be held to account for any failures on this score. In setting out the basic framework of refugee law, it has meant, and continues to mean, the difference between life or death, between safety or insecurity, between respect or disregard of fundamental rights, for millions of very vulnerable people. Anyone who has ever worked with refugees will know how singularly important the Convention is as often the only barrier lying between so many helpless people and the whims and vagaries of state discretion.**

**-It has, though, to be acknowledged that it is not a perfect text. Few international conventions are. I fervently believe that trying to amend the 1951 Convention in this sceptical asylum climate of today would only lead to its unravelling, to the huge detriment of its intended beneficiaries. It should not be attempted. However to say this does not preclude that its framework can, and arguably should, be built upon. Asylum movements today are very various. They consist more often than not of people moving together but for quite different reasons, or exoduses collectively labelled as refugee flows which are actually distinguishable one from another by quite important factors, from sheer numbers to the substantive reasons motivating flight. These are factors which will impact on the applicability or the usefulness of the Convention in any one circumstance when it comes to determining the rights and responsibilities at issue and how these should be acted upon.**

**-Just to explain this in a little more detail, the Convention is the foundation text when it comes to individual refugees claimants. It can, though, be somewhat more aspirational than actually implementable in the context of large scale influxes (involving**

presumptive refugees). It is an awkward tool when it comes, for example, to regulating refugee camps, where essentially it is the non-derogable provisions, like non refoulement, which can be brought into play. The location of camps, the numbers in them and the resources available to them make respect for many of the rights in the convention an abstraction. In effect what the Governments are prepared and able to offer is a more limited rights protection regime more akin to a form of temporary protection. Similarly, temporary protection has a place, yet to be defined, where displacement is forced other than by persecution, conflict or violence per se. This is the case, for example, with natural disasters. The displaced are likely to have many of the same protection needs as Convention refugees – they may be in a legal limbo situation, having lost identity or land title documents, or worse they may have lost family members and be single women heading households, or unaccompanied children. Vulnerability to sexual or gender-based violence may be high. In spite of such protection needs, however, the Convention is unlikely to be applicable or applied. Temporary protection is a response which could usefully be given greater meaning in such circumstances.

-Then there is the situation, which is actually the one we see confronting Australia, of mixed flows including both refugees and migrants. While economic push factors can be compelling in themselves, by and large they were never intended to be addressed through refugee protection mechanisms, and certainly not the 1951 Refugee Convention. There is a need to review and further develop processes which reliably pre-screen in the case of mixed arrivals, and lay the basis for implementation of differentiated responses tailored to the variety of protection needs, including for temporary protection, that people may have.

-As a tool temporary protection is actually coming more into vogue in different situations, even if its content remains generally vague. There would be much merit in more clearly articulating what is temporary protection, what rights and responsibilities must it ensure, and when should it apply and when not. Clear already, though, is that temporary protection should not be employed punitively, as part of a policy of deterrence. With this as a caveat, the guardian of the 1951

**Convention, UNHCR, has seen the merit of looking more closely at temporary protection and has begun the process of trying to give it more definition.**

## **WHERE DO AUSTRALIA'S ISSUES FIT IN THIS CONTEXT**

**-This brings me to Australia's issues!**

**- With situations of violence and persecution proliferating [witness most recently Somalia, Sudan, Syria, or Ukraine, or closer to home Myanmar), with old crises refusing to die and becoming intractable [witness Afghanistan, Iraq, DRC), with natural disasters likely to displace many more people (environmental degradation, climate change and its slow onslaught effects of drought, desertification, shrinking agricultural land), with solutions elusive and money less available, it requires no leap of the imagination to see why there are so many refugees and asylum seekers on the move.**

**-According to the just released 2014 Human Development Report, 1.2 billion people live on \$1.25 or less a day. Approximately 2.2 billion people are assessed to be experiencing multi-dimensional poverty. With high and persistent global inequality, disempowerment of large groups of people around the world, and a proliferation of transport options, it is also hardly surprising to see so many irregular migrants more generally.**

**- Australia is but one among many other countries confronting a flow by boat of irregular migrants, asylum seekers and refugees (in Yemen in 2013 there were over 65,000 boat arrivals; in 2012 a record 107,532 persons made the treacherous journey across the Gulf of Aden and the Red Sea; in Italy so far this year there have been over 63,000 arrivals, including 10,563 children, around a third of whom came from Syria). That it can become a problem for a government and for the receiving communities is a fact. It is a challenge, in a world of growing connectivity and human mobility, to manage borders and preserve national security. But what sort of problem is this really?**

**-At a minimum it is a problem whose contours are so complex that dealing with it predominantly through deterrence with the aim of stopping it – even if this were to be legally sound and justifiable from a humanitarian perspective, which I challenge - is just wishful thinking. Stop the boats to save lives is the mantra. This is at best disingenuous. I have heard Australia’s deterrence initiatives recently described as “bizarre” and, much worse, as “a policy of cruelty”. Whichever, it is certainly a flawed policy on a number of counts.**

**-Policies constructed centrally around deterrence are costly, inhumane, at odds with international conventions, can end up losing their popular support base and – perhaps the most persuasive to politicians – are just ineffective. Boat departures have always been a safety valve for the persecuted and for the downtrodden. They are symptomatic of the much deeper malaise which variously afflicts the societies from which the boat people come and through which they pass. The root problem is this malaise and boats will continue as long as the root causes of departure remain unaddressed. Deterrence will fail over the longer term because it ignores what drives people to put themselves in such perilous circumstances.**

**-Obviously, the retort of the sceptics will be, stopping conflict and redressing violence and inequality in the world, while to be fought for and invested in, is for the longer term. I agree on this point and hence I conclude that better management of the problem, rather than solving it at this point, is a more modest but probably the more realistic objective to pursue.**

**-Better management means, for me, a response as multifaceted as is the problem itself. It has to have elements which respond to: (a) the humanitarian fact of people in distress; (b) the non-derogatory international law principle of non-refoulement of refugees; (c) the legal reality that states also have other law-based obligations and responsibilities that must be honoured; (d) the law and order challenge of people smuggling; and (e) the dictates of international cooperation and burden-sharing which are ignored only at a Government’s peril, as we have seen in the recent ups and downs in the Australia/Indonesia relationship.**

**- I accept that the devil is in the detail here. However this is not virgin territory. Other governments have been grappling for much longer with maritime asylum and migration issues. So too have organisations like UNHCR. There are existing approaches elsewhere to learn from and build upon, processes like the Bali process to more effectively exploit, and management tools like UNHCR's 10 point plan to explore.**

## **CONCLUSION**

**-Australia has a role to play in keeping asylum meaningful both in its region and internationally. It has a rich tradition to build upon, being: (1) one of the earliest signatories of the 1951 Convention whose accession was instrumental in bringing the Convention into force; (2) a generous donor to UNHCR, through official and private sector contributions; (3) one of the big 3 resettlement countries with excellent standards of settlement services; and (4) a prosperous country having such small numbers to manage.**

**-Regional mechanisms are called for to halt the exploitation and abuse that plagues movements by sea [and land] and to save lives. But this is not enough. Meaningful asylum will only exist when the availability of effective refugee protection does not depend on where an individual seeks asylum; when there is recognition that resettlement programs are a complement to, not the alternative to on-shore protection for direct arrivals; and when functioning and accessible national asylum systems are genuinely fostered and utilised.**

**-The overall aim has to be robust, compassionate systems which protect rights, respect responsibilities, provide viable solutions and promote better international cooperation and burden sharing.**

**-I do not underestimate the challenge. Finding the most optimal balance between the principles which set the framework and the pragmatism which must also guide actual programming is one of the singular challenges for humanitarian action in today's world.**