INTRODUCTION

Every year millions of people are forced to leave their homes in times of disasters linked to natural hazards and effects of climate change. This reality creates specific protection needs for displaced persons and is increasingly recognised by the international community as one of the big humanitarian challenges of the 21st century that need to be addressed.

These challenges are the topic of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (hereinafter: Protection Agenda) endorsed by more than 100 States in October 2015 as outcome of 3 years of consultations by the Nansen Initiative. The Agenda is neither an attempt to develop new legal standards nor is it a binding document. Rather, it purports to enhance understanding, provide a conceptual framework, and identify effective practices for strengthening the protection of cross-border disaster-displaced persons. 1

The Protection Agenda does not address all kinds of disasters, only those triggered by or linked to natural hazards (hereafter disasters).

This contribution first describes the wider context of the Nansen Initiative, as well as the process leading up to the endorsement of the Protection Agenda. The chapter then explores key conceptual issues that underlie the Agenda before turning to a discussion of the effective practices identified within the Agenda to protect cross-border disaster-displaced persons and measures to manage disaster displacement risk in the country of origin. It ends with an assessment of what the Nansen Initiative and its Protection Agenda did and did not achieve.

The context

Disaster displacement: a reality

While numbers change from year to year, it is estimated that, on average, one person is displaced every second due to a disaster. Between 2008 and the end of 2016, some 227.6 million people – an average of more than 25 million per year or 1 person per second – were...
displaced in the context of sudden-onset disasters triggered by natural hazards such as earthquakes, tropical storms, landslides and floods.1 During this period, 96% were displaced by weather-related events and 14% by geophysical events. The number of people newly displaced each year in the context of disasters is, on average, larger than that of people fleeing conflict and other forms of violence. In 2016 alone, for instance, some 24.3 million people fled the impacts of disasters while 6.9 million were newly displaced by armed conflict and violence.2 In contrast, information on the number of those displaced in the context of slow-onset hazards such as drought, desertification or rising sea levels is not systematically gathered.

While dynamics vary from region to region, it is clear that the large majority of disaster-displaced people remain within their countries as internally displaced persons (IDPs). For example, in the aftermath of the 2004 Indian Ocean Earthquake and Tsunami more than 2 million IDPs were identified in multiple affected countries, spanning from Southeast Asia to Eastern Africa. In 2010, the unprecedented Indus River floods in Pakistan displaced an estimated 11 million people within their country.3

In some circumstances, disaster-displaced persons also cross borders to find refuge abroad. They may seek to escape life-threatening situations by fleeing to neighboring countries or beyond, particularly when they live in border areas and the safest escape routes lead across borders. They may also cross international borders when protection and humanitarian assistance is either unavailable or cannot be accessed in their own country. Others may try to reach family members or friends living abroad and ready to shelter them. However, their overall number is unknown as current counting methods focus on how many people have left disaster-affected areas, and not where they go and how long they remain there. The challenge of data collection is further exacerbated by the fact that the distinction between those migrating abroad for predominantly voluntary reasons and those forced to move is often difficult to establish in such situations.

While cross-border disaster-displacement is most easily identified in Southeast Asia and Europe, a considerable number of examples have been found in Africa and Central and South America. In Africa, the main driver is flooding, whereas in the Americas hurricanes, flooding, landslides and earthquakes primarily trigger cross-border displacement. A broad range of examples have been documented in various parts of the world.4 For example, following the 2010 earthquake in Haiti, the neighboring Dominican Republic admitted over 200,000 disaster-displaced Haitians over the course of several months following the disaster, as did other states in the Caribbean and throughout the Americas.5 During the 2011–2012 Horn of Africa drought crisis, some 290,000 disaster-displaced people sought protection and assistance abroad,6 most notably in Kenya, which in 2011 alone received an estimated 160,000 Somali refugees primarily from drought-affected regions of north and central Somalia.7 Severe floods have also resulted in cross-border disaster displacement, such as in Southern Africa in 2015, when people fled particularly severe flooding in both directions across the border between northern Malawi and southern Mozambique during Cyclone Chedza.8

Notably, climate change impacts have been identified as triggering disaster displacement already today.9 The Intergovernmental Panel on Climate Change (IPCC) expects that, due to the rise of extreme weather events and other climate change effects, the displacement of people will increase in the future. The IPCC highlights that at the same time “populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income”, meaning that such people face a higher risk of being displaced than those who have the means to migrate to safer areas within the country or abroad before disasters strike.10

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Disaster displacement: specific protection needs

Disasters affect displaced and non-displaced persons alike. The question then arises whether a specific focus on displaced persons is justified. The answer is ‘yes’ since displaced persons have particular protection and assistance needs that are not shared with non-displaced persons. For example, when a disaster occurs, displaced persons need to be able to reach a safe place either within their own country or in some cases abroad. During flight, family members may become separated, or displaced persons may rely on dangerous modes of transportation, including the use of human smugglers. Once they find a place of refuge, displaced persons need to find and have access to emergency shelter, life-saving medical care, water and sanitation facilities and food, as well as education, psychosocial counselling and livelihood opportunities in a place that is often unfamiliar to them and where they cannot rely on established community ties and support. Displaced women and children in particular are more likely to face gender-based violence during flight or in crowded collective centres than under normal circumstances. Away from their homes and social networks, women and children are also more at risk of human trafficking than before. Finally, displaced persons may lack essential legal documentation necessary for accessing humanitarian or reconstruction assistance because they fled without such documents or they were destroyed in the disaster.

Although the majority of people displaced in sudden-onset disasters can usually return home after a relatively short period of time, some concerning humanitarian assistance is necessary during the recovery and reconstruction phase until durable solutions for those displaced can be identified. Inadequate opportunities for durable solutions to displacement have left people in protracted displacement situations for months or years after the disaster. For example, 119,000 IDPs out of the more than 470,000 persons displaced by the 2011 tsunami and Fukushima disaster in Japan still remained in displacement at the end of 2016. Even upon return, disaster-displaced persons may face displacement-related challenges due to the lack of legal documentation necessary for accessing humanitarian or reconstruction assistance because they fled without such documents or they were destroyed in the disaster.

Disaster displacement: an increasing concern to the international community

Disaster displacement creates an obvious challenge not only for affected people and their countries, but also for the international community. In April 2009, the heads of organisations belonging to the Inter-Agency Standing Committee (IASC) — the coordinating body of United Nations (UN) humanitarian agencies and large international humanitarian civil society consortia — addressed a letter to the Executive Secretary of the UN Framework Convention on Climate Change (UNFCCC) asking for acknowledgement of and measures to address the humanitarian consequences of climate change in the new climate change agreement. Their lobbying efforts were successful as the 2010 UNFCCC Conference of the Parties (COP16) recognized the implications of climate change on human mobility in the so-called Cancun Adaptation Framework. Its paragraph 14(f) called for voluntary measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels.

In 2011, the UN High Commissioner for Refugees Antonio Guterres decided to make disaster- and climate change-related displacement one of the topics of the 73rd anniversary of the 1951 Convention relating to the Status of Refugees (CSR51). In February of that year, an expert roundtable on climate change and displacement was held in Bellagio, Italy.
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It acknowledged that the 1951, in most cases, does not cover cross-border disaster-displaced persons and identified the "need to develop a global guiding framework or instrument to apply to situations of external displacement other than those covered by the 1951 Convention, especially displacement resulting from sudden-onset disasters". At the same time the roundtable discouraged using "the terms of "climate refugee" and "environmental refugee" . . . as they are inaccurate and misleading". 23

As a next step, the Government of Norway hosted the 'Nansen Conference on Climate Change and Displacement in the 21st Century' in Oslo in June 2011. The Chairperson's summary called for a "more coherent and consistent approach at the international level . . . to meet the protection needs of people displaced internationally owing to sudden-onset disasters" and identified in this regard a normative gap with respect to external displacement resulting from disasters, which needed to be addressed. It was suggested that States, in conjunction with UNHCR and other relevant stakeholders, could develop a guiding framework or instrument for the protection of people displaced internationally due to sudden-onset natural disasters, including those related to climate change. 24

Following these events, it was hoped that the Ministerial Meeting of UN Member States facilitated by UN High Commissioner for Refugees (UNHCR) in December 2011 would give the green light to initiate such a process. However, no consensus was reached during the meeting, 25 with the Ministerial Communiqué only expressing, in somewhat opaque language, a readiness to "reinforce cooperation . . . to deepen our understanding of evolving patterns of displacement and to agree upon ways to respond to the challenges we face in a changing global context". 26 In order to ensure that the issue would nevertheless be addressed, the Governments of Norway and Switzerland highlighted during the meeting that a "more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced internationally owing to sudden-onset disasters, including where climate change plays a role". They pledged to cooperate with interested States and other relevant stakeholders to: (1) obtain a "better understanding of such cross-border movements at relevant regional and sub-regional levels", (2) identify best practices and (3) develop a "framework for how best to assist and protect the affected people". 27 The pledge was welcomed by several States and formed the basis of the Nansen Initiative.

The Norwegian and Swiss pledge was informed by the realisation of not only "a general lack of preparedness leading to ad hoc responses to cross-border disaster displacement", but also the existence of a series of gaps which the Protection Agenda identifies as (i) knowledge and data gaps, (ii) institutional and operational gaps and (iii) a "lack of clarity regarding funding for measures to address cross-border disaster displacement and find lasting solutions for displacement". 28

The process

The Nansen Initiative was conceived as a bottom-up, State-led consultative process with multi-stakeholder involvement to build a consensus on key principles and elements regarding the protection of persons displaced across borders in the context of disasters that sets the agenda for future action at domestic, regional and international levels. It was not set up as a new institution or organisation, but rather as a light structure providing a forum to learn, consolidate knowledge and frame the discussion about cross-border displacement in the context of disasters and climate change.

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Creating an organisational structure

The Nansen Initiative, drawing its name from the June 2011 Nansen Conference and thus highlighting the continuity of the process, was launched in October 2012. It ended in December 2015 when Norway, and Switzerland concluded that they had fulfilled their pledge with the adoption of the Protection Agenda in October of the same year.30

The Nansen Initiative’s organisational structure was light. Norway and Switzerland chaired a small Steering Group with Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, and the Philippines as members. UNHCR and IOM participated as standing invitees. The Steering Group met once a year and worked at the technical as well as ambassadorial level. An academic with international experience acted as Envoy of the Chairmanship of the Nansen Initiative on a part-time basis and provided strategic guidance and input. A Consultative Committee, with about 90 members from international organisations, non-governmental organisations, academic institutions and think tanks, as well as individual researchers, informed and supported the process with expertise in the areas of displacement, migration, disaster risk management and climate change. A Group of Friends, comprised of more than forty countries and regional organisations interested in the Initiative and co-chaired by the European Union and Morocco, acted as a sounding board and information-sharing network that contributed to the work of the Initiative with comments and feedback. Finally, the Nansen Initiative was supported by a small secretariat based in Geneva. This structure enabled, as observed by McAdam, ‘input from a diversity of actors, and created a sense of investment in the process’.31

This structure had the advantage of being nimble, very flexible and at the same time inclusive and representative of the specific situations and challenges in different parts of the world.

Consulting and learning

In order to build consensus, the Nansen Initiative led a series of regional and sub-regional consultations. Between May 2013 and October 2015, seven inter-governmental Regional Consultations, with one exception hosted by the respective governments, were held in the Cook Islands for the Pacific region, Costa Rica for Central America, Kenya for the Horn of Africa, the Philippines for Southeast Asia, Bangladesh for South Asia, South Africa for the Southern Africa region and Ecuador for South America. They were complemented by a series of five regional civil society meetings. Overall, about 100 countries, 10 regional organisations, 15 United Nations Agencies and 150 NGOs, with a total of more than 1,000 persons having a background in disaster management, displacement and migration, human rights, climate change and other relevant areas participated in these events. Each regional consultation’s agenda was developed in consultation with a wide variety of stakeholders in the respective regions based upon pre-visits by the Envoy and background research by the Nansen Initiative Secretariat to ensure that discussions were tailored to each region’s specific situations and challenges. This was an essential element to create trust and ownership and making these gatherings relevant. When particular issues related to disaster displacement in a region warranted additional research, the Nansen Initiative commissioned in-depth studies to further contribute to the discussions.

The Regional Consultations not only contributed to a deeper understanding of the phenomena of disaster displacement among participants, most of whom were unaccustomed with this issue, but also provided an opportunity to share experiences and enhance knowledge within the region. By bringing together the results from all the Regional Consultations, the Nansen Initiative was able to compile an enhanced knowledge base that allowed for a better understanding of the causes and dynamics of disaster displacement more generally and provided rich information.
The Nansen Initiative's protection agenda on the diverse challenges as well as effective practices used in the different parts of the world to address disaster displacement.

**Framing and feeding**

2015 was a particularly intense year for the international community due to several processes and events directly relevant to the issue of disaster displacement. In particular, States participated in the Sendai World Conference on Disaster Risk Reduction, held negotiations on a new agreement on climate change at COP21 in Paris, adopted the UN Sustainable Development Goals and participated in a series of consultations throughout the year in preparation of the 2016 World Humanitarian Summit. The Nansen Initiative did not attempt to duplicate these efforts but rather saw its role in framing relevant messages on how disaster displacement should be addressed within each of these contexts and feeding the messages into these processes by contributing background information and supporting joint negotiating efforts by States particularly active in the Nansen initiative.

Some of these efforts were successful. Despite strong opposition till the last hour, negotiators managed to have language on the prevention of and response to disaster displacement included in the Sendai Framework for Disaster Risk Reduction 2015–2030 (UNISDR 2015). The UN’s 2030 Agenda for Sustainable Development recognises that global challenges which threaten to reverse much of the development progress made in recent decades include more frequent and intense natural disasters as well as the forced displacement of people. In Paris, negotiators at the COP21 agreed to create a Task Force to develop recommendations for integrated approaches to adapt, minimise and address displacement related to the adverse impacts of climate change. The World Humanitarian Summit process identified disaster displacement as a current and emerging humanitarian challenge, with the UN Secretary-General Ban Ki-Moon suggesting, as part of this proposed Agenda for Humanity, the adoption of “an appropriate international framework, national legislation and regional cooperation frameworks by 2025 to ensure countries in disaster-prone regions are prepared to receive and protect those displaced across borders without refugee status.”

The Nansen Initiative also contributed to ongoing processes at the regional level. For example, the 2014 Brazil Declaration and Plan of Action recognises ‘the challenges posed by climate change and natural disasters, as well as by the displacement of persons across borders that these phenomena may cause in the region and the need to give more attention to this matter.” The ministerial States of the Regional Conference on Migration went one step further by adopting, in 2016, a guide to effective regional practices to protect cross-border disaster-displaced persons with humanitarian protection measures. A similar endeavour will start in 2017 in South America.

**Developing and endorsing the Protection Agenda**

Based on the Regional Consultations, commissioned research and the outcomes of relevant international and regional processes, a first draft of the Protection Agenda was prepared and widely distributed in early 2015 and meetings in Geneva and several parts of the world were organised to obtain broad feedback on the draft.

The process culminated in presenting the Protection Agenda to the Global Consultation held in Geneva, Switzerland on 13 October 2015. The representatives of more than 100 States participating in the event declared to “endorse the Agenda as a guiding document to better conceptualise cross-border disaster displacement,” highlighting that it “completes and analyses key principles
and illustrative examples of effective State practices from around the world, and provides a toolbox of policy options for action. 36 UN Secretary-General Ban Ki-Moon subsequently called on States to give favourable consideration to incorporating into national policies and practice the insights of the Agenda. 37

The Protection Agenda is comprised of three main parts. Part One discusses the protection and assistance needs of people who have been displaced across borders in the context of disasters and presents examples of effective practices used by States to either admit cross-border disaster-displaced persons or to refrain from forcibly returning foreigners to their countries of origin that have been affected by disaster. While Part One examines countries of destination, Part Two focuses on how to manage disaster displacement risk in countries of origin by identifying a series of tools to prevent displacement and highlight effective practices to strengthen the protection of Internally Displaced Persons (IDPs), so that they are not compelled to look for protection and assistance abroad. Part Three concludes the Agenda with a list of priority areas for future action at national, sub-regional, regional and international levels.

Conceptual issues

The Nansen Initiative was initially faced with several conceptual issues: how narrow or broad should the scope of the Protection Agenda be? Should it exclusively focus on cross-border disaster-displacement or also address other forms of human mobility, such as voluntary migration and planned relocation? And what about internal displacement? Should it try to conceptualise displacement as something caused by climate change or look for another approach? And would it be appropriate and feasible to call for a new convention on cross-border disaster-displaced persons?

Scope: a holistic approach

Although the Nansen Initiative was triggered by climate change discussions, Norway and Switzerland realized early on in the process that it would be problematic to exclude, by restricting the Protection Agenda’s scope to weather-related events, people displaced in the event of earthquakes, tsunamis and other geophysical hazards. Those promoting special protection for ‘climate refugees’ often refer to concepts of ‘climate justice’ and argue that most of the people displaced by extreme weather events are not at fault for climate change and therefore deserve special protection. However, from a human rights perspective, limiting protection to displaced victims of climate change would be highly problematic. Human rights entitlements are not a form of compensation for victims injured by the actions of someone else. Rather, they are grounded in the dignity of the human being and serve to protect fundamental needs of the human person. Because the protection needs of displaced people are basically the same in disasters triggered by weather/meteorological and geophysical hazards, restricting a protection regime to the former category would risk amounting to unjustified unequal treatment.

The pledge made by Norway and Switzerland in 2011 focused on cross-border movements. In the course of the Nansen Initiative consultations, it quickly became clear that this scope was too narrow. Early in the process, participants insisted that displacement is not an option and highlighted, as an alternative, facilitating voluntary migration and, if necessary, planned relocation in ways that respect the rights and dignity of those involved. It was clear that internal displacement was particularly highlighted in Southeast Asia and the Greater Horn of Africa region. Based on these contributions, the Protection Agenda...
The Nansen Initiative’s protection agenda highlights that a “comprehensive approach to cross-border disaster displacement also requires tackling disaster displacement risk in the country of origin.” It therefore also addresses measures related to (i) the prevention of displacement through climate change adaptation, disaster risk reduction and development interventions that build the resilience of people and communities at risk of displacement, as well as (ii) the facilitation of migration and planned relocation as ways to cope with disaster displacement risk and (iii) addressing the protection needs of IDPs in disaster contexts.

Starting point: disaster, not climate change

What is the cause of displacement when natural hazards occur? An understanding emphasizing the multi-causality of such displacement has gained ground over the years. It was also highlighted by participants throughout the Nansen Initiative process. According to this understanding, three factors determine whether people can stay or not. Displacement takes place when people are (i) exposed to (ii) a natural hazard and (iii) lack the resilience to withstand its impacts. Exposure risks increase, for instance, when people move into flood-prone river plains or coastal areas that were traditionally only sparsely populated, or when they settle on steep slopes or river valleys in urban areas. Vulnerability has many causes and is not only rooted in individual traits of affected people but also in factors such as a lack of disaster risk reduction and preparedness measures, high population density in areas with a general lack of development and the absence of good governance. Thus, people who are economically and socially vulnerable are, for instance, at particular risk of displacement if they live in densely populated and poorly planned urban neighborhoods where corruption contributes to weak enforcement of building codes and other measures to reduce disaster risks. As compared to the impacts of the natural hazard itself, demographic, social, economic, institutional and political factors contribute as much as, and sometimes even more, to whether affected people will be able to stay or have to flee.

This understanding underlies the conceptual approach of the Protection Agenda. By using the concept of a “disaster” as the point of departure, it avoids the pitfalls inherent in notions of “climate refugees” or “environmental migrants.” These notions require demonstrating direct causality between global warming and other hazards and ensuing displacement—a condition that can hardly ever be established as a single or the main cause of displacement. According to the UN, a “disaster is defined as a serious disruption of the functioning of a community or a society in which widespread human, material, economic or environmental losses and impacts occur, which exceeds the ability of the affected community or society to cope using its own resources.” Thus, people are typically displaced in contexts where their community or country is unable to cope with the impact of natural hazards and therefore experiences a disaster. Their approach looks at the socio-economic effects of natural hazards and their ensuing consequences for affected persons rather than the type of hazard that triggered the disaster. The advantage of this approach is the fact that it provides criteria to determine who is in need of protection and assistance abroad.

Ambition: a toolbox, not a convention

There have been several proposals for a convention on “climate refugees” or “environmentally displaced persons.” Similarly, the outcome of the 2011 Nansen Conference called for “a guiding framework or instrument for protecting cross-border disaster displaced persons.” The Nansen Initiative, as a process outside any international organization, certainly would not have been an ideal framework for a standard-setting exercise. During the Regional Consultations, it also became clear that most States were not ready to support standard-setting given that the phenomenon of cross-border
disaster-displacement was still not fully understood given a lack of data and knowledge. Even more importantly, the very significant differences in terms of challenges and dynamics between the different regions cautioned against the idea of a universal instrument applicable everywhere.

For these reasons, the Protection Agenda suggests that standard-setting activities, for the time being, are more appropriate at domestic, sub-regional or regional levels. Furthermore, instead of suggesting a normative framework, the Protection Agenda presents a set of tools and effective practices derived from experiences in different parts of the world to protect cross-border disaster displaced persons, as well as personal and collective disaster displacement risk in countries of origin. It is hoped that these practices will not only be applied on an ad hoc basis but may also inspire the development of more specific standards at local, national, sub-regional and regional levels.

Protecting cross-border disaster-displaced persons

The core of the Protection Agenda is dedicated to the protection of cross-border disaster-displaced persons. It first identifies criteria to determine who belongs to this category; then looks at the legal tools that can be used to admit such persons, allow them to stay or refrain from sending them back to disaster-affected countries of origin; and finally addresses the issue of durable solutions. The following overview summarises the key messages and sets out some of the ideas that underlie them.

Identifying the displaced

As mentioned above, present international law does not recognise people displaced across borders due to disasters as a distinct category worthy of protection in another country and therefore does not provide any recognised criteria to distinguish between those migrating for predominantly voluntary reasons in disaster contexts and those qualifying for predominantly voluntary reasons to resettle abroad. Thus, the central question is determining in what disaster situations a displaced person would be in need of protection abroad instead of in his or her home country. This question recognises that, in most situations, disaster-affected countries have at least some capacity to protect and assist their internally displaced persons.

In certain situations, moving across borders is the only reasonable option to seek safety and protection or assistance. In border regions, for instance, the closest path to safety may be in a neighbouring country. In other situations, protection and life-saving assistance may not be available in-country as a result of widespread destruction of infrastructure and basic services. A disaster may also multiply the consequences of disasters, international humanitarian actors and civil society alike. Particularly in mixed disaster-conflict situations, the delivery of humanitarian assistance may be seriously hampered by insecurity, a lack of trust of authorities or discrimination toward certain sub-sets of the population, which could again prompt disaster-affected people to seek assistance and protection abroad.

Slow-onset natural hazards are more challenging. People moving as a consequence of the gradual erosion of resilience and increasing environmental stress usually have some element of choice and thus can be qualified as (voluntary) migrants. However, when slow-onset hazards building up over many years reach an emergency or ‘disaster’ phase within a short period of time, for example when drought suddenly triggers famine, people may have no other option than to seek food and assistance abroad and thus be displaced. Slow-onset hazards or the cumulative effect of a series of smaller, medium-sized hazards may also compound a community’s capacity to withstand what would normally be insignificant sudden-onset hazards. Such disaster scenarios
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are particularly relevant for low-lying island States where inhabitants may be forced to leave their homes and seek temporary and permanent protection abroad as a consequence of the land becoming uninhabitable, permanent basis.

The Protection Agenda suggests as an effective practice to admit, on the basis of respective laws and policies or on an ad-hoc basis, persons arriving from disaster-affected countries if the individual concerned is seriously and personally affected by the disaster. This is particularly true for an individual if:

(i.) An on-going or, in rare cases, an imminent and foreseeable disaster in the country of origin poses a real risk to his/her life or safety; (ii.) as a direct result of the disaster, the person has been wounded, lost family members, and/or lost livelihood; and/or (iii.) in the aftermath and as a direct result of the disaster, the person faces a real risk to his/her life or safety or very serious hardship in his/her country, in particular due to the fact that he/she cannot access needed humanitarian protection and assistance in that country; (b.) because such protection and assistance is not available due to the fact that government capacity to respond is temporarily overwhelmed, and humanitarian access for international actors is not possible or is seriously undermined; or (c.) became factual or legal unable to make it impossible for him/her to reach available protection and assistance. 48

These criteria are derived from actual State practice. 49 States identify cross-border disaster-displaced persons by focusing on the effects of a natural hazard and the ensuing disaster on an individual. At their core, these criteria are based on considerations of whether the person could reasonably be expected to return under the circumstances. This is not the case in the cases contained in the above list.

In addition, States are sometimes ready to also admit persons from disaster-affected countries who do not fulfill these criteria on the basis of considerations of solidarity with an affected country that is temporarily unable to adequately protect and assist all of its citizens due to the disaster. In other cases, “humanitarian elements, such as strong ties with family members in the country of destination” are the reason why States grant admission. 50

These criteria are also applicable when a State has to decide whether to return foreigners to their country of origin who were on its territory at the time the disaster occurred or to grant them temporary protection. 51

Admitting the displaced

Based on an analysis of State practice, the Protection Agenda suggests the following five approaches for admitting cross-border disaster-displaced persons and allowing them to stay temporarily, or not returning foreign nationals outside their country of origin when a disaster has occurred: 52

• On the basis of regular migration categories foreseen in domestic laws regulating admission of foreigners, countries may admit cross-border disaster-displaced persons and allowing them to stay temporarily, or not returning foreign nationals outside their country of origin when a disaster has occurred. 53

* On the basis of regular migration categories foreseen in domestic laws regulating admission of foreigners, countries may admit cross-border disaster-displaced persons or eligible migrants.

For instance, admission may be granted on the basis of providing priority treatment to requests for work or study permits or family reunification or expanding pre-existing temporary worker quota for migrants from disaster-affected areas. In the aftermath of the 2010 Haiti earthquake, for example, Canada decided immigration applications from disaster-affected Haiti on a priority basis, while Bolivia granted temporary visas to children allowing them to enter the country pending long-term immigration solutions.
• While bilateral and regional agreements on the free movement of persons are not adopted for humanitarian purposes, disaster-displaced persons can profit from them to gain admission, unless documentary and other requirements are too high to be met by them. Examples include regular cross-border movements of pastoralists during times of drought between members of the Economic Community of West African States (ECOWAS) or the open borders between Nepal and India.

• Many countries use exceptional exceptions measures such as ‘temporary protection’ or ‘humanitarian visa’ foreseen in their legislation. Others admit disaster-displaced persons on humanitarian grounds through decisions taken on an ad-hoc basis. Among others, Argentina, Cuba, Finland, Mexico and Sweden’s immigration laws explicitly recognize the impacts of natural hazards as a potential ground for authorising the entry and stay of foreigners. China and the Democratic People’s Republic of Korea have a 1964 bilateral agreement which provides that “those who were forced to cross the border as a result of a disaster will not be treated as illegal border crossing”. In the USA, temporary protected status to citizens of an affected country who were already present on US territory at the time of the disaster may be granted if in a foreign State or parts of it:

1. There has been an earthquake, flood, drought, epidemic, or other environmental disaster in the State resulting in a substantial, but temporary, disruption of living conditions;
2. The foreign state is unable, temporarily, to handle the return to the State of aliens who are nationals of the State, and (iii) the foreign state officially has requested designation under this subparagraph. 53

• Pastoralist transhumance arrangements are an important feature in areas where pastoralists traditionally cross borders in times of drought. ECOWAS, for instance, issues international transhumance certificates that facilitate the cross-border movement of livestock to access grazing lands and water in neighbouring countries. Bilateral transhumance agreements also exist in other parts of Africa.

• Refugee law does not normally apply to disaster-displaced persons, as they do not flee persecution or violence from the hands of human actors – a condition that is inherent in all definitions of refugee. However, an initial cause must become relevant in specific situations, for instance when violence breaks out in the aftermath of a disaster and the authorities are unwilling or unable to provide protection to the victims. Broader notions of a ‘refugee’, such as those contained in the article 1 of the 1969 African Refugee Convention which expands refugee protection to persons fleeing either to . . . events seriously disturbing public order, may allow States to consider disaster victims as refugees if they experience (i) a life-threatening situation, (ii) are not able to receive protection and assistance from their government, and (iii) foreign assistance cannot reach them for instance due to an overall situation of insecurity or because competent authorities deny humanitarian access to international actors.


The Nansen Initiative has identified more than 50 States that during the past decades have admitted persons affected by disasters in their country of origin or state if even sending them back to such countries would put them in categories described above. This indicates that States have a rich set of...
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of experiences regarding cross-border disaster-displacement and that such persons may often get protection abroad even in the absence of clear legal obligations. However, existing mechanisms are largely unpredictable because in most countries competent authorities have the discretion as to when to use them in a given situation. Therefore, harmonisation of state practice is called for, preferably at sub-regional or regional levels as most cross-border disaster-displacement takes place within regions.

In most cases, cross-border disaster-displaced persons are admitted on a temporary basis. This raises the question as to how durable solutions ending displacement may be found. The Protection Agenda suggests as effective practices, inter alia, to ensure cooperation between countries of origin and receiving countries and, where relevant, with international organizations, to ensure that initiatives are oriented with respect for their safety, dignity, and human rights, and under conditions that allow them to find lasting solutions to their displacement.

As an alternative, receiving countries may adopt provisions ‘allowing cross-border disaster-displaced persons to apply for renewed or permanent residency, or resettlement to a third country when conditions causing the displacement persist for an extended period of time or become permanent’ 54 In reality, however, such durable solutions are often difficult to achieve.

Managing displacement risks in the country of origin

In line with its holistic approach to cross-border disaster-displacement, the Protection Agenda identifies a series of measures that States can take to manage disaster displacement risk in the country of origin to help people stay, move out of areas at risk, and address the specific needs of those that have been internally displaced. 55

Helping people to stay

It is often possible to identify areas particularly prone to disaster and assess the expected impact of a natural hazard on affected populations, including displacement risks. Measures building resilience and reducing the vulnerability of people and communities in such areas, thus helping them to stay, include disaster risk reduction, climate change adaptation and overall development measures. The Protection Agenda identifies, in particular, as effective practices: (i) 'to specifically incorporate disaster displacement risks and protection needs into separate or joint climate change adaptation and disaster risk management strategies, plans or laws; (ii) the prioritisation of preparedness and early warning systems that clearly describe the hazards, identify populations most at risk of displacement, determine evacuation corridors and sites, and ensure that information reaches affected communities and can be easily understood by them'; and (iii) the prioritisation of infrastructure improvements, such as sea-walls, dams, dykes, and earthquake-resilient buildings, in areas where people are most at risk of displacement' 56

These would be important steps, with just a few exceptions, existing disaster risk reduction and climate change adaptation strategies fail to address human mobility. 57 In this regard, the Sendai Framework on Disaster Risk Reduction and the COP21 decision may bring a change in attitude.

As mentioned previously, the latter lays the ground for the creation of a Task Force ‘to develop recommendations for integrated approaches to avoid, minimise and address displacement related to the adverse impacts of climate change’ 58 The Task Force started its work in May 2017 and is tasked with submitting the results of its work to COP24 in November 2018. The Sendai Framework
encourages States to adopt, at national and local levels, policies and programmes addressing dis-
caster-induced human mobility to strengthen the resilience of affected people and that of host
communities as per national laws and circumstances; and calls for trans-boundary cooperation to
address displacement risk in areas with common eco-systems, such as river basins or coastlines.

Helping people to move in dignity

Migration that is predominantly voluntary, because people have a relevant degree of choice, is
often used by individuals and families to cope with or adapt to environmental changes and natural
hazards, particularly when such changes negatively impact livelihood opportunities. Migration
in such contexts may be temporary, circular or permanent. Like those who are displaced, most
migrants move to another part of their own country, with a smaller number of people travelling
abroad. In some parts of the world, cross-border migration is already facilitated by agreements
on the free movement of persons.

The Intergovernmental Panel on Climate Change stresses that ‘[e]xpanding opportunities for
mobility can reduce vulnerability’ for populations at risk. Thus ‘changes in migration patterns
can be responses to both extreme weather events and long-term climate variability and change,
and migration can also be an effective adaptation strategy’. 59 However, if not properly supported,
migration may expose people to exploitation and discrimination and thus further exacerbate the
vulnerability of individuals and families by placing them in a more precarious situation than if
they had stayed in their place of origin. 60

The Protection Agenda identifies facilitating ‘migration with dignity as a potentially positive
way to cope with the effects of natural hazards, environmental degradation and climate change’
and highlights a series of effective practices. These include reviewing existing and negotiating
new bilateral or regional migration agreements ‘to determine how they could facilitate migra-
tion as an adaptation measure, including inter alia simplified travel and customs documents’;
developing or adapting ‘national policies providing for residency permit quotas or seasonal
worker programs in accordance with international labor standards to prioritize people from
countries or areas facing natural hazards or climate change impacts’, and facilitating ‘pastoralists’
traditional practice of moving internally and across international borders to access water, pasture
and regional markets during times of drought, such as through the development of transhumance
agreements or special travel permits to facilitate the cross-border movement of livestock’. The
Protection Agenda also highlights the need to provide:

- training and education, including through qualifications and accreditation alignment,
  to enable people from countries facing natural hazards or climate change impacts to
  compete for skilled employment opportunities in a regional or global labor market,
  and in this regard to cooperate closely with employers.61

The planned relocation of communities or groups of people in disaster-prone areas is another
instrument to move people from areas facing natural hazards or climate change impacts to
areas free from such hazards. Such relocation can offer a preventative measure within the country of origin to reduce the risk of
people in the future. By moving people from an area periodically at risk of sudden-onset
disasters or becoming uninhabitable in the face of environmental degradation and impacts of cli-
mate change. They may also provide a durable solution within the country of origin to allow
people to move to a location where the disaster-ridden part of their place of
origin is uninhabitable. Only in very exceptional cases, such as in the case of Small Island Developing
States losing substantial parts of their territory, would planned relocation to other countries be

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The Protection Agenda suggests as effective practices, inter alia, the development of international and regional guidelines, as well as national and local level laws and public policies to support effective and sustainable planned relocation processes adapted to the local context with full respect for the rights of affected persons or groups of persons. The Agenda furthermore identifies the consultation and participation of affected communities, the provision of suitable land and living space and the provision of adequate livelihood opportunities. Guidance on planned relocation has been developed in 2016 by UNHCR in collaboration with academic institutions.

Addressing internal displacement

The Protection Agenda recognises the protection of IDPs as particularly important as most disaster displacement takes place within countries. It also highlights that adequate protection and assistance for IDPs and the provision of durable solutions reduces their need to move abroad. At the normative level, the protection of internally displaced persons is rather well developed. The 1998 UN Guiding Principles on Internal Displacement, which have been recognised by the international community as an important international framework for the protection of internally displaced persons, as well as the Guiding Principles on Internal Displacement: Operational Guidelines, and the 2006 Great Lakes IDP Protocol all include the protection and assistance needs of IDPs in disaster contexts. For this reason, the Protection Agenda provides less detail on IDP protection as compared to other issues. In essence, the Protection Agenda suggests explicitly incorporating the Guiding Principles on Internal Displacement and other applicable instruments within domestic legislation in ways that ensure IDPs are adequately covered. It also suggests incorporating IDP protection within relevant disaster risk reduction, climate change adaptation, humanitarian response and development plans to address the specific needs of IDPs.

What the Nansen Initiative did and did not achieve

There have been voices questioning the added value of the Nansen Initiative in light of discussions on other issues and processes, such as the Sendai World Conference on Disaster Risk Reduction, the climate change negotiations or the work done by organisations such as IOM and UNHCR. The Protection Agenda responds to these queries in an implicit way by highlighting its key contributions in four points. First, the Protection Agenda conceptualises a comprehensive approach to cross-border displacement that understands disaster displacement not as something directly caused by climate change and other hazards, but as a complex process that allows for interventions that may prevent displacement and mitigate it. Second, it complements a broad set of effective practices by States and other actors suitable for ensuring future responses to cross-border disaster displacement that are more effective than most of today’s are. Third, it highlights the need to bring together and link policies and a diverse set of actors such as humanitarian assistance and protection, human rights protection, migration management,
disaster risk reduction, climate change adaptation, and development in order to address more comprehensively cross-border disaster-displacement and its root causes that to date have been relatively uncoordinated. Finally, it stresses that by taking the form of an agenda, it identifies key areas where future action is needed. 70

The particular strength of the Nansen Initiative was not only that it was able to solidly anchor disaster displacement on the international agenda, but also the fact that a large number of States with participants representing many different backgrounds (from disaster risk management to environment to migration and human rights) came together to work across silos and agree, albeit in an informal manner, on how to conceptualize displacement in the context of disasters and climate change as a holistic and, at the same time, differentiated concept. It was also able to contribute substantively to both disaster risk and climate change discussion and other relevant international and regional processes. The Nansen Initiative’s consultations and commissioned research, as well as the contributions by members of the Consultative Committee, certainly helped to address the knowledge and data gap identified at the initiative’s inception. While the Nansen Initiative was not a standard-setting exercise, the Protection Agenda contains a wealth of information and insight on how to close legal gaps at domestic and regional levels.

What the Nansen Initiative did not – and did not attempt to – achieve was to ensure that necessary action at normative and operational levels is taking place. Hence, as an agenda, it identified three priority areas of action. There are (i) enhanced data collection and knowledge, (ii) enhanced use of humanitarian protection measures for cross-border disaster-displaced persons, and (iii) enhanced actions to manage disaster displacement risk in the country of origin. For each of these action areas, the Protection Agenda lists a series of key actions that should be given priority.

In terms of actors, the Protection Agenda calls on stakeholders at all levels, from local communities and authorities to the United Nations and other international organizations, to work on these priority areas. At the same time, recognizing the variation of displacement dynamics from region to region, the Protection Agenda highlights the role of regional and sub-regional organizations, as well as the need for action at all levels to work together across silos and implement ‘coordinated approaches to cross-border disaster-displacement that bring together and link humanitarian action, human rights protection, migration management, refugee protection, disaster risk reduction, climate change adaptation, and development interventions.’ 71

Thus, the Protection Agenda is just a first, albeit important step in what will be a long path towards an effective international regime on cross-border disaster-displacement. To ensure that the Protection Agenda would not become another document gathering dust on a bookshelf, the Platform on Disaster Displacement (PDD) was launched at the World Humanitarian Summit in May 2016 as successor to the Nansen Initiative. With Germany as previous and Bangladesh as present Chair, the Platform’s purpose is following up on the Protection Agenda and promoting the implementation of its recommendations. Its organizational structure and membership is similar to that of the Nansen Initiative. The Platform’s action plan focuses on actions (i) addressing knowledge and data gaps, (ii) enhancing the use of identified effective practices and strengthening cooperation among relevant actors to prevent, when possible, or respond to and address cross-border displacement at the national, regional, and international levels, (iii) promoting policy coherence and mainstreaming of human mobility issues, (iv) supporting policy and action areas, and (v) promoting political will and awareness in areas where gaps exist. 72

Among many activities, the Platform is represented in the Task Force on Displacement set up by COP21 and actively engages in the elaboration of the Global compact for safe, orderly and regular migration to be adopted in 2018. At the same time, it puts a particular emphasis on

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Regional developments as it is at regional levels where hope for progress in the near realistic. In fact, the Platform will be a strong voice in the ongoing quest for a comprehensive response to the challenges of cross-border disaster displacement. However, as Susan Martin cautions, efforts such as those of the Nansen Initiative and Platform on Disaster Displacement in the long term, will only be as effective as the willingness of States and other stakeholders to implement the recommendations and offer protection on a nondiscriminatory basis to all who flee life-threatening situations. 74

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Notes


14 Nansen Initiative (n. 1) Annex I, 9 ff.


19 IDMC/NRC (n. 2) 44.


23 17 Ibid para 28.

24 Ibid para 8.

25 Nansen Initiative (n. 1) endnote 7.

26 Ibid para 28.

27 Ibid para 8.


29 Ibid para 12.

30 Ibid paras 34 ff.

31 Foresight (n. 15); Warner et al. (n. 15).

32 UNISDR, 2009 UNISDR Terminology on Disaster Risk Reduction (UNISDR, 2009).


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46. Nansen Initiative (n. 1) para 131.
47. McAdam (n. 25) 39.
48. Nansen Initiative (n. 1) para 33.
49. Ibid Annex II; Cantor (n. 35).
50. Ibid para 33.
51. Ibid para 65.
52. Ibid paras 47–57 and Annex II with examples.
53. USA, Immigration and Naturalisation Act 2002, section 244.1.
54. Nansen Initiative (n. 1) para 71.
55. Nansen Initiative (n. 1) para 76.
56. Ibid para 78.
57. Ibid para 94.
59. Warner et al. (n. 15) 17.
60. Nansen Initiative (n. 1) para 88.
61. Ibid paras 94–98.
62. Ibid para 95.
63. Ibid para 95.