

Concluding Comments: Revisiting the Principles of Protection for Migrants, Refugees and Other Displaced Persons, One Year On

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Within the context of the [14 Principles](#) and to conclude this symposium, I provide a few reflections below on the greatest human rights challenges faced by migrants, refugees, and the displaced in the last year.

As expected, things have gotten worse, and it will take time to re-establish—or even to establish for the first time—protection on a sure footing. The widespread failure of States when it comes to vaccinations is a sobering illustration: Research undertaken by World Health Organization (WHO) and [reported in The Guardian](#) on May 7th indicated that more than 70% of 104 government vaccination plans excluded migrants; most did not include refugees and asylum seekers; while 11.8 million internally displaced were also omitted.

Apart from this, I see three major rights challenges.

First, COVID-19 has proven to be a useful distraction for governments that want to allow ill-treatment and abuse to continue at their borders and on the high seas. At the same time, it has proven to be a useful vehicle for greater control over migrant and refugee populations.

For example, on May 14th Australia enacted [new legislation](#), with no advanced notice and no consultation, authorizing the indefinite detention of certain individuals who could not be removed, either on “refugee” grounds or because there was no country able and willing to accept them. Ostensibly,

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this was done in the interest and with the aim of “strengthening” the implementation of the country’s *non-refoulement* obligations. The very same week, the [Government’s budget](#) included a huge expenditure on detention facilities. COVID-19 as pretext and as cover is a theme that echoes throughout this symposium.

Secondly, while there have been very few *formal* derogations from human rights treaties (see [here](#) and [here](#)), there have been many derogations *in fact*. This is an important distinction, because the process of formal derogation implies certain safeguards, and the absence of formal derogation means that such safeguards are missing or diluted. In addition, in many States, oversight, monitoring, and the judicial review of police measures, among others, were already absent or circumscribed; thus, the pandemic has led to even fewer remedies for those detained, for example, in conditions that expose them to the risk of infection. This theme, too, is echoed throughout the symposium.

Thirdly, controls over movement, both internally and externally, have been ramped up. Even though many States have *not* imposed a barrier on access to protection procedures, the *means* for getting there have been curtailed—sometimes to zero. As we know, technology is already at the border and beyond, with drones now engaging in aerial maritime surveillance, but with little oversight. At the level of individual decision-making, we could be moving from a rules-based order to one in which the rule is generated directly by an algorithm, not by human beings, and applied in a context where the lived experience of the refugee and migrant are *not*, as they should be, front and center.

To what extent, without being pushed, will governments be ready to give up what to them appear to be useful and productive controls, either generally or specifically? In Australia—where I am currently based—the government has denied the right of citizens to return (see [here](#) and [here](#)), ostensibly in the interests of protecting the wider community from the risk of infection. It now treats the citizen as “the other”, as it does the refugee and the migrant. What’s to be done when a government can change the law at will, with no constitutional control or oversight?

The answers are not obvious, nor are they simple. Governments have the power to control, but we have the power to react and to resist, across many fields. Above all, we have the information directly from those impacted by COVID-19 restrictions. These stories, this narrative, must continue being told: told in litigation, told in policy meetings, told in legislative discussions and, above all, told in our conversations with people at large.

This means also that we must be prepared to identify the border police and the prosecutor individually responsible for push-backs and criminal proceedings; it means continuing to pressure State authorities that refuse disembarkation and those that will not support it with appropriate guarantees; it means combatting indifference—aided perhaps by the death toll due to COVID-19—as to whether people live or die, as well as to the woeful lack of basic decencies and common humanity that have been effectuated during the pandemic. It means recognizing that we all live with risk, and can do so quite successfully.

As Saint-Exupéry put it in *Flight to Arras/Pilote de guerre* (1942), “Each of us is responsible for all of us. Each of us is alone responsible. Each of us is alone responsible for all of us.”

This is not, as some might suppose, a Panglossian ideal. Pangloss, in Voltaire’s *Candide* (1759), proposed that the worst events, human and non-human, could be justified as being for the best “in the best of all possible worlds”. This definitely was *not* what Saint-Exupéry had in mind, nor do I intend to imply an idea of “negative responsibility”—that we are as much responsible for what we do as for what we do not do, for deliberately harming others, as for failing to relieve their suffering, however remote. That, as J. R. Lucas cogently remarked, “loads everyone with unbearable burdens and induces unassuageable feelings of guilt.” (*Responsibility*, 1993).

What I intend is that the protection of rights is and ought to be the business of everyone; and that each of us is and ought to be responsible for finding a way to make protection a part of our life, professional or private, no matter how small the contribution may appear to be.