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Stranded Migrants: Giving Structure to a Multifaceted Notion

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ABSTRACT

This paper represents a holistic study of the multifaceted notion of stranded migrants, which gained renewed attention by international actors in the past decade, and especially in relation to the 2011 uprising and consequent conflict in Libya and the current crisis in Syria. However, the call for new action concerning the protection of this group of migrants appears to be constrained by a lack of analysis of the phenomenon. This paper therefore studies the notion from a historical perspective, interrelated with a survey of the situation on the ground, and a review of previous and current international understanding of the notion. After deriving concrete characteristics of the group of stranded migrants and concluding that stranded migrants can be found anywhere, unrelated to geography and previous legal status, the paper focuses on vulnerabilities of migrants and stranded migrants. In specific from two perspectives: first, the concrete kinds of vulnerabilities; and second, factors causing different degrees of vulnerabilities. These factors are put into a vulnerability nexus, allowing evaluating various levels of vulnerabilities. Concluding, the paper offers a categorization of vulnerability for migrants and stranded migrants, exemplified in an inverted pyramid, culminating in a call for the international community to collaborate in a more systematic approach to the phenomenon of stranded migrants. In the view of the authors, this could best be initiated through concrete actions endorsed at the upcoming High Level Dialogue on International Migration and Development of the UN General Assembly in October 2013.

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Key Words: Migration, Stranded Migrants, Documented Migrants, Undocumented Migrants

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1. TRACING THE ROOTS OF THE ‘STRANDED MIGRANTS’ CATEGORY

Recent developments in North Africa and the Middle East shed new light on the plight of certain migrants in need of international protection, increasingly referred to as ‘stranded migrants’. While the term is not new and in fact quite ancient, its content remains vague and undefined. Indeed, the category has been used to describe various groups and individuals in a range of situations around the globe.

The ‘stranded migrants’ terminology can be traced to 1921, where it was used to refer to black African slaves moving from the rural South of North America to the cities of the North, who eventually become stranded on their journey without any means to go back or forth, and had to rely on local communities.¹ In 1953, the United States (U.S.) Supreme Court referred to a migrant ‘stranded’ on Elis Island, not allowed to enter the U.S., his admission refused by 14 other countries.² Since 1971 until recently the term was used to refer to 240,000 stateless Biharis stranded in West Bengal after Bangladesh seceded from Pakistan.³ In 1981 the concept was used to describe the plight of ‘stranded illegal Mexicans’, who illegally crossed the border to the U.S. and were unable to go back ‘to their native land for various reasons, including injuries, ill health, or misfortune; debts and economic dependency’.⁴ More recently the stranded migrants terminology was used to refer to approximately 165,000 migrants in Iraq from Asia and Egypt, as well as Palestinian migrants and thousands of others who were stranded outside of Iraq as a result of the 1991 Gulf War.⁵

¹ Henderson, “The Negro Migration of 1916-1918 – Dependents and Delinquents”, *Journal of Negro History*, 6(4), 1921, 464; also in 1936 the term ‘stranded farmers’ appeared, to refer to migrating seasonal farmers stranded in urban centers and the question of whether assist them in their return to the farms: Garey “Stranded Farmers in Urban Centers”, *Soc. F.*, 14, 1936, 388.

² United States Supreme Court: *Shaughnessy v. US ex rel. Mezei* (1953), 345 US 206.

³ Grant, “The Legal Protection of Stranded Migrants”, in Cholewinski, R. et al. *International Migration Law*, 2007, 31; see also Immigration and Refugee Board of Canada, Country Review, 1 April 1994, para. 12.1, available at: <http://www.unhcr.org/refworld/docid/3ae6a868b.html>.

⁴ Johnson et al., *Illegal Aliens in the Western Hemisphere: Political and Economic Factors*, 1981, 89, 93.

⁵ Home countries eventually evacuated many of these stranded individuals, but many individuals had to wait outside of Iraq/Kuwait for the situation to improve, the majority depending on IOM assistance, see: Perruchoud, “Persons falling under the Mandate of the International Organization for Migration (IOM) and to Whom the Organization may Provide Migration Services”, *International Journal of Refugee Law*, 4, 1992, 210, 212; Lauterpacht et al., *International Law Reports*, 109, 1998, 270, 271 & 276; Human Rights Watch. 1 October 2000. *Kuwait: Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression*, available at: <http://www.unhcr.org/refworld/docid/3ae6a87e0.html>; Immigration and Refugee Board of Canada, *The Persian Gulf: The Situation of Foreign Workers*, 1 May 1991, para. 4, <http://www.unhcr.org/refworld/docid/3ae6a8068.html>; IOM (International Organization for Migration), *Assisted Voluntary Return and Reintegration Annual Report 2010*, p. 56, available at: <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/regulating/AVRR-Annual-Report-2010.pdf>.

The first multilateral attention to stranded migrants can be traced to an international conference in 1996 that addressed the displacement effects of the collapse of the Soviet Union.⁶ In its final declaration states recognized that assisted return programs, ‘in particular those aimed at illegal migrants stranded in transit and at stranded students’, are useful in preventing irregular migration.⁷

Lately, the stranded migrant terminology has been reverted to in relation to ‘migration hubs’ or ‘transit countries’ that serve as major transit destinations for migration movements. Some examples are Somalia for the Arab Peninsula;⁸ Yemen as transit country on the Arab Peninsula;⁹ North African states, such as Libya or Morocco, for migration flows to Europe;¹⁰ the Ukraine, Greece and Turkey for migrants from the East;¹¹ and Mexico, and to a lesser extent the Caribbean for migrants from the Caribbean, Latin- and South America to the north.¹² However, reviewing specific countries in the world shows that stranded migrants can easily be found anywhere: in Russia;¹³ in Japan after the tsunami and nuclear disaster in 2011;¹⁴ China;¹⁵ Syria;¹⁶

⁶ UNHCR, *Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States*, 11 June 1996, para. 1, available at: <http://www.unhcr.org/refworld/docid/4062e27e4.html>.

⁷ *Ibid.* at para. 85. In consequence, short after the conference in 1997, Lithuania concluded readmission agreements with a number of other countries to allow the return of ‘stranded migrants’: United States Committee for Refugees and Immigrants. 1 January 1997. U.S. *Committee for Refugees World Refugee Survey 1997 - Lithuania*, available at: <http://www.unhcr.org/refworld/docid/3ae6a8ba20.html>

⁸ See e.g. IOM (International Organization for Migration), *Stranded Ethiopian Migrants in Bosasso, North East Somalia/Puntland*, Field Mission Report, 2006.

⁹ IRIN (Integrated Regional Information Networks). 5 December 2010. *Yemen: Agencies scramble to help stranded migrants*, <http://www.unhcr.org/refworld/docid/4cfde6dfc.html>; Voice of America. 25 Sept. 2012. *Stranded Ethiopian Migrants Return from Yemen*, available at: http://www.voanews.com/content/stranded_ethiopian_migrants_return_from_yemen/1514842.html.

¹⁰ IOM, “Migrants Caught in Crisis: The IOM Experience in Libya”, 2012, p. 9; IOM, “Returnees From Libya: The Bittersweet Experience of Coming Home”, *Policy Brief*, 2011; Collyer, “Stranded Migrants and the Fragmented Journey”, *Journal of Refugee Studies*, 23, 2010, 273, 275.

¹¹ Dowd, “Trapped in transit: the Plight and Human Rights of Stranded Migrants” (2008), 156 *UNHCR New Issues in Refugee Research*, p. 7; IOM, *Activities, Facts and Figures 2012*, available at: <http://www.iom.int/jahia/Jahia/activities/europe/eastern-europe/turkey>; Council of Europe, Parliamentary Assembly. 27 January 2005. *Asylum-seekers and Irregular Migrants in Turkey*, Doc. 10445, para. 7 and conclusion viii, available at: <http://www.unhcr.org/refworld/docid/4305df1d4.html>; IRIN. 15 Oct. 2012. *Migration: Greece failing Asylum Seekers* available at: <http://www.irinnews.org/report/96547/MIGRATION-Greece-failing-asylum-seekers>.

¹² UNHCR, *Refugee Protection and International Migration in the Americas: Trends, Protection Challenges and Responses*, Background Document (2009) paras. 15, 17; see also UNHCR, “Mixed Migration in the Americas”, available at: <http://www.unhcr.org/pages/4a1d50cd6.html>; Huffington Post, *Central American Migrants Flood North Through Mexico to U.S.* (July 2012), available at: http://www.huffingtonpost.com/2012/07/13/central-americans-in-the-united-states_n_1671551.html.

¹³ IOM, “The IOM Moscow Times”, Issue 26, 5 (Aug. 2012).

¹⁴ Migrant Forum in Asia. 10 Dec. 2011. *Statement: International Human Rights Day*, available at: <http://www.mfasia.org/home/421-statement-international-human-rights-day>; Immigration Resource. March 2011. *Additional U.S. Immigration Relief for those Stranded due to Earthquake and Tsunami in Japan*, available at: <http://immigrationresource.net/temporary-u-s-immigration-relief-for-love-ones-stranded-in-japan-due-to-recent-catastrophe/>.

Iraq;¹⁷ Saudi Arabia;¹⁸ Malaysia;¹⁹ in Thailand (Bangkok) after the massive flooding in 2011;²⁰ in Brazil;²¹ in South Africa;²² New Zealand;²³ and places such as Tajikistan²⁴ and Afghanistan.²⁵ Also, in 2005, the International Organization for Migration (IOM) published a list of 700 assisted stranded migrants in 2004 and 2005, which leaves an impression of the magnitude of the phenomenon, with assisted returns from nearly 20 states all over the world.²⁶

Since 2011 the stranded migrants terminology received new impetus because of the humanitarian crises in Libya and Syria, and within a consequent international debate focused on migrants in crises. The IOM International Dialogue on Migration (IDM) session of April 2012 focused on 'Moving to Safety: Migration Consequences of Complex Crises', and the September 2012 session focused on 'Managing Migration in Crisis Situations', specifically pointing on the vulnerability of stranded migrants.²⁷ Furthermore, the chair of the 2011 Intergovernmental Consultations on Migration, Asylum and Refugees (IGC)²⁸ chose as the theme 'Humanitarian Crises', 'in particular how immigration systems respond in an agile and compassionate manner while

¹⁵ Amnesty International, *Persecuting the Starving: the plight of North Koreans fleeing to China*, 15 December 2000, available at: <http://www.unhcr.org/refworld/docid/3b83b6fb0.html>.

¹⁶ IOM, *UN CERF Funds Evacuation of Migrants, IDP Assistance in Syria*, Aug. 2012, available at: <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/cache/offonce/lang/en?entryId=32154>.

¹⁷ IOM, *Migrants Stranded in Iraq as Funds dry up to Assist them to Return Home*, Dec. 2009, available at: <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/cache/offonce?entryId=26714>.

¹⁸ Filipinos after quitting their work because of exploitation where not given their documents and could not return home: World Socialist Web site, *Stranded Migrant Workers Protest in Saudi Arabia*, Jan. 2011, available at: <http://www.wsws.org/articles/2011/jan2011/phil-j26.shtml>.

¹⁹ Photojournale, *Thousand of migrant Bangladesh workers reported to be stranded after the collapse of world financial markets in 2008, and the resulting impact in the areas of development and construction*, available at: http://www.photojournale.com/categories.php?cat_id=141 (May 2012).

²⁰ Migrant Forum in Asia, see note 14 above.

²¹ ReliefWeb, *Jesuit Refugee Service Latin American and Caribbean helps trafficked migrants from Haiti*, Aug. 2012, available at: <http://reliefweb.int/report/brazil/jrs-helps-trafficked-migrants-haiti>.

²² IOM, *IOM Upgrades Shelter for Stranded and Vulnerable Migrants in Musina*, July 2012, available at: http://iom.org.za/web/index.php?option=com_content&view=article&id=127&catid=19&Itemid=21&lang=en.

²³ Indian Newslink, *Stranded Migrants accuse employer of \$1 million fraud*, 2011, available at: http://www.indiannewslink.co.nz/index.php/archives_2011/oct_15_2011/stranded-migrants-accuse-employer-of-1-million-fraud.html.

²⁴ IOM, *Tajikistan, Operational Movements Projects*, 2012, available at: <http://www.iom.tj/index.php/activities/operational-movements>.

²⁵ MigrantRights, *Indian Migrants Stranded in Afghanistan*, 2010, available at: <http://www.migrant-rights.org/2010/01/14/indian-migrants-stranded-in-afghanistan/>.

²⁶ IOM, *Informal Consultations on Budgetary and Management Matters, Stranded Migrant Facility (SMF)*, Briefing Notes, Annex B, (6 Oct. 2005).

²⁷ IOM, IDM (International Dialogue on Migration), *Moving to Safety: Migration Consequences of Complex Crises*, Chair's Summary, 24 and 25 April 2012; IOM, IDM, *Protection Migrants During Times of Crisis: Immediate Responses and Sustainable Strategies*, Chair's Summary, 13 and 14 Sept. 2012, para. 4.

²⁸ The IGC (Intergovernmental Consultations on Migration, Asylum and Refugees) brings together 17 Participating States, the United Nations High Commissioner for Refugees, the International Organization for Migration and the European Commission.

preserving the integrity of the immigration system during the stresses inherent in such crises'.²⁹ Also Peter Sutherland, the UN Secretary General Ban Ki-moon's Special Representative on Migration, recently announced to launch an initiative on stranded migrants.³⁰

The Office of the United Nations High Commissioner for Refugees (UNHCR) in a recent initiative on the concept of 'temporary protection' discussed the possibility of using the concept for 'asylum-seekers or migrants within the context of humanitarian evacuation, those awaiting emergency resettlement; or in case of migrants, their evacuation home or onward movement/admission into third countries', specifically referring to '[s]tranded migrants, or those who cannot be returned to their country of origin in the short-term [...]'.³¹ Also, the discussion regarding the upcoming 'High Level Dialogue on International Migration and Development' of the United Nations General Assembly (UN General Assembly) in 2013 expressed a need for improved international cooperation on international migration and development in regard to crisis effecting migrant movements.³² The recent Global Forum on Migration & Development (GFMD) summit meeting also had a breakout session focused on 'Common Ground and Partnership to Protect Migrants in Distress',³³ potentially affecting a category of stranded migrants. In deed civil society at the meeting pledged to work with governments and international organizations for more protection for stranded migrants.³⁴

The consequent sections shall seek to clarify who exactly are stranded migrants, what are their characteristics and vulnerabilities. As current international attention focuses on the situation of stranded migrants in crisis, the recent conflicts and their impact on the stranded migrant debate shall be considered in relation to the many situations already presented in this introduction. Further, existing definitions of the group shall be considered comparatively to seek clarity and conclusions on the contours of the group, and whether it is conceivable and useful to define stranded

²⁹ IGC, *United States Chair's Theme 2010-2011*, Full Round 2010, 5-7 May 2010.

³⁰ At the GFMD (Global Forum on Migration and Development) in December 2012, see available at: <http://gfmd2010.wordpress.com/2011/12/02/q-a-with-peter-sutherland-bringing-gfmd-into-un-would-kill-it/>.

³¹ UNHCR, *Roundtable on Temporary Protection: 19-20 July 2012*, International Institute of Humanitarian Law, San Remo, Italy: Discussion Paper, 20 July 2012, para. 9 (h), available at: <http://www.unhcr.org/refworld/docid/506d8ff02.html>.

³² UN General Assembly, *Summary of the informal thematic debate on international migration and development*, UN doc. A/65/944, 12 Sept. 2011.

³³ GFMD, *Sixth Meeting of the Global Forum on Migration and Development*, Report of the Proceedings, p. 19, available at: http://www.gfmd.org/documents/mauritius/gfmd_mauritius12_report_of_the_proceedings.pdf.

³⁴ *Ibid.* at 9.

migrants at all. Given the previous research, it appears necessary to address the vulnerabilities of stranded migrants in more detail in order to arrive at conclusions on specific protection needs.

2. RECENT DEVELOPMENTS – LIBYA AND SYRIA

The civil unrest and armed conflicts in North Africa and the Middle East that started in late 2010, prominently referred to as the ‘Arab Spring’, caused massive displacement, with over a million migrants displaced during the Libyan crisis, and already more than a million people fleeing the current Syrian crisis.³⁵

2.1. Libya in 2011

Millions of people were displaced both within and outside of Libya in the crisis that revolved around the overthrow of the Gaddafi regime in 2011. The great majority of the externally displaced people were third country nationals.³⁶ The majority fled to Tunisia, Algeria, Chad, Egypt and Niger, and across the Mediterranean Sea to the Italian island of Lampedusa and the Republic of Malta.³⁷ According to IOM, a total of 790,000 migrant workers crossed the Libyan border into neighboring countries.³⁸

To be sure, more than half of the migrants crossing Libya’s border had neighboring nationalities i.e. Chadians, Egyptians, Nigeriens and Tunisians – thus returning directly to their home country. However, the remaining were third country nationals stranded in a country that was not their country of origin, an unintended country of transit or destination, where they found themselves in desperate need of protection and humanitarian assistance.³⁹ To react to these protection needs IOM and

³⁵ UNHCR, *Number of Syrian Refugees reaches 1 Million mark*, 6 March 2013, available at: <http://www.unhcr.org/513625ed6.html>.

³⁶ UNHCR, *2012 UNHCR Country Operations Profile – Libya*, 2012, <http://www.unhcr.org/pages/49e485f36.html>; Libya’s economy has long relied on migrant workers. Accordingly, a de facto ‘open door’ policy towards migrant workers in particular operated as an enormous ‘pull factor’, leaving Libya not only as a traditional transit country for migrants endeavoring to reach Europe but also as a major country of employment for migrants—and hence a destination country in its own right, see: IOM, *The Middle East and North Africa – Annual Report 2012*, p. 24 and Bredeloup et al., “The Libyan Migration Corridor”, *Research Report European University Institute* (2011), p. 5, available at: <http://www.eui.eu/Projects/TransatlanticProject/Documents/CaseStudies/EU-USImmigrationSystems-Security-CS.pdf>.

³⁷ IOM, see note 10 above, p. 15.

³⁸ *Ibid.*, 5.

³⁹ *Ibid.*, 11.

UNHCR organized an emergency response, airlifting humanitarian aid and providing transportation assistance to more than 210,000 stranded migrants to help them return to their countries of origin or to resettle.⁴⁰ At the time of this writing however, some 800 individuals who fled the Libyan war were still in legal limbo or stranded in a border camp in Tunisia, having thus far failed to win asylum or resettlement elsewhere and threatened by the immanent closure of the camp.⁴¹ At the same time, large numbers of third country nationals were unable to reach the Libyan border and were ‘stranded’ in major cities inside the country, eventually assisted by IOM to leave the country.⁴² In sum IOM evacuated 40,000 stranded migrants trapped inside Libya, by boat, bus and plane.⁴³

The category ‘stranded migrants’ in Libya thus includes three different groups: migrants stranded inside Libya and unable to reach the border; migrants stranded at the border of Libya waiting to be admitted to a neighbouring state; and migrants stranded inside neighbouring countries (third countries). This last group is not a new phenomenon; as noted earlier the phenomenon was also observed in the 1991 Iraq crisis. As in 1991, the Libyan case proved that this group could easily consist of large numbers. However, the group is different from all other groups of stranded migrants because the individuals are stranded not in their country of transit nor destination, but in a third country to which they were forced to flee to, neither nationals there nor recognized as a refugee under the 1951 Convention Relating to the Status of Refugees (1951 Convention).⁴⁴

In the Libyan crisis the first group was also of a larger magnitude, while the second group was smaller. Most individuals in the first group were eventually evacuated out of Libya by IOM, while those in the second group were assisted by

⁴⁰ UNHCR, *IOM and UNHCR join forces, appeal for massive humanitarian evacuation for people fleeing Libya into Tunisia*, 1 March 2011, <http://www.unhcr.org/refworld/docid/4d6e0ca22.html>; IOM, *The Middle East and North Africa – Annual Report*, 2012, p. 24.

⁴¹ IRIN, *Hundreds in limbo at camp on the Tunisian-Libyan border* (16 Jan. 2013), available at: <http://www.irinnews.org/report/97254/Hundreds-in-limbo-at-camp-on-the-Tunisian-Libyan-border>; GlobalPost, *Tunisia camp for Libya refugees to close in June* (22 Mar. 2013), available at: <http://www.globalpost.com/dispatch/news/afp/130322/tunisia-camp-libya-refugees-close-june>.

⁴² More than 1 million Libyans fled to Tunisia, Egypt and overseas: UNHCR, *Libya 2012*, note 36 above; UNHCR, *2012 UNHCR Country Operations Profile – Tunisia*, 2012, available at: <http://www.unhcr.org/pages/49e486166.html>; UNHCR, *2012 UNHCR Country Operations Profile – Egypt*, 2012, available at: <http://www.unhcr.org/pages/49e486356.html>; Nascimbene et al., “The ‘Arab Spring’ and the Extraordinary Influx of People who Arrived in Italy from North Africa”, 13 *European Journal of Migration and Law* (2011), p. 341; IOM, *The Middle East and North Africa – Annual Report*, 2012, p. 24.

⁴³ IOM, see note 10 above, p. 16.

⁴⁴ United Nations, Convention Relating to the Status of Refugees, 28 July 1951, Treaty Series, vol. 189, p. 137.

UNHCR and IOM, and eventually admitted by boarder authorities. That left the third group to be of enduring concern, based on its vulnerability and sheer numbers.

2.2. Syria from 2011 Ongoing

The current situation in Syria is another example where the ‘stranded migrants’ terminology is increasingly chosen to refer to migrants trapped in dangerous situations due to armed conflict, even though at the time of this writing the numbers appear to be smaller compared to the case of Libya, as most people on the move are Syrian nationals. IOM has reported that ‘[m]any of the migrants are female domestic workers, who are trying to leave the country but they cannot because they do not have the proper documentation or they came into the country through smuggling networks, or undocumented migrants, they do not have the resources to return and in some cases it seems the employers are holding back pay, or passports or documents’.⁴⁵ In an update on the situation in Syria, IOM devoted a specific subsection to ‘Emergency Repatriation of Stranded Migrants’, reporting that since November 2011, 6,284 stranded migrants from 37 countries have requested IOM assistance to safely return to their country of origin.⁴⁶ By the end of the year 3,223 were provided with departure assistance.⁴⁷

In the Syrian case the majority of stranded migrants appears to be those trapped within the country with no means to move on or out. The main solution offered is to return to their respected home countries with assistance from IOM. By contrast, the category of stranded migrants at the border to third countries or migrants stranded in third countries, as identified in the Libyan case, appears to exist only on a very small scale, incomparable to the magnitude during the Libyan crisis.

2.3 Libya’s and Syria’s Impact on the Stranded Migrants Category

The developments of the past two years revealed the high potential for migrants to be trapped in crisis: stranded in their country of destination or transit or in ‘third’ countries

⁴⁵ United Nations Radio, *Evacuation of migrant workers from Syria hit by lack of funds*, 5 October 2012, available at: <http://www.unmultimedia.org/radio/english/2012/10/evacuation-of-migrant-workers-from-syria-hit-by-lack-of-funds/>.

⁴⁶ IOM, *IOM Regional Response to the Syria Crisis* (15 Nov. 2012), pp. 2, 3, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/IOM%20Regional%20Response%20Sitrep%2015%20November.pdf.pdf>.

⁴⁷ *Ibid.*

that are neither countries of destination nor transit. In comparison to other groups of stranded migrants not stranded because of crisis, the numbers of those trapped in crisis tend to be large, going into the hundreds of thousands, as it has been observed in the Libyan crisis.

However these two recent examples of crisis shed light on another form of stranded migrants: stranded migrants in *third countries*, neither their destination, nor planned transit country, but a state to which they were forced to flee. In Libya the group of migrants stranded in third countries appears to be the majority, while in Syria migrants appear to be mainly stranded within the country. Both groups have in common, however, the inability to move and a need for evacuation.

As shown by these two examples that exist in a context of civil war and violence, stranded migrants in third countries appear to be closely linked to specific humanitarian situations. This assumption is reinforced through the observation of similar forms of stranded migrants in the 1991 Iraq war, and needs to be included in the following analysis of the multifaceted notion.

3. STRANDED MIGRANTS – CHARACTERISTICS OF THE CATEGORY

In view of the foregoing, the following general observations related to the characteristics of the category of ‘stranded migrants’ can be made:

First, both numbers and nationality of stranded migrants vary widely and are not a decisive factor for identifying persons within the category. As described above, reported numbers go up to hundreds of thousand in places like Libya or Iraq; in cases elsewhere several thousands, e.g. in Morocco, Yemen, Syria, Somalia and Mexico; some hundred migrants were reported to be stranded in Saudi Arabia, Japan or Malaysia; to a few individuals in New Zealand, Australia, Tajikistan, Russia and many other countries all over the world.⁴⁸ In terms of nationalities stranded migrants appear to come from anywhere, all over the world, and cannot be linked to a specific region.

Second, migrants may become stranded during any part of their migration movement: in their country of origin/departure; on the way to their country of

⁴⁸ For all please refer to the more detailed overview under para. 1 above.

destination during their land travel or on the high seas (in transit);⁴⁹ in their current country of destination;⁵⁰ or when forced to leave their destination or transit country of which they are not nationals (third country).⁵¹ They could even get stranded on their way back to their country of origin.

Third, reasons for not being able to move or return because of being ‘stranded’ can be largely distinguished on *objective* and *subjective* grounds. Objective grounds for the inability to move can be humanitarian situations and/or state-driven. Humanitarian situations could be the outbreak of widespread violence, civil unrest or war in the country of residence or transit, or even natural disaster (*force majeure*). State-driven reasons can be immigration policies or discrimination against groups of migrants, e.g. detention by the authorities arising from the often-unregulated status or statelessness of migrants. Subjective grounds are reasons related to an individual situation, e.g. an unwillingness to return, economic reasons (no means to pay the travel back home; or debts at the current location), health issues or abuse by employers. Of course, objective and subjective grounds might occur simultaneously or be interrelated.

Fourth, while many of the humanitarian agencies and researchers link stranded migrants to irregular migration flows or undocumented migrants, it can be observed that this is not necessarily the case. Migrants can become stranded in regular and irregular movements; they can be documented or undocumented. While it is clear that migrants in regular movements and documented migrants generally have a lower risk of becoming stranded, that is not necessarily the case in situations of widespread violence or *force majeure*.

Fifth, many ‘stranded migrants’ are asylum-seekers, expelled persons and victims of human trafficking and smuggling. These groups have long been identified by UNHCR and others involved in refugee protection activities.⁵² In one example at the

⁴⁹ Many migrants who attempt to reach Australia or Europe become so.

⁵⁰ Like the examples in Saudi Arabia or New Zealand prove.

⁵¹ Like in the case of Libya, to Tunisia and Egypt.

⁵² UNHCR, *Report of the United Nations High Commissioner for Refugees*, 24 August 1984, A/39/12, para. 129; UNHCR, *Italy 1987 Annual Protection Report*, 1 January 1987; UNHCR, *Yugoslavia 1990 Annual Protection Report*, 1 January 1990, para. 2.1.2; UNHCR, *Russia 1992 Annual Protection Report*, 1 January 1992, para. 3.1.5; UNHCR, *Kenya 1992 Annual Protection Report*, 1 January 1992, para. 4.3.1; UNHCR, *Romania 1993 Annual Protection Report*, 1 January 1993, para. 7.2.2; UNHCR, *Cambodia 1994 Annual Protection Report*, 1 January 1994; UNHCR, *Report of the United Nations High Commissioner for Refugees*, 1994, 1 January 1995, A/49/12, para. 128; UNHCR, *Report of the United Nations High Commissioner for Refugees* [covering the period 1 Jan. 94-31 Mar. 1995], 25 April 1995, E/1995/52, para. 137; Immigration and Refugee Board of Canada, *Sri Lanka: Alien Smuggling*, 1 May 1996, para. 3.3., available at: <http://www.unhcr.org/refworld/docid/3ae6a8660.html>; Amnesty International, *Kingdom of Cambodia: Diminishing respect for human rights*, 28 May 1996, ASA 23/002/1996, para. 59, available at:

time of this writing, in Syria, hundreds of Iraqi refugees have become stranded awaiting their visas for travel to resettle in the U.S., because the U.S. stopped screening refugees in Syria due to the increasingly difficult security situation.⁵³

It is not uncommon for asylum-seekers to become stranded after their claim is rejected. As a group however, they might need to be distinguished from the stranded migrant groups discussed previously because their initial reasons to move were not migration related but flight-related. As subjects of an asylum process (even unsuccessful) they may be holders of specific statuses and rights under applicable law (notably, certain national, regional and international frameworks), and existing protection strategies might apply.⁵⁴

Sixth, and concluding, some individuals appear to be especially vulnerable to becoming stranded, namely unaccompanied minors, minors in general and women. Reports frequently point to the effect of their specific vulnerabilities increasing the likelihood of becoming stranded.⁵⁵

<http://www.unhcr.org/refworld/docid/3ae6a9ae14.html>; UNHCR, *Report of the United Nations High Commissioner for Refugees*, 1996, 4 September 1996, A/51/12, para. 192, available at: <http://www.unhcr.org/refworld/docid/3b00f4940.html>; Amnesty International, *Failure to Protect Asylum-seekers*, 1 April 1997, EUR/46/03/97, available at: <http://www.unhcr.org/refworld/docid/3ae6a9e50.html>; UN Human Rights Committee (HRC), *State Party Report: Hong Kong Special Administrative Region of the People's Republic of China*, 16 June 1999, CCPR/C/HKSAR/99/1, para. 169; IHF (International Helsinki Federation for Human Rights), *A Form of Slavery: Trafficking in Women in OSCE Member States*, 19 June 2000, <http://www.unhcr.org/refworld/docid/46963afd0.html>; UNHCR, *Note on international protection* (13 Sept. 2001), A/AC.96/951; Amnesty International, *Concerns in Europe: January - June 2001*, 1 September 2001, EUR 01/007/2002, available at: <http://www.unhcr.org/refworld/docid/45bf148c2.html>; UNHCR, *Report of the United Nations High Commissioner for Refugees* [covering the period 1 Jan. 2000-31 Mar. 2001], 18 May 2001, E/2001/46, para. 25; International Federation of Red Cross and Red Crescent Societies (IFRC), *Assistance to Asylum-seekers in Europe; A Guide for National Red Cross and Red Crescent Societies*, 2003; UNHCR, *Report of the United Nations High Commissioner for Refugees* [covering the period from 1 January 2007 to 30 June 2008], 2008, A/63/12, para. 54.

⁵³ New York Times, *Unrest and American Safety Concerns Strand Iraqis in Syria Awaiting Visas for U.S.* (23 Jan. 2012), available at: <http://www.nytimes.com/2012/01/24/world/middleeast/unrest-strands-iraqis-in-syria-awaiting-american-visas.html>.

⁵⁴ Notably, forms of complementary protection as they are often invoked after a failed asylum application or a cessation of refugee status, see: Mandal, "Protection Mechanisms Outside of the 1951 Convention ('Complementary Protection')", *UNHCR Legal and Protection Policy Research Series*, 2, June 2005; Also forms of temporary protection might apply to these cases, while this is debatable, see: Fitzpatrick, "Flight From Asylum- Trends Toward Temporary 'Refuge' and Local Responses to Forced Migration", 35 *VA.J.Int'l L.* (1994) p. 13.

⁵⁵ CEDAW Committee, *General Recommendation No. 26 -- forty-second session*, 2008, Women Migrant Workers, paras. 10-13; UNIFEM, *Mexico City Conclusions*, Mexico City, Mexico, Sept. 7-8, 2010, *Promoting and Protecting the Rights of Women Migrant Workers: Partnerships for Migration and Human Development: Shared Prosperity-Shared Responsibility*; IOM, "The Human Rights of Migrant Children", 15 *International Migration Law* (2008) 11; Human Rights Council, *Study of the Office of the United Nations High Commissioner for Human Rights on Challenges and Best Practices in the Implementation of the International Framework for the Protection of the Rights of the Child in the Context of Migration*, UN Doc. A/HRC/15/29 (July 5, 2010), part II. Thematic Issues: The Protection of Children in the Context of Migration.

4. STRIVING TO DEFINE 'STRANDED MIGRANTS'

No accepted international definition of 'stranded migrants' exists. In fact, after what has been observed in the preceding paragraphs, it appears that the term 'stranded migrant' can apply to nearly every group of displaced persons, with the only commonality being that they cannot move out of the situation in which they find themselves. They might be part of irregular or regular movements, be documented or undocumented and stranded because of objective and/or subjective reasons. Apparently the terminology of 'stranded migrants' has often been employed to raise international attention to situations of particular interest to individual actors – because, after all, it is a catchy term. On the other hand, the fact that migrants are in need of international protection because they are effectively trapped outside their country of origin cannot be ignored. To date however, the discussion on defining 'stranded migrants' appears more to have been mainly an exercise of matching realities with existing standards of protection.

In the past various actors have repeatedly attempted to define the group and when reviewing the literature, several perspectives on who a stranded migrant is can be identified. The question that remains to be answered is: have any of these attempts helped to draw a clearer outline of the category, and more generally, in the end does it make any sense to attempt to define the category?

4.1. The State of the Strive

Though the term 'stranded migrant' is now an integral part of the institutional discourse, there are almost as many definitions as actors. The diversity of definition arguably reflects the differences in the mandates and interests of the various actors involved in this issue.

4.1.1. IOM

Arguably IOM reverted to the stranded migrants terminology for the first time during the 1991 Iraq war.⁵⁶ The first public reference to the terminology, however, came only shortly after, when IOM established an emergency transport facility called Stranded

⁵⁶ Dowd, see note 11 above, p. 18.

Migrant in Transit (SMIT). This fund was supposed to help foreigners stranded in former Soviet Republics, without the means of returning to their home countries.⁵⁷ IOM's 2004 International Migration Law Glossary contains no definition of stranded migrants. Nevertheless in 2005 the concept was institutionalized to meet its purpose and function stemming from article 1 of the IOM Constitution,⁵⁸ of providing assistance to persons in need of international migration services. The IOM Council authorized a new funding mechanism, the Stranded Migrant Facility (SMF).⁵⁹

In its briefing note on the establishment of the SMF, IOM stated that the organization 'has long been called upon to provide humanitarian assistance to migrants stranded in transit or at destination who have no means of returning home or continuing their journey, and who are not eligible for assistance under any known program'.⁶⁰ Indeed, IOM previously made increasing use of its Assisted Voluntary Return and Reintegration (AVRR) tool to help stranded migrants to return to their country of origin.⁶¹ IOM thereby focused on persons who could not move in any direction based on subjective reasons (no means) and were not covered by any other 'specific' protection framework, but were willing to leave. In most cases today, IOM supports the return with integration in the country of origin. Other scenarios of stranded individuals appear not to be conceptually a part of IOM activities.⁶² The activities during recent and past crises appear to be emergency activities that IOM only recently started to study more comprehensively.⁶³

In a 2008 *internal* discussion note related to that year's IDM, titled 'Challenges of Irregular Migration: Addressing Mixed Migration Flows',⁶⁴ IOM stated that '[t]he term "stranded migrant" refers to individuals who have entered a country of transit or

⁵⁷ IOM, see note 26 above, para. 5.

⁵⁸ IOM, Constitution, Article 1.

⁵⁹ IOM, see note 26 above.

⁶⁰ *Ibid.* para. 2.

⁶¹ IOM, *Assisted Voluntary Return and Reintegration*, <http://www.iom.int/jahia/Jahia/activities/by-theme/regulating-migration/assisted-voluntary-return-and-reintegration/>: the programs purpose is stated as, 'AVRR is one of the many services IOM offers to its Member States in the interest of efficient migration management within and between countries. It aims at orderly, humane and cost-effective return and reintegration of migrants who either have applied for asylum or have seen their asylum applications rejected, and other migrants currently residing or stranded in host countries who are willing to return voluntarily to their country of origin'. See IOM, *AVRR Annual Report 2010*, p. 1, available at: <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/regulating/AVRR-Annual-Report-2010.pdf>.

⁶² See IOM, *AVRR Annual Report 2010*, pp. 32, 45, 56, available at: <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/regulating/AVRR-Annual-Report-2010.pdf>.

⁶³ IOM, see note 27 above.

⁶⁴ At hand with the author.

destination but have not been granted a right to stay, while at the same time being unable to return to their home countries. Their predicament may stem from an inability or unwillingness to prove their nationality, combined with a refusal by States to admit or readmit them'.⁶⁵ Hence in this case IOM linked the 'no means' factor to a second one: a state that does not grant a right to stay and a form of *de facto* statelessness. The stranded migrants were seen as persons who became stranded based on a government decision in combination with limited individual resources to travel onwards. The IOM definition did not refer to other groups, such as those addressed in the first part of this paper, and therefore the definition appears very narrow.

Recently, growing out of the 'Arab Spring' developments addressed earlier, the approach to define stranded migrants appears to have changed. In October 2012, an IOM background paper defined generally 'situations in which a migrant is unable to stay in the country of destination/transit, unable to return to the home country, and unable to move to a third country, and typically subject to severe vulnerability and distress. Crises and emergencies represent one scenario among many others which can lead to stranding'.⁶⁶ Apparently, this recent definition widens the previous position of IOM to situations of 'crisis and emergencies', and even further: 'among many others'. Also, the term 'unable' is chosen to describe the reason for being stranded, i.e. unable to stay, move back or forward. The term 'unable' is vague enough, to include all possibilities for a person to move, be they subjective or objective. Still, the definition appears to exclude large sets of possible stranded migrants: e.g. rejected asylum-seekers and victims of human trafficking or forced labour.

IOM's policy approach to stranded migrants appears ambitious and ambiguous enough to encapsulate stranded migrants within its own mandate. As a consequence, however, this notion of stranded migrant reflects a self-referential logic.

4.1.2. UNHCR

Like IOM, UNHCR has looked at stranded migrants through the specific lens of its own mandate. The term was first used by UNCHR in 1984 in referring to assistance given to

⁶⁵ IOM, *Challenges of Irregular Migration: Addressing Mixed Migration Flows*, Discussion Note, para. 20, 7 November 2008, MC/INF/294.

⁶⁶ IOM/IPI, *Migrants in Time of Crisis: An Emerging Protection Challenge* (2012), Background Paper for a Workshop to be held at the International Peace Institute, p. 3, fn. 8, New York, 09 Oct. 2012.

'needy Lebanese stranded in Europe'.⁶⁷ Ten years later a general definition of the notion was given in a 1994 publication commissioned by the International Labor Organization (ILO) related to an initiative in collaboration with UNHCR on 'International Aid as a Means to Reduce the Need for Immigration'. Twelve types of migration were provisionally distinguished, including 'stranded migrants'.⁶⁸ Later, 'stranded persons' were defined as 'those termed "refugees in orbit" and transit migrants who have been prevented from entering their chosen country of destination and who do not wish to return to their country of origin'.⁶⁹

Plainly, the group envisioned comprised persons on the move, unsuccessfully attempting to reach their country of destination. This definition excluded 'stranded persons' in destination countries, possibly a large part of the group of stranded migrants. Those stranded in third countries were also excluded. Lastly, the definition limits the group to those 'who do not wish to return to their country of origin' (subjective), leaving out the group of those who are unable to return out of objective reasons. In sum this definition provides a too narrow an approach, capturing only some parts of the whole, related to the organization's mandate.

In 1996 UNHCR led the preparation for the conferences previously described on displacement related to the collapse of the Soviet Union.⁷⁰ Stranded migrants were identified as one type of movement to be addressed at the conference, without further stating why and to what extent.⁷¹ At the conference, the 50 participating states focused on 'illegal migrants' and so called 'involuntary relocating persons',⁷² but did not specifically address stranded migrants as proposed by UNHCR, apparently choosing to cover these individuals within the previous two categories.⁷³

In 2001 UNHCR used the 'stranded' terminology for the first time in an annual Note on International Protection (Note), referring to 'stranded asylum-seekers'.⁷⁴ The

⁶⁷ UNHCR, *Report of the United Nations High Commissioner for Refugees*, 24 August 1984, A/39/12, para. 129, available at: <http://www.unhcr.org/refworld/docid/3ae68c350.html>.

⁶⁸ Böhning, "Aid in Place of Migration?: Selected Contributions to an ILO-UNHCR Meeting", *International Labour Office Publication* (1994) p. 76.

⁶⁹ *Ibid.* at p. 94.

⁷⁰ UNHCR, see note 6 above.

⁷¹ UN General Assembly, *Comprehensive consideration and review of the problems of refugees, returnees, displaced persons and related migratory movements: Report of the Secretary-General*, 7 September 1995, A/50/414, para. 14, <http://www.unhcr.org/refworld/docid/3b00f25e8.html>.

⁷² UNHCR, see note 6 above, para. 1.

⁷³ *Ibid.*

⁷⁴ UNHCR, *Note on international protection* (13 Sept. 2001), A/AC.96/951.

Note referred to asylum-seekers at airports, 'who have been refused access to asylum procedures, some stranded for months in a situation of limbo',⁷⁵ and reported women and girls who are victims of trafficking 'and have been stranded en route, have given rise to acute protection needs'.⁷⁶ Another 2001 UNHCR publication studying refugee trafficking and smuggling observed as one of the most 'significant hazards' the risk for victims to become stranded.⁷⁷ As seen before, this angle to stranded migrants was not entirely new, and it exemplifies the organization's focus on displacement related to its mandate.

In its '10-Point Plan of Action on Refugee Protection and International Migration' of 2006, UNHCR set out 'ten key areas in which UNHCR has an interest and a potential role to play'.⁷⁸ While stranded migrants were not mentioned, the 2010 follow-up paper took account of stranded migrants and defined them as '[p]ersons who are not in need of international protection and who cannot remain lawfully on the territory of a host State, move lawfully to another country, or return to their country of origin'.⁷⁹ The notion that stranded migrants are 'persons who are not in need of international protection' portrayed them as being not vulnerable and protected under some other framework. In effect the definition appears to ignore that being 'stranded' in a humanitarian crisis and left unprotected to human rights violations is a valid case for needing international protection. Further, a major shortcoming is the definition's generality, leaving many details identified in this paper unaddressed. Also, the definition is not reflective of perspectives other than UNHCR's mandate, and thus while the definition might serve UNHCR's mandate, it is not contributing to the field on the whole.

As in IOM's case, UNHCR has not yet realized the potentially overarching reach of stranded migrants, and has considered them mainly when their situations are related to its mandate. The perspective offered is thus too limited, and as seen in Libya leaves the agency vulnerable to situations where no specific protection policies exist and hence where creativity is demanded.

⁷⁵ *Ibid.* at para. 20.

⁷⁶ *Ibid.* at para. 70.

⁷⁷ Morrison, "The trafficking and smuggling of refugees: the end game in European asylum policy", *UNHCR New Issues in Refugee Research*, 39, 2001, p. 45.

⁷⁸ UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, p. 2, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

⁷⁹ UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, Glossary, 'Stranded Migrants', February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>; Interestingly, UNHCR pointed on the IOM AVRRE tool as a strategy to promote return of 'migrants stranded in transit' or 'stranded students'.

4.1.3. The Global Migration Group

The most successful attempt to define stranded migrants might be seen in a Background Paper for a Global Migration Group (GMG) Practitioners Symposium in May 2010, prepared by UNHCR with contributions from the GMG, namely IOM, UNFPA, UNICEF and UNODC.⁸⁰ Here stranded migrants were defined as 'such people ... "stranded" in the sense that they are unable or unwilling to return to their country of origin, cannot regularize their status in the country where they reside, and do not have access to legal migration opportunities that would enable them to move on to another state'. While being very general in nature, this apparently collaborative effort meant for practitioners covers large parts of the group thanks to its generality. However, the general language chosen carries the difficulty that nearly anybody not covered by an existing protection framework or unable to regularize his or her status would qualify as a stranded migrant, as long as he/she has no way to return to the country of origin. This broad view, however, still does not encompass other categories that possibly exist, as e.g. individuals qualifying for complementary protection, or stateless people. Further, while already including objective and subjective reasons for being stranded, it appears that the crisis dimension is not part of this definition. To address the stranded migrants notion in this way does not recognize its apparent multifaceted nature. Thereby it is not contributing to any specific group of stranded migrants at all.

4.1.4. UNESCO

Somehow surprisingly, the United Nations Educational, Scientific and Cultural Organization (UNESCO) came up with a rather large definition of the term. In a 2008 publication part of 'The Hague Process on Refugee and Migration of the UNESCO Section on International Migration and Multicultural Policies', the stranded migrants terminology was defined under the sub-section 'Migrant with Irregular Status' as 'a general term sometimes used to refer to a person unable to return to his/her previous country of residence or origin and compelled to remain in a country of transit or destination/settlement. This situation might be due to circumstances in the country of origin, a position of prolonged detention or practical difficulties. Stranded migrants may

⁸⁰ Global Migration Group, *Building partnerships for identifying, protecting, assisting and resolving the situation of stranded and vulnerable migrants*, Global Migration Group Practitioners Symposium, Background Paper, Geneva, 27-28 May 2010.

be individuals whose claim for refugee status has been rejected. They may experience irregularity of status although not systematically'.⁸¹

While this definition seems to cover substantial parts of the category, it appears insufficient for a structured study and too long to serve as a working definition. Also the link to 'migrants without immigration status' is apparently not reflective of the realities, and the narrow focus on rejected asylum-seekers and undocumented migrants appears too limited. Given the information part of this study and the characteristics of the group analyzed in part 3 of this paper, this definition fails to cover the broader realities.

Nonetheless, in 2011 UNHCR and IOM used this definition in a collaborative publication on 'Protecting Refugees and Other Persons on the Move in the ECOWAS Space', to which also the UN Office of the High Commissioner for Human Rights (OHCHR), the ILO and the United Nations Children's Funds (UNICEF) contributed.⁸²

4.1.5. Non-Governmental Organizations

In 2006 Amnesty International was the first NGO to address the issue of 'stranded migrants' by name, stating that '[m]any migrants are stranded in countries of transit or destination: they have been denied the right to enter and remain illegally, but are unable to return to their countries of origin'.⁸³ In detail Amnesty elaborated that '[s]ome migrants cannot return to their countries of origin due to continuing insecurity, because there is no legal means to get there, or because it is impossible in practice for them to return. Many are not granted any form of legal status, even where return proves impossible'.⁸⁴ Amnesty further observed, 'Many stranded migrants are individuals whose applications for refugee status have been turned down. People whose asylum claims have been rejected under a fair and satisfactory procedure are no longer protected under international refugee law. However, they should continue to enjoy the

⁸¹ UNESCO, *People on the Move: Handbook of Selected Terms and Concepts*, Meyer eds. et al., 2008, p. 15.

⁸² UNHCR, *Protecting Refugees and Other Persons on the Move in the ECOWAS Space*, January 2011, p. 16, available at: <http://www.unhcr.org/refworld/docid/4e54961d2.html>.

⁸³ Amnesty International, *Living in the Shadows: A primer on the Human Rights of Migrants* (2006), 'Stranded Migrants, including rejected asylum-seekers', available at: <http://www.amnesty.org/en/library/asset/POL33/006/2006/en/f8aa4dfe-d3fd-11dd-8743-d305bea2b2c7/pol330062006en.html#1.6.3.'Stranded%20migrants',%20including%20rejected%20asylum-seekers|outline>.

⁸⁴ *Ibid.*

protection of international human rights law'.⁸⁵ This latter group usually qualifies for forms of complementary protection as offered by many states today. Often those who cannot be returned to their countries of origin would be held in prolonged and sometimes indefinite detention.

Amnesty thereby linked the group of stranded persons to both migrant and refugee related movements, although the organization understood the reason for being stranded as mainly an individual inability to return. Further, the analysis seems to be closely linked to undocumented migrants, not referring at all to documented stranded migrants. Also, the NGO does not include persons in humanitarian crisis displaced in third countries, as well as victims of human trafficking, thereby excluding large parts of the group.

Other NGOs referred to the concept of stranded migrants, but did not specifically study or attempt to define them, largely regarding them as migrants or asylum-seekers stranded at borders or within transit countries, because of their non-admission to the country of destination.⁸⁶

4.1.6. Scholars and Practitioners

Academic literature on the topic is scanty and often outdated or one-sided. There appears to be a lack of a comprehensive overview and holistic study of the issue, and building on this, ambiguity on whose protection is going to be addressed.

In 2007 Stefanie Grant was the first scholar focusing on stranded migrants. She observed, 'In practice, migrants become legally stranded, where they are caught between removal from the state in which they are physically present, inability to return to their state of nationality or former residence, and refusal by any other state to grant entry. They may also be stranded where there are practical or humanitarian reasons which prevent them from returning home'.⁸⁷ According to Grant, rejected asylum-seekers, migrant workers or economic migrants, who might have entered a country

⁸⁵ *Ibid.*

⁸⁶ Human Rights Watch, *Ukraine: Migrants, Asylum Seekers Regularly Abused*, November 30 2005; Human Rights Watch, *European Union: Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees*, 17 October 2006, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4565dfbb4>.

⁸⁷ Grant, see note 3 above, p. 31.

illegally assisted by smugglers or traffickers could fit her definition.⁸⁸ Grant presented the group of stranded migrants as largely comparable to stateless persons, as often the stranded situation would also be related to an inability to return to the country of origin, based on the situation there or the respective government's refusal to accept them.⁸⁹ However, her concept is open to other groups, previously only identified by UNHCR, e.g. rejected asylum-seekers or victims of human trafficking. Also, Grant traced a link between being stranded and legal status, seeing 'illegal entry' as a major characteristic of the group.⁹⁰

Her definition though has several shortcomings: as has been seen, stranded individuals do often have a country of origin to which to return. Her strong link to an inability of return because of the situation in the home country as '*de facto* stateless' is only one possibility, in fact relatively small and less common in recent examples. One should further add that the very notion of *de facto* statelessness is controversial in itself and legally disputable. It is not helpful for the purpose of defining stranded migrants as it substitutes a vague term by another one. Further, Grant identified the refusal of third countries to accept the stranded persons as a major reason for their situation, again a less widespread factor. Also, many stranded migrants do not face removal and are therefore not 'caught' between removal and an inability to return. Lastly, she appears to neglect some major reasons for becoming stranded: subjective individual reasons and the possibility of becoming stranded in third countries. Her definition thereby can be seen as relatively inclusive, open to migration and refugee movements, but failing to identify all underlying reasons for the existence of this group, linking it too strong to a critical *de facto* statelessness angle.

Separately, a 2008 publication attempted to define stranded migrants, framing them largely as experiencing 'the plight of those who leave their own country for reasons unrelated to refugee status, but who become destitute and/or vulnerable to human rights abuses in the course of their journey. With some possible exceptions, they are unable or unwilling to return to their country of origin, are unable to regularize their status in the country where they are to be found, and do not have access to legal migration opportunities that would enable them to move on to another state'.⁹¹ This definition too has shortcomings because it excludes refugee related movements

⁸⁸ *Ibid.* p. 31

⁸⁹ *Ibid.* p. 29.

⁹⁰ *Ibid.* pp. 31, 32.

⁹¹ Dowd, see note 11 above, p. 4.

(notwithstanding it was a UNHCR publication) and relates to people on the move and not those who are stranded in destination countries or third countries. This definition is far too narrow, while at the same time too descriptive and generalizing as to provide a clear definition of the category.

Another study simply stated, ‘Stranded Migrants exist because of a range of obstacles, including: lack of voluntary return; legal bars to involuntary return, statelessness, unclear identity or nationality, prohibited means of removal’.⁹² This definition appears too focused on legal obstacles to move, individual will to move and the statelessness angle, which is only one part of the wider spectrum of why migrants may become stranded. It does not, however, address all the variations observed above, including subjective grounds, human trafficking or crisis, and therefore fails to respond to the complexity of the issue.

Finally, a 2010 publication studying migration across the Sahara approached the stranded migrant typology by breaking it up into several groups: first, those domestic workers who have fled abusive employers;⁹³ second, those who qualify for protection under the 1951 Convention or the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention)⁹⁴ supplementary definition, assuming that a significant number of stranded migrants would be eligible for refugee status under a strict application of these two conventions;⁹⁵ third, those who have already been recognized as refugees, usually by UNHCR in a country of first asylum;⁹⁶ and fourth those whose ‘humanitarian situation is extremely urgent and who cannot turn to their states of citizenship for assistance, but are unlikely to qualify for refugee status.’⁹⁷ Another group the author identifies refers to those ‘terminally stranded’, i.e., those who do not wish or are not able to return to their place of origin.⁹⁸

⁹² Betts, “Towards a Soft Law Framework for the Protection of Vulnerable Migrants” (2008), *UNHCR New Issues in Refugee Research*, 162, 2008, p. 10.

⁹³ Collyer, see note 10 above, pp. 273, 275.

⁹⁴ Organization of the African Union, Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 UNTS 45.

⁹⁵ Collyer, see note 10 above, p. 279.

⁹⁶ This group was also recognized by the Global Migration Group in 2010: OHCHR, *Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation*, 30 September 2010, para. 14 (d), available at: <http://www.unhcr.org/refworld/docid/4f7157bc2.html>.

⁹⁷ Collyer, see note 10 above, pp. 279, 280.

⁹⁸ *Ibid.* at p. 274.

With this description the author takes a strong refugee point of view, and singles out certain stranded migrants issues such as the humanitarian situation or the inability to return option. While this rather descriptive definition is more inclusive than any of the others, it is yet still too exclusive, because with the introduction of closely defined categories others are necessarily left out. For instance, his definition does not expressly include victims of human trafficking, migrants displaced in third countries or the variety of subjective reasons a migrant might have for being stranded.

4.2. Conclusion

Existing definitions fail to provide the proper mix of inclusivity and clarity to frame the category of 'stranded migrants'. Actors in the field appear to frame definitions according to their respective need or mandate, and existing definitions are therefore largely operational definitions and tend to be descriptive. On the other hand academics tend to link definitions too closely to their respective discipline or fail in the attempt to be exhaustingly inclusive.

However, narrow angles of focus, be they on the migrant worker, refugee, asylum-seeker, trafficked or smuggled victim or stateless person, appear to cover just one or some aspects belonging to the widespread phenomenon of becoming stranded. On the other hand the task of proposing a definition based on the existing realities on the ground appears to be fairly impossible, as this definition would need to cover every form of movement and displacement, as long as individuals can get stuck. Indeed, more than a few observations made in this paper on the historical usage of the term and the various groups covered leaves the impression that in fact any migrant can become stranded.

In the end it appears to be very ambitious, if not impossible, to reconcile practice with theory and to develop a short and useful definition of the category of stranded migrants. Such a definition would either exclude groups, or would need to include so many that it would not be useful to have a definition. Thus, this paper proposes to leave the category undefined, but to acknowledge that being stranded is a condition that might apply to anybody and everybody on the move in this world, and causes need for international protection. Instead it appears helpful to focus on specific vulnerabilities to establish a link that could be specifically addressed in the interest of stranded migrants.

5. THE VULNERABILITY OF STRANDED MIGRANTS

As stranded migrants are only part of the larger migration phenomenon, the renewed attention to stranded migrants suggests that aspects of their vulnerability might be distinct from other groups of migrants, and a diversity of circumstances might lead to various degrees or forms of vulnerabilities. The following sections shall serve as an attempt to establish a set of factors, which may result in different degrees of vulnerability and help to draw conclusions on the assumed increased vulnerability of stranded migrants.

5.1. Primary Vulnerability Factors

From a broader perspective it appears important to gain insights on the vulnerabilities of migrants – distinguished into the two major groups of documented and undocumented migrants – to then see how far these might be different, increase or even add up for migrants becoming stranded.

5.1.1. Documented & Undocumented Migrants: Vulnerabilities and Situation on the Ground

In 2001, a co-publication of the IOM and the UN on human rights of migrants observed, ‘despite the lack of research, there is more than enough experiential and anecdotal evidence to state categorically that violations of migrants’ human rights are so generalized, widespread and commonplace that they are a defining feature of international migration today’.⁹⁹ While the lack of research has not been closed in the past decade, a wealth of sources exists, confirming IOM’s and the UN’s assumption. In December 2010 Human Rights Watch reported abuses of migrants in various countries around the globe, stating ‘current immigration practices and massive protection gaps have exposed many others to a range of human rights abuses, including labor exploitation, violence, trafficking, mistreatment in detention, and even killings’.¹⁰⁰ The report observed systematic violations and abuses against migrant workers, primarily in

⁹⁹ IOM, “The Human Rights of Migrants”, *International Migration*, 38(6), Special Issue 3, 2000, p. 9.

¹⁰⁰ Human Rights Watch, *Rights on the Line* (Dec. 2010), p. 6, available at: <http://www.hrw.org/reports/2010/12/12/rights-line-0>.

low-wage sectors such as domestic work, agriculture and construction, in a vast number of countries.¹⁰¹ At other places, massive human rights violations of migrants with irregular status and in the context of legal migration were observed, leading to the conclusion that all migrants, whether regular or irregular, temporary or permanent, were affected by discrimination and anti-migration ideology, around the globe.¹⁰² Recently, Amnesty International in its Annual Report on Human Rights of 2013 describes the vulnerable status of migrant workers in many places around the world.¹⁰³ The former Commission on Human Rights and the Human Rights Council since years observed human rights violations of migrants across the spectrum, repeatedly expressing concern ‘at legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants’, and encouraged ‘countries of origin, transit and destination to seek technical assistance and/or to collaborate with the Office of the United Nations High Commissioner for Human Rights to better promote and protect the human rights of migrants’.¹⁰⁴ The UN General Assembly considered these observations and each year requests or calls upon states to ‘effectively promote and protect the human rights and fundamental freedoms of all migrants, regardless of their immigration status’.¹⁰⁵ Also the High Commissioner for Human Rights, Navi Pillay, pointed out the plight of many migrants, exposed to violations of their basic rights and treated as commodities around the world.¹⁰⁶

Considering individual situations, many reports around the globe can be found. Regionally, a recent surveys on the situation of migrants in the European Union (EU) concluded that in most states irregular migrants have cost-free access only to emergency treatment, if at all – even though they should have full access to healthcare according to EU law, and a general high vulnerability to abuse and harassment.¹⁰⁷

¹⁰¹ *Ibid.* at 6, 7., to these count: Côte d'Ivoire, Egypt, France, Greece, Guinea-Bissau, Hungary, Indonesia, Israel, Italy, Libya, Malawi, Malaysia, Kazakhstan, Kuwait, Lebanon, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Thailand, Ukraine, the United Arab Emirates, the United States, and Zambia.

¹⁰² OHCHR, Bustamante, Special Rapporteur for the Human Rights of Migrants, *Report to the Commission on Human Rights*, E/CN.4/2006/73, p. 2.

¹⁰³ Amnesty International, *The State of the World's Human Rights 2013*, p. 6.

¹⁰⁴ Most recently: Human Rights Council, Resolution 20/3 of 5 Jul. 2012.

¹⁰⁵ E.g. UN General Assembly res. A/Res/61/165, 19 Dec. 2006; A/RES/62/156, 7 Mar. 2008; A/RES/63/184, 17 Mar. 2009; A/Res/65/170, 17 Mar. 2011.

¹⁰⁶ UN News Centre, *Too many migrants continue to be victims of rights violations – top UN official*, available at: <http://www.un.org/apps/news/story.asp?NewsID=33292#.UZ3s4JV0pUR>.

¹⁰⁷ European Union, European Agency for Fundamental Rights, *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, 25 November 2011, available at: <http://www.unhcr.org/refworld/docid/4ecf5afa2.html>; European Union, European Agency for Fundamental Rights, *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, 5 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e2965af2.html>.

Despite the EU earning the Nobel Peace Prize in 2012, many more observers criticized violations of migrants' rights throughout the EU.¹⁰⁸ Another study reported exploitive working conditions for migrant domestic workers all over Asia and the Middle East: employers who strip their workers of their passports and identity papers; long abusive working hours; little or no payment; and sometimes even slave-like conditions including physical abuse, sexual abuse and food deprivation, up to loss of life.¹⁰⁹ In an account on the situation of migrants in the Maghreb countries, rights violations on the full spectrum are observed, leaving a bleak picture for sub-Saharan African migrants.¹¹⁰ In places like Russia and Central America a difficult situation has been observed too.¹¹¹

Domestically, the plight of Burmese migrant workers in Thailand has been observed and studied in detail, revealing a range of vulnerabilities related to very basic needs, such as health, education, safe working conditions – even worse for stateless migrants.¹¹² In the Ukraine it is reported that many migrants 'risk abusive treatment and arbitrary detention', as well as torture.¹¹³ The current Special Rapporteur on the Human Rights of Migrants in his recent visit to Greece observed that the Greek government 'needs to significantly step up its efforts in order to ensure that rights of all migrants within its territory are fully respected', observing systematic detention as a major problem.¹¹⁴ In Jordan many migrants working as domestic servants are reported to be subject to conditions of forced labor, including withhold of passports, restriction of movement, nonpayment of wages, threats, excessively long work hours and physical

¹⁰⁸ Pascouau, "Human rights violations in the field of migration: a collective responsibility", *European Policy Centre* (2012), p.1; Amnesty International, *S.O.S. Europe, Human Rights and Migration Control*, June 2012.

¹⁰⁹ Human Rights Watch, *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East*, 27 April 2010, 1-56432-625-X, p.2, available at: <http://www.refworld.org/docid/4bd7e2262.html>.

¹¹⁰ Euro-Mediterranean Human Rights Network (EMHRN), *Study on Migration and Asylum in Maghreb Countries: Inadequate Legal and Administrative Frameworks Cannot Guarantee the Protection of Migrants, Refugees and Asylum Seekers*, July 2010, available at: <http://www.refworld.org/docid/515018942.html>.

¹¹¹ United States Department of State, *2011 Country Reports on Human Rights Practices - Russia*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75a6b73.html>; UNHCR, *Regional Conferences on Refugee Protection and International Migration in Central America, Western Africa, Eastern Africa and Asia - Selected Conference Materials*, 77, June 2011, available at: <http://www.unhcr.org/refworld/docid/4e0d6be02.html>; see Grant, note 3 above, p. 32.

¹¹² Yuan Fu Yang, "Life and Death Away From the Golden Land: The Plight of Burmese Migrant Workers in Thailand", 8 *APLPJ* (2006-2007) 485, pp. 515-522.

¹¹³ United States Department of State, *2010 Country Reports on Human Rights Practices - Ukraine*, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56d79c.htm>.

¹¹⁴ OHCHR, News, UN Special Rapporteur on the Human Rights of Migrants, *UN Special Rapporteur on the human rights of migrants concludes the fourth and last country visit in his regional study on the human rights of migrants at the borders of the European Union: Greece*, 3 Dec. 2012; the UN Working Group on Arbitrary Detention recently visited Greece and observed severe Human Rights violations for all kinds of migrants, especially as regards arbitrary detention, see Greece: *UN experts on arbitrary detention concerned by detention conditions and limited access to legal assistance* (31 Jan. 2013), available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12963&LangID=E>.

and sexual abuse.¹¹⁵ In Bahrain hundred of thousands of mostly South Asian migrant workers face exploitation and abuse, from passport confiscation, unpaid wages, excessive and forced work, poor living conditions, and physical, psychological and sexual abuse.¹¹⁶ In Lebanon migrants suffer maltreatment and abuse due to a sponsorship system for temporary labor that makes migrants fully dependent on their employer, as they are depending on their sponsors.¹¹⁷ In the United Arab Emirates, the situation for migrants is bleak, with a reported system of exploitation that violates migrants' health and safety and includes discrimination, abuse and violence.¹¹⁸ Israel has been recently accused by one of the country's premier rights organizations of 'particular severe' human rights violations of migrants, including racism and xenophobia and violations of basic rights such as housing and medical treatment.¹¹⁹ In Malaysia migrant rights are frequently abused, including the withholding of their identity papers and overwork, as well as violence and sexual abuse.¹²⁰ The same occurs in Thailand, where migrant workers face exploitation on a wide range of issues, such as non-payment or low salaries, excessive working hours, forced labour, trafficking and violence.¹²¹ India and its rising economy draws migrants from all over Asia, who once in the country face severe violations of their human rights, lasting from abuse to violence and death.¹²² China's rising economy continues to draw migrants from all over the world, while systems in place appear to impose systematic discrimination on migrants, unfairly limiting migrants' access to housing, medical services and education.¹²³ Further rights violations are reported to be common place.¹²⁴ Morocco stands out as both a transit and destination country for sub-Saharan migrants, exposing them to a range of vulnerabilities, from poor basic living conditions to sexual

¹¹⁵ United States Department of State, *2011 Country Reports on Human Rights Practices - Jordan*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75a8ec.html>.

¹¹⁶ Human Rights Watch, *For A Better Life*, Oct. 2012, available at: <http://www.hrw.org/reports/2012/10/01/better-life-2>.

¹¹⁷ Green Prophet, *Visualizing Migrant Workers' Rights in Lebanon*, 7 Jan. 2013, available at: <http://www.greenprophet.com/2013/01/migrant-workers-rights-lebanon/>.

¹¹⁸ Keane et al., "Enforcing Migrant Workers' Rights in the United Arab Emirates", *International Journal on Minority and Group Rights*, 15, 2008, p. 114.

¹¹⁹ The Times of Israel, *Israel guilty of bleak' and 'sever' human rights abuses, local NGO asserts*, 16 Dec. 2012, available at: <http://www.timesofisrael.com/israel-guilty-of-bleak-and-severe-human-rights-abuses-report-asserts/>.

¹²⁰ Asian Century Institute, *Malaysia's Abuses of Migrants' Rights*, 13 Feb. 2013, available at: <http://www.asiancenturyinstitute.com/migration/190-malaysia-s-abuses-of-migrants-rights>.

¹²¹ ILO, *The Mekong Challenge, Underpaid, Overworked and Overlooked*, 2006.

¹²² Gopar Iyer, *Distressed Migrant Labour in India*, 2004, p. 15.

¹²³ Human Rights Watch, *World Report 2012, China, Migrants and Labor Rights*, available at: <http://www.hrw.org/world-report-2012/world-report-2012-china>.

¹²⁴ See generally Wong, "Chinese Migrant Workers: Rights Attainment Deficits, Rights Consciousness and Personal Strategies", *The China Quarterly*, 208, 2011, pp. 870-892.

violence.¹²⁵ In Libya, before the crisis of 2011, the situation of migrants was very difficult – reportedly migrants were tortured, detained, beaten and forcibly returned.¹²⁶

Generally, the vulnerability of undocumented migrants appears to be more concerning, and reports focusing on their specific situation are numerous. The Council of Europe in a study focusing on undocumented migrants observed a heightened vulnerability for undocumented migrants, pointing on their lack of status, integration and information on their rights, and also the lack of reliable statistical data to study their vulnerabilities, a ‘statistical invisibility’.¹²⁷ Amnesty International has observed, for irregular migrants, whether they can get out of the country or not, the protection of the law is often denied, specifically basic rights to education, health and housing.¹²⁸ In 2010, the GMG, then consisting of 15 UN agencies and IOM, adopted a statement on migrants who do not have a recognized valid immigration status, revealing, ‘Migrants in an irregular situation are more likely to face discrimination, exclusion, exploitation and abuse at all stages of the migration process. They often face prolonged detention or ill treatment, and in some cases enslavement, rape or even murder. They are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers and sexual predators, and can easily fall prey to criminal traffickers and smugglers. Rendered vulnerable by their irregular status, these men, women and children are often afraid or unable to seek protection and relief from the authorities of countries of origin, transit or destination’.¹²⁹ It is notable that in each of its annual resolutions the UN General Assembly expressed specific concern with regard to the treatment of irregular or undocumented migrants.¹³⁰

In sum the vulnerabilities for undocumented and documented migrants are manifold, however apparently increasing for undocumented migrants. The decisive difference appears to be the legal status, documented vs. undocumented migrants,

¹²⁵ Medecins Sans Frontieres, *Violence, Vulnerability and Migration: Trapped at the Gates of Europe* (March 2013), pp. 8 – 21.

¹²⁶ Human Rights Watch, *Libya: Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees*, 13 September 2006, available at: <http://www.unhcr.org/refworld/docid/4517c8f94.html>; Amnesty International, *The Battle for Libya: Killings, Disappearances and Torture*, 13 September 2011, MDE 19/025/2011, available at: <http://www.unhcr.org/refworld/docid/4e6f2d952.html>.

¹²⁷ Council of Europe, Commissioner for Human Rights, *The Human Rights of Irregular Migrants in Europe*, 17 December 2007, CommDH/IssuePaper (2007) 1, p. 7, available at: <http://www.unhcr.org/refworld/docid/479849842.html>.

¹²⁸ Amnesty International, see note 103 above.

¹²⁹ OHCHR, *Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation*, 30 September 2010, available at: <http://www.unhcr.org/refworld/docid/4f7157bc2.html>.

¹³⁰ E.g. UN General Assembly res. A/Res/61/165, 19 Dec. 2006; A/RES/62/156, 7 Mar. 2008; A/RES/63/184, 17 Mar. 2009; A/Res/65/170, 17 Mar. 2011.

and closely related the ability to move inside and out of the country. This latter criterion seems to be even more decisive than the former, as the ability to move freely is the fundamental condition to escape abusive situations. This is even more so, as in many places rights attached to a document may not be easy to claim, while on the other hand a document certifying the legal presence in the country may be needed to move unhindered. Thus, the vulnerability of migrants to the various perils observed by the many sources above is closely linked to the ability of migrants to move freely. Documented migrants appear to be in the best position to do so, while undocumented migrants can be expected to face obstacles.

5.1.2. Stranded Migrants – Any Different?

What is the concrete difference between the vulnerability of stranded migrants in all their existing varieties, and that of documented and undocumented migrants?

UNHCR in a background study for a 2010 GMG practitioners symposium observed, 'Migrants who become stranded are commonly subject to a wide range of abuses and human rights violations, committed by a range of different actors, including smugglers, traffickers and transport agents, border guards and immigration officials, the police and security services, as well as members of local society. Those violations include (but are not limited to) physical abuse and harassment; extortion and exploitation; lack of due process; arbitrary detention in inhumane conditions; deprivation of access to basic services, xenophobia, racial and ethnic discrimination; interception and abandonment at sea, as well as forced return or transfer to remote and dangerous locations'.¹³¹ In the first instance, this sounds not very different from the situation of many documented and undocumented migrants as observed in the previous section. There might be, however, a difference in the level of exposure for stranded migrants.

A quick survey of the situation on the ground suggests that far from being limited to a few regions of the world, stranded migrants are victims of abuses in many countries from all continents. In Central Asia stranded migrants often suffered violence during the migration process,¹³² and in Saudi Arabia laid-off migrant workers were stranded in labor camps, without electricity or running water for months, while many

¹³¹ UNHCR, see note 80 above.

¹³² *Ibid.*, at p. 129.

died under insufficient living conditions.¹³³ In Russia migrants became stranded because of government policies, trapped in the transit area of Moscow's airport. Generally, irregular migrants in Russia are reported to be often denied the right to work, and ethnic migrant groups are denied the right to register as residents, deprived of all rights of citizenship and prevented from working legally, leasing land or selling goods – in effect leaving them stranded without any legal means to survive.¹³⁴ Similar conditions are reported in Morocco and Tunisia.¹³⁵ In Yemen stranded migrants often die under severe conditions, are exposed to human traffickers, forced deportation by the government or forced to take escape routes endangering their lives.¹³⁶ Here lack of food and water are primary health concerns, especially for women and children.¹³⁷ In Jordan, Lebanon, Kuwait and the United Arab Emirates domestic workers are abused on a large scale, laid off by their employers or effectively forced to run away, in most cases without retrieving their passports beforehand, which leaves them stranded, frequently threatened by the government and imposed fines.¹³⁸ Often neither the previous employer, nor the government was or is willing to regulate the stranded migrants' stay, treating them as illegal immigrants, and thus leaving them without a possibility of exit. Also a refusal by the employer to pay salaries or buy required tickets to return home renders many stranded.¹³⁹ Another phenomenon occurs when migrants are recruited for non-existing jobs, in which fraudulent sponsors generate sizeable profits by auctioning off their visas to the highest bidder.¹⁴⁰ Left stranded these workers are often indebted and forced to take up illegal jobs, again making them vulnerable to abuse. Stranded migrants in the Americas are often held in prolonged administrative

¹³³ Human Rights Watch, *World Report 2011*, 24 January 2011, p. 598, available at: <http://www.unhcr.org/refworld/docid/4d3ecde52.html>; Amnesty International, *Amnesty International Annual Report 2012 - United Arab Emirates*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fbc3903c.html>.

¹³⁴ United States Department of State, *2011 Country Reports on Human Rights Practices - Russia*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75a6b73.html>.

¹³⁵ Medecins Sans Frontieres, note 125 above; IOM, *US Dollar 800,000 needed for reintegration of stranded migrants in Morocco*, available at: <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2012/pbn-listing/iom-morocco-appeals-for-usd-8000.html>; see also Dowd, note 11 above, p. 20.

¹³⁶ IRIN, *Yemen: Agencies scramble to help stranded migrants*, 5 December 2010, available at: <http://www.unhcr.org/refworld/docid/4cfde6dfc.html>.

¹³⁷ *Ibid.*

¹³⁸ Human Rights Watch, *Jordan: Abused Domestic Workers Stranded*, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da3f63ec.html>; United States Department of State, *2011 Country Reports on Human Rights Practices - Jordan*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75a8ec.html>; ILO, *Tricked and Trapped, Human Trafficking in the Middle East*, 2013, available at: http://www.ilo.org/addisababa/WCMS_210110/lang-en/index.htm.

¹³⁹ Human Rights Watch, *Jordan: Abused Domestic Workers Stranded*, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da3f63ec.html>.

¹⁴⁰ ILO, *Tricked and Trapped, Human Trafficking in the Middle East*, 2013, p. 13, available at: http://www.ilo.org/addisababa/WCMS_210110/lang-en/index.htm.

detention, locked in a 'cycle of detention'.¹⁴¹ Further return options for stranded migrants are reportedly frequently impeded by the lack of resources and logistical difficulties, such as the issuance of documents for travel through transit countries.¹⁴²

The situation in Mexico is one of the most difficult. Nearly all migrants arriving from the south are part of irregular movements, crossing the volatile southern border and region by riding on train tops, without any entry visa and therefore undocumented in Mexico, on their way north to the U.S.. Mexico is both a destination and transit country, and stranded migrants are particularly hard to distinguish from migrants residing in Mexico, often undocumented and without work. The criteria 'stranded' in this example appears fluid, a condition many migrants might fit at one point. However, many undocumented migrants get 'stranded' on their route north when trains stop operating, they wait for new travel opportunities or are stuck on their way or at the border.¹⁴³ Many are then often in desperate condition, vulnerable and in dire health.¹⁴⁴ Generally, undocumented/ stranded migrants in Mexico face severely difficult conditions: every year thousands are ill treated, abducted or raped, and arbitrary detention and extortion by public officials are common.¹⁴⁵ Most of the detained migrants have no access to consular assistance.¹⁴⁶ One of the major concerns are human smugglers, or so-called 'coyotes', that try to profit from the plight of stranded migrants, and when they face resistance, might even resort to killings.¹⁴⁷ Additionally, the situation before, at and after the border crossing to the U.S. reveals vulnerabilities including abuse by smugglers or even border control agents.¹⁴⁸ In cases where migrants eventually make it through to the U.S., they often find themselves stranded in the U.S., in a not much better situation.¹⁴⁹ According to Amnesty International, Mexico's

¹⁴¹ See UNHCR, note 111 above, p. 77; see Grant see note 3 above, p. 32.

¹⁴² UNHCR, note 111 above, p. 77.

¹⁴³ Latin American News Dispatch, *Stranded Central American Migrants Await Aid in Mexico* (13 Jul. 2012); BBC News, *Mexico Departs Stranded Migrants* (15 Aug. 2007).

¹⁴⁴ Latin American Herald Tribune, *Thousands of Migrants Stranded in Eastern Mexico* (14 Oct. 2012).

¹⁴⁵ Amnesty International, *Invisible Victims – Migrants on the Move in Mexico* (2010), p. 5.

¹⁴⁶ Grant, see note 3 above, p. 44.

¹⁴⁷ Hagan, *Migration Miracle: Faith, Hope and Meaning on the Undocumented Journey* (2012), 87; International Federation for Human Rights, *Urgent measures required to protect migrants in Mexico*, 27 August 2010, available at: <http://www.unhcr.org/refworld/docid/4cb6d218c.htm>; CNN Justice, *72 bodies found in Mexico were immigrants, official say* (25 Aug., 2010).

¹⁴⁸ Vargas, "U.S. Border Patrol Abuses, Undocumented Mexican Workers, and International Human Rights", *San Diego International Law Review*, 2, 2001, p. 2.

¹⁴⁹ Bustamante, "Extreme Vulnerability of Migrants: the Cases of the United States and Mexico", *Geo. Immigration Law Journal*, 24, 2009-2010, p. 565; Meneses, "Human Rights and Undocumented Migration along the Mexican-U.S. Border", *UCLA Review*, 51(1), 2003, p. 275; see also Johnson, note 4 above, p. 89.

protection policies for all migrants have failed so far.¹⁵⁰ It urged Mexico to tackle discrimination against migrants,¹⁵¹ despite the adoption of the new Mexican Migration Law (Ley de Migración) in 2011.

The foregoing observations suggest, that there is in deed an increased level of exposure of stranded migrants to the perils observed for documented and undocumented migrants. There appears to also exist a correlation between documented and undocumented migrants, and the possibility of becoming stranded. The vulnerability of undocumented migrants to become stranded appears to be even higher than of documented migrants. Once stranded, the previous status appears not to make a decisive difference regarding vulnerabilities, even though in some situations documented migrants becoming stranded may be in a better situation to claim protection than undocumented migrants who became stranded.

5.1.3. Conclusion

These only few observations on the situation of documented, undocumented and stranded migrants around the globe lead to the following conclusions regarding their vulnerabilities:

Far-reaching violations of migrants' rights appear to exist in the labour market, primarily in low-wage sectors. This appears to be the case for all migrants in general, be they documented, undocumented or in a situation of being stranded. Documented migrant workers, or those who were once documented, should generally be in a better position as they still can move under relative safety or simply change the employer. Undocumented migrants can also still move, even though under more risks than if they were documented. Oppositely, stranded migrants are not able to move, or only under very high risks. Their survival is in many cases closely linked to their employment, which makes them more dependent and consequently more vulnerable to exploitation, possibly even more drastic ones. This said, considering the fact that many migrants live in their host state on very limited means barely sufficient to secure their survival, some without proper documentation because they had to leave it with the employer, entered undocumented or lapsed into irregular status even after being admitted legally,

¹⁵⁰ Amnesty International, *Mexico's strategy to protect migrants fails to have impact*, 30 August 2011, available at: <http://www.unhcr.org/refworld/docid/4e5f589d2.html>.

¹⁵¹ Amnesty International, *Mexico urged to tackle discrimination against migrants and Indigenous Peoples*, 14 February 2012, available at: <http://www.unhcr.org/refworld/docid/4f3e16942.html>.

many more migrants might be 'indirectly stranded', relatively unable to move and exposed to abuse in their employment.

Also arbitrary detention appears to be a global issue not limited to one geographic area or group of migrants. As for undocumented migrants, detention might be justified under domestic legislation, as in many countries illegal entry is an offence under criminal law. Stranded migrants once more appear to be most vulnerable, as they are stuck and might not even be able to move on secure routes, exposed to the discretion of local authorities. In deed, many reports cited above point to an increased vulnerability of stranded migrants to be detained arbitrarily.¹⁵² Detention might be even one form for authorities to deal with their presence, or sometimes be the reason rendering them stranded.

Violence is one of the most common abuses to which all migrants are vulnerable. The above-mentioned reports observed violence stemming from diverse sources: the employer, citizens, state organs or criminals. The forms and degree of violence vary, although domestic violence is part of many reports, as many migrants are employed domestically. Stranded migrants are stuck in a situation, with no means to move anywhere, thus often finding themselves defenseless, having as a last resort only their own strength to protect them. Stranded migrants such as minors, women or elders might therefore be even more vulnerable. Also, as observed above, violence is often the reason why migrants become stranded, because the only means they have for their defense is to run away, on a route exposing them to more dangers.

Discrimination against migrants is commonplace. Obviously, all migrants are vulnerable to discrimination and anti-migration terminology, but the less attached a migrant is to the host society, the likelier they are to be discriminated against or serve as scapegoats. Stranded migrants often are depending on local communities, or find themselves stranded in places where no possibility for work or even housing exists.¹⁵³ The effects for local communities can be expected to be an initial for discrimination.

¹⁵² Amnesty International, note 145 above, p. 5; UNHCR, note 11 above, 77; see Grant note 3 above, p. 32; France 24, *Stranded immigrants detained in 'racist' Libyan camps* (25 June 2012), available at: <http://observers.france24.com/content/20120625-stranded-without-papers-immigrants-detained-libyan-camps-tripoli-benghazi-detention-migrant-workers-africans>.

¹⁵³ E.g. Mexico and Morocco: Latin American News Dispatch, *Stranded Central American Migrants Await Aid in Mexico* (13 Jul. 2012); Amnesty International, *Mexico's strategy to protect migrants fails to have impact*, 30 August 2011, available at: <http://www.unhcr.org/refworld/docid/4e5f589d2.html>.; Medecins Sans Frontieres, see note 125 above.

The most drastic perils for migrants that many reports point to are torture, human trafficking, smuggling and even death as a result of oppression, abuse or as victims of criminal groups or widespread violence as result of armed conflict or interstate war. Once again, the more a migrant is in a position to seek protection, the less likely these violations will take place. As stranded migrants are by definition stuck and have no realistic chance to seek immediate protection, they are most vulnerable to these most drastic forms of violations. This appears to be confirmed by many reports.¹⁵⁴

Based on these observations, it appears valid to say, that all the mentioned perils, even the most severe ones, are existing across the spectrum of migrants, be they documented, undocumented or become stranded. Looking closer however, the existence of more general vulnerabilities can be observed, to which practically all migrants are exposed, distinguished from more specific ones, which appear to be more likely for some groups of migrants. Abuse in the labour market appears to be a widespread phenomenon, confronting many migrants, especially in low-wage sectors. Arbitrary detention appears also to be widespread, although undocumented migrants, and even more those who become stranded, appear to be more exposed than documented migrants, staying lawfully in a country [e.g. Greece, Morocco, Libya].

However, many of the major migration hubs have only limited control of their borders, or even open borders [e.g. Mexico, Morocco, Libya, Horn of Africa, Greece and Hungary], and a distinction of documented, undocumented and stranded migrants might become very difficult, in effect all facing a high level of vulnerability to face arbitrary detention. Violence is also a vulnerability common to all kind of migrants, even though documented migrants might be in a better position to claim protection than undocumented migrants or those migrants becoming stranded, documented or undocumented or not. Discrimination and xenophobia are phenomena that know no status, and are often targeted against all immigrants in general, be they documented, undocumented, or in a situation of being stranded. Often the only possibility to deprive oneself of discrimination might be the ability to leave. Torture, trafficking, smuggling or even death are severe perils, often not distinguishing between migrants who are documented or not. This is because these perils are often observed in countries with a

¹⁵⁴ Amnesty International, note 145 above, p. 5; International Federation for Human Rights, note 147 above; CNN Justice, *72 bodies found in Mexico were immigrants, official say* (25 Aug., 2010); Human Rights Watch, see note 133 above, 598; Amnesty International, *Amnesty International Annual Report 2012 - United Arab Emirates*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fbc3903c.html>.

low level of the rule of law [e.g. Horn of Africa; pre war Libya], or on the brink to armed conflict [e.g. Libya before, in and after the crisis; Syria], countries experiencing social disorder or widespread violence in form of e.g. gang violence or organized crime [Mexico], or countries where immigrants generally have a relative insecure stand [Arab Peninsula; Horn of Africa; Morocco; Hungary; Greece; pre war Libya]. However, the vulnerability to these severe forms of perils strongly depends on the possibility of migrants to move, hide or seek protection.

Consequently, the primary reason for this varying degree of vulnerability appears to be in the first instance the ability to move, and in the second, the status (documented vs. undocumented), the rights attached to this status and the ability to claim and enjoy these rights. According to the previous observations on vulnerabilities, the status appears to be of vanishing importance, as many of the perils do not know legal limits or legal protection. Of primary importance though is the ability to move. The less a migrant is able to move away from the source of insecurity, the greater is the spectrum of vulnerability. Apparently, documented migrants are, at least theoretically, always able to move, and also undocumented migrants can still move, as they are not yet stranded. Stranded migrants however are, according to their very title, unable to move; however what leaves them stranded can also be the lack of secure routes relative to the existing insecurity.

Adding to this primary vulnerability factor, there appear to be instances, causing a higher probability for some of the above-mentioned perils to occur. These 'secondary vulnerability factors' shall be the focus of the consequent section.

5.2. Secondary Vulnerability Factors

Secondary vulnerability factors are individual factors possibly confronting every migrant. These factors can occur individually or in combination, adding up insecurity.

5.2.1. The Migration Journey

Because migration is a dynamic process¹⁵⁵ or fragmented,¹⁵⁶ different vulnerabilities may arise. If there is no direct path to the country of destination, migrants may find

¹⁵⁵ Betts, note 92 above, p. 2.

themselves in transit, on their way to their final destination. This ‘transit migration’ is not to be understood as necessarily linked to ‘irregular migration’ because documented migrants might also need to travel through another or several countries before arriving at their destination. Still, these two terms are often taken as going hand in hand, as a considerable overlap might exist.¹⁵⁷

Much transit migration – and here, especially transit migration that is irregular – is also associated with a higher risk to the migrant’s life, as invisibility and social exclusion make migrants vulnerable to exploitation and abuse.¹⁵⁸ Numbers of reports and studies point to the dangers of migrants in transit, and the increased need for protection.¹⁵⁹ Dangers en route may include natural obstacles, traffickers and smugglers, robbers, threats arising from the practices of state agents and indirectly, increasingly effective immigration controls in favorite destinations, such as Europe or North America.¹⁶⁰ Sojourns in transit countries can last for years and may be a reality for huge numbers of migrants, as migrants arrive and stay in certain countries en masse before they are able to move on or back.¹⁶¹

Another form of transit migration has been identified under section [2.1.], when migrants are forced to leave their planned migration route, forced to opt for a route through a third country, not part of their original transit route. As seen in the Libya example, migrants of all kinds, documented and undocumented, suddenly found themselves in a stranded situation in a country they did not know at all, in often difficult geographic situations (e.g. isolated desert land at the Tunisian border or in south Libya, at the border to Niger and Chad), with only limited support in the first instance. Subjective grounds, like health or personal strength, as well as age and gender, can suddenly pose increasing vulnerability risks. Not only a sometimes remote and difficult geographic situation exposed them to a wide range of dangers, but also their complete unpreparedness to live under such circumstances. Subsequently they were nearly fully

¹⁵⁶ Collyer, note 10 above, pp. 273, 276.

¹⁵⁷ Papadopoulou-Kourkoula, *Transit Migration: The Missing Link Between Emigration and Settlement*, 2008, p. 6.

¹⁵⁸ *Ibid.* 14; Betts, note 92 above, p. 2.

¹⁵⁹ E.g. a background document of UNHCR for a regional conference on refugee protection and international migration in the Americas in 2009 reported that UNHCR and its partners regularly receive reports of abuses, including sexual and gender-based violence, committed against migrants and asylum-seekers who transit through Central America and Mexico in their quest to enter the United States of America or Canada, see note 12 above, para. 37; Medecins Sans Frontieres, note 125 above, 8 – 21; see also Dowd, note 11 above.

¹⁶⁰ Collyer, note 10 above, pp. 276, 277 and 278; Dowd, note 11 above, p. 7.

¹⁶¹ Papadopoulou-Kourkoula, note 157 above, p. 6; Grant, note 3 above, p. 34.

dependent on outside assistance.¹⁶² IOM has suggested to explore migration managements approaches, to complement humanitarian systems and to limit the adverse effects of unplanned and forced migration.¹⁶³

Generally, the legal protection situation during transit depends largely on the admission policies of the state of transit and factors like geography and existing levels of protection and law enforcement. If migrants have to transit illegally through a country they might be exposed to a larger vulnerability than if allowed to enter legally with a visa or transit visa, documented, with rights attached to the status, 'officially' allowed moving in the country. Also, the general standard of the rule of law and the political system of the transit country, its adherence to international human rights conventions and their translation into national laws are factors affecting vulnerability. However, undocumented migrants in transit are by definition more vulnerable than documented migrants in transit, as passing through a country illegally/unofficially does not carry with it the practical protections that ordinarily are associated with legal status and constrains to the ability to move freely.

Transit therefore poses a secondary vulnerability factor, increasing the vulnerability of migrants to some of the above-mentioned perils. Key appears once more the ability to move freely: transit migrants with a planned transit road, officially admitted and allowed to use it, have theoretically a greater ability to seek protection and move, than those who enter the country illegally. Entering illegally leaves their freedom to move constrained, and the ability to seek protection. As has been observed, many of the sever forms of perils for migrants exist in transit countries [Libya, Mexico, Morocco, Greece, Hungary] and the exposure of migrants to these perils is greatly dependent on their ability to move away from the source of insecurity, or on secure roads. Further, transit may increase the possibility of becoming stranded, and the GMG observed accordingly, 'Stranded and vulnerable migrants are often to be found in "transit" states, especially those which form a bridge between poor and instable regions of origin, and more prosperous and secure regions of intended destination'.¹⁶⁴ This view is also supported by many reports cited earlier in this study.¹⁶⁵

¹⁶² Le Temps/Worldcrunch, *Trapped: Why 2,400 Immigrants Risk Dying in the Libyan Desert* July 2012), available at: <http://worldcrunch.com/world-affairs/trapped-why-2-400-immigrants-risk-dying-in-the-libyan-desert/c1s5763/>.

¹⁶³ IOM, IDM, *Moving to Safety: Migration Consequences of Complex Crises*, note 27 above, p. 1.

¹⁶⁴ UNHCR, note 80 above, p. 1.

¹⁶⁵ Medecins Sans Frontieres, note 125 above; IOM, note 135 above; IOM, *Stranded Ethiopian Migrants in Bossasso, North East Somalia/Puntland* (Nov., 2006); UNHCR, note 111 above, p. 77; see Grant, note 3 above, p.

5.2.2. Crises and Migration

Recently an increasing number of humanitarian actors and international fora turned their focus to the situation and protection of migrants in crises, amid concerns that the issue has not been sufficiently addressed to date.¹⁶⁶ Participants during the intersessional workshop on 'Protection Migrants During Times of Crisis: Immediate Responses and Sustainable Strategies' of the IDM 2012 concluded that international migrants and movements of people will always be caught up in crises of all sorts; among other things, 'how migrants' human rights are protected before a crisis will directly affect their level of vulnerability and exposure to abuse during a crisis'.¹⁶⁷ The April 2012 IDM already concluded, 'the interactions between vulnerability, agency and rights are essential for understanding and responding to migration crises'.¹⁶⁸ During the IGC 2011, the discussion on responding to migrants in crisis also focused on whether IGC member states provide immigration-related services to affected persons located outside of and within the participating state.¹⁶⁹

As it is clear that crises may put exceptional threats on affected populations, it is also clear that vulnerability largely depends on the possibility for migrants to claim protection and move. Obviously, vulnerabilities during humanitarian crises related to armed conflict or interstate war makes little or no difference between affected populations, be they migrants or citizens. However, if an individual has no possibility to claim protection, normally the last possibility is to move.

But, stranded migrants cannot move, or only on routes dramatically increasing their vulnerability and possibly even endangering their lives. Thus, if they have no possibility to claim protection, cannot move securely or without outside assistance, and are caught in crisis, they are, as seen before, defenselessly exposed to the full

32; Latin American News Dispatch, *Stranded Central American Migrants Await Aid in Mexico* (13 Jul. 2012); BBC News, *Mexico Departs Stranded Migrants* (15 Aug. 2007).

¹⁶⁶ IOM, *Protection Migrants During Times of Crisis: Immediate Responses and Sustainable Strategies*, note 27 above, 1; The Institute for the Study of International Migration at Georgetown University in 2011 launched a project on 'Crisis Migration', commissioning nine case studies of crisis situations and further larger studies on the subject; The International Law Commission has as one of its activities the Protection of Persons in the Event of Disaster under the guidance of Special Rapporteur Eduardo Valencia-Ospina, touching, *inter alia*, on the duties and obligations of States in regard of their populations, including migrants.

¹⁶⁷ IOM, *Protection Migrants During Times of Crisis: Immediate Responses and Sustainable Strategies*, note 27 above, p. 2.

¹⁶⁸ IOM, *Moving to Safety: Migration Consequences of Complex Crises*, note 27 above, p. 3.

¹⁶⁹ IGC, note 29 above.

spectrum of vulnerabilities. This has been confirmed in the recent and past situations of migrants during the civil uprisings in North Africa and the Middle East, and more specifically the first armed conflict in Libya, and the ongoing armed conflict in Syria.

In Libya many migrants stranded in port towns had no opportunity to leave because their foreign employer had left the country without leaving them their passports.¹⁷⁰ During and after the uprising against Gadhafi, migrants stranded inside Libya were under threat of popular anger, often attacked and losing all of their possessions; some were killed before they could be evacuated.¹⁷¹ Further reported effects on stranded migrants included a complete lack of or only insufficient food or drinking water at the border; little or no sanitation; precarious health situations; and violence, including death.¹⁷² For lack of other options many of those who were stranded migrants were forced to take the dangerous journey across the Mediterranean Sea, and thousands died.¹⁷³ Those migrants who remained in Libya and survived the war often found themselves with invalid work permits, which were not renewed, and imprisoned under reportedly severe conditions.¹⁷⁴

In Syria stranded migrants are at risk of becoming victims of the generalized violence, but also human trafficking.¹⁷⁵ In many cases the migrants have no embassy to assist them to leave or offer some form of support or protection, and are further hindered from leaving the country because of a lack of 'travel documents, debts owed to recruitment agencies, inability to purchase flight tickets and insecurity around

¹⁷⁰ New York Times, *In Libyan Port, Stranded Migrants Watch Hope Depart* (26 Feb. 2011), available at: http://www.nytimes.com/2011/02/27/world/africa/27migrants.html?_r=0.

¹⁷¹ Human Rights Watch, *Libya: Stranded Foreign Workers Need Urgent Evacuation*, 2 March 2011, available at: <http://www.unhcr.org/refworld/docid/4d7089aa12.html>; Refugees International, *Libya Abandoned by Government, Migrants Face Increasing Violence Near Tripoli*, 5 October 2011, available at: <http://www.unhcr.org/refworld/docid/4e92bf982.html>; Amnesty International, *The Battle for Libya: Killings, Disappearances and Torture*, 13 September 2011, MDE 19/025/2011, 46/47, available at: <http://www.unhcr.org/refworld/docid/4e6f2d952.html>.

¹⁷² IRIN, *Egypt-Libya: Stranded at the border - and frustrated*, 7 April 2011, available at: <http://www.unhcr.org/refworld/docid/4d9ee246c.html>; New York Times, *In Libyan Port, Stranded Migrants Watch Hope Depart* (26 Feb. 2011), available at: http://www.nytimes.com/2011/02/27/world/africa/27migrants.html?_r=0.

¹⁷³ UNHCR, *Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011*, available at: <http://www.unhcr.org/4f27e01f9.html>.

¹⁷⁴ France 24, *Stranded immigrants detained in 'racist' Libyan camps* (25 June 2012), available at: <http://observers.france24.com/content/20120625-stranded-without-papers-immigrants-detained-libyan-camps-tripoli-benghazi-detention-migrant-workers-africans>.

¹⁷⁵ IOM, *As more Filipina migrants return home from Syria, concerns grows for those staying on*, 1 Feb. 2013, available at: <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2013/pbn-listing/as-more-filipina-migrants-return.html>.

them'.¹⁷⁶ In particular, women, the elderly and children face hardship due to gaps in legal mechanisms, confiscation of passports, an exploitative sponsorship system, unpaid wages, abuse and more.¹⁷⁷ While reports pertaining to migrants within Syria are scarce, the violence and chaos increases; it is likely that the vulnerabilities of stranded migrants are even more serious.

Other examples of widespread violence, as opposed to armed conflict would be gang violence and a high level of organized crime. As seen in the Mexico example depicted above, the current level of gang violence in the country has a clear effect on migrants passing through the country.¹⁷⁸

Beside armed conflict, natural disaster can be reason for humanitarian crises, and the vulnerabilities of migrants might be different here. Generally, when a natural disaster strikes every individual is exposed to it. However, the situation of each individual during disaster largely depends on general living conditions as well as the attachment to the host society. After a natural disaster, the situation might be different.¹⁷⁹ The vulnerability of a migrant then again largely depends on primary and secondary vulnerability factors. Generally disaster relief should be provided to all affected populations as the state is responsible for all individuals on its territory, and a distinction between legal status, citizen vs. non-citizen, documented vs. undocumented migrants and stranded migrants should not take place in the first instance. Thus, as long as disaster relief is provided, the effects of the disaster should be alleviated for every individual. It has been reported, that legal residence rights are crucial to receive services and protection.¹⁸⁰ Also, some groups of person might be easier to reach than others, and the effectivity of disaster relief will strongly depend on this. As some reports have shown, stranded migrants tend to suffer under social exclusion and sometimes even repressive policies, which might have an impact on their protection in the event of

¹⁷⁶ IOM, *Kuwait Donated USD 5 Million to Fund IOM's Humanitarian Work in Syria*, available at: <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2013/pbn-listing/kuwait-donates-usd-5-million-to.html>.

¹⁷⁷ IOM, note 175 above.

¹⁷⁸ Just recently the attack on 300 migrants in Mexico by a criminal gang was reported: Insightcrime, *300 Central Americans attacked in East Mexico*, 3 May 2013, available at: <http://www.insightcrime.org/news-briefs/300-central-american-migrants-attacked-in-east-mexico>.

¹⁷⁹ IOM, "Migration, Development and Natural Disasters: Insights from the Indian Ocean Tsunami", *Migration Research Series*, 30, 2007, p. 33.

¹⁸⁰ *Ibid.*

natural disaster. Susan Martin has addressed this issue in detail, and in relation to stranded migrants it deserves more attention.¹⁸¹

Concluding, vulnerabilities of migrants increase in humanitarian crises, but can be quite distinct according to the reason for the humanitarian crisis, here distinguished into armed conflict and natural disasters. To distinguish what kind of perils are more typical for each of three scenarios would need a thorough study. However, generally, sexual abuse, trafficking, torture and forced recruitment into rebel groups are all very common civilian harms in armed conflict,¹⁸² while humanitarian crises related to natural disasters can be expected to cause insecurity regarding clean drinking water, food and health services.¹⁸³ Documented migrants finding themselves in humanitarian crises might once again be in a better position to claim protection or move away of the source of insecurity. However, as the Libya and Syria examples prove, widespread violence does not hold at legal statuses, and once stranded, all migrants may find themselves exposed to many perils and dependent on outside aid. Again, the ability to move often becomes the last resort.

5.2.3. Further Factors Adding to Vulnerability

It has to be noted and once more be emphasized, however, that the vulnerability of all migrants varies among regions and countries, at times in relation to simple geography, the general reception policies and conditions for immigrants of individual transit or destination states, the rule of law in host states, and subjective grounds, as identified in section [3] of this paper. Especially the subjective grounds tend to be very individual and can play out differently in various situations. The mixture of these factors, combined with the conditions presented in this section, result in different levels of vulnerability.

5.2.4. Conclusion

¹⁸¹ See generally, Martin, "War, Natural Disasters and Forced Migration," in *The Oxford Handbook of International Migration*, ed. Daniel Tichenor and Marc Rosenblum, 2012.

¹⁸² Farrell, "The Causes, Character and Conduct of Armed Conflict, and the Effects on Civilian Populations, 1990-2010", *UNHCR Legal and Protection Policy Research Series*, 26, May 2013, p. 8.

¹⁸³ IOM, note 179 above, p. 33.

The migration journey, humanitarian crises and further secondary factors appear to have a large impact on the vulnerability of migrants in general and even more for stranded migrants. Generally, migrants in transit appear to be more vulnerable than in their destination, as transit countries expose them to a wider range of vulnerabilities than destination countries. Migrants in transit in third states appear to be most vulnerable and increasingly dependent on outside assistance, as the Libya example has proven. Humanitarian crisis appears to have a general negative impact on all migrants, and vulnerability increases according to levels of disorder and violence. However, both vulnerability-factors, the stage of the migration journey and the existence of a humanitarian crises are further swayed by a variety of other factors, as depicted under [5.2.3.]. The effects of these secondary factors largely depend on the pre-existing primary factor – whether a migrant is to move in relative security or not. Together sections [5.1.] and [5.2.] result in a vulnerability nexus, which shall be analyzed in the following paragraphs.

5.3. The Vulnerability Nexus

Key to systemizing degrees of vulnerability and explaining the situation of stranded migrants is the combination of primary and secondary factors identified under [5.1.] and [5.2.] above.

From part [5.1.] it follows that vulnerability levels increase according to the ability to move, and less relevant status (documented vs. undocumented). The observations under [5.2.] leads to the conclusion that further distinctions are possible: generally, migrants in transit are more vulnerable than migrants in destination, and crisis affects all migrants, but the worse those who cannot move any longer. Lastly, subjective grounds, such as health, strength, personal wealth and the ability to raise attention add to the degree of vulnerability during transit and crisis.

Now, adding this together, the vulnerability nexus presents itself as follows:

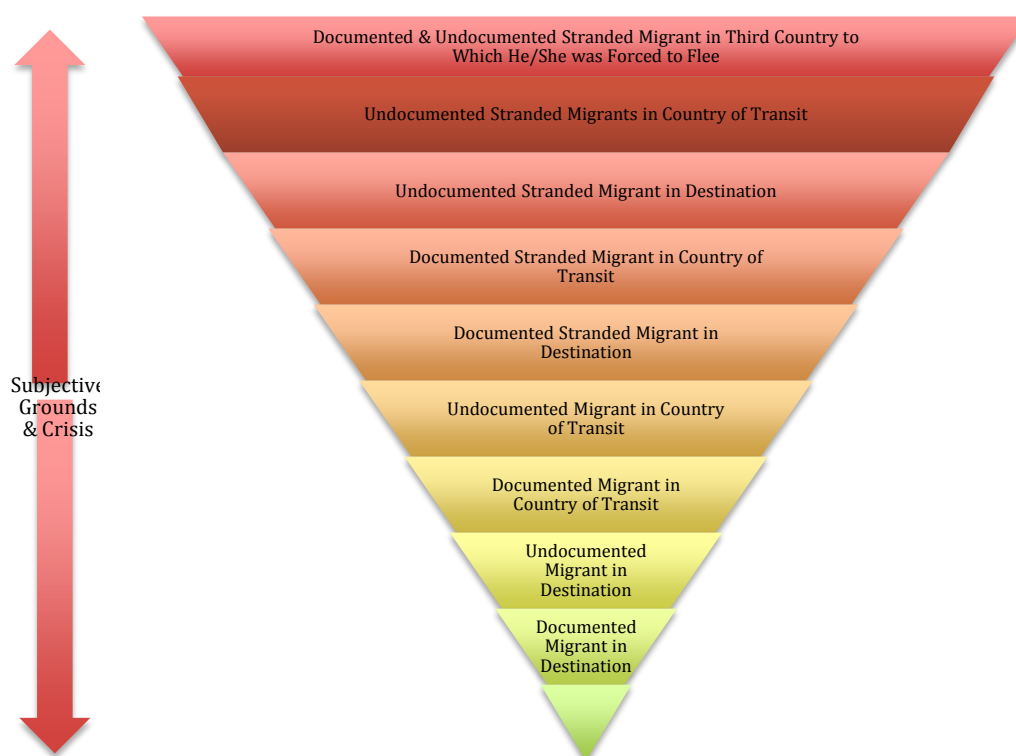
Primary factors + Secondary factors = Level of Vulnerability

As the primary factor is of central importance to the security of each migrant, the secondary factors only add to the basic condition. Thus, as stranded migrants cannot move, they necessarily build the upper scale of the vulnerability curve. Building on this

vulnerability nexus, a systematization of vulnerability levels shall follow, exemplified in an inverted pyramid.

5.4. A Pyramid of Vulnerability?

The following ladder of vulnerability is a result of the foregoing observations and conclusions on migrants' vulnerabilities. However as secondary factors are very individual, while still allowing for generalization, borders between the categories are fluid and in some individual cases might in fact fall outside this categorization.



Each level adds up vulnerability and opens up to a wider spectrum of perils. As observed above, major criteria to distinguish levels of vulnerability are the status (documented and undocumented), the stage of the journey (transit and destination), and most importantly the ability to move (stranded as the situation were moving has become impossible). Humanitarian crises and further secondary factors have a negative impact in terms of vulnerabilities, at every stage of the migration journey. The

nine ladders of the inverted pyramid are reflecting combinations of primary and secondary factors, largely reflecting the observation made in the previous sections. Crisis and further subjective factors would need to be factored in individually. Generally, the group combining most vulnerability is those of migrants found in Libya and currently in Syria, building the top of the inverted pyramid. Their vulnerability is further increased as they find themselves in a humanitarian crises linked to armed conflict and often in difficult geographic situations. In fact, each stage of the inverted pyramid is reflected by one or some of the examples depicted above. Each group would need specific attention to address its vulnerability, however the upper scale of the inverted pyramid appears to be in most urgent need for attention.

6. CONCLUSION: STRANDED MIGRANTS AS A VULNERABLE GROUP OF MIGRANTS

As with migrants generally, the vulnerability of stranded migrants consists of a complex combination of factors. Again, according to the primary and secondary factors vulnerabilities can increase and change. However, the inability for stranded migrants to move increases their vulnerability, as their last resort, i.e. to run, is non-existing.

Still, the ill treatment of migrants at many places around the world, no matter if migrants are documented or undocumented or in a situation of being stranded, exemplifies the general vulnerable position of migrants of any kind. The vulnerability nexus, as presented in the inverted pyramid of vulnerability, is an attempt to put this into perspective: within the overall category of migrants, a combination of primary and secondary factors leads to the migrants' exposure to certain degrees of possible vulnerabilities. As in the inverted pyramid, each level opens up to a wider range of vulnerabilities, and the condition of being stranded is cause for further vulnerabilities.

The difficulty to articulate a clear definition of stranded migrants is closely linked to its overlap with the general category of migrants. As any migrant can become stranded – whether he/she is documented, undocumented, in transit or in a destination state – the notion of stranded migrants necessarily encompasses all forms of movement, adding only (but quite significantly) the characteristic that the migrant cannot move from where he/she is. The term 'stranded migrant' is thus a descriptive

one grounded on facts (the inability to move back and forth) without an exact equivalent in legal or policy categorization schemes.

Against such a background, considering and addressing vulnerability as a frame of analysis for encapsulating the multifaceted realities of stranded migrants is instrumental for two reasons.

First, as demonstrated above, though the term stranded migrant has a relatively ancient lineage and is now part of the common language of the main concerned actors, there is no agreed upon definition of the notion. Its exact scope and content remain conspicuously vague, and the definitions proposed by international agencies reflect too much of their own specific mandates rather than a comprehensive picture of the phenomenon. Instead of trying to define a phenomenon which can affect every migrant, it is more appropriate and arguably more coherent to explain this changing reality with the vulnerability nexus, simplified within a pyramid of vulnerability. This frame of analysis can in turn be helpful for guiding policy and operational strategies of international agencies and other actors on the ground.

Second, identifying stranded migrants and their needs through a scale of vulnerability is further required in order to make sure that the *other* migrants (who are not stranded) are not outside the picture of decision and policy-makers, e.g. as a side effect of the recent euphoria surrounding the notion of stranded migrant and the other related fashionable terms for migrants in crisis. This sudden increased focus towards stranded migrants is welcomed, but it should not proceed at the detriment of the others. There are other vulnerable migrants who also deserve the attention of the international community. Using vulnerability in the context of stranded migrants recalls that they deserve protection but they are not alone in sharing the unenviable fate of being a vulnerable migrant.

However, section [5] has clearly demonstrated that the vulnerability nexus is true in its general assumption, but in itself demands further research and policy development. In particular, the degrees of vulnerabilities arising during transit, the various forms of crisis and the negative effects they pose for migrants in general and in the sub-groups more specifically, need closer attention.

The authors of this piece therefore see a clear need and call for the international community to look at a range of recent crisis situations to see how

vulnerabilities of migrants have been understood, and what the actual responses to those vulnerabilities in such crises have been. Also, the vulnerabilities of migrants in transit and destination, as well as those forced to leave their transit road to third countries, need increased attention and analysis. The international community needs to collaborate on more systematic approaches for situation-based analysis, reviewing existing rights, principles, practices, and gaps, with a view to develop recommendations on better response to all migrants trapped in crisis situations. The upcoming High Level Dialogue on International Migration and Development would be an appropriate forum to take up this call and endorse concrete action.¹⁸⁴

¹⁸⁴ See UN High-Level Dialogue on International Migration and Development, United Nations General Assembly, 3-4 October 2013, available at: <http://www.un.org/esa/population/meetings/HLD2013/mainhld2013.html?preparatory>.

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