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# International Protection for Internally Displaced Persons

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WASHINGTON UNIVERSITY  
Graduate School of Arts and Sciences  
International Affairs

**INTERNATIONAL PROTECTION FOR  
INTERNALLY DISPLACED PERSONS**

by

Kuan-Wen Liao

A thesis presented to the  
Graduate School of Arts and Sciences  
of Washington University in  
partial fulfillment of the  
requirements for the  
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## **I. Introduction and Scope**

The Twentieth Century saw the emergence of international and academic attention and scrutiny to the problem of forced population movement and displacement, sometimes referred to as forced migration. It is now understood that persons who are forced to leave their homes tend to face humanitarian problems and human rights abuses as a result of their displacement. Entire communities and populations that have been forced to leave their homes as a result of armed conflict, natural disasters, and/or even government resettlement and relocation problems have inconsistent and often insufficient access to humanitarian provisions (i.e., security, food, clothing, shelter, and water) and are at greater risk of victimization during displacement. In addition, displaced populations face greater humanitarian challenges when the governing states fail to provide the necessary protection and/or humanitarian provisions. As a result, studies about forced population displacement and movement focus on the challenges displaced populations face and how the state and/or the international community should respond to address their needs.

What makes forced population displacement different from other forms of population movement is the lack of individuals' volition or ability to decide to leave their homes and relocate. Accordingly, forced population displacement refers to those who have been "pushed" to leave their homes, as opposed to those who are "pulled" by more attractive opportunities to voluntarily leave their homes.

The many 'push factors' leading to...displacement can be aggregated into a range of overlapping categories: natural and human-made disasters, ethnic or religious persecution, development, and conflict. 'Displacement' occurs where coercion is employed, where choices are restricted, and where the affected populations are facing more risks than opportunities by staying in their 'place' of residence, which distinguishes it from 'voluntary' or 'economic' migration. Displacement

is, by definition, forced and involuntary and involves some form of de-territorialization [where the individuals lose (cultural) ties to a place, in this case their home].<sup>1</sup>

For this reason, voluntary population movements and individuals who leave their homes for economic reasons are excluded from forced population discussions, as they are perceived to have more volition in their decision to leave their homes. When individuals leave their homes in search of better opportunities, jobs and quality of life, they retain the ability to decide to move.

Voluntary and economic migration (e.g. including rural-urban and intra-urban movements) is more a reflection of people's deliberate pursuit of new opportunities. Displacement and resettlement become 'involuntary' when the choice to remain is *not provided*. The question of 'choice to remain' is central to this dichotomy.<sup>2</sup> (emphasis in original)

Without the ability to choose to leave home, displaced populations face challenges that voluntary population movements do not.

Within the study of forced population displacement, there are subsets of displaced populations, including refugees and internally displaced persons. Article 1(A)(2) of the 1951 United Nations Convention Relating to the Status of Refugees (hereinafter the "Refugee Convention") defines "refugee" as an individual who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...<sup>3</sup>

After the Cold War, the flow of refugees became very problematic for countries that were receiving large numbers of refugees. In wanting to address the increasing refugee flows,

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1. Robert Muggah, "A Tale of Two Solitudes: Comparing Conflict and Development-induced Internal Displacement and Involuntary Resettlement," *International Migration*, 41, no. 5 (2003): 7.

2. *Ibid.*, 10.

3. Office of the United Nations High Commissioner for Human Rights, "Convention relating to the Status of Refugees, Article 1(A)(2)," Adopted 28 July 1951, *United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly Resolution 429 (V) of 14 December 1950*.

greater attention was turned to addressing the root causes of refugee producing population displacement. Eventually, it was recognized that not all forced population displacement could be categorized as “refugees.” That is, not all individuals forced from their homes fled in fear of persecution based on race, religion, nationality or political opinion. But they did face similar, if not worse, humanitarian problems than refugees. For example, other types of forcibly displaced persons who faced humanitarian problems like refugees include, but are not limited to, the following:

In some instances, government counter-insurgency operations or ethnic cleansing campaigns could be seen to be deliberately uprooting people on ethnic or political grounds...In other cases, [some] could be found trapped in the midst of conflicts and in the direct path of armed attack and physical violence from insurgent forces...<sup>4</sup>

In addition, not all displaced persons crossed an internationally recognized state boundary to gain access to the international refugee system. The term “refugee” was too narrow to accurately identify the international displacement problem. Thus, the international community focused its attention on forced displacement populations that remained within the borders of its state, now commonly referred to as “internally displaced persons” (IDPs):

[I]nternally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>5</sup>

While refugees and IDPs fall under the umbrella of forced population displacement debates, discussions about refugees and IDPs are actually quite different.

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4. Roberta Cohen, “Developing an International System for Internally Displaced Persons,” *International Studies Perspectives* 7 (2006): 89.

5. United Nations Economic and Social Council, *Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)*, (Geneva: Office of the United Nations High Commissioner for Human Rights, February 11, 1998), annex, para. 2 (hereinafter “Guiding Principles”).

The main distinction between refugees and IDPs is that refugees have crossed an internationally recognized state border and thus, are a legally recognized group in international law with rights to international protection of their persons and *non-refoulement* (right to not be returned home), among other things. IDPs on the other hand, do not have any international legal status and as such, are without international protection of their rights and needs. In addition, as IDPs have *not* crossed a border, they remain within the jurisdiction (and mercy) of their governing state. Unfortunately, not all states are willing or able to sufficiently protect and provide for its internally displaced populations, which puts IDPs at great risk of being victims of human rights abuses and makes them one of society's most vulnerable groups. Refugees, on the other hand, have greater access to protection in their new homes compared to IDPs. This is not to suggest that the refugee system is without problems, but merely to emphasize that IDPs are met with significantly less international efforts for protection than refugees. Additional details regarding the differences between the two groups will be further discussed in Chapter 1.

What makes IDPs particularly more vulnerable than refugees is that during their displacement within their state, IDPs fall into “a vacuum of sovereignty, when the state is unable, or refuses, to assume its responsibilities towards its own population.”<sup>6</sup> In situations where the state is unwilling or unable to protect its refugee population who flees in fear of persecution and who cross an internationally recognized state boundary, refugees still have their rights and protection guaranteed by states party to the Refugee Convention. Unfortunately, IDPs remain hidden behind traditional concepts of state

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6. Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge: Cambridge University Press, 2004), 212.



sovereignty and the internationally accepted principle of non-intervention. After the Thirty Years War in the early Seventeenth Century, states pushed for international recognition and acceptance of a state's sovereign authority over the affairs within its territory, such as the freedom of religion. Today, Article 2(7) of the United Nations Charter embodies this recognition and respect for sovereign authority:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The barriers of state sovereignty and the principle of non-intervention make it very difficult for international organizations to gain access to IDPs and provide them the needed security and/or humanitarian provisions. Consequently, local and international responses are insufficient, uncoordinated and *ad hoc*. Some actors only provide humanitarian provisions but no protection, or only get involved when states welcome their assistance and presence. Without a legal status for IDPs to justify international interventions for humanitarian reasons, international responses towards the international internal displacement problem will be inconsistently and poorly applied.

Popular media, academics and the United Nations have also acknowledged the growing international IDP problem. Images of the large-scale internal displacement problem that has plagued the Western state of Darfur in Sudan have forced the international community to better understand IDPs and how to respond to them. In recognizing the severity of the international IDP problem, the United Nations created the position of Special Representative to the Secretary-General on IDPs in the early 1990s to identify and address IDPs' needs. Former Secretary-General Javier Pérez de Cuéllar

made the following comment regarding the humanitarian problem of IDPs in as early as 1991:

I believe that the protection of human rights has now become one of the keystones in the arch of peace. I am also convinced that it now involves more a concerted exertion of international influence and pressure through timely appeal, admonition, remonstrance or condemnation...It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity. The fact that...the United Nations has not been able to prevent atrocities cannot be cited as an argument, legal or moral, against the necessary corrective action, especially where peace is also threatened. Omissions or failures due to a variety of contingent circumstances do not constitute a precedent. *The case for not impinging on the sovereignty territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of...launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.*<sup>7</sup> (emphasis added)

As Pérez de Cuéllar suggests, the sanctity of state sovereignty cannot be preserved at the expense of human rights abuses, including and especially those experienced by IDPs.

This is a position that has also been adopted by subsequent United Nations Secretary-Generals, including Boutros Boutros-Ghali and Kofi Annan. In 2000, the Canadian government sponsored a study that agreed with Pérez de Cuéllar and concluded there was an international “responsibility to protect” (R2P) IDPs to preserve international peace.

As previously mentioned, studies regarding internal forcible displacement began as a part of the greater refugee debate. Hence, IDPs were initially perceived to be an extension of the international refugee problem in the post-Cold War era. But now the tail has begun to wag the dog. Today’s IDP problem far exceeds the refugee problem where the number of refugees dwarfs in comparison the number of individuals who currently

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7. United Nations General Assembly, *Report of the Secretary-General on the Work of the Organization: 46<sup>th</sup> Session, Supplement No. 1 (A/46/1)*, (New York: United Nations, September 13, 1991), 12.

find themselves internally displaced within their state's borders. Present-day studies involving IDPs and refugees may sometimes overlap, as they are examples of forced population movements, but the challenges facing both forms of displacement differ.

Because the number of IDPs in the world today far exceeds the number of refugees and international responses to address IDP concerns remain *ad hoc* and insufficient, this thesis advocates for the international protection of IDPs. Despite Pérez de Cuéllar's passionate speech, the literature on how the international community should respond to IDPs remains divided. Most commentators are not opposed to providing humanitarian assistance, such as water, food, and clothing, to IDPs. However, some believe that IDPs need more than just access to humanitarian provisions – they also need physical protection and security. In addition, organizations working with or for IDPs often face logistical problems and political challenges from both receiving and sending countries who do not want international interference in their domestic affairs and who do not want to devote resources to individuals who are not their civilians, respectively. For those who argue that IDPs require security and physical protection of their person, the presence and/or use of armed forces may be necessary to protect IDPs, which creates a logistical nightmare for both the intervening actors and the receiving states.

There are many issues that arise before, during and after displacement, such as addressing the root causes of displacement, how to return IDPs and/or end displacement, and how to enforce or guarantee protection for IDPs. However, this thesis will focus on the deficiencies and discrepancies found in international law with regard to the humanitarian challenges IDPs face *during* displacement. Such grey areas include the lack of systematic international legal protection for IDPs, the preservation of traditional

concepts of state sovereignty, and the legality of international humanitarian interventions. This is not to suggest that the prevention and post-displacement problems are not equally important and problematic. Rather, it will be argued that the more immediate humanitarian concerns occur during displacement, which remain insufficiently addressed by states and international organizations alike.

This thesis begins by identifying who IDPs are and exploring the evolution of the present-day definition of IDPs. This historical study will elucidate some of the problems preventing international consensus on assigning a legal status to internally displaced persons. The first section will also explore the international scale and severity of the IDP problem and the problems such displacement causes at the local, regional and international levels. Without a legal status, internally displaced persons will only continue to face humanitarian and human rights problems. And at the scale to which the current IDP problem exists, the aggregate human rights abuses are catastrophic, such as in present-day Darfur.

The next section explores the first of two challenges in international law that prevents the emergence of an international normative response to protect IDPs – specifically, the role of traditional notions of state sovereignty in contemporary international affairs. Today, concept of sovereignty and the international order have evolved, resulting in the concept that sovereignty is conditional. That is, state sovereignty can only be legitimized and respected if the state meets certain conditions, such as fulfilling its obligations (i.e., security) to its people. There is also an emerging belief that when a state fails to fulfill its obligations to its population, such as providing

for and protecting its population, then there is a correlative international responsibility to protect those in need.

But for such a norm regarding the international “responsibility to protect” IDPs to emerge, there needs to be a legal doctrine that describes who IDPs are and explicitly lists the rights and provisions to which they need to have access, which the final section will address. This serves as the second legal hurdle that results in insufficient international protection for IDPs – the lack of a binding document that specifies the legal rights of IDPs. Without an internationally recognized and accepted definition of who IDPs are and what their needs are, future international responses will remain *ad hoc*, uncoordinated and insufficient.

## **II. The Problem of Internal Displacement**

Internally displaced persons have regularly pointed out that security is as important to them as food. Providing food and supplies without attending to protection can undermine assistance programs and even lead to situations in which the victims become the “well-fed dead.”

Roberta Cohen and Francis M. Deng,  
*Masses in Flight*<sup>8</sup>

The international problem of internal displacement is alarming as the number of IDPs today far exceeds the number of refugees. However, this large-scale internal displacement problem has only recently gained international attention and study. This chapter explains the extent of the internal displacement problem on the global scale and outlines the humanitarian and international problems associated with internal displacement. Despite the scale of internal displacement, there remain no clear

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8. Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, D.C.: Brookings Institution Press, 1998), 10.

understanding or international acceptance of who IDPs are and how to respond to address their needs.

### ***Internally Displaced Persons (IDPs) Definitions***

Today's international IDP problem emerged out of concern for refugees during and after the Cold War. Refugees were forced to flee their homes owing to a fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. As refugees were outside the country of their nationality, they did not have the protection of their home state. In some instances, refugees were unwilling to avail themselves to the protection of their home state owing to the fear of persecution that forced them to flee their homes in the first place. Thus, internal displacement was initially conceived and studied as contributing to the refugee problem. Specifically, internal displacement initially referred to refugees who did not cross an internationally recognized state border. For example, the Office of the United Nations High Commissioner for Refugees (UNHCR) first recognized IDPs as refugees who had not crossed an internationally recognized border but who were fleeing persecution.<sup>9</sup> This means that such internally displaced persons should have had access to the same assistance and programs as refugees, but did not simply because they had not crossed an internationally recognized border.

However, it was soon realized that not all displaced persons who needed international protection could be considered refugees. That is, not all persons who were displaced who required international protection and assistance were fleeing in fear of persecution based on their race, religion, nationality, membership of a particular social

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9. United Nations High Commissioner for Refugees, *The State of the World's Refugees 1997-98: A Humanitarian Agenda* (Oxford: Oxford University Press, 1997).

group or political opinion, nor did they find themselves outside their home state. For example, there are persons who are forcibly displaced from their homes as a result of man-made or natural disasters who are not considered refugees. There were also those who fled and who would have qualified as refugees except for having not crossed an internationally recognized border. Like refugees, these displaced persons faced problems with their security, accessing humanitarian provisions and human rights protection. But unlike refugees, such displaced persons do not have a legal right to humanitarian provisions and protection during their displacement.

In the case of refugees – persons who fled across borders – the international community did take action. At the end of the Second World War, in 1950, the Office of the United Nations High Commissioner for Refugees was created and in 1951, the Refugee Convention was adopted. This made it possible for persons subject to persecution in their own countries to find refuge on the territory of a foreign state. But this system of international protection and assistance for those who crossed borders did not extend to persons forcibly displaced and at risk *within* their own countries...[T]hey remained under the jurisdiction of their own governments and largely beyond the reach of the international community.<sup>10</sup>

As internally displaced persons had not crossed an internationally recognized state border, they were considered internally displaced, or now commonly referred to as “internally displaced persons (IDPs).” Without sufficient protection or security from the governing state or the international community, IDPs remain more vulnerable to human rights abuses than refugees.

In 1991, in its request to the United Nations Secretary-General to consider the protection of human rights and the needs of IDPs, the UNHCR indicated that it was “disturbed by the high number of internally displaced persons suffering throughout the world, who have been forced to flee their homes and seek shelter and safety in other parts

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10. Cohen, “Developing International System,” 87-88.

of their own country.”<sup>11</sup> This initial concern identified two elements of internal displacement, “that internally displaced persons have been forced to flee their homes, and that they remain in the territory of ‘their own country.’”<sup>12</sup> In the 1992 United Nations High Commissioner for Human Rights’ (UNHCHR) Analytical Report of the Secretary-General on Internally Displaced Person (hereinafter the “Analytical Report”), IDPs were distinguished from refugees by incorporating these two IDP distinguishing elements:

[Internally displaced persons were] persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.<sup>13</sup>

This initial 1992 description of IDPs show that in contrast to refugees, IDPs could be considered “displaced” based on non-political factors such as natural disasters.<sup>14</sup>

Unfortunately, this initial IDPs definition failed to identify and include all the relevant internally displaced persons.

This initial 1992 IDP definition that was introduced to the United Nations faced major criticisms. Specifically, the definition included persons displaced by natural or man-made disasters as there “had been many cases where floods, earthquakes and famine as well as human-made disasters, such as nuclear or chemical accidents, had uprooted populations, and it could not be discounted that these were also major causes of population displacement.”<sup>15</sup> But critics argue that “the causes and remedies of conflict-

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11. United Nations Commission on Human Rights, *Internally Displaced Persons (E/CN.4/RES/1991/25)* (Geneva: United Nations, March 5, 1991), para. 3.

12. United Nations Commission on Human Rights, *Analytical Report of the Secretary-General on Internally Displaced Persons (E/CN.4/1992/23)* (Geneva: United Nations, February 14, 1992), para 12 (hereinafter “Analytical Report”).

13. *Ibid.*, para. 17.

14. O. Okechukwu Ibeanu, “Exiles in Their Own Home: Conflicts and Internal Population Displacement in Nigeria,” *Journal of Refugee Studies* 12, no. 2 (1999): 165.

15. Erin Mooney, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern,” *Refugee Survey Quarterly* 24, no. 3 (2005): 10.



induced and disaster-induced displacement [are] different, making it ‘confusing’ to include both in the IDP definition.”<sup>16</sup> While some argued that the 1992 definition was too broad and too inclusive, others believed the definition was too narrow as it only included displaced persons who fled “suddenly or unexpectedly.”<sup>17</sup>

It has been found that a great number of people do not flee ‘unexpectedly or suddenly’...People may first flee to a nearby town or village in search of security and still go back to their farms during the day to pursue their economic normal activities. If the degree of violence reaches a higher level, people then consider going further and leaving their property for a longer period.<sup>18</sup>

Critics also saw the criteria “forced to flee” and “in large numbers” as too limiting.<sup>19</sup> In reality, some displaced persons flee in small groups or even on an individual basis to avoid detection, to blend in to the local communities better and “make themselves less conspicuous...”<sup>20</sup> Eventually, the criteria that displacement occur in “large numbers” and be “suddenly and unexpectedly” were removed and the “forced to flee” criterion was expanded.

Taking these suggestions into consideration, the former Special Representative to the Secretary-General on Internally Displaced Persons Francis Deng recommended a revised IDP definition in his 1998 report to the United Nations titled, *Guiding Principles of Internally Displaced Persons* (“Guiding Principles”):

[I]nternally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations

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16. Roberta Cohen, “For Disaster IDPs: An Institutional Gap,” *Brookings Institute*, August 8, 2008, [www.brookings.edu/opinions/2008/0808\\_natural\\_disasters\\_cohen.aspx](http://www.brookings.edu/opinions/2008/0808_natural_disasters_cohen.aspx).

17. Cohen and Deng, *Masses in Flight*, 17.

18. United Nations Commission on Human Rights, *Internally Displaced Persons: Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Profiles of Displacement: Colombia (E/CN.4/1995/50/Add.1)* (Geneva: United Nations, October 3, 1994), para. 13.

19. Phuong, *International Protection*, 33.

20. Cohen and Deng, *Masses in Flight*, 17.

of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>21</sup>

The revised 1998 IDP definition removed the temporal and quantitative requirement of being “suddenly or unexpectedly [displaced] in large numbers.”<sup>22</sup> The word “obliged” was added to working IDP definition to encompass situations where individuals “were obliged to leave their homes, as for instance with the forced evictions of minorities during the war in Bosnia or...in the summer of 2005, in Zimbabwe with the home demolitions and forced removal of more than half a million people.”<sup>23</sup> In addition, the phrase “within the territory of their own country” was altered to those “who have not crossed an internationally recognized State border, to reflect the possibility of sudden border changes, for instance as had occurred with the break-up of the former Yugoslavia and the dissolution of the Soviet Union.”<sup>24</sup>

The language of the 1998 definition inherently included those displaced or forced/obliged to leave their homes as a result of government-sponsored displacement, such as during development projects. “According to the World Bank, around 10 million people have been displaced by development projects every year since 1990. The two main causes of displacement are dam construction and urban transportation projects.”<sup>25</sup> As a result, Principle 6(c) of the Guiding Principles prohibits arbitrary displacement, which includes displacement in “cases of large-scale development projects, which are not justified by compelling and overriding public interests.”

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21. Guiding Principles, para. 2.

22. United Nations Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, (E/CN.4/1998/53)* (Geneva: United Nations, February 11, 1998), para. 19.

23. Mooney, “Concept of Internal Displacement,” 11.

24. *Ibid.*

25. Phuong, *International Protection*, 30-31.

In resolution 43/131, “Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations,” the United Nations General Assembly also recognized “that displaced persons outside the original definition of refugees [needed to be] within the scope of international, and therefore UN, concern.”<sup>26</sup> Hence, displacement by natural and man-made disasters remained in the 1998 definition to address situations where states responded to “such disasters by discriminating against or neglecting certain groups on political, ethnic, racial or religious grounds or by violating the human rights of the affected population in other ways, thereby creating special protection needs.”<sup>27</sup> After visiting the region affected by the December 2004 tsunami in Southeast Asia, current Special Representative to the Secretary-General on IDPs, Walter Kälin, concluded that “persons forced to flee their homes share many common types of vulnerability regardless of the underlying reasons for their displacement.”<sup>28</sup>

The experiences of natural disasters in other parts of the world showed that there is a risk of human rights violations when displacement lasts and the displaced cannot return to their homes or find new ones after some weeks or months. In the context of natural disasters, discrimination and violation of economic, social and cultural rights tend to become more entrenched the longer the displacement lasts. Often, these violations are not consciously planned and implemented but result from inappropriate policies.<sup>29</sup>

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26. Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community* (Washington, D.C.: Brookings Institution Press, 1993), 11.

27. United Nations General Assembly, *Report on internally displaced persons, prepared by the representative of the Secretary-General (A/54/409)* (Geneva: United Nations, September 29, 1999), para. 12.

28. Walter Kälin, *Protection of Internally Displaced Persons in Situations of Natural Disasters: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons* (Geneva: Office of the United Nations High Commissioner for Human Rights, 2005), 9.

29. United Nations General Assembly, *Report of Mr. Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons (A/60/338)* (Geneva: United Nations, September 7, 2005), para. 41.

Hence, individuals displaced by natural disasters remained in the IDP definition because they often face similar humanitarian and human rights problems as those displaced by violent conflict as a result of their displacement.

The inclusion of displacement as a result of man-made or natural disasters remains one of the most contested components of the 1998 IDP definition, which is now the most widely used and recognized definition of IDPs. The International Law Association (ILA), an international non-governmental organization of lawyers in private practice, academia, government and the judiciary, adopted the following working definition of IDPs at its 69<sup>th</sup> Annual Conference in London in July, 2000:

[P]ersons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border.<sup>30</sup>

The exclusion of displacement forced by natural or man-made disasters would leave those displaced persons without any recourse or international protection. This is especially problematic when the governing state refuses to accept foreign humanitarian assistance for their population displaced by natural or man-made disasters.<sup>31</sup> But the growing number of humanitarian disasters resulting from natural or man-made disasters and uncoordinated attempts or efforts by the governing states in the Twenty-First Century, such as in the case of Hurricane Katrina in the United States in 2005, is providing a very strong case for why such forms of internal displacement must remain in the IDP definition.

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30. International Law Association, "Declaration of International Law Principles on Internally Displaced Persons, Article 1," *International Law Association*, July 29, 2000, [www.unhcr.org/refworld/docid/42808e5b4.html](http://www.unhcr.org/refworld/docid/42808e5b4.html).

31. David J. Scheffer, "Toward a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review* 23 (Winter 1992), 270.

Just like the greater forced population displacement debates do not include those who have some volition in deciding to leave their homes, the 1998 IDP definition also excludes “those who migrate because of extreme poverty or other economic reasons.”<sup>32</sup>

As far as man-made and natural disasters are concerned, one can make a distinction between causes provoking slow movements of population (such as extreme poverty and degradation of the environment) or sudden migration due to chemical or nuclear accidents or to earthquakes, cyclones and floods. Presumably the resolution does not cover the slow population movements which does [sic] not provoke suddenly an emergency situation but focuses on sudden and involuntary migration requiring immediate action on the part of the international community.<sup>33</sup>

Hence, this separation emphasizes the distinction between those who are coerced to flee their home and those who “choose” to migrate for economic reasons. While those who leave their homes for economic reasons may face problems such as discrimination, they are not considered to face similar or greater humanitarian challenges and human rights abuses on the scale that IDPs face when they are forced to leave their homes.

Another problem with the 1998 definition that has not been heavily discussed by United Nations is the discussion about when displacement ends. Presumably, displacement would end when IDPs are able to return home. However, the definition of “home” has not yet been clarified for the purposes of returning IDPs.<sup>34</sup> Critiques on this criterion have gone back and forth and many have tried to define “home” as the community of origin, the physical house the IDP used to live in, etc. Some critics argue that because IDPs remain within the borders of their country, they are “home.” Others do not believe that IDPs can ever really return home, especially in situations where their

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32. Cohen and Deng, *Masses in Flight*, 17.

33. United Nations Economic and Social Council, *Note by the Secretary-General pursuant to Economic and Social Council resolution 1990/78 Addendum: Report on refugees, displaced persons and returnees, prepared by Mr. Jacques Cuénod, Consultant, E/CN.4/1990/Add.1* (Geneva: United Nations, 1991), para. 10.

34. Phuong, *International Protection*, 36.

homes are destroyed in natural disasters and must be re-built or where there is someone else occupying their home. In other instances, IDPs displaced by natural disasters may lose their homes to climate change, soil erosion, rising sea levels, etc.,<sup>35</sup> and do not have a home to which to return. In some situations, IDPs do not need to return home to end their displacement. For example,

In some cases, the displaced may have integrated economically and socially into another area and may not choose to return home. They may no longer feel secure in their home areas even though the government or the international agencies and NGOs assisting the displaced believed they could safely return. Or they may be unable to return because their land and homes have been occupied by others...In the view of some observers, displacement ends when returnees have both security and the means to reestablish themselves in their areas of origin.<sup>36</sup>

Refugees are granted the protection of *non-refoulement*, the right to not be returned home. It remains unclear whether IDPs can be granted a similar right. Opponents fear that without a cessation clause clearly defining when displacement ends, international assistance and intervention will continue on an *ad hoc* basis, which defeats the purpose of creating a uniform definition applied in all situations.

The search for criteria and mechanisms to determine when an internally displaced person ceases to be internally displaced may not appear to be very meaningful. Likewise, to determine when a victim of human rights violations ceases to be a victim is not especially helpful. Protection and assistance to the internally displaced should cease when their needs are fulfilled. This can only be determined on an *ad hoc* basis after a general assessment of the political and socioeconomic situation, as well as a specific assessment of the situation of a particular IDP group.<sup>37</sup>

Despite the lack of a cessation clause, the 1998 IDP definition remains the most widely used and referenced working definition of IDPs used by the United Nations and other

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35. Elizabeth Ferris, "Displacement, Natural Disasters, and Human Rights," *Brookings Institute*, October 17, 2008, [www.brookings.edu/speeches/2008/1017\\_natural\\_disasters\\_ferris.aspx](http://www.brookings.edu/speeches/2008/1017_natural_disasters_ferris.aspx).

36. Cohen and Deng, *Masses in Flight*, 36, 37.

37. Phuong, *International Protection*, 37.

international organizations such as the International Committee of the Red Cross and the United Nations High Commissioner on Refugees.

### ***International Scale of IDP Problem***

Internal displacement is not a new problem, but the international recognition and acceptance of internal displacement as a problem *is* new. Internal displacement is often viewed as a post-Cold War phenomenon because international concern regarding internal displacement initially emerged with the refugee problem. However, internal displacement occurred during the Cold War. “The fact of the matter is that some of the major cases of internal displacement over the past two decades are related to conflicts affected by cold war policies.”<sup>38</sup> The politics between the United States and the former Soviet Union increased the internal displacement problem exponentially as it “contributed heavily to the crisis of governance in Africa, Asia, and Latin America that led to large-scale displacement.”<sup>39</sup> Specifically, the Cold War proxy wars “played a dominant role in other conflicts that uprooted millions...during the 1980s, most notably in civil wars...in Central America, and in the conflicts in Afghanistan and Cambodia.”<sup>40</sup>

Despite the internal displacement problem that existed during the Cold War, the international community was initially concerned with addressing the causes influencing refugee movement. After the fall of the former Soviet Union, borders were redrawn and many nationalist movements were no longer suppressed. These often left individuals on the wrong side of the border or were caught in internal conflicts, creating large numbers of forcibly displaced populations who found themselves displaced both within and

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38. Cohen and Deng, *Masses in Flight*, 19.

39. Roberta Cohen and Francis M. Deng, *The Forsaken People: Case Studies of the Internally Displaced* (Washington, D.C.: Brookings Institution Press, 1998), 4.

40. *Ibid.*, 4-5.

outside their home state. As a result, the number of refugees after the Cold War began to rise, which placed a heavy burden on states party to the Refugee Convention.

The international refugee system had been overloaded since the early eighties and industrial states took various opportunities, ranging from the collapse of the Soviet Union to the European construction, to reshape and restrict refugees' access to asylum... The end of the Cold War prompted a redefinition of agendas and of UN activities. This collided with the crisis of the refugee regime owing to an increased number of forced migrants and the disappearing hospitality of industrialised nations... *[The United Nations High Commissioner for Refugees] acknowledged the structural crisis of the refugee regime... [and] claimed that it could no longer ignore the links between internal and external displacement.*<sup>41</sup> (emphasis added)

The United Nations Security Council agreed that the “massive flows of refugees were a threat to international peace and security.”<sup>42</sup> For example, the exodus of Hutus and Tutsis from Rwanda into the Democratic Republic of Congo (DRC) and Sudan as a result of the 1994 Rwandan genocide created a regional problem involving Rwanda's neighbors. Hutus and Tutsis living or seeking refuge in the DRC and Sudan became involved in the internal conflict between the Hutus and Tutsis in Rwanda. As a result, the study and preoccupation with internal displacement emerged in an attempt to identify and address the root causes of refugee movement from the Cold War.<sup>43</sup>

As IDPs were initially identified in relation to the refugee problem, early literature on IDPs labeled them “internal refugees,” referring to those who fled their homes owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, but remained *inside*, rather than *outside*, their country of nationality. By defining internal displacement in relation to refugees, the international community initially believed that internal

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41. Cécile Dubernet, *The International Containment of Displaced Persons: Humanitarian Spaces Without Exit* (Aldershot: Ashgate Publishing Limited, 2001), 5, 26, 34.

42. Cohen and Deng, *Masses in Flight*, 4-5.

43. Analytical Report, para 4.



refugees should have the same access to international protection guaranteed to all refugees whether they remained within their home country or crossed an internationally recognized border. Hence, internally displaced persons were initially perceived to have similar rights and protections as refugees.

Because internal refugees remained within the borders of its state, international attempts to protect internal refugees resulted in “in country protection,” which refers to providing protection for refugees who remained within the borders of their home state. By providing protection to would be refugees who remained within their state, in country protection has been criticized for being a policy that contains and prevents refugees from accessing the refugee and asylum institutions.<sup>44</sup> Despite these concerns, in country protection became an international necessity by the end of the Cold War. For example, during the First Gulf War in the early 1990s, Turkey closed the border it shared with Iraq, denying Iraqi Kurds who were fleeing in fear of persecution based on their ethnicity refuge in Turkey.<sup>45</sup> Despite remaining within their home country, these fleeing Iraqi Kurds otherwise qualified as refugees and deserved the same access to protection and humanitarian provisions as other refugees. Hence, Operation Provide Comfort, which was led by the United States, provided in country protection and humanitarian aid to the Kurdish refugees who remained in Iraq.

The evolution towards providing in country protection to internal refugees opened discussions regarding providing international protection to displaced persons who remained within the borders of their state. Insufficient international responses to

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44. Michael Barutciski, “The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal assistance in Bosnia-Herzegovina (1992-1994),” *International Journal of Refugee Law* 8, no. 1/2 (1996): 50.

45. Dubernet, *International Containment*, 70.

internally displaced persons exacerbated the humanitarian crises persons faced during displacement, especially when they remained within their country. While IDPs may have initially been conceived as part of the refugee debate, it is now clear that the IDP problem far exceeds the refugee problem. The Special Representative to the Secretary-General on IDPs soon realized that the displacement problem included more than those who were internal refugees, but faced similar problems and needs, which they shared as a displaced population. Hence, the United Nations High Commissioner for Refugees “developed an interest in working with IDPs in the early 1990s in order to ensure ‘preventive protection’ and contain would-be refugees.”<sup>46</sup>

It was also recognized in the 1990s that the internal displacement problem far exceeded the refugee problem that initially plagued the international community. “When IDP statistics began in 1982, only 1.2 million people were internally displaced in 11 countries.”<sup>47</sup> In 1992, the United Nations reported an estimate of 17 million refugees compared to the 24 million IDPs in the world.<sup>48</sup> “By 1995, there were an estimated 20-25 million IDPs in more than 40 countries, almost twice the number of refugees.”<sup>49</sup> In some cases the number of internally displaced in fact may be even higher, “given the reticence of Governments to admit the existence of the problem and considering that there is no institution charged with collecting the information.”<sup>50</sup> The United Nations has regularly cited similar statistics when emphasizing the severity of the international IDP problem.

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46. Muggah, “Tale of Two Solitudes,” 8.

47. Internal Displacement Monitoring Centre, “The definition of an internally displaced person (IDP),” Internal Displacement Monitoring Centre, [www.internal-displacement.org/8025708F004D404D/\(httpPages\)/CC32D8C34EF93C88802570F800517610?OpenDocument](http://www.internal-displacement.org/8025708F004D404D/(httpPages)/CC32D8C34EF93C88802570F800517610?OpenDocument).

48. Analytical Report, para 5.

49. Cohen and Deng, *Masses in Flight*, 4-5.

50. United Nations General Assembly, *Internally displaced persons: Note to the Secretary-General, Annex, A/50/558* (Geneva: United Nations, October 20, 1995), para. 5.

In 2007 and 2008, the Internal Displacement Monitoring Centre (IMDC), established by the Norwegian Refugee Council, reported approximately 26 million IDPs in conflict-related situations involving at least 52 countries. “This is the highest figure since the early 1990s, and marks a six percent increase from the 2006 figure of 24.5 million.”<sup>51</sup> In addition, the IMDC also reported that there were 4.6 million people newly displaced in 2008, which “represented an increase of 900,000 compared to the same total in 2007[,]” when there were 3.7 million newly displaced.<sup>52</sup> It is also “estimated that internal conflicts are forcing the flight of an estimated 10,000 persons daily.”<sup>53</sup> Refer to Figure 1 for a map illustrating the global scale of the internal displacement problem.

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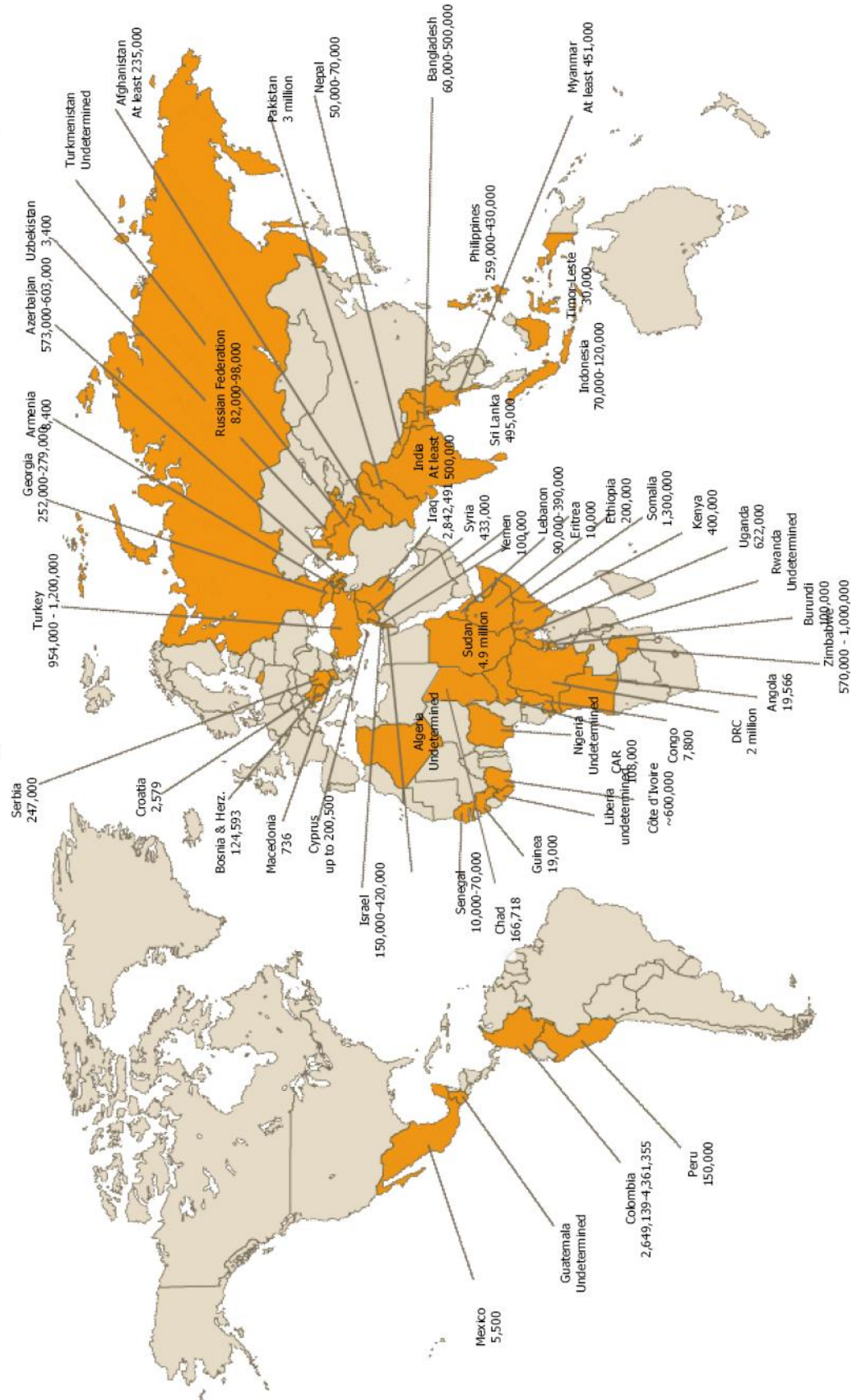
51. Edmund Jennings, ed., *Internal Displacement: Global Overview of Trends and Developments in 2007* (Geneva: Internal Displacement Monitoring Centre, April 2008), 7.

52. Edmund Jennings and Nina M. Birkeland, ed., *Internal Displacement: Global Overview of Trends and Developments in 2008* (Geneva: Internal Displacement Monitoring Centre, April 2009), 9 and 13.

53. General Assembly, *Note A/50/558*, para. 6.

Occupied Palestinian Territory  
24,500-115,000

# Internally Displaced People Worldwide August 2009



**Figure 1** – Internal Displacement Monitoring Centre, “Internally Displaced Persons Worldwide, August 2009,” [www.internal-displacement.org/8025708F004CE90B/httpWorldMap?ReadForm&count=1000](http://www.internal-displacement.org/8025708F004CE90B/httpWorldMap?ReadForm&count=1000).

At best, these numbers are only guestimates as the nature of displacement makes it very difficult to identify and count the exact number of internally displaced persons. Some IDPs intentionally hide among new communities for security reasons<sup>54</sup> and “disperse so as to avoid identification, which makes access [identifying and counting IDPs] more difficult.”<sup>55</sup> In addition, institutions and countries have varying IDP statistics as they implement differing methodologies in considering who IDPs are and how to count them. For example, the U.S. Committee for Refugees only considers IDPs to be “those who would be ‘refugees’ if they were to cross an international border”<sup>56</sup> although others may include those displaced by natural and man-made disasters in the IDP count. Regardless of the exact number of IDPs in the world, it is generally agreed that IDPs today far exceed the number of refugees.

### ***Problems IDPs Create***

Less attention has been paid to the problems displaced persons create during their displacement, but internal displacement is not just a problem that plagues the governing state. Large-scale forced population displacement can have far reaching negative ecological, political, economical and social impacts. In some cases, internal displacement has led to the depopulation of entire communities and even entire regions,<sup>57</sup> which has been documented to have negative long-term impacts on the communities and environments they left behind. Consider the following example in Afghanistan:

With departures from rural areas, the human resources needed to maintain adequate levels of cultivation dwindled. In irrigated areas, canals fall into

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54. Cohen and Deng, *Masses in Flight*, 6.

55. Ibid.

56. Ibid., 31.

57. Ibid., 24.

disrepair and cannot be easily rehabilitated. A decade of such neglect in southwestern Afghanistan caused extensive, perhaps irreparable, damage to patterns of cultivation there...Furthermore, crops that demand constant attention, as does coffee, will suffer ill effects for years to come (plants will deteriorate and the quality of harvests will decline) if they are abandoned for even a single season.<sup>58</sup>

In addition to their negligence to the environment, IDPs can also directly and negatively affect on the environment. For example, during displacement Rwandan IDPs and refugees fed off the Akagera National Park and settled in the Nyungwi and Gishweti forests, damaging those ecosystems.<sup>59</sup>

Despite remaining within their home state, IDPs can also create local, regional and international problems. The rise in the number of IDPs foreshadows the potential mass exodus that can occur from one country into another, thereby putting additional strain on international refugee and asylum programs if IDPs cross a border and qualify for those international statuses. Even if IDPs cross a border but do not qualify as refugees or asylees, IDP presence in another/bordering country can potentially have destabilizing effects, especially in already politically volatile regions. This list is just to name a few of the problems associated with large-scale forced population displacement, but list is by no means exhaustive or comprehensive.

### ***Challenges Facing IDPs***

As persons displaced from their homes, IDPs often have little or no protection of their persons or human rights from their governments, making them one of society's most vulnerable groups. "When individuals are on the move, it is more difficult to ensure that their human rights are protected."<sup>60</sup> The IMDC indicated there were approximately 11.3

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58. Ibid.

59. Ibid., 25.

60. Phuong, *International Protection*, 43.

million IDPs in at least thirteen countries as of December 2007, who did not have any significant humanitarian assistance from their governments and 9.3 million IDPs in at least ten countries where the governments were indifferent or hostile to their protection and humanitarian needs.<sup>61</sup>

The specific needs of IDPs vary depending on their location and the circumstances surrounding their displacement. But IDPs share some common traits and challenges. For example, IDPs “are often composed largely of women and children, and often are predominantly of rural origin.”<sup>62</sup> In addition, “[d]isplacement is often created by, and in turn results in, crisis in which the rights normally taken for granted – physical security, shelter, food, water, health care and basic amenities – are acutely compromised.”<sup>63</sup> Kälin provides the following overview of the problems IDPs face:

As persons who left their homes involuntarily, internally displaced persons...confront specific problems and needs that are different from those who may remain at home. While in flight, they may be attacked or cross into mine fields in areas they do not know. Families might be separated, with members losing contact with one another. Once they arrive at their destinations, they need food, shelter, and access to health services. Often they are not welcomed by the host population but suffer discrimination. Their children may encounter difficulties in getting a proper education. IDPs in many countries run higher risks than those remaining at home of having their children forcibly recruited, of becoming the victims of gender-based violence, or of remaining without jobs [or] other means of livelihood...<sup>64</sup>

The United Nations has also reported that some of the “highest mortality rates ever recorded...have come from situations of internal displacement, where the death rates among internally displaced persons have been as much as 60 times higher than those of

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61. Jennings, *Global Overview 2007*, 6.

62. Analytical Report, para 6.

63. Deng, *Protecting the Dispossessed*, 8-9.

64. Walter Kälin, “Internal Displacement and the Protection of Property,” *Swiss Human Rights Yearbook* 1 (2006): 176.

non-displaced within the same country.”<sup>65</sup> In addition to the humanitarian challenges IDPs encounter, internally displaced populations face the possibility of “de-skilling” in protracted displacement situations. Certain segments of the displaced populations are uneducated and without skills to be a functioning member of that population. The loss of skills within certain societies can have negative impacts as de-skilling “alters the structure and size of households and changes family patterns and gender roles.”<sup>66</sup>

Kälin and the United Nations’ assessment only provide a glimpse of the problems IDPs face when they are displaced during non-violent situations. In armed conflict situations, IDPs face additional humanitarian challenges such as:

...IDPs were victims of summary executions, torture, cruel, inhuman and degrading treatment, forced recruitment, sexual violence and looting of their property...Displaced women and girls were at increased risk of sexual violence, including rape and exploitation...[and] were exposed to significant health risks due to their lack of access to reproductive and maternal health care in areas of displacement...A specific threat facing displaced children was forced recruitment by armed groups. Family separation and other risk factors deriving from displacement put children in danger of forced recruitment...In the majority of countries affected by internal displacement, children lost access to education and were forced to work in order to survive.<sup>67</sup>

The International Committee of the Red Cross, which provides humanitarian assistance to victims of war and internal violence, also notes that IDPs are at risk of creating tension in hostile communities, increased risk of sexual violence and are sometimes used “as a tool or even as a method of warfare by parties to a conflict.”<sup>68</sup>

Internally displaced persons typically have suffered from a series of human rights violations which add up to a characteristic and distinctive syndrome. The cumulative effect of these violations, together with the fact of having been forced

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65. General Assembly, *Note A/50/558*, para. 7.

66. Cohen and Deng, *Masses in Flight*, 25, 26.

67. Jennings, *Global Overview 2007*, 28 and 7.

68. International Committee of the Red Cross, “ICRC Position on Internally Displaced Persons,” *International Committee of the Red Cross*, May 2006, [www.icrc.org/Web/eng/siteeng0.nsf/html/idp-icrc-position-030706](http://www.icrc.org/Web/eng/siteeng0.nsf/html/idp-icrc-position-030706).



to flee their home and the difficulties, risks and deprivations invariably associated with their new situation, make their needs qualitatively different from those of other persons.<sup>69</sup>

Hence, IDPs face a wide variety of humanitarian problems and challenges that arise during short term and long term displacement and where displacement occurs in violent and non-violent environments.

As previously mentioned, despite the variety of challenges IDPs face during their displacement, there has been an insufficient and uncoordinated international approach in responding and/or protecting internally displaced persons. There is no standard international response to IDPs whether they are displaced under violent or non violent circumstances, or whether their displacement is short term or long term. For example, in non-violent situations, IDPs lack access to economic, social, and civil rights during the time of their displacement and sometimes even during their attempt to return home.<sup>70</sup>

[Unlike refugees, as] no one agency is specifically mandated to address the needs of internally displaced persons, international responses to their plight are highly uneven. In some situations, the needs of the internally displaced are met to varying degrees but in others they are largely neglected or not addressed at all. Even in situations where the international community has extensive humanitarian operations, the attention that it provides to the internally displaced may be less than the need requires. Moreover, protection does not constitute a primary area of concern for many of the international agencies involved with the displaced.<sup>71</sup>

Part of the problem to coordinating an international response to IDPs is the lack of understanding of who IDPs are and the circumstances requiring international involvement.

In recognition of this uncoordinated and insufficient international response to IDPs, the Economic and Social Council of the United Nations in 1991 requested the

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69. Analytical Report, para. 91.

70. Jennings, *Global Overview 2007*, 31-36.

71. General Assembly, *Note A/50/558*, para. 20.

Secretary-General initiate a system-wide review to assess the coordination of assistance to displaced persons. In 1991, the UNHCHR also requested the Secretary-General to consider the protection of human rights and the needs of IDPs in this system-wide review.<sup>72</sup> In 1992, the consultant to the Secretary-General on this issue confirmed that IDPs faced human rights problems such as the right to food, shelter and adequate living conditions, health care, life and personal integrity, work and adequate wages, family unity, and education. In addition, the consultant noted that IDPs lacked the freedom of residence and movement and the freedom of thought, association, expression and assembly.<sup>73</sup> Given these considerations, the United Nations has embarked on the elusive task of trying to identify IDPs and create an internationally recognized definition of IDPs in hopes of laying the foundation for a normative framework towards providing protection for IDPs.

### ***Conclusion***

The international scale of internal displacement, which far exceeds the present-day international refugee problem, requires closer attention and study. The sheer number of internally displaced persons is expected to continue to destabilize local, regional and international peace if their problems and presence remain unaddressed. Large-scale displacement, often seen as a symptom of potential state failure or rising civil unrest, is especially problematic for the governing states and their neighbors. In addition, IDPs crossing into another state can sometimes destabilize already sensitive regional political relationships. For those who qualify, IDPs who cross a state border also threaten to overburden the already overburdened refugee institution.

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72. Analytical Report, para. 1-2.

73. Ibid., para 42-73.

The reason that IDPs have recently gained greater international attention is not because internal displacement is a new problem. Rather, it is now known that the IDP problem far exceeds the refugee problem, and that IDPs continue to face day-to-day challenges that prevent them from having adequate or sufficient protection and access to humanitarian provisions. The humanitarian atrocities that have emerged from the Rwandan genocide and the civil war that has lasted almost a quarter of a century in Sudan demonstrate what *does* happen when there is no adequate international response to IDPs.

However, no standardized international response exists on how to appropriately and adequately respond to IDPs. The deficiencies in the international response to IDPs will continue if there is no explicit recognition of who IDPs are and the needs and challenges they face during their displacement. While the 1998 working IDP definition may be widely recognized and applied by international institutions such as the United Nations and the Red Cross, it is still not a legally binding document and grants IDPs no legal rights or status. But the lack of a legal status for IDPs is only the first problem to creating a standardized response to IDPs.

### **III. International Responsibility to Protect Internally Displaced Persons**

I also accept that the principles of sovereignty and non-interference offer vital protection to small and weak states. But to the critics I would pose the following question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?

Kofi Annan, Former United Nations Secretary-General  
United Nations Millennium Report 2000<sup>74</sup>

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74. Kofi Annan, *'We the Peoples': The Role of the United Nations in the 21<sup>st</sup> Century* (New York: United Nations, 2000), 48.

As briefly discussed in the last section, even as persons displaced within their state, the United Nations has recognized that IDPs pose an international problem – their presence may destabilize a region or a border, and/or become refugees and overburden the already troubled refugees institution. However, the general acceptance of the international IDP problem has not yet produced any standardized international responses that appropriately and sufficiently address IDPs’ problems and needs during all circumstances surrounding their displacement. For example, there is more international attention to IDPs when their displacement is a result of civil unrest or if they are caught in a violent conflict. In addition to the lack of a legal status afforded to IDPs, the second legal hurdle preventing an international norm from emerging regarding how to respond to IDPs is the concern regarding the legitimacy of foreign actors and states who intervene in a state’s domestic affairs, even for humanitarian reasons. Specifically, because IDPs have not crossed an internationally recognized state border, they remain within the domestic jurisdiction of that governing state.

This section examines the traditional concept of state sovereignty, how it has evolved over time, and the role sovereignty plays in contemporary international affairs. Humanitarian disasters such as the genocide in Rwanda in 1994 have prompted the international community to consider whether there is an international “responsibility to protect;” to conduct humanitarian interventions to prevent or limit humanitarian atrocities. IDPs are a good example to demonstrate the debate between sovereignty and international responsibility because they remain within the domestic jurisdiction of their governing state, but face grave humanitarian problems that are difficult for the international community to ignore. In addition, this section reviews the debates regarding

the legitimacy of humanitarian interventions to elucidate the arguments against establishing a common international response to IDPs.

### ***Legitimizing Humanitarian Intervention***

There are varying definitions and perceptions of permissible intervention, as well as the obligations associated with humanitarian interventions, if any even exist. In its broadest definition, “*intervention* refers to external actions that influence the domestic affairs of another sovereign state.”<sup>75</sup> More importantly, some critics argue that “the state on the receiving end must *not* consent to the action” in order for it to be truly considered an intervention.<sup>76</sup> But the reason why interventions should be considered in response to IDPs is because “[i]n international society, intervention...[is] the most visible and perhaps most consequential ways of enforcing standards of conduct...”<sup>77</sup> Specifically, In intervention is “understood to be aimed at governments...and so provided a way of bringing about political change without disturbing the Vienna boundaries and territorial settlement that underpinned the entire European order of the period.”<sup>78</sup> Hence, in order for humanitarian interventions to be successful, they must enforce or shape international standards of conduct toward IDPs.

However, the type of acceptable and legitimate intervention for humanitarian purposes remains highly debated. For example, *soft* intervention refers to intervention in

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75. Joseph S. Nye, *Understanding International Conflicts: An Introduction to Theory and History*, 7th ed. (New York: Longman, 2008), 166.

76. Jennifer M. Welsh, “Taking Consequences Seriously: Objections to Humanitarian Intervention,” in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2004), 56.

77. Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003), 2.

78. Finnemore, *Purpose of Intervention*, 11.

the form of a “discussion, examination, and recommendatory action”<sup>79</sup> or it can “be simply a speech designed to influence domestic politics in another state.”<sup>80</sup> But less coercive forms of interventions such as speeches and economic sanctions may not have the effect of correcting the behavior that the intervention seeks to influence. On the other hand, *hard* intervention generally “refers to the adoption of measures that (unlike soft intervention) are coercive but do not involve the use of force, such as economic and other kinds of sanctions...”<sup>81</sup> Examples of hard intervention can include, but are not limited to, “transporting relief workers into the territory of a sovereign state to deliver humanitarian assistance...”<sup>82</sup>

Lastly, and probably one of the most controversial forms of intervention, involves the use of force, also known as *forcible* intervention. Proponents of humanitarian interventions argue that interventions that aim to address humanitarian concerns can only be successful with the use of force:

[T]he threat or use of force by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.<sup>83</sup>

However, the use of force poses the one of the strongest challenges against the legitimacy of humanitarian interventions today as the presence of armed forces seemingly distorts the humanitarian nature of interventions. Instead, the presence of armed forces makes it

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79. Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 3<sup>rd</sup> Ed. (New York: Translational Publishers, Inc., 2005), 173.

80. Nye, *Understanding International Conflicts*, 167.

81. Tesón, *Humanitarian Intervention*, 3<sup>rd</sup> Ed., 173.

82. Gene M. Lyons and Michael Mastanduno, “Introduction: International Intervention, State Sovereignty, and the Future of International Society,” in *Beyond Westphalia? State Sovereignty and International Intervention*, eds. Gene M. Lyons and Michael Mastanduno (Baltimore: The Johns Hopkins University Press, 1995), 10.

83. J. L. Holzgrefe, “The humanitarian intervention debate,” in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 18.

seem as if the intervening states or organizations have other motives for such interventions. For example, humanitarian interventions can serve as a disguise for powerful states to “impose their own culturally determined moral values on weaker members of international society...”<sup>84</sup> much like during the period of colonialism that fulfilled the white man’s burden.<sup>85</sup> The underlying assumption, as realists argue, is that states would only act to pursue their national interest and would not “risk their soldiers’ lives unless vital interests are at stake.”<sup>86</sup>

In addition to the use or presence of armed forces, another controversy related to humanitarian interventions is the timing of these interventions. It is difficult to determine whether humanitarian interventions should serve only as a response to an already existing crisis or be utilized as a preventive measure. Unfortunately, it is almost impossible to determine ahead of time whether humanitarian interventions will be preventive in nature, achieve its intended goal(s), or merely create more problems. It can also never be known “in advance that more lives will be saved by intervention than will be lost by it, or that the means employed will not take on such a character that the moral credentials of the intervenors [sic] begin to look little different from those they are fighting against.”<sup>87</sup> Hence, the debate about the timing and permissibility of humanitarian interventions is divided between those who believe that the ends justify the means and those who argue that the means justify the ends. But it would still be “wrong to make success the defining

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84. Nicholas J. Wheeler and Alex J. Bellamy, “Humanitarian intervention in world politics,” in *The Globalization of World Politics: An Introduction to International Relations, 3<sup>rd</sup> Ed.*, ed. John Baylis and Steve Smith (Oxford: Oxford University Press, 2005), 559.

85. Robert H. Jackson, “International Community Beyond the Cold War,” in *Beyond Westphalia? State Sovereignty and International Intervention*, ed. Gene M. Lyons and Michael Mastanduno (Baltimore: The Johns Hopkins University Press, 1995), 76.

86. Wheeler and Bellamy, “Humanitarian intervention,” 558 and 563.

87. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 36-37.

test of legitimacy in such cases, since this would lead to the conclusion that we can judge the legitimacy of an intervention motivated by humanitarian reasons only with the benefit of hindsight.”<sup>88</sup> In the end, these criticisms of humanitarian intervention do not argue about whether humanitarian interventions *should* occur. Rather, they merely point out that humanitarian interventions face operational challenges and that mechanisms must be in place to check and/or limit these problems.

### *Sovereignty as Authority*

A discussion regarding the legitimacy of humanitarian interventions, and interventions in general, require a corresponding examination into the issue of state sovereignty. Interventions of any kind for any reason directly violate the traditional concept of state sovereignty that emerged after the Thirty Years’ War in the Peace of Westphalia in 1648. Prior to the outbreak of Thirty Years’ War, the Reformation movement in Europe challenged the absolute and authoritarian rule of the Catholic Hapsburgs and the Catholic Church. This war became a war where states fought to maintain their right to religious freedom. With this, states wanted the authority to conduct the domestic affairs within their territory. As a result, “the treaties of Westphalia formally recognized the existence of separate sovereignties...The settlement thus created a new international covenant based on state sovereignty, which displaced the medieval idea of the *Respublica Christiana*.”<sup>89</sup>

The Westphalian sovereignty that emerged in the mid Seventeenth Century emphasized the “unrivalled control over a delimited territory and the population residing

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88. *Ibid.*, 40.

89. Robert H. Jackson and Patricia Owens, “The evolution of international society,” in *The Globalization of World Politics: An Introduction to International Relations Third Edition*, ed. John Baylis and Steve Smith (Oxford: Oxford University Press, 2005), 59.



within it...”<sup>90</sup> and is often referred to as *sovereignty as authority* or *authoritarian sovereignty*. “Instabilities and disorder, it was believed, were severe obstacles to a stable society and could only be overcome by viable governments that could firmly establish ‘sovereignty’ over territory and populations.”<sup>91</sup> Because man’s inherent state of nature is solitary, poor, nasty, brutish and short in a state of anarchy, Thomas Hobbes argued that “security for individual human beings...could be guaranteed...by the radical subordination of individual or group will, judgement [sic], and capacity to threaten or endanger, to the unified will and judgement [sic] and the effectively imposed coercive authority of a sovereignty power.”<sup>92</sup> In other words, the sovereign state is “an authority that is supreme in relation to all other authorities in the same territorial jurisdiction, and that is independent of all foreign authorities.”<sup>93</sup> Hence, the international principle of non-intervention emerged as a corollary to the recognition and acceptance of state sovereignty. “If a state has a right to sovereignty, this implies that other states have a duty to respect that right by, among other things, refraining from intervention in its domestic affairs.”<sup>94</sup> The non-intervention principle was also included in the United Nations’ Charter to recognize and accept states’ sovereign authority. Article 2(7) of the Charter states,

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

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90. Welsh, “Taking Consequences Seriously,” 52.

91. Lyons and Mastanduno, “Introduction,” 5.

92. John Dunn, “Political Obligation,” in *Political Theory Today*, ed. David Held (Stanford: Stanford University Press, 1991): 26.

93. Robert H. Jackson, *Sovereignty: Evolution of an Idea* (Cambridge: Polity Press, 2007): 10.

94. R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974): 14.

To maintain the sovereign authority over the domestic affairs within its territory, “[e]xternally, there was no room for any overarching intervening authority comparable to the [head of the state].”<sup>95</sup> As a result, traditional forms of state “[s]overeignty entail[ed] the right of states to be free from interference.”<sup>96</sup>

Critics of sovereignty fear that states may use this authoritarian sovereignty to shield the human rights violations occurring within their territory. “Sovereign states are expected to act as guardians of their citizens’ security, but what happens if states behave as gangsters towards their own people, treating sovereignty as a licence [sic] to kill?”<sup>97</sup> States that fail to “meet the standards prescribed for membership in the international community...[are] likely to assert sovereignty and cultural relativism in an attempt to barricade itself against alleged foreign interference.”<sup>98</sup> It is the tension between state sovereignty and the humanitarian abuses within state territory that has forced the international community to question whether absolute sovereignty is still applicable and relevant in the Twenty-First Century.

### *The Collapse of Sovereignty*

On the other hand, critics of traditional sovereignty argue that the concept of authoritarian sovereignty has collapsed. According to this view, there is “nothing that is inevitable or sacrosanct about the sovereign state system. It is a human arrangement

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95. Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), 166.

96. Nicholas Onuf, “Intervention for the Common Good,” in *Beyond Westphalia? State Sovereignty and International Intervention*, ed. Gene M. Lyons and Michael Mastanduno (Baltimore: The Johns Hopkins University Press, 1995), 49.

97. Wheeler and Bellamy, “Humanitarian intervention in world politics,” 556.

98. Francis M. Deng, “Reconciling Sovereignty with Responsibility: A Basis for International Humanitarian Action,” in *Africa in World Politics: The African State System in Flux*, ed. John W. Harbeson and Donald Rothchild (Boulder: Westview Press, 2000), 357.

from start to finish, meaning it is historical. It could change fundamentally.”<sup>99</sup> For example, some have interpreted the principle of non-intervention in the UN Charter as *not* giving states a shield behind which they can hide their actions and human rights abuses:

“Domestic jurisdiction” [in Article 2(7) of the United Nations Charter] does not exempt everything within sovereign borders from the scrutiny of the international community any more than the domestic jurisdiction of the city of Toledo shields its government and residents from the reach of Ohio state law, federal law, or, for that matter, international law. In the past, the United Nations found that “domestic jurisdiction” was no bar to de-colonization or anti-apartheid actions. Similarly, a state’s treaty obligations – many of which can deeply penetrate national sovereignty and territorial borders – cannot be regarded as “domestic jurisdiction.”<sup>100</sup>

In fact, the last clause of Article 2(7) allows for exceptions to the non-intervention principle, such as in situations that prevent the application of enforcement measures under Chapter VII of the Charter, which deal with the maintenance of peace by the Security Council. If sovereignty was once considered sacrosanct, today it has evolved so that states no longer have such sovereign authority.

The erosion of sovereignty is more prevalent in contemporary international affairs as states grow more interconnected and interdependent on each other in the Twenty-First Century.<sup>101</sup>

In the context of a highly interconnected global order, many of the traditional domains of state activity and responsibility (defence, economic management, communications, administrative and legal systems) cannot be fulfilled without resort to international forms collaboration.<sup>102</sup>

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99. Robert Jackson, *Sovereignty: Evolution of an Idea*, 161.

100. Scheffer, “Modern Doctrine,” 261-262.

101. David Held, “Democracy, the Nation-State and the Global System,” in *Political Theory Today*, ed. David Held (Stanford: Stanford University Press, 1991), 207.

102. *Ibid.*, 207-208.

Specifically, globalization has led to an “‘internationalization’ of domestic activities and an intensification of decision-making in international frameworks.”<sup>103</sup> In the case of the European Union, states “pool” their sovereignty “into a common ‘supranational’ institution in which they no longer make decisions independently.”<sup>104</sup> The decisions of individual states not only affect its population and its territory today,<sup>105</sup> rather, it can have regional and/or international ramifications. In addition, the decision-making process that was traditionally controlled by state leaders is now influenced by other states, grass root mobilization, international organizations and international bi- and multi-lateral agreements. The emergence and increasing role of non-state actors, trans-national actors and international institutions are increasingly influencing state agenda.<sup>106</sup>

These long-term trends [economic interdependence, interventions in the domestic affairs of states after the Cold War, and delegitimization of colonialism] have led not only to an *erosion* of traditional sovereignty, i.e., to a reduction in the autonomy of the state and in its actual power, but also to a striking *diffusion* of the state’s influence beyond the borders of the sovereign state: through the mechanisms of the world economy and the operations of international and regional organizations, states have an increasing capacity to affect others, either deliberately...or as result of its domestic policies and practices.<sup>107</sup>

As long as interdependent economic relations and memberships in international organizations continue to exist, state sovereign authority over its territorial border will remain porous.

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103. Held, “Democracy,” 222.

104. Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001), 39.

105. Held, “Democracy,” 202.

106. Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (New York: Longman, 1989), 33 and 35.

107. Stanley Hoffmann, “Sovereignty and the Ethics of Intervention,” in *The Ethics and Politics of Humanitarian Intervention*, ed. Stanley Hoffmann (Notre Dame: University of Notre Dame Press, 1996), 15.

Despite the recognition that sovereignty is evolving with the emergence of non-state actors and international institutions, there is evidence that some sovereignty remains intact.<sup>108</sup>

[A]ny claim that a world of [non-state actors and non-governmental organisations] is displacing the system of sovereignty states – rather than merely operating under their jurisdiction and protection – is misleading. Globalisation presupposes the existence of the system of states. The states system opens and secures a space for transnational activity, making it feasible to conduct operations and engage in transactions on an international plane. Non-state actors and organisations operate within that system, and not outside it...[I]t is still the case that sovereign states and the great powers in particular, both individually and jointly, carry the heavy responsibility for arranging and sustaining international order which at base is a diplomatic and military enterprise. Non-state actors and organisations are not responsible and could not be made responsible for that.<sup>109</sup>

There is no doubt that the traditional concept of sovereignty that emerged from the Peace of Westphalia has changed. How much and to what extent that sovereignty has changed continues to be contested and debated.

### *Conditional Sovereignty*

Between the two extremes of the spectrum regarding the extent to which sovereignty still exists in modern day international affairs is the argument that sovereignty is conditional. Conditional sovereignty is premised on the political and philosophical arguments in support of the “social contract,” where a state must meet its obligations to its citizens and fulfill its *raison d’être*. According to John Locke, individuals enter into a social contract with its government, giving up some rights in return for the protection or guarantee of other rights. “[T]he state exists as a discretionary association for the mutual advantage of its members, and the government as an agent

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108. Held, “Democracy,” 212.

109. Robert H. Jackson, “Sovereignty and its Presuppositions: Before 9/11 and After,” *Political Studies* 55 (2007), 310.

whose duty is to serve the basic interests of those members.”<sup>110</sup> For example, in return for giving up certain individual liberties, the state is expected to provide security. Hence, political theorists contend that sovereignty is directly linked to the state being able to fulfill these obligations to its people.

Conditional sovereignty can also be understood as sovereignty that denotes responsibility – or *sovereignty as responsibility*, a term coined by Francis Deng.

Thinking of sovereignty as responsibility...has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission.<sup>111</sup>

Hence, if states do not fulfill its obligations to its people, then it loses its claim to legitimate rule and sovereign authority. In other words, “if the *raison d’être* of the state is the provision of protection, no state which actively menaces its own subjects can have a sound claim to their dutiful obedience.”<sup>112</sup>

[B]ecause the ultimate justification of the existence of states is the protection and enforcement of the natural rights of the citizens, a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well.<sup>113</sup>

When states lose their legitimate claim to sovereignty, the international community must consider what should be done and what their obligations are to protect those in need and step in for the faltering government. As a result, the loss of sovereign claim to authority

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110. Welsh, “Taking Consequences Seriously,” 59.

111. International Commission on Intervention and Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and Sovereignty* (Ottawa: International Development Research Center, December 2001), 13 (hereinafter “ICISS report”).

112. Dunn, “Political Obligation,” 33.

113. Tesón, *Humanitarian Intervention*, 3<sup>rd</sup> Ed., 16.

opens the door for the support of international humanitarian interventions to fulfill the residual international responsibility to protect.

### ***Responsibility to Protect (R2P) IDPs***

The international responsibility to protect suggests that the international system of states, and other international actors, must carry the burden of stepping in and acting on behalf of the state that is unwilling or unable to protect and/or provide for its citizens. The idea that states have responsibilities that extend beyond the domestic jurisdiction of their territory have been previously applied in an attempt to regulate and maintain international order and peace.

To the idea of international society was added a sense of responsibility [after the defeat of Napoleon] on the part of the major states; those states agreed that they were responsible for maintaining order in international relations through a set of principles and institutions about which they basically agreed.<sup>114</sup>

Hoping to prevent another Napoleonic era and to maintain a balance between states in the international order, the Westphalian sovereignty was forced to evolve.

Four institutions eventually developed to maintain order and stability in a decentralized system of international relations in which resources are unequally distributed: a balance of power to prevent the rise of a preponderant state and to contain unlimited aggression; the codification of rules of behavior through international law; the convening of international conferences to settle major differences; and the growth of diplomatic practices through which states would maintain continuing contact and be encouraged to negotiate differences among themselves.<sup>115</sup>

Even today, “all states – including major powers – limit their control over their own affairs by the treaty obligations that they assume and by their participation in international organizations.”<sup>116</sup> As traditional sovereignty continues to evolve and shape the international order, states increasingly accept that its obligations extend beyond those

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114. Lyons and Mastanduno, “Introduction,” 6.

115. Ibid.

116. Ibid.,15.

within their borders. For example, the United Nations sought to maintain a balance between the international community of states, but it required states to respect the treaties and provisions created by an external entity, in this case the United Nations.

Indeed, beginning in 1948 with the adoption of the Universal Declaration of Human Rights, and the subsequent drafting and adoption of a large number of human rights treaties, an evolution began to take place from a strictly state-centered system in which sovereignty was absolute to one in which the behavior of states toward their own citizens became a matter of international concern.<sup>117</sup>

If states are willing to adhere to universal norms of human rights, then a similar argument can be made in support of establishing an internationally recognized legal status and rights for IDPs. Such formulation would require states to forego as much of their sovereign authority as they already do for current human rights treaties.

Prior to World War II, the protection of individual human rights was primarily perceived to be the responsibility of the state. While Western European countries and the United States got involved in “Latin America and the Caribbean to rescue nationals caught in situations of civil strife or to establish or protect special rights and privileges for Europeans and Americans[. . .] rarely . . . did they intervene to protect foreign nationals from their own governments” with the exception of slavery.<sup>118</sup> But after the Holocaust, the international community became more concerned with the rights and protection of foreign nationals and the Convention on the Prevention and Punishment of the Crime of Genocide was signed. “[I]t would be preposterous to suggest that there is a universal negative duty not to commit genocide but that there is no positive duty to protect

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117. Cohen, “Developing International System,” 89 – 90.

118. Jack Donnelly, “State Sovereignty and International Intervention: The Case of Human Rights,” in *Beyond Westphalia? State Sovereignty and International Intervention*, ed. Gene M. Lyons and Michael Mastanduno (Baltimore: The Johns Hopkins University Press, 1995), 122.



intended victims.”<sup>119</sup> It is “morally intolerable” to say that the “only clear bearer of a default duty to protect people against genocide is the one organization most likely, judging from historical experience, to have orchestrated the genocide, the victim’s own state.”<sup>120</sup> In addition, in 1951, the Refugee Convention was adopted to address the international humanitarian problem plaguing refugees.

Unfortunately, the politics of the Cold War, with the exception of decolonization, temporarily immobilized the international community against acting on human rights issues again.<sup>121</sup> After the Cold War, there was a proliferation of armed conflict within states that “centred on demands for greater political rights and other political objectives, demands that were in many cases forcibly suppressed during the Cold War.”<sup>122</sup> These new security issues have also shaped how violent conflicts play out, where forcible population displacement is sometimes an intentional objective.<sup>123</sup> For example, “regimes have launched campaigns of terror on their own populations, sometimes in the name of an ideology; sometimes spurred on by racial, religious or ethnic hatred; and sometimes purely for personal gain or plunder.”<sup>124</sup>

Accordingly, a new standard of intolerance for human misery and human atrocities emerged “to raise the consciousness of nations to the plight of peoples within sovereign borders. There is a new commitment – expressed in both moral and legal terms – to alleviate the suffering of oppressed or devastated people.”<sup>125</sup> This new concern evolved into the *responsibility to protect* (R2P) principle, which refers to providing “life-

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119. Henry Shue, “Limiting Sovereignty,” in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2004), 18.

120. *Ibid.*, 19.

121. Donnelly, “State Sovereignty,” 122-124.

122. ICISS report, 4.

123. *Ibid.*

124. *Ibid.*, 4-5.

125. Scheffer, “Modern Doctrine,” 259.

supporting protection and assistance to populations at risk.”<sup>126</sup> The R2P terminology emerged from a report released by an independent commission, the International Commission on Intervention and State Sovereignty (ICISS). In 2000, the Canadian government established the ICISS to investigate and study current humanitarian problems and the idea of the international responsibility to protect, which is premised on conditional sovereignty argument.<sup>127</sup>

[S]overeign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.<sup>128</sup>

The report agreed that right of state sovereignty implied responsibility, primarily the responsibility for the protection of the state’s population. States that are “too weak to feed their people, or too ravaged by civil wars to maintain a minimum of order” were considered “failed sovereigns.”<sup>129</sup> In addition, internal displacement constituted a “‘symptom of state dysfunction’ to the extent that the state persecutes members of its own population and causes them to flee, or fails to protect them from persecution by non-state agents or the effects of a natural disaster which causes them to flee.”<sup>130</sup>

To take the conditional sovereignty argument one step further, the ICISS report suggests that where a population is suffering serious harm as a result of internal war, insurgency, repression or state failure, and the state is unwilling or unable to halt or avert such humanitarian dangers, the principle of non-intervention yields to the international

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126. ICISS report, 17.

127. C.A.J. Coady, *The Ethics of Armed Humanitarian Intervention* (Washington, D.C.: United States Institute of Peace, July 2002), 21.

128. ICISS report, viii.

129. Hoffmann, “Ethics of Intervention,” 15-16.

130. Phuong, *International Protection*, 209.

responsibility to protect<sup>131</sup> and that “a residual responsibility also lies with the broader community of states” to assume those unmet state responsibilities.<sup>132</sup>

First, [the responsibility to protect] implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of states are responsible for their actions; that is to say, they are accountable for their acts of commission and omission.<sup>133</sup>

Even defenders of sovereign authority like Michael Walzer recognize that an exception can be made to state sovereign and recognize that humanitarian interventions are morally defensible.

[N]onintervention is not an absolute moral rule: sometimes, what is going on locally cannot be tolerated. Hence the practice of “humanitarian intervention” – much abused, no doubt, but morally necessary whenever cruelty and suffering are extreme and no local forces seem capable of putting an end to them. Humanitarian interventions are not justified for the sake of democracy or free enterprise or economic justice of voluntary association or any other of the social practices and arrangements that we might hope for or even call for in other people’s countries. Their aim is profoundly negative in character: to put a stop to actions that, to use an old-fashioned but accurate phrase, “shock the conscience” of humankind.<sup>134</sup>

It is because humanitarian atrocities often “shock the conscience” that an international response is necessary, even when it infringes on traditional norms of state sovereignty.

[O]ne surprising specific limit on state sovereignty is dictated by the nature of fundamental individual rights. Every effective system of rights needs to include some default, or backup, duties – that is, duties that constitute a second-line of defence requiring someone to step into the breach when those with the primary duty that is the first-line of defence fail to perform it.<sup>135</sup>

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131. ICISS report, xi.

132. Ibid., 17.

133. Ibid., 13.

134. Michael Walzer, “The Politics of Rescue,” *Social Research* 62, no. 1 (Spring 1995): 55.

135. Shue, “Limiting Sovereignty,” 16.

In recognition of the importance of individual human rights, there must also be both a negative and a positive international duty to ensure those rights are guaranteed and protected.<sup>136</sup>

While the politics of the Cold War temporarily froze international responses to international human rights issues, the international community was more willing to respond to international humanitarian crises after the Cold War ended. In the 1990s, the images brought by the media, including the twenty-four hour reporting CNN channel, affected domestic opinion that “pressur[ed] policymakers into taking humanitarian actions.”<sup>137</sup>

Experiences in Afghanistan, Bosnia, Liberia, and in particular, Somalia show that the local powerholders [sic] can obstruct the delivery of humanitarian aid and unduly benefit by confiscating it. Therefore, the ability to meet the humanitarian criteria requires at least some armed protection of the convoys and deliveries.<sup>138</sup>

Unfortunately, international responses to humanitarian crises were not uniformly implemented during the 1990s. For example, there was a lack of international fervor for getting involved in the Rwandan genocide in 1994 until after most of the killings had occurred.

International humanitarian responses slowed again after the terrorist attacks of September 11<sup>th</sup> on the World Trade Towers in New York, City, which brought about fear of retaliation and global terrorism. Some believe that September 11<sup>th</sup> “spell[ed] the end of Western intervention for the purposes of protecting individuals and minorities in

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136. *Ibid.*, 26-27.

137. Wheeler and Bellamy, “Humanitarian intervention,” 564.

138. Raimo Väyrynen, “Introduction: How Much Force in Humanitarian Intervention?,” in *The Ethics and Politics of Humanitarian Intervention*, ed. Stanley Hoffmann (Notre Dame: University of Notre Dame Press, 1996), 8.

danger.”<sup>139</sup> In fear of such retaliation, the post-September 11<sup>th</sup> world order has “dampened Western states’ enthusiasm for criticizing the treatment of civilians within other sovereign jurisdictions.”<sup>140</sup> Specifically, “states that were previously subject to international criticism for internal repression have skillfully deflected attention by labeling their actions as ‘counter-terrorist.’”<sup>141</sup>

But like the lull in international concern that appeared during the Cold War, the lull in international concern for human rights atrocities in the post September 11<sup>th</sup> world may only be temporary. The United Nations General Assembly at the 2005 World Summit accepted the concept of the international responsibility to protect: “[I]f national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations.”<sup>142</sup> It remains to be seen whether the comments made in the 2005 World Summit will have any lasting impact on international institutional responses to humanitarian atrocities that continue to plague the international system of states.

### ***Conclusion***

The role of the state and its sovereign authority over its domestic affairs in contemporary international affairs remain sensitive topics today. Some states are more willing to be an active member in the international community of states and are thus more

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139. Nicholas J. Wheeler, “The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,” in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2004), 51.

140. Jennifer M. Welsh, “Conclusion: The Evolution of Humanitarian Intervention in International Society,” in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh, Oxford: Oxford University Press, 2004), 180.

141. *Ibid.*

142. United Nations General Assembly, *2005 World Summit Outcome (A/60/L.1)* (Geneva: United Nations, September 15, 2005), para. 135.

willing to forego its staunch advocacy for absolute state sovereignty. On the other hand, some states are less willing to accept international involvement and interference in their domestic affairs, such as its internally displaced populations; they argue that the “state system endures, even if states increasingly share authority with intergovernmental and nongovernmental organizations.”<sup>143</sup> Regardless of the extent to which sovereign authority exists or does not exist, there is an emerging argument that the international community has a correlative responsibility to step in on behalf of the state to protect those facing humanitarian crises.

A precedent for international involvement in states’ domestic affairs has already been set, with the creation of international organizations like the United Nations and the signing of several international human rights treaties. States cannot presuppose to enter into such international agreements without having to give up some of its authority over the affairs within its boundaries. Furthermore, when a state is unable or unwilling to fulfill its “social contract” obligations to its population, the state loses legitimate claim to absolute authority and tacitly grants permission for other states or organizations to intervene. Because traditional concepts of sovereignty have started to degrade in some instances and because there is an international responsibility to protect, interventions can be justified on humanitarian grounds. And as internally displaced persons continue to face challenges that are the result of their state’s inability or unwillingness to provide sufficient protection and humanitarian assistance, there is indeed an international responsibility to protect IDPs. However, it remains to be seen how this international responsibility can be best fulfilled.

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143. Friedrich Kratochwil, “Sovereignty as *Dominium*: Is There a Right of Humanitarian Intervention?,” in *Beyond Westphalia? State Sovereignty and International Intervention*, ed. Gene M. Lyons and Michael Mastanduno (Baltimore: The Johns Hopkins University Press, 1995), 31.

#### IV. International Law Concerning Internally Displaced Persons

[B]ut if we wait until the emergency is upon us, it will come too late to save those who have been killed or forcibly displaced.

Nicholas J. Wheeler, *Saving Strangers* <sup>144</sup>

State sovereignty and the legality of humanitarian interventions are not the only legal hurdles preventing the international community from recognizing and fulfilling its responsibility to protect IDPs. As briefly mentioned earlier, IDPs are currently without a legal status of their own and face significant problems with protection and accessing humanitarian provisions. However, critics of increasing IDP protection would suggest that as members of society, IDPs are inherently already protected under existing international law and do not require a legal status of their own like refugees. For example, during peaceful times, IDPs are protected under existing human rights law. In situations of armed conflict, international humanitarian law “curb[s] and restrain[s] armed hostilities so as to limit individual human suffering, of both soldiers and civilians, in times and places of war.”<sup>145</sup> But it is inconceivable that existing humanitarian and human rights law provide sufficient protection to IDPs given the sheer number of IDPs that continue to exist in the world today and the humanitarian problems they continue to face. Even if one could make the argument that there was sufficient protection for IDPs in today’s international law, the United Nations has agreed that “a consolidation and evaluation of existing norms would be of value and would provide the basis for filling whatever gaps may exist.”<sup>146</sup>

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144. Wheeler, *Saving Strangers*, 34.

145. Jackson, *Evolution of an Idea*, 124-125.

146. United Nations General Assembly, *Internally Displaced Persons: Note by the Secretary-General (A/49/538)* (Geneva: United Nations, October 19, 1994), para. 14.

This chapter will first review existing legal doctrines within humanitarian and human rights law that apply to IDPs. However, it will become obvious that existing legal provisions for IDPs overlap, contradict each other, are not enforceable, and lack sufficient clarity and protection. As a result, to solve the problem of insufficient protection for IDPs in international law, and to address how the international community should fulfill its responsibility to protect, IDPs require a legal doctrine recognizing who they are and detailing their rights. The end of this section reviews how an international norm towards protecting IDPs can be established by creating such a legal doctrine and status for IDPs.

### ***Humanitarian Law***

International humanitarian law (IHL), often known as the law of armed conflict or law of war, defines the conduct and responsibilities of belligerent and neutral nations and individuals engaged in warfare, in relation to each other and to non-combatants and civilians.<sup>147</sup> IHL not only dictates how states conduct war, but also allows organizations and non-state actors to be involved in the conflict to provide humanitarian relief. The most common referred to documents in IHL are the four treaties that make up the Geneva Conventions, which were adopted from 1864 to 1949, and its two Additional Protocols of June 8, 1977.

It is difficult to discuss IHL without making reference to the International Red Cross and Red Crescent Movement<sup>148</sup> as one of the organization's founders also laid the foundation for humanitarian law. In the mid-Nineteenth Century, Henri Dunant and

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147. Phuong, *International Protection*, 44-45.

148. The International Red Cross and Red Crescent Movement includes the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies.



General Guillaume-Henri Dufour, two of the five founding members of the Movement, expressed grave concerns regarding the human suffering they witnessed in the battles between France/Sardinia and Austria.

On 24 June 1859 the armies of France and Sardinia engaged Austrian forces near the northern Italian village of Solferino. This decisive battle in the struggle for Italian unity was also the most horrific bloodbath Europe had known since Waterloo: in ten hours of fierce fighting, more than 6,000 soldiers were killed and more than 30,000 wounded.<sup>149</sup>

During a business trip, Dunant passed by the battle site at Solferino and stopped to help the wounded. Dunant wrote of the pain and suffering that he witnessed at Solferino in *Un Souvenir de Solferino (A Memory of Solferino)*, which would later inspire the creation of the International Committee of the Red Cross (ICRC) and international standards regulating the conduct of war and the treatment of non-combatants.

The battle of Solferino led Dunant to push for the creation of a neutral and impartial organization to protect and assist the war wounded (ICRC). He also suggested that voluntary relief societies should be established to care for the injured – an idea that would eventually lead to the formation of National Red Cross and Red Crescent Societies. In addition, he proposed that an international principle be created to serve as the basis for these societies, an idea that developed into the Geneva Conventions...<sup>150</sup>

Developing Dunant's visions, unofficial representatives from sixteen states attended the 1864 Diplomatic Conference convened by the Swiss government, where the representatives adopted the Geneva Convention "for the amelioration of the condition of the wounded in armies in the field."

The Geneva Conventions are characterized by:

[S]tanding written rules of universal scope to protect the victims of conflicts; its multilateral nature, open to all States; the obligation to extend care without

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149. François Bugnion, "From Solferino to the Birth of Contemporary International Humanitarian Law," *ICRC* (Geneva: International Committee of the Red Cross, April 22, 2009): 4.

150. International Committee of the Red Cross, "Solferino and the International Committee of the Red Cross," *ICRC*, June 23, 2009, [www.icrc.org/Web/Eng/siteeng0.nsf/html/solferino-feature-240609](http://www.icrc.org/Web/Eng/siteeng0.nsf/html/solferino-feature-240609).

discrimination to wounded and sick military personnel; respect for and marking of medical personnel, transports and equipment using an emblem (red cross on a white background).<sup>151</sup>

The Geneva Conventions would continue to protect the “wounded, sick and shipwrecked members of the armed forces (First and Second Conventions), prisoners of war (Third Convention), and civilians, particularly when they are in enemy territory and in occupied territories (Fourth Convention).”<sup>152</sup> The Geneva Conventions applied to both international (Geneva Conventions and 1977 Protocol I) and non-international (Article 3 of the four Geneva Conventions and 1977 Protocol II) armed conflicts, such as in situations of internal strife and civil war.<sup>153</sup> Hence, IDPs who find themselves forcibly displaced during or as a result of violent conflict would be considered non-combatants and come under the protection of IHL.

Specific IDP protection under IHL can be found in varying sections throughout all four Geneva Conventions. Common Article 3 of each of the four Geneva Conventions indicates that individuals who are not actively participating in the conflict must be “treated humanely.” In addition, “Article 59 of the 1949 [Fourth] Geneva Convention relative to the Protection of Civilian Persons in Time of War obliges all parties of an international conflict to permit free passage for humanitarian assistance such as food delivery.”<sup>154</sup> The 1977 Protocol I lists the protection to which civilians, which inherently

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151. International Committee of the Red Cross, “What are the origins of international humanitarian law?,” *ICRC*, January 1, 2004, [www.icrc.org/web/eng/siteeng0.nsf/html/5KZFR8](http://www.icrc.org/web/eng/siteeng0.nsf/html/5KZFR8).

152. Jean-Philippe Lavoyer, “Refugees and internally displaced persons: International humanitarian law and the role of the ICRC,” *International Review of the Red Cross* 305 (April 30, 1995): 163.

153. *Ibid.*

154. Economic and Social Council, *Note by Cuénod*, para. 155.

includes IDPs, are entitled in the event of “displacements due to international armed conflict.”<sup>155</sup> Article 17 of Protocol II also prohibits forced movement of civilians:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. [In addition, c]ivilians shall not be compelled to leave their own territory for reasons connected with the conflict.<sup>156</sup>

Besides explicitly listing the individual rights of civilians to protection in armed conflict situations, IHL also explicitly grants civilian access to humanitarian assistance during armed conflict situations.

Article 18(2) requires the government in power to accept international relief operations, even for the population under opposition control, if that population lacks the supplies essential for its survival and the relief operations are of an exclusively humanitarian and impartial nature and are conducted without any adverse distinction.<sup>157</sup>

In theory and on paper, IDPs should receive international protection as non-combatants in violent and armed conflict environments.

However, IHL fails to provide sufficient protection to all IDPs as IHL only “applies only to persons displaced because of armed conflict, and only to States parties to Additional Protocol II,”<sup>158</sup> which “contains the more extensive provisions protecting citizens in non-international armed conflicts.”<sup>159</sup> Deng explains that in some situations, “tension and disturbance that fall short of armed conflict” and international humanitarian

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155. Lavoyer, “Refugees,” 170.

156. International Committee of the Red Cross, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article 17” *ICRC*, June 8, 1977, [www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545](http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545).

157. International Review of the Red Cross, “The ICRC and internally displaced persons,” *International Review of the Red Cross*, no. 305 (April 30, 1995): 188.

158. Analytical report, para. 88.

159. Corrine E. Lewis, “Dealing with the Problem of Internally Displaced Persons,” *Georgetown Immigration Law Journal* 6 (1992): 704.

law is not applicable and the protection provisions of IHL that are “critical for the well-being or survival of the displaced” are suspended.<sup>160</sup> This means that if a situation does not escalate to the level of “armed conflict,” then IHL is inapplicable and the protections guaranteed under the Geneva Conventions and Protocol II do not apply.<sup>161</sup>

Furthermore, there is a problem of non-compliance and non-enforcement of IHL. Not every state in the international community has signed and ratified IHL. Currently, 194 countries have ratified the Geneva Conventions<sup>162</sup> and only 163 countries have ratified Protocol II, which contains the provisions regarding protection of victims in non-international armed conflicts. The United States, Israel, Iran, Pakistan, Afghanistan and Iraq are some notable countries that are absent from the list of countries who have ratified Protocol II.<sup>163</sup> In addition, while IHL may be binding, there is no mechanism to enforce compliance. “Neither the Geneva Conventions nor Protocol II contain any mechanism for bringing violations of the humanitarian law principles enshrined...to the attention of the international community or for enforcing the obligations contained in these documents.”<sup>164</sup> Given these obstacles, humanitarian law at best only protects IDPs during armed conflict situations, but even IHL protection may be applied on an *ad hoc* basis.

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160. United Nations Economic and Social Council, *Internally Displaced Persons: Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57 (E/CN.4/1996/52)*, (Geneva: United Nations: February 22, 1996): para. 10.

161. Lewis, “Internally Displaced Persons,” 704.

162. International Committee of the Red Cross, “Geneva Conventions of 12 August 1949,” [www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P](http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P).

163. ICRC, “Protocol Additional.”

164. Lewis, “Internally Displaced Persons,” 705-706.

## *Human Rights Law*

As previously mentioned, IHL does not apply to persons displaced as a result of internal strife or natural disasters, and other situations not considered “armed conflict.”

But existing human rights law offers IDPs some protection to cover those gap areas.

Human rights law applies to internally displaced persons since it applies to all circumstances. When humanitarian law is not applicable, human rights law becomes the only source of legal protection and ensures that the human rights of internally displaced persons are respected. Internal displacement often occurs in situations of internal disturbance or civil unrest. In such situations which cannot be qualified as armed conflict (internal strife), humanitarian law cannot apply and some human rights can be restricted.<sup>165</sup>

As is suggested in its name, human rights law should apply to all humans as human rights law embodies man’s natural rights. Writing in the early Seventeenth Century, Hugo Grotius, also known as the father of modern international law, based his formulation of the international law doctrine on man’s natural rights.<sup>166</sup>

Human rights are ordinarily understood as the rights one has simply because one is human being. They are held equally by all human beings irrespective of any rights or duties individuals may (or may not) have as citizens, members of families, or parts of any public or private organization or association. They are also inalienable rights, because being human is not something that can be renounced, lost, or forfeited. In practice, not all people *enjoy* all their human rights, let alone enjoy them equally. Nonetheless, all human beings *have* (the same) human rights and hold them equally and inalienably.<sup>167</sup>

Specifically, Grotius felt that “natural human sociality links everyone together in an international society [and] this sociality gives rise to a natural law, which defines states’ obligations and ought to guide their actions in the international realm.”<sup>168</sup>

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165. Phuong, *International Protection*, 42-43.

166. Frede Castberg, “Natural law and human rights. An idea-historical survey,” in *International Protection of Human Rights: Proceedings of the Seventh Nobel Symposium Oslo, September 25-27, 1967*, ed. Asbjørn Eide and August Schou (Oslo: Interscience Publishers, 1968), 29.

167. Donnelly, “State Sovereignty,” 115-116.

168. Nathan E. Busch, “International Duties and Natural Law: A Comparison of the Writings of Grotius and Plato,” *Interpretation: A Journal of Political Philosophy* 35, no. 2 (2008): 154.

Natural law dominated international law until the Eighteenth and Nineteenth Centuries where it was replaced by legal positivism, which is “the grounding of international duties in treaties and other commitments voluntarily entered into by sovereign states.”<sup>169</sup> For example, in 1789, the French legislative assembly adopted the French Declaration of Human Rights that “remains to this day the classic formulation of the inviolable rights of the individual vis-à-vis the state” and incorporates “natural-law human rights” into “national positive law.”<sup>170</sup> Today, human rights law defines the relationship between state rulers and its civilian population as it limits “the scope of authority which a state can exercise over individuals.”<sup>171</sup> In other words, human rights law is an instrument “to protect individuals from abuses from the state: states cannot treat their population as they wish with impunity.”<sup>172</sup>

There are several contemporary human rights treaties that may also apply to IDPs, such as the United Nations Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The Convention on the Prevention and Punishment of the Crime of Genocide addresses freedom of residence and movement, which are two central features to the discussion on IDPs. The Universal Declaration of Human Rights declares that everyone “has the right to freedom of movement and residence within the borders of each state [and] has the right to leave any country, including his own, and to return to his country.”<sup>173</sup> In addition, the “Universal

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169. Ibid., 155-156.

170. Castberg, “Natural law,” 19.

171. Stephen D. Krasner, “Sovereignty, Regimes, and Human Rights,” in *Regime Theory and International Relations*, ed. Peter Mayer and Volker Rittberger (Oxford: Clarendon Press, 1993), 140.

172. Phuong, *International Protection*, 44.

173. See Article 13 of the United Nations Universal Declaration of Human Rights.

Declaration of Human Rights (1948) embodies the moral code, political consensus and legal synthesis of human rights.”<sup>174</sup> Article 12 of the International Covenant on Civil and Political Rights “provides that freedom of residence and movement may be subject to restrictions provided for by law and which are necessary to protect national security, public order, public health, morals or the rights and freedoms of others.”<sup>175</sup> However, Article 4 of the Covenant allows States to derogate from this “in time of public emergency which threatens the life of the nation and...which is officially proclaimed.”<sup>176</sup>

Existing humanitarian and human rights law seems to provide a variety of protection for IDPs, but IDPs’ continued lack of security and access to humanitarian provisions demonstrate otherwise. Like humanitarian law, human rights law faces similar problems associated with non-binding agreements, the lack of enforcement, and the lack of nationalization of human rights law. For example, according to the United Nations High Commissioner for Human Rights, as of June 9, 2004, only 152 countries have signed the International Covenant on Civil and Political Rights.<sup>177</sup> This means that the relevant provisions under ICCPR to IDPs only apply to IDPs who were within one of the signatory countries. States were originally “reluctant to accuse other states of human rights violations because of the danger that their own sovereign control would be undermined.”<sup>178</sup>

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174. ICISS report, 14.

175. Analytical report, para. 85.

176. Ibid.

177. Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (Geneva: United Nations: June 9, 2004).

178. Krasner, “Sovereignty, Regimes,” 164.

### ***International Norm of IDP Protection***

The emergence of humanitarian and human rights law over a century ago demonstrates that the international community has always recognized and emphasized the necessity of protecting individuals in armed conflict situations and peaceful times through legal doctrine. Even though humanitarian and human rights law today cannot be enforced, it does not mean that their emergence has not positively shaped international behavior and norms. “Under no circumstances should the non-exercise of a duty be used as an excuse to suspend or abrogate a right.”<sup>179</sup> In fact, law is often interpreted as the foundation for establishing and shaping social normative behavior.

[L]aw is a deeply interconnected web of structures shaping agent action. When agents succeed in changing law at one level, say, by ratifying an international treaty, the structure of law is such that domestic law in many states is superceded or, at least, pressure of domestic change (in the form of implementing legislation or executive action) is created. Law, as a social form, thus connects international- and national-level changes in some important ways.<sup>180</sup>

In the case of humanitarian and human rights law, such doctrines dictate and influence socially acceptable behavior regarding humanitarian issues.

Human rights norms have a special status because they both prescribe rules for appropriate behavior, and help define identities of liberal states. Human rights norms have constitutive effects because good human rights performance is one crucial signal to others to identify a member of the community of liberal states.<sup>181</sup>

Legal doctrines that explicitly list the rights to which individuals need access also tacitly or in some cases, directly outlines how others should act and respond to guarantee and protect those rights. “The attribution of a right is meaningless without the possibility of a

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179. Etienne-Richard Mbaya, “The Compatibility of Regional Human Rights Systems with International Standards,” in *Human Rights in Perspective: A Global Assessment*, ed. Asbjørn Eide and Bernt Hagtvet (Oxford: Blackwell Publishers, 1992), 20.

180. Finnemore, *Purpose of Intervention*, 148.

181. Thomas Risse and Kathryn Sikkink, “The socialization of international human rights norms into domestic practices: introduction,” in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999): 8.



correlative duty resting somewhere”<sup>182</sup> as “rights generate responsibilities to ensure the protection and well-being of individuals. In contemporary international politics, the State and other authorities are the duty-bearers with responsibilities to respect and protect individuals’ rights.”<sup>183</sup> For example, IDPs have a positive right to security and protection of their persons and a negative right to not be forcibly displaced from their homes. Hence, human rights “are said to have three correlative duties: duties to *avoid* depriving, duties to *protect* from deprivation and duties to *aid* the deprived.”<sup>184</sup>

In 1996, the United Nations supported a comprehensive study to comment on whether there is sufficient protection and humanitarian provisions embedded in existing international law for IDPs. The group of legal scholars, which included Walter Kälin, who would later succeed Francis Deng as the Special Representative to the Secretary-General on IDPs, determined “there are areas in which the law fails to provide sufficient protection for internally displaced persons.” Such areas include the following:

forcible return to conditions of serious danger; the need for personal identification, documentation and registration in order to ensure the means to exercise one’s legal rights; the protection of relief workers, their transports and supplies; as well as access by humanitarian agencies to provide protection and assistance to internally displaced persons.<sup>185</sup>

The study also concluded that the specific protection and humanitarian provisions relevant to IDPs are currently dispersed among several human rights and humanitarian doctrines, which have been sporadically ratified and enforced. Even if IDPs needs are all met by existing legal texts, the study determined that it would still be more beneficial to

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182. R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986): 9.

183. Global Protection Cluster Working Group, “Handbook for the Protection of Internally Displaced Persons: Provisional Release,” *Global Protection Cluster Working Group* (December 2007): 8.

184. Vincent, *Human Rights*, 11.

185. General Assembly, *Note A/50/558*, para. 55.

create a separate document that compiled and restated all the relevant law regarding IDPs.

[T]here are significant areas in which [international law] fails to provide adequate protection and which require remedy through restatement of existing law and clarification of its provisions in one document. This would serve several useful purposes. It would consolidate in one place existing norms that at present are too dispersed and diffuse to be effective. It would also call attention to the need for the better implementation of existing norms and assist the work of Governments, international organizations and non-governmental organizations in the field in protecting and promoting the rights of internally displaced persons. In addition, it would serve the educational purpose of increasing international awareness of the situation of the internally displaced.<sup>186</sup>

Accordingly, the creation of a legal doctrine for IDPs is required to ensure that IDPs' needs are explicitly outlined and met so that all organizations and actors involved have the same understanding of who IDPs are and what their needs are.

The reason why an IDP doctrine is so important to shaping future understandings of who IDPs are and how organizations and states should respond to IDPs is because the emergence of legal norms prescribing the acceptable behavior regarding human rights can create "new expectations for conduct [that] are increasingly accompanied by new expectations for corrective action."<sup>187</sup>

Normative context is important because it shapes conceptions of interest and gives purpose and meaning to action. It shapes the rights and duties states believe they have toward one another, and it shapes the goals they value, the means they believe are effective and legitimate to obtain those goals, and the political costs and benefits attached to different choices.<sup>188</sup>

Historically, discussions regarding how best to enforce and ensure human rights norms are met have only come *after* the standards were already detailed. Hence, a broad range of new international institutions and non-governmental organizations concerned with

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186. United Nations General Assembly, *Note to the Secretary-General on Internally Displaced Persons (A/51/483)* (Geneva: United Nations, October 24, 1996), para. 3.

187. ICISS report, 6.

188. Finnemore, *Purpose of Intervention*, 53.

monitoring and promoting the implementation worldwide of human rights and international humanitarian law have emerged as a result of the international recognition of legal norms regarding human rights violations.<sup>189</sup> Without the foundation establishing who IDPs are what their needs are, in both peaceful situations and in armed conflict, international responses to IDPs will remain *ad hoc*, uncoordinated, and insufficient.

There are several ideas on how ideas become international norms, but they share one common idea – in order for a norm to emerge to shape state behavior on the international scale, the intended normative behavior must be specifically detailed and outlined somewhere. Theo van Boven, former Director of the United Nations Division for Human Rights, former United Nations Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights and former Special Rapporteur on Torture, argues there are three steps to realizing human rights. First, it is necessary to clarify at the international level of human rights and the corresponding state obligations. Second, establish international machineries to supervise national implementation of those rights and obligations. The last step involves the consolidation and growing utilization of those machineries as a framework to influence sovereign states and to provide international access to victims of violations.<sup>190</sup>

Others suggest a slightly different approach to creating an international normative response to IDPs. Finnemore and Sikkink argue that the creation of international norm occurs in three stages: norm emergence, norm cascade and norm internationalization. Norm emergence requires the existence of a set of standards, principles and/or behavior

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189. ICISS report, 6.

190. Asbjørn Eide, “National Sovereignty and International Efforts to Realize Human Rights,” in *Human Rights in Perspective: A Global Assessment*, ed. Asbjørn Eide and Bernt Hagtvet (Oxford: Blackwell Publishers, 1992), 20.

which the international community would like to become a norm. To reach the first two stages, it is imperative for the intended norm(s) must reach a threshold or “tipping” point at which “critical mass of relevant state actors adopt the norm.”<sup>191</sup> “Up to the tipping point, little normative change occurs without significant domestic movements supporting such change.”<sup>192</sup>

After the emergence of a norm, norm cascade is “characterized more by a dynamic of imitation as the norm leaders attempt to socialize other states to become norm followers...Socialization is thus the dominant mechanism of a norm cascade—the mechanism through which norm leaders persuade others to adhere...”<sup>193</sup>

...at this point, often an international or regional demonstration effect or “contagion” occurs in which international and transnational norm influences become more important than domestic politics for effecting norm change...Networks of norm entrepreneurs and international organizations also act as agents of socialization by pressuring targeted actors to adopt new policies and laws and to ratify treaties and by monitoring compliance with international standards.<sup>194</sup>

Finnemore and Sikkink believe that “a combination of pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem facilitate norm cascades.”<sup>195</sup> In other words, “[w]hat happens at the tipping point is that enough states and enough critical states endorse the new norm to redefine appropriate behavior for the identity called ‘state’ or some relevant subset of states (such as a “liberal” state or a European state).”<sup>196</sup> The last step, norm internationalization,

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191. Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (August 1998): 895.

192. *Ibid.*, 902.

193. *Ibid.*, 895.

194. *Ibid.*, 902.

195. *Ibid.*, 895.

196. *Ibid.*, 902.

occurs when “norms acquire a taken-for-granted quality and are no longer a matter of broad public debate.”<sup>197</sup>

It is important to note that this process of creating an international norm will occur slowly and over time. Because of the gradual socialization that is necessary before other states and actors begin adopting a certain behavior, norm internationalization does not occur overnight or within a matter of weeks or months.

Social influence involves the use of rewards and punishments such as back patting and shaming to change behavior. It differs from persuasion in that it involves changed public behavior without private acceptance of the new beliefs or purpose underlying that behavior. Social influence by itself, then, does not involve changed social purpose, but it can contribute to such changes in a variety of ways. The need to reduce cognitive dissonance means that people’s beliefs tend to come into line with their actions over time. Thus, even if someone does not initially agree with the new behavioral standard they act on, over time they may come to accept it and internalize it as part of their belief structure.<sup>198</sup>

Hence, even if a legal doctrine regarding IDPs is not initially fully recognized and implemented by states and other organizations, this doctrine would serve as the first step towards potentially internationalizing the responsibility to protect. For example, existing humanitarian and human rights law, although “imperfectly implemented, these agreements and mechanisms have significantly changed expectations at all levels about what is and what is not acceptable conduct by states and other actors.”<sup>199</sup>

There is fear that creating a legal category for IDPs would favor one minority group over others or prevent persons from accessing the international refugee system. However, an IDP legal doctrine would not exclude individuals from accessing other avenues towards international protection.

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197. *Ibid.*, 895 and 905.

198. Finnemore, *Purpose of Intervention*, 158-159.

199. ICISS report, 6.

In situations of armed conflict, for instance, ensuring the protection of IDPs does not disqualify other civilians from the guarantees of protection to which they are entitled under international humanitarian law. Generally, focusing on the particular problems of specific groups at risk often will be the best way to ensure that the group is afforded the same protection as others.<sup>200</sup>

Rather, a distinct IDP doctrine would serve to be more inclusive, so that those who are left outside or without access to the refugee and asylum institutions are still protected. Hence, “the purpose of identifying IDPs as a distinct category of concern is not to privilege them over others but rather to ensure that their needs are addressed and their human rights are respected *along with* those of other persons.”<sup>201</sup>

### ***Conclusion***

The level of international displacement and the continued humanitarian challenges IDPs face clearly demonstrate that existing humanitarian and human rights law provide insufficient protection to IDPs. Problems with enforcement and applicability of existing international law continue to limit the protection to which IDPs have regular access. But international responses will remain uncoordinated and *ad hoc* without an internationally agreed upon legal doctrine that specifically details and addresses the needs and rights unique to IDPs. Such a legal doctrine would serve as a foundation or guideline for other states, international institutions, or non-state actors responding to IDPs. It is hoped that eventually this legal doctrine would be further developed to outline an international norm regarding IDPs, such to the status that refugees have today.

In the Twenty-First Century, the United Nations has also recently recognized the need to address IDPs’ rights. In September 2004, the United Nations Commission on Human Rights appointed Walter Kälin to replace Francis Deng as the Representative of

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200. Mooney, “Concept of Internal Displacement,” 19.

201. *Ibid.*

the Secretary-General on the human rights of IDPs. Kälin was appointed with a mandate that differed slightly from Deng's: Deng was involved with identifying the IDP problem and their needs, but Kälin was tasked with focusing on the rights of IDPs, such as identifying and protecting those rights.<sup>202</sup> In an interview with the editors of *Forced Migration Review* in February 2005, Kälin provided the following clarification regarding his mandate:

The change in title of my mandate suggests that the concept of the human rights of IDPs is, at least in principle, accepted today by the international community and indicates a certain redirection of the mandate as it puts more emphasis on the protection of the rights of IDPs...One of my priorities will be the development of a handbook to show law and policy makers how to translate [the Guiding Principles] into specific norms and thereby provide domestic authorities with detailed guidance on how to develop a national legal framework.<sup>203</sup>

As a result, Kälin has spent the last five years discussing with individual countries, regional blocs and the relevant institutions in the United Nations about adopting some guidelines regarding how to respond to displacement, including those displaced by natural disasters.<sup>204</sup>

If there are any hopes to mobilizing a standardized, normative international response to IDPs, there must first be a list of the needs and rights to which IDPs need access. Even if such a normative response never materializes or takes a long time to realize, a legal doctrine for IDPs would at the very minimum compile a list of the types of problems IDPs face. Many critics continue to argue that international norms regarding IDPs can never be fully realized given its associated operational and implementation problems, especially when confronted by authoritarian sovereignty. However, these

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202. General Assembly, *Report A/60/338*, para. 2.

203. Marion Couldrey and Tim Morris, "Interview: Walter Kälin, Representative of the UN Secretary-General on the Human Rights of IDPs," *Forced Migration Review* 23 (May 2005): 4.

204. United Nations General Assembly, *Protection of and Assistance to Internally Displaced Persons. Note by the Secretary-General (A/61/276)*, (Geneva: United Nations, August 21, 2006): 2.

questions do not address any particular reason(s) why IDPs should or should not have legal rights associated with their displacement status; these questions are reserved for debates about *how* to implement humanitarian intervention to protect human rights.

“Although implementation of the norms remains the main challenge, there is recognized value in identifying the legal principles applicable to the displaced and raising the level of international awareness of the problem and the need for solutions.”<sup>205</sup> Hence, before the questions regarding what sort of institutional framework will be effective at addressing the needs of IDPs in the field can be addressed, IDPs rights and needs must first be outlined and agreed upon by party States.

## V. Conclusion

The international community, comprised of sovereign states and international organizations, already recognizes that forced population displacement/movement puts displaced populations and persons into situations where security and human rights protection are acutely compromised. They also recognize that there is a global IDP problem; given the numbers of IDPs in the world, it is hard to ignore their presence. The creation and ratification of the 1951 Convention relating to the Status of Refugees and other human rights treaties after the Holocaust shows that the international community has long recognized and accepted that there is a correlative international responsibility to protect those who are caught in the vacuum of sovereignty, where the state is either unwilling or unable to provide the necessary protection and provisions to its population.

Within the forced population community, IDPs, like refugees, require international action to guarantee their security and human rights. Without equal protection and guarantee of rights, including to IDPs, “some human lives end up

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205. Analytical Report, para. 106.



matter a great deal less to the international community than others.”<sup>206</sup> There is no precedent in ethics or the law for valuing some lives more than others. Over time, “[h]umanitarian appeals created interests where none previously existed and provided legitimate justifications for intervention that otherwise might not have been taken...”<sup>207</sup> Consequently, the United Nations has since been looking into developing a normative framework for the protection and assistance to internally displaced persons to address these problems.<sup>208</sup>

The responsibility to protect is even more important today as the international community of states share closer interdependent ties, and with greater frequency.

There is no longer such a thing as a humanitarian catastrophe occurring ‘in a faraway country of which we know little.’ On 11 September 2001 global terrorism, with its roots in complex conflicts in distant lands, struck the US homeland: impregnable lines of continental defence proved an illusion even for the world’s most powerful state. At the same time, around 40 per cent of the victims of the World Trade Center attacks were non-Americans, from some 80 countries. In an interdependent world, in which security depends on a framework of stable sovereign entities, the existence of fragile states, failing states, states who through weakness or ill-will harbour those dangerous to others, or states that can only maintain internal order by means of gross human rights violations, can constitute a risk to people everywhere.<sup>209</sup>

The discussion that there ought to be an emerging international responsibility to protect IDPs has already occurred at the United Nations’ 2005 World Summit, emphasizing that the R2P principle is necessary especially when governing states fail or refuse to provide the necessary humanitarian provisions and protection for its (IDP) population. According to the ICISS report, there is an “emerging principle...that intervention for human protection purposes...is supportable when major harm to civilians is occurring or

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206. ICISS report, 1.

207. Finnemore, *Purpose of Intervention*, 65.

208. Commission on Human Rights, *Report E/CN.4/1998/53*, para. 5.

209. ICISS report, 5.

imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator.”<sup>210</sup> However, there are logistical problems regarding how to implement and fulfill these obligations that prevent the responsibility to protect from being fully recognized on the international level.

The first hurdle, and probably the biggest political challenge, to the notion of the responsibility to protect is the existence of state sovereignty. Even in today’s heavily interdependent world, staunch supporters of traditional concepts of sovereignty point out that it is difficult to find the line between respecting sovereignty and fulfilling the international responsibility to protect. However, over the last two decades, former United Nations Secretary-Generals Javier Pérez de Cuéllar (1982-1992), Boutros Boutros-Ghali (1992-1997), and Kofi Annan (1997-2007) have all consistently emphasized that sovereignty can no longer be a mask behind which states hide to justify their domestic actions. As early as 1991, then Secretary-General Pérez de Cuéllar commented,

The case for not impinging on the sovereignty, territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.<sup>211</sup>

Shortly after taking office in 1992, Boutros-Ghali presented his message in *An Agenda for Peace*. In this speech, Boutros-Ghali also recognized that “[r]espect for its fundamental sovereignty and integrity are crucial to any common international progress.

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210. Ibid., 16.

211. United Nations General Assembly, *Report of the Secretary-General on the Work of the Organization, 46<sup>th</sup> Session, Supplement No. 1 (A/46/1)* (New York: United Nations, September 13, 1991), 5.

The time of absolute and exclusive sovereignty, however, has passed...<sup>212</sup> In his address to the United Nations General Assembly on September 20, 1999, then Secretary-General Kofi Annan articulated that, “[s]tate sovereignty, in its most basic sense, is being redefined by the forces of globalization and international cooperation. The State is now widely understood to be the servant of its people, and not vice versa.”<sup>213</sup> And most recently, in 2005, the United Nations World Summit recognized the need for the United Nations to “take effective measures to increase the protection of internally displaced persons.”<sup>214</sup> Specifically, Article 139 of the 2005 World Summit Outcome argues that,

[T]o help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity[,]. . . we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN Charter, including Chapter VII. . . should peaceful means be inadequate and national authorities manifestly failing to protect their populations. . .<sup>215</sup>

The 2005 World Summit may be the beginning of a new UN paradigm regarding humanitarian violations.

The Summit did succeed in endorsing the ‘responsibility to protect’ as a new principle of international conduct. . . Whereas the earlier High Level Panel on Threats, Challenges and Change had endorsed the notion of a “collective international responsibility to protect” . . . the Outcome Document (following the Secretary-General’s report) discusses it under the rubric of human rights. This suggests an aversion on the part of Member states to consider intervention for human protection purposes as part of the UN’s ‘standard’ practice of collective security.<sup>216</sup>

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212. Boutros Boutros-Ghali, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on January 31, 1992 (A/47/277-S/24111)* (Geneva: United Nations: June 17, 1992), para. 17.

213. United Nations, “Secretary-General presents his annual report to General Assembly, Press Release (SG/SM/7136 GA/9596),” *United Nations*, September 20, 1999 [www.un.org/News/Press/docs/1999/19990920.sgsm7136.html](http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html).

214. General Assembly, *2005 World Summit*, para. 132.

215. *Ibid.*, para. 139.

216. Welsh, “Conclusion,” 186.

Arguably, there does seem to be an emerging norm towards recognizing and enforcing the international responsibility to protect. “Humanitarian appeals created interests where none previously existed and provided legitimate justifications for intervention that otherwise might not have been taken...”<sup>217</sup>

However, what is problematic is *how* to carry out such humanitarian interventions.

[I]t can never be known in advance that more lives will be saved by intervention than will be lost by it, or that the means employed will not take on such a character that the moral credentials of the intervenors might begin to look little different from those they are fighting against... Decision-makers can argue that their actions were required by necessity and that there were no alternatives to stop the atrocities, but, even if intervention produces a surplus of good over harm, it will never be known whether non-violent alternatives might have achieved the same result at less cost.”<sup>218</sup>

These odds and uncertainty regarding the success and impact of humanitarian interventions prevent an international normative response towards IDPs from emerging. But many of these legal and operational critiques could be dealt with in an internationally recognized document that outlines who IDPs are and prescribes their needs. Such a doctrine would be the first step towards internationalizing a coordinated humanitarian response to IDPs. But the problem that remains now is getting states to agree on what should be included in that legal doctrine.

Once a doctrine granting legal status to IDPs is written, this will be the first step towards creating an internationally recognized and accepted response to IDPs. This will prevent future humanitarian operations from being *ad hoc*, insufficient and uncoordinated. Just because it may take years before this socially accepted behavior becomes internationalized does not mean that we ought not try for it.

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217. Finnemore, *Purpose of Intervention*, 65.

218. Wheeler, *Saving Strangers*, 36-37.

## **Annex – The Guiding Principles of Internally Displaced Persons**

This paper has been an advocate for the creation of a legal doctrine granting an international status for IDPs that details their rights and needs. But what has not been emphasized is that there is already an international document that can serve as a basis for future talks about what this IDP legal doctrine might look like and entail. As a result of the 1996 United Nations comprehensive study on the international protection of IDPs, representatives from international organizations, regional bodies, nongovernmental organizations and research institutions under Francis Deng’s leadership drafted the *Guiding Principles on Internal Displacement* (“Guiding Principles”). The Guiding Principles were finalized at an expert consultation in Vienna in January 1998, hosted by the Government of Austria.<sup>219</sup> Today’s most commonly accepted working definition of IDPs is also contained in the Guiding Principles.

Specifically, the Guiding Principles also list thirty principles that address the specific problems and needs facing IDPs. The following is an excerpt of some of the Guiding Principles:

Principle 3 – (1) National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. (2) Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request...

Principle 6 – (1) Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. (2) The prohibition of arbitrary displacement includes displacement: (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, which are not justified by compelling and overriding public

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219. Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (Washington D.C.: American Society of International Law, 2008), xii.

interests; (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and (e) When it is used as a collective punishment. (3) Displacement shall last no longer than required by the circumstances...

Principle 14 – (1) Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence. (2) In particular, internally displaced persons have the right to move freely in and out of camps or other settlements...

Principle 26 – Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence...

The Guiding Principles continue on to describe additional IDP rights such as protection against discrimination and slavery and the right to property, liberty, freedom, etc.

These selected principles are highlighted in this annex to offer an example of what a legal doctrine describing the rights and provisions to which they ought to have access might look like. Principles 6 and 14 explicitly list the rights to which IDPs should have access so there is no confusion among the various international actors such as the International Committee of the Red Cross that work closely with IDPs. Principle 3 is an example where the conditions under which international involvement and interference must occur are detailed. This places burden to national authorities to protect IDPs, list their explicit right to such protection. And Principle 26 addresses logistical issues such as the protection of humanitarian aid workers to facilitate and encourage the involvement of international organizations and other actors.

The working IDP definition and its complimentary Guiding Principles are considered crucial in the development of an international response to IDPs because it set forth the “rights and guarantees relevant to the protection of internally displaced persons in all phases of displacement: protection against arbitrary displacement; protection and

assistance during displacement; and during return, resettlement and reintegration.”<sup>220</sup>

Kälin also emphasizes:

The Guiding Principles[']...definition of ‘internally displaced’ includes all those who have left their homes and places of habitual residence **involuntarily**, whatever the circumstances, and have not crossed an international frontier. Furthermore, they address the full range of rights that may become relevant for protection against displacement, during displacement and in the context of return or resettlement once durable solutions become possible. In doing so, they reflect the fact that internally displaced people remain citizens of the country they are in and do not lose, as a consequence of being displaced, the rights granted to the population at large.<sup>221</sup> (emphasis in original)

However, the 1998 definition remains non-binding and does not prescribe any legal status to IDPs.<sup>222</sup> A month after the Guiding Principles were finalized, a resolution was adopted without a vote and sponsored by only fifty-five states. The resolution recognized “that the protection of internally displaced persons would be strengthened by identifying, reaffirming and consolidating specific rights for their protection and noting the progress made by the Representative in developing a normative framework...”<sup>223</sup> Today, the Guiding Principles have been translated into more than 40 languages have been widely used by many states, United Nations agencies, regional bodies, non-governmental organizations, international civil society organizations.<sup>224</sup>

The importance of even a non-binding document such as the Guiding Principles is that it serves as the first compilation that lists the rights and addresses the needs of displaced persons. Without clear international mandate regarding IDPs, “institutional arrangements for addressing internal displacement remain unclear while the failure to

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220. General Assembly, *Report A/54/409*, para. 11.

221. Walter Kälin, “The role of the Guiding Principles on Internal Displacement,” *Forced Migration Review Supplement* (October 2005): 8.

222. General Assembly, *Report A/54/409*, para. 12.

223. United Nations General Assembly, *Protection of and assistance of internally displaced persons: Note by the Secretary-General A/58/393* (Geneva: United Nations, September 26, 2003), para. 9.

224. Cohen, “Developing International System,” 93.

assign responsibility in the field regularly weakens international response.”<sup>225</sup>

Although the Principles do not constitute a binding instrument like a treaty, they do reflect and are consistent with existing international law. They address all phases of displacement—providing protection against arbitrary displacement, offering a basis for protection and assistance during displacement, and setting forth guarantees for safe return, resettlement and reintegration. It is my hope that in time they may attain the status of customary international law...For the time being, they serve as a morally binding statement that should raise awareness of the particular needs of internally displaced persons and provide guidance to those responding to their plight.<sup>226</sup>

Until a legal norm emerges to sufficiently address the needs and protection issues for IDPs, the Guiding Principles “set standards that should put both governments and rebel groups on notice that their conduct is open to scrutiny and will be measured against specific standards.”<sup>227</sup> The Guiding Principles provide guidance to States with internal displacement and intergovernmental and non-governmental organizations that deal with IDPs.<sup>228</sup> “As a result, there is now for the first time an authoritative statement of the rights of internally displaced persons and the obligations of governments and other controlling authorities toward these populations.”<sup>229</sup>

The purpose of the Guiding Principles is to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights law and international humanitarian law. They restate the relevant principles applicable to the internally displaced, which are now widely spread out in existing instruments, clarify any grey areas that might exist, and address the gaps identified...They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.<sup>230</sup>

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225. Cohen, “Developing International System,” 100.

226. *Ibid.*, xii-xiii.

227. Cohen and Deng, *Forsaken People*, 6-7.

228. Guiding Principles, para. 9.

229. Kälin, “Guiding Principles Annotations,” xi.

230. Guiding Principles, para. 9.



States, United Nations agencies and regional and non-governmental organizations are applying and utilizing Deng's Guiding Principles as a standard.<sup>231</sup> Since the Guiding Principles were drawn in 1998, the United Nations at the 2005 World Summit recognized them as an "important international framework for the protection of internally displaced persons."<sup>232</sup>

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231. General Assembly, "Summit Outcome," para. 10.

232. *Ibid.*, para. 132.

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