Internally Displaced Persons

A National Problem Requiring an International Response

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Photo: Hanne Melfald

Former Office of the International Committee of the Red Cross (ICRC),
occupied by internally displaced persons in Bogotá, Colombia. May 2001.

Preface

Writing this dissertation has been a challenge, and at times, a difficult process. It has, however, been an experience of great value, and especially by gaining knowledge on such an important issue as internal displacement. Hopefully the thesis will be of value and interest to others. Initially, it was a presentation by a Norwegian Refugee Council representative that made me aware of this uprooted group falling into a vacuum of responsibility within the state. Generally, I believe, the internally displaced have not received the academic attention they deserve.

There are many I would like to thank. First, I am especially grateful to the Norwegian Refugee Council's Global IDP Project in Geneva, who offered me a three months scholarship, and gave me the opportunity to learn extensively about internal displacement, in an international and encouraging environment. The more I learned about the IDPs, the harder it was to specify a thesis, particularly within the theoretical framework of political science.

I wish to express gratitude to my supervisor Anne Julie Semb, for her availability, support to my topic and constructive comments. I will further express appreciation to Dr. Matthew J. Gibney and the Refugee Studies Centre Library at the University of Oxford and the library at the Norwegian Refugee Council. They were all welcoming and friendly, and made literature easily available. I would also like to thank my dear friend, Kjersti Dale and Eric Demers, for taking the time to read through my thesis and for their valuable comments.

To my dear ma and dad: thank you for your financial - but most importantly, moral support.

Finally, I would like to express gratitude to the great social environment and my fellow students at the department of political science. I hope and believe that despite our time as students having come to an end, we will keep dancing as ever before.

I alone bear responsibility for this thesis's content, its conclusions and possible errors.

Hanne Melfald.

Oslo, 2003 May 8

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1.   Introduction

1.1   Why Internal Displacement?

In recent years, internal displacement has emerged as one of the most pressing humanitarian, human rights and political issues facing the international community. The situation of internally displaced persons (IDPs) can be described as falling into a vacuum of responsibility within the state. On the one hand, they have often been let down by the same national authorities that were supposed to protect them from becoming IDPs in the first place. On the other hand, unlike refugees, they do not have an international organisation to help them with their plight. The IDPs do not have legal status. The principle of state sovereignty limits the ability of the international community to provide them with assistance and protection. This has lead to institutional gaps in international law when it comes to the protection of IDPs, and constitutes what I will call a *protection gap*.

In my thesis I will argue that the subject of internal displacement and the protection gap are challenging the principle of sovereignty and the work of the United Nations High Commissioner for Refugees (UNHCR). I will analyze how the protection gap affects the principle of sovereignty and the UNHCR. The subject of internal displacement and the protection gap clearly create both constraints and opportunities for the principle of sovereignty and the UNHCR. There are also serious gaps in the United Nations (UN) response towards IDPs, and the question is how can the international community overcome the obstacles of negative sovereignty and ensure protection to the IDPs? Protecting persons forcibly uprooted within their own country by violent conflicts, is one of the greatest challenges of our time. I intend to throw a light on the IDP situation in a world where their needs continue to be inadequately addressed.

IDPs have been the focus of particular attention on the part of the international community since the beginning of the 1990s. The political aspects of today's refugee problems signal choices that must be made by governments and international organizations. Those choices include whether to abide by international obligations or

develop new international instruments or agencies; whether to provide ad hoc responses to situations; whether to refine national responses to refugee flows, by changing laws and procedures or introducing obstacles to arrival; whether to support international humanitarian relief; whether to promote solutions, and which ones; and whether to try to deal with causes. Each of these political decisions takes place within a context in which human rights law, refugee law, and international humanitarian law ought to have their impact (Goodwin-Gill 1999:222-223).

Internal displacement is such an important issue to address is because the scale of the IDP problem is immense, and growing. The number of IDPs driven from their homes by armed conflict in the world remains at some 25 million people in 50 countries affected by conflict (Global IDP Project 2003a), compared to 12 million refugees (UNHCR 2002a). In the 1990s, following the end of the Cold War and an increase in the number of internal conflicts, significant demographic changes took place in the two groups, with a greater increase in numbers of IDPs than refugees.

With 25 million IDPs world-wide, this is almost twice as many as refugees. Millions more are internally displaced as a result of natural and human-made disasters. Though the situation of IDPs has been recognised by the international community, it has not been given priority. Unlike refugees, the internally displaced have not left the country whose citizens they normally are. As such, they remain entitled to the same rights that all other persons in their country enjoy. They do, however, have special needs by virtue of their displacement. The challenge the international community is facing today is to bridge the gaps that do exist in rights and needs the IDPs may have and strengthen the protection of IDPs in armed conflict.

1.2   What is Internal Displacement –Definition of IDPs

The International Committee of the Red Cross (ICRC), the UNHCR and some major non-governmental organisations (NGOs) have developed their own definitions of internal displacement, which usually reflects their own operational "peoples of concern". A more inclusive (and still evolving) working definition for IDPs used in this thesis is based on the working description of the UN Guiding Principles on Internal Displacement:

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or 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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border (OCHA 1999:6).

Given the broad scope of the description, this thesis chooses to focus only on those internally displaced who have been forced to flee from *"armed conflict, situations of generalised violence, and violations of human rights".* Those who have been internally displaced as a result of natural or human-made disasters or, who are economic migrants are not considered in this thesis.

1.3   Regional Distribution

The largest displacement situations are found in Africa. Two of the countries which have the highest number are Angola and Sudan which each have 4 million internally displaced. In the Americas, Colombia is the worst hit with more than 2 million displaced, while Indonesia tops the list in Asia with 1.2 million IDPs. Iraq, currently with 700,000 IDPs, which may yet increase up to one million as a result of military intervention in March 2003, is the most severely affected country in the Middle East. In Europe, the scope of displacement varies considerably from one country to another where Moldova has the smallest IDP population with 1,000 persons, while Turkey has an estimated 1 million IDPs (Global IDP Project 2003b).

There are vested interests in withholding or exaggerating facts and figures related to IDPs (Hampton 1998:xv). But statistics are necessary to appreciate the size of the problem; but they are, at best, estimates and, at worst, misleading. Even if those receiving some form of international or national assistance are counted, those who never receive such assistance and who are far from the cameras and notebooks of the international media may never be counted (Vincent 2001a:2).

1.4   Factors Contributing to Internal Displacement

According to March Vincent (2001a:2), there are two principle reasons contributing to the apparent increase in internal displacement, which also constitute the basis for why

choosing to focus on the principle of sovereignty and the UNHCR. Firstly, there has been a change in the nature of conflict and a rise in communal violence since the end of the Cold War. Almost all of today's armed conflicts are internal. Traditionally, war was fought between states and 90% of the victims were soldiers. Today, most of the victims are civilians –children, women and men, minorities, refugees, IDPs and the elderly (Robinson 1999:11). Increasingly, civilian displacement has become a military or political objective of communal violence. The ICRC, which normally follows a discrete path in advocacy, has for several years publicly deplored the use of civilians as intentional targets. The changing nature of conflict has had an effect on the traditional concept of sovereignty (Vincent 2001a:2).

Secondly, the world has witnessed the declining willingness, -on the part of some states-, to accept large refugee inflows. That attitude effectively denies the right to asylum and limits the ability of IDPs to escape national boundaries (UNHCR 1997). European governments are frequently singled out for their restrictive policies towards asylum-seekers; but those kinds of policies are now cropping up all over the world (Vincent 2001a:2). As a result, people are being trapped in civil conflict areas. It is ironic that the fastest growing group in need for protection, IDPs, is the group with no international institutional legal framework to give them protection. The declining willingness to accept refugees also affects the work of UNHCR.

1.5   Addressing the Crisis

In recent years there has been growing awareness within the international community of the enormity of the crisis of internal displacement and the need to take adequate steps to address it. But today the international response system is still largely ad hoc. UN efforts to improve capacity and response to internal displacement really started in 1992 when, at the request of the United Nations' Commission on Human Rights, the UN Secretary-General at the time, Boutros Boutros-Gali, appointed a representative, Francis Deng, to raise awareness of the problem and to investigate ways to improve protection and response. Deng observed that, unlike the case of refugees, there was no single organisation within the UN system responsible for protecting and assisting the internally displaced (E/CN.4/1993/35). In 1996, he concluded:

Because there is no one organisation, or collection of organisations, mandated to take responsibility for the internally displaced, there are institutional gaps in the international system. At the same time, there is no political will to create a new organisation mandated to protect and assist these persons. Nor is it likely that an existing institution will be mandated to assume full responsibility for the internally displaced. The residual option is that of a collaborative arrangement among a wide variety of bodies and organisations whose mandates and activities are relevant to the problems of internal displacement (E/CN.4/1996/52: paragraph 16)

We can draw the same conclusion today as in 1996, there is still no agency or organisation whose specific mandate it is to protect IDPs. What we have is a collaborative approach, centred on the UN Inter-Agency Standing Committee (IASC), created in 1991. The IASC is chaired by the Emergency Relief Coordinator and is composed of the heads of major humanitarian and development organisations, including UN agencies, the Red Cross Movement, The World Bank and the International Organisation for Migration, plus three NGO umbrella groups. The IASC's role is to strengthen coordination in emergency situations (Vincent 2001a:3). In 2000, US Ambassador to the UN, Richard Holbrooke, lamented an inadequate and uneven protection afforded to internally displaced persons. For him, there was no difference between a refugee and an internally displaced person. They are equally victims, but treated differently (Goodwin-Gill 2000). Holbrooke demanded a reassessment of the institutional structures to deal with the problems of internal displacement:

It's unacceptable that legalistic distinction prevent people from receiving the same assistance simply because they're classified as something called IDPs instead of refugees…I do not personally believe that shifting responsibility of different agencies to head the operation in different areas will work. I believe that "co-heads" means no heads and I'm glad that we have an opportunity to keep attention on this enormous issue that affects tens of millions of people (Holbrooke 2000).

In 2001, the IASC created a "Senior Inter-Agency Network on Internal Displacement", mandated to assess the humanitarian response at the local level, and provide recommendations for improvement. However, the needs of displaced populations continued to be inadequately addressed. One reason given for this was the unwillingness or inability of governments to address the needs of the displaced. Lack of funding was just as much of a problem in the response to IDPs as lack of coordination, accountability and expertise. Also, it was serious doubt about the UN commitment to

the process, where NGOs were more enthusiastic about improving the UN response to internal displacement than the UN itself (Vincent 2001b).

The international response system is largely ad hoc. The humanitarian, human rights, and development organisations that become involved pick and choose the situations in which they wish to become engaged on the basis of their mandates and resources. Institutional boundaries and limitations contribute to the large number of people who do not receive assistance or protection (Cohen and Kunder 2001). Insufficient and unpredictable support from the donor community has certainly also had a negative impact on the humanitarian response towards IDPs.

The latest outcome of the international debate on the UN's responsibility towards IDPs is the establishment of a small internal displacement unit within the Office for the Coordination of Humanitarian Affairs (OCHA) in January 2002. Its primary aims are the promotion of an improved inter-agency response to the needs of the displaced, and support to the Emergency Relief Coordinator (ERC) in his role as the coordinator of the international humanitarian response to IDPs' needs. Its impact on the world's internally displaced remains to be seen. The IDP Unit's role is to primarily be catalytic rather than operational, and creating accountability for the protection of IDPs in the field remains an important challenge (Weiss 2002).

1.6   Legal Framework for the Protection of IDPs

Lack of binding legal framework explicitly addressing the issue of IDP protection, similar to the 1951 Refugee Convention, has often been cited in the past as a reason for the inadequate response to situations of internal displacement. Existing international law provides coverage of the specific needs of the internally displaced. There are nonetheless a number of significant gaps and grey areas where protection is insufficient or unclear.

Closest to a legal framework specifically developed for IDPs are the Guiding Principles on Internal Displacement. In 1998, at the request of the United Nations Commission on Human Rights and the General Assembly and in cooperation with legal experts, Deng's office developed and issued the "Guiding Principles on Internal Displacement" as a means of drawing international attention to the needs of IDPs and to enhance protection for them. Developed by a team of international legal experts, in

collaboration with international agencies and NGOs, 30 principles set forth the rights of IDPs and the obligation of governments, non-state actors and international organisations towards these populations (OCHA 1999:i). The Guiding Principles have not been signed or ratified by states and are therefore not considered binding international law. However, they restate and reflect other international conventions in the fields of Human Rights Law, Humanitarian Law and Refugee Law. Practically almost all Principles can be traced to one of these three categories of binding international law (Global IDP Project 2002a). However, these laws prove to be insufficient in guaranteeing the protection of the internally displaced. By re-stating the existing norms, the Guiding Principles address grey areas and gaps regarding protection of IDPs (OCHA 1999).

1.7   Thesis

Internal displacement is a national problem requiring an international response. The aim of this thesis is to better understand the problems that impede protection efforts for the IDPs and how the protection gap challenges the principle of sovereignty and the work of the UNHCR. The principle of sovereignty is one of the obstacles impeding the international community from providing protection to IDPs. UNHCR's mandate is based on the principle of non-interference, and with an increase of IDPs and a decrease of refugees, the protection gap does affect the work the UNHCR.

With this as a basis, my thesis will seek to answer the following question:

In which ways do the subject of internal displacement and the protection gap challenge the principle of sovereignty and the mandate of the UNHCR?

First, I will address the principle of sovereignty. The increase in internal conflicts has caused more IDPs, which has forced analysts to rethink the traditional notion of sovereignty. This is because international protection of IDPs needs to be carried out within a country, which is in disagreement with the principles of sovereignty, and non-interference. Any attempt at international involvement can be seen as meddling in the domestic affairs of states.

Second, I will consider the mandate of the UNHCR. The restrictive asylum policy is another reason explaining the increase in numbers of IDPs. The changing asylum policy has also resulted in a discussion around the mandate of UNHCR, and whether in-country protection should be part of this mandate, but which again is in conflict with the principle of sovereignty. But when IDPs do not manage to cross an international border for a variety of reasons, it is argued that in-country protection by UNHCR is needed to access and protect the IDPs.

Third, I will address the 1951 Refugee Convention of Geneva which provides refugees with legal protection. This law is based on the principle of non-interference. The UNHCR is responsible for making sure that states abide to the Convention, namely protecting people who have crossed an international border. The fact that protection and assistance to people fleeing happens more and more within the areas of conflict, has made new demands on the international refugee law and some find the Convention inadequate as the IDPs have been left out. I will address the question of whether a new international legal framework is needed regarding the IDPs.

In the same chapter, I will provide an overview of approaches set forward by the international community trying to fill the protection gap and whether these approaches can intercede to overcome the obstacles of negative sovereignty and ensure protection to the IDPs.

Fourth, I will give an empirical illustration of the IDP situation in Colombia. I will demonstrate the ways in which the subject of internal displacement challenges the principle of sovereignty and the work of the UNHCR in Colombia. Internal displacement is a national problem but is requiring the international community's attention.

1.8   Why the Principle of Sovereignty?

I have chosen to raise the principal of sovereignty as the national authorities have the primary responsibility for addressing the needs of their displaced citizens. However, the state often lacks the capacity and sometimes the will to provide them with protection and assistance. According to Deng, the international community is called upon not only to supplement the efforts of local and national authorities, but also to pay due regard to

the efforts of the displaced themselves to cope with, and respond to, their situation (Deng 2001:xiii). The principle of sovereignty is what constitutes the political barrier when it comes to protecting the IDPs. IDPs are an internal matter, and any attempt to create an international agency to address the IDP issue could be seen as implicitly meddling in the domestic affairs of states. An important question is whether the international community needs the consent of the state when trying to protect the state's IDPs.

Another reason for why I have chosen the principle of sovereignty as a thematic issue is that in recent years the interest of sovereignty has almost exploded. This can partly be explained by the end of the Cold War, and possibilities for a "New World Order", where old perceptions about the state's sovereignty are being questioned. I will argue that the subject of internal displacement is part of this New World Order, challenging state sovereignty.

1.9 Why the United Nations High Commissioner for Refugees (UNHCR)?

I would like to address the challenges UNHCR meets in dealing with IDPs in a changing world. The world has seen an increase in IDPs but the number of refugees has decreased. This has given rise to a new refugee agenda. The mandate of the UNHCR was developed with the Second World War in mind, and focuses solely on refugees, those who have crossed an international border. In the light of a new refugee agenda, I attempt to answer which implications this has for the UNHCR.

The principle of sovereignty and the UNHCR are linked together in the sense that UNHCR is based and dependent on a sovereign state's consent to provide help, and legally civilians need to cross an international border, if they are to be entitled to UNHCR protection and assistance.

Furthermore, is it possible for the UN to be a supranational protector, as long as states can claim their independence and a sovereign position not subordinated to any global supranational authority? In chapter two I discuss the concept of sovereignty as responsibility, but what responsibility does the UN have in a situation where the state has failed in protecting its IDPs? As there is said to be negative sovereignty, can we also talk about "negative UN responsibility"?

1.10 Colombia –an Empirical Illustration

The section on Colombia will be an illustration of how the protection gap manifests itself in the real world, and will demonstrate ways in which IDPs challenge the state sovereignty and the work of the UNHCR. Colombia's civil war is one of the world's most vicious protracted crises, an internal conflict often ignored by the worldwide audience. Colombia provides us with a representative example in terms both of the nature of its internal conflict and large numbers of IDPs, as well as having the experience being surrounded by neighbour countries conducting restrictive asylum policy towards Colombian citizens.

After a general introduction of the conflict in Colombia, I will divide the chapter into three parts. First, I will address the principle of sovereignty and whether Colombia's sovereignty has been challenged by the subject of internal displacement and the normative development where sovereignty comes with responsibility.

I will then address the role of the international community, particularly UNHCR, who have provided in-country protection to the IDPs, after a request was made by the Colombian authorities in June 1997. I will look at the option of seeking asylum and whether this is realistic for the IDPs. The attitude of Colombia's neighbouring countries effectively denies IDPs the right to asylum and limits their ability to escape national boundaries. Peace societies[1] have been tried as an alternative for people who have not crossed a border, and there are both successful and failed examples.

Finally, I will address the IDP legislation in Colombia. Being the fourth country in the world in terms of the numbers of IDPs and, ironically, with the best developed democratic legal framework intended to protect the IDPs, Colombia should be a good illustration of the situation to IDPs. The developed democratic legal framework makes Colombia unique in relation to other countries with large numbers of IDPs. But lack of success in implementing this legal framework or in offering effective protection to the country's IDPs, raises the questions as to whether Colombia has failed as a sovereign state, and whether an international collaborative approach, with the UNHCR as the co-ordinator, can fill the protection gap in Colombia.

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[1] A Peace Society is for those who are not a 'Convention Refugee' and for different reasons have not crossed an international border. The objective is to keep the civilian population out of the armed conflict by declaring neutrality and civilian autonomy vis-à-vis the armed actors.

1.11 The Subject of Internal Displacement–Using a Qualitative Method

The kind of approach one chooses when answering a thesis depends on what one wants to explain. My aim is to provide a greater understanding of the problems that impede protection efforts, such as the principle of sovereignty and the limited mandate of UNHCR which formally excludes the IDPs, and how these might be overcome. The reason I have chosen to look at the protection gap is because it is the biggest gap in response to the IDP situation. From a political science perspective it would be natural to identify the policy makers responsible for this protection gap and to try to identify who can bridge it. Some research on IDPs pursues an actor-oriented approach, which emphasises the enabling capacity of the individual, indicating that IDPs may influence their own situation even at times of extreme deprivation. However, this should not ignore the structural aspect of flight and deprivation (Lund 2001). I have chosen an institutional-oriented approach. I will concentrate on both constraining and enabling structures when it comes to protection of IDPs. A major challenge lies in finding how to assist and protect IDPs as individuals and as a group. The thesis is an empirical question. This means that the question is about how a certain issue relates to reality and where collection of data can answer this question (Hellevik 1994:391). The aim is to describe how the IDP situation actually is in a case where they lack both national and international protection. Part of the answer will also be of normative character as I will try to pursue what may bridge the protection gap, without knowing if it will be the case.

Hellevik (1994:14) describes quantitative research method as one where the researcher systematically collects comparable information on several research objects of a certain kind, expresses this information in forms of numbers, and in the end conducts an analysis of the pattern in the numbers. In my case, this work has already been done. Even if the numbers are only estimates and they are disputed, they demonstrate the increase in numbers of IDPs. Compounding difficulties in obtaining valid numbers are the political and security-related constraints in reaching and talking to IDP communities (Jacobsen 2001). But there is a general agreement that the increase in numbers of IDPs constitutes a challenge to the international community. To analyse what kind of challenges IDPs raise, I have chosen a qualitative approach as this will give me the possibility to explain the implications of their high and increasing numbers.

According to Østerud (et al. 1997:136), there are usually three main reasons for choosing qualitative research: 1) the case is too complex and unorganised for using quantitative measurements 2) there is not enough knowledge within the area we want to research and more exploration is necessary and 3) the actors themselves create their own world, and the researcher needs to understand this process with flexibility and through a dialogue of understanding. All of these three reasons are relevant for my thesis. The subject of internal displacement is a complex one, and my thesis cannot be measured in exact numbers. Further, there is a need to continue to explore the area of internal displacement. Finally, there is a need for the researcher to be open minded and to include both people and organisations working with internal displacement, as well as the IDPs themselves in a dialogue.

Qualitative work has tended to focus on one or a small number of cases, to use intensive interviews or depth analyses of historical materials, to be discursive in method, and to be concerned with a rounded or comprehensive account of some event or unit. This kind of work is sometimes linked with area or case studies where the focus is on a particular event, decision, institution, location, issue, or piece of legislation (King, Keohane & Verba 1994:4). I have chosen Colombia as case study based on personal interviews and in-depth analyses of second hand materials to give a comprehensive account of internal displacement in the country.

The qualitative method always tries to understand a phenomenon in relation to other phenomena and as a whole (Madsen 1979:76). By using various ways of collecting data, qualitative research offers a deeper understanding of a phenomenon in my case that of the situation of IDPs (Andersen 1990:14). I will try to cover different points of view regarding the principle of sovereignty and the mandate of UNHCR, and implications the subject of IDPs have for these two thematic issues.

According to Ottar Dahl (1997:51-53) the source's origin is of importance when trying to answer a thesis. However, there may be problems attached to the origin of a source: the time and place of origin, purpose, technical environment and the circumstances in which the source is delivered to mention a few. To achieve the best result, in deciding whether a source is useful or not, it is essential to know its origin and work with a group of sources. Information is rarely neutral and there is often vested interest in withholding or exaggerating facts and figures. Information is often disputed,

even by those closest to the situation. The different points of view often depend on where you work and where you live, whether you represent international, national, local or personal interests. Who will gain what is often essential for the different actors.

Data in this thesis includes personal interviews, secondary sources as official documents, and observations made in Colombia as an illustration of the area of internal displacement. Secondary official documents will provide me with the facts I need to answer my thesis, even though this is revised information. Personal interviews have offered me first hand information and a deeper understanding of the topic of internal displacement, and they have also helped me verify the secondary sources used. A field study of Colombia has provided me with both first and second hand sources on the subject of internal displacement, and can also help illustrate the situation of the IDPs in this country.

The *reliability* of sources is of uttermost importance, and can be separated into high or low levels of reliability. A high level of reliability means that the collection of data and treatment of data, are done with a high level of accuracy. Consequently, a low level of reliability implies a low level of accuracy. Equally important is the data's *validity*, meaning whether the data collected is adequately reliable and relevant to answer the thesis or not. When data has high validity, the reliability is high as well, meaning that data collected can adequately answer the thesis. However, high reliability does not necessarily mean high validity (Hellevik 1994:43). By using several and various sources, such as academic scientists, states, the UN, national and international NGOs the intention is to reflect the existing range of opinions. I believe this will increase the reliability and validity of the sources used to answer my thesis. I hope the information collected to answer my thesis is precise and can provide adequate answers-, and that the relevance and the validity of this information coincides with the thesis, therefore increasing reliability. I intend for the empirical information to cover my thesis ("content validity") (Rose 1999 [Lecture]), and will increase the correspondence between reliability and validity. In Andersen (1990:122), Yin defines a case study as an empirical research which throws light on a contemporary phenomenon within the framework of reality, where the limits between the phenomenon and its relation to where it belongs to is not clear, and where there are possibilities to utilise several sources of information to throw light on the phenomenon, which in this case is internal displacement.

Because of the extremely tense situation in Colombia, it is especially important to consider the sources' origin. The tense situation forces actors to be particular aware of the language they use when expressing their opinions. The UN especially has to be cautious about their political language when they make a statement on a situation in the country as this might challenge the state's sovereignty. If they are too harsh, they risk being denied presence in the country. For the UN contact with the involved actors and the access to the field is decisive when collecting reliable data. At the same time, an agency like the UN can bring resources to the country, and the government might be hesitant to criticise their statements in fear of the consequences. This makes it important to compare information from the state with information from non-state actors.

Regarding internal displacement, national and international NGOs may be the most trustworthy source. They are not part of any bureaucracy and can therefore play a more independent role than both the state and the UN. They often act more out of idealism and independent interests and they are often physically close to the area of research. However, it is important not to be naive. Also between NGOs, both national and international, there is competition for resources and prestige. Usually, they all need external resources to exist as an organisation, and many NGOs receive support not only from their own national state, but also from international donors. This is important to consider when justifying a source.

Information from academic researchers should in general also be a reliable source. They act out of professional interest, and try to describe the reality. But there are different opinions about what constitutes reality. It depends on the basis for the sources, the arguments for their claims and their distance to the situation described.

These are all secondary official documents. In addition I also try to answer my thesis with information collected from personal interviews, meaning face to face contact. Normally you divide the questions into cognitive and evaluative questions, whether the question is about a particular situation or you are asking about feelings the respondent may have regarding a particular situation (Hellevik 1994:125). During my stay in Colombia, I mainly asked cognitive questions. However, with a situation as tense as the one in Colombia, it is almost impossible to avoid noticing the personal feelings of the respondent when expressing his or her opinion. To gain as much knowledge as possible, I believe it has been beneficial to prepare specific questions in advance. This proves that

I have knowledge about the subject I ask questions about, and can be selective in the information given. However, I did not use a standard form with questions.

Personal interviews were conducted in Colombia and concerned the internal displacement situation in the country. All respondents have been or are working in Colombia on the issue of internal displacement. They represent both the state, the UN, national and international NGOs, and some were IDPs themselves. I also spent three months as an intern with the Norwegian Refugee Council's Global IDP Project in Geneva, which gave me the opportunity to gain general knowledge on the subject of internal displacement. I had access to different kinds of sources, both secondary and first hand, and I made contact with people working with internal displacement, both within the UN and NGOs.

When conducting personal interviews it is important to ask where the respondent gained his or her information from. How close has the respondent been to the information given? How real is the respondent's engagement and possibility to observe the event? The more physically close a source has been to a situation, the easier it is to assume its reliability (Dahl 1997:61). However, "first-hand" sources can be influenced by other sources. Often the source has talked and discussed with other people, and possibly been influenced by that conversation. But this might not mean the source has lost its credibility. The influence from others can also mean correction and control of a source (Ibid:59). Every statement given is a reproduction or a reconstruction of happenings, not a direct part of them. It is also important to ask why the respondent is willing to share information. What kind of information did the respondent want to share and what kind of message was received by the interviewer (Ibid:62-63)?

Dahl (1997:64-66) explains the interpretation of the content when conducting an interview takes place in several steps. But the most relevant is step 1; the language. Some of my interviews were conducted in Spanish, the language of origin of the respondent, but my third language. I have taken this into consideration when interpreting the answers. To reduce the possibility of misinterpretation or loss of information I have made it a point to use several various independent sources and comparing them with each other. It is not only an understanding of every single source that is important, but equally important is an adequate description of their relationship to each other, especially their function as a whole. In this case, using logic and psychological capability, an

understanding of language, and the ability to "imagine" the story told and the conditions the information is based on, is important.

I spent three weeks in Colombia, where I had the opportunity to observe issues related to internal displacement. I talked to people, both formally and informally. Three weeks may not be long, but it gave me the possibility to imagine and understand the sources and the subject of internal displacement to a larger extent than if I had not been there.

All sources can lie or be wrong, and alternatively the truth can be hiding in sources that originally have little credibility. It is therefore important to compare several independent essential sources and confront them with comprehensive theories. If several independent sources provide the same information, the reliability is strengthened. Corresponding sources can be mutually strengthening of each other, but only of value if the sources are independent, and not influenced by one another (Ibid.). By taking these issues into consideration when interpreting and comparing several various independent well grounded sources, I intend to give an answer which is as reliable and valid as possible when answering what challenges the protection gap may raise to the principle of sovereignty and the mandate of the UNHCR.

2. The Principle of Sovereignty –Challenged by the IDPs?

2.1 Introduction

The increase in internal warfare and internal conflicts has led to the idea that the national state's sovereignty is being challenged. The protection of the internally displaced becomes directly associated with the question of state sovereignty. National authorities have the primary responsibility for addressing the needs of their displaced citizens. However, the state often lacks the capacity and sometimes the will to provide them with protection and assistance. IDPs, being an internal matter, mean that any attempt to create an international agency to address the IDP issue could be seen as implicitly interfering in the domestic affairs of states. If the state fails to protect its IDPs, can it still claim to be sovereign –in the sense that it does not recognise the need of the IDPs and denies the international community access?

In a formal sense, sovereignty means that state authority is not subject to a higher power. Both the formal notion of sovereignty and the correlative norm of non-interference have been given legal expression in international law[2]. Werner and De Wilde (2001: 284) claim that threats to the state's autonomy and ability to rule have reinforced the claims to sovereignty rather than weakened them. They argue that instead of asking what state of affairs "really" corresponds to the idea of sovereignty, one should ask in what context a claim to sovereignty is likely to occur, to whom a sovereignty claim is addressed, what -if any normative framework is used to determine the legitimacy of a sovereignty claim, and what consequences generally follow from the acceptance of a sovereignty claim. How does the protection gap affect the principle of sovereignty? What kind of responsibility do states have towards IDPs?

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[2] Article 2 (7) allows the UN itself to "intervene in matters which are essentially within the domestic jurisdiction of any State…", but only through application of Chapter VII enforcement measures by the Security Council, which must first "determine the existence of any threat to the peace, breach of the peace, or act of aggression" (Article 39). It may then, if

2.2 The Balance between Sovereignty and Human Rights

Achieving a balance between state sovereignty and human rights is no small issue. The question is, in what regard can a state claim to be sovereign when human rights are being broken within its borders. When a state cannot provide protection to its citizens, can it still claim to be sovereign?

The four decades between 1948 and the collapse of communism may be characterised and possibly stigmatised, as the lip-service era for human rights, when diplomats strove to ensure that they could never be meaningfully asserted against a nation state. Throughout the Cold War diplomats used human rights opportunistically, as a propaganda weapon against their enemies. After the Cold War, the European Convention and its Strasbourg court were sufficiently impressive for the newly liberated nations of Eastern Europe to sign up a membership. By the time of the UN's triumphalist talk-fest in Vienna in 1993, there was a much more genuine desire to put human rights at the centre of the "New World Order" proclaimed after the apparent defeat of Saddam Hussein (Robertson 2000:xv). Part of this "New World Order" is the increasing number of IDPs. Are the IDPs a human rights issue? There are multiple examples of situations when these human rights are broken as in countries where the government has collapsed, and plays a part in the internal conflict, -where the civil population is identified as an opponent, -where the national and institutional service are non accessible or active counteract, as well as a negative attitude towards the international community. Yes, IDPs are a human rights issue.

IDPs are protected by human rights laws, as all other human beings. But as opposed to refugees, women, children and so on, no institution has been given the responsibility for IDPs when the state fails to protect its people. In international law, there exists a legal principle of forced intervention based on humanitarian suffering which could open a Pandora's Box of uncontrolled interference between states. Most states are very reluctant to make the UN a global peace force at the expense of state sovereignty. The power of human rights has increased. The breakdown of the Cold War has made it to a large extent easier than before for the international community to take part in internal

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measures short of armed force are insufficient, "take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security" (Article 42) (Robertson 2000:405).

relations and observe people's need. Human rights have to do with social, political and economic conditions. There is an increasing international concern for victims of internal warfare and human rights. The Cold War made it difficult for the international community to cooperate, but today the UN can promote peace and respect for human rights. After the Cold War, however, national conflicts seem to be more difficult to control, without adjusted legal international principles and instructions on how to handle crises in this new situation.

According to Guy S. Goodwin-Gill (1996:264) the primary responsibility for the protection of and assistance to internally displaced persons rests with the territorial state, in virtue of its sovereignty and the principle of non-intervention. The principles of sovereignty and non-intervention have a special significance for formerly colonised people at a time when the threat of re-colonisation looms large. Any attempt to dilute them in the name of the defence and promotion of human rights is therefore viewed with understandable suspicion. Such an argument should not be read as supporting an absolute doctrine of sovereignty. According to Chimni (2000a:392), the problem is *"that the invocation of human rights is selective, often a pretext for attaining incompatible ends, and is advocated by powers which author global policies irreconcilable with any conception of human rights".*

In Fixdal and Smith (1998:288) Hoffman writes that for three centuries, the state has been the organising principle of political power, political philosophy, and political science. And human rights have become a major feature of both political and ethical discussion in the late twentieth century (Ibid.). Human rights are firmly established in international law. In the growing standing of human rights principles, states recognise the sovereignty of peoples and their representative institutions. This is called *"popular sovereignty"* (Barnett 2001:248)[3]. Thus, the rights of states continue to take priority in the law and politics of international human rights. If human rights should be taken seriously they must also be a priority. It is easy to get the impression that the UN Human Rights Committee is a large and respected organisation, rather than a group of underfunded part-timers which is the reality. Today, human rights are much in fashion, which makes them the subject of a certain amount of humbug. In a world where virtue is no longer its

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[3] In Barnett (2001:248) Reisman and Frank explains that popular sovereignty concerns the domestic principles that we now define as the rule of law (liberalism) and representative institutions (democracy).

own reward, there are plenty of human rights awards, many funded by corporations exposed for exploiting the poor. The UN can be accused of cheapening the human rights cause by recruiting voguish but vapid models and pop stars as "goodwill ambassadors" (Robertson 2000:xx-xxi).

The disagreement mainly concerns how deep the limits on state sovereignty are. How much will IDPs need to suffer before receiving protection from the international community? It may seem that sovereignty will always recede in the background and borders will constitute barriers, but it is important to take advantage of the internationalist vision of the principle of human rights, work within the existing mechanism of cooperation developed at the international level through the UN (Mishra 2000). It may be an idea to develop a framework and criteria that can be used to determine to what extent human rights can be broken before the international community can intervene. The aim should be to develop a tool that establishes new standards that make governments accountable. The right of a humanitarian intervention arises in an emergency, to stop the continuing commission of crimes against humanity, but it has never been suggested that a state's poor human rights record justify armed intervention (Robertson 2000). We can also place this discussion in the context of the allies; United States, Britain and Spain's military intervention into Iraq March 2003, where there clearly are disagreements as to whether the intervention has a legitimate basis.

In Fixdal and Smith (1998:292) the legitimate authority is discussed, where Wallensteen mentions that at issue is whether a state that has not collapsed may nonetheless be illegitimate. If such is the case, it can be argued that the UN Security Council can decide to disregard the claim to sovereignty. According to McCarthy, states have rights only if they promote the rights and welfare of their citizens, while Pastor argue that in this perspective, sovereignty is beside the point: the real issue is how to meet the needs of the world's citizens (Ibid:294). The human rights movement may be on the offensive, but it still has far to go yet. There is no clear answer on how irresponsibly a sovereign state can act towards its citizens before it is held accountable by the international community.

2.3   Sovereignty as Responsibility

The subject of internal displacement is a sensitive one as it inherently raises the issue of sovereignty. The meaning and practice of sovereignty is more complicated than defining sovereignty by the principle of non-interference. At issue is not only who is sovereign, but what practices are associated with sovereignty (Barnett 2001). Therefore, a key question is how it is possible to address the plight of internally displaced in a highly and increasingly politicized human rights context. Internal displacement poses a challenge to the international community to develop norms, institutions, and mechanisms for preventing it, addressing its consequences, and finding durable solutions, with the responsibility of sovereignty as the starting point. In recent years, the old concept of sovereignty, behind which states have hidden while they abuse their own citizens, is gradually being replaced by a newer model "sovereignty as responsibility", which is being promoted by, among others, UN Secretary-General Kofi Annan, as well as by Francis Deng, the UN Secretary-General's Representative on Internally Displaced Persons (Vincent 2001b). According to Deng a state is sovereign as long as the people are sovereign, and sovereignty must be viewed as something positive (Deng 2003 [Personal Interview]).

Against the classic view, put forward by Pease and Forsythe in Fixdal and Smith (1998:294) that the state *"has the ultimate legal right to say what should be done within its jurisdiction",* Michael Reisman proposes that international law still protects sovereignty, but it *"is the people's sovereignty rather than the country's sovereignty"* (Ibid.). Under the old concept, even scrutiny of international human rights without the permission of the sovereign could arguably constitute a violation of sovereignty by its "invasion" of the sovereign domain reserve. The actual respect for human rights has not become universal, but today there are fewer states or respected opinion leaders who will find arguments justifying systematic human rights abuses in the name of revolutionary ideologies or political expediency (Hieronymi 1999:4). Under the old concept, even the scrutinizing of international human rights, without the permission of the sovereign could arguably constitute a violation of sovereignty by its "invasion" of the sovereign's domain reserve. The UN Charter replicates the 'domestic jurisdiction –international concern' dichotomy, but not many serious scholars still supports the contention that internal human rights are essentially within the domestic jurisdiction of any state' and hence

insulated from international law. An exception is China that remains deeply suspicious of any international legal development which threatens sovereignty. The mildest criticism against sovereignty at the UN Human Rights Commission it condemns as interference in China's internal affairs (Wilkinson 1999). But you can also turn the question of sovereignty around and ask why sovereignty can be seen as license to commit crimes against humanity.

If states fails to meet their obligations or to invite or welcome international assistance, and masses of their people suffer, then they must expect the international community to show concern and perhaps even threaten intervention. Such intervention can range from persuasive diplomatic intercession, to more assertive political and economic measures in the form of sanctions, to the coercive form of military intervention in extreme cases. The best way of guaranteeing state sovereignty is to discharge the responsibilities of sovereign towards the citizens and all those under the jurisdiction of the state. It is important to view sovereignty as something positive (Deng 2003 [Personal Interview]).

This contemporary change in content of the term 'sovereignty' also changes the cast of characters who can violate human rights when an outside forced invades and imposes its will on the people. But what happens to sovereignty, in its modern sense, when it is not an outsider but some home-grown specialist in violence who seizes and purports to wield the authority of the government against the wishes of the people, which is often the case in countries with IDPs? Is such a seizure of power entitled to invoke the international legal term 'national sovereignty' to establish or reinforce its own position in international politics? For instance, until the mid-1990s, Zimbabwe was grouped among the more prosperous and politically stable countries in Africa, but has since then seen both her economy, social and political stability deteriorate. Population movements, both voluntary and forced, have become an increasingly visible aspect of the new situation. People have been forced to move because of political violence, both separate from and closely linked to the controversial land acquisition programme implemented by the Government. There have been indications that several thousand people have been forced to seek protection away from their homes, but still with-in the country, because of their affiliation with the opposition movement during elections in 2000 and 2002 (Global IDP Project 2002b). Zimbabwe is party to most major international human

rights law (HRW 2002a:36), including those that form the basis for the UN Guiding Principles on Internal Displacement, and has thus a clear obligation to protect its population from being displaced and to provide protection and humanitarian assistance after displacement. But the political climate in Zimbabwe has made it difficult to raise the issues of political violence and the effects of the accelerated land reform process with the government. International organisations tend to avoid confrontations with the government and even the UN High Commissioner for Human Rights has so far not responded to the situation (ICG 2002a).

According to Fixdal and Smith (1998:288-289), it is an empirical and analytical error to assume that the age of sovereign states is coming to an end. Presently there are more sovereign states than there have ever been, and they keep appearing, the latest with the independence of East Timor in 2002. According to Nils Butenschøn (2001:3), we have to accept the principle of sovereignty and its power. The point is not to argue whether the state should be weak or strong, but rather if criteria for a responsible state have been created. Sovereignty is necessary, but it is also a dangerous tool. That is why he argues that the principle of sovereignty and the system, which the principles maintain, should be both criticised and defended.

To say that states have a right to act in certain areas is not to say that anything they do in those areas is right (Walzer 1983:40). By trying to shift the fulcrum of the system from the protection of sovereigns to the protection of people, it works qualitative changes in virtually every component. According to Reisman in Chimni (2000a:410) many of the old terms will survive, but in using them in a modern context, one should bear in mind Holme's lapidary dictum: *"A word is not a crystal transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used"*. When constitutive changes such as these are introduced into a legal system while many other struts of the system are left in place, appliers and interpreters of current cases should not proceed in a piecemeal and mechanical fashion. Precisely because the human rights norms are constitutive, other norms must be reinterpreted in their light, lest anachronisms be produced.

When people's rights are not being respected, they look to their homeland not only with hope, but also with expectations. Such expectations are legitimate. But where can the IDPs look for hope, when states split? No legal appeal is possible; there is no

superior body. There is a discrepancy between the rhetoric and action, whereas most states recognise obligations towards IDPs and refugees in practice, some do so only in law. This can be seen as a debate between idealism and realism. Idealism is a shorthand term for a process by which an ethical response to a large-scale tragedy is first aroused and then translated into political action. Meanwhile, realism emerges in the recognition that the actors in the multilateral operations are the governments of states, acting out of a mix of short- and long-term interests (Fixdal and Smith 1998:284).

There may be no ultimately satisfactory general answer to the question of legitimate authority. Urgent relief resources sent by outsiders are usually welcomed by the government in control of the territory. If not, as in the case of Zimbabwe, then that resistance almost always bespeaks an element of political oppression that probably should itself bring the deprivation within the classic contours of the UN definition, as traditionally understood (Martin 1991:39). In Werner and De Wilde (2001:291) both Jackson, James and Mayall argue that sovereignty can only exist by virtue of mutual recognition between governments. Its functions are regulative and authoritative. If states are incapable of discharging responsibilities towards all those under state jurisdiction, they are expected to request, or at least accept, international cooperation in providing assistance and protection. It is on this basis that states can best guarantee their sovereignty (Deng 1998:8).

2.4   A State's Responsibility Towards IDPs

A responsible diplomat would argue that the very purpose of a legal definition of IDPs is to narrow the scope for abuse, and international law would be an obscenity if it required the world to turn its back rather than act to save the lives of thousands of men, women and children, merely because they were located in an unco-operative sovereign state. But state practice has been the most potent, and has become the most problematic, source of international law. A problem is that states rarely consent, genuinely and voluntarily, to external limits on their power over their own people (Robertson 2000:89). Rather than tackling the basic problems, as the underlying causes of the conflicts, and finding political solutions, states tend to become involved themselves in humanitarian activities or to direct their funds at specific areas without any coordination and without

any comprehension of the phenomenon of vulnerability as a whole. This attitude can only be detrimental and indeed fuel new conflicts. It could therefore seem reasonable to argue that humanitarian action, which is intended to protect human dignity and save lives, should on no account be used as a substitute for political decisions (Hickel 2001:54).

The turning point in states' responsibility towards IDPs came with the Gulf and Yugoslavian Wars. Both the Kurdish population and people in Yugoslavia were denied the exit option. The European countries limited the numbers of refugees, but not wanting to appear completely heartless, the European states encouraged UNHCR to provide relief for IDPs. In short, states slowly approved the concept of IDPs not because of an abundance of humanitarianism but because of its very absence (Barnett 2001:267).

The question of protection is obviously associated with the question of whose mandate it is. In fact, the state under whose jurisdiction IDPs live or are compelled to live is supposed to be the protector of its citizens; thus IDPs are insecure because the very expected protector is either unable or unwilling to protect them. In a situation like this, IDPs fall into a vacuum of responsibility within the state. This failure of the state in its obligation towards its citizens is the main cause that draws the attention of the international community and subsequently demands its protection role. However, there is also the opinion that over-eagerness to promote international involvement may in many ways dilute the notion of state responsibility. Hence, rebuilding the state's capacity by adopting various measures is also considered an essential process toward safeguarding IDPs. The very notion of this process of building up the state's responsibility is intended to make the state or government or other actors agree to certain principles as a first step, and secondly, make them act in a way that is conducive to the prevention and resolution of the internal displacement problem (Chakma 2000:228).

At the annual General Assembly meeting in 1999, the U.N. Secretary-General Kofi Annan urged UN member states to put aside sovereignty and the sanctity of national borders -in favour of protecting and assisting civilians caught in the crossfire of war. *"There is no doubt that enforcement action is a difficult step to take. It often goes against political or other interests, but there are universal principles and values which supersede such interests, and the protection of civilians is one of them",* Annan told delegates (Wilkinson 1999).

It was one of the most controversial speeches by a Secretary-General in recent history and sharply split member states. In support of Annan, the French Prime Minister Lionel Jospin said to the General Assembly that the UN mission is not limited to the settlement of conflicts among states and that the mission extends to defending human dignity within each state and, where necessary, against states. Also, the Netherlands Foreign Minister Jozias Van Aartswen agreed. He said that respect for human rights since the end of World War Two had become more and more mandatory and respect for sovereignty less and less stringent. But there were also opposition viewpoints. China vehemently opposed a liberal western view. Foreign Minister Tang Jaxuan argued that it seemed vogue that human rights had precedence over sovereignty. He claimed respect for national sovereignty and non-interference in internal affairs where the basic principles governing international relations and any other approach would lead to the imposition of old-fashioned gunboat diplomacy in world relations. Algerian President Abdelaziz Bouteflika told delegates they did not deny the UN the right and duty to help suffering humanity, but he remained extremely sensitive to any undermining of state sovereignty, not only because sovereignty is the last defence against the rules of an unequal world, but because he is not taking part in the decision-making process of the Security Council. His view reflected the concerns of many developing countries where humanitarian agencies do the bulk of their work, that stronger nations would "impose" solutions on them (Ibid.).

2.5   Conclusion

The increase in internal warfare and internal conflicts has lead to the increase of IDPs. The protection of IDPs becomes directly associated with the question of state sovereignty. The fact that IDPs are an internal matters, mean that any attempt to create an international agency to address the IDP issue could be seen as interfering in the domestic affairs of states, if the state has not explicitly asked for or accepted their presence. The IDPs and the protection gap clearly challenge the traditional concept of sovereignty and there is a need to rethink the traditional notion of sovereignty, particularly the balance between state sovereignty and human rights, which is no small issue. IDPs are a human rights issue in countries where the government either has

collapsed or is part of the internal conflict. Even if states are reluctant to agree to anything at the expense of state sovereignty, they are today more pressured by the international community. The power of human rights has increased. In the growing standing of human rights principles, states recognize the sovereignty of peoples and their representative institutions, which is called "popular sovereignty". The breakdown of the Cold War has made it easier for the international community to take part in internal relations to a greater degree than earlier, which also opens up the opportunity for international responsibility. However, the rights of states continue to take priority in the law and politics of international human rights.

The protection gap has affected the practices associated with sovereignty. A new trend has developed and the question is if it can be reflected in international law. The old concept of sovereignty is gradually being replaced by a newer model, sovereignty as responsibility. Sovereignty should be perceived in terms of the protection and respect of the rights of their citizens and promotion of international peace and security. The willingness by states to elevate the legitimating principle of popular sovereignty is strongly associated with the belief that there is a direct relationship between international order and domestic order (Barnett 2001). But it may be an error assuming that the age of sovereign states is coming to an end, rather it is important to discuss premises of a responsible state. There may be no ultimately satisfactory general answer to the question of legitimate authority, but if states are incapable of discharging responsibilities towards all those under state jurisdiction, they are expected to request or at least accept international cooperation in providing assistance and protection.

With the Gulf and Yugoslavian Wars, states slowly approved the concept of IDPs, not necessarily because of humanitarianism, but rather through trying to hinder refugees from entering their own country. It could also happen that over-eagerness to promote international involvement may dilute the notion of state responsibility, but it may also be considered as an essential process toward safeguarding IDPs. Northern states have every incentive to dry up refugee flows at source, if possible by containing people within their borders. Delivering aid and protection may be cheaper than dealing with huge increases in the numbers of asylum-seekers. Dispossessed by their own national authorities, IDPs' only source of protection and assistance becomes the international community. With the increased focus on human rights as responsibility, there should be possibilities for the

international community to show legitimate concern, if the state itself has failed in protecting its citizens.

The protection gap has made states' lack of responsibility and shortcomings in meeting their obligations more visible on the international arena. As borders weaken in a globalizing age, the importance of IDPs will come to rival that of refugees and the duty of outsiders to do something should become all the more obvious. But without adjusted legal international principles and instructions for how to handle crises in this new situation, the protection gap will still exist. International law, unlike municipal law, cannot be said to rule. Standards laid down by independent states may in practice be ignored, which they often are, without suffering anything more than diplomatic embarrassment. The aim should be to develop an instrument that establishes new standards that make governments accountable.

There have been attempts to create an international agency to address the IDP issue without meddling in the domestic affairs of states. It was suggested that UNHCR should take on this responsibility. But many disagree with this suggestion. The next chapter will discuss the role of the UNHCR in relation to the increase of IDPs and the protection gap.

3. The Increasing Need for Protection: A Dilemma for the United Nations High Commissioner for Refugees (UNHCR)

3.1 Introduction

From chapter two we can conclude that normative developments have taken place, in the sense that there is more pressure on a sovereign state to behave responsibly, and there has been an increase in the acceptance of international involvement if this responsibility is absent. UNHCR is not immune to global developments such as the increase in internal conflicts and a more restrictive asylum policy. The end of the Cold War and changes in world politics have had consequences not only for state sovereignty but also for the work done by the UNHCR, since its own primary responsibility is defined by inter alia, reference to flight. UNHCR was established to help states carry out their responsibilities to refugees, but obligations were carefully limited and it was ensured that UNHCR's working definition of humanitarianism included the principle of non-interference (Barnett 2001).

It is the combination of state pressures and normative developments that have permitted UNHCR to become more involved in the domestic affairs of states. UNHCR has extended protection or assistance to certain groups who were not included in UNHCR's original mandate, but whom the UN Secretary-General or the UN General Assembly have requested that the agency assist. Among these groups are an estimated 5.3 million IDPs, the fastest growing group of uprooted persons in the world (UNHCR 2002a).

But the extent to which UNHCR wants to find itself attempting to save failed states is a matter of debate. I would like to address the challenges the agency meets in the matter of IDPs. The question is whether this political transformation which enables the agency to become more deeply involved in the internal affairs of states actually protects the IDPs? Are there practical, political, and principled reasons for distancing UNHCR

from the problems of the internally displaced, other than as a functional extension of refugee-related activities? I will review the changing relationship between the principle of sovereignty and the UNHCR, and link this to the emergence of a new international refugee regime and whether protection of IDPs is out of bounds for the UNHCR.

3.2   UNHCR in a New Refugee Regime

The Office of the UNHCR was established on December 14, 1950 by the UN General Assembly. The agency is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. UNHCR is the principal guardian of the 1951 Refugee Convention. But the agency's Statute has been interpreted flexibly to allow it to work with IDPs. Article 9 states that the High Commissioner may, in addition to work with refugees *"engage in such activities…as the General Assembly may determine, within the limits of the resources placed at her disposal"*. The most frequent restraints on UNHCR involvement is lack of security and refusal of access to the displaced by governments and other insurgents (UNHCR 2003a and UNHCR 2003b).

UNHCR has been careful not to compromise its own mandate covering refugees and to work within its limited financial and manpower resources. But since the end of the Cold War a new refugee agenda has developed. The dynamics of displacement have changed greatly over the half-century of UNHCR's existence, and consequently international responses to the problem of forced displacement. UNHCR's early development took place in the tense climate of the Cold War, when the organisation focused on refugees in Europe. The end of bipolar confrontation at the beginning of the 1990s profoundly altered the universe in which UNHCR operated (UNHCR 2000). The new humanitarianism is causing the erosion of the fundamental principles of refugee protection and is transforming the character of UNHCR (Chimni 2000b). As a result of the changing dynamics of displacement, millions of IDPs throughout the world live scattered in the jungle, huddled in camps or hiding in the anonymity of urban slums. Their masses cover the dark side of the world refugee problem. UNHCR's involvement with IDPs, has become increasingly significant over the last decade, a reflection, in many instances, of the changing environment in which the UNHCR has had to carry out even its more traditional activities, in particular the voluntary repatriation of refugees

(UNHCR 1994). But until recently its involvement with IDPs had mostly been in the context of the voluntary repatriation of refugees where return movements and rehabilitation and reintegration programmes have included both refugees and displaced persons in circumstances where it was neither reasonable nor feasible to treat the two categories differently (Chimni 2000b:260).

In 1994, Leonardo Franco, the Director of International Protection in UNHCR, made clear that

"legal categories and institutional mandates retain all their relevance. But at the same time, UNHCR increasingly finds it operationally untenable, as well as morally objectionable to consider only the more visible facet of a situation of coerced displacement. A comprehensive approach to coerced human displacement does not mean, however, that UNHCR should employ broad generalisations and undifferentiated treatment. No two humanitarian crises are ever the same, and a global approach to such complex situations requires, if anything, finer tools of analyses and a larger arsenal of flexible responses" (UNHCR 1994).

An evaluation of the UNHCR's involvement with IDPs in 1994, concluded that given the magnitude and scope of the problem and the inadequate ad hoc response thus far, there seems to be international consensus that an institutional mechanism to cope with the displacement phenomenon is urgently required. Although initially set up as a temporary institution, essentially intended to wrap up the refugee problems remaining after the Second World War and in the late 1940s, UNHCR has acquired quasi-permanent status, as well as universal support, even among those initially opposed to the "politics" of refugee protection. In a practical sense, UNHCR's protection and solution responsibilities take place in a context that is increasingly likely to involve the provision of material assistance, either short –or long-term, the uncertain availability of durable solutions dependent, as always, on the political will of states, weaknesses in the system of ensuring compliance with international obligations, and increasing resource demands. UNHCR's work is intended, indeed required, to be humanitarian, social and non-political, but it clearly takes place in a political context, frequently characterised by tension between the national and international arms of protection, between sovereignty and international responsibility (Goodwin-Gill 1999: 221-222).

Insecurity impels people to flee in search of refuge, but the persistence of conflict and displacement has weakened the commitment of many states to uphold international

agreed principles of refugee protection (UNHCR 2000). Today the concept of security now provides UNHCR with conceptual coherence for its post-Cold War transformation from, in its own words, a 'reactive exile-oriented and refugee-specific' paradigm to a 'proactive, homeland-oriented and holistic' one. UNHCR is one of the world's largest humanitarian relief agencies, with staff operating in conflict zones to assist and protect people in or near their homes so that they need not flee across international boundaries. UNHCR's security discourse provides the legitimisation for this new paradigm by explaining that refugee flows must be prevented, contained and reversed because of the security threats such flows create for the social cohesion, political integrity and economic welfare of the host states, regional and international stability, humanitarian workers and the refugee themselves. As discussed in chapter two the change of focus from state to people's sovereignty has also influenced UNHCR.

Security is one of UNHCR's most important concepts, and in the 1990s it has moved from being a peripheral to a core concern. Despite this, UNHCR's usage of the term security is ambivalent. It is often difficult to assess what meaning the agency attaches to 'security' and with *whose* security it is concerned when it talks about 'human security'[4], 'national security' and 'international peace and security' (Hammerstad 2000:396). An article prepared by UNHCR's Policy Research Unit exemplifies UNHCR's effort to redefine security in humanitarian and human rights terms:

> *It is interesting to note that the notion of security itself has been reformulated since the demise of the bipolar state system. Until the late 1980s, analysts applied the concept of security almost exclusively to states. Today however, it is also used in relation to the welfare of individuals and groups of people (Hammerstad 2000:397).*

By stating that *"unless people feel secure in their own homes, the security of states will continue to be threatened by internal tensions and refugee flows"*, UNHCR tries to establish harmony between the security concern of states and the protection needs of displaced people (Ibid.). Roberta Cohen (2001) emphasises that situations of conflict and displacement rarely remain confined within borders. They spill over into neighbouring countries and can upset regional stability, thereby often compelling a regional response. Regional activity is also essential because of the influence regional powers can have in encouraging

governments in their regions to assume their responsibilities toward their internally displaced population. In 1996, South Centre in Geneva argued that a reason for concern is that crisis with important humanitarian implications, such as internal displacement, are generally regarded as individual, isolated events, to be dealt with on an emergency basis to stem the damage. There is no general international policy on how to act on internal displacement. In addition to reflecting the inadequacy and inappropriateness of development policies themselves, it signals the past inability or unwillingness of the international community to help create the broader conditions that would help prevent such crisis and conflicts, as well as its failure to take practical steps to pre-empt or to help defuse such crisis (Chimni 2000a:417).

UNHCR has been acutely aware of the emergence of more restrictive and hostile attitudes towards refugees in the post-Cold War period. In Fixdal and Smith (1998:293), David Scheffer argues that refugee flows and the prospect of conflict spilling over international borders mean that massive violations of human rights and internal conflicts inevitably have an impact on regional and international security. Despite the efforts of UNHCR and other human security advocates, states and, consequently, the Security Council have been hesitant to broaden the definition of 'threats to peace and security' and emphasise the connection between the security of people and that of states and regions. There is yet little consensus among Security Council members or other states on whether or how the category of threats to international security should be expanded. There is genuine suspicion, especially among developing states, that human security arguments may function as a disguise for legitimising the imperialist and interventionist ambitions of international or regional powers.

There have been disputes about the UNHCR's mandate, the role it can play in providing assistance and protection to IDPs, whether its mandate should be extended to include also the IDPs, and not only refugees. Some have applauded and encouraged UNHCR for addressing humanitarian needs on a more comprehensive basis, others have accused UNHCR of undermining the institution of asylum without being able to ensure effective protection within borders (Horekens 1999:17). Issues to be addressed in a new refugee agenda include UNHCR's competence with respect to the internally displaced,

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[4] Human security for individuals.

the criteria, the nature and content of UNHCR's involvement, and the complementary roles of other international organisations (Chimni 2000a).

3.3   Towards In-Country Protection?

At the end of the Cold War, concern grew within the UNHCR that it would no longer have a significant role to play in the post-Cold War period. But looking back at the many refugee crises and the substantial expansion of UNHCR's operational scope and budget in the 1990s, this concern seems misplaced. Today, according to Hammerstad (2000:391), UNHCR has been described as the UN's 'humanitarian arm', and its primary focus has shifted from providing international protection for refugees, particularly in the form of promoting asylum, towards large-scale humanitarian operations, in the midst of conflict, for war-affected populations, IDPs and refugee alike.

A number of questions may be raised to facilitate the critical evaluation of the guidelines which the UNHCR outlines for providing assistance and protection to IDPs: would UNHCR's increasing involvement with IDPs detract from the possibility of those displaced to seek and obtain asylum? Is a transformation from a refugee to a humanitarian organisation being dictated by the aim of the powerful donor states to keep potential refugees at home? Should it support standards, which focus on IDPs without attempting to fill at first the gaps which exist in refugee protection? In all these respects the UNHCR may well find, as Petrasek express it, that *'the shield of IDP protection turns into a sword for undermining refugee protection'* (Chimni 2000a:398).

Apart political barriers such as sovereignty, there are also other operational obstacles to working with IDPs. Sometimes, because of ongoing conflict, collection of data for use in future work in the affected areas may become very difficult and may become an impediment to any humanitarian assistance process. Working with IDPs can also mean working under dangerous conditions, often near or even in the middle of a combat zone –much closer, in any case, to the battlefield than any refugee camp (Chakma 2000:229). Even though there is an improvement in the protection provided within countries, there are clearly obstacles which UNHCR needs to deal with in order to continue expanding in-country protection.

Some have argued that the UNHCR has strayed from its original mandate and "lost its soul" (Horekens 1999:15). Although the basic mandate of the High Commissioner of Refugees under the Statue of the Office (General Assembly res. 428 (v)) does not include any general competence for persons displaced within their own country, the effect of various General Assembly resolutions has been to confer upon UNHCR a selective and limited mandate to undertake humanitarian assistance and protection activities on behalf of the displaced. In 1994, UNHCR developed guidelines and criteria for its involvement with IDPs. The internally displaced who are of potential concern to the UNHCR are those in a refuge-like situation, for example, persons fleeing persecution, armed conflict or civil strife, rather than victims of physical disasters, such as earthquakes, floods or nuclear power-plant expositions. UNHCR's limited mandate to undertake activities on behalf of the internally displaced is both conditional and, in principle, discretionary. There are certain preconditions that must be satisfied before UNHCR considers its involvement: it must not in any way detract from the possibility to seek and to obtain asylum; UNHCR must have full and unhindered access to the affected population; adequate provision must be made for the security of staff of UNHCR and its operating partners and for acceptable operating conditions; and UNHCR's involvement should have the consent of all concerned parties and enjoy the support of the international community (Chimni 2000a:436).

But UNHCR emphasises that it must be recognised that the most serious problems with respect to the protection of persons who are either displaced or threatened with displacement in their own country result not from an absence or deficiency of legal norms but from the failure of the parties concerned to respect and to enforce those norms, and, even more fundamentally, from the failure of warring parties, and of the international community as a whole, to achieve a peaceful resolution of the conflicts that are the major cause of forced displacement. Any effective legal system must include both norms of conduct and some mechanism to ensure their observance or enforcement. The existing international legal framework to ensuring observance of human rights principles and of humanitarian law is clearly not fully adequate to the task. It should be noted, that together with the ICRC, UNHCR is the only international organisation to combine humanitarian assistance and protection mandates (Ibid:437-439). But it is worth emphasising that UNHCR's mandate is not to provide food and relief to the needy, but

to provide protection. Other agencies are responsible for meeting human and material needs. Monitoring of the human rights situation falls outside the responsibility of the UNHCR. That such issues are not resolved on the basis of established principles, however, speaks even more eloquently to the existence of major organisational weaknesses (Goodwin-Gill 1999).

Notwithstanding the specificity of its responsibility to provide international protection, UNHCR asserted its own comprehensiveness: *"UNHCR…is the only agency whose responsibility is to meet all humanitarian needs of its concern, as opposed to responsibilities defined by nature of need, age or gender".* According to Goodwin-Gill (1999:233) it was either unfortunate or significant that UNHCR neglected to mention that its own primary responsibility is defined by, inter alia, reference to flight.

The High Commissioner of Refugees Ruud Lubber, Sadako Ogata's successor, wants to concentrate on legal refugees alone, although he accepts that, as part of the 'UN-family', his organisation must take note of IDPs. He is cautious about trying to help too many. There is a risk, he thinks, that refugee rights could be blurred if extra help goes to those who have not crossed a border. UNHCR's statute makes clear where its responsibilities lie, even if, on the ground, it is sometimes very hard to distinguish official refugees from the internally displaced (The Economist 2001a).

3.4   Seeking Asylum -is it an Option for IDPs?

It is argued that the change in the policy of asylum has increased the total number of IDPs. Many states have done little more than fulfil their international law duty, which means not returning asylum seekers to dangerous states or territory. However, there is no doubt that the principle of non-refoulement is an important constraint on state sovereignty. But as the primary basis for how states should respond to rising numbers of people forced from their homeland, it has proven hopelessly inadequate. Many states have simply avoided its full demands by using indiscriminate measures, such as visas and carriers sanctions, to prevent asylum seekers from arriving at frontiers where they could claim entry. Worse still, the principle does nothing to encourage states to deal with the actual causes of forced migration, particularly those states that are not faced with large numbers of asylum applicants (Gibney 1999:169-70). Also, some countries of origin

impose strict exit control measures, which makes it impossible for refugees even to leave their countries without help (Türk 2001:90).

After the Cold War, rich and powerful states, particularly in Europe, increasingly wish to deter refugees and asylum-seekers from crossing their borders, which has therefore increased the numbers of IDPs. The reasons for this is a mix of reduced demand and increased supply: in spite of the ageing populations of Western Europe, immigrants, including refugees, are no longer seen as a welcome contribution to national workforces, refugees are no longer strategically important geopolitical pawns or ideological trump cards for the hostility against people from other cultures and of other colours which has manifested itself in the electoral successes of anti-immigration, extreme rightwing parties (Hammerstad 2000:393).

There is a consensus among both states and refugee studies scholars that the international refugee regime is in crisis. The crisis manifests itself in this restrictive asylum policy. These restrictive measures have been adopted without any consultations with the states of the South hemisphere. This unilateralism of Northern states has had an impact on core refugee protection principles. The 1951 Convention recognises the international scope of refugee crises and the necessity of international cooperation, including burden-sharing among states, in tackling the problem. Instead of accepting the principle of burden sharing, the Northern states increasingly practice burden shifting. Countries around the world, including some in Europe, believe they are being overwhelmed by asylum seekers. And while it is true that numbers have increased inexorably in the last few decades in many areas, the concerns of individual states are not equal. Most burdened are nations in Africa and Asia, which have far fewer economic resources than industrialised countries and, sometimes host larger numbers of refugees for far longer periods of time (UNHCR 2003e). In 1996, the South Centre in Geneva expressed concern over the Security Council's assumption of exclusive responsibility for emergencies reflecting a dominant role to those countries from the North with a permanent seat. Moreover, it reduces the range of possible approaches to dealing with a complex crisis, since Security Council members and particularly its key permanent members tend to see such matters essentially in military terms and on the basis of their own strategic considerations (Chimni 2000a:419). But in the face of the manifold developments in international politics, the international refugee regime cannot be

insulated from change. This raises the question of how then change is to be brought about (Ibid. 2001:152). Is it by a stronger policy of asylum, in the sense that protection abroad is replaced by rejection, and if so, will those who reject refugees, mostly Northern countries, compensate by focusing more on in-country protection?

3.5 The Principle of Asylum -Protection Replaced by Rejection

A more restrictive asylum policy has led to an increase of IDPs. It is difficult today to enter countries with the purpose of seeking asylum. One of the dilemmas regarding the principle of asylum is on the one hand, that everyone must have a place to live, and a place where a reasonably secure life is possible. On the other hand, this is not a right that can be enforced against particular host states. According to Walzer (1983:50-51), the right cannot be enforced in practice until there is an authority, which would intervene against the states whose brutal policies had driven their own citizens into exile. Why be concerned only with men and women who have crossed a border and who ask to remain, and not with men and women oppressed in their own countries who ask to come in? Why mark off the lucky or the aggressive, who have somehow managed to make their way across our borders, from all the others? Walzer has no adequate answer to these questions. But the right to restrain the flow remains a feature of communal self-determination, and this self-determination is more utilised today than ever before.

In 1995, Chimni wrote that a paradigm shift has taken place in two separate but overlapping stages which have quickly succeeded, and therefore continue to complement, each other. In the first phase the language of protection was replaced by the reality of rejection. A whole host of restrictive laws and practices were and are being put in place: visa restrictions, carrier sanctions, and restrictive interpretations of the 1951 UN definition. This necessitated the second phase of couching the reality of rejection in a language which conceals the discourse of power in humanitarian concepts and phrases. It has spawned a new vocabulary: the right to remain, on-site assistance, on-site inspection, relief corridors, and of course 'safety zone'. States will ensure that people do not flee, that they remain at any cost. So if a person does not manage to cross an international border, what may the alternatives be (Chimni 2000a:440-441)?

3.6   Safety Zone –an Alternative to Asylum?

As a measure to sustain the political will necessary not only for retaining asylum as a legal entitlement, but also for broader efforts that are nearly always viewed as optional political responses rather than legally mandated entitlements, one option is the creation of a safe haven or safety zone, for are for those who are not Convention refugees, meaning those who have not crossed an international border. It is no accident that UNHCR faces its most wrenching funding crisis at the time that its traditional donors find themselves incurring unprecedented expenses to meet the needs of record numbers of asylum claimants within their own borders. Martin (1991:37) thinks that the political will to provide the needed funding has been sapped, in part, by the expenses resulting from their ineffective asylum systems. According to Bill Frelick of the United States Committee for Refugees (USCR) a new paradigm is emerging by which refugee flows are prevented before asylum seekers cross an international border. It is concerned with the need to contain the problem within states. Thus the idea to create distinct spaces in which displaced people can be accommodated (Chimni 2000a:440).

The idea of a safety zone or a safe heaven is in theory a simple one. It is an area within a country to which IDPs (and prospective refugees) can flee to secure assistance and protection. Chimni (2000a:398) distinguishes between three kinds of safe havens: Firstly, there can be a safe haven outside of the country from which individuals flee, a territory in a third country under the protection of an external power or the UN. The second involves the establishment of a large self-administrated and economically viable internationally protected zone within the country whose citizens are at risk. And the third entails the establishment, also within the country whose citizens are at risk, of internationally protected safe havens whose populations are dependent on external support for their basic necessities. The first kind of safe haven or safety zone is the kind that the United States established in Guantanamo Bay, Cuba, for Haitian refugees interdicted on the high seas. The second type of safe haven was created in Iraq for the Kurds. And the last kind of safe havens were established in Bosnia (Ibid.).

In 1995, Chimni (2000a:440) expresses a critical view on the safety zone, but does offer reasons for not dismissing the concept. He argues that spatial practices are socially constructed and are implicated in power. The absence of innocent space can only be grasped if we understand that spatial practices cannot be assigned meaning

independently of the material or social processes which produce them. New spatial categories, like the concept of 'safety zones', must therefore necessarily be deconstructed in the matrix of changing configurations of material and social processes. The growing concern with 'internal asylum' (for example, through establishing safety zones for the internally displaced) as opposed to 'external asylum' (refugee status) has, in other words, to be grounded in contemporary realities.

The question however remains whether the UN Security Council, the only UN institution which could have such power, would create a safety zone without the consent of the state concerned. Concerning the safety zone established in Northern Iraq this was done, despite countries such as Zimbabwe and Cuba voting against Security Council Resolution 688. However, on 20 December 1991, the General Assembly adopted Resolution 46/182 which elaborates the principles which must be applied in the case of humanitarian assistance: The sovereignty, territorial integrity and national unity of states must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country (Ibid:445). In other words, the Security Council appears to have exceeded its authority in passing Resolution 688, and without doubt in establishing and organising the coercive defence of safety zones in Iraq without its consent. Can the Security Council also exceed its authority in the case of protecting the IDPs? Lessons learned from cases of safety zones are that the need to protect safe areas will not be seriously considered in the absence of geopolitical and commercial interest. International involvement is unlikely without a hidden geopolitical or commercial agenda. An example is Iraq, peaking at almost a million people internally displaced, as a result of the military intervention in March 2003 (Global IDP Project 2003c). Trying to legitimate a military intervention, the allies; the United States, Britain and Spain provide disputed arguments for attacking Iraq. Even though human suffering is mentioned as one of them, most likely geopolitical and commercial interest also constitute reasons for an international intervention.

3.7 Is a Safety Zone Safe?

The case of a safety zone in Bosnia raises the question as to whether a state has the right to prevent people from fleeing persecution even when the objective is the survival of the state itself. Those concerned with negative implications of the principle of sovereignty, and committed to the cause of human rights do not seem to have paid any attention to this consequence. A successful safety zone fell through because the Western powers were not willing to commit the necessary resources to protect. Since states were only interested in stopping the flow of refugees from former Yugoslavia the only way out was to create safety zones inside the country. The fall of Srebrenica in Bosnia exemplifies the dangers of a fashionable human rights policy when it is decreed by states unwilling to lose a single life in its enforcement. Men living in the safety zone Srebrenica were caught in a human rights death trap, sacrificed to the good intentions of cowardly countries (Robertson 2000:74-75). As a result of the failure to protect people in Srebrenica, Chimni in 1995 writes that the equation that establishing safety zones is similar to collusion with genocide is justified (Chimni 2000a:452). The concept of a safety zone offers an excellent example of how language can constitute our practices. By calling the particular space a 'safety zone', despite its contrary nature, it contrives to remove all other spaces, genuinely safer, from view. If the UN is to protect a safety zone, it should have a clear idea of whom they are protecting them from, and treat these aggressors as the enemy. But instead, attention has been riveted on a predefined space. We are dealing here with a new architecture of control which is being constructed in the aftermath of the Cold War. In fact, it defines the new field of institutional life. The body of the oppressed, the refugee, is coming to be enmeshed in an international division of labour in which only goods, capital, and services are permitted mobility (Ibid.).

Yet, disturbing as the concept of a safety zone is, should it be rejected out of hand? According to Weiner and Münz (1997:40), the failure of safe havens, as the one in Srebrenica, should not be regarded as evidence that they cannot work. In a cynical world moral judgements do not necessarily translate into practical intervention. When the world is as unjust as it is today, the victims of the international system (in this case the host countries) themselves often end up seeking answers in responses proposed by hegemonic powers for their own reasons. Thus it is that even some developing countries find the concept of a safety zone attractive. On the one hand, there are the poorest of

countries which are faced with mass influx of refugees and cannot cope with it. In their case the very misery of the world that they inhabit is conspiring to break the bonds of solidarity with the more immediate victims of the unequal international system. On the other hand, there are the affluent countries which advance the concept in order to eliminate the need for burden sharing at the level of asylum, in this way hoping to protect unbelievable privileges. Chimni argues that only in the former instance should the idea of creating a safety zone be considered with sympathy (Chimni 2000a:456-57).

3.8   Prevention Rather than Protection

From ignoring the role and responsibility of the country of origin in the prevention of refugee problems or in creating conditions to promote return, the end of the Cold War opened up the possibility of direct engagement with human rights law as a means of implementing the policy of preventive protection, on the one hand, and to promote return, on the other. The changed perspective has yielded an inclusive concept of protection that increasingly does not distinguish between different legal categories of persons (Chimni 2000b:253-254). In 1994, UNHCR wrote that for the international community as a whole, there are clear advantages in adopting a global approach to situations of coerced displacement, actual or potential. The measures necessary to solve a refugee problem through voluntary repatriation are the same as those required to relieve the plight of the internally displaced and of those at risk of displacement; and preventing internal displacement by removing the factors that force people to flee their homes will also remove the immediate cause of refugee flows. By recognising that the problems of the internally displaced and of refugees are manifestations of the same phenomenon of coerced displacement, UNHCR has increasingly considered activities on behalf of the internally displaced to be indispensable components of an overall strategy of prevention and solutions. In Sri Lanka, Tajikistan, Azerbaijan, Georgia, the countries of former Yugoslavia, the Horn and Central Africa, Liberia, Mozambique, and Central America, to cite some current examples of UNHCR involvement with the internally displaced, the link between internal and external displacement is obvious and the need to address the internal situation in order to satisfactorily resolve the external refugee problem seems equally clear (Chimni 2000a:434- 435).

Goodwin-Gill (1999:246) claims that future protection seems to be fading rapidly from the refugee agenda. UNHCR's embracement of 'humanitarian action' and the willing endorsement of this move by many states have compromised the agency's mandate responsibility: it is no longer identified primarily as a protection agency, but rather as an assistance provider. However, when UNHCR tends to IDPs and provides assistance - not protection, the result is that it may be accused of failing to speak out on protection matters for fear of jeopardising its assistance capacity (Cohen and Deng 1998). It is as necessary to ensure that the international response is not dominated by the 'dead hand' of the legalist, as it is to maintain consistency and adherence to principle. A culture of protection is thus not just lawyers' business; on the contrary, while it supposes recognition of an international legal context and a commitment to the principles of the UNHCR Statute, protection is and ought to be the business of everyone.

Preventing internal displacement by removing the factors that force people to flee their homes will also remove the immediate cause of refugee flows. Prevention and assistance is and will be important in the future. However, part of a prevention strategy should also be protection. Many get displaced several times. If they were provided with the protection they needed, it would prevent them from fleeing several times.

3.9 UNHCR -Still Apolitical?

One debate within the UNHCR is whether it can maintain its humanitarian and apolitical stance given its growing involvement in the affairs of refugee-producing countries. Its humanitarian and non-political character has prohibited it from becoming too intrusive (Barnett 2001:258). During the Cold War, UN organisations routinely presented themselves as 'apolitical' and 'humanitarian' to signalise to states that they understood their place and recognised sovereignty's canon of non-interference. As the tasks of UNHCR are being redefined in the matrix of the policy of containment and the accompanying language of security, the 'non-political and humanitarian' clause in its mandate is being diluted (Chimni 2000b:256).

Originally, the UNHCR framework is specifically embodied to be of a non-political nature. But in the realm of IDP protection, the UNHCR is often in direct conflict with government entities. Regarding the limitations of the humanitarian actions undertaken

by humanitarian and civil organisations that raised the issue of whether more assertive forms of action and interventions are required, the UN High Commissioner for Refugees, Sadako Ogata, remarked in 1997;

> *"Enforcement is a critical issue. It may complicate the arduous efforts of conflict mediators. It may undermine neutrality and engender risks for impartial humanitarian action. But are strict neutrality and effective protection not often incompatible? Humanitarian responses should serve first of all protection of people" (Chakma 2000:230).*

In 1991, UNHCR's Working Group on International Protection considered whether it could maintain its apolitical credentials alongside its growing involvement in the refugee-producing countries. It offered four observations and conclusions. First,

> *"the evolution of UNHCR's role over the last forty years has demonstrated that the mandate is resilient enough to allow, or indeed require, adaptation by UNHCR to new, unprecedented challenges through new approaches, including in the areas of prevention and in-country protection" (Barnett 2001:258).*

Refugee rights, the document noted, are part and parcel of human rights; thus, UNHCR's role as protector of refugee law legitimizes its growing concern for the violations of human rights that lead to refugee flows. Second, *"UNHCR's humanitarian expertise and experience have been recognised by the General Assembly as an appropriate basis for undertaking a range of activities not normally viewed as being within the Office's mandate"*. Third, *"the High Commissioner's non-political mandate requires neutrality;"* but *"neutrality must be coupled with a thorough understanding of prevailing political and other realities"*. Fourth, whereas once humanitarianism meant avoiding the political circumstances within the home country and honouring the principle of non-interference, it soon began to include aspects of the state's internal affairs. UNHCR noted that it was not violating state sovereignty because it was operating with the consent of the state (except in those circumstances where there was no state to give consent), but there was little doubt that what was permissible under the humanitarian label has significantly expanded (Barnett 2001:258-259).

If neutrality results in negative responsibility, it becomes problematic to justify when crimes are committed against human beings. As such UNHCR faces formidable challenges if claiming to be apolitical, meaning the doctrine of 'negative responsibility', namely, the idea that we are as much responsible for what we do, as for what we do not do. Displacement crises are not generally predictable, as to timing, size, needs or duration. Transposed to the institutional context, negative state responsibility can be

seen to have led UNHCR to embrace every humanitarian operation remotely connected to the issue of displacement, in a vain effort to remedy wrongs that do or might give rise to flight. Given the complexity of causes, however, not to mention their political dimensions and the finite resources available, such engagements are doomed to failure. To accuse the UNHCR for being responsible for not doing anything, is ultimately unproductive. For example, during the war in Bosnia 1992-1995, the UN was criticised for being impartial and not taking sides for justice and law to occur. The 'general lack of political will' that is so frequently castigated by the High Commissioner for Refugees and others, becomes simply the lack of no one's will (Goodwin-Gill 1999:241). Plattner in Paul (2000) argue if that impartiality and neutrality are compromised, an ongoing humanitarian operation should be reconsidered, scaled down or terminated. Then again, in intra-state conflicts impartiality has often failed to restore peace and, in some cases such as Bosnia, may have actually prolonged suffering. Is the conclusion then, that being neutral and impartial is not enough? A crime against humanity creates a moral responsibility. It is important to consider neutrality also as taking side. Neither inaction nor neutrality can be justified in the face of egregious crimes as massacre of innocent people. Taking no action assists only the perpetrators. Neutrality and impartiality should not be interpreted to mean passivity in the face of violence. In fact, neutrality and impartiality demand strong action on the behalf of victims, but on behalf of victims regardless of whatever side they are on (Paul 2000). UNHCR's statutory responsibilities impose important legal constraints on its own freedom of action; another is that 'political will' is as much the business of states, as it is of those organisations which states have created to fulfil particular political purposes (Goodwin-Gill 1999:241).

The political realities being what they are, UNHCR has only limited capacity to influence outcomes or to ensure that states fulfil their international obligations. Apart from a small percentage of administrative costs met from the budget of the General Assembly, UNHCR is entirely dependent on voluntary contributions, and even if not earmarked for specific operations, donations frequently come with the baggage of the donors' agenda (Ibid:244), which again affect their work. As in the case, for instance, of members of the UN's donor governments who donated an average of $ 207 per person towards the 1999 Kosovo/Yugoslav UN Appeal while an average of $ 16 per person

was rendered towards the UN Appeal for Sierra Leone. Life in one country clearly held greater value for donor governments than life in the other (Camilleri 2003).

It has become more difficult for UNHCR to maintain its apolitical standing given its growing involvement within refugee-producing states, and UNHCR has become more political in the sense that one of the main objectives today is to promote and support an effective state in response to internal displacement, with direct contact with the government as a result. But UNHCR's role as protector of refugee law legitimates its growing concern for the violations of human rights that lead to displacement.

3.10 In-Country Protection: Out of Bounds for UNHCR?

UNHCR has considerable skills and experience in the international protection of refugees, but these may not be automatically transferred to the internally displaced. UNHCR has no legal authority to 'protect' persons within their own country; there is no treaty, no customary international law, and no *locus standi* (Goodwin-Gill 1999:246). However, the combination of state pressures and the normative principle of popular sovereignty enable a more political and pragmatic UNHCR to widen its activities under the humanitarian banner and to become more deeply involved within countries (Barnett 2001). Still, so far as UNHCR purports to 'protect' IDPs or even returnees, it must necessarily rely on consensual arrangements outside the rule of law, depending on states' will. The timely identification of an agency generally competent to work on behalf of IDPs (such as the Office of the Co-ordinator for Humanitarian Affairs, or the International Committee of the Red Cross) will likely be one other crucial factor trying to assist UNHCR's mandate. This is not to say that the IDPs have no call on the international community; only that this should not be met at the price of the international protection of refugees. After all, there is enough to be done there (Goodwin-Gill 1999 and 2000).

Goodwin Gill (1999:246) sees an in-country presence on behalf of IDPs as potentially incompatible with UNHCR's primary responsibility to provide international protection to refugees, that is, to those who have fled their country. The relief that may be due in such politicised and conflict-ridden situations should be left to those organisations better able to maintain independence, neutrality and impartiality. Although,

UNHCR's mandate to provide protection and solutions for refugees has not changed over the last 50 years, its involvement with the IDPs has grown considerably. But UNHCR has a possible conflict of interest and the extent to which UNHCR is called upon to assume further responsibilities in relation to the internally displaced will be a key issue in the future development of the organisation (UNHCR 2000).

According to Human Rights Watch (HRW) (2000), UNHCR should continue to disseminate the Guiding Principles and should encourage governments to abide by them; UNHCR should strengthen its advocacy on behalf of IDPs, including in those countries where it is not directly involved in providing assistance and protection. In particular, UNHCR should more forcefully condemn violations against IDPs if they occur, and UNHCR should ensure that its involvement with IDPs does not undermine refugee protection principles, in particular the right of all individuals to leave their country and seek asylum. Growing involvement in in-country protection might discourage individuals from fleeing and thus exercising their right to seek asylum (Barnett 2001). Concepts such as preventive protection and internal flight alternatives are essentially designed to discourage flight and to bring safety to people rather than people to safety. This can be defended in the sense that they represent pragmatic responses to an environment that increasingly forced UNHCR to choose between the "least bad" of alternatives, but they also can have the effect of discouraging flight because they are intended to provide an alternative to exit (Ibid:265). A consequence of a UNHCR in-country protection, is that they actively are trying to improve the domestic political situation, a tendency reinforced by the knowledge that relief can be provided to those still within their country. The result, as Gilbert express it in Barnett (2001:266) is that UNHCR might find itself compromising its protection role as it provides in-country assistance and delivers humanitarian aid; principles yield to pragmatism and political expediency. Though according to Mooney (1999:216) UNHCR might still be able to provide in-country protection without necessarily sacrificing refugee rights.

In the early 1990s, there was an increased emphasis on an international presence in countries of origin in order to encourage people to remain and international assistance to the internally displaced, wherever this could have 'a preventive impact'; that is, not just humanitarian relief, but relief with a purpose. UNHCR was consequently positioned to try to fill this need, but as if it had no other role, no pre-existing mandate, just a blank

slate on which to write out its new purpose. The circumstances were propitious, however, as developments in a variety of contexts reveal (Goodwin-Gill 1999:225-226). But any whisper that UNHCR should take on the mandate for IDPs was quickly and roundly muzzled by a very large majority of UNHCR officials who worried about becoming more entangled with domestic politics, diluting their protection mandate, and giving states another opportunity to backtrack from refugee rights, and of state officials who balked at sanctioning an open-ended commitment that threatened state sovereignty (Barnett 2001).

In-country protection may not be out of bonds for UNHCR. However, it must rely on consensual arrangements with the refugee-producing state to be present within a country. As long as UNHCR manages the balance between prevention and protection, not discouraging the right to seek asylum, in-country protection should be an alternative.

3.11 Former Yugoslavia –a Pilot Project of In-Country Protection

The turning point of UNHCR protecting IDPs came with the Gulf and Yugoslavian Wars, where both the Kurdish population and people in Yugoslavia were denied the exit option (Barnett 2001:267). The Former Yugoslavia was something of a pilot project, in which UNHCR's strategy was directed away from protection of refugees strictly so-called, to the more idealistic political goal of preventive solutions. From this, UNHCR was provided many lessons regarding working within a state, including the dilemma between prevention and protection.

In his letter of 14 November 1991, the then UN Secretary-General, Javier Péres de Cuéllar, invited the High Commissioner for Refugees to become more closely involved with events in the Former Yugoslavia *"to assist in bringing relief to needy internally displaced persons affected by the conflict…[which]…involvement…may also have a welcome preventive impact in helping to avoid the further displacement of population"*. It was this operation, in particular, that inspired that notion of humanitarian action which, it was said, could be seen in UNHCR's *"initiatives to provide protection and assistance to displaced populations within countries of origin"*, where 'pre-emptive assistance' would serve as a tool for preventive protection, although it was stressed that prevention was not a substitute for asylum (Goodwin-Gill 1999:226). However, since several regions were on the verge of declaring independence,

the counter argument was that today's internally displaced would be tomorrow's refugees and as a practical matter should be helped immediately (Wilkinson 1999).

The Former Yugoslavia provided many lessons and illustrations of political and humanitarian failures. UNHCR's humanitarian mandate was negatively manipulated. Given its specific humanitarian and non-political role, as well as its independent responsibility to provide international protection to refugees, the attribution to, or assumption by, UNHCR of a 'lead agency' role was incompatible with its mandate in any situation having serious political content, such as mediation or conflict resolution. UNHCR was not only obliged to negotiate away substantial quantities of relief aid as the price for access, but was also caught between the devil and the deep blue sea in the politics and practice of ethnic cleansing and evacuation. When facilitating the transit of persons leaving Bosnia, for example, UNHCR appeared tacitly to endorse 'organised flight' and to be a party to restrictions on spontaneous movement in search of refuge. This was obviously not intended, but it was nonetheless a reasonably foreseeable consequence of the politics of prevention and assistance to populations at risk (Goodwin-Gill 1999:226-227).

Moreover, UNHCR's response to the Secretary-General's invitation to engage in operations not clearly within its mandate confused established lines of authority. The problems faced by UNHCR were due not only to the complexities of the situation, but also to the fact that the terms of its engagement in the Former Yugoslavia were not clearly laid down in advance. Although the situation was quite unlike any in which it had been involved, some see the choice of UNHCR as 'logical', at least so far as it was driven by recognition of the agency's recognised logistical capacity. At the same time, however, its lead agency status *propelled it into a policy vacuum and detracted from its primary role as a…body for protecting and assisting…refugees"*. The relationship between 'preventive protection' and asylum was never worked out in this strategy, either theoretically or on the ground. If effective protection generally requires being there, 'merely being there' is never the sufficient condition for protection (Ibid:228). As Erin Mooney writes in 'Presence ergo Protection?' (1995:430): *"Given that a concern for physical safety is the primary impetus for flight, the protective effects which High Commissioner attributes to assistance are minimal".* But the possibility of designated lead agencies to co-ordinate complex emergencies still remains.

The UNHCR's involvement in the Former Republic of Yugoslavia from the early stages of war often placed UNHCR in a precarious position. UNHCR was portrayed as being irrelevant in Europe and the former Soviet Union, but through the UN High Commissioner for Refugees, Sadako Ogata innovative emergency procedures, UNHCR earned a newfound respect within and outside the UN arena. Various donor countries, primarily European, whose shores and borders were facing overwhelming numbers of asylum-seekers from former Eastern bloc nations, *"pushed UNHCR to help stem the haemorrhage of refugees on the continent"*, and thus quickly supplemented its budget. The UNHCR's assignment for supporting IDP populations did not always stem from a purely humanitarian angle. UNHCR was utilised as a political tool to encourage containment (refugee prevention). It becomes evident that donor countries, anxious on the question of prevention, are not as apprehensive about post-conflict restoration as they are on alleviating refugees/asylum-seekers from their territory during the points of crisis. They do not seriously consider that lack of development opportunities will stagnate the return process for both refugees and IDPs, and even possibly ignite another war (Camilleri 2003).

3.12 The 'If…Why Not' Argument

Reality suggests that humanitarian responses to the protection of IDPs are often guided by geo-political considerations. Among the many objections, one is particularly cogent; it is the 'if…why not' argument (Fixdal and Smith 1998:294). If Kosovo, why not Sudan? In many cases the plight and sufferings of small groups of IDPs remain unattended or forgotten (Chakma 2000:231). Three of the world's most protracted, vicious crises in Sudan, Angola and Colombia are largely internal conflicts with together over nine million IDPs, and as such are often ignored by the world's audience compared with, say, Kosovo. Why did the international community intervene in Former Yugoslavia, and not in other war-torn countries?

President Clinton justified a bombing attack on a sovereign state with *"We could not stand aside and let history forget the Kosovo Albanians […] Because of our resolve, the twentieth century is ending not with helpless indignation, but with hopeful affirmation of human dignity and human rights for the twentieth century"*. But human dignity, the assumption upon which the

Universal Declaration was built, was not much in evidence in places like Colombia or the Congo (Robertson 2000:444-445).

In the course of the NATO bombing of Former Yugoslavia, former US President Carter in 1999 wrote: *"Formal commitments are being made in the Balkans, where white Europeans are involved, but no such concerted efforts are being made by leaders outside of Africa to resolve the disputes under way there. This failure gives the impression of racism"* (Chimni 2000b:249). This type of selectivity undermines the claims that the motivation driving is purely human and non-political. This issue is ethical to begin with, potentially legal if efforts are made to codify the action into international law, and directly political, strategic and operational. In Fixdal and Smith (1998:301), the Secretary-General of the UN made the following statement in Sarajevo in 1992: *"You have a situation [here] which is better than ten other places all over the world"*. And as Stephen John Stedman observed: *"if humanitarian concerns –measured by death and genocide campaigns –where the justification of military intervention, Bosnia would rank below Sudan, Liberia and East Timor"* (Ibid.).

Many have argued that the reason why states themselves will not help protecting the IDPs, is not only because of their sovereignty, but also for geographic reasons. Does distance matter from the moral point of view? Wilfully allowing someone to die when you could easily help them seems callous and blameworthy, irrespective of whether the victim of indifference is close at hand or in a distant country. However, there are also intuitions that seem to pull in the other direction. Partiality, any special concern for those who are emotionally and geographically close to us, seems the most natural and morally appropriate of impulses (Cottingham 2000:309-310). Former Yugoslavia may be an example of the latter. Indeed, the international community's preference for some large-scale tragedies over others leads some commentators, as Jeffrey Clark in Fixdal and Smith (1998:301) to suggest that there are important weaknesses in the UN system. The 1990s record of inconsistency and selectivity should lead us to address the difficult problems of priorities, of the relative scale of different tragedies, and of the comparative importance of solving the dilemmas that give rise to war. The UN Security Council and the great powers do not have the resources to do everything: on what basis will they decide which of the several pressing problems to confront? How high up on the agenda is the plight of the IDPs?

3.13 Conclusion

State sovereignty has shaped the character of refugee law and the establishment of UNHCR. After the end of the Cold War a new refugee regime has developed. The dynamics of displacement have changed greatly, so too has the international response and the character of UNHCR. UNHCR's working definition of humanitarianism includes the principle of non-interference. However, the combination of state pressures and the normative principle of popular sovereignty have enabled the UNHCR to be more political and pragmatic and widen its activities under the refugee-producing country. But the extent to which UNHCR wants to find itself attempting to save failed states is a matter of debate.

Initially set up as a temporary institution, UNHCR was essentially intended to wrap up the refugee problems remaining after the Second World War. This has clearly influenced its personality and practices. Its work is intended, indeed required, to be humanitarian, social and non-political, but it clearly takes place in a political context, frequently characterised by tension between sovereignty and international responsibility. But as with state sovereignty and popular sovereignty, UNHCR tries to establish harmony between the security concern of states and the protection needs of displaced people. The increasing legitimating principle of popular sovereignty, has expanded UNHCR's humanitarian space, while others argue that motivation for intervening often is political, strategic and operational. This may be an evidence of important weaknesses within the UN system. Deciding which of the several pressing problems to confront is often a question of priority, and such decisions seem to be taken on a questionable basis.

UNHCR has been aware of the emergence of more restrictive and hostile attitudes towards refugees in the post-Cold War period. As part of a myriad developments in international politics, the international refugee regime cannot be immune from change and these restrictive asylum measures do affect the work of UNHCR. Also, the prospect of conflict spilling over international borders mean that violations of human rights and internal conflicts have an impact on regional and international security. This gives UNHCR a reason to be more involved within states. If not willing to receive asylum-seekers, effort should be transferred to strengthen the protection of IDPs within countries, instead of just leaving it to a rejection at the borders. Some applaud and encourage UNHCR for addressing humanitarian needs including IDPs, others accuse

UNHCR of undermining the institution of asylum without being able to ensure effective protection within borders. However, UNHCR's primary focus has shifted from providing international protection for refugees towards large-scale humanitarian operations in the midst of the conflict, for war-affected populations. UNHCR role as protector of refugee law legitimates its growing concern for the violations of human rights that lead to refugee flows. And if operating with the consent of the state, UNHCR is not violating state sovereignty. However, where the consent of the state is absent, UNHCR has only limited capacity to influence outcomes or to ensure that states fulfil their obligations, political realities being what they are.

Is in-country protection out of bounds for the UNHCR? UNHCR has no legal authority to protect persons within their own country. While there are arguments for protecting IDPs, others find it incompatible with the primary responsibility to provide international protection to refugees. There are many obstacles for UNHCR to protect IDPs, such as state sovereignty, possible political involvement, a dilution of their protection mandate, the dilemma between prevention and protection and asylum, the danger of becoming a substitute for state responsibility, lack of resources and security concerns. These are all very important considerations. But are these obstacles enough to maintain a protection gap when crimes against humanity are committed? Clearly, as the case of Former Yugoslavia shows, it is necessary to establish lines of authority and guiding principles before getting involved within a country. Reasons for UNHCR's engagement within a refugee-producing country need to be laid down in advance, if not UNHCR risks ending up in a political vacuum, like the IDPs themselves.

4.   Need for an International IDP Legislation?

4.1   Introduction

The rights of refugees are spelled out in the 1951 UN Refugee Convention, and UNHCR is the principal guardian of the Convention. But despite the principle of sovereignty, protection and assistance to people fleeing happens more and more within the areas in conflict. This has put forward new claims towards the international refugee law. One hundred and thirty-seven states have subscribed to the ideal of international protection in its treaty-based formulation, as represented by the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. By way of these two instruments, states have accepted a range of fundamental obligations as crucial for protection as they are for assistance and solutions. Among them are a near universal consensus on the refugee definition[5] and acceptance of the fundamental principle of non-refoulement, the obligations states have not to return a refugee to a territory where his or her life or freedom may be endangered (Goodwin-Gill 1999:221). But as the pattern of global migration changed where increased numbers of people are fleeing within their own country, the relevance of the 1951 Refugee Convention has been called into question, especially in Europe, ironically its very birthplace (UNHCR 2003e).

The 1967 Protocol expanded the scope of the Convention and removed the geographical and time limitations written into the original Convention under which mainly Europeans involved in events occurring before 1 January 1951, could apply for refugee status. But still, one challenge for the international community is the strict insistence of territorial criterion[6] in the Law of Refugee Status. According to Hathaway (1991:29), this has prompted concern that there is a mismatch between the definition

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[5] Article 1 –Definition of the term "refugee" in 1951 UN Refugee Convention: "A (2) [Any person 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; or who, not having a nationality and being outside the country of his former habitual residence…is unable or, owing to such fear, is unwilling to return to it…"(UNHCR 2000).

[6] This meaning that you have to cross an international border to be entitled to international legal protection and assistance.

and the actual human suffering related to involuntary migration. There is nothing intuitively obvious about this requirement, many if not most of the persons forced to flee their homes in search of safety, remain within the boundaries of their state. Their plight may be every bit as serious as that of individuals who cross borders, yet the Convention definition of refugee status excludes the internally displaced from the scope of global protection.

In 1994, in a report by the Representative of the Secretary-General, Francis Deng, to the Commission on Human Rights, he writes that many important principles can be drawn by analogy from refugee law for the protection of IDPs. For instance, the articulation of a right not to be forcibly returned to areas where the life or freedom of the displaced persons could be threatened is vital in some cases. Other similar rights could include the right to seek residence in a safe place, the right to be provided with adequate documentation, the right not to be identified as a displaced person if that would result in discrimination, the freedom of movement especially in and out of the camp or other shelter for the displaced, the right to benefit from measures towards family reunification and the right to voluntary return to the original area of residence (Chimni 2000a:404).

The question is whether the Convention still is relevant for the new millennium. There are now about twice as many IDPs as refugees. Since the root causes of their displacement are the same -human rights abuses, civil strife, and generalized violence - this global displacement of more than 25 million people inevitably calls into question the soundness of a definition of refugees that continues to exclude two-thirds of them (Lee 2001:456). Though the nature of conflict and migration patterns have changed in the intervening decades, the Convention has proven resilient in helping to protect an estimated 50 million people in all types of situations. As long as persecution of individuals and groups persists, there will be a need for the Convention. But with the change of nature in most conflicts, the numbers of IDPs have increased and there is definitively a need for a widespread international debate on how this group of uprooted people can be better protected and by whom. The right of IDPs to international protection and assistance, hitherto constrained by the concept of sovereignty, must be invigorated by human rights law and increasing resort to Chapter VII of the United Nations Charter (Ibid:457).

IDPs often face a much more difficult and hazardous future. Their principal source of legal protection and material assistance is their own government which may, in fact, view the displaced as "the enemy" or "enemy sympathizers" in a civil conflict and which may be in no position anyway to offer emergency food, medicine or shelter. Since sovereignty has, until recently been sacrosanct, outside donors have been more likely to support refugee crises rather than victims of internal displacement. And though it is now generally agreed that general human rights law applies to all displaced persons, international protection is still more difficult to enforce for the internally uprooted than for refugees (Wilkinson 1999).

In this chapter, I will address the question as to whether a new international legal framework is needed regarding the IDPs, presently excluded from the scope of global protection. I will end the chapter with an overview of approaches set forward by the international community trying to fill the protection gap, and discuss whether they are adequate to bridge the protection gap in international law.

4.2   Need for a Separate Legal Framework?

In recent years it has often been argued that the international community should adopt a convention protecting IDPs, along the lines of the 1951 Refugee Convention. Some people believe that existing international human rights law is adequate, others argue that there are big gaps. However, admitting that there are gaps may be seen as offering a hiding place, so the government cannot be held responsible for breaking human rights towards the IDPs. While others argue that the same gap will bring attention to the problems raised by IDPs and will provide an opportunity to develop a clear protection strategy for the IDPs.

The scholarly opinion is divided on the need for evolving a specific legal framework to meet the assistance and protection needs of IDPs. There are three main schools of thought. One school of thought contends that the existing regime of international human rights and humanitarian laws offers a firm basis to enforce the accountability of states. Indeed, it argues that any attempt to produce a separate legal regime for IDPs could undercut the extensive legal framework, which already exists. A second school of thought believes that there is a need for a definitive legal statement of the principles and

norms applicable to IDPs (Chimni 2000a: 391). Francis Deng, the Special Representative of the UN Secretary-General on IDPs and Roberta Cohen are among those who respectively argue that a specific framework would be more helpful. Arguments against a new legal instrument come mainly from those who believe in placing emphasis on implementing existing norms rather than creating new ones. The ICRC, in particular, has expressed the fear that any attempt to develop new standards could risk undercutting the extensive coverage that already exists under the Geneva Conventions. They believe that rather than undermining existing protection a new instrument would both reconfirm and expand coverage for a group of persons insufficiently protected at present. Drafting a non-binding declaration would be an incremental step toward establishing minimum conditions for the treatment of the displaced (Cohen 1996:24-25).

Bugnion (2001:22-23) is among those who think a new legal statement on the protection of IDPs will weaken the existing legal framework. The Convention of 1951 was essential for the protection of refugees because international humanitarian law did not apply on the territory of neutral or non-belligerent states. IDPs uprooted by armed conflict –whether international or non-international –are protected by international humanitarian law, according to Bugnion. Any new treaty on the protection of IDPs would therefore be a source of confusion and might weaken existing provisions. There is no guarantee that any new codification would provide a higher standard of protection than the rules already in force. Nor is there any guarantee that a new treaty would be quickly ratified. Bugnion emphasises that refugees and displaced persons are first and foremost civilian victims of war; as such they are protected by international humanitarian law before, during and after displacement.

According to Hathaway (1991:33) three factors dictated the exclusion of the internally displaced from the 1951 Refugee Convention; limited resources, concern about state participation and respect for sovereignty. It was also a reflection of the limited reach of international law. In other words, the purpose of the Convention was not to divide involuntary migrants into those who are worthy of assistance and those who are not deserving, but was instead to define the scope of refugee law in a realistic, workable way. Further, he writes that in one sense, the exclusion of the internally displaced is clearly unfair, it does not recognise the existence of social, legal and economic barriers which make it impossible for all to escape to international protection

(Hathaway 1991:29). Also, Martin (1991:48-49) admits that internal conflicts poses more complex issues, depending on the extent and intensity of the fighting, the civilians' greatest need is often relocation. But they do not fit within the Convention, and Martin compares them with victims of socio-economic rights violations or of natural disasters (Martin 1991:40).

According to Fixdal and Smith in Reichberg and Syse (2002), the focus of international lawyers has tended to be narrowly legalistic. In a report to the Commission on Human Rights in 1994, Deng writes that controversy still prevails among lawyers as to the scope and applicability of existing legal doctrine. There are those who believe that the main challenge is one of implementation. The proponents of this view believe that to hold otherwise would be to put into question the legal foundation for accountability. In contrast, there are those who maintain that legal reform is necessary to ensure complete and adequate coverage. While both points of view emanate from the need to strengthen protection, the second implies, according to Deng, that setting new standards would not only fill any existing gaps but would also focus international attention and thereby raise the level of public awareness of the problem and the need for solution (Chimni 2000a:401-402). But today's conflicts will not and cannot be solved by international law alone. According to Robinson (1999), the first need today is not to write new laws, but to implement what already exists in the field, close to the victims. It is important to notice that a rule is one of law not because it has been laid down with clarity in a treaty or a textbook, but because there is at least a slim prospect that some day someone will be arrested for its breach. A significant impact can be achieved by agents and organizations through a concerted approach towards a common cause by monitoring the implementation of international law.

Hathaway (1997:82) argues that the 1951 Refugee Convention is not a means of punishing "bad" states that choose to inflict serious harm on their citizens. Refugee law is rather about the protection of people who have no ability to access national protection. But if refugee law is about the protection of people who have no ability to access national protection, IDPs living in a state that lacks political will and capacity to provide protection, should be able to look somewhere for protection. Hathaway (1997:79) continues by saying the key challenges to the value of the Convention refugee definition are that it fails to recognise the claims of persons whose predicaments do not

resemble those of the post-Second World War ideological emigrés; that it is insufficiently attentive to dilemmas that result from the failure of the states and that its alienating criterion inappropriately excludes the claims of the internally displaced. Still, he believes that the Convention remains of significant ethical value. The IDPs, who in his view are more logically seen as part and parcel of the broader class of human rights victims within states, clearly have a strong moral claim to protection. But there are increasing opportunities for the international community to intervene in states to stop the harm, or at least facilitate remedies outside the state that ultimately pressure governments to desist from human rights abuses. It remains the case, however, that the protective capacities of international human rights law can very often be frustrated by claims of the sovereign authority of a state to govern the welfare of its own citizens. Sovereign frontiers often force the international community to accept less than fully adequate solutions to the needs of the internally displaced. From the point of view of Hathaway's (1997:88) the net result of advocating a merged regime to address the plight of what are, legally and logistically, two distinct groups of persons at risk will be simply to drag the protective standard for refugees toward the lowest common denominator of what is possible to secure for the internally displaced. He adds that this would not be a victory for fairness, but rather a lost opportunity to guarantee protection.

4.3   The Guiding Principles on Internal Displacement

All fundamental human rights are applicable to IDPs, given that they have not crossed an internationally recognised border and continue as full-worthy citizens of their own country. But before the Guiding Principles on Internal Displacement were introduced and acknowledged in resolutions for the UN in 1998, international organizations and NGOs frequently complained that no legal instrument existed to guide their work with the internally displaced. Governments similarly found that there was no instrument to consult when drafting laws to protect the internally displaced. A myriad of provisions can be found in international human rights and humanitarian law, and in refugee law by analogy, but some are applicable in certain circumstances and not in others. But there was not one instrument to set forth these principles in a coherent fashion. Even if Bugnion (2001) argues that both human rights and humanitarian law

cover all people, including the IDPs, these laws have proved insufficient in their protection of the internally displaced. For example, no explicit guarantee exists against the forcible return of IDPs to places of danger. Governments are also not explicitly obliged to accept international humanitarian assistance or to ensure the safe access for IDPs to essential facilities and commodities needed for survival. Clear gaps also exist in the law when it comes to personal documentation for the displaced or restitution or compensation for property lost during displacement. International lawyers identified seventeen areas where there were insufficient protection owing to inexplicit articulation, and eight areas where there were significant gaps in the law (Cohen 1996:24).

With this as a backdrop, it seemed useful to formulate a definitive statement of guiding principles that would recapitulate and clarify the existing norms, make explicit the grey areas in the law, and remedy identifiable gaps. To obviate a need for ratification (and because the political reality is that many governments would not be willing to bind themselves through a convention), it was to take the form of a declaration of principles whose moral force could, over time, achieve for it the status of customary law (Ibid.). In addition to providing a modicum of legal protection for the internally displaced, such a declaration would serve the important educational purpose of raising the level of international public awareness of the needs of internally displaced. It would also serve the practical purpose of giving human rights and humanitarian agencies a document to point to when dealing with governments and insurgent forces to gain access to the internally displaced.

Some fear that the increasingly frequent and almost exclusive reliance on the Guiding Principles intended specifically to deal with displaced persons, which are not binding on states and armed opposition groups, may end up creating the impression that international humanitarian law is not applicable. The risks involved in concentrating attention on specific types of problems may also be related to the feeble response of the international community to situations involving long-term displacement. The international community is more inclined to respond to the immediate and visible consequences of displacements than commit itself long-term, in a responsible manner, to the social development of the entire population affected (Hickel 2001:54).

The general reception given to the Guiding Principles points very much in the direction of increasing use and support, in particular by international organizations,

regional bodies, NGOs and an increasing number of governments. They are in particular being used to monitor conditions in countries, as the basis for domestic law and policy and as an advocacy tool (Bagshaw 2001). The Guiding Principles are welcomed by most states, but it still needs to translate into an operational reality in a larger degree than today. Modest achievement will be slow and tortuous if the recent fractious debate in the last meeting of the millennium at the General Assembly in New York is any guide. Michael Kingsley-Nyinah of UNHCR's Department of International Protection said that *"In 1948 the Declaration of Human Rights was a major accomplishment, but it was still only a piece of paper. It took years before it began to be accepted in practice in many parts of the world. Perhaps that is where we are today with the Guiding Principles. It is a first step, but there is a long way to go."* Another specialist added, *"We have reached a critical plateau in the debate over IDPs and the role of the Special Representative. The challenge now will be to turn principles into practice. The Special Representative has been a lone voice crying out in the wilderness. The prophet must now begin to deliver"* (Wilkinson 1999).

In addition to discussion of a possibly separate legal framework, there is a need to clarify who is responsible when states lack political will and capacity to protect their citizens. We have seen that there are disagreements as to whether UNHCR can and will be the agency providing in-country protection to IDPs. But if not the UNHCR, how can the international community ensure protection to the IDPs? There have been put forward three proposals as solutions for improving the protection of the IDPs. In addition to the one proposal already mentioned, to assign the responsibility of IDPs to the UNHCR, there have been suggestions for both a new single IDP agency approach and a collaborative approach.

4.4 A Single Agency Approach

Despite different steps taken in the United Nations to enhance its capacity to respond to situations of internal displacement, a persistent question which is asked is whether a new agency should be created within the organisation for providing assistance and protection to IDPs. At present no single operational agency in the international system has responsibility for IDPs, and there seems to be little international good will for creating such an institution. According to Deng (2003 [Personal Interview])

consensus has emerged that the problem is too big for one agency and requires the collaborative capacities of the international system. There appear to be many persuasive arguments against the establishment of a new agency (Chimni 2000a). In Masses in Flight (1998:169) Cohen and Deng points out:

> *To begin with, it would duplicate the many existing resources and capacities that have already become involved with the internally displaced…The cost of a new institution would be substantial …There is also the concern that it would foster dependency by encouraging governments to call upon the new agency to address problems that should fall within their own purview…A new agency for the internally displaced is certain to arouse considerable opposition from governments that believe the problem belongs within the domestic jurisdiction of states.*

As an alternative they suggest that*:*

> *Assigning responsibility to an existing organization such as UNHCR could be an effective solution if it were assured the support of other agencies with skills needed to deal with the different phases of internal displacement, and if it received full back-up support from the UN system (Ibid:185).*

The agencies which could lend support to the UNHCR include the ICRC, the United Nations Development Programme, the World Food Programme, the United Nations Children's Fund, the World Health Organisation, and the International Organisation for Migration.

But Chimni (2000b:251) argues that refugee issues are too important to be left to specialised organisations like the UNHCR. The international refugee regime extends far beyond UNHCR; and it is changing rapidly and other actors like NGOs are involved and should be considered to be new important actors who can help filling the protection gap.

4.5 New Actors

As the number of displaced persons has increased dramatically in recent decades, so too have the number of organisations and groups trying to help them. Under the Geneva Conventions, the ICRC is mandated to protect and assist the victims of armed conflict (Wilkinson 1999). Without specific international institutions covering the IDPs, and difficulties in applying general agreements like the Geneva Conventions, donors have been reluctant to intervene in internal conflicts and help this group.

The increasing role of humanitarian NGOs in collecting and disseminating human rights information at the field level, has been one of the most dramatic changes in protection in recent years. International organisations are primary vehicles for stating community norms and for collective legitimisation. They are, as Barnett and Finnemore expresses it in Chimni (2001:158) 'ontologically independent' and 'powerful actors who can have independent effects on the world'. Though NGOs have a range of agendas, their part in bringing about change in state behaviour should not be underestimated. Although media coverage of the issue of internal displacement remains rare, civil society, media and NGOs have played an important role in upholding and promoting the state's responsibilities. A collaborative and responsive network on both national and international footings is important to enhance the process of building up the state's responsibility.

While UNHCR's mandate is to ensure that refugees receive protection and to find durable solutions to their problems, it often has its hand tied by reluctant or frustrated host governments. In the field, this means that NGOs and Red Cross players need to position their own programmes around these weaknesses in the international protection system, by either filling gaps or encouraging others in doing so (ICVA 2002). A key role that the transnational activist and NGO network can perform is to place *"norm-violating states on the international agenda"*. In this regard it is suggested that an annual report be compiled on the record of individual states in the realm of refugee protection. For instance, the collective production of an annual Refugee Watch would persuade states to enter into dialogue with the transnational NGO network. The process of argumentation would be used to make states justify their claims and reflect on their 'interests' in the realistic hope that it would help transform behaviour. The arguments advanced could be both legal and moral (Chimni 2001:163). It is suggested that NGOs and the UNHCR should try to complement each other in their work on protecting the IDPs. This leads us to the collaborative approach, favoured by both the Secretary General Representative on Internally Displaced People, Francis Deng and the High Commissioner for Refugees, Ruud Lubbers.

4.6 A Collaborative Approach

When he assumed his post, Deng believed that one organization should become the recognized 'lead' agency for IDPs, a logical candidate being UNHCR. But now he believes a collaborative effort of existing organizations is best at tackling the problem. Nevertheless, there is a need to strengthen the collaborative approach in order to overcome the challenging problems of coordination and the gaps in response that frequently arise under the present arrangement, especially in the realm of protection (Deng 2003 [Personal Interview]).

This is the approach that has received most attention regarding action vis-à-vis IDPs, and which is the one in use. In a letter dated March 2001 to the Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Kenzo Oshima, the High Commissioner for Refugees, Ruub Lubbers writes in favour of an inter-agency mechanism to initiate action on IDPs. He further says that the appropriate agency in charge of that mechanism should be the UN Office for the Coordination of Humanitarian Affairs (OCHA), with the support of the inter-agency IDP Unit (UNHCR 2001a [Letter]).

After this exchange of letters, the Internal Displacement Unit at OCHA agreed to take the lead in mapping out the activities of UN Inter-Agency Standing Committee (IASC) members on behalf of the IDPs and undertake analyses of the results. An IASC Protection Policy paper (OCHA 2002b) described that

"the scale and multifaceted nature of displacement crises have led the IASC to recognise that an effective and comprehensive response to the protection and assistance needs of displaced persons necessitates a collaborative approach. Thus, the management model for assistance and protection in situations of internal displacement, rather than a single agency approach, is one that involves government officials, UN agencies, international organisations, and international and local NGOs".

In its simplest form, the collaborative approach relies on an operational framework that builds upon the complementary capacity of agencies and organisations at the field level, including national and non-state actors. In addition to coordination forums and information sharing mechanisms, the collaborative approach also anticipates inter alia, a common policy or strategy formulation to ensure different actors are working towards a common goal (Ibid.).

Protection, however, is identified as the biggest ongoing flaw in the collaborative international approach. Humanitarian agencies are still not succeeding in making protection operational in the field, and there is inadequate guidance to humanitarian workers as to how to "do" protection. Also noted is that protection *from* displacement is not being effectively achieved (Weiss 2002). Despite advantages to the existing collaborative approach, there are problems with lack of accountability, responsibility and consistency in who is doing what at the national level, as well as within the international community.

4.7   Conclusion

Is there need for a new international legal framework? The IDPs fall in between the division of ethical and legal concepts of justice. As a result of global changes there is definitely a need for an international debate on how this group of people involuntarily displaced can be better protected and by whom. The important question is whether a person needs international protection because it is not available in the country of origin. IDPs are more vulnerable than refugees in that they often face a much more difficult and hazardous future, and if they cannot look to their state for protection, they should be able to look elsewhere.

There are disagreements as to whether a new international legal framework is needed. By establishing a new law some argue that it will undermine the existing one, others that it will rather draw attention to the protection gap, and make it possible to provide for the assistance and protection needs of IDPs. Ratifying a new binding law is a very long and complex process which may never be achieved. States are, and will probably always be, very reluctant to sign a law which may affect state sovereignty. But a new international law cannot alone fill the protection gap, it is also important to implement what already exists in the field.

However, the Guiding Principles, a non-binding instrument, is an incremental step towards establishing minimum conditions for the treatment of the displaced. Also, these Guiding Principles have made explicit the grey areas in the law and help identify the protection gap. Maybe most importantly, they serve the educational purpose of raising the level of international public awareness of the needs of the IDPs. Although they need

to be translated into an operational reality to a greater extent than today, over time one can hope that they will achieve the status as of customary law.

To overcome the obstacles of negative sovereignty and ensure protection to the IDPs, someone has to be in charge of implementing international law and responsibility. There are disagreements as to whether this should be the UNHCR, a single IDP agency or through a collaborative approach is arguable. But there seems to be no international political will to give this responsibility to the UNHCR, or to a new single IDP institution. The main argument is that the subject of internal displacement is too complex for one agency to handle. Most likely to fill the protection gap is the collaborative approach, which is being practised today and includes both international agencies and organisations at the field level, national and non-state actors. However, this approach clearly needs to be strengthened, especially the coordination between the different actors involved. Lack of coordination between and within the UN, the state and NGOs is one of the main challenges in Colombia in protecting the IDPs. The next chapter will illustrate the weaknesses of the collaborative approach in Colombia, and that the international community still has a long way to go regarding responsibility, consistency, resources, priorities, implementation and accountability in protecting the IDPs.

5.   Colombia –the Reality of IDPs

5.1   Introduction

5.1.1   Why Colombia?

Globally, an increase of internal conflicts and more restrictive asylum policies have resulted in new displacement and a protection gap for IDPs, and this is also the case in Colombia. This has affected the principle of sovereignty and the work of UNHCR. By using Colombia as an example, my aim is to illustrate how this manifests itself in reality. IDPs do challenge the principle of sovereignty and the work of UNHCR, the question being whether it does in Colombia. Colombia is an example of a state which has no political will to improve the protection of IDPs. As a result, Colombia supports and is maintaining the protection gap. Lack of clear international principles describing how to fill this protection gap causes new displacement and millions of people have to live in a political vacuum between state sovereignty and international responsibility.

The reason I have chosen Colombia as an empirical case is that the country has over two million IDPs, fourth highest in the world.[7] It would seem reasonable to claim that problems experienced by IDPs in Colombia, are often the same problems faced by IDPs around the world. However, what makes Colombia different from other countries with IDPs, is ironically that Colombia has the best developed national legal framework to protect and assist the IDPs. Unfortunately there is a discrepancy between rhetoric and action where some states recognise obligations towards IDPs and refugees in practice some do so only in law. Colombia may have the rhetoric, but obviously lacks the action. But lack of success in implementing this legal framework proves that the international community must apply pressure to make the state accountable.

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[7] After Sudan, Angola and the Democratic Republic of Congo (DRC), respectively.

Another reason for choosing Colombia as an empirical illustration is that being member of "Groups of Friends"[8], Norway is involved in the peace process in Colombia and in 2001 Norway opened an Embassy in the capital Bogotá. The subject of internal displacement should therefore also be of interest to the Norwegian Government. In addition, during the time while Jan Egeland was the UN Representative of the Secretary-General in Colombia, Colombia received a great deal of attention in Norway. However, after his departure at the end of 2002, this attention has become less both from the Norwegian government and the Norwegian media. But because of the scale of the problem, lack of awareness and therefore sympathy for the plight of the internally displaced, the issue of internal displacement deserves much more attention than it receives today.

This chapter is divided after the three former chapters. First, after an introduction on the internal conflict in Colombia, I will relate the state of Colombia's relation to the principle of sovereignty and its responsibility towards IDPs. Second, I will present the role of UNHCR and their work with IDPs, as well as how the restrictive asylum policy from the neighbour countries make it necessary for the UNHCR to work within Colombia, and where peace communities[9] (safety zones) have been established by the IDPs themselves as an alternative to crossing an international border. Third, I will review Colombia's national legal framework for IDPs, and discuss whether the collaborative approach is filling the protection gap in the absence of implementation of Colombian IDP legislation.

The modalities of displacement, the numbers of people estimated to be affected, the areas of origin and of destination of those displaced and the number of state and non-state actors involved in the problem are four of the elements that give a special character to the phenomenon of displacement in Colombia (Roldán 2001)

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[8] Cuba, France, Norway, Spain and Switzerland constitutes "Group of Friends". This group is supposed to play a role in the peace process and in negotiations with the National Liberation Army (ELN), although for the moment the peace process is absent. Norway was also part of a group with ten other countries whose role was to facilitate negotiations with the Armed Forces of Colombia (FARC), but this peace process can now be said to be a dead (Aasheim 2003 [e-mail]).

[9] Peace Community is the Colombians attempt on creating a safety zone for civilians.

5.1.2 Figures

It is difficult to estimate the number of those displaced, when often those affected do not register and some persons are displaced numerous times. Also, the majority of those displaced prefer to hide in fear of new persecution (ACT 2002). But it should be noted that both government and non-governmental sources agree that not only is there a steady increase in the total number of IDPs in Colombia, but also that the phenomenon is taking on crisis proportions (TGD 2001).

During the first nine months in 2002, the Colombian NGO Consultancy for Human Rights and Displacement (CODHES) estimated the numbers of new displaced people at 353,120.[10] A total estimated 2.45 million Colombians were internally displaced at the end of 2001, including about 342,000 who became displaced during the year. This total does not include displaced persons who returned to their places of origin or resettled elsewhere. Nor does it provide information on the percentage of persons who were displaced more than once (CODHES 2001 and 2002). What makes Colombia special is that there are as many as over 300 000 people fleeing each year, compared to other conflicts where groups often flee within a certain period.

An estimated 80,000 to 105,000 Colombians are living in refugee-like circumstances in neighbouring countries, primarily Venezuela (50,000 to 75,000) and Ecuador (30,000) while some 23,200 Colombian refugees and asylum seekers were in other countries (USCR 2002).[11]

The government of Colombia also compiles data on displacement, and estimates that about 525,000 displaced persons in total are in need of assistance. However, the government estimates only take into account new displacement since 1995 (during the first two years that the registration system was in place, in 1995 and 1996, the government only registered about 3,400 people). Ever since 2000, when the registration system became fully operational, many displaced persons have avoided registering with government agencies, often because they do not trust the government (Ibid. 2002). Also,

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[10] These numbers are absolute.

[11] In estimating the number of displaced in Colombia, and for other figures regarding internally displaced Colombians, these numbers rely primarily on the Consultancy for Human Rights and Displacement (CODHES), a Colombian nongovernmental organization (NGO) that works closely with the Catholic church, other NGOs, and local authorities to produce detailed statistics on displacement in Colombia. The figure of 2.45 million displaced Colombians is cumulative from 1985 and may include a number of people who have returned home.

the government does not consider displaced people as such after two years, but some have been displaced for over ten years (US DOS 2001).

5.1.3 Causes of Displacement in Colombia

The internal conflict in Colombia is one of the most prolonged and violent internal conflicts in the world today. The causes of internal displacement vary, sometimes leading individuals or families to flee, while at other times entire communities abandon a settlement together. In order of predominance, the causes of internal displacement are the following: collective threats; armed confrontations; massacres; individualised threats; direct attacks on population centres; and to avoid forced recruitment by illegal armed actors (UNHCR 2002b). Massacres are the single most common reason for population displacement (an average of 224 people displaced per massacre) (E/CN.4/2002/83/Add.3). The coca growing areas of Colombia, without exception, are another cause that produces displacement. Apart from for economic needs (for lack of viable alternatives), local populations are often pressured by guerrillas, paramilitaries, or drug traffickers to involve themselves in coca cultivation, thereby increasing the risk of repercussions from armed groups, and hence displacement. Paramilitaries (between 46 and 63 percent), guerrillas (between 12 and 13 percent) state agents (0.65 percent) and unknown agents (19 to 24 percent) are among those allegedly accountable for displacement (Ibid.).

Plan Colombia attracted a new wave of media attention to the region (Ruiz 2001). In 2000, Pastrana's administration requested assistance from the international community through an aid package, "Plan Colombia", designed to address the narcotics business, socio-economic development, human rights, and the country's insurgency. The United States has committed military resources to Colombia as part of this plan, primarily to support a "war on drugs". But through-out there has been a concern among human rights organisations that U.S. military aid could lead to a further escalation of the armed confrontation (Leonard 2002). In an international NGO declaration from Costa Rica 2000, the international organisations were convinced that Plan Colombia as conceived, would not only contribute to an escalation to the conflict, but also result in more deaths in Colombia and lead to a regionalisation of the conflict. According to CODHES, Plan Colombia exacerbated displacement in 2001, and 18 months into the

program, more coca was being grown in Colombia than before fumigation began (USCR 2002). Interviews I conducted with national and international NGOs in Colombia in May 2001, all expressed concern regarding Plan Colombia and how the civil population is directly effected by the fumigation, which causes further displacement.

5.1.4   A War of Land

The roots of the conflict in Colombia are multiple and complex. In such a long, protracted struggle it has become very difficult to distinguish between causes and effects. Over time, instruments that originated as means have transformed into ends. According to Jan Egeland (2003 [Personal Interview]) an evil circle constitutes the heart of the conflict. Violence causes conflict, conflict causes humanitarian suffering and new IDPs, which again cause new displeasure and trigger new violence. The dimensions of the conflict are enormous. Problems such as economic inequalities, the weakness of the state, discriminatory political institutions, elite politics and interventionism are viewed as the root of the conflict (Azcarate 1999).

Colombia is a state out of order. It has a government, administration, elections, parliament and laws, but a large part of its territory is not under the administrative control of the state and is either no man's land or it is directly or indirectly controlled by the guerrilla organisations such as the Armed Forces of Colombia (FARC) or the National Liberation Army (ELN) or by increasingly powerful paramilitary groups. The fundamental principle that the modern state should have a legitimate monopoly on the use of force bears no weight. At the same time, the system is highly inefficient. The country's economy is deformed by illegal drug production and exports. People have no confidence that the government or any other institution can protect them –and they are correct in their lack of confidence. Colombia is one of the most dangerous countries in the world to be a judge, a human rights advocate, a labour leader, a journalist, a farmer, a Presidential candidate, or even an ordinary citizen (Thompson 2002). Impunity and the denial of justice continue to be amongst the most serious concerns in Colombia. Impunity is close to 100% for human rights violations (CCJ 2001).

It is important to recall the complexity of the conflict owing to the multiplicity of actors and interests involved. Not a single actor in the armed conflict has a clean record. First, there are the state armed forces (comprising the army, navy and air force) and

National Police, both of which are attached to the Ministry of Defence. Second, there are various paramilitary groups, organised under an umbrella group known as United Self-Defence Groups of Colombia (Autodefensas Unidas de Colombia -AUC). Though they no longer enjoying legal authority, as was the case from 1968 to 1989, the paramilitary groups have effectively been institutionalised through the existence of "special private security and vigilante services"[12] and perform functions of public order similar to those of the armed force and police. AUC claim to have a force of over 11,000 fighters, and operates with as many as eight hundred troops at a time (HRW 2002b). Third, there are the guerrilla forces which are organised into several distinct and autonomous groups. By 1999, guerrillas operated in 30 of the nation's 32 departments. Foremost among these is the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarios de Colombia –Ejército Popular FARC-EP), which is the strongest of the guerrilla forces militarily. Their present strength is estimated at 17,000 fighters. Comparatively smaller and possessing less military strength is the National Liberation Army (Ejército de Liberación Nacional -ELN). The ELN consist of an estimated 4,500 fighters (UNHCR 2002b). Record levels of poverty and rural unemployment drive young peasants into the ranks of both guerrillas and paramilitaries (Carrigan 2001).[13] All of Colombia's departments are affected by displacement, except the islands of San Andrés and Providencia. The top-five departments generating displacement are Antioquia, Magdalena, Cauca, Bolivar and Chocó (UNHCR 2002b). The victims are non-combatants, mostly farmers who flee to the cities in search of safety So complex is the violence of Colombia that often while some people are fleeing one region in terror, others are arriving in the same region (Thompson 2002).

The Colombian political scene has long been dominated by two rival political parties, the Conservative Party (Partido Social Conservador –PSC) and the Liberal Party (Partido Liberal –PL). The armed conflict has its origin in the 1950s, when the government and insurgency groups battled for political power. Since the 1980s, paramilitary and self-defence groups have also taken up arms against the rebels. Caught

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[12] Previously known as "Convivir"

[13] There are also smaller guerrilla groups in Colombia. These are more regional in nature, such as Ejército Popular de Liberación (EPL), Frente Jaime Bateman Cayón, Ejército Revolucionario Guevarista, Ejército Revolucionario Popular and others.

in the middle is Colombia's civilian population, which has been used, mostly abused, by all combatants for their own ends. Escalating conflicts tend to polarise the community around them. Formerly neutral parties gravitate or are pulled toward one side or the other. The scale and dimension of the violations of basic human rights of the IDPs are so perilous that their survival instinct drives IDPs away from the violators; but reality confines them within the country's boundary, very often protected or controlled by the violators themselves. In a situation like this, the IDPs are like trapped birds whose fate absolutely depends upon the wishes of the violators (Chakma 2000:227). With time the original ideological rationale for the fighting has been lost amid unholy alliances with drug traffickers and peace negotiations played out while war efforts intensify. The fight for political power and full social and political participation within the country is also closely linked to forced displacement (Delgado and Lægreid 2001:205).

The rise of drug trafficking cartels in the late 1970s and early 1980s transformed both Colombian society and the nature of the civil conflict. Widespread and high level corruption, intimidation and murders weakened the government, particularly the law enforcement apparatus, as well as the influence of the traditional political parties. As the state targeted the drug cartels, FARC and paramilitaries became increasingly engaged in drug cultivation, processing and trafficking. This has allowed them to obtain finances for recruitment, arming, as well, as independence from the Communist Party and large landowners, respectively (UNHCR 2002b). The investments done by FARC have enabled the guerrilla to establish an economic independence that few guerrilla movements in the world have been able to achieve, except from the Lebanese and the Palestinian guerrillas, UNITA (National Union for the Total Independence of Angola) and the Taliban (Afghanistan) (Richani 2001). What we see is that drug trafficking has been rewarding. The economic facts of the matter are that as long as there is a multibillion dollar market available to Colombia without any alternatives, Colombians will continue to grow coca. The explanation for Colombia's booming business is seen in its tradition of individualism, with few social controls (The Economist 2001b).

In 2001, political violence became increasingly urban, with clashes and selective killings occurring in cities. The displaced often settle on the outskirts of large cities in crowded conditions without proper sanitation, and with limited access to health care, education or employment (UNHCR 2002b). Nearly 50 percent of displaced Colombians

are unemployed, and those who find work usually obtain only poorly paid day labour. Only 34 percent of displaced Colombians have access to health care and, according to the Colombia's human rights ombudsman, only 15 percent of displaced children attend schools (USCR 2002). The priority needs of displaced persons are food security, housing, health care, education and income-generating projects (TGD 2001). There are no large welfare centres monitored by UNHCR or other agencies available to receive the displaced population (E/CN.4/2002/83/Add.3). Kofi Asomani, the United Nations Special Co-ordinator on Internal Displacement of the Office for the Co-ordination of Humanitarian Affairs, visited Colombia in August 2002 and concluded that the conflict had "catastrophic consequences" for the civilian population. Despite government programs meant to assist the displaced, Asomani found that they continued to suffer extreme hardship, living in overcrowded and unsanitary conditions with limited access to basic services (HRW 2002b).

Observers suggest that the increasing incidence and intensity of acts of aggression against civilians is part of a deliberate strategy by armed groups to extend their sphere of influence and gain territorial control. Indeed, there is rarely direct confrontation among armed groups. Instead, displacement normally follows a pattern of rural farmers being accused of collaborating with the enemy, followed by direct threats on their life, which ultimately force them to flee to urban centres (Global IDP Project 2001a). But the very fact of having fled heightens suspicions of their allegiances and intensifies their risk of being targeted. As a result many try to blend anonymously into communities of urban poor (Deng 1999). Most observers agree that the fight for strategic territorial control affects the whole territory of Colombia today. The conflict in Colombia, while differentiated among regions, is a veritable "guerra de territorio" or war of land (Muggah 2000:138). A form of reverse land reform is taking place. Powerful people and their allies are displacing the less powerful (Thompson 2002). Strong ties between landowners, government officials and paramilitaries have blocked any serious agrarian reform (Global IDP Project 2003d). Complaints regarding links between members of the paramilitary groups and state officials continued to be received during 2002 (E/CN.4/2003/13).

A problem is that few IDPs return to their original home. A majority of IDPs are expected to stay in areas to which they have fled, usually in the large cities. According to CODHES, only 24 percent would like to return to their places or origin. This figure

reflects IDPs' low confidence in the government's ability to provide safety in areas of return (Global IDP Project 2001a).

Displacement disproportionately affects Colombia's ethnic minorities: Afro-Colombians in coastal areas and indigenous populations in various parts of the countries are often targeted (UNHCR 2002b). UNHCR has reported that indigenous and black populations constitute one third of the IDP population even though they make up only 11 percent of the total national population (US DOS 2001). However, the conflict in Colombia did not arise as a result of ethnic or racial exclusion (Chernick 1999:161). The Representative of the U.N. Secretary-General on Internally Displaced Persons, Francis Deng, describes displacement and harassment in Colombia as a form of "political cleansing", in contrast to the phenomenon of "ethnic cleansing" that goes on in other parts of the world. In the latter case, governments uproot or wage wars against groups on the basis of their ethnic identity whereas in Colombia, persons are uprooted because of their association or perceived association with political insurgencies (Cohen and Sanchez-Garzoli 2001). Also, the disproportionately high numbers of displaced Afro-Colombians can be explained by the proximity of indigenous communities to designated reserves containing 95 percent of the nation's natural resources (Global IDP Project 2003d).

In order to explain the conflict in Colombia, there were, according to Richani (2001), two important variables not necessarily linked to its root causes to consider. One, the balance of power between the state and the guerrillas have not allowed any one to win decisively over the other; Second, the ability of the three main actors in the Colombian civil war, -the state, the guerrillas and organised criminal organisations, particularly the narco-traffickers and their paramilitary groups- to adjust to a war condition through which the three actors invariably manage to accumulate economic and political resources that outweigh the costs of war. Individuals take the law into their own hands because of the inefficiency of the judicial system. Obviously the privatisation of security has not succeeded in reducing the level of violence. Threats against local authorities are common and countrywide. The precarious situation of alcaldes (mayors), consejales (council members) and other municipal authorities is illustrative of the weakness of the state. Roughly one fifth (about 200 out of 1,098) of Colombia's municipalities are without state security presence (for instance army or police). In many

smaller municipalities the limited police presence is no guarantee against threats by illegal armed actors (UNHCR 2002b).

5.1.5   The Peace Process

The peace initiatives which the Government of President Andrés Pastrana launched in 1998, soon after taking office, with the two main guerrilla groups, FARC and ELN, ended abruptly in the first months of 2002 without yielding the positive result that many sectors in the country had been hoping for (E/CN.4/2003/13). Pastrana also seized the zona del despeje ("clear zone"), the large area that the president had ceded to the FARC in 1999.[14] During the peace process, under the Pastrana administration, the third party domestic and international actors, including the UN, could potentially have played a more decisive role had they been allowed to (ICG 2002b). In Colombia, the armed conflict escalated further after communication had been broken between the parties (Azcarate 1999).

Avaro Uribe, an independent candidate supported by the Conservative Party, Partido Social Conservador (PSC), was inaugurated President of Colombia on 7 August 2002 with a strong electoral mandate to fulfil his pledge to enhance the state's authority and guarantee security. Uribe is a former governor in the region Antioqia, with Medellin as capital. As recently as 2000 he was viewed as the leader of the country's right-wing fringe, known primarily as an outspoken opponent of peace talks. During his period as a governor he established private security groups, "convivir", which strengthened the paramilitary in the region. The new president is very controversial, but Uribe's work ethic, pursuit of solutions, and law-abiding image has won him broad support among the Colombian people. Still, several decrees aimed at improving security have alarmed defenders of human rights and civil liberties world-wide, though they enjoy the Bush Administration's enthusiastic support (Isacson 2002). The new government has sold the idea that it can score a military victory over the guerrillas, while the guerrillas seem convinced they can win the war. They believe the only alternative to peace talks is a policy of military deterrence, with more death and destruction as a result until people are

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[14] A demilitarized zone (Zona de Despeje -DMZ), comprising five municipalities, of the approximate size of Switzerland (42,129 square kilometres) was established, the idea being to have a neutral area where the government and guerrillas could meet to talk peace. The DMZ, an essential FARC demand, was originally created for only 90 days. FARC control of this zone was extended 11 times until February 2002 despite a lack of progress in achieving peace.

convinced that this is not the way to Colombia's future. As former Representative of the Secretary-General on Colombia, Jan Egeland, expressed it *"Military victory might have been decisive at a time when Norwegians, Swedes, Germans and French and Iraqis and Kuwaitis fought against each other in international conflicts, but the conflicts of today are internal, the actors many, the messages unclear, and the victims are exclusively the civil population. Military actions only results in more violence, terrorism and insecurity. At the same time valuable time is thrown away before some people realise that a conflict cannot be won at the battle ground, but rather at the negotiation table"* (Egeland 2001). Over 40 years of civil war without a settlement should itself be a reason to return to the negotiation table.

5.2   The Colombian State's Responsibility towards the IDPs

There is no balance between state sovereignty and human rights in Colombia. Where the government is part of the internal conflict, which is the case of Colombia, IDPs become a human rights issue. With one of the most comprehensive and judicially advanced IDP legislation, Colombia has every opportunity to protect her citizens. But they seem to lack the means and political will. Unfortunately, the subject of internal displacement is not a priority on the government's agenda, and the implementation is still missing (Egeland 2003 [Personal Interview]). The government consider IDPs as a "public order problem" rather than a human rights problem (Global IDP Project 2003e). The right of the state and not its citizens continue to take priority in the law and politics of international human rights.

5.2.1   Sovereignty as Responsibility

Sovereignty should be perceived in terms of protection and respect for the rights of their citizens and promotion of international peace and security. However, the failure of the Colombian state to meet its obligations towards its citizens has drawn the attention of the international community and mobilised it to take on protection role. But is the government the only actor responsible for IDPs, or when the displacement is done by an organised group, to what extent does it bear responsibility and culpability for the conditions it creates (Aluwihare 2000:68)? In a report from the Human Rights Commission in 2001, it was explained that a state that is not able to control its borders and has lost the monopoly of force will lead to de facto division of the territory among

different actors such as drug traffickers, guerrillas, paramilitary groups, oil companies with private armies, and others. In the case of Colombia, the state has delegated the counter-insurgency to private actors, creating what is called the "privatisation of the war" that facilitates the entry of mercenaries in the conflict (E/CN.4/2001/18).

The Government's response towards IDPs is paradoxical. The Government has granted emergency humanitarian aid to only 20% of the displaced (E/CN.4/2002/NGO/89). Government officials continued to estimate that 70 to 80 percent of humanitarian assistance received to aid displaced persons is provided by the ICRC and NGOs (US DOS 2001). This also illustrates the role of the UN in Colombia. The state has sought to strengthen existing (albeit ambiguous) institutional mechanisms to better accommodate the perceived needs of the displaced, without taking into consideration their acute vulnerabilities, like employment and food security. The system depends largely on political will and effective institutional machinery at the municipal (implementing level). The reality on the ground suggests, however, that civil servants are not particularly well-informed with respect to their obligation under Law 387 established in 1997. Certainly, there exist few incentives to convince either locally or regionally elected authorities to respond to IDPs from other departments. But in spite of the much lauded decentralisation and reform process local authorities have not been adequately prepared (Muggah 2000:145). The state's efforts to comply with international recommendations on human rights protection issues have failed to produce tangible results. There has been progress in some areas, such as registration of the displaced population and greater national coverage, but that has only been accompanied by limited action to protect and assist victims and ineffective preventive policies (E/CN.4/2002/17). The subject of internal displacement still has a long way to go to receive the attention which it deserves from the Colombian state (Egeland 2003 [Personal Interview]).

All parties in the conflict are responsible for the forced displacement of large numbers of civilians. But as a sovereign state, Colombia has the obligation to protect, provide and fulfil international obligations, including the enactment of relevant internal legislation, and to abstain from enacting legislation that is contrary to international laws, as well as to punish those responsible and to provide suitable redress for victims. The fact that a violation has taken place does not mean that the state has failed to fulfil its

duty. A key element in identifying failure to fulfil the obligation is the fact that failure has been systematic. On the basis of responsibility, development and spread of paramilitary activity, and the different types of conduct, the High Commissioner of Human Rights, Mary Robinson has reiterated in her various reports on Colombia that the actions of the paramilitary groups entail state responsibility for the violations of human rights. The state and its institutions have been increasingly absent from many regions of the country, which has aggravated the problems of good governance and legitimacy (E/CN.4/2002/17). The state's legal responsibility both for the attacks carried out directly by Colombian armed forces and for those committed by paramilitary organisations with state support, acquiescence or connivance were also emphasised by the Special Representative of the Secretary-General on Human Rights Defenders, in a report from a mission in Colombia in 2001 (E/CN.4/2002/106/Add.2).

But in his response on 21 March 2002 to the report from UN High Commissioner for Human Rights (UNHCHR), the Vice-president of Colombia said the following:

> *"(…) our country does not face a war or peace dichotomy, as shown superficially by the media. Even if it seems hard to understand, the conflict that surrounds us has not taken over or affected internal unity in our society, and it has not stopped the evolution of our democratic system. What we are confronting is a war put together by illegal groups that do not add up to more than 0.1% of the population, against the legitimate state and civil society. We are facing challenges against violence as usually democracies do: using the means granted by the Constitution and the law effectively and ethically and against all forms of violence, without exceptions. And we are doing it as a state of law: respecting fundamental rights and guarantees of all citizens who have entrusted their defence and protection and who have confidence in their institutions and its men and women that represent and defend them. (…) In order for our task to be more productive, we have received the support of the international community and will continue to request it. (…) We do not ignore the obligations we have with the Colombian people (E/CN.4/2002/172)."*

The Colombian state does not deny or conceal the serious human rights situation which the country faces, but equally in the above statement, the state does not accept institutional responsibility in its own parts, and blames the harmful humanitarian and social effects on guerrilla war, problems of paramilitarism and drug-trafficking. The Colombian Government also claims that the best strategy with regard to the subject of human rights is peace, a political solution to the armed conflict. According to the Colombian Government, the Social Solidarity Network (Red de Solidaridad Social -

RSS)[15] has made important efforts to attend to the population displaced by armed conflict and agrees with the UNHCHR that greater efforts must be made to develop a comprehensive strategy to prevent displacement (E/CN.4/2002/172).

The alarming figures indicate that one of the main concerns should be to focus on preventing new displacement. Unfortunately, Colombia's weakest component is displacement prevention, as is shown by the way the problem has grown and spread. During the last couple of years, over 300,000 Colombians have been displaced each year, and there is no capacity or political will to deal with it. However, Colombian IDP legislation and policy documents have given prevention quite a lot of attention. They suggest preventive activities to be taken by different institutions. One of these measures is the "Early Warning System" (SAT). But early warning indicators have failed to prevent and protect persons from displacement (Deng 2002). There is no adequate discernible state policy or comprehensive strategy for translating the regulations into concrete programmes. With the state army as part of the conflict, there is no mechanism that can make the system effective (Ruiz 2001 [Personal Interview]). At times, the state seems to act more as an observer than as a genuine protector of the civilian population. There is little commitment to prioritising the matter. This seems evident from the limited resource allocation and spending; the lack of clear instructions to the security forces to prioritise protection of the population; the general failure to punish those responsible for omissions; the widespread impunity of those responsible for displacements; and the fact that the local committees are not playing their part in preventing displacement (E/CN.4/2002/17). In cases where the population has been warned of a possible massacre, they occasionally choose to stay because of lack of alternatives and money (Kvernmo 2001 [Personal Interview])

The Ombudsman (Municipal Ombudsman -MO) has expressed concern that many "early warning" activities have not been acted upon either by the police or the army. According to Colombian Commission of Jurists (CCJ) (E/CN.4/2002/NGO/89), early warnings were not taken into account, and those issuing such warnings were often discredited. It is not necessarily the early warning that is missing, but the nature of the system's response. A problem is the relationship between the early warning system and

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[15] Since 1999, RSS has been the government agency coordinating the National System of Comprehensive Assistance to

the military. What can the military gain from the system? A rational will from the state army has to be in place (Reed 2001 [Personal Interview]).

5.2.2 Colombia –an Incomplete State

Some people call Colombia a failed state. This is not correct. According to Thompson (2002) Colombia is an incomplete state.[16] The majority of Colombians are literate, healthy and reasonably prosperous. The Colombian government is democratically elected; Colombia has a strong civil society and many progressive institutions, ideas and policies. Unfortunately, the majority are dissatisfied with the way democracy is operating in practice (The Economist 2001c). The weakness of the Colombian state is one of the important causes of the conflict and its escalation. A weakened Colombian government and its demoralised armed forces cannot provide for the safety of its citizens. Many of the ills of Colombia derive form a single problem: violence (Thompson 2002). In several regions of the country entire populations feel abandoned, given the state's failure or inability to protect its citizens from violence (IACHR 2001). Individuals and groups feel compelled to provide for their own defence. Everyone tries to protect their own life, family and property by using any means available. As a result, intrastate security deteriorates further. Private justice replaces public justice. The political controversy created around "security co-operatives" ("convivir") is based on different conceptions of the citizen's right to arm and defend collectively when the state has lost control over the public order (Azcarate 1999).

The Colombian state is incapable of discharging itself of its responsibilities towards all those under state jurisdiction. Although the state has increased its capacity to respond to internal displacement, the goals and standards set by the National System for Integral Attention to the Displaced Population have not yet been achieved (UNHCR 2003c). The government has at least accepted international cooperation in providing assistance and protection. However, the balance between not interfering too much in internal affairs and not diluting the notion of state responsibility is no small issue, but adjusted legal

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IDPs.

[16] In this case I define a failed state as a state where a national government is absent, for instance in Somalia. Colombia has both a democratically elected national government and national legal institutions to protect and assist the IDPs. However, the state of Colombia is an incomplete state in the sense that the implementation of the national legal framework and the function of these national institutions is absent.

international principles for how to handle the relationship between state responsibility and international responsibility could ease this dilemma.

5.3   The International Responsibility

5.3.1   *The Acceptance of International Involvement*

The combination of state pressure on governments and normative developments have enabled the UNHCR and the international community to become more involved in internal affairs though there are still countries that refuse to acknowledge the issue of internal displacement and international involvement, like Burma, or even Turkey to a lesser extent. But other countries, like Colombia, recognise that they need international help to assist and protect their populations. Also, when asked what they most need, IDP communities (despite the fact that they have many materials needs) most often request international presence and accompaniment (Lægreid 2001). The Government of Colombia has demonstrated a readiness to accept or request international co-operation in responding to the assistance and protection needs of the IDPs. This is particularly true in recent years, with the result that a number of international agencies have established or enhanced their presence in Colombia. But it is still very limited compared to the scope and magnitude of the humanitarian crises. It is a fight for resources and attention from the international community, a fight Colombia, together with southern Africa and others are loosing to the crisis in the Middle East (Egeland 2003 [Personal Interview]).

The agencies of the UN system, in accordance with their mandates, have been carrying out activities for the prevention of displacement and providing protection and care to displaced persons. The work of the agencies comes under areas such as emergency humanitarian aid, information systems, reintegration, and institution-building (TGD 2001). At its 1996 session, the United Nations Commission on Human Rights requested that the United Nations High Commissioner for Human Rights (UNHCHR) establish an office in Colombia on the basis of an invitation extended by the Government. The Office was established on 26 November 1996 under an agreement signed by the Government and the UNHCHR. The agreement has been extended, at President Uribe's suggestion, until September 2006 (E/CN.4/2003/13).

5.3.2 Lack of Co-Operation between the State and the International Community

Although accepting international involvement, the co-operation between the state and the international community has not been satisfactory. At a meeting in Geneva April 2003, Deng agreed that the Colombian government is willing to talk about internal displacement, it is willing to invite the international community, but the state does not move to implementation (Global IDP Project 2003e). Being the first UN Office in Colombia, there have been various difficulties for the UN impeding its full discharge of its UNHCHR mandate in Colombia. This included difficulties in maintaining a dialogue with the Government. However, there has been progress but unfortunately, statements by senior state officials indicate that they view the pursuance by the UNHCHR Office of its mandate as undue interference in the country's internal affairs. Such statements by officials constitute a failure to respect the terms of co-operation provided for in the Agreement between the Government and the UNHCHR (E/CN.4/2002/17). But despite poor co-operation with Colombian government officials, UNHCHR has continued to operate in Colombia. As UN High Commissioner for Human Rights Mary Robinson noted in the UNHCHR's annual Colombia report, *"the overwhelmingly majority of Governmental responses to Office communications about specific cases and situations (such as early warnings) have been unsatisfactory, inoperative and purely bureaucratic". "The end result",* she emphasised, was that *"the potential of the Office has been greatly underutilized by the Government"* (HRW 2002b). An example of unsatisfactory co-operation between the UN and Colombia was when Jan Egeland, a former special adviser on Colombia to the United Nations Secretary-General who frequently visited Colombia to assist in peace talks, was prevented by the government from remaining in the country for more than eight days at a time. In addition, the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, undertook a fact-finding mission to Colombia in October at the invitation of the Colombian government. It ended bitterly, after Jilani raised questions about the new Attorney General and his commitment to prosecuting cases of high-ranking military officers (Ibid.).

President Uribe deserves praise for inviting the UN to play a mediating role in an eventual negotiation with Colombia's armed groups; this is a measure that his predecessor, Andrés Pastrana, did not allow until his peace effort was on the brink of collapse. However, Uribe is trying to force the guerrillas to cease fire for renewal of talks,

but this could take years and cost thousands of lives. It may be necessary to reconsider negotiation before the guns are silenced (Isacson 2002).

5.3.3 The United States (U.S.) in Colombia – a Hidden Agenda?

Humanitarian responses to protection of human rights are often guided by geo-political considerations, and some argue that motivation for intervening often is political, strategic and operational. As with the case of the Northern European countries' involvement in Former Yugoslavia, the U.S.' involvement in Colombia may seem guided by these considerations.

Events in Colombia during 2001 were marked by a series of issues that explain the context of the country's critical situation. Among these, it is worthwhile mentioning the campaign in preparation for the upcoming presidential elections in May 2002. Another relevant element was the new world situation after 11 September 2001 (E/CN.4/2002/106/Add.2). As in the rest of the world, "the war against terror" became important, which influenced U.S. policy in Colombia, this without consideration for the social, economic and political causes of the internal conflict. The U.S. administration proposed millions of dollars in counter-terrorism aid to Colombia even as the Colombian military refused to break ties with a designated terrorist group, the AUC (HRW 2002d). The fact that the conflict in Colombia is backed by economic and strategic interests increases its complexity (E/CN.4/2002/106/Add.2). Colombia is the third highest recipient of U.S. military aid, after Israel and Egypt. The Colombian military is seeking U.S. assistance in its fight against guerrilla forces, chiefly the FARC (HRW 2002c).

Since 1997, all U.S. military aid has been conditioned on Colombia's progress in meeting human rights conditions, among them breaking persistent links to paramilitary groups (Ibid.). President Uribe's commitment to combating paramilitaries is a continuing concern, and despite evidence of links between the paramilitary and state army, the U.S. has continued its support.

As Winifred Tate noticed in a North American Congress on Latin America (NACLA) Report on the Americas (2000), Washington justifies its involvement in Colombia as a "drug war" tactic to destroy the Colombian coca and poppy fields that supply cocaine and heroin to the United States. But the reason for supporting the

Colombian government is probably more complex and multifaceted. Among them is the fact that the area where most narco-traffickers are located, northern Colombia, will hardly be touched by the U.S. eradication effort. The region that will be hit, the south, is largely governed by guerrillas. The real reasons for the intervention, Tate argues, are political, economic and electoral. In the wake of the Cold War, the military-industrial complex in the U.S. still seeks power and business, this combined with winning support and future votes, Democrats and Republicans compete with "drug war" talk. Colombia fits the bill for all these interests—but at a terrible price for that country's people. U.S. interests in Colombia should be questioned and to many observers the militarised anti-drug strategies are an obvious failure and a national embarrassment (Hagen 2001).

5.3.4   *Seeking Asylum –an Option for IDPs in Colombia?*

UNHCR has been aware of the emergence of more restrictive and hostile attitudes towards refugees in the post-Cold War period and the Colombians have also experienced a more restrictive asylum policy from the neighbouring countries. Neighbouring states do not respect the principle of non-refoulement. Those who have managed to cross an international border risk being sent back to Colombia, without being given the opportunity to apply for asylum. The development of the displacement crisis involving an element of cross-border flight has had important implications for the international response, namely the involvement of UNHCR (E/CN.4/2000/83/Add.1).

According to UNHCR (2003d), the worsening of the conflict in Colombia is aggravating a very complex security situation at the border. The situation is now explosive. In addition to battling the government, the guerrillas kidnap neighbouring Venezuelans and Ecuadorians and the paramilitaries smuggle weapons from bases along the Panamanian border (Pardo 2000). This cross-border presence of Colombia's armed parties diminishes the level of security available to Colombian asylum seekers in neighbouring states. The Governments of neighbouring countries have expressed concern over border crossing. As an example, the Venezuelan President Hugo Chavez ordered a bombing raid against suspected Colombian irregular forces inside Venezuelan territory (UNHCR 2003d). The crossing of borders, though limited, leads to problems of protection and non-respect for the doctrine and international practice in the matter of refuge, and consequently violations of human rights. At the same time, the authorities

frequently question the reasons alleged by Colombians for crossing the border and whether the displaced Colombians are covered under the mandate of UNHCR (TGD 2001). Venezuela especially repeatedly fails to comply with its international obligations to protect refugees under the 1951 Refugee Convention, calling the Colombians "displaced in transit" rather than refugees (HRW 2000). In 2001, UNHCR approached Venezuela's central government requesting access to a group of refugees but the government denied the presence of the refugees on Venezuelan soil (UNHCR 2001b). Both UNHCR and non-governmental groups like the U.S. Committee for Refugees have documented the refoulement of fleeing Colombians, which is not only adding to the numbers of those internally displaced, but exposing those who seek asylum to serious risks to their safety and well-being (E/CN.4/2000/83/Add.1).

The UNHCR has said that while it supports all efforts to strengthen border security in the region, it is concerned that bona fide asylum seekers may be victimised in the process and that carefully built refugee protection standards may be compromised. It added that any discussion of security safeguards should start from the assumption that most asylum seekers are escaping persecution and violence, and are not themselves the perpetrators of such acts. In view of recent developments, the UNHCR has called upon governments in the region to guarantee that civilian victims of the Colombian conflict continue to have access to their territories and asylum procedures, while ensuring that asylum seekers are registered and documented as soon as possible (UNHCR 2002d). The internal conflict in Colombia, has become a threat to the whole region, and poses a threat to international security. On this basis, the UN Charter legitimates the international community's involvement in Colombia.

5.3.5 *Peace Community -Is It Safe?*

For those who are not Convention Refugees and for different reasons have not crossed an international border, a "safety zone", or in this case, a peace community may be the only option to survive. In Colombia, for a long time, the displaced basically hid to preserve their anonymity, but by the mid 1990s they began to seek safety in solidarity both at the local and national levels. Today, there are 60 to 70 organisations of displaced persons in Colombia (Cohen and Sanchez-Garzoli 2001). As an alternative to crossing an international border and seeking asylum, the best known organised self-protection

movements in Colombia are the "Peace Communities" (Communidades de Paz) and "Communities in Resistance" (Communidades en Resistencia) in Urabá. These emerged after intense fighting between government forces and FARC in 1997 and led to the first massive displacement and subsequent threats and massacres by paramilitary groups. The initial objective of the movement was to keep the civilian population out of the armed conflict by declaring civilian autonomy vis-à-vis armed groups (Lægreid 2001).

A peace community is a unilateral commitment based on human rights and humanitarian law. Ideally, it is an agreement between all the actors involved in a conflict. It is a consolidation of humanitarian space. The question is whether these peace communities are and can remain peaceful in an environment that says "either you are with us, or you are against us". Although the armed groups have agreed not to attack, peace communities in Colombia have been everything but safe, at worst they have been killing fields for the armed actors.

In March 1997, seventeen of the 32 communities which make up San José de Apartadó declared themselves as a peace community, with the support of the Catholic Church and a number of Colombian non-governmental human rights organisations. This was an attempt to persuade the warring factions on both sides to respect their right to life and neutrality in the conflict. The considerable media coverage of the Pavarando camp, where IDPs languished in impoverished conditions for up to two years, served to raise awareness of the phenomenon of internal displacement in Colombia. It also laid bare the inadequate response on the part of the authorities to addressing the phenomenon of mass displacement. The members of the peace community have, however, continued to face intimidation, torture and death in the hands of FARC, the army and the paramilitaries. As for instance in 2001, army-backed paramilitaries entered the hamlet of La Unión and forcibly rounded up members of the peace community of San José de Apartadó. At the site of a previous massacre, in the centre of the hamlet, they threatened to kill the villagers that refused to collaborate with them, if they did not leave the area. Members of the paramilitary who have entered the peace community have also been recognised as members of the security forces (PBI 2001). Even if organised in peace communities, IDP leaders face increasing risks. A crucial element of such communities is their proclaimed neutrality. As with the indigenous people, this posture unfortunately has the reverse effect of making such communities, and in particular their

leaders, suspect in the eyes of all armed actors. Numerous murders and disappearances of IDP leaders have taken place (UNHCR 2002b).

It is a paradox when members of the peace communities deny the state army entrance. This is because it is common knowledge that the state army provides the paramilitary with weapons. But are the civilians allowed to deny the army access, or is it possible to justify the intrusion of a state army into a peace community? Can the military force themselves into these communities? Legally yes, but politically not as long as they represent one part of the internal armed conflict (Kvernmo 2001 [Personal Interview]).

Nevertheless, this strategy of creating "peace communities" remains one which should be given further consideration in the future as a possible mechanism for facilitating the dialogue between the Colombian government and the insurgent groups (Roldán 2001). For third parties in the conflict, those who neither are able nor want to leave their country, but are still forced to flee, the establishment of a neutral peace community may be the only secure option for survival and opportunity to gain access to basic facilities, such as food, shelter and medicines.

In 1995, Chimni (2000a:443) emphasised the appropriateness and feasibility of creating a safety zone, which depends upon a number of factors. These include: who has the authority to create a safety zone, the length of time for which it is established, who are the parties which will guarantee its safe character, which category of people are to be protected, what are their rights in this zone, which agencies will be involved in the relief and assistance effort, and finally which of the stated purposes represents the predominant motive for creating the safety zone. Most importantly, however, a peace community must warrant respect from all armed actors when claiming to be neutral. The only actor who can ensure this may be the presence of international monitors (Sanchez 2001 [Personal Interview]).

5.3.6 UNHCR: In-Country Protection in Colombia

Although it had been given neither mandate nor legal authority to protect IDPs, the increasing demand for in-country protection led the UNHCR to open an office in Colombia in June 1998. This was after an invitation from the Colombian Government in 1997. The objectives of the programme there are twofold and directed towards the IDPs. Firstly, it aimed to support an effective, integrated and co-ordinated state and civil

society response in favour of the IDPs, based on fundamental protection principles and with special emphasis on the national institutional framework, and secondly, to contribute to the initiatives of the peace process by reinforcing the response to humanitarian concerns linked to internal displacement. In addition to carrying out its own operational plan, UNHCR plays an important role in facilitating interaction among agencies of the United Nations system on the issue of internal displacement, having been asked to do so on an informal basis by the United Nations Resident Co-ordinator in the country (E/CN.4/2000/83/Add.1). The UNHCR office in Bogotá works to strengthen the Government's capacity to address the IDP problem and to work on regional refugee issues (US DOS 2001). UNHCR provides the Colombian government with technical advice, and helps the government maintain the registration system for the displaced. As problems of internal displacement are not high up on the social and political agenda in Colombia, UNHCR is working to increase the visibility of IDP issues in order to create a better understanding within receiving communities and the public at large (UNHCR 2003c). UNHCR also operates four field offices that seek to ensure the *"implementation of domestic legislation for displaced persons at the local level"* and provide support to displaced persons' organisations (USCR 2002). By doing this it makes the UNHCR political in their work. The question is if "to ensure" can be transferred to "make accountable"?[17]

Even if its presence is accepted by the Colombian government, there are practical, political, and principled obstacles for in-country protection for the UNHCR. Most international presence is in the capital and not sufficiently spread out around the country and the international programmes undertaken target only a portion of the displaced population. But there are reasons why the international community has not established a more thorough presence in Colombia. One of the concerns is security, many prominent human rights monitors work under constant fear for their physical safety. Given their perceived or imputed "leftist" tendencies, many human rights organisations are stereotyped as being associated with the guerrillas and are subsequently targeted. Whenever feasible, UNHCR and partner organisations have accompanied IDP communities on the move. However, the intensified conflict has reduced the availability

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[17] Other international agencies working on behalf of the IDPs are; the UN Development Programme (UNDP), the UN International Children's Emergency Fund (UNICEF), the World Health Organization (WHO), the World Food Programme

of alternative locations and safe areas, leaving more and more affected groups in precarious situations. In order to maintain its field presence, UNHCR is continually monitoring security measures for its staff and NGO partners (UNHCR 2003c). Moreover, in general these organisations advocate a negotiated peace and end to Colombia's internal conflict. In the current political climate, in which a negotiated peace is being eschewed in favour of a military response, the position of human rights activist is becoming more vulnerable with regard to paramilitaries who are increasing both their influence and popular support (UNHCR 2002b)

Another consequence is that some IDPs are seeking safety in anonymity and consequently there is a problem of access. The humanitarian space is too small, and it stops access to the civil population. New areas are under control of illegally armed actors and the space believed to be secure is becoming smaller. Lack of access to IDPs makes this group more vulnerable than other exposed groups of people. Another reason for the limited presence is the Government's readiness to transfer the responsibility for IDPs onto international organisations. Indeed, a number of authorities, at different levels, when asked on what needed to be done often deflected the onus for action onto the international community. It is vital that Colombia -a country with a high level of human and resource capacity –does not transfer to the international community the responsibilities that it has the duty and ability to discharge (E/CN.4/2000/83/Add.1).

5.4   IDP Legislation –Lack of Implementation

5.4.1   National Legal Framework

Just as Colombia is one of the countries with the highest number of displaced persons, it is also the country with the most comprehensive and judicially advanced IDP legislation. It is very characteristic of Colombia that "if you can't change the people, change the law". For every new problem, a new law is established by the Colombian state. In 1995, under pressure from the church and national and international NGOs, the government acknowledged the magnitude of the displacement problem and elaborated a policy to prevent displacement and offer assistance to those already displaced (Delgado

and Lægreid 2001:207). A legal framework made up of laws, presidential decrees, government policy documents and court decisions regulates the prevention, protection, assistance and return/resettlement of the displaced persons. This framework also sets up co-ordinating structures and defines concrete responsibilities of each government institution (Global IDP Project 2001a).

The centrepiece of this legal framework is IDP Law 387 from 1997. Law 387 recognises displaced persons' right to humanitarian aid in emergencies. It also provides direct access to the state's social programmes with the aim of improving economic and social conditions to encourage return and resettlement. The law gives displaced persons access to government income-generating projects, the national agro-reform and rural development system, small business promotion, training and social organisation, programmes related to health and rural and urban housing, special programmes for children, women and the elderly, and urban and rural employment programmes organised by the RSS (Delgado and Lægreid 2001:207). Also, in May 2000 legislation classified forced displacement as a crime (US DOS 2001).

Decree 2569 of December 2000 states that the Government, in co-operation with ICRC, will provide humanitarian assistance to displaced persons during the first 90 days of their displacement. Certain categories of persons may apply for an extension for a further three-month period, but the assistance is said to be far from satisfactory and in need of review (E/CN.4/2002/83/Add.3). Though the exact moment when displacement ceases is not defined by the Guiding Principles, Decree 2569 attempts to define when displacement ends. The criteria are somewhat subjective and open to interpretations: 1. Successful return or resettlement, 2. Exclusion from the central government IDP registry, or 3. Upon request by the displaced person. But returning IDPs should also be in a position to receive economic and social restitution. However, it is argued that the social and emotional impact of displacement never ceases to affect those who are once displaced (Global IDP Project 2001a).

The RSS has shown a desire to assist the displaced, particularly through their presence and the provision of humanitarian assistance. However, their response has been limited, owing to the scarcity of resources and the cumbersome nature of the relief

and the International Organization of Migration (IOM) (E/CN.4/2000/83/Add.1).

mechanism. Despite the mandate entrusted to them by the Law 387, which provided for the establishment of departmental and municipal committees, municipalities and departments have played a very limited role in providing assistance to displaced persons (TGD 2001).

According to the comprehensive legal policy framework, displaced persons in Colombia should theoretically enjoy advanced legal protection. Unfortunately, those rights are not being upheld and important parts of the legislation remain to be implemented. The very right not to be displaced was reportedly violated in every municipality represented. Initially, the legal framework generated enormous expectations among the displaced population, but those expectations, however, exceeded the state's capacity to meet them. Indeed, according to Posada et. al. in Delgado and Lægreid (2001:207), recent studies suggest that the government's offer to assist the displaced is more theoretical than real, and still very much in the developing stage. This gap is in large part due to the disparity between the resources available and the immense numbers of persons affected (UNHCR 2002b). The authorities acknowledge difficulties with inter-institutional management and co-ordination, information, and funding. Also the lack of specificity on how to implement government policy is one of the main constraints they face (E/CN.4/2000/83/Add.1).

5.4.2 *The Guiding Principles in Colombia – Are They Useful?*

Some countries have criticized the Guiding Principles for not having been approved in an intergovernmental review process and for supporting relief activities seen as humanitarian intervention violating national sovereignty (Global IDP Project 2002c). On his 1999 visit to Colombia, the Representative of the Secretary-General on Internally Displaced Persons, Francis Deng found that government officials accepted the UN Guiding Principles as a basis for dialogue. Indeed, a number of officials prepared advance analysis of displacement in Colombia on the basis of the Principles. Colombia's Ambassador to the UN told the Economic and Social Council in July 2000 that the Colombian Government has *"found these principles to be a useful guide"* for its work. And the Office of the *Defensoria del Pueblo* included the Principles in its public awareness campaign on internal displacement while the RSS included the Principles in its compendium, Attention to the Population Displaced by the Armed Conflict. Colombia's Constitutional

Court also cited the Principles in a recent decision, arguing that they *"should be used as parameters for the creation of rules and for the interpretation of laws regarding forced displacement"* (Cohen and Sanchez-Garzoli 2001). National NGOs have also widely disseminated the Guiding Principles, employed them as a benchmark against which to monitor and evaluate national policies and legislation, and used them to promote and strengthen dialogue with the Government on the rights of IDPs (Bagshaw 2001). Still, regrettably, as the *Defensor del Pueblo* noted, many of the Principles are not being observed. Violations of international human rights and humanitarian law continue to be systematic and widespread, and indeed appear to have only intensified in scope and severity (E/CN.4/2000/83/Add.1).

5.4.3 *Why an IDP Legislation is Necessary*

The lack of an IDP Convention has meant that the IDPs have not been recognised as persons entitled to assistance and protection from the international community. Lack of documentation has become an acute problem for displaced people in Colombia. To receive emergency help from the government, 'certification' is necessary, and the displaced must present personal identity documents. Some displaced Colombians have lost their documents in the chaos of fleeing their homes while others have had their documents stolen or destroyed. Some are lone women whose husbands -the traditional bearers of the family documents -are missing or have been killed. Some of the displaced people, however, have never had documentation even before the violence forced them from their homes. As expressed by an UNHCR employee, *"the importance of documents has only really become an issue for them since becoming displaced. Being displaced, they need the documents to get government help and services"* (UNHCR 2002c).

It should be mentioned that the right to recognition as a person before the law is a universally recognised principle of international law. In this respect, the Guiding Principles also stress the need to carry out an effective documentation process for all displaced persons. Also, according to the Guiding Principles, the authorities must issue documents to IDPs, whether passports, personal identification documents, birth certificates or marriage certificates, so that they can enjoy their right to recognition before the law (Cohen and Sanchez-Garzoli 2001). However, the government is criticised for excessive bureaucracy and slow action, and most displaced persons are

either unaware of the assistance to which they are entitled or choose not to register. So frightened are many of the displaced that they try to remain invisible (Thompson 2002).

Colombian legislation makes a distinction between someone who is in a "situation" of displacement and a person who has achieved the "status" of being formally recognised as displaced. This distinction, which is challenged by the Constitutional Court, the Ombudsman's Office and many Colombian NGOs, gives the government the power to decide when a person's "status" of being displaced ends (Global IDP Project 2001a). But it is important that, through its concept of "assumption of good faith", the Colombian Constitution puts the burden of proof on the authorities, rather than on the IDP, as it is today, when it comes to determine who is a displaced person and who is not. Such an interpretation would avoid situations where IDPs have to return to their areas of origin to collect "proof" of the events that caused their displacement (Ibid.). The displaced need to be brought out of the shadow, and have their needs recognised. This meaning legalisation of the communities in which the displaced live in, recognition of their ownership of the land on which they live and the acceptance by federal and local governments of their obligation to provide health, education, and public services to these communities (Thompson 2002).

But there have been some improvements regarding registration, and IDPs have increasingly an opportunity to reclaim their identity. Under an agreement between the UNHCR and the Colombian Registrar, displaced people can now complete the whole application process in an UNHCR mobile unit, without having to leave their settlement. The information is sent in to the Colombian Registrar, and the Registrar gives priority processing to the applications from the displaced people and provides them with the actual documentation (*cedula*). The project enables displaced people to obtain a *cedula* in just two months, compared to the usual six to eight months. But the practical benefits of having a *cedula* are only part of the picture. Some displaced people tell of the very clear security risks they run without proper IDs. The armed groups demand a *cedula* (UNHCR 2002c). Without an ID you are not recognised as a citizen and displaced people are eager to reclaim their identities, their documents and their rights.

5.4.4   The Collaborative Approach -Lack of Coordination and Resources

Who can ensure protection to the IDPs and be in charge of implementing international law and responsibility? As written earlier, no single international agency has been assigned absolute responsibility or has sufficient capacity to attend to the varied requirements of IDPs. According to UNHCR, the most frequently engaged inter-agency approach is the collaborative approach wherein a single organisation is responsible for co-ordinating the humanitarian and reconstruction efforts of which IDPs are a part (Muggah 2000:148). In Colombia, UNHCR is the designated co-ordinator on displacement issues for the UN system. This task is carried out with the support of OCHA. In co-ordination with other UN agencies in the country, the UNHCR works to enhance mechanisms for facilitating inter-agency co-ordination on IDP issues (UNHCR 2003c). It seems that the collaborative approach will continue trying to bridge the protection gap in Colombia.

However, also in Colombia the collaborative approach is characterised by a complete lack of communication and co-ordination among and between public entities, the UN and the NGOs. This may be a result of the complex situation or lack of clear guidelines on who is doing what. In theory, the national capacity of the state (for instance the RSS) to respond is high, while local capabilities are relatively weak. As a result, inter-governmental organisations (IGOs) and NGOs have emerged to fill the gap. In regions that are particularly affected by conflict, non-state actors have become intermediaries between the state and civil society, in some cases taking on a status comparable to that of political parties. But as a result of their rapid increase in number and frequently narrow perspective, their activities have often resulted in contradictory impacts, leading to confusion between public entities and NGOs (Muggah 2000:148). In spite of this, Colombian NGOs, the Catholic Church and other religious-based organisations have been crucial in mobilizing a response to the needs of the displaced.

It is generally accepted by all actors that local networks and community-based solidarity groups achieve the greatest impact for the least investment. It is similarly recognised that the state has little capacity to directly reproduce this phenomenon due to structural and financial constraints. Where relations between government and NGOs have been poor, lack of co-ordination has led to parallel rather than complementary NGO service provision. But that overlapping delivery could be reduced through the

articulation of clear lines of command and measures to increase accountability between NGOs and the state. In addition, NGOs must put pressure on municipalities and public entities to comply with their agreements and legal obligations to displaced people. At the same time, however, the research process revealed paternalistic attitudes towards IDPs among a number of local solidarity and human rights groups, whose representatives often spoke of "my communities" and "our IDP representatives". Such sentiments often lead to IDP's reluctance to collaborate with state actors on account of the perceived risks presented to their existing institutional and social investments (Ibid:148-149).

A democratic state can endure only with a strong civil society, and it is the responsibility of the Colombian state to protect, promote and strengthen its civil society (E/CN.4/2002/106/Add.2). But there is not only the co-operation between the Government and the NGOs that have been criticised. At a NGO meeting in Bogotá (Global IDP Project 2001b), many national NGOs expressed frustrations that very little of the last years' debate on institutional arrangements by the state and the UN on IDP issues had been shared with key NGO counterparts in the field. Colombian NGOs felt excluded from being up-dated on the latest institutional developments, widely discussed in Geneva and New York but seldom known and discussed in the field. Evaluating experiences with the UN system, Colombian NGOs came up with several critical points; there is currently no co-ordinating mechanism between the NGOs and the UN system as a whole. In the work of the UN Thematic Working Group on Internal Displacement (TGD), which objective is to contribute to ensure a more effective response by UN agencies towards displacement, includes the government but not the NGOs. The UN should promote a space for NGOs to discuss the government's IDP policy and activities with appropriate Colombian government institutions. The UN in Colombia is said to have fallen into a Colombian cultural pattern with the development of elaborate theoretical schemes and programmes, while very little is actually achieved on the ground. The UN was seen as having a very limited scope in Colombia, both in terms of human and financial resources, and many NGOs requested a stronger political role for the UN. Several participants at the NGO meeting felt the UN should play a more active role in advocacy and take stronger political stand in favour of IDPs and other beneficiaries (Ibid.). Although, intended to be non-political, its work clearly takes place in a political context, which influences UNHCR's personality and practice. In 2003 UNHCR intends

to advise the new government to integrate its forthcoming Action Plan on Internal Displacement into a four–year development plan. In addition, UNHCR will call for the Action Plan to be issued in the form of a law, in order to make it mandatory for the different entities of the National System for Integral Attention to the Displaced Population (UNHCR 2003c).

In 2002, the UN agencies in Colombia completed a Humanitarian Plan of Action (HAP), which set out the priorities for co-ordinated UN intervention on behalf of the IDPs. The HAP was worked out in consultation with the NGO partners and the Red Cross Committee. It focuses on five main issues: co-ordination and capacity-building; protection and prevention; integration and reconstruction; health, education and social welfare; and food security (Ibid.). Most likely the collaborative approach will continue to bridge the protection gap in Colombia. However, it clearly needs to be strengthened especially on the level of coordination, including consistency in who is doing what, as well as increase of resources.

5.5   Conclusion

My aim with this empirical chapter was to illustrate how issues of internal displacement have an effect on both the principle of sovereignty and the work of the UNHCR. In the case of Colombia, the government's lack of political will and capacity to provide protection maintains the protection gap. Colombia illustrates the dilemma between state sovereignty and international responsibility. Although Colombia has accepted international involvement and they have the most well developed national legal framework to protect and assist the IDPs, state responsibility when it comes to cooperation, coordination and implementation is absent. There is a large gap between norms and actual implementation. The degeneration of the conflict, combined with the lack of a comprehensive prevention strategy, has resulted in millions of IDPs living in a political vacuum between state sovereignty and international responsibility.

The Colombian government does not meet its obligations under Law 387. With over two millions IDPs, and over 300,000 new ones each year, the phenomenon of internal displacement is taking on crisis proportions. There is clearly a need for an extended state presence. However, in comparison to other countries affected by internal

displacement there are a much larger number of state agencies and institutions in Colombia. Still, Colombia is a state out of order, an incomplete state behaving irresponsibly. A large part of its territory is not under the administrative control of the state, and the fundamental principle that the modern state should have a legitimate monopoly on the use of force bears no truth. Colombia's population is caught in the middle between the state armed forces, paramilitary groups and guerrilla forces, used, mostly abused, by all combatants to meet their own ends. IDPs are like trapped birds whose fate absolutely depends on the wishes of the violators. This is a manifestation of the protection gap. Living in this protection gap, IDPs continue to suffer hardship and unsanitary living conditions with limited access to basic necessities. As long as the three actors invariably manage to accumulate economic and political resources that outweigh the costs of war, the protection gap will continue to exist. Because of the inefficiency of the judicial system, the individuals take the law into their own hands. Private security groups have expanded, the peace process is closed down and people continue to flee. "Sovereignty as responsibility" is absent and the sovereign state's failure to protect its citizens draws the attention of the international community.

Colombia has recognised the need for international involvement, which has resulted in an increase in the number of international agencies in the country. The new trend of cross border flight has had important implications for the international response, and the involvement of UNHCR. There are problems of protection and non-respect for the doctrine and the international practice in the matter of refuge. The refoulement of fleeing Colombians is adding to the numbers of those internally displaced. This has lead to an increasing demand for in-country protection. However, it is important to maintain the balance between providing international protection without diluting the notion of state responsibility. It should be borne in mind that displacement and indeed the conflict generating it are symptoms of deeply rooted national problems. The tendency to render the international community responsible for addressing their needs may therefore be of serious concern.

Lack of safe areas affects the IDPs and widens the protection gap because it reduces access to assist and protect the IDPs. This has created a need for a safe humanitarian space, which has resulted in the creation of peace communities. Unfortunately, IDPs in peace communities have continued to face intimidation, torture

and death from all the actors. International presence may improve the safety, but is it realistic to expect international presence in areas where the state itself is not present?[18]

Even with the most comprehensive and judicially advanced IDP legislation, the response towards IDPs has been limited. But an IDP legislation is important to bring the displaced out of the shadow and have their needs recognised. The challenge of protecting IDPs in such a complicated context is great, and there is no quick or easy solution to the problem. UNHCR is the designated co-ordinator on displacement issues in Colombia. However, the collaborative approach is characterised by a complete lack of communication and co-ordination between the UN, the state and the NGOs. Herein lies a pressure on the UNHCR, as well as on the state which must prove political will to cooperate. This lack of taking responsibility by the state has resulted in political and security threats to the whole region. As a result, the protection gap has challenged the UNHCR in Colombia to move towards protection programs where IDPs are the main objective, including direct contact with the Colombian state to improve the state and civil society response to internal displacement.

It is important to build upon the normative and institutional frameworks that have already been created and work closely with the international community, national and international NGOs and the leaders of the displaced to address the existing protection gap. As such, in the absent of a legal international agency, a collaborative approach deserves support. In the case of Colombia, the only solution to the problems of displacement, violence and conflict are long-term. It will probably take decades before the Colombian government is capable of fostering respect for human rights, the rule of law, and political and economic justice and equity for all Colombian citizens.

Whether IDPs challenge the traditional notion of sovereignty in Colombia can be questioned. I will argue that legally, the state of Colombia is a responsible sovereign state, doing everything "right" in lines with normative developments. They have the most comprehensive and judicially advanced IDP legislation in the world. However, politically, the Colombian state's sovereignty is questionable when implementation of IDP law is absent. The theory and practice do not coincide. When the state of Colombia

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[18] Though the Democratic Republic of Congo is an example where this is the case.

in practice ignores its responsibility towards IDPs, it challenges the principle of sovereignty.

How is it possible to hold a sovereign state accountable when political action is missing? There have been normative developments and an increased pressure on states, which have affected both the principle of sovereignty and the work of the UNHCR. Still, internal conflicts continue and forced displacement shows no sign of slowing down. Foreign involvement will make a difference, but it has to come in an adequate form. It has to balance both state responsibility and international responsibility. For this, universal legal international principles for how to deal with this new situation may help improve the protection of IDPs.

6.   Conclusion

The subject of internal displacement has presented the international community with new issues to deal with, and it has contributed to put pressure on state sovereignty and the work of the UNHCR. IDPs are a human rights issue and it has been a gradual acceptance by the international community that gross violations of human rights should take precedence over the traditional emphasis on state sovereignty. Abusive exercising of state power is becoming harder to hide and easier to condemn. This may be a result of a strong association with the belief that there is a direct relationship between international order and domestic order. This calls for an involvement of the international community to supplement the efforts of local and national authorities. In practice this has influenced the work carried out by the UNHCR, with an increase of in-country protection as a result. There is, however, need for a more comprehensive, reliable and predictable international system of response to the IDPs. Although, the principle of sovereignty is the main political impediment when dealing with the protection of IDPs, the Westphalia system of government is here to stay and governments will always be reluctant to constrain one another's latitude. The subject of internal displacement and the protection gap clearly challenge the principle of sovereignty and the work of the UNHCR.

Through an empirical analysis, I have attempted to describe the kind of problems the subject of internal displacement presents to the international community, as well as the kind of obstacles that impede the international community from providing protection to the IDPs. The reason for choosing to analyze the principle of sovereignty and UNHCR is that they both have been affected by the two main causes for increased internal displacement: internal conflicts and restrictive asylum policy. Also, when explaining the protection gap, state sovereignty constitutes a political barrier to the UNHCR where non-interference is the basis for their mandate.

I found it necessary to include a chapter based on the international legal framework, the reason being that the protection gap appeared as a result of lack of an international legal framework and an institution responsible for protecting the IDPs when the state neither has political will nor capacity to do it itself. There are no legal

guidelines for how to deal with this immense and growing group of people in need for assistance and protection. I also found it necessary to evaluate whether the proposals put forward to deal with this hole in international law are adequate in protecting the people uprooted within their own country. I included Colombia as an empirical manifestation of reality. Colombia is a state which carries out its responsibility legally but not in practice and by ignoring human rights millions of persons are internally displaced. Colombia is also an example of a country with an internal conflict which is met with restrictive asylum policy from its neighbor countries, jeopardizing regional and international security. It is not necessarily a conflict between the tradition of sovereignty and the international community's right to get involved. This only becomes a problem when a state does not respect human rights and at the same time does not allow international intervention. The case of Colombia is something in between. Through a national legal framework, human rights and IDPs' need for protection are respected. But this is not implemented in practice, which creates a dilemma between state sovereignty and international responsibility. Abandoned by their national authorities, IDPs' only source of protection and assistance becomes the international community, UNHCR being one of the actors.

The protection gap has had both political, principle and practical implications for the work of UNHCR. UNHCR has had mixed reactions to the global changes. In stylized terms, pragmatists favor an expanded definition of UNHCR's target group and mandate and want to help the internally displaced based upon their circumstances and not their locations, and fundamentalists fear that an expanded definition would make it easier for states to avoid their obligations under refugee law and would dilute UNHCR's core mission, refugees. The debate on developments of the IDP category and its implications for UNHCR highlight that such developments precipitate reconsiderations of the meaning of sovereignty and raise potentially troubling concerns for traditional rights. However, it is a conflict of interest, both politically and practically. UNHCR needs to make a priority, and so far refugees have been their priority. In-country protection is not out of bound for the UNHCR. Although UNHCR has only limited capacity to influence outcomes or to ensure that states abide to their obligations, it has autonomy from its role as protector of refugee law and individuals who fall between the protections of national states.

The world is changing and the international community needs to adjust to keep up with the international agenda. New issues appear with which it is necessary to deal urgently take precedence on the international agenda, IDPs being one of them. The refugees are becoming fewer, and the number of IDPs growing, this having an effect on the ways of helping people in need. UNHCR is a potential provider of protection and assistance, but already occupied with refugees, they need both new authoritative guidelines and an increase of resources, or alternatively, as is the case today, they must be complemented by other international agencies.

How can the international community intercede to overcome the obstacles created by the protection gap in international law? Although, there have been UN efforts to improve capacity and response to internal displacement, there are serious gaps in the UN response. It does not seem likely that an existing institution will be mandated to assume full responsibility for the internally displaced. While no single agency wants responsibility for IDPs, no agency wants any other to get it either. As a result of this, the collaborative approach has evolved. Whether this is a result of the unwillingness or inability of governments to address the needs of the displaced, or that governments and UN agencies really believe in collaboration, using comparative advantages, the consequence has nevertheless always been an inadequate response. With no one to co-ordinate who is doing what, or at least ensure that action is taken, the protection gap will continue to exist. But if the UN does not strive to bridge the protection gap, we can also talk about negative UN responsibility. An important balance is to not dilute state responsibility but rather ensure accountability.

The Guiding Principles identify the protection gap. States, however, will always be very reluctant to sign a law which may affect their state sovereignty, and the process towards making the Guiding Principles binding will most likely be long and complex. In the mean-time, the Guiding Principles may help increase the focus on the subject of internal displacement and gain the attention from the international community, in an effort to improve the protection of IDPs.

A specific agency in the field is given the task of serving as the locus of responsibility for IDPs, the IDP Unit in OCHA. Complementary and mutually supportive, the IDP Unit, in cooperation with the Brookings Institution-SAIS Project on

Internal Displacement[19] has embarked on a Protection Survey which will examine the protection response of country teams to internal displacement. In the beginning of May 2003 major findings and recommendations will be presented. The final purpose and overall aim of the exercise is to identify, in a systematic way, the presence of gaps in the collaborative approach both at the institutional and policy level as well as the sectorial level and provide recommendations to reduce the gaps (OCHA 2002a).

In addition, the role of NGOs and the media should not be underestimated. They too can channel international pressure on states, both morally and politically. It will be important to continue to bring NGOs (which do most of the real human rights fact-finding) into the appointments process, thereby providing some guarantee that members are true experts in human rights, rather than experts in defending governments accused of violating them (Robertson 2000:47).

There may be no answer for how to make a state abide by international obligations. The international response system is largely ad hoc, and there is no willingness to promote new international instruments or agencies as long as it may influence sovereignty. National response to refugee flows has become more restrictive, and despite a gradual acceptance of human rights and international involvement, human rights continue to be subordinated to state sovereignty. The test, incidentally, is not whether a state has signed a treaty, but whether it has agreed to be bound by it through the process known as ratification. Enforcement will remain utopian until state parties are prepared to give the UN the power to condemn the conduct of its members, meaning themselves. Often there is a hidden agenda, and the nation with the most to offer the human rights movement in the twenty-first century will, it appears, do so only on the strict condition that other countries are the targets. This will be a major problem for the future. The next challenge for international law, having made individuals as well as governments its subjects, must be to encompass institutions which are neither states nor persons but increasingly more powerful than either. If the promises of the Universal Declaration are to be realized, there may be an idea to look to bodies independent of the UN, to regional treaty systems and their courts, to forge an international human rights

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[19] The Brookings Institution is an independent, nonpartisan organization. The Brookings-SAIS Project on Internal Displacement was created to promote a more effective national, regional and international response to the

law sufficiently understood and respected to be enforced in municipal courts throughout the world (Ibid:xix and 441).

The subject of internal displacement and the protection do challenge the principle of sovereignty and the mandate of the UNHCR. The international community remains fraught with dilemmas, ambivalence and tensions. Leading international experts, advocates and others concerned with IDPs sees government accountability and improved coordination of aid as key challenges in the international community's effort to improve protection of IDPs.

The global changes may create new opportunities for state sovereignty. The increasing respect for human rights may result in states being more responsible and held accountable if they break them. The question is if these normative developments can be transferred to international law. What accountability is there to ensure sovereignty comes with responsibility? The enforcement of international human rights standards will most likely never be as normal as is, say, the enforcement of domestic criminal law. States exclude themselves from international jurisdiction for no better reason than that they choose not to be judged. International law is a system created and controlled by sovereign states, for their own convenience. But there seems to be an increase awareness and agreement about the notion that state sovereignty should be perceived in terms of responsibility and the respect of their citizens. This is decisive to promote international peace and security. Nothing can act a sustainable substitute for state responsibility.

The chapter on international response has yet to be closed. The biggest gap in the response to IDPs is protection and there is clearly a need to continue to explore the area of internal displacement, particularly the impact of the concept of sovereignty as responsibility on states, inter-governmental agencies and NGOs. My aim with this thesis has been to answer which ways the subject of internal displacement and the protection gap challenges the principle of sovereignty and the mandate of the UNHCR, in addition to raising awareness of these uprooted people that constitute a national problem, but are requiring an international response.

It is, however, a question of the international community's political will to establish a new regime to mobilize action. In the future, it is to be hoped that the IDP issue

IDP problem. The Project is co-directed by Dr. Francis M. Deng, Representative of the UN Secretary-General on

receives the attention which is needed within this new international refugee regime, and that this new regime can help improve the protection of millions of people fleeing from persecution, without being bound to whether the person fleeing has crossed an international border or not.

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