

**Conflict-induced Internal Displacement: International
Response, Institutional Arrangements and State Practices**

Thesis submitted to Jadavpur University, Kolkata

For the award of the **Degree of Doctor of Philosophy (ARTS)**

By

Om Prakash Mishra

Jadavpur University

Kolkata 700032.

2017

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In memory of my father

Ghanashyam Mishra

Who toiled for the tea garden labourers till his last

Certified that the Thesis entitled “**Conflict-induced Internal Displacement: International Response, Institutional Arrangements and State Practices**” submitted by me for the award of the Degree of Doctor of Philosophy in Arts at Jadavpur University is based upon my work and that neither this thesis nor any part of it has been submitted before for any degree or diploma anywhere/elsewhere.

Om Prakash Mishra

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**Conflict-induced Internal Displacement
International Response, Institutional Arrangements and State Practices**

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Introduction to the Thesis

“Conflict-induced Internal Displacement: International Response,
Institutional Arrangements and State Practices”

Statement of the Problem

Forced displacement across international borders resulting in refugee situation has merited considerable attention since the First World War. Over the decades, an international protection regime has evolved for assistance, protection, resettlement and rehabilitation of the people who flee their countries from persecution and generalized violence. In contrast, the gigantic problems faced by people who are displaced within the borders of their country due to persecution and numerous and ever increasing armed conflicts have hardly received due attention to their protection needs and human rights. Governments have invoked sovereignty, and the United Nations' (UN) Charter principle of non-interference in domestic jurisdiction to block international scrutiny and support to the displaced. At times, governments have involved international agencies in situations of internal displacement because of their inability to contain the consequences of displacement. However, political and security considerations and exigencies of regime stability are more central in national responses to what has emerged as the most singular of the international crises involving the plight of millions of people trapped within the border of their own countries. Though there is a growing international recognition of the problem of internal displacement, evolving international norms and protection arrangements lack consensus and are yet to be institutionalized, despite tremendous advances in the last two decades, especially in the context of the active pursuit of protection and assistance interests of the displaced people by the UN General Assembly and the Security Council. The role of the UN Human Rights Commission and the expansion in the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR) has been instrumental in setting the standards of protection for the internally displaced and provide assistance to them in collaboration with various humanitarian, human rights and developmental actors. It is pertinent to ask how the international community may respond to internal displacement situations and in what way the

protection and human rights needs of the affected population maybe improved and secured by international measures.

Addressing Internal Displacement

In 2016, the world recorded a total of 40.3 million internally displaced people. Such a depressingly high number of displaced people is on account of war, generalized violence and massive human rights violations witnessed in different parts of the world. These have brought upon untold misery and distress to millions. The relationship between the internally displaced and those who can cross borders and seek refuge and asylum is strong. People would generally flee to nearest safer areas. In most situations, it would be a different part of their own country. In some situations, it would be a neighboring and, wherever possible, it could even be a country in the West. The international system for the protection of people forced to leave the country of their nationality had resulted in a broad international consensus in favor of a principle of *non-refoulement*, recognized in the Convention on the Status of Refugees of 1951. Over the decades, the Convention provisions have weakened and are increasingly under stress through restrictive interpretations and a general reluctance to shoulder the responsibility of refugees. The UNHCR, mandated to provide protection to refugees and find durable solutions to the refugee problem itself became an instrument to restrict the displaced people within the borders of their own country under the rubric of “in country protection”, “right to remain” and an increasingly assertive role to facilitate “voluntary repatriation”. These negatively impacted the refugee protection principle and led to its gradual erosion. One consequence of these developments was observed in the rise of situations of internal displacement and in the fast increasing numbers of those who are displaced but remain within the borders of their own country. The similarities in the causal factors responsible for refugee flow and the dire situation of the refugees in many respects was mirrored in the situations giving rise to internal displacement and the conditions of the Internally Displaced Persons (IDPs).

This necessitated due international attention and advocacy for the protection needs and rights of the internally displaced persons. The issues pertain to legitimacy of the state, effectiveness of government, activities of non-state

armed groups and the need, capability and resolve of neighbors, major powers and international institutions to address the plight of the uprooted people through assistance and protection. Consequently, contours of a developing regime could be seen in the efforts of the United Nations bodies, particularly of the Commission on Human Rights in developing a set of Guiding Principles on Internal Displacement through the instrumentality of the Office of the UN Secretary- General's Representative on Human Rights of internally Displaced Persons. While principles of existing international humanitarian law and international human rights law did cover certain aspects of protection for civilians in both international and internal armed conflict and certain human rights protection provisions and standards were applicable to the IDPs as well, these were neither sufficient and nor did they directly address the plight of the affected people.

Development of refugee law jurisprudence was also relevant to the protection needs of the IDPs but only as an analogy. As such, it was necessary to glean through the provisions of international humanitarian law, international human rights law and refugee law, identify the gaps and grey areas and build up a comprehensive set of protection principle and rights endowing framework for the internally displaced. This onerous task was conducted through a nongovernmental process with the tacit encouragement of UN bodies. Once achieved, the Guiding Principles on Internal Displacement has become the standard protection framework for the IDPs worldwide. A consensual understanding of the Principles is gradually pervading the international system and national framework for IDP protection in different countries is also getting strengthened. The Principles prioritizes national responsibility for the internally displaced and does not question the sovereignty principle. At the same time, the Principles are imbued with the philosophical exposition of the concept of sovereignty as responsibility and prescribe international assistance for displaced people through national governments. In the case of a government either unable or unwilling to receive international assistance, the Principles contend that international community has a duty to offer and give such assistance which the national authorities are expected not to refuse.

International Norms

However, the development of international norms related to the protection of internally displaced may exacerbate tension with international law of sovereignty. National governments are most reluctant to get their authority challenged and their human rights record scrutinized. Governments may be unwilling to involve international agencies and organizations to substitute for what they consider to be their exclusive domain. Inviolability of the principle of “non-interference in domestic affairs of Member States” upheld by the Charter of the United Nations is jealously guarded and developments in real life – the spread and intensity of armed conflict and its dangerous byproducts, the development of an increased acceptance of human rights and globalization processes with their concomitant features such as communication, mobility, technology and information revolution – are usually discounted.

This growing chasm and the resultant tension has been sought to be addressed by newer sets of ideas and concepts. At one level, refugee flows, distress of the civilian population and of the internally displaced and their human rights have been linked to threats to the maintenance of international peace and security by Security Council and preventive and enforcement action have been authorized to remedy the situation. This happened in respect of northern Iraq, Somalia, Bosnia and Haiti. When it has not been possible to obtain such authorization, international action by regional security organizations have nonetheless been undertaken as in NATO’s action in Kosovo. In situations such as Rwanda and Srebrenica where international action was missing or lacking, horrendous crimes committed have become a constant point of lamentation.

Since a direct link between atrocities and large-scale displacement on the one hand and a threat to international peace and security on the other may not be possible to be established and/or may not meet the criterion of requisite decision-making process of the Security Council, it was necessary to find ways and means to overcome the challenges involved by re-contextualizing the debate over sovereignty and humanitarian intervention. The International Commission on Intervention and State Sovereignty (ICISS) reformulated the debate in the language of responsibility. Sovereign states are expected to be responsible for the protection of their nationals and the international

community is expected to have a responsibility to protect if the state is unwilling or unable to discharge its responsibilities. This formulation of Responsibility to Protect (R2P) was a direct response to the challenge posed by UN Secretary-General to address and account for the absence of humanitarian intervention in Rwanda. The central issue was how best to negotiate the primacy of sovereignty with the maintenance of order and justice especially in situation of a political deadlock or indecision in the Security Council. The R2P doctrine formulated by ICISS and supported by the High Level Panel appointed by the Secretary -General was endorsed by some of the formulations of the Outcome Summit Declaration agreed to by Heads of States and Governments in 2005.

This endorsement has brought R2P in the mainstream of conceptual formulations both regard humanitarian intervention and the central question of creation of international norms. The explanatory framework for humanitarian interventions formulated by classic realist thinkers and the understanding of the issue from a liberal-international standpoint has always differed. The newer manifestations of the two schools of thought in the form of neorealism and neoliberalism have enriched the conceptual landscape of thinking on humanitarian intervention. A major enquiry inevitably centers on the question of the link between national interest and security and the decision to favor intervention or not to engage.

Intervention

The content and contour of interventions have changed over the last two-three decades. Humanitarian principles have been prioritized or at the very least have served as a pretext for more pressing security interests. The realm of decision - making has also changed, with an increased focus on the link between refugee flows and internal displacement with threats to international peace and stability. All this has occasioned numerous formulations, explanations, and theoretical approaches to bear upon the central question of relationship between national interest and humanitarianism. Some formulations stress on norm creation and the increasing positive role of norm entrepreneurs. The constructivists are attempting to explain the apparent dichotomy of norm creation and its uneven internalization to certain processes at play. A realist-constructivist approach may be employed to better

understand and analyze the growing emphasis on humanitarian intervention or for the rise of the concept of R2P. Again, a liberal-institutional approach may be combined with the insight of the constructivists to better explain the relationship between internationalism, human rights and norm creation in support of humanitarian intervention or to apply R2P in concrete situations.

Protection of IDPs

There is not as yet any acceptable and formal Convention for protection and rights of the conflict-induced IDPs. The ad hoc mandate repeatedly assigned to UNHCR for the internally displaced people was considered largely as an adjunct to its responsibilities for refugees. The mandate of the International Committee for the Red Cross (ICRC), however, did involve assistance for the internally displaced as a category within the civilian population affected by armed conflict, war and generalized violence. Due to the salience and persistence of armed conflict and the consequent internal displacement, the numbers of affected people have increased significantly, much above the refugee numbers and the situation has remained unchanged over the last two decades. Rather, the IDP numbers have seen a sharp rise and the gap has widened as refugee reception has declined and refugee protection weakened. Persistence of armed conflict between the state and plethora of non-state armed groups in different parts of the world has often resulted in protracted conflict and the resultant situation of protracted displacement.

National authorities are the focus in IDP protection. International aspects of assistance, protection and even intervention come about in the wake of the failure of the national authorities to care for and assist the displaced and vulnerable section of people. It may come about also in situations where the government is unable to discharge its responsibilities but willing to accept international assistance for its displaced nationals. This acceptance of its own responsibilities is a sure first step for better assistance and protection framework for the IDPs. Increasingly more and more governments are partaking international assistance and support for refugee repatriation, assistance to refugee returnees and assistance and support for IDPs. There are elements of political-economy as well as political-security considerations involved in decision frame of the country concerned. However, especially in the past, governments have been reluctant, unwilling and at times even

hostile to the idea of international scrutiny and international assistance to their displaced people. In some cases of regime-induced displacement and also in some other cases a desire to “control” the international assistance to leverage advantage in situations of civil war or guerrilla resistance to its authority, such international assistance and support may come quite handy.

The question is how best to address these pertinent issues.

Objective and Scope

The research work seeks to analyze worldwide conflict-induced internal displacement as a subset of forced migration, drawing on the insight of refugee studies and international refugee regime and relate these to the problems of protection and rights of the IDPs consistent with international standards framed under the Guiding Principles on Internal Displacement. The research work also seeks to situate conceptual understanding and theoretical approaches to conflict-induced internal displacement with a view to understand the development of international norms on this issue area of growing significance. Finally, this research endeavors to formulate and present a set of appropriate international policy on the central issues involved and connected to the main theme of the thesis.

The above three objectives are sought to be met by a thorough examination of international responses to internal displacement crises, available institutional framework and national responses of countries generating significant internal displacement.

The scope of research work is consistent with the objectives. While the focus is on development of international responses to internal displacement crises, the emphasis on case studies of national responses and approach complement the objective of development of appropriate international policy.

It bears emphasis that the scope of this research work is limited to internal displacement caused by persecution, generalized violence and armed conflict. While other causes, for example, natural or human made disasters generate significant internal displacement and affected people require and deserve protection and assistance, the focus of this research is on internal displacement which is induced by conflict.

The time period chosen for this study covers development since early 1990s up to the end of 2016. Early 1990s was the starting point for the international attention and gradual engagement of the international community with the problem of internal displacement and the protection needs of the internally displaced persons. The period also saw a changed approach to refugee protection by the UNHCR in the wake of restrictive policies adopted by the Western countries; Security Council resolutions linking international peace and security with refugee-flows and conditions of internally displaced and UN Human Rights Council's increasing emphasis on building a normative framework for the protection of the internally displaced. The time period for the study is consistent with developments in the normative framework, the emphasis on addressing atrocity crimes and the advent of the doctrine of Responsibility to Protect. While certain references to developments up to September 2017 is part of the analysis relevant to countries studied for research, the latest publicly available data, especially of the UN agencies and Internal Displacement Monitoring Centre (IDMC) up to December 2016 have been used.

Research Questions

- What is the framework of protection for the internally displaced at the international level and to what extent national practices reflect the assistance regime and protection principle in this regard?
- To what extent and with what effect international protection and assistance principle for the IDPs have been realized and what are their limitations?
- Whether the international norm of sovereignty is susceptible to human rights and protection concerns and can accommodate demands for international action for the protection of IDPs?
- What are the prospects of development of international norms supporting international action for securing IDP protection?

Main Argument and Hypothesis

Norm of assistance and protection for the internally displaced people is in conflict with the international norm of state sovereignty. Attempts to

negotiate the tension between state sovereignty and protection concerns for internally displaced through “humanitarian intervention” and by focusing on “Guiding Principles on Internal Displacement” or by the invocation of a “Responsibility to Protect” has helped advance the creation of a new norm of “sovereignty as responsibility”. This norm is developing fast and has implications for state accountability at the domestic as well as at the international level. The hypothesis to be tested through the examination and analysis of materials is the following: “International community” does not have a right to interfere in the internal affairs of a sovereign state. The UN Charter prohibits “interference” in the domestic jurisdiction of member states. As such, internal displacement is to be regulated by the state and not by the “international community”.

Methodology and Sources

The present work is based primarily on an analytical survey of the reports and data available in public domain principally maintained by the United Nations and its agencies; and the information documents published by a plethora of governmental and non-governmental organizations and institutes active in the field of forced displacement. A historical analytical approach has been used to narrate and assess policies and consequences thereof with special reference to certain countries selected on the basis of high intensity/protracted nature of displacement in order to ascertain general trends or uniqueness of particular cases. While the work explains the conceptual tools and records a historical evolution of the problem, it further clarifies and interprets the causal links of events and strategies leading towards certain concluding remarks and observations.

Source material for the thesis would involve scanning and analyzing primary source documents with regard to the research questions raised and shall include: Legal documents related to International Humanitarian Law, International Human Rights Law and International Refugee Law; Statements of governments, national policy documents, and decisions and publications of the UN bodies, principally UNOCHA, UNHCR, General Assembly and Security Council; Database, documents and reports of UNHCR’s Refworld and Internal Displacement Monitoring Centre (IDMC). The research work has also drawn upon scholarly contributions and commentaries especially

those contained in the New Issues in Refugee Research from Evaluation and Policy Analysis Unit of UNHCR and in journals such as International Journal of Refugee Law, Journal of Refugee Studies, Refugee Survey Quarterly, Forced Migration Review and others. The thesis work has also extensively consulted the research reports of reputed organizations such as Brookings Institution, Norwegian Refugee Council, IDMC and different academic bodies.

Chapters

The analysis of research questions raised by the subject matter has been undertaken in six Chapters.

Chapter I seeks to contextualize and analyze the emerging field of Forced Migration Studies. Various attempts to conceptualize forced migration have led to a broadening of the field as various descriptive categories and sub-categories are increasingly researched to analytically enrich the field. It is important to conceptually understand the different facets and manifestations of forced migration in order to delineate the sub-category of conflict-induced internal displacement, which is the principal subject matter of this research work. The subject matter of this Chapter is presented in five broad sections. The first section addresses conceptual issues related to the development of Forced Migration Studies, its relationship with Refugee Studies and some critical perspectives. An attempt has been made to delineate the field, survey the relationship with Refugee Studies, debate the relevance and critique the growth of the field. In the second section, a brief history of the refugee regime up to the end of the Second World War is presented with the idea that this evolutionary perspective may enlighten our understanding of the more recent challenges. The third section introduces a wide variety of descriptions and categories of forced migration. Apart from the Refugee and IDP category, the section describes all the associated sub-categories as well as some newer manifestations of movement compelled by force. The fourth section attempts to focus on the restrictive policies and practices that characterize the approach of the states toward asylum and asylum-seekers, the limitations and a critique of the work of the UNHCR and finally the “clash of norms” involved in negotiating a balance between the responsibility and the care for the displaced

people on the one hand and the sovereign interests of the nation-states on the other.

Forced displacement throughout the world is a direct consequence of the proliferating armed conflict. The resultant crises may be understood as the “new war” which is mostly played out in domestic settings. However, more often than not, these armed conflicts involve regional and international dimensions, affecting civilians, forcing people to flee the battle zones across different parts of their country and wherever possible across state frontiers. Chapter II attempts to situate the role of armed conflict in generating internal displacement in section 1. Section 2 considers the situation of the IDPs in protracted displacement in 7 of the top ten countries generating internal displacement. We consider Afghanistan, Iraq, South Sudan, Nigeria, Yemen, Ethiopia and Democratic Republic of Congo as illustration of the violence, distress, violations of human rights and security of the internally displaced in these countries and the protracted nature of the conflict. Also considered is the international engagement with the conflict and assistance regime for the IDPs in these countries. The scope of the section 3 of the Chapter involves an analysis of the existing protection mechanism at the international level for the IDPs. International humanitarian law and international human rights law are major legal instruments. Issue for consideration, however, is not only the scope of law. It is also a question of the nature and extent of the obligations of the states under these laws. The various “grey areas” and “gaps” in the existing law have been addressed by the Guiding Principles on Internal Displacement. The history of the drafting of the Guiding Principles, the role of the UN Secretary-General’s Special Representative on the Human Rights of Internally Displaced Persons are presented in section 4 of the Chapter which is followed by the last section on the significance of the Guiding Principles for addressing the protection and assistance need of the world’s internally displaced.

The aim of the analysis presented in Chapter III is to understand various interconnected perspectives and exemplify the current discourse on humanitarian intervention and Responsibility to Protect (R2P). Historically, humanitarian intervention has been mostly a pretext to gain material advantage and serve the national interests of the intervening powers. This explanation, however, loses its salience and merit when interventions cannot

be linked to material interests. The international community has unanimously agreed that principle of non-intervention cannot be invoked when there is a Responsibility to Protect (R2P) civilians facing atrocity crime. The focus on the tension between the international law norm of non-intervention and human rights considerations that privilege humanitarian intervention under the new norm of R2P has illuminated the current theoretical discourse in International Relations (IR). In the first section, the Chapter considers Liberal Internationalism, Realism/Neorealism and the Constructivist approach to IR and the perspective of these approaches on state sovereignty and humanitarian intervention. Section 2 analyses humanitarian intervention from the standpoint of material objective and interests of the nation states and alternative explanations rooted in ethics and morality in foreign policy. Alternative explanations have been build that prioritizes a conception of state interest which is inclusive of non-material objectives including international norms of state behavior. Articulation of such norms has found strong support and endorsement of the international community in the context of the exposition of a Responsibility to Protect doctrine that privileges international action over concerns for state sovereignty especially in the context of atrocity crimes. The Report of the Independent Commission on Intervention and State Sovereignty (ICISS) and the annual reports of the United Nations Secretary-General on R2P provide the base for the analysis presented in section 3 of the Chapter. A detailed consideration of international norm creation through these normative principles however, need not necessarily result in effective protection for the internally displaced. International action to operationalize R2P has been rare and even when collective action has been undertaken; the end result has been dissatisfactory. The Chapter considers the example of international action in Libya which showed that operationalization of R2P are dependent as much on the political consensus in the Security Council as it is conditioned by operational aspects of intervention.

Chapter IV seeks to locate and analyze the available system for the protection of the internally displaced people of the world. In the absence of a specific binding treaty obliging the states to discharge their responsibilities towards internally displaced, a system of protection and assistance for the IDPs has developed at the international level over the last two decades. While the ultimate responsibility for according such protection rests with the national

governments, a plethora of international arrangements have developed in this regard. Governments have been increasingly supportive of such arrangements and a host of organizations and agencies are now involved in protection of the IDPs. The first section of the Chapter considers the initiative and role of the United Nations in attempting to create a protection regime for the IDPs. The second section analyses the role played by UN agencies and humanitarian departments including the responsibilities of the UNHCR for the conflict-induced IDPs under the expanded mandate for the agency. Since the introduction of the Cluster Approach for protection and assistance of the IDPs, the role of coordination amongst agencies and organizations are being constantly reviewed and updated and as such a consideration along these lines is also presented.

The International Committee of the Red Cross (ICRC) is the guardian of international humanitarian law (IHL). A measure of international legal protection for the civilian victims is available both in respect of international as well as in non-international armed conflicts. The IDPs are part of affected civilian population and entitled for such protection. The role of the ICRC in IDP protection is analyzed in the third section of the Chapter. This is followed by a discussion on the unique position and role of Médecins Sans Frontières (MSF), one of the largest non-governmental organizations of the world. The last section of the Chapter delves into the regional legal instruments developed in recent years to protect the IDPs. Two initiatives in Africa have set the standard for international protection for the IDPs. The analysis of the Great Lakes Pact and the Kampala Convention for binding legal commitments in favor of IDP protection concludes the analysis of the Chapter.

Chapter V and Chapter VI analyze the conflict context, internal displacement situation, the condition of the IDPs, national policies and international responses in respect of 6 countries- Colombia, Kenya, Georgia, Turkey, Myanmar and Syria. There are considerable variations in national policies and international responses in respect of the main research questions pertaining to the internal displacement situation in these countries. Colombia has suffered decades of armed conflict between the government and the insurgent groups and internal displacement situation in the country has been severe involving generations of Colombians in prolonged and protracted displacement. In

Kenya, internal displacement has largely played out as a result of violence and conflict in the context of ethnic divisions and strife in the arena of competitive electoral politics of the country. The context in Georgia is completely different. Here, internal displacement has occurred as a result of secession of some territories with support from Russia. While Colombia and Georgia have adopted progressive legislations to address internal displacement and to ameliorate the conditions of the IDPs, Kenya has undertaken obligations under the Kampala Convention and also passed national legislation to translate its obligations toward the internally displaced. All the three countries, irrespective of the circumstances leading to internal displacement of their population have acknowledged national responsibility and are broadly welcoming of international assistance.

However, a very different and contrasting situation emerges when we analyze internal displacement and the conditions of the IDPs in Turkey, Myanmar and Syria. This is the subject matter presented and analyzed in Chapter VI. All the three countries are “hard” cases where state sovereignty is prioritized over situation and conditions of the internally displaced persons. Turkey had long denied the existence of IDPs. The government policy, in its fight against the minority Kurds who had raised a secessionist struggle, involved deliberate measures to forcibly relocate villages apart from other harsh measures to quell protest and dissent. The government was forced to revisit its denial of internal displacement as a result of conditions for accession to the treaties necessary for the admittance of the country into European Union. The estimate of the numbers of internally displaced people by government appointed study revealed that more than a million Turkish nationals were displaced. Government eventually did undertake certain positive measures to redress the situation but has not allowed access to international humanitarian actors. Moreover, the condition of the IDPs remains a prisoner of fast paced political developments in the country where the ruling establishment has gone back on assurances supportive of the rights of the internally displaced.

A long period of international isolation preferred by the ruling establishment of Myanmar (then Burma) that lasted till mid-1990s had shrouded the internal displacement of the country from any international attention. The gradual and relative opening up of the country in the last about two decades has helped an understanding of multiple internal conflict and displacement in

Myanmar. The country has generated a large number of refugees and undocumented migrants into neighbors like Thailand and Bangladesh and into various countries of South East Asia. The ethnic-secessionist fault lines especially in the remote border regions populated by ethnic minorities and harsh measures of the government authorities toward them has been the principal reason for both refugee-flows and internal displacement. The suppression of religious minorities and their disenfranchisement in Arakan region has also contributed to significant displacement numbers. The role of Tatmadaw, the Myanmar military, in forcibly appropriating land and their brutal suppression of rebels and the civilians suspected of supporting them, is highlighted in the Chapter. Government grants only restrictive access to the humanitarian organizations. Due to the introduction of certain political reform in the direction of popular election and civilian control of the government, Myanmar has undertaken few important measures under the ongoing peace processes with dozens of ethnic insurgent groups to address internal displacement. This also includes an attempt to start restitution of land to the displaced people. However, the continued importance of the military in the power structure of the country and the more recent severe measures against the minority Rohingyas leading them to flee to Bangladesh raises questions about the limitations of the government and cast doubt over its sincerity to address displacement and the distressed conditions of the affected people.

In terms of numbers, Syria has the highest numbers of internally displaced persons in the world. The Syrian civil war presently in its seventh year has regional and international political-security dimensions with more than a dozen countries directly involved on one side or the other in the three-way intense war affecting the entire country. Millions of Syrians are refugees in neighboring Lebanon, Jordan, Turkey and Iraq. A large number of refugees have also sought asylum in Europe. Half of the population of the country has been forced to flee the war-affected areas and close to 11 million Syrians are in need of urgent humanitarian assistance. The government of Syria in its determination to protect the country's sovereignty and territorial integrity from the armed insurgency of the fundamentalist groups such as Islamic State of Iraq and the Levant (ISIL) and moderate armed groups such as Free Syrian Army (FSA) and Syrian Democratic Forces (SDF) has displaced millions. A

host of countries and international actors are directly participating in the hostilities.

The serious situation in Syria has jeopardized the international protection principles for the IDPs. The political division in the Security Council has ensured an absence of unanimous international action. The moderate groups of Syria's Opposition forces are being supported by US and its partner countries. The government, bolstered by direct military support of Russia and Iran as well as Hezbollah fighters from Lebanon, is controlling humanitarian access. Large numbers of hard-to-reach civilians in big swath of territory under the control of ISIL are in besieged towns and cities. Under these conditions, international humanitarian action is unable to provide assistance to the affected population. The Chapter analyses the significance of the inability of international community to intervene in Syria and the implications of the imbroglio for the future of humanitarian action, protection principles and the doctrine of R2P.

Conclusion

The findings of the research work are presented in the Conclusion part of the thesis. Conclusion builds on the findings in respect of the analysis presented in each of the six Chapters especially from the standpoint of the research questions identified and the hypothesis advanced.

Bibliography

A Bibliography of primary source documents, research reports, online resources, books and journal articles consulted for this study is also included at the end.

Chapter 1

Forced Migration: Concept, Categories and Refugee Regime

Introduction

This Chapter presents, contextualizes and analyzes the emerging field of Forced Migration Studies. The aim is to conceptually understand the different facets and manifestations of forced migration in order to delineate the sub-category of conflict-induced internal displacement which is the major focus of the research work. Despite the conceptual difficulties of the concept of forced migration, the field has emerged to represent a variegated set of manifestations of human movement where different types of causative factors and circumstances compel people to leave behind their habitual places of residence, locality, province and at times national boundaries. The reasons to flee across national border are well-recognized in the definition of a refugee and the subject has been regulated by international law. The growth of Refugee Studies closely followed the developments in the field of international law and practices of states and involved both passionate advocacies on behalf of the victims of persecution as well as an objective study of the legal regime for the refugees. Given the similarities in situation and circumstances, the coerced nature of movement within the national boundaries also deserved equal emphasis from the standpoint of human rights and protection concerns. Internal displacement situations and associated issue-areas also came to prominence centring on the conditions of the internally displaced people and the assistance and protection they needed. In a way, the merger of these two set of concerns, for the refugees and for the internally displaced persons laid the foundation of the field of Forced Migration. However, the various attempts to conceptualize forced migration led to a broadening of the field as various descriptive categories and sub-categories are increasingly researched to analytically enrich the field.

The subject matter of this Chapter is presented in four broad sections. The first section addresses conceptual issues related to the development of Forced Migration Studies, its relationship with Refugee Studies and some critical perspectives. We attempt to delineate the field, survey the relationship with

Refugee Studies, debate the relevance and critique the growth of the field. In the second section, a brief history of the refugee regime up to the end of the Second World War is presented with the idea that this evolutionary perspective may enlighten our understanding of the more recent challenges. The third section introduces a wide variety of descriptions and categories of forced migration. Apart from the Refugee and IDP category, the section describes all the associated sub-categories as well as some newer manifestations of movement compelled by force. The last section attempts to focus on the restrictive policies and practices that characterize the approach of the states toward asylum and asylum-seekers, the limitations and a critique of the work of the UNHCR and finally the “clash of norms” involved in negotiating a balance between the responsibility and the care for the displaced people on the one hand and the sovereign interests of the nation-states on the other.

Section 1: Issues in Forced Migration Research

The term forced migration is a shorthand term, difficult to be defined analytically. There is a conceptual and logical difficulty in the term. Opposite of forced migration is voluntary migration. But all types of migration are necessarily based on a need. This is applicable to both voluntary and “involuntary” migration and involves a decision. There is always the human agency that decides. So when we talk of forced migration, we possibly are referring to the situation and circumstances leading to migration. The element of force is in the nature of these circumstances: persecution, war or human rights violations. In other situation of migration, say voluntary migration, yet other elements like travel, business or economic opportunity may be involved. Malkki explains the term “refugee” which has analytical usefulness not as a label for a special, generalizable “kind” or “type” of person or situation. Its usefulness is only as “a broad legal or descriptive rubric that includes within it a world of socio-economic statuses, personal histories, and psychological or spiritual situations”. The same can be said about the use of the term forced migration. ¹

¹L. Malkki, Purity and Exile: Violence, Memory and National Cosmology Among Hutu Refugees in Tanzania, University of Chicago Press, Chicago, London, 1995, p.496.

Search for policy relevance has been a key determining factor in research on forced migration issues and this constraint the frame of reference and areas selected for study. This search often mirrors the categories, concepts and priorities of policy makers and represents a disservice to the world of research. David Turton, Oliver Bakewell, and several other scholars have drawn attention to the tendency to privilege the worldview of the policy makers in the selection of research areas and themes. Turton thinks that we fail to see the “normality” of forced migrants when we categorize them as exceptional. Instead, we need “always to think of forced migrants as “ordinary people”, or “purposive actors”, embedded in particular social, political and historical situations’.²

While it is difficult indeed for researchers on forced migration not to highlight the distressing conditions of refugees and IDPs and yearn and advocate effective changes in their situation, it raises several question of academic propriety and independence. David Turton did concede:

I cannot see any justification for conducting research into situations of extreme human suffering if one does not have the alleviation of the suffering as an explicit objective of one’s research. For the academic this means attempting to influence the behaviour and thinking of policy-makers and practitioners so that their interventions are more likely to improve than worsen the situation of those whom they wish to help.³

Giulia Scalettaris maintains that by “taking the category of ‘refugees’ as both the primary focus and the boundary for its research”, Refugee Studies (or even Forced Migration studies) “is underpinned by definitions that originate from policy”. Analytically these definitions are not meaningful as it is not possible to apply these definitions to separate discrete classes of migrants. These are “policy related labels, designed to meet the needs of policy rather than of scientific enquiry”.⁴ She goes on to say that “Refugee Studies needs to maintain analytical independence from the refugee regime; instead of

²David Turton, “Refugees, Forced Resettlers and ‘Other Forced Migrants’: Towards a Unitary Study of Forced Migration”, Working Paper No. 94, New Issues in Refugee Research, UNHCR, p.1.

³David Turton, “Migrants and Refugees: A Mursi Case Study” in T. Allen, ed. In Search of Cool Ground: War, Flight and Homecoming in Northeast Africa, James Currey, London, 1996, p. 96.

⁴Giulia Scalettaris, “Refugee Studies and the International Refugee Regime: A Reflection on a Desirable Separation”, Refugee Survey Quarterly, Vol. 26, No. 3, 2007, p.1.

remaining entangled in the refugee regime policy framework, it would be fruitful if Refugee Studies included this policy framework among its objects of study”.⁵

Bakewell thinks that “research which is designed without regard to policy relevance may offer a more powerful critique and ironically help to bring about more profound changes than many studies that focus on policy issues from the outset”.⁶His study of a group of self-settled Angolan refugees in villages of Zambia showed the de facto integration of the refugees despite the government claim that local integration would not be a solution to the situation of the refugees. This case study “illustrates that stepping outside policy categories can cast new light on the situation of ‘invisible’ populations of forced migrants and those among whom they live”.⁷

“Invisibility” of the refugees and IDPs is a recurrent theme in many studies on forced migration. UNHCR denies that a very high number of “self-settled” or “spontaneous” refugees are present throughout the world. The phenomenon of urban refugees and also IDPs is usually ignored unless the forced migrants are in camp setting administered by different agencies. Many displaced people remain “invisible” to researchers who mostly focus on “specific categories of people defined by international actors and on “institutional notions” of policy”.⁸ In the context of self-settled refugees or in many situations where the IDPs fear to reveal their identities or in the case of urban IDPs, this “invisibility” is beyond the official agency statistics. The coping mechanisms adopted by the forced migrants, an acceptance of the “normality” within their situation instead of “privileging their position as forced migrants as the primary explanatory factor” should also be studied.⁹G. Uehling has observed: “The term refugee has become synonymous with a violation of human rights. But if we become fixed on this notion of violation, we will fail to recognize the

⁵ Ibid.

⁶Oliver Bakewell, “Research Beyond the Categories: The Importance of Policy Irrelevant Research into Forced Migration” Journal of Refugee Studies, Vol. 21, No.4 December 2008, p.433.

⁷Ibid. p. 441.

⁸Dawn Chetty and Philip Marfleet, “Conceptual Problems in Forced Migration”Refugee Survey Quarterly, Vol. 32, No. 2, 2013, pp.1–13.

⁹Bakewell, n. 6.

ways in which the refugees are actively building their world”.¹⁰Such studies may help “to bridge the gap between refugee studies and broader social scientific theories of social transformation and human mobility”.¹¹

Researchers on forced migration face a “dual imperative”. They need to conduct rigorous academic research and at the same time they would like their work to be policy relevant.¹²It is of course not necessarily a binary choice between advocacy and scholarship. Both can be integrated and “in refugee studies, scholarship is embedded in advocacy and advocacy in scholarship”.¹³

On the subject of research and its relationship with relevance, it is not necessary to make a distinction between research and policy making or between the academic and the practitioner. Instead, for Turton, what is necessary is to make a distinction between “practical knowledge”, and “scientific knowledge”:

Practical knowledge’ is produced by ‘doing’ and is necessarily unreflective and unself-conscious (though not necessarily false), while ‘scientific knowledge’ is produced by the application of scientific method and is necessarily reflective and self conscious, (though not necessarily true). I conclude that research on forced migration will be most relevant to policy when it is used, not to sustain and legitimise the practical knowledge upon which policy is based, but to scrutinise and problematise it.¹⁴

1.1: “Refugee Studies” and “Forced Migration Studies”

James C Hathaway, a leading international refugee law scholar laments and opposes what he calls the “marriage of refugee studies” with “migration

¹⁰G. Uehling cited in “Is there “Refuge” in the Refugee Category?” in R. M. Krulfeld and J. L. Macdonald, Power, Ethics and Human Rights: Anthropological Studies of Refugee Research and Action, Rowman&Liittlefield, Lanham, 1998, pp. 123-144.

¹¹Bakewell, n.6.

¹²K. Jacobsen and L. B. Landau, “The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration”, Disasters, Vol. 27, No. 3, pp. 185-206.

¹³E. Voutira and G. Dona, “Refugee Research Methodologies: Consolidation and Transformation of a Field”, Journal of Refugee Studies, Vol. 20, No. 2, p.167.

¹⁴Turton, no. 6.

studies” in the union of “forced migration” studies. He criticizes the “preferred governmental and agency agendas which increasingly sacrifice(s) the autonomy of refugee himself or herself to broader migratory management goals”.¹⁵ He thinks it is not necessary “to merge our fields”. Rather, “a movement away from the conceptual merger would remind us of the importance of retaining our separate identities and points of focus”. According to him:

Subsuming refugee studies into the broader framework of forced migration studies may result in a failure to take account of the specificity of the refugee’s circumstances which are defined not just by the movement to avoid the risk of harm, but by underlying social disfranchisement coupled with the unqualified ability of the international community to respond to their needs.¹⁶

There are important conceptual issues here. Forced Migration studies have grown as a necessary and indeed beneficial expansion of the field of refugee studies. While the causes and circumstances of movement as well as the suffering and predicament of the victims are more or less the same, why should it be necessary to de-couple the refugees from other victims? The circumstances and ability to move across the national border (refugees) alone cannot become the basis of separation between refugees and IDPs as well as yet many other categories of displaced people. It was the refugee studies scholars and refugee protection activists who brought up the issue of “internal refugees”, their predicaments and concerns to the attention of wider academic and NGO community. Roberta Cohen quotes Hillary Benn, UK Secretary of International Development who had asked, “Is it really sensible that we have different systems for dealing with people fleeing their homes dependent on whether they happened to have crossed an international border”?¹⁷ Displacement situations may vary but this is not a sufficient ground to brush aside the IDP category to be subsumed under the rubric of “other internal human rights victim”. Writing on the similarities in the vulnerabilities faced by both refugees and IDPs, Cohen argues:

¹⁵James C Hathaway, “Forced Migration Studies: Could We Agree Just to “Date’?”, Journal of Refugee Studies, Vol. 20, No. 3, 2007, p. 350.

¹⁶Ibid. p.349.

¹⁷ Roberta Cohen, “Response to Hathaway”, Journal of Refugee Studies, Vol. 20, No 3. 2007, p.370.

Although [the IDPs] remain inside their countries, they are often perceived as ‘the enemy’ through their association with an insurgent group, an opposing political or ideological viewpoint, or as members of an ethnic, cultural, religious or social group considered inferior or threatening. Often they experience de facto ‘outsider’ status.¹⁸

Refugees flee persecution, mostly from the state authorities and also increasingly from non-State armed groups. IDPs also escape from these two organized authority structure. Since state itself is the cause of internal displacement in many situations, government authorities cannot be relied exclusively for protecting the displaced and international community may have to offer assistance and support.¹⁹

Howard Adelman and Susan McGrath joined the “debate” and they have also attempted to refute Hathaway’s contention for the exclusivity of “refugee studies”.²⁰ They think that Hathaway is focused on the legal paradigm of “Convention refugees”, in disregard or neglect of “humanitarian refugees” who constitute the overwhelming numbers of world’s refugees today. Underscoring the need and rationale of studying the refugees and IDPs within the overall frame of forced migration, Adelman and McGrath argue:

Hathaway’s radical contrast between IDPs and refugees ignores the recent real-world shift. The international community currently claims a moral and even legal responsibility for potential victims of genocide and ethnic cleansing who are internally displaced, thus eschewing Hathaway’s Westphalian realist paradigm. It is difficult to argue that there is only one way of organizing our studies, particularly when that one system of categorization has a direct impact not only on how areas of state responsibility are studied, but also on how moral responsibilities are construed and how they evolve in practice.²¹

To them, forced migration or refugee studies are a problem area, not a discipline and that forced migration and refugees are “problems to be tackled from the perspective of different disciplines”.²²

¹⁸Ibid.p.371.

¹⁹ See Chapter II

²⁰ Roberta Cohen, “Response to Hathaway”, Journal of Refugee Studies, Vol. 20, No 3. 2007, p.370.

²¹Ibid.p.377.

²²Ibid. p. 378.

1.2: Forced Migration Studies as “Imperial Project”

The “debate” over the “autonomy” of Refugee Studies, imperative of the IDP category and the salience of Forced Migration Studies has also been joined by B. S. Chimni, a prominent international law specialist and a spirited critic of “refugee regime”. Chimni sets out to distance himself from both the critics and defenders of the turn to Forced Migration Studies as he believes that this turn in fact represents continuity. The “expansion of Refugee Studies was a function of the anxieties and concerns of Western states in the wake of increasing movement of asylum seekers from the south to the north...”²³ According to him, Forced Migration Studies should be explored “in the backdrop of a western strategy to employ *political humanitarianism* to legitimize a new imperial world order”.²⁴ The themes that Forced Migration Studies includes and focuses, for example, IDPs, different types of migrants, humanitarian intervention, post-conflict reconstruction etc. reveals that the “concept of forced migration has been reconfigured to *primarily* reflect the geopolitical and strategic concerns of western states..”²⁵ His central thesis, in his words:

[As] the movement of refugees from the south to the north became the primary preoccupation, and the cold war ended, the colonial logic of humanitarianism took over. That is to say, the entry of the southern refugee, without the constraints of the cold war, immediately implicated Refugee and Forced Migration Studies in a radically different project viz., the impulse to reform the Other. It became an integral part of a Civilizing Project in which the focus shifted from refugees to the reform of third world countries whose policies cause extensive internal and external displacement”.²⁶

No doubt, this is a radical proposition and I would submit that the analysis flies on the face of the real world developments. To reduce the countries and people of south to be completely dependent or as a victim of northern countries’ design or selective use of knowledge form is doing a disservice to

²³B. S. Chimni, “The Birth of a ‘Discipline: From Refugee to Forced Migration Studies”, Journal of Refugee Studies, Vol. 22, N. 1, 2009, p.14.

²⁴Ibid. p.13.

²⁵Ibid. p.17.

²⁶Ibid. p. 20.

the agency of state in the south as well as the abject haplessness of the people displaced.

Section 2: Evolution of Refugee Protection Principle

The principle of refugee protection is a distinct 20th Century development embedded in politics, foreign policy and international law of the period. There are references to grant of protection to people who fled discrimination based on religious belief and to escape from capricious rulers by states from 16th Century onwards. However, these were in the nature of ad-hoc decisions and no clear and consistent pattern in such grant of permission can be discerned. The cumulative body of international law and state practices on the subject has evolved since the end of the First World War, especially to manage the large number of people who sought refuge in the wake of the Bolshevik revolution in Russia in 2017. A definitive moment was the 1951 Convention on the Status of Refugees and the establishment of UNHCR in 1950. However, many developments preceded these two significant milestones. We shall briefly discuss these developments at the international level since 1920.

The League of Nations High Commissioner for Refugees was established in 1921 under the direction of Fridtjof Nansen. It was supposed to be a temporary organization to deal with the exodus of more than 1 million Russians- aristocrats and others escaping the Bolshevik revolution of 1917. The refugee problem was recognized as an international issue but the new organization was limited and handicapped, lacking resources and support. The US and USSR were not members. The HCR did not attempt any general definition for a refugee. Rather it relied on a category-oriented approach that identified refugees according to group affiliation and origin.²⁷

Russian exiles were considered as refugees. Later on, the description was also extended to Armenians and some other groups as well. According to Gil Loescher, “Despite the much-publicized shortcomings of the inter-war refugee regime, the appointment of Nansen as High Commissioner constituted the first formal acknowledgement of international responsibility toward refugees,

²⁷See Laura Barnett, “Global Governance and the Evolution of the International Refugee Regime” *International Journal of Refugee Law*, Vol. 14, No. 2 and 3, April 2002, pp. 238–262, https://doi.org/10.1093/ijrl/14.2_and_3.238

and Nansen proved to be a highly innovative and successful advocate for them, particularly in facilitating assistance to certain groups of refugees”.²⁸To his credit, he persuaded 51 countries to recognize travel document which came to be known as “Nansen passports”.

In 1933, a Convention Relating to the International Status of Refugees was drawn. Refugees were categorized as people who lacked protection and were effectively without a nationality. Laura Barnett points out: “The Convention provided a definition that based refugee status on lack of protection and effective non-nationality. Although still category oriented, this provided a clear indication of what was required to belong to such a group”.²⁹

The 1933 Convention was the first to oblige the signatory states not to expel authorized refugees from their territories and to avoid “non-admittance [of refugees] at the frontier.” Its Article 3 reads:

Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

Europe was flooded with new groups of refugees, fleeing fascism in a number of countries in the 1930s. No effective international cooperation to address the issue and provide support to the people could be undertaken, principally for political reasons. Governments were more willing to accommodate and buy peace with Germany than in antagonizing it and as a result stricter exit controls and emigration restrictions were imposed. Millions of people died in Soviet Union under Stalin’s brutal regime but only very few numbers could get out of the country. France gave refuge to Italians and Spaniards fleeing the fascist governments in their countries. In 1938, yet another Convention, the Convention on the Status of Refugees Coming From Germany was signed. It created a stricter definition that excluded people fleeing from Germany for personal reasons from becoming refugees.

²⁸Gil Loescher, Beyond Charity: International Cooperation and the Global Refugees Crisis, Oxford University Press, New York, Oxford, 1993. p.37.

²⁹Barnett, n.27.

After the death of Fridtrjof Nansen in 1930, the nascent refugee protection system which was consolidating suffered a lack of direction. There was hardly any advancement except for the Convention of 1933 and later the 1938 Convention. As “the scale of Jewish refugee problem grew, any will to resolve it faded”.³⁰ There was no interest and enthusiasm in embracing the persecuted German Jews and other refugees. High Commissioner for German refugees, James G. McDonald resigned in frustration. In his letter of resignation, he underlined the political roots of the problem:

The efforts of the private organizations and any of the League organization for refugees can only mitigate a problem of growing gravity and complexity. In the present economic conditions of the world, the European States, and even those overseas, have only a limited power of absorption of refugees. The problem must be tackled at the source if disaster is to be avoided.³¹

McDonald believed that it was crucial to confront the causes that created the refugees and thought that it was necessary to negotiate with the country responsible for the exodus. In his view, this is a political responsibility of the Great Powers. His words are prophetic but then he was ahead of his time. Great Britain and France were not interested in confronting Germany. They were more interested in appeasing Germany and hence no international action followed.

The Second World War displaced millions of people. Due to redrawing of the national boundaries, millions were left without any effective nationality. Many countries expelled minorities and in most cases it was based on political allegiance especially during the war. The Allied Powers created the United Nations Relief and Reconstruction Agency (UNRRA) in 1944 to deal with the new population flows. The UNRRA was expected to organize relief, and set up mass repatriation and resettlement programs. From the very beginning, the nascent organization met the hostility of USSR which alleged that UNRRA was acting in a political and partisan manner.

The objection and opposition of USSR toward the activities of UNRRA was carried to the new organization, International Refugee Organization (IRO) established in 1948. IRO's goal was to find a solution for the 1.5 million

³⁰Loescher, n.28, p.43.

³¹Cited by Loecher, n.28, p. 43.

refugees left in Europe, providing relief, repatriation, resettlement, and legal protection for the most difficult cases left by UNRRA.³² To their credit, UNRRA helped 7 million people to return to their home and IRO organized repatriation of 70,000 people and assisted in resettlement of more than a million people in more refugee receptive countries at that time: Canada, Australia, the US, and Israel.

Few observations on the evolution of refugee protection principle are in order. The individualized and Euro-centric orientation of the 1951 Convention is in fact a continuation of the principles and priorities as they developed particularly in the immediate aftermath of the Second World War. The system of determination of refugees based on categories that Nansen had started was abandoned as time passed by. Secondly, assistance to refugees and issues related to their protection was approached by countries from the standpoint of their international relations and foreign policies. Thirdly, considerations of state interests were always prioritized and humanitarian concerns were not the prime factor in policy toward refugees. Lastly, resignation letter of McDonald is instructive for pointing out causes of refugees' (or of IDPs') flight must be addressed to solve the problem.

Section 3: Forced Migration Categories

3.1 The Refugee Category

According to Guy S. Goodwin –Gill, the term refugee is used as a “term of art”, a term ‘having a content verifiable according to principles of general international law.’ To him:

Refugees are a class known to and defined by general international law; that certain legal implications follow from the existence of this class and of related principles (in particular, that states are bound not to return refugees to territories where they may be persecuted or where their life or freedom may be threatened); and that the international community, besides being in a general sense for finding solutions, also has the necessary legal standing to protect refugees.³³

³²Barnett, n.27.

³³ Guy S. Goodwin-Gill, The Refugee in International Law, Clarendon Press, Oxford, 1982, p. vi.

The term did not originate from sociological analysis or empirical observation. Rather it was adopted from humanitarian policy. Two principal conventions govern international refugee law matters: the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol. The Convention sets out the rights of refugees and the standards for their treatment in the countries that receive them. It defines "refugee" in Article 1A (2) as

“...[A]ny 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 [or her] nationality and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country...”.

Since the definition requires that the person concerned should be outside his country of nationality, obviously people displaced within their own country do not meet the criterion. Secondly, the definition privileges individualized persecution. Therefore, displacements due to other situations or conditions like war, generalized violence or development or natural disasters do not qualify to be a legitimate ground for seeking a refugee status. In 1967, a Protocol Relating to the Status of Refugees was signed. It was recognized that there was a disjuncture between the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the scope of the 1951 Convention. Thus geographic and time limit reflected in the Convention were removed by the Protocol but the refugee definition was left unchanged.

The Convention and the Protocol do not make any direct reference to the concept of asylum. Lawful admission to the state and conditions under which it is granted remained under the sole discretion of admitting state. However, under Article 33, the Convention categorically enjoins: "No Contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to...territories where his (or her) life or freedom would be threatened...."

The scope of this research work does not permit a detailed analysis of the 1951 Convention. Suffice would be to say that the refugee definition was considered too narrow, too individualized and reflected the Cold War politics of the time. It was readily seen that the Convention framework of refugee protection was not suitable for situations of mass exodus and the qualifying criterion needs to be broadened. Faced with refugee exodus in massive numbers, African countries decided to conclude agreement on a legal

instrument suitable to Africa. The result was the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa on 10 September 1969. The Convention retained the refugee definition of the 1951 Convention but also added:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Latin American countries further broadened the refugee definition applicable to them through the Cartagena Declaration of 22 November 1984. Refugees are those:

persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

The real world developments in the 1990s have changed the orientation, policies and practices of UNHCR in many different ways. UNHCR was called upon by the UN Security Council to undertake newer responsibilities in a rapidly evolving landscape of violence and conflict. Sadako Ogata, the UN High Commissioner for Refugees had pointed out that "the problem of forced migration has become a much broader and more complex phenomenon than is suggested by the conventional image of a refugee camp. Indeed, refugees in the legal sense of the word now constitute little more than half of the people who are protected and assisted by UNHCR."³⁴ In 2017, the refugee numbers are considerably less than those of the IDPs and it is UNHCR that has been mandated to be the lead protection agency for the conflict-induced IDPs.

3.2: Internally Displaced Persons

Unlike refugees, internally displaced persons (IDPs) are not a legal category. The term does not convey a legal status. It is a description of people who are

³⁴UNHCR: The State of the World's Refugees, 1997-98: A Humanitarian Agenda, Oxford University Press: Oxford.

displaced due to a number of reasons but are located within the country of which they are a national. Since late 1980s, attention to the critical situation of people displaced was first brought to the attention of academic and NGO community by the refugee rights and refugee protection activists. It was pointed out that the internally displaced people are in a “refugee like” situation. Had they crossed their national border, their vulnerabilities and predicament would have qualified them to be considered as refugees and some measure of entitlement. The massive refugee flows of the late 1980s and early 1990s in certain ways acted as a catalyst for the international attention and engagement with the problems of people who are internally displaced. Appointment of a Representative of the Secretary General on Human Rights of Internally Displaced Persons in 1992 was the beginning of a process that culminated in the formulation of Guiding Principles on Internal Displacement. The Representative functioned within the limited responsibility he was assigned by the Commission on Human Rights. A series of initiatives including compilation of norms and laws, based on international humanitarian law, international human rights and by analogy refugee law, applicable to the distressing conditions of the IDPs was compiled by the Representative and finally Guiding Principles on Internal displacement were presented before the UN bodies and the wider international community. Commission on Human Rights and subsequently General Assembly have “taken note” of the Guiding Principles.

The definition of internally displaced persons has been set out in the “Introduction: Scope and Purpose” section of the Guiding Principles. It defines internally displaced persons:

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

The definition has two crucial elements - the coercive character of movement - caused due to a variety of reasons and secondly, that the movement takes place within the national borders. It is noteworthy that contrary to a more general understanding of the reasons for internal displacement, that is

conflict-induced displacement, the Guiding Principles have presented a much broader set of causal factors by including people affected by “natural or human-made disasters” as part of the definition. A detailed analysis of the Principles is part of Chapter II of this work. It was emphasized by the Representative and later on by his successors to the Office that the definition is a description and does not confer a legal status to the IDPs.³⁵

Following categories of people qualify to be considered as IDPs

- Internally displaced citizens of the country concerned
- Former refugees who have returned to their country of origin but are unable to return to their former homes or find another durable solution through social and economic integration in another part of the country
- Displaced stateless persons who have their habitual residence in the country concerned
- Displaced nationals of another country who have lived there for a long time (maybe even generations) and have largely lost contact with their country of nationality
- Displaced nationals of another country who have their habitual residence in the country concerned because they been admitted permanently or for prolonged periods of time.

IDPs constitute the largest component of worldwide force migrants. At the end of 2016, their numbers was more than 40 million. Should the development-displacees and disaster-affected are also included in the count, the figure would be much higher. The scope of this research work is limited to conflict-induced internal displacement and all figures presented and analyzed here pertain to the conflict-induced internally displaced and not all categories of IDPs as defined in broadest possible way in the Guiding Principles.

Internal Displacement Monitoring Centre (IDMC) has emerged as the largest, systematic and current database and source of analysis on all aspects of conflict-induced internal displacement. The UNHCR, which has been designated as the lead agency for the protection of internally displaced people in respect of most important of the issues relevant to IDPs under the new cluster approach of United Nations, also recognizes the data and figures of IDMC. As per the latest IDMC Global Report on Internal Displacement (GRID) published in May 2017, the total number of conflict IDPs at the end

³⁵Walter Kèlin, Guiding Principles on Internal Displacement Annotations, The American Society of International Law & The Brookings Institution-University of Bern Project on Internal Displacement, 2nd ed. 2008.

of 2016 is 40.3 million.³⁶New displacements associated with conflict and violence for the period, January-December 2016 is 6.9 million.³⁷Estimates of disaster IDPs have also been made by GRID 2017. 24.2 million people were newly displaced as result of disaster during 2016.³⁸

Number of new IDPs is averaging 5.3 million every year since 2003, about 15,000 people forced to flee their home every day. The overwhelming number of people newly displaced in 2016 (6.9 million) are primarily in sub-Saharan Africa and the Middle East. The top 10 internal displacement generating countries in 2016 as per IDMC are: Democratic Republic of Congo (922,000), Syria (824,000), Iraq (659,000), Afghanistan (653,000), Nigeria (501,000), Yemen (478,000), India (448,000), Ethiopia(296,000), South Sudan (281,000) and Philippines (280,000).³⁹

3.3: Disaster IDPs

Definition of “Internally Displaced Person” in the 1998 Guiding Principles on Internal Displacement includes people displaced by “natural or human-made disasters”. This implies that development-induced displaced people and resettlers as well as people displaced because of natural calamities and disasters are included, for the purpose of assistance and protection. There was disagreement amongst the scholars and experts who were consulted and contributed to the development of the Guiding Principles. A strong view was that the IDP category should be exclusively for people who are conflict-displaced. Roberta Cohen writes that despite opposition, “majority favoured including those uprooted by natural disasters because in responding to disasters, governments often discriminate against or neglect certain groups on political or ethnic grounds or overlook their human rights in other ways”.⁴⁰ Governments are most reluctant to accept the category of “disaster IDPs”: in US, government officials settled on every possible description of

³⁶ IDMC, Global Report on Internal Displacement, May 2017.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Internal displacement in 7 of these countries are analyzed in Chapter II.

⁴⁰Roberta Cohen, “An Institutional Gap for Disaster IDPs”, *Forced Migration Review*, No. 32, pp. 58-59.

those people uprooted by Hurricane Katrina who were variously described as “refugees”, “evacuees”, “disaster victims” except IDPs.⁴¹

There are important differences between conflict IDPs and disaster IDPs but as a result of continuing the separation would be that disaster IDPs would be perceived as “not having human rights and protection problems”. Walter Kälin, the Representative of Secretary General on Human Rights of Internally Displaced People aptly remarked: “the causes of displacement could be legal or illegal, but the legality did not alter the factual state of being internally displaced”. He has developed “Operational Guidelines for Human Rights and Natural Disasters”, which has been adopted by the Inter-Agency Standing Committee in 2006. The Guidelines prioritizes the human rights and protection concerns of people uprooted by natural disasters.⁴² In this context, it is noteworthy that environmental degradation and climate changes would impact millions of people in not so distant a future and therefore there is some urgency for institutional arrangements to be developed at the international level for the disaster IDPs.

3.4: Development-induced Displacees/Resettlers

Guiding Principles also include in the description of an IDP, people who are displaced due to ‘human-made disasters’. Human-made disasters include people who are displaced and at times resettled elsewhere due to development projects. Principle 6.2(c) states that all human beings have a right to be protected from ‘arbitrary displacement’, including cases of “large scale development projects, which are not justified by compelling and overriding public interests”. Michael M Cernea who was senior advisor of the World Bank and extensively worked on large-scale development projects and their effect on human settlement, considers this inclusion as a ‘key conceptual gain, breaking new ground’. To him, internal displacement is not limited to one sub-type of displacement only- war or conflict-displacees –but embraces all populations forcibly displaced, either by wars, civil wars, persecution, or by development projects, who are uprooted from their lands yet do not cross a

⁴¹ Ibid.

⁴²Ibid. p.58.

national frontier”.⁴³Development projects almost invariably induce human displacement. According to him, “some people enjoy the gains of development, while others bear its pains”. Susan Martin points out: “[i]nvoluntary relocations occur, for example, as a result of the building of dams for irrigation or hydropower, highway construction, and urban renewal. Some governments have tried to redistribute residents from over- to under-populated regions, sometimes compelling relocation through force”.⁴⁴ People displaced by development worldwide are the single-largest sub-category within the world total of displaced people. Millions have been displaced in big countries like China and India and at times people have been left to fend for themselves without assistance from the government. This is a worldwide phenomenon and most of the countries have generated development-displacees. In many cases, government tries to help resettle the displacees but the gap between the promise of government assistance and compensation and the implementation of the promises on the ground is generally stark. According to David Turton:

[F]orced resettlers have been deliberately moved by their own governments in the name of ‘eminent domain’ law, which allows property to be expropriated from its owners or traditional users for the sake of a wider public good. Forced resettlers, therefore, expect to be compensated for the land and property they have lost and it remains the theoretical responsibility of the government that moved them, under the national legal system, to provide them with protection and assistance”.⁴⁵

It is evident that there is a research divide, a gap between those who study conflict displacement and those who focus on development-displacees/resettlers. Turton pleads for a “unitary study of forced migration” and quotes Cernea on the divide and how it is a disservice to the study of the emerging discipline:

...the literature on ‘refugees’ coexists side by side with a literature on ‘oustees’ or on ‘development caused involuntary displacement’. There is little communication and mutual

⁴³Michael Cernea, “Development-induced and Conflict-induced IDPs: Bridging the Research Divide”, Forced Migration Review- Bern Special Issue 25, pp. 25-27.

⁴⁴Susan F Martin, “Forced Migration and the Evolving Humanitarian Regime, 2000, Working Paper No.20, New Issues in Refugee Research, UNHCR, 2000, p. 7.

⁴⁵David Turton, “Refugees, Forced Resettlers and ‘Other Forced Migrants’: Towards a Unitary Study of Forced Migration”, Working Paper No. 94, New Series in Refugee Research, UNHCR, September 2003.

enrichment between them. Concepts and propositions are not inter-linked, and empirical findings are rarely compared and integrated. For instance, most of the writings on refugees omit oustee groups from the typology of displaced populations. In turn, research on oustees forgoes the opportunity of doing comparative analysis by studying refugees. As a result, the chance for more in depth treatment is being missed.⁴⁶

3.5: Stateless People

There are many reasons for statelessness, a situation that currently about 10 million people face worldwide. Discrimination against particular cultural or religious minorities, emergence of new states involving transfer of territory and associated problems of State Succession and conflict of nationality laws are the chief reasons for the existence and continuation of the problem. Minorities who do not enjoy the confidence of the authorities or face hostility of the majority community in the country they reside often face discrimination, violence and repression which may cause their flight. Statelessness also occurs when refugees lose their former nationality without being successful in acquiring a new nationality. António Guterres, United Nations High Commissioner for Refugees while launching UNHCR's Global Action Plan observed: "Statelessness is a profound violation of an individual's human rights. It would be deeply unethical to perpetuate the pain it causes when solutions are so clearly within reach. This Global Action Plan sets out a strategy to put a definitive end to this human suffering within 10 years. I count on your support to help make this ambitious goal a reality."⁴⁷The objectives of the Plan are to resolve existing major situations of statelessness, prevent new cases of statelessness from emerging and to better identify and protect stateless populations.

As per a publication of UNHCR:

Governments may amend their citizenship laws and denationalise whole sections of society in order to punish or marginalize them or to facilitate their exclusion from the state's territory. The formation of new states,

⁴⁶Cited in Turton, n.3, p.294.

⁴⁷UNHCR, [Global Action Plan to End Statelessness, 2014-2024](http://www.unhcr.org/en-us/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html), November 2014.

resulting from decolonization or the disintegration of a federal polity, may leave thousands or even millions of people stateless or with a disputed claim to citizenship. Large-scale statelessness may also arise in the context of mass expulsions and refugee movements, especially when the population concerned has lived in exile for many years without acquiring citizenship.⁴⁸

Without a nationality, stateless people live a precarious life with restrictions on enjoyment of rights and exclusion from the entitlements of citizens. Those not considered its citizens by any state are *de jure* stateless people but there are also people of undetermined nationality. Stateless people are generally invisible, living on the margin of society and it has been a challenging task to estimate the numbers of stateless people. UNHCR, which has the mandate for stateless persons, collaborates with statisticians and national authorities to assist in identifying the number of stateless people in that country.⁴⁹

Statelessness and forced migration are interrelated. The two processes can both be a cause and consequence. In the wake of the disintegration of the former USSR, 15 independent states emerged but the entire process of state formation left thousands of people without a nationality. For example, Estonia and Latvia's new nationality laws granted citizenship only to those residents and their descendants who were citizens at the time the Soviet Union occupied these countries in 1940. Post-1940 settlers or their descendants could naturalize but only if they showed a proficiency in the local language. This effectively barred ethnic Russians. About 1.2 million were thus rendered stateless.

3.6: Repatriated/Returnees

While the numbers of IDPs have grown exponentially throughout the world, the number of refugees has seen relative decline. Inter-connect between the decline of the numbers of refugees and the rise in the number of IDPs is well established. Yet another factor is refugee repatriation. Host country predicaments and insecurity coupled with the increasing violence against the refugees at the local level makes repatriation inevitable.

⁴⁸UNHCR: 1997,

⁴⁹UNHCR, Global Trends: Forced Displacement in 2016.

UNHCR considers voluntary repatriation as the best possible durable solution to the refugee problems. With other two durable solutions- local integration and resettlement – losing their acceptance amongst host countries, repatriation remains the only option to promote. As per UNHCR, “Voluntary repatriation (the free and voluntary return to one’s country of origin in safety and dignity) is the solution of choice for a vast majority of refugees”. This implies the “restoration of national protection (to obviate the need for international protection) and, through the reintegration process, the ability to maintain sustainable livelihoods, access basic services and fully reintegrate into communities and countries of origin”. UNHCR is expected to “situate its repatriation and reintegration work within a broader context of transition from conflict to peace and try to build peace and bridge the gap between relief and development so as to avoid creating a dependence of returnees on humanitarian assistance and to ensure returnees’ early and sustainable reintegration”.⁵⁰

Principle of voluntary repatriation is laudable but over the last few decades, the emphasis on “voluntariness” of repatriation is absent in policies and practices of UNHCR.⁵¹ According to B S Chimni, during 1985-93, voluntary repatriation as a durable solution found favour with UNHCR but in 1993, UNHCR introduced the notion of safe return in the discourse on durable solutions. From 1996 onwards, the focus has completely shifted. UNHCR has become involved in return and repatriation processes which are clearly involuntary.⁵² Research demonstrates that notion of return in safety and dignity is emphasized by the agency but there is considerable confusion about what it means in practice.⁵³

⁵⁰UNHCR, Handbook for Repatriation and Reintegration Activities, 1996
<http://www.refworld.org/docid/416bd1194.html>

⁵¹ See Sane Takahashi, “The UNHCR Handbook on Voluntary Repatriation: The Emphasis of Return over Protection”, International Journal of Refugee Law, Vol. 9, 1997, p.593.

⁵² B. S, Chimni, “From Resettlement to Return: Towards a Critical History of Durable Solutions to Refugee Problems”, Refugee Survey Quarterly, Vol. 23, No. 3, 2004, pp. 55-73.

⁵³ Megan Bradley, “Return in Dignity: A Neglected Protection Challenge”, University of Oxford, RSC Working Paper No. 40, June 2007. <https://www.rsc.ox.ac.uk/files/files-1/wp40-return-in-dignity-2007.pdf>

In recent years, UNHCR admits in its annual reports that repatriations occur in less than satisfactory conditions. This is an understatement as forced return has become much more pronounced and despite its reservations, the agency works with the unwilling host countries to effect repatriation often in the face of opposition of the refugees.

Most refugee situations in the last two decades have seen forced return. “Voluntariness” of return has been forced as the conditions in the host country deteriorated. In the 1980s, Ugandan refugees in Sudan and Zaire found the conditions, with acute crisis in food supply and availability of medicines, horrible and preferred “anything better” than continue their indefinite exile. This “anything better” was return to their home countries where conditions had not improved. Susan Martin writes:

Deteriorating conditions in the asylum country, rather than changes in the home country, provoke the most troubling type of repatriation. To give two examples: early in the 1990s, increased fighting in Somalia prompted the return of Ethiopian refugees to still insecure areas; later in the decade, fighting in Zaire (Congo) forced the repatriation of thousands of Hutus to Rwanda. This form of repatriation is troubling for two reasons: one, premature return can endanger the refugees who may move from one insecure situation into another; two, such forced return undermines the entire concept of asylum, that is, a place where refugees can find protection from danger and persecution.⁵⁴

Principle of choice of return for the refugees can be deduced from Universal Declaration of Human rights. The Guiding Principles have also have uphold the right of return of the internally displaced in secure and dignified conditions. In many cases, however, like the refugees, IDPs find the conditions of their return neither safe nor dignified. Those who return may have lost their land and houses. The realm of insecurity does not end with return and protection needs continue. The refugee returnees as well as the IDP returnees, the circumstances of their return and the issue of the loss and retrieval of their properties and possessions remain an important aspect of research in Forced Migration.

⁵⁴Martin, n.41, p.6.

3.7: “Involuntary Immobility”

The relationship between migration and displacement is central to understand the nature and contour of forced migration studies. Is it necessary that to be “displaced” one has to move (migrate)? Secondly, is it inevitable that displacement has to be a byproduct of a crisis (war, persecution, human rights violations)? These questions have been raised in the context of “forced immobility” and “socially empowering forced migration” by Lubkemann from the perspective of anthropology based on his research studies amongst tribal communities in Africa.⁵⁵ He argues that “preconceived notions about the relationship between mobility and social place tend to render invisible an entire category of people whose lives are as profoundly (and sometimes more) disturbed by the effects of conflict on the mobility environment as are the lives of wartime migrants”. However, this category of people may not even have “moved” at all. Involuntarily immobilized populations “may suffer from forms of displacement that are as ‘forced’” as those of many people who migrate due to the effects of war.⁵⁶ It is useful to analytically de-couple displacement from migration. This relationship is always assumed but it possibly needs to be investigated and as such it is necessary to expand the frame of reference of forced migration studies to include such populations.

3.8: Deportees

Almost all migration is a matter of both force and choice. Forced migrants, refugees or IDPs, also do have a choice and can exercise their choice in respect of when, where and how they would depart. In contrast, people who are deported have no choice; they are truly forced out. Matthew J Gibney argues that deportees are “a type of migrant that constitutes forced migration par excellence”.⁵⁷ Deportees who do not submit to the order to leave are physically ousted. Deportation is “a form of international movement that is push and no pull”. Gibney points out that deportation and deportees are neglected by forced migration scholars because they are “forced to move home” and “not forced out of home” and also because deportation is not a

⁵⁵Stephen C. Lubkemann, “Involuntary Immobility: On a Theoretical Invisibility in Forced Migration Studies”, Journal of Refugee Studies Vol. 21, No. 4. 2008, pp. 454-475.

⁵⁶ Ibid.

⁵⁷Matthew J. Gibney, “Is Deportation a Form of Forced Migration?” Refugee Survey Quarterly, Volume 32, Issue 2, 1 June 2013, Pages 116–129.

significant issue numerically or politically. He thinks that “[d]eportation, unlike other forms of forced migration (e.g. refugees, conflict-induced displacement, etc.), does not violate the key principles of a liberal-statist world order that it is treated differently from other types of forced migration and accepted as legitimate”.⁵⁸

3.9: Displacement Caused by Organized Gangs

Recent scholarship has drawn attention to forced displacement generated by organized crime. David James Cantor has analyzed this alarming phenomenon across Mexico, El Salvador, Guatemala and Honduras in a significant study.⁵⁹

Three types of criminal groups—mara street gangs, drug transporters and drug cartels are the agents of large scale displacement in Mesoamerica.⁶⁰ In Mexico, about 2 per cent of the country’s population, about 1.65 million people, changed residence in five years between 2006 and 2011. This was due to the threat or risk of violence emanating from the organized gangs.⁶¹ In El Salvador, 2.1 per cent of population had to change their home due to threats in a year (2012) as per the above study. The resultant displacement is mostly internal as the opportunities for seeking, and gaining, asylum is difficult. There is both a scope and a need to study this phenomenon under forced migration as not only a large number of people are affected but also because the overall ‘invisibility’ of such displaced people hampers the efforts of the national authorities and the international community to work toward finding an appropriate approach and response strategy.

⁵⁸ Ibid.

⁵⁹David James Cantor, *Forced Displacement Caused by Organized Crime in Central America and Mexico*, *Refugee Survey Quarterly*, Vol. 33, No. 3, 2014, pp.34-68. See also, M. Boultron, *Living in a World of Violence: An Introduction to Gang Phenomenon*, UNHCR Legal and Protection Policy Series, 2011.

⁶⁰Generally referred to as the region encompassing Mexico and the countries of the North Triangle of Central America, i.e., El Salvador, Guatemala and Honduras. Belize, Nicaragua and parts of Costa Rica are also included in the use of the term.

⁶¹Cantor, n. 56, p.36.

3.10: Mixed Migration

A growing interest on the subject of “mixed migration” in recent years may be noted. Long-distance travel has become easier and clandestine means are often resorted to reach destination of choice. The migratory impulses are increasingly fuelled by transnational pull factors. There are security concerns related to irregular movements also. Refugees seek protection against persecution and an international legal framework exists for them. Question is how to separate the refugees and asylum seekers from other migrants who move for reasons other than to escape from persecution? Thomas Linde points out: Mixed migration appears like a translation of the term ‘*nexus*’, which denoted an *interface* between categories, into the concrete imagery of a mixture of migrants and refugees”.⁶² Migrants are usually categorized in terms of status rather than their needs and therefore it is not at all clear what policy and approach may be adopted for them by humanitarian organizations.

International Federation of Red Cross and Red Crescent Societies (IFRC) have adopted a policy to focus on “the needs, vulnerabilities and potentials of migrants, irrespective of their legal status, type, or category”. Linde considers that this undertaking by IFRC would be “a tall order for public policy makers in today’s political environment to apply so radical an idea of humanitarianism in situations of mixed migration”.⁶³In 2006, UNHCR launched a 10-Point Plan of Action on Refugee Protection and Migration with an emphasis on the need to protect refugees and asylum-seekers within the larger phenomenon of mixed migration movements which has emerged as a new and acute challenge. As per the UNHCR document: “ More often than not such movements are irregular, in the sense that they take place without the requisite documentation and frequently involve human smugglers and traffickers. The people who move in this manner often place their lives at risk, are obliged to travel in inhumane conditions and may be exposed to

⁶² Thomas Linde, “Mixed Migration- A Humanitarian Counterpoint”, Refugee Survey Quarterly, Vol.30, No. 1, 2011.

⁶³Ibid. p. 90.

exploitation and abuse. States regard such movements as a threat to their sovereignty and security”.⁶⁴

UNHCR has called upon the international community to “address this phenomenon in a more coherent and comprehensive manner”.⁶⁵

Section 4: Refugee Regime: 1990s and Beyond

Developments during the 1980s and 1990s suggested that the traditional refugee protection role of the UNHCR was evolving; both in response to the nature of the imminent crises as well as due to the increasingly restrictive policies states were adopting to stem the tide of refugee flows into their territory. Driven by a ‘donor fatigue’ and difficult community reception to the influx of refugees in the asylum countries, restrictive practices were becoming common. The post-Cold War promise of international stability, away from the pitfalls of super power rivalry and resultant conflict was widely expected to usher in peace and hopefully, as a result, of the minimization of conflict and displacement. The result was just the contrary. Disintegration of USSR and the eventual emergence of 15 independent countries brought about massive mass movement across borders, often accompanied by internal conflict. With the “protective umbrella” of super power rivalry and competition which also had spelled some stability gone, varieties of internal conflict involving ethnic, sub-national and territorial claims in different parts of the world resulted in chaotic conditions engendering human life and security in an unprecedented way. Fragile national identities, national frontiers and institutions in many countries across the world and particularly in Asia and Africa and in post-Soviet space came under increased pressure over contestation for power and legitimacy. Some salient features that characterize most of the conflict and the resultant displacement in the post-Cold War era are highlighted by Guido Ambroso:

⁶⁴UNHCR, Refugee Protection and Mixed Migration: A 10-Point Plan of Action, January 2007.

<http://www.unhcr.org/protection/migration/4742a30b4/refugee-protection-mixed-migration-10-point-plan-action.html>

⁶⁵ Ibid.

- Growth in internal displacement figures above those of “classical” cross-border movements.
- Intra state-conflicts/civil wars based on ethno-political identities often resulting in overt or covert secessionist movements.
- Non-state actors are also emerging as agent of persecution.
- Civilians and humanitarian workers are deliberately targeted.
- Complex and massive emergencies are leading to large-scale displacement.⁶⁶

According to Myron Weiner, four reasons cause mass refugee exodus: interstate wars, ethnic conflicts, non-ethnic civic conflicts and flights from repressive, authoritarian and revolutionary regimes. There are geographic clusters of countries producing refugees. In these “bad neighbourhood”,... violence and brutality impel large numbers of people to cross international borders in search of security”.⁶⁷

The major cause of refugee flows undoubtedly is civil war. As per the ICRC: “With the exception of displacements caused by natural or technological disasters, the prevention of population movements corresponds essentially to the prevention of armed conflict and the prevention of abuses during armed conflict”.⁶⁸

Yet another aspect that got highlighted during the 1990s was the interlinkages between refugees and militarization. Militarization of refugee camps is a serious issue with lot of implications. Quite often the refugees are used by rival political groups. Refugees themselves are not necessarily uninvolved. Very much part of the political-military dynamics, refugees often take sides. A large percentage of refugee crises involve ‘militarized

⁶⁶ Guido Ambroso, “The End of History? Conflict, Displacement and Durable Solutions in the post-Cold War Era”, Research Paper No. 207, New Issues in Refugee Research, UNHCR, May 2011, p. 4-5.

⁶⁷ Myron Weiner, “Bad Neighbour, Bad Neighbourhoods: An Enquiry Into the Causes of Refugee Flows”, International Security, Vol. 21, no. 1, 1996.

⁶⁸Y. Sandoz, “Internally Displaced Persons”, paper presented at UNHCR Subcommittee on Internal Protection, Geneva, 18 May cited in Adam Roberts, “More Refugees, Less Asylum: A Regime in Transformation”, Journal of Refugee Studies, Vol. 11, No 4, 1998, p. 378.

refugees”.⁶⁹ Sadako Ogata, the former UN High Commissioner for Refugees, had pointed out that there was a “world-wide [...] problem of separating refugees from fighters, criminals, or even ge´nocidaires”. Sue J. Nahm has noted:

As long as civil war remains an issue for refugee and IDP hosting countries (and their neighbours), militarization also remains a real threat. Indeed, common to both refugee-hosting and refugee-sending states is the prevalence of armed violence and war as both a cause and effect of displacement. Massive refugee influxes in Tanzania, Uganda, Rwanda and Guinea in recent years have been the result of internal conflict in these so-called “bad neighbourhoods” and have contributed to chronic domestic insecurity and instability. With the exception of Tanzania, civil war and massive internal displacement have at some time compromised the host state’s capacity to provide refugee protection and assistance. Moreover, common to all Africa’s conflicts are the ubiquity and diffusion of small arms – assault rifles, grenade launchers and semi-automatic weaponry.⁷⁰

James Milner points out: “The direct threat, posed by the spillover of conflict and refugee warriors, is by far the strongest link between refugees and conflict. There are no intervening variables between refugees and violence as refugees themselves are actively engaged in armed campaigns against the country of origin.”⁷¹ Refugee warriors would often be located near the borders and “raids and guerilla activity across the border may drag the host state into an existing conflict, and in fact this may be the deliberate strategy of the

⁶⁹ R. Muggah and E. Morire, “Arms Availability and Refugee Militarization in Africa – Conceptualizing the Issues”, in R. Muggah ed., No Refuge: The Crisis of Refugee Militarization in Africa, London, Zed Books Ltd., London, 2006, p. 3.

⁷⁰ S.J. Nahm, “From Bad to Better: Reflections on Refugee and IDP Militarization in Africa”, in R. Muggah ed., No Refuge: The Crisis of Refugee Militarization in Africa, Zed Books Ltd., London, 2006, p. 225.

⁷¹ James Milner, “Refugees and Security in South Asia: Responding to the Security Burden”, in Omakash Mishra, ed. Forced Migration in the South Asian Region: Displacement, Human Rights and Conflict Resolution, Manak Publications, New Delhi, 2004, p. 210.

armed exile group”.⁷²Refugee warriors “invite retaliation, complicate relations with other states, and threaten the host states and security of their citizens”.⁷³

An inevitable result was conflict, insecurity and consequent flight and displacement. This directly impacted the hitherto international system and arrangement which had developed over the last four decades for the protection of the refugees and “durable solutions” to their problem.

4.1: Concept of Prevention and Root Causes Approach

Concept of prevention was promoted by UNHCR in an effort to give “policy coverage to activities seeking to reduce access to asylum, particularly to industrialized countries, and to put the financial and political costs of the response to forced displacement in the countries where it originated”.⁷⁴The 1992 Note on International Protection considered “prevention to be an umbrella term covering activities both to attenuate causes of departure and to reduce or contain cross-border movements or internal displacements. Prevention is not, however, a substitute for asylum; the right to seek and enjoy asylum, therefore, must continue to be upheld”.⁷⁵ In 1993, it further clarified the concept which “is not to obstruct escape from danger or from an intolerable situation, but to make flight unnecessary by removing or alleviating the conditions that force people to flee”.⁷⁶

Failure of techniques of in-country protection which the concept of prevention spawned in Srebrenica, Bihac and Zepa, opened a floodgate of criticism. Michael Barutciski pointed out: “the international refugee regime’s recent

⁷² Alan Dowty and Gil Loescher, “Refugee Flows as Grounds for International Action”, International Security, Vol.21, no.1, Summer 1992, p. 49.

⁷³Gil Loescher, “Refugee Movements and International Security”, Adephi Paper 268, IISS and Nuffield Press, London, 1992, p.15.

⁷⁴FN See Joseph Zapater, “Prevention of Forced Displacement: The Inconsistencies of a Concept”, Research Paper No. 186, New Issues in Refugee Research, UNHCR, April 2010.

⁷⁵UNHCR, Executive Committee of the High Commissioner’s Programme, Note on International Protection, 25 August 1992, A/AC.96/799, para. 26.

⁷⁶UNHCR, Executive Committee of the High Commissioner’s Programme, Note on International Protection, 31 August 1993, A/AC.96/815, para. 37.

preoccupation with in-country protection is intended to reinforce State policies that deny entry to asylum seekers, and that the Office of the United Nations High Commissioner for Refugees is assigned these interventionist activities in order to indirectly subvert its original palliative role.”⁷⁷ Nonetheless, UNHCR attempted to link prevention with the issue of addressing the causes of refugee movements and defined preventive action as “initiatives which have the effect of averting the occurrence and recurrence of those conditions which force people to leave their usual place of residence”.⁷⁸

In 1997, UNHCR Executive Committee in its “General Conclusions on International Protection” noted that UNHCR has “a role in facilitating lasting solutions, in contributing to the resolutions of refugee crises, and in addressing their root causes”. This suggested not only a broadening of the category of people who are of concern to the agency but to the extent that it would also preoccupy itself with the “root causes” effectively meant that political aspects and issues involved in such undertakings would not be far behind.

To meet the challenges of refugee protection, UNHCR has attempted to engage with refugee-producing countries. According to an UNHCR official: “By addressing the problems, which cause refugee flows, the so-called “root” causes, in the country of origin, it is hoped that refugee flows can be contained at their source”.⁷⁹ He also writes: “Focusing on the countries of origin also recognizes the fact that these countries have an obligation to create the political and practical conditions necessary for the safe return and reintegration of the refugees. The increasing emphasis on prevention, return and attention to the “root causes” has produced a change in the way UNHCR

⁷⁷Miachel Barutciski, “The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina (1992-94)”, International Journal of Refugee Law, Vol. 8, 1996, pp. 49-110.

⁷⁸UNHCR’s role in the Prevention of Refugee-producing Situations, UNHCR, Geneva, 1999.

⁷⁹ J. M. Castro-Magluff, “Role of the UNHCR in Addressing the Problem of Forced Migration”, in Omprakash Mishra, ed. Forced Migration in the South Asian Region: Displacement, Human Rights and Conflict Resolution, Manak Publications, New Delhi, 2004, p. 102.

has approached the protection of refugees.”⁸⁰ The critics, however, charged that the “preventive protection- another word for “root causes” is largely employed to allow the West to more easily evade its responsibilities under refugee law.

4.2: Security Council and Refugee Flows

Security Council Resolution 688 of 5 April 1991 attempted to protect the minority Kurds in the northern Iraq by creating a “safe haven” for them. A direct connection between refugee flows and international security issues was made in the Preamble of the Resolution: “Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in the Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region”.

In the case of Bosnia and Herzegovina of former Yugoslavia, Security Council Resolution 752 of 15 May 1992 referred to “the large number of refugees and displaced persons” and supported “current efforts to deliver humanitarian aid to all the victims of the conflict and to assist in the voluntary return of displaced persons to their home”. This emphasis on “voluntary return” suggested the active preoccupation of the Council not to encourage further refugee flows in Western Europe. With regard to Somalia, letter of Secretary General Boutros-Ghali of 29 November 1992 to the President of Security Council became the basis for Security Council’s Resolution of 3 December 1992. The Resolution explicitly authorized a military intervention within a country without the consent of the government. Secretary General’s letter had pointed out that “at present no government exists in Somalia that could request and allow” a humanitarian intervention. The letter asked the “Security Council to make a determination under Article 39 of the Charter that a threat to peace exists, as a result of the repercussions of the Somali conflict on the entire region, and to decide what measures should be taken to maintain international peace and security”.⁸¹

⁸⁰Ibid. pp.102-103.

⁸¹Security Council, UN Doc S/24868 30 November 1992:3

United Nations was caught in indecision when a massive humanitarian crisis engulfed Rwanda. Within a matter of few weeks, thousands of people were killed in the fierce and widespread ethnic conflict. United Nations Assistance Mission for Rwanda (UNAMIR) was already stationed in the country but instead of bolstering its presence and empowering an enabling mandate, the Council proceeded to virtually withdraw the mission. However, after the nature and extent of mass extermination of Rwandans shook the world, Security Council sprung to action. Council's Resolution of 918 of 17 May 1994 expressed concern over "a humanitarian crisis of enormous proportions" and decided to extend the mandate of UNAMIR. The Mission was tasked to "(a) to contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas; (b) to provide security and support for the distribution of relief supplies and humanitarian relief operations".

With reference to Haiti, Security Council resolution of 31 July 1994 authorized the "use of all necessary means to facilitate the departure from Haiti of the military leadership... and to establish and maintain a secure and stable environment". The Resolution expressed the concern of the Council to the "desperate plight of Haitian refugees". To put it differently, the situation of the refugees and issues related to refugee flow into neighboring countries and issue of provision of humanitarian assistance to the displaced within their country were considered by the Security Council while responding to the above crises. Noteworthy is that refugee flows have triggered international response and action and the substance of these actions have limited the outpouring of refugees into neighboring areas and indeed across borders.

4.3: Temporary Protection

Rise of the idea of "temporary protection" was in direct relation to the nature of refugee flows in 1990s. Many states put emphasis on this idea and device to deal with the problem of refugee influxes in response to the war in former Yugoslavia. According to Roberts, "temporary protection has solid merits. During an ongoing war, refugees can enjoy the real security that comes from being under the protection of a functioning state; and because the

arrangement is temporary, it can be granted more readily than alternative arrangements which have greater implications of permanence”.⁸²

It has been argued that as a concept “temporary protection” is applicable only in mass influx situations. It is, however, difficult to define a mass influx and the period for temporary protection to last. In the first meeting of the Third Track on Global Consultations on International Protection by UNHCR, a number of questions and issues in this regard were raised: “A number of delegations from countries hosting large number of refugees described the massive impact these refugees have on their society, infrastructure, economy and environment. Some warned that the international system for refugee protection would collapse unless the international community helps States to shoulder the burden of hosting refugees, particularly for protracted period”.⁸³

As per a UNHCR document, Temporary Protection or Stay Arrangements (TPSAs) is an “emergency response to the large-scale movement of asylum-seekers, providing immediate protection from refoulement and basic minimum treatment”. UNHCR considers these as “responses to humanitarian crises and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate” and that these are “pragmatic “tools” of international protection, reflected in States’ commitment and practice of offering sanctuary to those fleeing humanitarian crises”. It is also considered that “TPSAs are complementary to the international refugee protection regime, being used at times to fill gaps in that regime as well as in national response systems and capacity, especially in non-Convention States”.⁸⁴

⁸²Roberts, n.80.

⁸³Global Consultations on International Protection, Draft Report of the First Meeting in the Third Track, UNHCR, EC/GC/01/8, 20 April 2001, para 15.

⁸⁴UNHCR, Guidelines on Temporary Protection or Stay Arrangements

<http://www.unhcr.org/542e99fd9.pdf>

4.4: Restrictive Policies

Admission of refugees is increasingly perceived as against the self-interest of the host state. Host states also feel that commitments to refugee protection may tantamount to an abdication of their migration control mechanism. In view of refugee flows overwhelming their willingness or capacity, many western countries have adopted sophisticated policies of *non entrée*. These restrictive policies are designed to effect barriers and restrict the numbers of asylum seekers. Visa requirement, carrier sanctions, multilateral burden shifting arrangements, bilateral readmission treaties, safe third country concept, interdiction of potential refugees at the frontier, summary exclusion process—these are all part of the restrictive practices devised and designed to stem refugee flows.⁸⁵

Increasing domestic restrictions is reflected in the European countries' various attempts to consolidate and harmonize their refugee status determination procedure. Apart from a more restrictive interpretation of Convention refugee definition, this has involved “deteriorating reception standards within destination countries, increasing levels of social control, heightened policing and stricter detention policies, and the growing sophistication of expulsion procedure”.⁸⁶ Rate of recognition of refugees by western countries has been declining steadily. Many states, such as France, Germany, Italy, Sweden, Norway, and Switzerland- do not grant refugee status as a consequence of persecution by non-state actors. This negatively impacts the application of the victims of violence and persecution by such non-state actors who are no less powerful and brutal and operate with impunity across the world.⁸⁷

A brief consideration of “internal flight alternative” is also relevant. A number of western countries have used “internal flight alternative” criterion to deny and reject asylum claim. This implies that individuals who are fleeing persecution or conflict should avail the opportunity in their country of origin or the nearest possible destination for protection. Sweden has used the

⁸⁵Mishra and Majumdar, n.85.

⁸⁶ Barnett, n. 27, p. 13-14.

⁸⁷ See Barnett, n.27.

criterion to return and reject refugees and asylum seekers from Iraq and UK has done similarly with asylum- seekers from Afghanistan.⁸⁸

Western countries attempted to translate their restrictive policies through the use of the “safe country” concept. In refugee context, the concept applied to countries considered non-refugee-producing countries. This meant that “nationals of countries designated as safe” may be “automatically precluded from obtaining asylum/refugee status in receiving countries...”⁸⁹

From the standpoint of “safe country of origin”, “asylum seekers/refugees may be returned to countries where they have, or could have, sought asylum and where their safety would not be jeopardized...”⁹⁰ Rules related to “safe third country” principle have significantly affected the prospect of the grant of a refugee status application. This means that an applicant must not land in a European country from a country through which he/she has passed but did not file an application. The Dublin Convention of 1990 thus requires the first destination country to process the application for the grant of asylum.⁹¹

UNHCR supported the application of the “safe country” concept by accepting that “there should be means to identify the State responsible for examining an asylum request, so as to avoid orbit situations and multiple, simultaneous asylum requests by any one applicant”. It had no hesitation, therefore to consider The European Community Convention on Determining the State Responsible for Examining Asylum Requests Lodged in One of the Member States (the Dublin Convention of 1990), as well as the Additional Schengen Convention relating to the suppression of frontier controls at common

⁸⁸Alexander Betts, “The Refugee Regime Complex”, Refugee Survey Quarterly, Vol 29, No. 1, 2010, pp. 12-37.

⁸⁹Background Note on the Safe Country Concept and Refugee Status, UNHCR, EC/SCP/68, 26 July 1991. para 3.

<http://www.unhcr.org/excom/scip/3ae68ccec/background-note-safe-country-concept-refugee-status.html>

⁹⁰ Ibid.

⁹¹Barnett, n.27, p.14.

borders as “positive developments”.⁹² It believed that “burden sharing arrangements allowing for readmission and determination of status elsewhere are reasonable...”⁹³

Yet another UNHCR document, based on the conclusions of a roundtable on temporary protection upholds: “The value of temporary protection in ensuring protection from refoulement and basic minimum treatment in accordance with human rights where individual status determination is impracticable or inapplicable”.⁹⁴ According to the Summary Conclusion of the roundtable “temporary protection has been a response to humanitarian crises coordinated with and complementary to the 1951 Refugee Convention, predicated on responsibility- and burden-sharing, and manifest through situation or regional specific arrangements”.⁹⁵ International refugee law experts have vehemently criticized UNHCR’s policies in this regard. James C Hathaway, a most prominent exponent of refugee law is scathing in his denunciation of the refugee restrictive practices.⁹⁶ According to Hathaway, the exodus from Yugoslavia was sought to be stopped by forcing the refugees into “temporary protection”. UNHCR was also pressed into action to proclaim a so called “right to remain”. Hathaway points out: “These persons would have qualified for refugee status had they not been encouraged, and at times compelled, to remain inside their own country.” Enforcement of what often amounted to a *duty* to remain exacted horrific costs- for example, in Srebrenica and Bihac”.⁹⁷

The implementation of the right to remain principle was a strategy of containment that served to mask real intention of European countries to deny refugee protection responsibilities. It was presented as a protection strategy for the IDPs but these people would have generally qualified to be accepted as

⁹²See <http://www.unhcr.org/542e99fd9.pdf>, para 14.

⁹³Ibid. para 16.

⁹⁴Roundtable on Temporary Protection: 19-20 July 2012. International Institute of Humanitarian Law, San Remo, Italy: Summary Conclusions on Temporary Protection, UNHCR, 20 July 2012.

⁹⁵ Ibid.

⁹⁶James C Hathaway, “Forced Migration Studies: Could We Agree Just to “Date’?”, Journal of Refugee Studies, 2007, p. 354-55.

⁹⁷Ibid. p. 356.

refugees. Interest and accelerated preoccupation with the IDPs was “in at least large measure, a strategy designed to deflect scrutiny of the refusal of states to live up to their responsibilities to refugees”. Commenting on the dilution of the principle of refugee protection through a variety of non-entrée policies, Hathaway wrote: “If there is a single overarching trend in refugee protection.... it has been the official drive to rein in, to control, to constrain, to render orderly and hence manageable the arrival of refugees’.”⁹⁸

Critics maintain that developed countries have distorted the true purpose of the Refugee Convention. Most refugees today are not only in the developing world but remain there “under conditions which are generally rights-abusive and often literally life-threatening”.⁹⁹ A pernicious suggestion that the Convention obligations of protection are of “last resort” means that refugees may be sent away to any country willing to admit them. In effect, asylum seekers who arrive without pre-authorization are increasingly considered “illegal”. Moreover, we see justification of strict practices on the ground that allocation of resources should meet the needs of those refugees who are located in the developing countries. All this, according to Hathaway is “largely a distortion of international refugee law”.¹⁰⁰ Refugees are, in fact, as per the Convention, not under any obligation to seek protection within their region of origin or in the first country that they arrive. He is also critical of the encampment policies resorted to in many developing countries. This is a breach and violation of both the Refugee Convention as well as the International Covenant on Civil and Political Rights. He maintains that promotion of the principle of equitable sharing of burdens and responsibilities for the refugees may seem attractive. But this “...goal is not served by a system of purely discretionary resettlement or fiscal transfers which promotes or sustains local responses- in particular, mandatory and long-term encampment—which is themselves rights-regarding”.¹⁰¹

⁹⁸ Ibid.

⁹⁹James C Hathaway, “Why Refugee Law Still Matters”, Melbourne Journal of International Law, Vol. 8, no.1, 2007, p.89.

¹⁰⁰Ibid. p.90.

¹⁰¹Ibid. p.95.

4.5: Refugee Situation: Continuing Crises

At end-2016, the total number of refugees in the world was 22.5 million, with 17.2 million under UNHCR's mandate and a total of 5.3 million Palestinian refugees registered by UNRWA. 3.4 million refugees were added in 2016. Main countries of asylum for the refugees were: Turkey 2.9 million, Pakistan 1.4 million, Lebanon, Iran and Uganda about 1 million each. Ethiopia also hosted 791600 refugees. Main countries of asylum for the refugees were: Turkey 2.9 million, Pakistan 1.4 million, Lebanon, Iran and Uganda about 1 million each. Ethiopia also hosted 791600 refugees. Fastest growing refugee generating situation was in South Sudan. UNHCR defines a protracted refugee situation as the one "in which 25,000 or more refugees from the same nationality have been in exile for more than five years or more". This criterion does not capture quite a few situations given the dynamic nature of refugee flow and return. Nonetheless, based on this definition, UNHCR reports that more than two-thirds of all refugees, a total of 11.6 million, were in protracted refugee situations at the end of 2016. A staggering 4.1 million refugees have been in a protracted situation for more than twenty years.¹⁰²

At times, refugee returns have been a function of some form of coercion. Outbreak of violence in areas where refugees have settled may become a disincentive for the refugees to continue. If security is jeopardized and protection concerns become acute, return is expected. In many situations, the conditions in the home country may not have improved but if situation deteriorates in the country of refuge, the option to return to the country of origin presents itself as a choice, albeit a difficult and hard choice. Yet another issue is nature and quantity of international or national assistance. These may be drastically reduced or altogether stopped, forcing the refugees to contemplate return. It is an open secret that UNHCR has often encouraged repatriation even when the situation is not conducive. However, this is mostly due to the pressure of the host country. Negotiations are often most difficult and attempt to balance many a factor involved in repatriation is an

¹⁰²UNHCR, Global Trends, Forced Displacement in 2016

undertaking fraught with risks and loss of credibility. Some critics maintain that increased focus on repatriation as a ‘durable solution’ promoted by UNHCR at times violates the principle of *non-refoulement*, a sacrosanct provision of refugee law. In this context, the rationale offered by former High Commissioner for Refugees S. Ogata is pertinent:

When refugee outflows and prolonged stay in asylum countries risk spreading conflict to neighbouring states, policies aimed at early repatriation can be considered as serving prevention. This was an important rationale in the case of repatriation to Tajikistan in 1993. It is also what motivated, in addition to the refugees' own safety, UNHCR's policy of encouraging repatriation from Zaire and Tanzania to Rwanda, even though human rights concerns in Rwanda never disappeared.¹⁰³

Number of refugees returning to their country of origin in 2016 was 552,000. 90 per cent of these returnees received the assistance of UNHCR. It is significant to note that returnees are only about 5 per cent of the total refugee population and the total number is less than the total number of people newly arrived. This would mean that there is no reasonable prospect of gradual reduction in the overall refugee crises facing the world. Moreover, as the UNHCR report notes: “the context in which some refugees are returning to their home countries is complex with many situations still fragile and unstable, leading to concerns that may returns may not be sustainable”.¹⁰⁴

Regarding resettlement, yet another one of the durable solutions UNHCR promotes, total number of refugees resettled in 2016 was 189,000, not even a fraction of the world refugee numbers. Though a total of 37 countries participated in the resettlement program of the UNHCR, just three countries took 80 per cent of refugees for resettlement in their countries (USA- 96,900, Canada-46700 and Australia- 27,600).

¹⁰³S. Ogata, Transcript of Remarks at a Conference of the Carnegie Commission on the Prevention of Deadly Conflict, Geneva, 17 February 1997, p.4, Cited in Roberts, n.65, p. 390.

¹⁰⁴UNHCR, Global Trends, Forced Displacement in 2016

Figures of local integration for refugees are difficult to obtain and are usually unreliable. In this overall climate of disinterest and even disdain for the refugees, their local integration in larger numbers is almost impossible. As per the UNHCR report for 2016, only 23,000 refugee naturalizations were “reported to the UNHCR”. This figure may be misleading as greater number of local integration may be taking place in the developing countries of asylum as they are largely un-documented.

4.6: Emerging Trends

At the time of its creation, refugee regime was “virtually the only form of institutionalized cooperation in the area of human mobility and it remains the most developed and coherent aspect of global migration governance”.¹⁰⁵ With proliferation of international institutions in the area of human rights, humanitarianism, security, development and peace-building impinging and impacting the refugee regime, it is perhaps necessary to consider use of the term ‘refugee regime complex’. Betts has analytically established the term ‘refugee regime complex’, “in which different institutions overlap, exist in parallel to one another and are nested within one another in ways that shape States’ responses toward refugees.”¹⁰⁶ This “regime complex” has characterized the overall frame of international policy toward the refugees and several other categories of vulnerable people.

Certain developments in the 1980s were indicative of the evolving nature of the UNHCR activities, in fashioning an arrangement that would place more emphasis on refugee repatriation over refugee resettlement, more strain on the traditional role of refugee protection with the addition of category of ‘persons of concern’ to the organization and an increased emphasis on concept such as “right to remain”. These developments and formulations gained traction and accelerated during the 1990s and broadly came to be characterized as constituting a restricted view of the traditional protection role and responsibility of UNHCR. Adam Roberts has well captured the

¹⁰⁵Alexander Betts, “The Refugee Regime Complex”, Refugee Survey Quarterly, Vol. 29, No. 1, 2010, pp. p.13.

¹⁰⁶ Ibid. Also see, A. Betts, “Institutional Proliferation and the Global Refugee Regime”, Perspectives on Politics, Vol. 7, No. 1, 2009.

changes in the nature and emphasis of the evolving regime on the protection of refugees:

The changes in the handling of refugee issues, mainly in the 1990s, have included: the extension in UNHCR practice of the categories of people it assists; the increased focus of many agencies on preventive action, even within countries at war, to reduce the likelihood of massive refugee flows across borders; the creation of safety zones, mainly under UN Security Council authorization, to reduce the likelihood of refugee outflows or to encourage return; the authorization of military interventions, including by the UN Security Council, in refugee-producing situations; the granting by states of temporary protection to refugees rather than permanent asylum; the growth of the practice of assisted, or in some cases forced, repatriation; and the concern with monitoring and helping to ameliorate conditions following resettlement.¹⁰⁷

During the height of the Cold War, refugees were considered 'valuable', not only in terms of the intrinsic worth of the individual refugees with their qualification and skill set but in regard to the political messaging their arrival and inclusion represented for the western countries. Most of the refugees who arrived and were accorded welcome and asylum came from the other side of the Cold War divide. The definition of a "refugee" fleeing from persecution due to his/her belief, mostly from communist countries to the western countries, in a way was a 'triumph' of liberal values and constitutional order. However, when, through the 1960s, refugee numbers increased due to the mass nature of the movement across borders for protection and asylum, the earlier enthusiasm for protection of the rights of the persecuted gave away to voices of caution and uncertainty. From a focus on the problems of the refugees, attention gradually shifted to "refugee problem". The developing countries had accepted a disproportionately large number of refugees throughout the 1960s -1980s. Easy access across soft and fragile border as well as the nature of the mass exodus propelled by civil war and border conflicts had made large number of people fleeing violence take refuge in the neighboring countries. In contrast, the number of refugees from the south in a position to make necessary arrangements and eventually reach a land border/port/ airport of a western country to request asylum, was always

¹⁰⁷ Adam Roberts, "More Refugees, Less Asylum: A Regime in Transformation", Journal of Refugee Studies, Vol. 11, No 4, 1998, pp.375-76.

much less than the mammoth numbers that poor developing countries would accommodate. The developed countries however started showing a ‘fatigue’ with refugee arrivals. An UNHCR publication noted:

Sadly, it is becoming increasingly difficult for refugees to find a place of safety beyond the borders of their homeland. Confronted with pressing domestic problems and declining international support, a growing number of countries have closed their borders to impending large-scale refugee influxes. In many parts of the world, moreover, people who have taken refuge in another country have been harassed, attacked and even forced to go home against their will.¹⁰⁸

UNHCR’s evolving role was in full display in Bosnia during 1992-95. “Containment” of refugee flow became the major preoccupation “to the extent that the agency was forced into a position that actually undermined the right to seek asylum”. Western states “instituted stiffer visa requirements, forbade UNPROFOR to escort Bosnians abroad, and compelled UNHCR to deliver considerable assistance to those in need who remained within Bosnia”. To provide assistance, UNHCR “had to negotiate access to persons of concern from the very authorities that were causing the forced displacement”. Under the circumstances, “relief protection undercut traditional protection”.¹⁰⁹

In a similar vein, David Keen writes: “In line with major donors’ priorities, UNHCR assumed a preventive protection responsibility inside the former Yugoslavia, without having the number of staff or the influence over the armed groups to fulfill this task; meanwhile, it went along with the major donors’ increasing distaste for major resettlement schemes.”¹¹⁰ Gil Loescher maintains that “UNHCR’s dependence on voluntary contributions forces it to adopt policies that reflect the interests and priorities of the major donor

¹⁰⁸ UNHCR: The State of the World’s Refugees, 1997-98: A Humanitarian Agenda, Oxford University Press: Oxford, p. 51.

¹⁰⁹ David Forsythe, “UNHCR’s Mandate: the Politics of being non-political”, *New Issues in Refugee Research*, UNHCR, March 2001, pp. 1-34, see, pp. 4-5

¹¹⁰ David Keen, Complex Emergencies, Polity Press, Cambridge, 2008, p. 139 cited in Phil Orchard, “The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement”, Refugee Survey Quarterly, Vol. 29, No. 1, 2010, p. 55.

countries." He endeavours to show how "politics and foreign policies priorities cause donor governments to favor some refugee groups over others".¹¹¹

The gradual weakening of the system of reception and hospitality for the refugees has been explained both in economic terms as well as with reference to the link between refugee flows and state insecurity. While the western countries' increased reluctance to accept larger number of refugees is attributed to the economic difficulties and decline from the 1980s onwards, the poorer countries of the South were equally apprehensive of the prospect of sharing their meager economic resources. The "host and resettlement countries feel that the economic, social and political costs of dealing with refugee problems have become too high".¹¹²

Secondly, the inter linkages between refuge flows and security threats especially in the context of ideology of radical Islam and acts of terrorism came to the fore in the aftermath of 9/11. However, "security burden" has been an evident threat for the developing countries for last few decades and a primary reason for their reluctance to host refugees. James Milner defines "security burden" as "threats perceived by a host state related to the grant of asylum and the resources required to effectively address those threats".¹¹³ Sadaka Ogata, former High Commissioner for Refugees had maintained;" the

¹¹¹ Gil Loescher, Beyond Charity: International Cooperation and the Global Refugee Crisis, Oxford University Press, New York, 1993, p. 137.

¹¹² Omprakash Mishra and Anindyo J Majumdar, "Introduction: International Refugee Regime: The Challenge of Protection", in Omprakash Mishra and Anindyo J. Majumdar, eds. The Elsewhere People: Cross-border Migration, Refugee Protection and State Response, Lancer's Books, New Delhi, 2003, p. 7.

¹¹³ James Milner, "Refugees and Security in South Asia: Responding to the Security Burden", in Omprakash Mishra, ed. Forced Migration in the South Asian Region: Displacement, Human Rights and Conflict Resolution, Manak Publications, New Delhi, 2004, p. 206.

best way to uphold refugee protection ...is to take into consideration the security interests of states".¹¹⁴

Section 5: "Clash of Norms"

UNHCR's original mandate specifies protection to refugees. Subsequently, through various UN General Assembly Resolutions, the mandate has been expanded to include protection to certain other "persons of concern". How is it possible for the agency to be strictly a non-political organization when effective protection would involve relief operations, generally in the midst of internal conflict and human rights violations? Public policy involving advocacy and action is invariably a political act that may necessitate involvement in prioritization of the responsibility set and action on the ground on behalf of the displaced. However, UNHCR can be said to be 'non-political' in the sense that:

" ... it does not pronounce directly and explicitly on "who governs", meaning who should govern in general; it does not pronounce on public policies, beyond its mandate, and thus on the general nature of governance unrelated to refugee concerns; and it does not engage in military coercion in an effort to compel policy change".¹¹⁵

But UNHCR faces policy dilemmas. Often it is called upon to choose between competing international norms. Its traditional role flowing from its original mandate is protection of refugees and finding durable solutions to their problems. This role has evolved and the organization finds itself in a world where newer responsibilities and expanded issue areas under its operational role is often at the cost of its traditional role. Myron Weiner considers the policy dilemma in terms of "clash of norms".¹¹⁶ In several humanitarian crises, "UNHCR and other international humanitarian institutions and NGOs have been faced with dilemmas in which the choice of one norm has been at the cost of another".¹¹⁷ For example, what should be the right course of action when

¹¹⁴UNHCR, EXCOM, 1998, p.19.

¹¹⁵ David Forsythe, "UNHCR's Mandate: the Politics of being non-political", New Issues in Refugee Research, UNHCR, March 2001, pp. 1-34, see, p.1.

¹¹⁶ Myron Weiner, "The Clash of Norms: Dilemmas in Refugee Policies", Journal of Refugee Studies, Vol. 11, No.4, 1998. pp. 433-453.

¹¹⁷Ibid. p. 437.

refugee-warriors take control of the refugee camp and attempt to convert it into military bases? “If UNHCR closes the camps it fails to live up to its obligations to protect and assist needy refugees, but to keep the camps open is to provide assistance to human rights violators, place non-combatants at risks and [may] prolong the war”.¹¹⁸ It may be possible to protect the internally displaced by creating “safe haven” but this would negatively impact the prospects that the internally displaced may have to try and obtain asylum abroad. Again, the agency may be approached by either the country of origin or the host country in favor or against repatriation of refugees. If return is not safe or the conditions in the country of origin have not stabilized but there is tremendous pressure by the host country to repatriate the refugees, UNHCR would find itself in the midst of a dilemma. If it agrees to the repatriation, it may incur the wrath of the country of origin and future cooperation may be jeopardized.

Moral principles may not be a good guide to policy when confronted with the choice between competing or even conflicting norms. Faced with dilemmas, UNHCR officials, Weiner writes, turned to *instrumental humanitarianism* which essentially involved “a way of bowing to the ‘new realities’ without surrendering humanitarian objectives” and choosing the ‘least worst’ option in many situations.¹¹⁹ Those within the organization wanting the agency to take a ‘principled stand’- in line with *monistic humanitarianism*—believe that UNHCR should insist on inviolability of norms. Secondly, they also think that *instrumental humanitarianism* may easily end up as opportunism. Weiner thinks that “values are incommensurable: that is, there is no single standard of measurement. Individuals must often choose among incommensurable and at times incompatible values” and that “balancing of conflicting norms is not always possible and circumstances may force humanitarians to choose”.¹²⁰ This may be a hard choice but choice nonetheless and has to be made.

Concluding Observations

The discussion and analysis of the field of Forced Migration Studies, both conceptually and in terms of descriptive categories it has spawned has been

¹¹⁸Ibid. p. 437.

¹¹⁹Ibid. p. 442.

¹²⁰Ibid. pp. 444-448.

enriching. The international law provisions protective of civilians both in international and in internal armed conflict can be applied on an extended basis to include different categories of people caught in conflict (refugees, internally displaced). The principle of national responsibility can be applied to all those who become a victim of circumstances beyond their control (stateless, oustees) or those who are dependent on state authorities to redress their situation (returnees, repatriated).

No less significant was the analysis of developments related to refugee protection and how the context and content of refugee regime has evolved in the last few decades. The underlying reasons involve a sharpening of ideas related to protection of state interests - political, economic and strategic - under threat from a burgeoning refugee population. The erosion of support for the victims of war, the war-affected population was less pronounced before the Second World War but as our analysis showed, adjustment of state interests over concerns for the refugees was no less a paramount objective. The reasons for the resignation of the then High Commissioner for Refugees in 1938 are equally cogent today. High Commissioner for German refugees, James G. McDonald had reasoned that without addressing the political aspects of dispute/conflict between the sovereign states, we cannot hope to “solve” the refugee problem. In the same vein, we may argue that without putting an end to armed conflict and their dangerous manifestations we cannot hope to end internal displacement and cannot expect a turnaround in protection of the internally displaced people.

The various attempts to contain refugee flows in an era of “donor fatigue” necessitate adoption of policies and measures that prioritizes “in -country protection”. The restrictive aspects of refugee protection are not limited to industrialized countries. Refugees are increasingly unwelcome everywhere. Coupled with an unprecedented unraveling of state boundaries and armed challenges to existing political regimes across the continents, forced displacement within the borders becomes a global crisis requiring adjustments of international policies and a reordering of the existing mechanism for international peace and security. The crisis of internal displacement and the attention to the conditions of the internally displaced persons especially in the light of a concern for human protection and for the principles of human rights therefore justifiably becomes a matter of

international policy. Both international law and humanitarian principles combine to synergize focus on the conditions of the internally displaced and generate a movement to address their protection and assistance needs. This aspect is the subject-matter of the following Chapter.

Chapter II

Internal Displacement: Global Crises, Protracted Displacement and the Guiding Principles

Introduction

The proliferation of armed conflict in different parts of the world has directly contributed to forced displacement of millions of people in the world. The scale and magnitude of the crises affecting a large number of countries has been unprecedented and as a consequence, the nature and level of international attention to mitigate the sufferings of the affected population has also been without precedence. The crises may be understood as the “new war” mostly being played out in domestic settings but involve regional and international dimensions, affecting civilians, forcing people to flee the battle zones across different parts of their country and wherever possible across state frontiers.

The first section of the Chapter analyses the “new war” and its impact on the displacement crises. After delineating some of the major characteristics of the “new war”, the discussion focuses on the activities of the non-state armed groups and the national political regime in generating displacement which threatens human rights of the affected population. The pattern of internal displacement across the countries shows certain characteristics which are unique. It is not necessary that the internally displaced would avail assistance and protection in camps. Non-encampment and dispersal in urban areas as well as finding refuge amongst local communities presents major difficulty in counting the numbers as well as in strategies for reaching assistance to the victims. As a result, there are always significant gaps in redressing the sufferings of the internally displaced.

The magnitude of the crises of internal displacement and the conditions of the internally displaced people is best understood with reference to some of the affected countries. The countries selected for the purpose in section 2 have generated some of the highest numbers of internally displaced in the world.

The situation in these countries –Afghanistan, Congo, Iraq, Nigeria, Ethiopia, South Sudan and Yemen – are analyzed from the standpoint of conflict context, the role of the government, conditions of the IDPs and the provision for protection and assistance to the internally displaced. The protracted nature of internal displacement in these countries may require prioritizing local integration as a solution to the problems of internally displaced. However, this approach is beset with lot of problems.

The scope of the section 3 of the Chapter involved an analysis of the existing protection mechanism at the international level for the internally displaced. Attention needs to focus on international humanitarian law and international human rights law. Issue for consideration is not only the scope of the law but it is also a question of the nature and extent of the obligations of the states under these laws. The various “grey areas” and “gaps” have been addressed by the Guiding Principles on Internal Displacement. The history of the drafting of the Guiding Principles, the role of the UN Secretary-General’s Special Representative on the Human Rights of Internally Displaced Persons are presented in section 4 of the chapter which is followed by the last section on the significance of the Guiding Principles for addressing the protection and assistance need of the world’s internally displaced.

Section 1: “New War” and the Displacement Crises

Since the 1990s, the vulnerability and predicament of the people who are displaced within the boundaries of their own countries has engaged both the academic community and non-government organizations. Their persistent efforts to “internationalize” what was hitherto considered matters “within the domestic jurisdiction of states”, has succeeded in catapulting the concerns and protection needs of the internally displaced people to international attention as well as into a subject of international policy.

There are many situations where a single conflict has generated internal displacement as well as refugee flows. The assistance and protection needs of IDPs and refugees in these situations are markedly similar. The refugee returnees are often provided a variety of assistance by relief agencies and NGOs. However, in many cases, returnees cannot get back their home and

properties as these could have been destroyed or occupied by others, rendering their plight similar to IDPs. UNHCR has noted, “in Mozambique, Sierra Leone, Afghanistan and Guatemala, it has been operationally and conceptually difficult for UNHCR to differentiate between returnees and internally displaced”.¹

If people fleeing conflict and violence cannot access passage to the territory of another country, it is evident that they would seek refuge in other parts of their own country. Ferris provides us some example of “relationship between border closures and internal displacement”. Kurds escaping the brutal attack on them by the Iraqi forces under Saddam Hussein in 1991 could not enter Turkey as the latter closed its border. Eventually, “safe haven” for the Kurds was created within Iraq, backed by the military forces of the US, UK and France under “Operation Provide Comfort”. Again, all 6 neighboring countries of Afghanistan closed their borders to potential Afghan refugees in the wake of US strike in Afghanistan, following the 9/11 attack on US. Also, Kenya closed its border to Somali refugees in January 2007 following Ethiopia-Somalia war.²

Contemporary conflicts are generating huge numbers of internally displaced. As per the numbers put together by UNHCR in its latest *Global Trends, Forced Displacement in 2016*, the number of IDPs in the world at the end of 2016 is 40.3 million. This is in contrast to the refugee numbers at 22.5 million.³ The magnitude of the internal displacement crises could also be seen in the numbers added to forced displacement in the world during 2016: out of 10.3 million people, new refugees and asylum seekers are 3.4 million. 6.9 million people were displaced within their own countries. The Internal

¹“Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees”, UNHCR, Report to the 18th Meeting of the Standing Committee, UN doc. DC/50/SC/INF.2, 20 June 2000, p.4.

²Elizabeth Ferris, “Internal Displacement and the Right to Seek Asylum”, Refugee Survey Quarterly, Vol. 27, No. 3, 2008, pp. 76-92, p.78.

³ The figure quoted by UNHCR is from IDMC. UNHCR figures are above 36 million. This does not include the IDPs which UNHCR has not counted. Also, the total refugee figures include more than 5 million Palestinian refugees.

Displacement Monitoring Centre (IDMC) estimates confirm that a total of 6.9 million people were newly displaced by conflict in 2016. Elizabeth Ferris points out that except for Afghanistan and Burundi, contemporary conflicts tend to generate more IDPs than refugees.

As the cost of escaping to safety, whether as an asylum seeker or displaced within the border of the country has increased, the choice of destination is conditioned by the forced migrants' capacity and means. This means that only relatively well resourced people may be able to escape to safe destination of choice. Nicholas Van Hear has argued that "class is not only a key factor in determining the routes taken, but also in the means of migration and the destinations reached".⁴ Since an overwhelming number of people displaced are from poorer regions and countries of the world, the high density of IDPs in the developing countries of Asia and Africa is not a surprise. Also, the choice of destination within the country is conditioned by geographical limits and economic capacity.

A plethora of internal conflicts is destabilizing a large number of states and generating huge displacement across the borders and internally within the country. This leads us to conceptualize about "new wars". Increasingly, "new wars" are being fought within the borders of states rather than between the states. An overwhelming percentage of victims in these "new wars" are civilians. He'le`ne Lambert and Theo Farrell point out that some of the features of the "new wars" of 1990s:

The 1990s also saw the rise of what were termed the 'new wars'. Some of these conflicts were developing world legacies from the Cold War (for example, Afghanistan, Cambodia, Nicaragua, El Salvador); some were wars that coincided with the end of the Cold War (for example, the wars of central Africa and the former Yugoslavia). All suggested that the character of war had changed from the modern form of high-tech and state-on-state warfare, to a pre-modern form of low-tech and trans-state warfare. These new wars had been messy affairs involving a broad range of military actors, including insurgents, militias and criminals, as well as state-based military forces. The new wars are not waged for reasons of

⁴ See Nicholas Van Hear, "I Went as Far as My Money Would Take Me: Conflict, Forced Migration and Class", in Francois Crepeau et al. eds. Forced Migration and Global Processes: A View From Forced Migration Studies, Lexington Books, n.d., pp. 125-158.

state but rather a mix of motives involving greed and grievance: wars are fought to secure resources; and to avenge past wrongs. Moreover, these new wars are characterized by the blurring of the lines of traditional boundaries of war in terms of space, time and participants.⁵

A surfeit of internal conflicts and resultant internal displacement (with some of them also generating refugee flows) is the central issue of our times. In this regard, Mary Kaldor has noted:

[R]ecent conflicts – especially in Iraq, Somalia and Pakistan – do seem to confirm the contention that forcible displacement is a central methodology of new wars. In Iraq, for example, some 4 million people were displaced at the height of the war in 2006–2008; roughly half were refugees and half were internally displaced. Indeed, it can be argued that one reason for lower levels of deaths in war is that it is easier to spread fear and panic using new communications, so that more people leave their homes than formerly. At the same time, there does seem to be a trend towards increasing displacement per conflict. Using the American Refugee Council data, Myron Weiner (1996) calculated that the number of refugees and internally displaced persons per conflict increased from 327,000 per conflict in 1969 to 1,316,000 in 1992 (1992 was, of course, a peak year for conflict). Using the Uppsala Conflict Database and figures from UNHCR and the IDMC, an upward trend in refugees and internally based persons can be observed per conflict.⁶

As we have analyzed in the previous chapter, a general reluctance to offer refuge and restrict asylum has been the broad trend around the world since late 1980s. Roberta Cohen has pointed out: “The political advantage that motivated many states to accept refugees during the Cold War has given to preoccupation with limiting their entry. The rising number of internally displaced persons... is, in part, a consequence of this reversal of this

⁵H.Lambert & T. Farrell, “The Changing Character of Armed Conflict and the Implications for Refugee Protection Jurisprudence”, *International Journal of Refugee Law*, Vol. 22 No. 2, 2010, p. 257.

⁶ M. Kaldor, “In Defence of New Wars”, *Stability: International Journal of Security and Development*, 2(1), 2013, available at: <http://www.stabilityjournal.org/articles/10.5334/sta.at/> cited in Tom Clark and James C Simeon, “War, Armed Conflict, and Refugees: The United Nations’ Endless Battle for Peace”, *Refugee Survey Quarterly*, Vol. 35, 2016, pp. 35-70, See p. 44.

attitude”.⁷ Thus the correlation between restrictions on refugees and an increase in the numbers of internally displaced is quite strong.

1.1 Non-State Armed Groups

Theoretically, only state authorities have the legitimacy to the use of force, to enforce rule of law and administer a justice system. However, the rise of the Armed non-State Actors (hereafter ANSAs) across the world shows that national authorities do not enjoy a monopoly over the use of force. Exposure to violence and violation of their human rights by ANSAs is a living reality for millions of IDPs. Overwhelming numbers of people internally displaced are caught in conflict, whether one involving a civil war or a secessionist movement, and invariably ANSAs of various hues and description are involved. A study in 2010 of people who are internally displaced showed: “While governments or armed groups associated with the government were the main agents of displacements in close to half of the situations of displacement, in more than a quarter of situations, the main agents of displacement were armed groups opposed to the government”.⁸

ANSAs are also subject to international humanitarian law under the Geneva Conventions and their Additional Protocols. Guiding Principles are explicit on ANSAs obligations toward the IDPs. Provisions of Rome Statute and Kampala Convention, two more recent instruments, are also applicable to the ANSAs. Irrespective of the general provisions of international law protecting the IDPs, whether from state authorities or ANSAs, “[T]hey may not be sufficient to address IDPs’ specific needs such as the protection against forcible return or the provision of identity documents, or the needs of the specific groups of IDPs, such as internally displaced women or children”.⁹

⁷ Roberta Cohen, “Protecting the Internally Displaced”, World Refugee Survey, US Committee for Refugees, Washington DC, 1996, p.20.

⁸ “Armed non-State Actors and the Protection of Internally Displaced People”, Report of the Conference Organized by Geneva Call and IDMC, 23-24 March 2011, Geneva, p.7.

⁹Ibid. p.3.

UN Security Council has addressed some of the violations committed by the ANSAs. Council's Resolution 1612 in 2005 is about monitoring and recording mechanism to record six grave IHRL violations committed against children in armed conflicts by ANSAs.¹⁰

ANSAs carry out forced displacement of population groups based on their assessment of loyalty or disobedience of the affected group and as a part of their resistance movement or strategy. They can, however, play a good role should they cooperate in assistance to the IDPs or enable voluntary and safe return of the displaced. It is important to study and identify the "incentives that could be used to improve ANSAs compliance with their legal obligations regarding the protection of IDPs".¹¹

1.2 Human Rights

A direct consequence of the rise of the 'new war' with proliferation in activities of ANSAs across the world was swelling of the ranks of internally displaced persons. SussanneScheidl has summed up the devastating effects of mass displacement:

Both the communities left behind and the towns and the villages in which the displaced find refuge are often ravaged. In some cases, so many people flee that whole societies are uprooted. Violence and instability can spread through entire regions, forcing neighboring states to bear the brunt of massive refugee flows. Even countries continents away may have to contend with a wave of desperate refugees.¹²

The human rights dimension of mass internal displacement is highlighted by a report of the Brookings Institution:

¹⁰Security Council Resolution 1612(2005) on Children and Armed Conflict adopted at 5235th meeting, 26 July 2005, S/RES/1612(2005).

¹¹N.7 p.7.

¹²SussanneScheidl, "Comparative Trends in Forced Displacement, 1964-96", in Internally Displaced People: A Global Survey, Global IDP Survey & Norwegian Refugee Council, Earthscan Publications Ltd, London, p.31.

Since [the displaced] still reside within their countries of origin, the displaced often continue to be subjected to the same dangers and abuses that caused them to flee from their houses in the first place. Sometimes they are trapped in the midst of conflicts and need to be evacuated or protected from the constant threat of armed attack. Or they may need protection from forcible relocation or expulsion often carried out on ethnic or political ground.¹³

Francis Deng in his report to the UN wrote:

[IDPs] may be more readily subjected to round-ups, forcible resettlement and arbitrary detentions or arrests. They may be more vulnerable to forced conscription and sexual assault. They are more regularly deprived of food and health services. Some of the highest mortality rates ever recorded during humanitarian emergencies have come from situations involving internally displaced populations.¹⁴

Despite the recognition given to the importance of human rights protection, there is no consensus on the role of human rights bodies regarding identifying, monitoring and addressing the protection problems of IDPs. The Inter-Agency Standing Committee (IASC) of the UN has emphasized the need to develop a mechanism to address both “protection and relief needs in urgent situations of internal displacement”. Its task force on Internally Displaced Persons affirmed that ‘there are indispensable protection prerequisites for any successful program in favour of IDPs’.¹⁵

Security is as overriding priority as food in most situations of internal displacement but the physical safety of the affected people and the dangers confronting them do not receive equal importance. The “balance between the provision of humanitarian assistance” to the IDPs and “the upholding of their

¹³ “Internally Displaced Persons: Improving the Institutional Arrangements for the Internally Displaced”, The Brookings Institution-Refugee Policy Group Project on Internal Displacement, Washington DC, n. d., p.6.

¹⁴ United Nations Department of Humanitarian Affairs, “Internally Displaced Persons: An Interim Report to the United Nations Secretary General on Protection and Assistance”, submitted by Francis M. Deng, Representative of the Secretary General on Internally Displaced Persons, December 1994, p.10.

¹⁵ Cited in n.12, p.7“.

human rights is crucial”.¹⁶ Therefore, ‘respect for human rights should underpin all programme of assistance to internally displaced people’ and “there should... be no separation of assistance from protection activities”.¹⁷

International programs undertaken for the IDPs when carried out without taking into account the importance of human rights protection, end up in failure.¹⁸

Human Rights Watch had analyzed and reviewed the Displaced Persons Programme (DPP) undertaken by the UNDP in Kenya during 1993-95. The review came to the conclusion that UNDP “ignored the political, human rights and development dimensions of displacement’, proceeding on the assumption that all that was necessary was to provide relief supplies to enable people to return while doing nothing about the “political causes of the displacement and the attendant human rights violations that needed to be addressed”.¹⁹ The DPP had placed greatest emphasis on relief. This was the easiest and least controversial part of the program. But it neglected “protection, human rights and long-term needs, which would have required (UNDP) to adopt a more critical advocacy in relation to the Kenyan government”.²⁰

1.3 Regime-induced Displacement

A large number of forced displacement situation involves deliberate use of coercive force by the governments against their own population. This,

¹⁶ Statement of Charles LaMunier of UN Department of Humanitarian Affairs before the UN Sub-committee of the whole on International Protection, Executive Committee of the High Commissioners Programme, Geneva, 18 May 1994.

¹⁷ Wendy Davis, “Introduction” in Rights Have No Borders: Worldwide Internal Displacement, Norwegian Refugee Council –Global IDP Survey, 1998, p. x.

¹⁸ See Omprakash Mishra, “Mass Exodus and Human Rights: Challenge of Internal Displacement” in Debi Chatterjee, Sucheta Ghosh and Sumita Sen eds. Human Rights: Theory and Practice, South Asian Publishers: New Delhi, 2002, pp. 203-219.

¹⁹ See Africa, Failing the Internally Displaced: The UNDP Displaced Persons Programme in Kenya, Human Rights Watch, 1997, p. 108.

²⁰Ibid. pp.10-11.

“regime-induced displacement” has risen substantially.²¹ Cohen and Deng have noted: “When governments become directly involved in uprooting minority populations they often see those who they are uprooting not as their citizens but as the ‘other’. This process of dehumanization enables authorities to more easily explain away the high number of those killed or uprooted”.²² Phil Orchard’s study of 103 situations of mass displacement between 1991 to 2006 in 53 countries (involving more than 100,000 refugees or IDPs) demonstrated that there was a high co-relation between civil wars and regime –induced displacement. It was one of the primary causes in sixty-five of the cases.²³ Orchard writes that “the propensity of regimes in fragile states to displace their own citizens has become a major concern in the post-Cold War era” and “frequency of regime-induced displacement has been increasing over time”.²⁴

1.4 Urban IDPs

Displacement in many countries is increasingly an “urban and dispersed phenomenon”. Majority of IDPs live outside camps- living in mostly urban areas or dispersed in remote or rural areas. Donors and aid agencies working for the IDPs tend to focus on initiatives that are visible and attainable. Urban IDPs due to a host of factors often do not fall into the fit. This contributes to their “invisibility”. Not only identifying this category of IDPs is more difficult and the dynamics of their situation more complex, urban IDPs, especially those who are outside camps are invariably much less visible. Fielden writes that urban IDPs receive little attention from aid and protection agencies and that they have been categorized as ‘messy’ beneficiary in many context.²⁵ According to her, there is “a vacuum of protection for this particularly vulnerable group, who are without access to the safeguards and

²¹ Phil Orchard, “The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement”, Refugee Survey Quarterly, Vol. 29, No. 1, 2010, pp. 38-60.

²² R. Cohen and F. M. Deng, “Mass Displacement Caused by Conflicts and One-sided Violence: National and International Responses”, SIPRI Yearbook, Stockholm International Peace Research Institute, Oxford University Press, Oxford, 2009, p. 20.

²³ Orchard, n.20, p.39, 50, 52.

²⁴ Ibid. p. 59.

²⁵ See Alexandra Fielden, “Ignored Displaced Persons: The Plight of IDPs in Urban Areas”, Research Paper No. 161, New Issues in Refugee Research: UNHCR, July 2008, pp. 1-21.

assistance available to most other persons of concern”.²⁶It is also noted that it is much more difficult to determine when internal displacement has ended for the urban IDPs, since “durable solutions” are no more visible than the displacement itself.²⁷

1.5 The Gaps

Gaps in assistance to the IDPs occur for various reasons. The camps for the IDPs receive more attention in comparison to IDPs who are scattered and dispersed in urban areas or in rural settings. There are remote areas of IDP concentration which is inaccessible and aid cannot be reached. Then there are “invisible” IDPs who prefer to mix and merge with the general population and do not think that revealing their status as IDP would be worth the risk. Though women and girls constitute almost about 80 per cent of world’s IDP population, they are the most under-served. Depending on the nature of displacement and the overall approach of the international actors as well as the national authorities, IDPs would receive differential level of assistance and protection. In some situation, as in the case of Darfur in Sudan at some point of time, a large number of aid agencies were involved in supporting the camp IDPs. This prompted ICRC to attempt focusing on other rural populations of IDPs to fill gaps in assistance for the non-camp IDPs.²⁸In spite of a plethora of international humanitarian actors, national civil society organizations and in many cases, national government working to assist and alleviate the sufferings of the IDPs, “large proportions of conflict-affected IDP population have fallen through the cracks”.²⁹Yet another consideration is the varied approach and responses of the national governments on the assistance and protection needs of IDPs. Colombia has developed an advance system of providing assistance including payment of compensation to the victims of internal displacement. *Accion Social*, a government organization is tasked with the responsibility to channelize national and international aid for the IDPs.

²⁶Ibid.p.1.

²⁷ Ibid.p.12.

²⁸Alain Aeschlimann, “Protection of IDPs: An ICRC View”, Forced Migration Review: Protecting and Assisting the Internally Displaced: The Way Forward, 2006, p.25.

²⁹Matthew Finger, “Humanitarian Aid and Internally Displaced Persons: Impacts in Conflict and Post-Conflict Zones”, Issue-Specific Briefing Paper, Humanitarian Assistance in Complex Emergencies, University of Denver, 2011, p.4.

There are countries which face a severe security environment and there is a weak government. Commenting on this aspect of national will and capability, Matthew Finger writes:

Sudan represents a clear-cut example of this. Plagued by regional and national conflicts, sparked by ethnic, religious and economic issues and the emergence of a new nation from its south, Sudan has struggled to provide for most of its citizens, much less for its internally displaced population, which at certain points has constituted the largest IDP population in the world. Sudan's government is incapable –or unwilling– to provide the systematic support IDPs need.³⁰

Section 2: Protracted Displacement: Study of 7 Countries

Most displacement crises persist for many years. In the context of refugees, data for the period 1978-2014 revealed that only one out of 40 crises were resolved in less than 3 years. Protractedness of a situation usually involves decades. It is, however, a subjective exercise when to consider a displacement situation a “protracted” one. A Report by HSG clarifies:

Determining how many people are in a protracted displacement and how long they have been displaced within those situation is problematic since changes in displaced populations-provoked by returns, multiple displacements, varying degrees of integration etc.- are dynamic, and because national and international systems of tracking the displaced are often incomplete. A displacement situation may be incontrovertibly protracted— the Daadab refugee camp in Kenya, for example, has existed for decades—but not all of its residents at any one time are in protracted exile. Many IDP situations –such as in Columbia—are protracted, but the “churn” of old and new IDPs could be significant.³¹

Internal conflicts and thereby internal displacement are not easily resolved. Protracted displacement is a reality for most of the world's IDPs. However, it is difficult to exactly determine the numbers both because of the unavailability of data for many countries as well as due to the dynamic nature of movement in internal displacement situations. According to the report cited above,

³⁰ Ibid.

³¹ Nicholas Crawford, John Cosgrave, Simone Haysom and Nadine Walicki, “Protracted Displacement: Uncertain Paths to Reliance in Exile”, HPG Commissioned Report, Overseas Development Institute, Humanitarian Protection Group, September 2015. pp.10-11.

figures of global expenditure on displacement for 2014 showed that out of a total of \$12,172 million (including both refugees and IDPs), expenditure for the protracted displaced was \$6,375 million i.e. more than 50 per cent.

2.1 Local Integration as Solution

The option of integration with local communities has found favor both of the aid agencies as well as those of the IDPs living in situation of protracted displacement for years and even for decades. International assistance as well as the national efforts may privilege this approach as a ‘solution’. Betts writes with reference to the refugees in protracted situation. The same is applicable for the IDPs as well:

Whether in the formal or informal sectors, refugee communities are often integrated within vibrant and complex economic systems. Recognizing and understanding this represents an opportunity to turn humanitarian challenges into sustainable opportunities. It has the potential to unlock ways to enable those economic systems to be channeled to the benefits of the refugees, host states, and donors, as well as possibly offering a neglected opportunity for private sector entrepreneurship.³²

However, it is difficult indeed to achieve durable solutions for millions of IDPs who are in situations of long-term displacement. The approach is complicated given that many protracted internal displacement situations are “regime-induced”. Governments today generally acknowledge that settlement options other than return are needed. But a range of factors including “the lack of resolution to conflicts, a long economic recovery period, inadequate community infrastructure, weak rule of law and property disputes”³³ present difficulties.

³² Betts et al., “Refugees Economics: Rethinking Popular Assumptions”, Refugee Studies Centre, University of Oxford, Oxford, 2014, cited in HPG Report, Ibid. p. 23.

³³ “IDPs in Protracted Displacement: Is Local Integration a Solution?”, Report from the Second Expert Seminar on Protracted Internal Displacement, 19-20 January 2011, Brookings, IDMC and Norwegian Refugee Council, Geneva, p. 4.

These are most often effective roadblock to achieve “local integration” as a durable solution. It needs emphasis of course that ‘local integration’ as a solution to protracted displacement is not a substitute to right of the IDPs to return to their home and community. Guiding Principles on Internal Displacement is explicit on this right. Moreover, as UNHCR has also asserted, this would not preclude the rights of IDPs to seek asylum. In this vein, a study of protracted internal displacement in Europe correctly points out:

Local integration and settlement elsewhere in the country are not necessarily incompatible with return. IDPs are entitled to their rights to an adequate standard of living now, regardless of whether they plan one day to return, stay where they are or settle elsewhere.³⁴

We shall consider in little detail the context, severity, nature and challenges of internal displacement in respect of 8 countries where internal displacement crises is at its most dangerous level.

2.2 Afghanistan: Protracted Displacement

In 2009, a survey by ICRC concluded that 76 per cent of Afghans have experienced displacement.³⁵ This includes a large number of refugees, refugee returnees and all those displaced internally due to conflict and violence and also due to natural disasters. Khalid Kosser has tried to identify different categories of IDPs in the country:

1. Protracted caseload covered by UNHCR and living in camps mainly in the south;
2. People recently being displaced by conflict, especially in the south and east;
3. Displacement due to ethnic persecution of Pashtuns in the north forcing many to flee to safe enclaves in the north, or south;
4. Returning refugees and migrants who are not willing or able to go to their areas of origin;
5. A growing number of urban IDPs, mainly in capital Kabul and

³⁴ See Executive Summary, “Protracted Internal Displacement in Europe: Current Trends and Ways Forward”, IDMC and Norwegian Refugee Council, May 2009.

³⁵ ICRC, “Our World: Views from Afghanistan, Opinion Survey”, 2009, p.6.

6. Poor urban dwellers displaced due to rising land prices and increase in rent³⁶

However, as per the estimates of IDMC, IDPs due to conflict and violence number 1,553,000 as of 2016. This includes 653,000 IDPs newly displaced. An evidence-based research study carried out in the country showed that 1. It is possible to distinguish between an IDP and an urban migrant; 2. Long-term IDPs are not necessarily better off than those newly displaced; 3. IDPs also include nomadic groups who follow “pastoral-based lifestyles” and their livelihood disrupted by conflict and 4. Most IDPs would prefer to remain, locally integrate, than to return.³⁷

Protracted conflict has characterized Afghanistan since the 1970s, starting with the Soviet invasion of the country in 1979. Unfortunately, it continues even today, through the Soviet occupation, Mujahedeen resistance, onset of Taliban rule and US’ “war on terrorism” by the US led international forces in the country and the ongoing resistance of the pro-western Afghan government by Taliban and other hard line radical groups. Increase in the activities of non-state armed groups and counterinsurgency operations against them have been a big trigger of internal displacement. While majority of displaced people consider Taliban to be primarily responsible for their displacement, there are yet many other conflicts based on inter-tribe or ethnic conflicts.³⁸

A number of national and international organizations work in Afghanistan to address assistance and protection needs of war-affected population including IDS. Government has been cooperating with these organizations and has shown interest in issues affecting the internally displaced.

³⁶ Khalid Koser, “Internal Displacement in Afghanistan”, Brookings, November, 2007, <https://www.brookings.edu/on-the-record/internal-displacement-in-afghanistan/>

³⁷ “Challenges of IDP Protection: Research Study on the Protection of Internally Displaced Persons in Afghanistan”, Norwegian Refugee Council & IDMC, November 2012.

³⁸ Ibid.

Ministry of Refugees and Repatriation (MoRR) is the lead government body for conflict-induced IDPs. Afghanistan Natural Disaster Management Authority (ANDMA) coordinates short-term assistance for people affected and displaced by natural disasters. A National IDP Task Force was created in 2009. This was co-chaired by the MoRR and UNHCR. There are regional IDP task forces based in Kandahar and Herat. These task forces assist other ad-hoc, informal protection coordination mechanisms at the provincial level. Strategy Report of the Afghanistan National IDP Task Force in 2009-2010 included the goal to “advocate with all relevant stakeholders to address causes of displacement and support initiatives to prevent further internal displacement”.³⁹

A National IDP policy process was launched in 2012 and it is noteworthy that Afghanistan has accepted the application of the Guiding Principles on Internal Displacement. Afghanistan adopted a National IDP Policy in 2014. The policy emphasizes on local integration. This is also the preferred option for most displaced people and recommends that IDP families must be given assistance to legally settle, find job and receive basic services. Return is yet another option for the displaced and if this option is viable and accepted, IDPs should be helped to reintegrate. The Policy also maintains that reintegration should be carried out in a way that it is sustainable so that displacement situation does not reoccur.⁴⁰

A report of the Office of the High Commissioner for Human Rights centring around the visit of Prof. Chaloka Beyani, UN Special Rapporteur on the Human Rights of IDPs to Afghanistan in 2016 points out that “displacement

³⁹ Andrew Solomon and Chareen Stark, “Internal Displacement in Afghanistan: Complex Challenges to Government Response”, *Brookings*, November 2011, p.262.

https://www.brookings.edu/wp-content/uploads/2016/06/From-Responsibility-to-Response-Nov-2011_Afghanistan.pdf

⁴⁰ M Ashraf Haidari “Let’s not Forget Afghanistan’s Internally Displaced Persons”, *The Diplomat*, October 21, 2016,

<http://thediplomat.com/2016/10/lets-not-forget-afghanistans-internally-displaced-persons/>

is becoming more protracted for more people as the security situation has led many to make the difficult decision not to return to their homes.”⁴¹

Special Rapporteur found that many IDPs have not been given National ID card (*Tazrika*) and he cautioned:

A National IDP Policy, while a positive step, remains largely unimplemented in practice. National institutions charged with IDP responses lack resources and capacity to fulfill their functions. The influx of tens of thousands of Afghan returnees from Pakistan has further increased pressure on the Government and its international partners to resolve the situation of other vulnerable groups.⁴²

2.3 Democratic Republic of Congo: Costly Discontinuity

Democratic Republic of Congo (DRC) has been at war for almost 25 years. Political instability, weak governance structure and economic vulnerabilities have fuelled numerous insurgencies and resultant internal displacement. A resource rich country but entangled in corruption and illegal extraction of natural resources, DRC with 3.7 million internally displaced people, today ranks one of the top displacement-generating country in the world. Much accretion in the high number of IDPs in DRC has occurred in 2016-17. The latest phase in the internal conflict was a result of widespread violence in the wake of assassination of opposition leader Kamuina Nsapu reportedly by government forces. Some of the intractable internal conflict in the country of the 1990s still cast shadows and internal displacement spawned by these conflicts have become protracted. The country is experiencing serious economic and social decline, largely as a result of political instability and ineffective governance mechanism. The country is ranked 176th out of 187 countries in terms of human development and cyclical political crises, most

⁴¹Office of High Commissioner for Human Rights, “Afghanistan: Deteriorating Displacement Crisis Requires Urgent Attention and Increased Resources”, 20 October, 2016
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20716&LangID=E>)

⁴² Ibid.

recently in 2016 is generating significant displacement. Competition over land resources as well as share in extraction of minerals has led to repeated clashes and conflict. Quite often forced displacement of people has been carried out as a strategy to limit or eliminate competition.

IDPs have cited violence as the prime reason for their displacement. There is a mix in the predicament of the displaced as they have also been, at intervals of time, refugees. IDMC explains the complexity:

Displacement is often short-term but occurs on multiple occasions, as IDPs seek to stay close to their areas of origin and maintain access to their livelihoods. Shifting front lines have pushed IDPs further away from their homes, making returns more difficult and putting them at greater risk of impoverishment and further displacement. As a result, IDPs also find themselves having to move across borders into Angola, the Central African Republic, South Sudan and Sudan when they are unable to find safety. Porous borders and a lack of coordination between countries have generated circular cross-border displacement, with people being uprooted multiple times and having to seek protection in different cultural and social contexts. This phenomenon also shows that unresolved internal displacement generates refugee flows with effects that may further destabilize host countries.⁴³

Law Commission of DRC has developed and endorsed a law on the protection and assistance of IDPs but it is yet to be enacted. UNHCR staffs deployed in the country for the protection of IDPs require the maintenance of safety and security at a level which allows them and members of other humanitarian organizations to work unhindered. UNHCR's protection strategy of IDP has focused on:

[E]nhancing advocacy for greater engagement of DRC authorities in IDP issues, comprehensive and coordinated humanitarian response to the urgent needs of camp-based IDPs by the respective clusters and the promotion of durable solutions for IDPs either through their local integration in the areas of displacement but also by advocating for the creation of conditions in their areas of origin that are conducive to return in safety and dignity.⁴⁴

⁴³IDMC, DRC <http://www.internal-displacement.org/countries/drc>

⁴⁴UNHCR, Internally Displaced and Returnees, Strategy

<http://reporting.unhcr.org/node/15777>

UNHCR has specified a number of constraints affecting its protection role in the country: ‘ethnic conflicts, the violation of the civil character of the IDP sites, human rights violations by both the official government forces and the various armed groups, extortions, sexual violence, and illegal arrests’.⁴⁵ Aspects of funding are also a key concern. “Donor fatigue” is a reality and international funding over the years has been very uneven. International support and action have not been steady as the problem has been neglected or sidetracked at times. This discontinuity in international engagement and approach has been costly. Overall grim scenario does not leave much room for optimism: “For certain groups no durable solutions are possible due to the conditions of the area of displacement and return and therefore alternative solutions will have to be considered by the humanitarian actors”.⁴⁶

2.4 Iraq: Continuous Displacement

The humanitarian and displacement situation in Iraq presents a very severe and destabilizing crisis involving difficult and strenuous humanitarian challenge and acute hardship faced by millions of Iraqis over the last about three decades. At present, as per IDMC, the internally displaced in the country number more than 3 million. The fault line along political, religious and ethnic conflict and in more recent years, the battle for supremacy between the Iraqi Security Forces and the Islamic State in Iraq and the Levant (ISIL) has generated significant displacement. At the heart of the crisis, the battle over taking and retaking of cities, particularly Falluja and Mosul has contributed to accretion of displaced people on a continuous basis.⁴⁷

⁴⁵IDMC, DRC <http://www.internal-displacement.org/countries/drc>

⁴⁶UNHCR, Internally Displaced and Returnees, Strategy
<http://reporting.unhcr.org/node/15777>

⁴⁷IDMC, Iraq <http://www.internal-displacement.org/countries/iraq>.

Political and security situation in Iraq has been on the agenda of the UN Security Council, beginning its landmark Resolution 688 in April 1991 whereby a safe haven for the minority Kurds under intense attack by the government forces was set up and a 'no-fly zone' in northern Iraq was enforced. In more recent years, the Security Council had mandated an Assistance Mission for Iraq (UNAMI). Extending the mandate of the Mission, the Council adopted Resolution 2233 (2015). Part of the Resolution expressed "grave concern for the more than three million individuals seeking refuge in other areas of Iraq", underscored that "host communities should provide access to safe areas for internally displaced people", and encouraged Member States "to support the United Nations' humanitarian response in Iraq".⁴⁸

The first wave of internal displacement to hit Iraq was in the early 1990s, mainly due to the political attitude of the then Iraqi government toward the Kurds. After the overthrow of Saddam's regime, sectarian conflicts in a politically fluid situation between 2006 and 2008 caused the second phase of displacement in the country. The current phase, starting 2014 involved the rise of ISIL and its success in taking control of a large part of the country. Policies and practices adopted by ISIL as well the continuing military confrontation with the government caused significant displacement. Largest numbers of IDPs in Iraq, 2.2 million, were added to the world total in 2014. 85 per cent of IDPs in Mosul were in emergency camps in 2016, where they faced severe shortages of basic services. After capturing Mosul, ISIL had captured Sinjar and enslaved thousands of Yazidi females for sex, and kidnapped young Yazidi males for training to become fighters. An estimated 200,000 Yazidis were displaced. Elsewhere too, IDPs living in areas controlled by ISIL faced restrictions. 85 per cent of IDPs in Mosul were in emergency camps in end 2016, where they faced severe shortages of basic services.

It is generally held that political marginalization of Sunnis was the principle trigger for the growth of non-state armed groups and ISIL. The intense battle to retake Mosul from the ISIL by a coordinated military offensive was

⁴⁸for text of the Resolution See Security Council, 7495th Meeting, 29 July 2015. <https://www.un.org/press/en/2015/sc11986.doc.htm>

launched by Iraqi Security Forces, Kurdish Security Forces and Shi'a militias in late 2016. The offensive resulted in further displacement, causing one third of the total of 659,000 IDPs generated in 2016.

A report by the Office of the Coordination of Humanitarian Affairs released on 7 March 2017 presents a grim scenario of the nature, extent and the challenges facing people trapped in multiple conflicts in the country:

The humanitarian crisis in Iraq remains one of the largest and most volatile in the world. The pace of displacement over the past three years is nearly without precedent. In 2014, over 2.5 million people were displaced in Iraq; in 2015, an additional million were forced to flee. During the past year, nearly 700,000 people in areas impacted by the conflict with the Islamic State of Iraq and the Levant (ISIL) have been newly displaced. Every one of the nine major military campaigns during 2016 has created new displacement. Over 3 million Iraqis are currently displaced, living in 3,700 locations across the country; more than one million displaced and refugees are in the Kurdistan Region. In 2017, depending on the intensity and length of fighting in Mosul, Hawiga and Tel Afar, as many as 1.2 million additional civilians may be forced from their homes.⁴⁹

Roberta Cohen had identified some basic issues facing the IDPs in Iraq in 2002. Now with two more phases of intense displacement in Iraq over, the central issues, however, remain the same as in 2002:

The plight of Iraq's internally displaced is bound up with issues of water, land, oil, minority and majority rights, ethnicity and religion, citizenship and national allegiance, and systems of justice. Any new government will have to address these issues as a high priority if it is to secure the unity and stability of Iraq. But this will not be easy. It will require the return or resettlement of hundreds of thousands of displaced people, in many cases to areas already occupied by others or that have been destroyed, as well as resolving different ethnic groups' competing claims to resources

⁴⁹Report by UN Office for the Coordination of Humanitarian Affairs, 7 Mar 2017. <https://www.humanitarianresponse.info/en/node/141686>

and land and the meting out of justice through trials, legal redress or economic compensation.⁵⁰

It may be noted that after the fall of Saddam Hussein's authoritarian regime which was chiefly responsible for causing internal displacement in Iraq, displaced people were hopeful of return. However, the return of the displaced people undertaken by authorities in the post 2003 period met with lot of difficulties including the risk of igniting ethnic conflict and civil war.⁵¹ Similarly, military action against ISIL has succeeded and Mosul has been retaken but there is no quick resolution of numerous political-ethnic battle lines in Iraq. Return of the displaced people to their home and community is a possibility in the post-conflict phase but political stability and no less important, political reconciliation would only pave the way forward for the displaced.

2.5 Nigeria: Boko Haram Insurgency and Displacement

Displacement crisis in Nigeria have “multi-faceted, complex and often overlapping dimensions and are ‘fuelled by economic, social, political and environmental factors’”.⁵² Scholars have underlined the link between displacement and conflict and emphasized “development deficits” in Nigeria for the perpetuation of both the conflict and its consequence.⁵³

⁵⁰Roberta Cohen and John Fawcett, “The Internally Displaced People of Iraq”, *Brookings*, 20 November 2002, <https://www.brookings.edu/research/the-internally-displaced-people-of-iraq-2/>

⁵¹ For a detailed analysis, see, David Romano, “Whose House Is this Anyway: IDP and Refugee Return in Iraq”, *Journal of Refugee Studies*, Vol. 18, No. 4, 2005, pp. 430-453.

⁵²IDMC Nigeria <http://www.internal-displacement.org/countries/nigeria>

⁵³ Fatima KyariMohammed. “The Cause and Consequence of Internal Displacement in Nigeria and Related Governance Challenges”, *SWP*, Berlin, Working Paper, April, 2017. https://www.swpberlin.org/fileadmin/contents/products/arbeitspapiere/Mohammed_2017_Internal_Displacement_Nigeria.pdf

As per IDMC, while violence by Boko Haram and other non-state armed groups are directly responsible for the swelling of internal displacement as well as some population movements across the borders into neighboring countries, ethnic and religious tensions have also contributed to displacement.⁵⁴

The cycle of violence and counter-insurgency measures contributes to fear and insecurity amongst common people. Two Nigerian scholars have articulated the dilemmas faced by the civilians in the country:

IDPs along with the majority of the affected population, have witnessed atrocities in addition to losing family members and succumbing to the insurgents campaign of terror. Many IDPs therefore fear that they will be pursued by the insurgents, will be perceived by the authorities as supporters of the insurgents or will be supposed by the insurgents or other elements as informants for the authorities. Remaining silent and hidden for IDPs becomes the unpalatable option.⁵⁵

More than 90 per cent of Nigeria's about 1.75 million internally displaced are in the north-eastern states of Borno, Adamawa and Yobe. Lately, security forces have registered some vital successes against Boko Haram. This has facilitated some return as well as help secure access for humanitarian organizations in areas hitherto inaccessible. Conflict Context analysis of IDMC in June 2017 has noted that despite 'continued violence, the number of IDPs reportedly decreased in most states in the first half of 2017 and fewer Boko Haram attacks allowed "humanitarian and aid agencies to reach previously inaccessible areas of the country, facilitating trade flows and encouraging returns, including from abroad".⁵⁶

IDP camps in north-east Nigeria have witnessed repeated attacks by Boko Haram militants. The counter-terrorism military operations have also led to displacement as security forces have destroyed infrastructure suspected to be used by Boko Haram. Use of excessive force and extra-judicial measures by the security forces have instilled fear and insecurity and have also contributed

⁵⁴IDMC, Nigeria <http://www.internal-displacement.org/countries/nigeria>

⁵⁵ See EniAlobo and SynndaObaji, "Internal Displacement in Nigeria and the case for Human Rights Protection of Displaced Persons", *Journal of Law, Policy and Globalization*, Vol. 51, 2016.

⁵⁶IDMC Nigeria <http://www.internal-displacement.org/countries/nigeria>

to the flight of people. IDMC points out that “protection space for IDPs is minimal” and that many IDPs and returning IDPs have “taken shelter in insecure areas in [those] northern states and are in desperate need of emergency humanitarian assistance”. IDPs also lack access to livelihoods and suffer from severe food insecurity. There are thousands of survivors who were abducted and sexually exploited. The brutality of Boko Haram’s senseless violence against civilian population requires effective remedies including psychological support and justice for the survivors.

Internal displacement in Nigeria is intrinsically linked to sustained armed conflict and terrorism waged by Boko Haram and ISIL in the country. Overwhelming percentage of internally displaced have cited Boko Haram as responsible for their flight and plight. The neighboring countries, Cameroon, Chad and Niger are equally affected and people are forced across the border or displaced in their own country. The governments have launched coordinated counter-terrorism military offensive and have received unequivocal support of the UN. Unless Boko Haram and ISIL are not eliminated or neutralized, conflict and consequent forced displacement in the region would not stop.

UN Security Council considers the activities of Boko Haram and ISIL as constituting “transnational organized crime”. Its latest Resolution 2349 adopted on 31 March 2017 was in the aftermath of a high level UN team to Lake Chad Basin region countries: Cameroon, Chad, Niger and Nigeria. The Resolution affirms solidarity and support “for the conflict-affected populations of the region including displaced and host communities who are suffering from the ongoing security crisis, humanitarian emergency and development deficits resulting from the violence by terrorist groups Boko Haram and the Islamic State in Iraq and the Levant (ISIL, also known as Da’esh)”. The Council commended the “Multinational Joint Task Force which has contributed to the liberation of hostages, the arrest of Boko Haram members, and an increase in the number of defectors” and welcomed the “efforts of the governments in the region for the hospitality provided by host communities for the millions of displaced people”.⁵⁷

⁵⁷Security Council Resolution 2349, 7911th Meeting, 31 March 2017.

The Resolution referred to the issue of return of refugees and internally displaced persons to their areas of origin and maintained that it should be “voluntary, based on informed decisions, and in safety and dignity”. The Resolution further urged the affected countries to “work cooperatively with displaced persons and host communities, to prevent secondary displacement of affected populations, and to take all necessary steps to respond to the humanitarian needs of host communities”.⁵⁸

Government of Nigeria has taken a number of steps to address issues related to internal displacement and IDPs. A committee was entrusted to draft a National policy on IDPs in 2003. Despite the submission of the report in the form of a National Policy on Internally Displaced Persons in 2011, it is yet to be adopted by the government. The draft policy is based on Guiding Principles on Internal Displacement and provisions of the Kampala Convention. An analysis of the Policy reveals that it is quite comprehensive, adopts international standards and would be suitable for Nigeria. Given the “monumental challenges’ relating to prevention of displacement, assistance, return and relocation of IDPs”, Nigeria “requires a strong legal and institutional framework”.⁵⁹

2.6 Ethiopia: Interplay of Drought and Conflict

Internal displacement in Ethiopia continues unabated as about 213,000 new IDPs join the existing numbers in 2017. As per the IDMC, the number of conflict and violence induced internally displaced people now number close to 600,000. In October 2016, the government had declared an emergency which saw the security forces attempt to crush the protests led by country’s Oromo and Amhara minorities. It is difficult to differentiate between the numerous reasons for the displacement in the country. Successive drought, resultant

⁵⁸Ibid.

⁵⁹Bagoni Alhaji Bukar, Nigeria Needs to Take Responsibility for its IDPs, Forced Migration Review, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/young-and-out-of-place/bukar.pdf>

misery as well as ethnic political conflicts has contributed to the rise in the IDP numbers. IDMC points out:

Internal displacement in Ethiopia is multi-causal and complex. The confluence of numerous drivers and triggers of new displacement is so complex that any attempt to distinguish between displacement caused by conflict or disaster is rendered pointless. The interaction between high levels of existing vulnerability in rural populations; severe droughts, sometimes followed by heavy rains and floods; ongoing conflict; already high numbers of displaced people; and overstretched government capacity create a high-risk environment in which new displacements are likely to continue.⁶⁰

International Organization for Migration (IOM) considers that drought has been the biggest contributor to the displacement situation and IDP numbers in Ethiopia. A “draught displaced” category is not unique to Ethiopian IDPs but the description well captures the vulnerabilities of people due to the vagaries of nature. Consequent food insecurity is a direct trigger and conflicts over land rights are a manifestation of dispossession and extreme penury in rural parts of the country. Communal conflicts related to access and control of water and pasture is yet another reason for the displacement.⁶¹

Ethiopia has been at war, with two of its neighbors, Eritrea and Somalia and generated significant numbers of refugees in the 1980s and during 1998 and 2000. Afterwards, Ethiopia also became one of the largest refugee-hosting countries, from Somalia, Eritrea and South Sudan. Additionally, internal conflicts with insurgency groups had led to some persistent and protracted internal displacement, especially in the border areas. A large number of IDPs are in Tigray.⁶²

⁶⁰IDMC, Ethiopia, Patterns of Displacement section
<http://www.internal-displacement.org/countries/ethiopia>

⁶¹Government of Ethiopia and UN, 2016 Ethiopia Humanitarian Requirements Document, January 2016, available at <http://goo.gl/3yvz9E>

⁶²Mesfin Araya, “Postconflict Internally Displaced Persons in Ethiopia”, UMEA University Medical Dissertations, 2007, p.14.

<https://www.diva-portal.org/smash/get/diva2:141049/FULLTEXT01.pdf>

A study by NRC/IDMC carried out in the field in 2016 captures the interplay of several factors in the displacement situation:

In the severely drought-affected regions of Afar, Somali and Oromia, as of the end of the year there were a variety of groups of IDPs displaced at different times and for various reasons. In the Kilibati area of Afar, more than 14,500 people fleeing "drought" joined 5,700 people displaced by the effects of a volcanic eruption in Eritrea, of whom 1,800 had been living in displacement since 2010. In Siti, around 71,200 people "displaced by drought" joined more than 5,600 people displaced by communal conflict a month earlier, and another 7,600 displaced by communal conflict up to two and a half years earlier.⁶³

Ethiopia has been urbanizing very fast. Dislocation of people in good numbers has accompanied the urban push. Government capacity to address humanitarian needs of the vulnerable population has improved considerably. However, persistence of drought conditions and some of the unresolved internal conflict would continue to negatively impact the overall situation for the IDPs and the prospects of their return.

2.7 South Sudan: Sudden Massive Displacement

Demand for autonomy and independence of southern region of Sudan was articulated since 1960s and a very prolonged war concluded in 2005 with the signing of a peace agreement. The agreement provided for a referendum to be held in 2011. In 2011, South Sudan gained independence from Sudan under peaceful conditions. The new member of international community, however, is a much underdeveloped country with one of the lowest human development indicators. Given the vast oil reserves in the country, it was expected that eventually South Sudan would emerge strong, with political stability and economic development playing their due part. However, in December 2013, a civil war ensued between armed forces of Sudan People's Liberation Army (SPLA) and Sudan People's Liberation Movement (SPLM) based on ethnic and political differentiations. The immediate provocation of the political crisis

⁶³ "Global Report on Internal Displacement - Ethiopia: Extreme Conditions, Extreme Measures" Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), 2016 , 1 May 2016, <http://www.refworld.org/docid/57a98bf910.html>

was the accusation of President Salva Kiir against former Vice-President Riek Machar for attempting a coup. Armed clashes soon followed the crisis and the resultant conflict reopened simmering ethnic and political fault lines.

Following the political instability and the civil war, South Sudan has experienced some of the biggest population movements, both across the country's borders as well in the form of internal displacement. Refugee flows into Uganda has been significant. Internal displacement figures have crossed two millions in the first half of 2017 (new displacement between January-June 2017 accounting for 281,000 IDPs) as per the IDMC Country profile. A peace agreement was signed in 2015 but its breakdown in fact exacerbated the conflict and caused more displacement in 2016. Armed conflict and displacement has put enormous pressure on both the national authorities as well as the international humanitarian actors. The latest IDMC Conflict Context for South Sudan points out:

Conditions in displacement sites are poor, with many lacking adequate space and infrastructure. About 163,000 new displacements caused by conflict were registered in the first half of 2017. The number of displaced people is expected to increase during the rest of 2017 with influxes to existing PoC sites and collective centres, and new displacement sites are expected to be established.⁶⁴

It is indeed difficult to accept that a newly independent country would slide into chaos and anarchy so early and armed conflicts would wreck such a devastating effect, with millions displaced but there are certain systemic causes. What has been pointed out by Janne Gundersen with reference to Sudan is also applicable to South Sudan:

Displacement has many causes and Sudan stands as a good example where conflict is an apparent reason but where other complicating factors also play a part and can be traced back to root causes such as drought and environmental degradation, and continuous food crisis that again can be

⁶⁴See IDMC, <http://www.internal-displacement.org/countries/south-sudan>

traced back to government neglect and changing regional demographics amongst other factors.⁶⁵

It is then readily seen that “history of underdevelopment and conflict, and the multiple causes of displacement in the country make for complex dynamics that frequently overlap”.⁶⁶ Some of the fault lines and conflict areas for South Sudan has been summed up in the Country profile of South Sudan by BBC News under the heading ‘Conflict’:

Alongside the oil issue, several border disputes with Sudan continue to strain ties. The main row is over border region of Abyei, where a referendum for the residents to decide whether to join south or north has been delayed over voter eligibility. The conflict is rooted in a dispute over land between farmers of the pro-South Sudan DinkaNgok people and cattle-herding Misseriya Arab tribesmen. Another border conflict zone is the Nuba Mountains region of Sudan's South Kordofan state, where violence continues between the largely Christian and pro-SPLA Nuba people and northern government forces. Inside South Sudan, a cattle-raiding feud between rival ethnic groups in Jonglei state has left hundreds of people dead and some 100,000 displaced since independence.⁶⁷

The situation of the IDPs in South Sudan is most alarming. Security is a matter of protection and “extends far beyond the urgent material needs of newly displaced people for food, water, shelter and essential non-food items”, which is in great demand too. Children are vulnerable to abuse, forced recruitment and killings. IDMC notes that “there are also safety and security concerns at sites for IDPs, including UN protection shelters”.⁶⁸

⁶⁵Janne Gundersen, “Internally Displaced Persons in Sudan: A Study of Livelihood and Coping Strategies under Protracted Displacement”, Norwegian University of Life Sciences, August 2016. See

<https://brage.bibsys.no/xmlui/bitstream/handle/11250/2422526/Masterthesis2016.pdf?sequence=1>)

⁶⁶IDMC, n.68.

⁶⁷ See <http://www.bbc.com/news/world-africa-14019208>

⁶⁸ IDMC, South-Sudan, priority needs and vulnerabilities section, <http://www.internal-displacement.org/countries/south-sudan>

2.8 Yemen: Overlooked Internal Displacement Situation

Yemen is one of the poorest countries, caught in intense armed conflict between the rival forces owing allegiance to two different political leaders past about 2 years. Country faces restrictions on imports, commercial transaction and to some extent even humanitarian assistance. Conflict in Yemen started in the backdrop of political transition in leadership of the country between the President Ali Abdullah Saleh and his successor Abdrabbuh Mansur Hadi. Al-Houthi forces loyal to Saleh are in control of capital Saana but are facing strong resistance by forces led by Hadi who has the backing of Saudi Arabia. Air strikes and shelling by Saudi-led coalition forces in support of Hadi is one of the reasons for people to flee their homes.⁶⁹

With almost 2 million IDPs in the country, economic resources of Yemani society is under tremendous strain. IDPs constitute 7.1 per cent of country's population and face a precarious situation. Sufferings of the internally displaced in Yemen have not received due international attention. Funding for humanitarian programs in Yemen is also comparatively low. The narrative of refugee-flow from Syria and the international dimensions of the ongoing conflict in that country has been the mainstay of international attention. As such, the ongoing armed conflict in Yemen and the plight of its internally displaced have not received priority.

Overwhelming numbers of IDPs are located in governorates of Hajjah and accessible areas of Sa'ada, the main conflict area. A large percentage of IDPs live with host families. Given the strong social bond of the society, interdependence of host and displaced families provides cohesion.⁷⁰

⁶⁹Omer Karasapan, "Conflict, Famine, Refugees and IDPs: A Perfect Storm in Yemen?", *Brookings*, April 14, 2015.

<https://www.brookings.edu/blog/future-development/2015/04/14/conflict-famine-refugees-and-idps-a-perfect-storm-in-yemen/>

⁷⁰Ghaidaa Motahar and Mohammed Al-Sabahi, "Internal displacement and Social Cohesion in Yemen", LSE, Middle East Blog, July, 2017.

As with many conflicts and civil war situation, initial displacement were expected to be “temporary” and a big number of displaced had taken shelters in schools and abandoned buildings. The steady progression and indeed intensification of the conflict, however, has made the “temporary” into a semi-permanent arrangement. It has been possible to reach some relief and other necessary assistance to displaced people who have taken refuge in schools and other buildings as well as in the identified camps. However, there is no arrangement to support the host families who are bearing the burden of carrying the responsibilities of a large number of IDPs in Yemen. It has been pointed out that a differentiation in support level and quantum of assistance between IDPs who are in “settled” structures and those who are staying with the hosts may exacerbate tension.⁷¹

Condition of the IDPs has been described by the IDMC in its country profile for Yemen:

The majority of IDPs live in overcrowded rented accommodation, schools and other public spaces, or tents and other forms of makeshift shelter. They face a wide range of protection needs and vulnerabilities including lack of shelter options, lack of safety and security, harassment, lack of livelihood options, gender-based violence, loss of documentation, food insecurity and limited access to healthcare, education, water and sanitation. Displacement has also forced many families to separate, and there are large numbers of unaccompanied minors. IDPs have few livelihood options, and most are dependent on charity or humanitarian assistance for survival.⁷²

It is noted that a big percentage of Yemeni IDPs would like to return to their home. A survey reported by IDMC has revealed:

A crucial finding of the profiling in Yemen concerned IDPs intentions to return to their place of residence before displacement. As much as 25% of the IDPs were at risk of protracted displacement: they were not intending to return and not interested in - or aware of - alternative

<http://blogs.lse.ac.uk/mec/2017/07/18/internal-displacement-and-social-cohesion-in-yemen/>

⁷¹ Ibid.

⁷²<http://www.internal-displacement.org/countries/yemen>

solutions. Of the 72% who do intend to return, the vast majority (over 90%) does not know when. Both male and female-headed households indicated that insecurity and conflict are primary reasons of preventing or delaying return.⁷³

A political agreement is a prerequisite for peace processes to take off but the hard stance of both sides in the conflict has made it a difficult attainment. There is an unfortunate probability that the conflict in Yemen would not be resolved any time soon and as such the displacement may acquire a protracted nature.

Section 3: Protection Mechanism for IDPs

A systematic approach to understand internal displacement and the protection needs of the internally displaced people began with the appointment of Francis M Deng as the Special representative of the UN Secretary General on Internally Displaced Persons. There were two options: “1. to initiate an intergovernmental process to develop a binding international treaty protecting IDPs, or 2. To gather, restate, deduce and interpret from existing international norms in order to draft a non-binding instrument.”⁷⁴ Deng and his legal team chose to work on the second option. The prospects of a binding treaty may be alluring but the nature of present international system composed of sovereign states would preclude the possibility of the success of such an ambitious undertaking. Instead, it was reasoned, gradual development of the realm of rights, responsibilities and obligations of the internally displaced, national authorities and international community may offer a better prospect of success of the intended objective. According to Pettersson, “a set of principles had the potential to be a more operational and effective instrument than a legally binding treaty”,⁷⁵ which may not have seen the light of the day. The highlight of the responsibility concluded with the submission of a document, “Guiding Principles on Internal Displacement”, specially

⁷³ See <http://www.internal-displacement.org/countries/yemen>

⁷⁴Bjorn Pettersson, “Complementarity between Key Instruments of International Law”, Global IDP Project, 2002, p.1.

⁷⁵Ibid.p.2.

drafted for guiding international response and national action for the assistance and protection needs of IDPs.

Guiding Principles do not create new norms but this does not mean the existing framework of International Humanitarian law (IHL) and International Human Rights Law (IHRL) was sufficient to meet the protection needs of internally displaced. The principles have made extensive use of IHRL and IHL with a view to provide comprehensive protection to IDPs and more specific guidance than available under each individual instrument. For example, Guiding Principle No. 10 covers the right to life and physical integrity. This Principle is based on the International Covenant on Civil and Political Rights (ICCPR) part of IHRL but also draws on the Common Article 3 of the Geneva Conventions. This is important as most displacement occurs in situations of armed conflict. Again, Guiding Principle 21 protecting property rights of internally displaced draws on Article 17 of Universal Declaration of Human Rights and IHL provides protection of property from destruction and illegal appropriation in elaborate laws governing several situations including in rules relating to belligerent occupation.

Guiding Principles have made explicit what was implicit in IHL and IHRL regarding the protection of internally displaced. Guiding Principles prohibit forced displacement. To the question whether this prohibition is available under IHL and IHR, the answer is yes but in an indirect way. An explicit prohibition of displacement does not figure in IHRL except in the case of indigenous population as per ILO Convention No 169, Article 16. Certain other human rights such as freedom of movement and right to choose one's residence can be interpreted to include such a prohibition. Under IHL, Article 17, Additional Protocol II, there is explicit prohibition of "ordering the displacement of civilian population". But there are situations of displacement that are not ordered but are caused to occur indirectly. Therefore, an explicit prohibition against forced displacement was necessary and the Guiding Principles has achieved it by creatively blending the provisions of IHRL and IHL and contextualized it in cases of forced internal displacement.

Refugee definition is part of a legally binding 1951 Convention which has been ratified by 144 governments. Guiding Principles are based on

international human rights and humanitarian law, and by analogy, refugee law. Many governments have included aspects of the Guiding Principles into their national laws. The Great Lakes Pact and the Kampala Convention are the latest regional international instruments that include obligations to the Principles in their various provisions for the internally displaced. The focus of international attention on the growing number of IDPs in the early 1990s had raised questions related to provisions of protection for them. At one level, the issue related to the domain of state sovereignty and hence protection provisions and mechanism were needed that would not ‘clash’ with the overriding nature of state sovereignty in international law. However, it was also evident that international law was not devoid of provisions that called for obligations on states in certain matters. The impressive growth of international human rights law in the post-Second World War period and the long tradition of inviolability of international humanitarian law, principally the four Geneva Conventions of 1949 (specially the Common Article 3) and their two Additional Protocols indeed oblige the states to protect civilian persons, both in international war as well as in the non-international armed conflict. Moreover, the 1951 Convention on the Status of Refugees also had analogous provisions which could be applied to internally displaced people. Should then a legal approach be adopted for protection of internally displaced? Should not there be emphasis on ensuring the implementation of existing law? Or is there a need to elaborate new provisions to suit the assistance and protection needs of the IDPs in a distinctive way?

The ICRC has repeatedly maintained that there exist laws that protect people from being displaced in the first place, both in terms of space and conflict and “strict observance of international law would considerably reduce the millions of civilians who have had to abandon their homes, leaving behind them possessions and families and communities”.⁷⁶

In response to a request from the Commission on Human Rights, the Representative of Secretary-General on Human Rights of Internally Displaced Persons undertook an assessment and evaluation of existing

⁷⁶ See Daniel Helle, “Enhancing the Protection of Internally Displaced Persons” in Rights Have No Borders: Worldwide Internal Displacement, Norwegian Refugee Council –Global IDP Survey, 1998, p. 35.

international law. In a comprehensive study, the Representative queried whether existing international instruments provide sufficient legal protection for the internally displaced and whether what is needed is more legal prescription or simply better implementation of existing law. A “Comprehensive Study of Human Rights Issues Related to Internally Displaced Persons” was prepared by Representative of the Secretary General and was submitted pursuant to a Commission on Human Rights Resolution.⁷⁷

The Compilation and Analysis of Norms pertaining to IDPs was presented at the 51st Session of the Commission on Human Rights.⁷⁸ According to the Report:

This compilation and analysis of legal norms relevant to internally displaced persons aims at restating obligations within the framework of existing norms as well as identifying areas where existing international law does not respond adequately to the protection and assistance needs of internally displaced persons. While this report should sharpen awareness of the legal problems faced by internally displaced persons, its conclusions will show that there is still a need to proceed further and to elaborate an appropriate international instrument: existing international law as applied to internally displaced persons consists of a highly complex web of norms originating from a variety of legal sources which makes its application in specific situations of internal displacement difficult unless it is restated in a concise form.⁷⁹

The study examined the provisions of human rights law, international humanitarian law and refugee law and their applications to situations of internal displacement. It concluded that ‘while existing law covers many aspects of particular relevance to internally displaced persons, there remains areas in which the law fails to provide sufficient protection to them’.⁸⁰

The existing law covers many aspects relating to right to life, prohibition of torture, hostage-taking, contemporary forms of slavery, subsistence rights

⁷⁷ UN DOC UN/E/CN/4/1993/35, 21 January 1993.

⁷⁸ Francis M. Deng, “Internally Displaced Persons: Report of the Representative of the Secretary General”, submitted pursuant to Commission on Human Rights Resolution 1993-95, UN DOC UNE CN 1 1995 CRP 1, 30 January 1995.

⁷⁹ Ibid. Para 4.

⁸⁰ Ibid. Para 410.

and many areas of religious rights.⁸¹ However, the Compilation also identified a number of legal weaknesses and some situations where the law is silent. It also found numerous ‘grey areas’. Two principal categories of insufficient protection for the IDPs were identified:

One area of insufficient coverage results from the gaps in legal protection which occur where no explicit norms exists to address identifiable needs of the displaced. In some cases there may be a norm in human rights law but not in humanitarian law and vice versa. The second area of insufficient coverage results where a general norm exists but a corollary, more specific right has not been articulated that would ensure implementation of the general norms in areas of particular need to internally displaced people.⁸²

In view of the gaps and the grey areas, the document recommended that “the protection of internally displaced persons would be strengthened by spelling out (these) specific guarantees in an international instrument”.⁸³ Subsequently the Commission invited the Representative to develop an appropriate framework for the protection and assistance to IDPs on the basis of the legal compilation. Accordingly, the Representative submitted a document “Guiding Principles on Internal Displacement” to the Commission on Human Rights at its 54th Session in 1998.⁸⁴

Question arises as and when the international community requires the consent of state to either offer and or give international assistance. Reisman argues that human rights are “constitutive” of the contemporary legal order and that popular sovereignty supersedes the traditional norm of state sovereignty. In a way, a state that rules without popular consent cannot be regarded as sovereign.⁸⁵ We need to analyze the scope and content of the present international norms in this regard.

⁸¹Helle, n. 76.p.42.

⁸²Compilation and Analyses of Legal Norms, n. 81.p. 103.

⁸³ Ibid.

⁸⁴Cited in UN Document e/CN.4/1998/53/Add.2.

⁸⁵ See M. Reisman, “Sovereignty and Human Rights in Contemporary International Law” American Journal of Refugee Law, Vol. 84, 1990, pp., 869-873.

In the Nicaragua Case, The International Court of Justice rejected the idea of unilateral intervention and held that commitment by Nicaragua to Organisation of American States (OAS) to install a government that is respectful of human rights. Court maintained that it could “not contemplate the creation of a new rule opening a right of intervention by one state against another on the ground that the latter has adopted for some particular ideology or political system”.⁸⁶

As we would analyze further in Chapter 3, even if the states are supportive of international humanitarian assistance in favor of IDPs, they are careful and would rather avoid the question of addressing the issue of sovereignty directly.

What are the provisions of international human rights law on this issue? There are some non-derogable rights that must be respected all the time. Human Rights Committee of International Covenant on Civil and Political Rights has stated that even though some provisions are listed as non-derogable this does not mean other provisions could be discarded at will. International human rights law is applicable when the internal displacement is a consequence of internal violence, armed conflicts and to displacement caused due to disasters. Under Article 70 of Additional Protocol I to the 1949 Geneva Conventions parties are obliged to agree to humanitarian relief that is conducted in an impartial and non-discriminatory manner. In terms of the Article, offers of relief assistance shall not be regarded as unfriendly acts. Under Article 18 (2) of Additional Protocol II relief measures to mitigate the undue hardship of people caught in internal armed conflicts “shall be undertaken subject to the consent of the government in power”. It has been argued by International Law experts that in cases where it is not possible to

⁸⁶Katja Loupajarvi, “Is there an Obligation on States to Accept International Assistance to Internally Displaced Persons under International Law?”, International Journal of Refugee Law, Vol. 15, No. 4, p. 682.

determine who has the control of the government, consent would be presumed as assistance is of paramount importance and cannot be delayed.⁸⁷

As per Common Article 3 of Geneva Conventions, the consent is required only where a relief operation is passing through over territory that is controlled by that government. State parties to international human rights treaties also have a positive obligation to provide protection when there are widespread violations of the right to life. After all, human beings have an “inherent right to life”. ICCPR considers the right to life as inherent and this is recognized as customary international law. As per International Covenant on Economic, Social and Cultural Rights (ICESCR), existence of economic, social, and cultural rights imply that a state must accept offers of international assistance to IDPs.⁸⁸

Charter of the UN imposes significant obligations on the Member States in several respects. Purposes of the UN under Article 1(3) is to “achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for fundamental freedoms for all...” Article 55 and 56 of the Charter elaborate on the aim of international cooperation. However, duty to cooperate regarding humanitarian assistance must be read together with Article 2 (7) on non-interference in domestic jurisdiction. There would be a broad agreement, nonetheless, that this principle should be balanced against the duty to achieve international cooperation under Article 1(3). Francis Deng has argued that duty to cooperate implies a corollary obligation to accept international assistance.

Undoubtedly, humanitarian law upholds the right to offer assistance for civilians caught in armed conflicts, whether international or non-international. Bothe argues that international organizations like UNHCR and

⁸⁷ Y Sandoz, C. Swinarski & B. Zimmermann, eds., Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC, Martinus Nijhoff Publications, 1987, p. 1479.

⁸⁸ For an elaborate justification, see Luopajarvi, n.89, pp. 693-698.

ICRC can undertake unilateral action if there is an unlawful refusal of consent to reach relief assistance to the victims of armed conflict. Such refusal may not be considered legal.⁸⁹ Moreover, as per the ICJ judgment in Nicaragua case maintained, strictly humanitarian aid given without discrimination is not in violation of international law.

Section 4: Analysis of Guiding Principles

The preparation of the Guiding Principles was not an intergovernmental process as these are based on existing law. Commission on Human Rights and General Assembly “took note” of the Principles but they were not “adopted” by the UN bodies. However, UN Secretary-General promoted them in a proactive manner and many international organizations, human rights body and the wider non-Government organizations began to cite and apply the Principles.⁹⁰ The reason why a Convention or Declaration was not attempted instead of Guiding Principles has been responded to by Roberta Cohen who was one of the main protagonists for IDP rights and worked closely with Deng. According to her, three main reasons included an appreciation of “political realities”. Firstly, the governments would not have favored a binding treaty. This is why the Commission had asked Representative of Secretary-General to develop an “appropriate” framework. The Commission avoided the term *legal*. Moreover, the ICRC was not in favor of embarking on a journey to enact a treaty as that might undermine the Geneva Conventions which already had significant protection set for the civilian population in a non-international armed conflict and that included protection for the IDPs as well. Secondly, there was an urgent need for a guiding document in view of the humanitarian crises in many parts of the world with IDP numbers overtaking the refugees. Thirdly, it was recognized that there are applicable international law contained in IHRL, IHL as well as in analogous provisions

⁸⁹ M. Bothe, “Relief Actions: ‘The Position of the Recipient State’”, in F. Kalshoven ed. Assisting the Victims of Armed Conflict and Other Disasters, Martinus Nijhoff Publications, 1989, p.96.

⁹⁰ For a fascinating and detailed account of the development of Guiding Principles, See Roberta Cohen, “Lessons Learned from the Development of the Guiding Principles on Internal Displacement”, Working Paper, Crisis Migration Project, Institute for the Study of International Migration, Georgetown University, October 2013, pp. 1-19.

of refugee law. Therefore, it was more vital to restate and rework rather than attempt to enact a binding treaty which may take years, if not decades.⁹¹

The experts who contributed to the drafting of the Guiding Principles took every possible precaution not to be seen breaching the sovereignty wall. Therefore, it was considered not necessary to obtain “comments” of the governments on the document as that had the potential to negate the progress achieved. When Deng was asked whether the Guiding Principles should go through an intergovernmental process, he said:

Considering that the Guiding Principles were developed in response to successive resolutions of the Commission on Human Rights and the General Assembly and the wide support they have received since their presentation to the appropriate UN bodies, it would not be strictly correct to assume that they have not been considered in pertinent intergovernmental bodies, even though formal adoption was not called for, given their nature as guidelines restating existing law and thereby facilitating their implementation.⁹²

Guiding Principles on internal displacement represent a milestone in the evolution and standard setting for the protection of the internally displaced people throughout the world. The 30 Principles cover each and every respect of assistance and protection requirements for the IDPs. We shall focus on some of the Principles which have a bearing on the research questions of this work. Walter Kèlin who became the Representative of Secretary-General on Human Rights of Internal Displacement from 2004-2010 came out with Annotations to the Guiding Principles to throw light on legal norms applicable to the Principles in 2000. The Annotations have acted as a main legal reference point for the Principles. According to the Annotations:

The Principles identify the rights and guarantees which, when fully observed and respected, can prevent arbitrary displacement and address the needs of internally displaced persons in terms of protection, assistance and solutions. In keeping with its focus on needs, the Principles are structured around the phases of internal displacement: They address protection against displacement (Principles 5 – 9); protection during displacement (Principles 10 – 23); the framework for

⁹¹Ibid.p.5.

⁹²Cited in Roberta Cohen, Ibid.

humanitarian assistance (Principles 24 – 27); and protection during return, local integration in the locations where persons have been displaced, and resettlement in another part of the country (Principles 28 – 30).⁹³

For the purposes of this study it is worthwhile to reference the Principles specially related to three aspects: ‘Definition’ of IDPs (Scope and Purpose), Responsibility of national authorities (Principle 3), and Principles relating to Humanitarian Assistance (Principles 24-27).

A “definition” of internally displaced persons has been given in the Introduction of the Guiding Principles under the heading “Scope and Purpose”.

“2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.”

Paragraph 2 is a descriptive identification and contains two elements-coercive character of movement and that the movement is within national borders. According to Kèlin, the broader connotation would be “it refers to the place where the displaced person finds refuge and is also met if displaced persons, e.g., have to transit through the territory of a neighbouring state in order to gain access to a safe part of their own country”.⁹⁴

Definition or description of “internally displaced persons” finds mention in the introductory section and not as part of the Principles. The main reasoning is that Guiding principles “seek to highlight the descriptive and non-legal nature of the term”.⁹⁵ Internally displaced persons “need not and cannot be

⁹³ Walter Kèlin, Guiding Principles on Internal Displacement Annotations, The American Society of International Law & The Brookings Institution-University of Bern Project on Internal Displacement, 2nd Ed. 2008, p. 3.

⁹⁴ Ibid.

⁹⁵ Kèlin, p. 5.

granted a special legal status under international law”.⁹⁶After all, they are citizens or habitual residents in the country and endowed with rights and entitlements as such.

Internal displacement may be brought about by situations of generalized violence, violations of human rights, or natural or human-made disasters. So the Guiding Principles do not apply to people who move voluntarily for economic reasons and use of the word “in particular” means that the reasons stated need not be exhaustive.⁹⁷

It is significant that IDPs’ definition in the Guiding Principles include displacement due to “natural or human-made disasters”. This has made the IDP category truly broad-based. Indeed there are dissimilarities between situation of displacement caused by conflict and those occasioning due to disasters. At the same time, there are similarities too, in terms of vulnerabilities of the affected people. It has also been argued that many a times, authorities would discriminate between victims of natural disasters based on identity markers- ethnicity, religion or political orientation. Secondly, it has also been seen much displacement happens due to “human-made disasters”. To the extent that victims are forced out of their home, their vulnerability and protection needs would not be different from those displaced due to violence and conflict. This inclusion is also important because the authorities need to be accountable for their policies and projects. Aspects of protection needs of IDPs in this respect, however is beyond the scope of this research work.

Words “as a result of or in order to avoid the effects of” would mean that people may become internally displaced after suffering the circumstances mentioned or in anticipation of adverse effects.

“Principle 3.

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

⁹⁶ Ibid.

⁹⁷ Ibid.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request”.

Principle 3 is an explicit recognition of the primacy of sovereign authority albeit from the standpoint of “duty and responsibility”. The Guiding Principles or for that matter international action, if necessary, is not a substitute for the exercise of sovereign function of caring for the vulnerable citizens of the country by the national authorities. A corollary of the state duty and responsibility in this respect is the right of the displaced people to invoke the duty and responsibility of the state. Principles Relating to Humanitarian Assistance

“Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political and military reasons”.

The significance of the Principle is self-explanatory especially in view of the contested nature of internal conflicts causing displacement where government authorities and non-state armed groups are usually at loggerhead. This may cause problems in an impartial and non-discriminatory distribution mechanism. Secondly, since a large number of internal displacement situations are “regime-induced”, it is difficult to ensure that principle of humanity, impartiality and non-discrimination would inform the actions of national authorities. International humanitarian law is quite explicit, in Article 18(2) in Additional Protocol II and Article I in Additional Protocol I of the Geneva Conventions that relief actions for the civilian populations need to be carried out in an exclusively humanitarian and impartial manner. Judgment in Nicaragua Case by International Court of Justice also elaborated on the element of non-discrimination in distribution of emergency relief. The ICRC has put it emphatically: “[t]he humanitarian character of the action is fulfilled once it is clear that the action is aimed at bringing relief to victims, i.e., in the present case, the civilian population lacking essential supplies. What matters most of all is to avoid deception, that is to say, using the relief action for other purposes. [...] The impartial character of the action may be

assumed on the basis of fulfilling the obligation, also laid down, to conduct the action ‘without any adverse distinction’. [...] ⁹⁸ Paragraph 2 on non-diversion of humanitarian assistance for political or military purposes is equally significant. It directly flows from the first principle in Paragraph I. This requirement assumes urgency in view of the nature of conflict causing displacement. Parties to the conflict may be tempted to divert resources for the beneficiary of their choice or they may attempt to leverage the resources to gain support. The ICRC commentary cited by Kèlin above explains that “[t]he obligation to protect relief consignments means, on the part of the Party concerned, that it must do its utmost to prevent such relief from being diverted from its legitimate destination, particularly by strictly punishing looting and any other diversion of relief and by providing clear and strict directives to the armed forces”.⁹⁹

“Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State’s internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced”.

Principle 25(1) is a reiteration of Principle 3 that puts a premium on “duty and responsibility” of the national authorities. Here, the language seeks to privilege the national authorities in carrying out their “primary duty and responsibility”.

The first sentence of paragraph 2 is based on common Article 3(2) of the Geneva Conventions where impartial humanitarian bodies are entrusted to

⁹⁸ Cited in Kèlin

⁹⁹ Ibid.

offer their services. Article 18(1) Protocol II also refers to this principle. The second sentence of paragraph 2 is based on Article 70(1) Protocol I. ICRC explains that “[t]he fact that consent is required does not mean that the decision is left to the discretion of the parties”. The authorities cannot refuse relief and assistance without good grounds. This aspect is also covered, to a certain extent, in the various Human Rights Covenants.¹⁰⁰ Security Council has also reiterated in almost all its Resolutions dealing with conflict, humanitarian action and displacement since the 1990s that authorities must grant immediate and unimpeded access to international humanitarian organizations. Many a times such Resolutions have been passed by the Council under Chapter VII of the Charter that deals with enforcement action in case of defiance. World Summit in 2005 also underlined the need to ensure “that humanitarian actors have safe and unhindered access to populations in need in conformity with the relevant provisions of international law and national laws”.¹⁰¹

Para 3 is again based on Additional Protocol 1, Article 70(2) and is applicable to ‘all authorities’. This means that not only the government authorities but also the non-state armed groups who are in effective control of the territory should not impede free passage of humanitarian assistance.

“Principle 26

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

This Principle follows from other above Principles on humanitarian assistance. Humanitarian actors require protection in the discharge of their responsibilities. This aspect is covered by the Convention on the Safety of United Nations and Associated Personnel. Customary humanitarian law also emphasizes that humanitarian relief personnel and the goods and resources under their charge must be respected and protected. The Security Council Resolution 1502 (2003) strongly condemned all forms of violence against humanitarian workers as well as attacks on humanitarian convoys and acts of

¹⁰⁰ Ibid.

¹⁰¹ UN General Assembly Resolution A/60/L.1 para. 169

destruction. Crimes against humanitarian personnel should be punished and reaffirmed “the obligation of all parties involved in an armed conflict to comply fully with the rules and principles of international law applicable to them related to the protection of humanitarian personnel and United Nations and its associated personnel”.¹⁰²

“Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.”

Humanitarian assistance should not necessarily be limited to emergency relief. Human rights concerns should pervade all international assistance programs. Without ensuring protection, international assistance may become empty of substance for the victims of violations of human rights- the primary reason for displacement. So a strong link needs to be forged between assistance and protection. Secondly, this important responsibility needs to be discharged keeping in view international standards. Thirdly, though ICRC is the only organization whose mandate as guardian and promoter of international humanitarian law extends even in times of peace, this does not preclude yet other organizations from assuming protection responsibilities. Under the “cluster approach” initiative of the Inter-Agency Standing Committee, a number of organizations/agencies have obtained specific mandate to work for different aspects of the needs of internally displaced people. UNHCR has been given the “protection cluster” under this arrangement.

Section 5: Significance of Guiding Principles

The Guiding Principles are based on the recognition of the duty and responsibility of national governments for the care, assistance and protection

¹⁰² See Kèlin, p. 121.

of the IDPs. Government has the responsibility for its nationals at all three levels- prior to displacement, during the displacement as well as in the third stage of return, resettlement and reintegration. In case, the governments are not in a position to discharge their responsibilities or they are unwilling to do so, international community may be asked to offer humanitarian assistance. Such an offer may not be refused in an arbitrary manner.

The widespread dissemination of the Guiding Principles, their gradual acceptance and indeed their application as a standard of action by at least some national governments and international agencies have made a direct contribution to the amelioration of the sufferings of internally displaced in many situations. UNHCR which has assumed the responsibility for three important components of issues related to IDPs under the Cluster Approach has incorporated the Principles into its protection and human rights activities for the IDPs. Inter-Agency Standing Committee which comprises of major humanitarian, human rights and development agencies is also using the Guiding Principles for operational guidance to its staff. The December 2008 issue of *Forced Migration Review* was devoted to analyze the achievements and challenges of “The Guiding Principles”. It was noted that “[from] the point of view of humanitarian agencies, the Guiding Principles have shaped humanitarian and protection operations. They also provide the primary reference from which humanitarian and protection standards and practices are developed”.¹⁰³ It was pointed out that the Guiding Principles have become “a key point of reference for the development of normative frameworks for the protection of IDPs in domestic laws and policies” and Organization of American States and Council of Europe have recommended the “adoption of the Guiding Principles through national legislation to their Member States”.¹⁰⁴ Cordula Droege of the ICRC writing in the same issue of *Forced Migration Review* points out: “Legal developments of the past decade have not only strengthened and consolidated the law underpinning the Guiding Principles but have also been influenced by them”.¹⁰⁵ More than twenty

¹⁰³“Ten Years of the Guiding Principles: Achievements, Challenges and Recommendations”, Summary of the outcomes of the GP10 Conference, Forced Migration Review, December 2010, p.6.

¹⁰⁴ Ibid.

¹⁰⁵CordulaDroege, “Developments in the Legal Protection of IDPs”, in Ibid., p.8.

countries have passed specific legislation or adopted policies reflecting the protection accorded to the IDPs in the Guiding Principles. Except in the case of Azerbaijan, Columbia and Georgia where policies were adopted prior to the Guiding Principles, all the advances registered have been after the Principles were considered by the UN bodies.¹⁰⁶ Elizabeth Ferris draws attention to the fact that “UN human rights groups have used the Principles to draw attention to the shortcomings of the government’s response to the needs of those displaced by Hurricanes Katrina and Rita in 2005”.¹⁰⁷

It is an open question if the Guiding Principles have acquired “legal significance” or if they are now part of international law. In Africa, the Great Lakes Pact has adopted a protocol that obliges the 11 member countries which are signatories to adopt Guiding Principles as a framework and incorporate their provisions into national law. The Kampala Convention is the first regional Convention to oblige the states to take measures to improve the conditions of IDPs. Some of the provisions of the Convention are based on the Guiding Principles.¹⁰⁸The Convention has “reinforced the developing legal status of the Guiding Principles”.¹⁰⁹

Quite a number of countries are adopting national policy or even legislation in regard to IDP protection and the Guiding Principles have been used in these policies and legislation as an important reference point. Roberta Cohen has pointed out that “governments have been slow to implement policies and laws they have adopted, and some of them have failed to do so at all”.¹¹⁰ A case in point is Nigeria which finalized a national policy for the IDPs in 2011 but the policy has not been adopted even today.¹¹¹Since the Guiding Principles are not a treaty they cannot invoke binding commitments of the states. Representative of the Secretary-General has observed that it is only “if states,

¹⁰⁶ Elizabeth Ferris, “Assessing the Impact of the Principles: An Unfinished Task”, in *Ibid.*, p. 10.

¹⁰⁷*Ibid.*

¹⁰⁸ For a detailed consideration of the Great Lakes Pact and the Kampala Convention see Chapter IV.

¹⁰⁹Cohen, n. 93, p.12.

¹¹⁰Cohen, n. 93, p.11.

¹¹¹ This aspect would be covered comprehensively in Chapters V and VI of this research work.

international organizations and other actors continue to insist that specific guarantees exist for the internally displaced”, that “the law of internal displacement will grow”.¹¹²

Concluding Observations

The foregoing analysis attempted to capture the magnitude of the crisis of internal displacement, largely propelled by devastating armed conflicts and the inability of the national sovereign authorities to contain the resultant violence and displacement of civilians. We also found how the authorities themselves have been an active agent in these conflicts and how displacement is linked to the question of state survival and regime interest. The international responses to these crises and their consequences have also evolved, in a robust direction. The conceptualization of sovereignty as also entailing responsibilities toward the citizens has significantly impacted the international response. International humanitarian and human rights laws have been creatively interpreted to accentuate national obligations to respect international law and the fast developing norm of protection of civilians. Urgency in this respect has been upheld by the UN Security Council in linking refugee-flows and internal displacement with maintenance of international peace and security. The developments in the international response have been strengthened by the Guiding Principles on Internal Displacement drafted through various stages with the encouragement of UN Human Rights Commission and the UN General Assembly. The Guiding Principles have become the new international norm for the protection of and assistance to the internally displaced people. The Principles advantages the role of the national authorities but also enjoins an obligation on them to accept international humanitarian support to redress the sufferings of the affected population. The Principles endow the internally displaced with a set of rights that increasingly would find favor in national policies and laws irrespective of the prevarication of the authorities concerned. Their unwillingness to uphold their obligations would invite international humanitarian action. In case of an inability to protect the displaced and provide for their assistance, the national authorities can request for

¹¹²Cited in Cohen, n. 93, p.12.

international assistance which they should facilitate. The realm of international action, both humanitarian as well as in the form of intervention may possibly open up if the national authorities fail their responsibilities. A detailed consideration of these inter related aspects of international action in the form of humanitarian intervention or under an international pledge to protect people from atrocity crimes would be dealt with at length in the next Chapter III.

Chapter III

Humanitarian Intervention, R2P Doctrine and Theoretical Perspectives from IR

Introduction

This Chapter seeks to encompass a wide range of interconnected perspectives and exemplify the current discourse on humanitarian intervention and Responsibility to Protect (R2P). The focus is on the tension between the international law norm of non-intervention and human rights considerations that privilege humanitarian intervention under the current and developing norm of R2P. While the Report of the Independent Commission on Intervention and State Sovereignty (ICISS) and the annual reports of the United Nations Secretary-General on R2P provide the base for the analysis presented here, the competing International Relations approaches to humanitarian intervention and international norm are discussed to enrich the debate on the subject. Applicability of R2P to Libya has been presented as a case study. Concerns related to IDP protection under R2P have also been analyzed.

The principal issue in all attempts to theorize international relations and world politics is to identify patterns in state policies, practices and articulation in order to build explanations of state behavior and to project and predict the trajectory of events and developments consistent with the explanation. A number of competing theories of IR have developed to serve the quest for such explanations. Even while these theories are self-contained and have developed sophisticated tools to examine the available material, the efforts in this direction are conditioned by overlapping emphasis, individual theorists' proclivity and preferences and above all the worldview of the school of thought that the theoretical approach may adhere in preference over yet other competing school. The first section of this Chapter considers Liberal Internationalism, Realism/Neorealism and Constructivists' approach to IR in general and their perspective on state sovereignty in particular.

The subject of humanitarian intervention analyzed in the second section has been enriched by different theoretical perspectives, from the standpoint of material objective and interests of the nation states and alternative explanations rooted in ethics and morality in foreign policy. The absence of specific material interests of the states in supporting and even undertaking humanitarian intervention at times, especially in some situations of mass atrocity crimes has led to some doubt about the centrality of state interests as an arbiter of state action. Alternative explanations have been build that prioritizes a conception of state interest which is inclusive of non-material objectives including international norms of state behavior. Articulation of such norms has found strong support and endorsement of the international community in the context of the exposition of a Responsibility to Protect doctrine that privileges international action over concerns for state sovereignty especially in the context of atrocity crimes. This aspect is dealt at length in the third section of the Chapter. However, the operationalization of R2P are dependent as much on the political consensus in the Security Council as it is conditioned by operational aspects of intervention and as such international will may not necessarily translate in international security action.

Section 1: Theoretical Perspectives

1.1: Liberal Internationalism

A state of peace among independent, sovereign states is the starting point of the classical liberal tradition in international relations represented by Immanuel Kant and Giuseppe Mazzini. John Locke, great liberal individualist and Adam Smith, Baron de Montesquieu and Joseph Schumpeter – proponents of commercial liberalism and liberal pacifism- contributed immensely to the development of liberal worldview. However, it was Kant who laid the foundation of liberalism in the context of international relations. For Kant, constitutionalism and popular representation in a republic would serve as restraints on foreign policy. In his Second Definitive Article of Perpetual Peace, Kant thought that liberal republics would establish peace among themselves. His Third Definitive Article of Perpetual Peace postulated

that spirit of commerce would soon take hold of every nation, adding material incentives to moral commitments. ¹

Classical liberals such as Bentham, Kant and Mazzini were optimists and thought that mutual trust among nations would foster progress in the international arena.

Scholars broadly subscribing to liberalism have applied insights from game theory to enrich discussion on interdependence as well as regime creation. More recently, liberal international relations theorists are also focusing on the interplay between domestic politics and international cooperation: “This new scholarship seeks to explain in particular the close international cooperation among liberal democracies as well as higher-than-average levels of delegation by democracies to complex multilateral bodies...” ²

Though seminal thinkers in the liberal international relations tradition like Kant, Mazzini, and Mill displayed an interest in ethical dimension of foreign policy, they were less than enthusiastic about moral behavior in the international setting. In the contemporary debate on normative aspects of intervention and regime, one can discern two groups of liberal scholars—cosmopolitan interventionists and liberal internationalists. ³

Cosmopolitan interventionists consider it a duty, an obligation to intervene militarily wherever there are systematic violations of human rights. Their understanding of state sovereignty militates against tyranny and oppression and they think it is morally incumbent to intervene militarily to overthrow oppressive regimes. In contrast, liberal internationalists are broadly not in favor of intervention as they regard state sovereignty to be inviolable. Mazzini and Mill were not in favor of using force to promote liberty and democracy. They reasoned that tyranny must be defeated domestically. Otherwise, liberty achieved through foreign intervention would be fragile and unsustainable. In this view, policies of forcible democratization are rejected.

¹For an exposition See Miachel Doyle and Stefano Recchia , “Liberalism in International Relations” in Bertrand Badie, Dirk-Berg Schlosser and Leonardo Morlino, eds., International Encyclopedia of Political Science, Sage, Los Angeles, 2011. pp. 1434-1439.

²Ibid. p.1437.

³Ibid. p.1438.

According to Doyle, “Democratic transformation is best fostered peacefully and indirectly through trade, investment, and foreign aid. These can help diversify societies, and diversified, growing societies tend to demand responsive governance in the long turn”.⁴

John Rawls, a prominent liberal internationalist, is supportive of military intervention as a measure of last resort in the face of massive human rights violations. In such a situation, insistence on inviolability of state sovereignty would not be justified. However, he and some of the other liberal internationalists maintain that multilateral authority and legal delegation from the Security Council is the preferred way forward in this type of situation. The 2001 report by International Commission on Intervention and State Sovereignty (IICSS) echoes in great measure the position of the liberal internationalists.

Liberal theory has always focused on what policymakers should do instead of what they actually do. Theorizing at the systemic level allows it to avoid having to explain ongoing, empirical anomalies. There is no attempt to understand and link the domestic context with international policy. Jennifer Sterling-Foker finds similarities in constructivism and neoliberalism: “The choice between neoliberal institutionalism and constructivism is not paradigmatic and is merely a choice between short-term behavioral cooperation in the moment or its development into communal cooperation into the future”.⁵ According to her, constructivism can be seen as yet another variant of liberalism:

Liberal IR theorizing has also had an historical tendency to co-opt new approaches with constructivism being perhaps the latest example. Integration, transnational relations, interdependence and regimes were each touted in turn as new ideas and approaches. However, each contained the same functional logic that had simply been dressed up in new, albeit, sometimes remarkably fascinating, feathers.⁶

⁴Ibid.

⁵Jennifer Sterling-Foker, “Competing Paradigms or Birds of a Feather? Constructivism and Neoliberal Institutionalism Compared”, *International Studies Quarterly*, Vol. 44, No. 1, March 2000, pp. 97-119.

⁶Ibid. p.115.

1.2: Understanding Realism/Neorealism

Ideas, approaches and theories that explain international politics are a product of time and they seek to project a trajectory of future course of politics and international relations based on their understanding of the present.

It is erroneous to constraint our thinking of theoretical approaches to politics by considering various theoretical formulations as monolithic. This may be tempting but it does not serve to correctly describe the practitioners' viewpoint. Robert Gilpin has articulated this quite well: it is incorrect to deny that "schools of thought exist" but it also necessary to define "rather carefully what constitutes the common ground" of particular bodies of thought.⁷

Humanitarian intervention is important in International Relations because it considers the tension between ethics and politics. Realism is a theory of politics where power and power relations are dominant and realists have labored the point that national interests and survival is the best guide to foreign policy. Chasing universal values of liberal-democratic order or of human rights may not serve the national interest and can be undertaken only if it does. Morgenthau was apprehensive of the type of intervention Vietnam involved as it would diminish and undermine US power and prestige. Robert Tucker maintained that only pursuit of specific national interests can be a ground for intervention. Waltz did not favor intervention for purposes other than vital national interests. Intervention as a policy may embroil the superpowers in conflict whereas the national interest demanded the maintenance of international balance of power. In Waltz's writing the focus was on East/West balance and 'international stalemate as the minimum basis for survival'.⁸ Mandelbaum was critical of NATO's intervention in Kosovo as it was politically costly, straining relations with Russia and China and that US foreign policy should not become subordinate to social work.⁹

⁷ R. Gilpin, "The Richness of the Tradition of Political Realism", International Organization, Vol. xxxviii, No. 2, 1994, p. 288.

⁸Daniel Fiott, "Realist Thought and Humanitarian Intervention", The International History Review, Vol. 35, No 4. September 2013, pp. 766-782.

⁹M. Mandelbaum, "A Perfect Failure: NATO's War against Yugoslavia", Foreign Affairs, Vol. lxxviii, No. 5, 1999 pp. 2-8.

This does not necessarily mean that moral and ethical considerations are beyond the ken of realists or they devalue these considerations. What this means is that realists have focused on understanding, studying and prescribing what it *is*, rather than what it *ought* to be. This quest of the realists does not mean they are divorced from social construction of the reality they study. This only means that they are mindful of the constraints of power relations as a determinant of social phenomenon.

In his *Theory of International Politics* published in 1979 Kenneth Waltz offers a perspective of international politics in contradiction to the classical realist theory of power.¹⁰ Morgenthau maintained that causes of conflict and war are to be found in an imperfect human nature. Waltz located it in an anarchic international system. State remains the central pivot in the realists understanding. Neorealists, in contrast, emphasize international system. According to Waltz, only structural changes are determinant of world politics and therefore he did not place importance to agency. After all, the units are not central to the understanding and analysis of international politics as it is the systemic factors that decide the behaviour of states. Neorealists are much influenced by behaviorist revolution in the social sciences in the 1960s, and are interested in constructing a rigorous and scientific approach to the study of International Politics. Waltz was committed to “scientific realism” and focused on tangible variables as they are easy to quantify. Classical realism, however, is much more focused on subjective valuations of international relations.¹¹

Morgenthau maintained that causes of conflict and war are to be found in an imperfect human nature. Waltz believed that we cannot empirically verify what human nature is. Classical realist position in this respect is hypothetical and cannot be validated. He also thought that Morgenthau’s conception of human nature is essentialist but “a constant (human nature) cannot explain variation that keeps on occurring”. If human nature is the cause of war, what about peace? According to Waltz patterns of international politics constantly

¹⁰Kenneth Waltz, *Theory of International Politics*, McGraw-Hill, 1979.

¹¹ See A. H. Pashkhanlou, “Comparing and Contrasting Classical Realism and Neorealism: A Re-examination of Hans Morgenthau’s and Kenneth Waltz’s Theories of International Relations” <http://www.e-ir.info/2009/07/23/comparing-and-contrasting-classical-realism-and-neo-realism/>

reoccur and therefore he locates causation at the systemic level. The differences between Morgenthau and Waltz have been succinctly put forth by Pashakhanlou:

Morgenthau's 'bottom-up approach' takes human nature as the starting point and moves up the levels of analysis, while Waltz 'top-down approach' begins at the third image and slowly move down to the unit-level, without ever reaching the individual level. Contrary to the conventional wisdom then Morgenthau's classical realism cannot be seen as a strict first image theory and Waltzian neorealism is not a purely systemic theory.¹²

Realists are no less interested in values and norms though there is some thinking that denies realists interest in this respect. Morgenthau, however, was quite clear in this regard: "While truth tries to unmask power for what it actually is, in order to open space for normative and critical challenges to the status-quo, power tries to cloak itself and pretend to be bearer of truth and justice in hope of maintaining the existing order".¹³Morgenthau enjoined that task of the scholar is to "speak truth to power".

Morgenthau, especially in his latter writings discusses ethics and morality. He supported an international police force under the United Nations for international peace and security and forcefully asserted that scholars should speak truth to power. He also maintained in his "To Intervene or Not to Intervene" that while it is imprudent to overrate "what a nation can do for another nation by intervening in its affairs", this does not necessarily mean that intervention cannot (or should not) occur.¹⁴Henry Kissinger also wrote that "a statesman must attempt to reconcile what is considered just with what is considered possible"¹⁵ and expressed himself in favor of an intervention in Rwanda.

Motivations in favor of intervention for moral ends are valid but it is necessary to first understand from the realists the limits of power in an anarchical system. Beardsworth writes: "realist prudence is neither relativism nor opportunism: it entails the construction of value, freedom and non-

¹² Ibid.

¹³Cited in Ibid.

¹⁴Fiott, n.8, pp. 774-775.

¹⁵ Cited in Fiott, p.775

violence through the practical constraints of a plural, violent world. These constraints are not negative barriers [...] they essentially limit political possibility. Ethical responsibility in the political domain emerges from this limitation”.¹⁶

Scheuerman has argued that humanitarian intervention may not be undertaken on a consistent basis and only ideas and ideals may not be sufficient for successful outcome. In his view, a “progressive realism” can help understand the constraints involved in any consideration of humanitarian intervention. Fiott has underlined that any realist “treatment of humanitarian intervention in the present period cannot mimic cold-war thinking but must reflect the full heritage it represents. By accepting morality as a major problem in IR and a key element of debates on humanitarian intervention, realist thinkers may be able to overcome hostility to concepts such as humanitarian intervention”.¹⁷

The concept of Responsibility to Protect is based on a notion that state sovereignty can and should be subordinate to human values. Jeremy Moses, however, challenges this notion and endeavors to show that realists’ understanding of sovereignty is indivisible and what matters is international politics and not international law.¹⁸ To quote Morgenthau:

We have heard it said time and time again that we must ‘surrender part of our sovereignty’ to an international organization for the sake of world peace, that we must ‘share’ our sovereignty with such an organization, that the latter would have ‘limited sovereignty’ while we would keep the substance of it, or vice versa, that there are ‘quasi-sovereign’ and ‘half-sovereign’ states. We shall endeavor to show that the conception of a divisible sovereignty is contrary to logic and politically unfeasible, but that it is a significant symptom of the discrepancy between the actual and pretended relations existing between international law and international politics in the modern state system.¹⁹

¹⁶R. Beardsworth, “Cosmopolitanism and Realism: Towards a Theoretical Convergence?” *Millennium Journal of International Studies*, Vol. xxxvii, No. 1, 2008, pp. 69–96.

¹⁷Fiott, n.8, p. 779.

¹⁸Jeremy Moses, “Sovereignty as irresponsibility? A Realist Critique of the Responsibility to Protect”, *Review of International Studies*, Vol. 39, 2013, pp. 113–135.

¹⁹Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, Alfred Knopf, New York, 1972, p. 320.

The Responsibility to Protect concept is premised on understanding sovereignty as normative but in great measure, sovereignty is de facto power and therefore any attempt to base policy on normative considerations would meet the constraints presented by de facto power.

1.3: Limits of Sovereignty

How is it possible to reconcile state sovereignty and the concomitant principle of non-intervention with the principle of universal human rights? Different understandings of morality invoke different conception of humanitarian intervention. It depends on whether one is privileging justice over order or order over justice.

Liberalism maintains that political institutions exist to serve people who have equal rights and freedom and people possess these rights regardless of culture, race and nationality and protection of these rights is concern of everyone- individuals, states and international organizations. According to Teson, “If human beings are denied basic human rights and are, for that reason, deprived of their capacity to pursue their autonomous projects, then others have a prima facie duty to help them”.²⁰ Authority of morality protects us from violation of human rights. Solidarist theory maintains that diverse societies and culture can and do reach agreements on substantive moral rights. Doctrine of internationally protected human rights is a powerful critique of non-intervention principle. Thomas Hobbes who was a theorist of state sovereignty also pointed to the limits of state power. Hobbes’ masterpiece Leviathan recognized that absolute power had an obligation to protect people. Sovereignty is a two-way street. People offer loyalty in exchange of protection. According to Peter Berkowitz:

Hobbes’s political theory shows why sovereignty, though absolute and indivisible in its proper sphere, is in the end limited by the power that brings it into being and maintains it, namely, each individual’s natural and inalienable right to self-preservation. And this limitation illuminates both the good reasons that states have for respecting the claims of national sovereignty, and the conditions under which rulers surrender

²⁰ Cited in Liam James Spadling, “A Critical Investigation of the IR Theories that Underpin the Debate on Humanitarian Intervention”, International Public Policy Review, Vol. 7, No 2, June 2013.

the right to govern their people and other nations become free to intervene.²¹

Edward Luck has attempted to situate the significance of Hobbes's theory in contemporary context: "Only an agreed-upon sovereign with absolute and indivisible powers, argues Hobbes, can protect subjects from each other and from threats. But in the end, the subject's obligation to obey runs no further than the sovereign's capacity to protect".²²

Metaphysical focus on state sovereignty cannot blind us to the violence and excesses committed by the rulers on the pretext of maintaining order. Kant maintained that morality is higher than authority of the sovereign power. His application of universal law supported coercion if it hinders the hindrances to freedom. According to Gomes, this position can be applied to a justification of humanitarian intervention as it "will be a hindrance to the hindrance of freedom, and will thus be consonant with freedom in accordance with universal laws – that is, it will be right". Moreover, Kant's formulation of duty is that it is a moral obligation as individuals who assist others can expect reciprocation at some other time. Humanitarian intervention would be invoked in cases where states fail to provide "even the minimum degree of security and order to their populations". In such cases, sovereignty ceases to exist.²³

Commentators have highlighted the co-relation between material interests and moral-ethical dimensions of humanitarian intervention. Yet others have highlighted the course of norm progression. Devastating consequences of intervention in Somalia harmed the prospects of meaningful engagement and intervention in Rwanda where mass killings shook the conscience of the whole world. Security Council instead of strengthening the already present UN peacekeeping forces in Rwanda in fact proceeded to dilute its mandate

²¹ Peter Berkowitz, "Leviathan Then and Now", Policy Review, Hoover Institution, October/November 2008.

²² Edward C. Luck, "Sovereignty, Choice and Responsibility to Protect", Global Responsibility to Protect, Vol. 1, MartinusNijhoff Publishers, 2009, pp. 10-21.

²³ M. Ayoob, "Humanitarian Intervention and State Sovereignty", The International Journal of Human Rights, Vol. 6, No. 1, 2002, p.82.

and diminish the number of UN personnel. Security Council resolution 912 in this regard is considered as the worst resolution of the Council. Within a month, however, but only after mass massacre were already committed, UN reactivated its presence and role. In his address to Rwandan people, President Clinton said: “the international community together with nations in Africa, must bear the share of responsibility for this tragedy, as well. We did not act quickly enough after the killing began. [...] we did not immediately call these crimes by their rightful names: genocide”.

It has been claimed that norm of humanitarian intervention in the case of Rwanda were not internalized to the extent necessary for the international community to decisively intervene. George Mullens argues that norms, interests and identities at the time of Rwanda were not in support of humanitarian intervention..²⁴

Traditional realism prioritized material interests and did not favor any dilution of the autonomy of the political sphere. Pursuit of national interest was considered as the legitimate reoccupation of foreign policy. Neorealism emphasized on systematic dimensions of world politics. It was important to pursue interests that may advance prospects of survival in an anarchical system. Neither the realists nor their neorealist variants were much preoccupied with norms and the role it can play in explaining international politics. States have an interest in the international system and they would maximize their own welfare irrespective of the interests of other states. Cooperative behaviour in international institutions results as a function of reciprocity of interest. Strong states comply with norms that suit them and do not contradict their action. To Shannon, “norms are of trivial importance in explaining world politics, an epiphenomenon of the interests of the powerful”.²⁵ Weak states would comply with norm as failure to do so may

²⁴George Mullens, “To what extent can Realism and Constructivism explain the policy of United States of America in the UN Security Council”, Master Dissertation, University of Sussex, 2015, p. 13.

²⁵V. Shannon, “Norms are What States Make of Them: The Political Psychology of Norm Violation”, *International Studies Quarterly*, 2000 p. 296, cited in Steven Dixon, “Humanitarian Intervention: A Novel Constructivist Analysis of Norms and Behaviour”, *Journal of Politics & International Studies*, Vol. 9, Summer 2013, p. 131.

invite sanctions. In contrast, neoliberals believe that states maintain regimes to facilitate cooperation and collaboration as they gain more from the process. Even though the neoliberals accord a higher pedestal to norms, but still, as with the neorealists, it is about calculations of self-interest. Often, neorealists have argued that norms are mere “rationalizations” advanced to mask material interests. However, in many instances of recent humanitarian interventions, it has been difficult, if not impossible, to establish a connection between intervention and state interest.

Norm internalization had progressed in relation to Libya where international action under R2P was undertaken. Moreover, there were material considerations as well. It has been claimed that Libyan oil is highly prized due to low sulphur content and the country has extensive and exploitable reserves of natural gas. This questionable claim apart, Mullens argues that “acceptance of R2P acted as a catalyst for intervention into Libya, despite it being a case specific occurrence”.²⁶ Supporters of R2P do not believe that the principle has been abandoned in the case of Syria. The R2P concept is still emerging. In Libya moral thought and political power both were present whereas in Syria moral considerations are not backed by availability of political power.

1.4: Constructivism, Norms and Humanitarian Intervention

A dense network of human rights norms and international law is increasingly shaping the action of states. Traditional security scholars are hard pressed to answer the rash of humanitarian intervention that has taken place in the last 2-3 decades. It is not sufficient to draw attention to state or national interest. It is difficult indeed to deduce material interest and benefits of intervention in Somalia. Neither it is possible to explain the intervention in Libya by the yardsticks of national interest. However, humanitarianism by itself cannot explain intervention. Martha Finnemore maintains: “Only by examining the broader normative landscape we begin to understand the practice and ethics of humanitarian intervention”.²⁷ She further says: “...what constitutes a

²⁶Muellens, n.24.

²⁷ Martha Finnemore, “Paradoxes in Humanitarian Interventions” in Richard M Price ed., Moral Limit and Possibility in World Politics, Cambridge Studies in International Relations: 107, Cambridge University Press, 2008, p. 198.

humanitarian crisis is always a function of the normative fabric of political life and standards of acceptable behavior in the world.²⁸

UN Security Council Resolution 688 of 5 April 1991 was a watershed moment in the development of humanitarian intervention. US, UK and France led an unprecedented military relief operation to protect the minority Kurds facing the wrath of Saddam Hossein's Iraq. Shiites and the Kurds had rose in rebellion and a brutal Iraqi assault on the Kurdish population resulted in mass exodus of about 2.3 million refugees, constituting a humanitarian disaster. UN resolution, however, could be passed only in the context of "threat to international peace and security" necessitating enforcement action under Chapter VII of the Charter. But this enforcement action that involved military operation and creation of save haven and enforcement of no-fly zone in North Iraq was no less about "the repression of the Iraqi civilian population".

One may ask what material interests are involved in many of the humanitarian interventions the world has witnessed. One may even argue that these interventions are mere 'rationalizations', a 'cover up' etc. The issue is why such a 'cover up' is increasingly necessary? Why it is so that repeated references to human rights and international law are invoked? Even if we concede that intervening states are not motivated by the principles they profess, they would be obliged to behave in a way that their actions remain compatible with their claim.

It is now commonplace to accept that what constitutes standards of acceptable behaviour has changed. Genocide and ethnic cleansing provoke a very different kind of response- moral outrage, resolve for action and so on—in comparison to mass murders in earlier period of time. People today react differently to human rights violations. Normative culture has changed fast in the course of the last 2-3 decades. Governments today are expected to be both responsible and responsive. Transparency, accountability, good governance practices are necessary intermediary in the citizen-government relations. International standards are also changing, more qualitative and more exacting. There is increased scrutiny of what governments do internally, in

²⁸Ibid. p. 201.

their relations with their citizens. Globalization processes have accelerated the pace and qualitatively impacted the expectations from the government. To quote Finnemore again: “Contrary to the realist view- that the basic dynamics of world politics are immutable and that our world is not different in essentials from that of the Athenians and Melians— constructivist analysis suggests that norms and norm structures do change and behavior changes as a consequence”.²⁹ Norm of human rights has emerged as powerful expression of minimum agreement between the people of the world.³⁰

Constructivism has emerged as an important theoretical approach to explain world politics. Constructivists are concerned with how world politics is “socially constructed”. To them, the fundamental structures of international politics are social rather than strictly material. They also maintain that these structures shape actors’ identities and interests, rather than just their behavior. This claim makes them distinct and different from rationalism.³¹

Constructivism prioritizes the “role of idea in identity formation and subsequent behaviour” and maintains that “the mutual constitution of actors and structures in which the behavior of the states can shape the international system which, in turn, shapes the behavior of states”.³²

It is increasingly difficult to co-relate state interests and humanitarian intervention. Since normative contexts have changed, understanding of state interests have also changed. Realist and liberal approaches to international politics do not explain humanitarian intervention as a practice and how that practice has changed over time. We need to identify interests instead of

²⁹Ibid. p.219.

³⁰ See Kathryn Sikkink, “The Role of Consequences, Comparison and Counterfactuals in Constructivist Ethical Thought” in Richard M Price ed. Moral Limit and Possibility in World Politics, Cambridge Studies in International Relations: 107, Cambridge University Press, 2008, pp. 83-111.

³¹ Alexander Wendt, “Constructing International Politics”, International Security, Vol. 20, No. 1, summer 1995, pp. 71-81.

³²Dixon, n. 25, p.129.

merely assuming these. Constructivists ask “what interests are and to investigate the ends to which and the means by which power will be used”.³³ Humanitarian interventions or rather interventions with humanitarian justifications have taken place in the past too but which state and for what reasons it would be intervened has changed as the norms have evolved. Finnemore explains the role of moral entrepreneurs, committed individuals who happen to be the right place at the right time to instill their beliefs in larger global social structures.

How do norms develop? It is constructivists’ position that there is a reciprocal mechanism through which actors influence the emergence of new norms, while norms also influence behaviour. This understanding has been presented as an analysis of *Norm Life Cycle*, developed by Finnemore and Sikkink.³⁴ Dixon summarizes the three stages of the cycle: emergence, cascade and internalization. “Norms emerge when they are actively promoted by strong nations” and an agenda of appropriate behaviour is developed by norm entrepreneurs. Entrepreneurs attempt to persuade other actors and success takes the cycle to the second stage- cascade. This is when the actors acting as norm entrepreneurs reach a “tipping point” where its prevalence leads other states to conform. Subsequently in the third stage, norms are internalized, “achieving a taken for granted quality”.³⁵

Jefferey Checkel has reviewed three constructivists’ contribution to international relations studies and the review throws light on the richness of the strands of the constructivists. According to him “Constructivism is concerned with how the social and political world works. It is not a theory but an approach to social enquiry based on two assumptions: (1) the environment in which agents/states take action is social as well as material; and (2) this

³³Martha Finnemore, *Constructing Norms of Humanitarian Intervention* in Peter J Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, Columbia University Press, 1996.

³⁴ See M. Finnemore & K Sikkink, “International Norm Dynamics and Political Change”, *International Organization*, Vol. 52, No 4, pp. 887-917.

³⁵ See Steven Dixon, “Humanitarian Intervention: A Novel Constructivist Analysis of Norms and Behaviour”, *Journal of Politics & International Studies*, Vol. 9, Summer 2013, pp. 126- 172.

setting can provide agents/states with understanding of their interests (it can constitute them)".³⁶ Material structures are given meaning only by the social context through which they are interpreted. Checkel explains: "Norms embodying certain logics of appropriateness had provided the states with a new understanding of their interests."³⁷ Checkel cites the work of Risse-Kappen who has studied the formation of North Atlantic Treaty Organization and attempts to explain its endurance through a liberal constructivist approach. He maintains that democracies; "externalize their internal norms when cooperating with each other. Power asymmetries could be mediated by norms of democratic decision-making among equals emphasizing persuasion, compromise and the non-use of force or coercive power."³⁸ An interesting example is why a large number of international organizations and states adopted sanction against the apartheid regime in South Africa. Despite strategic and economic interests, many states imposed sanctions as a result of the emergence of a global norm of racial equality. According to Klotz, this demonstrated a constitutive role for norms where they affect state identity and not simply regulate behaviour.³⁹

According to Palan, Constructivists "assert but never prove the primacy of norms and laws of material considerations in domestic and international politics".⁴⁰ He further criticizes the approach: "IR constructivism has become a vehicle for the introduction of a highly dubious 'idealist' perspective on the international. In doing so, constructivists have not only done a disservice to IR theory, but also to the great potential for constructivist thought in IR".⁴¹

Checkel praises the efforts of the constructivists to focus on social structures and norms but points out that the approach lacks a theory of agency. It is necessary to explain how norms diffuse so differently in the real world. For

³⁶Jefferey T Checkel, "The Constructivist Turn in International Relations Theory", Review Article, World Politics, Vol. 50, January 1998, p.325.

³⁷ Ibid. p.331

³⁸Ibid. p.335.

³⁹Cited in Checkel, n. 36, p.336.

⁴⁰ Ronen Palan, "A World of Their Making: An evaluation of the Constructivist Critique in International Relations", Review of International Studies, Vol. 26, No. 4, October 2000, p. 575.

⁴¹Ibid. p. 598.

example, why these same norms of appropriate international behaviour have not developed in China? To explain this, the constructivists need also to focus on domestic structure and politics. He points out: “Without theory, especially at the domestic level, constructivists would not be able to explain in a systematic way how social construction actually occurs or why it varies across nationally”.⁴² Again, “Constructivism, while good at the macrofoundations of behaviour and identity(norms, social context), is very weak on the microlevel/ It fails to explore systematically how norms connect with agents’.⁴³

Section 2: Humanitarian Intervention

2.1:Humanitarianism

At the heart of issues surrounding humanitarian intervention is the nature and role of the principle of humanitarianism. Humanitarianism is now the centre of international policy agenda. Increasingly integrated with human rights discourse, it emphasizes “ethical” or “moral” foreign policy. Language of humanitarianism has been reworked to pursue human rights end. To quote Chandler, “Not only this more interventionist approach seen as a legitimate response to Humanitarian crises in non-Western states, it is increasingly understood to be non-political and ethically driven”.⁴⁴

During the Cold War, humanitarianism developed as an impartial and neutral intervention, irrespective of the politics of either of the sides, in regard to need for emergency relief and assistance. The development of international humanitarian law role and the stellar contribution of the ICRC served as an inspiration for undertakings across the world that made no distinction between good and bad, right cause or wrong cause. No distinction was to be made between two sides to a conflict and it was the role and responsibility of the humanitarian organizations to serve without distinction. Michael

⁴²Checkel, n. 36, p. 339.

⁴³Ibid. p. 342.

⁴⁴David C. Chandler, “The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda”, Human Rights Quarterly, Vol.23.No. 3, 2001.

Ignatieff noted about Red Cross: “It made no distinction between good wars and bad, between just and unjust causes, or even between aggressors and innocents”.⁴⁵

This position earned international recognition and credibility for humanitarian organizations. However, following the Biafran famine in Ethiopia, doubts were raised regard to the moral and ethical aspects of supporting dictatorial regimes trampling on human rights of their nationals, causing death and widespread anarchy. Bernard Kochner resigned from ICRC arguing against neutrality between good and bad. According to him, moral ends are not only a prerequisite but an imperative and we should exercise choice when it comes to our action. British NGOs rallied against their government’s support to the Ethiopian regime. British government’s arms shipment to the military leadership of Nigeria was condemned as constituting a betrayal of the Biafran people who were starving. Bernard Kouchner resigned from ICRC and launched MSF in 1971 and symbolized “new humanitarianism”. While receiving the 1999 Nobel Peace Prize on behalf of MSF, James Orbinski stated:

Silence has long been confused with neutrality, and has been presented as a necessary condition for humanitarian action. From its beginning, MSF was created in opposition to this assumption. We are not sure that words can always save lives, but we know that silence can certainly kill. Over our 28 years we have been – and we are today- firmly and irrevocably committed to this ethic of refusal.⁴⁶

NGOs started focusing on development and argued for long-term involvement in South, instead of the short-term emergency relief. The approach was well summarized in the campaign: “ Give a man a fish and you can feed him for a day. Teach him to fish and you feed him for life”. NGOs criticized the approach of the western governments of giving development aid to military dictatorships and fascist governments in the Third World. Rather, their focus was on alternative grassroots model of development. They thought that ‘capacity building’, empowerment and civil society concept was more sustainable: “There is a need to re-focus policies so that they enhance

⁴⁵M. Ignatieff, The Warrior’s Honor: Ethnic War and the Modern Conscience, Chatto & Windus, London, 1998, p.119.

⁴⁶J. Orbinski, The Nobel Lecture by the Nobel Peace Prize Laureate 1999 MSF, 10 December 1999.

the capacity of humanitarian agencies to prevent, mitigate and resolve the effects of violent conflict”.⁴⁷ Max Boot writing in *Foreign Affairs* argued: “Interventions such as these [Somalia and Haiti] that address symptoms (famine, or repression, for example) instead of their causes (such as bad government) are doomed to disappoint. This is a lesson for the Clinton administration learned belatedly in Kosovo and Bosnia, and perhaps even in Iraq”.⁴⁸ Chandler points out: “Once the range of humanitarian assistance was expanded the ethical basis of NGO intervention became human rights not human needs. The transformation of humanitarian work through the displacement of needs by rights has been crucial to the “new humanitarian” discourse”.⁴⁹

Yet another strand may be located in the sharp criticism of the earlier insistence on neutrality. This has now been challenged. Michael Ignatieff has noted: “the doctrine of neutrality has become steadily more controversial as the new politics of human rights has entered the field”.⁵⁰ ICRC’s conservative “legalistic bias” has been criticized as “cautious, lawyerly neutrality”. Emma Bunino, former European Commissioner of Human Rights was sharp in her criticism of notion of neutrality. I have my doubts ... that being neutral is still at all possible, or ethically just”. She questions whether humanitarian organizations “should be unable to distinguish right from wrong, the aggressor from the victim, the killers from the dead bodies? What absurd wisdom could call for this organized ethical confusion”.⁵¹ It will be worth to note the position of MSF on this question:

Moral intention of the humanitarian act must be confronted with its actual result. And it is here where any form of moral neutrality about what is good must be rejected. The result can be the use of the humanitarian to 1985 to support forced migration in Ethiopia, or the use in 1996 of the humanitarian to support a genocidal regime in the refugee camps of Goma. Abstention is

⁴⁷Goodhand and Hulme cited in N. Leader “ Proliferating Principles: Or How to Sup with the Devil Without Getting Eaten, *Disasters*, Vol. 22, No. 4, 1998, p. 297.

⁴⁸ M. Boot, “Paving the Road to Hell” (Book Review): *The Failure of UN Peacekeeping, Foreign Affairs*, Vol.79, No.2, 2000, pp.143-148.

⁴⁹Chandler, n.44.

⁵⁰Ignatieff, n.45, p. 119

⁵¹Cited in Chandler, n.44.

sometimes necessary so that the humanitarian is not used against a population in crisis.⁵²

For the new humanitarians it is more important to strengthen civil society and, work for long term development goals that could be sustainable amongst local communities. International development aid may perpetuate governments and regimes that brutalize their civilians and it should be reviewed to meet human rights standards prevailing in the country. Governments cannot be allowed to get away with arbitrary measures and human rights violations accentuating human misery. They also thought that it is not necessary to be neutral. Rather silence could be killing. It was also felt that earlier universalist principle of aid and support to all those in need was wrong. It made no distinction between murderers and their victims and as such it was tantamount to being complicit. As such, humanitarians have become “fervent interventionists”, insisting on linking international support to the government with human rights records. Chandler has summarized the direction of changes well: “Through the human rights discourse, humanitarian action has become transformed from relying on empathy with suffering victims and providing emergency aid, to mobilize misanthropy and legitimizing the politics of international condemnation, sanctions and bombings”.⁵³

2.2: ICISS Report on Responsibility to Protect

Report of the International Commission on Intervention and State Sovereignty (ICISS) entitled “The Responsibility to Protect” has engaged international community since its publication in 2001.⁵⁴ The report has been at the centre of animated debate, controversy and international attention for the radical recommendations it offers to address “the intervention dilemma”. The context in which the Commission was constituted under the initiative of Government of Canada is also noteworthy. It was a response to the open

⁵² J. Orbinski, The Nobel Lecture by the Nobel Peace Prize Laureate 1999 MSF, 10 December 1999.

⁵³ Chandler, n.44.

⁵⁴ FN Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect, International Development Research Centre, Ottawa, 2001.

challenge articulated by the UN Secretary-General to the international community to bring in fresh ideas and perspectives to put a stop to massive human violations and genocide witnessed in some parts of the world. Secretary-General asked some pertinent question: why it should not be possible for the world to put an end to conflict and violence that claim millions of lives while the perpetrators are comfortably ensconced in their offices protected by the wall of State sovereignty?

The ICISS report “The Responsibility to Protect” became the basis of the agreement reached by leaders of the world in the World Summit Outcome held in 2005 to address atrocity crimes of genocide, war crimes, ethnic cleansing and war against humanity. The world leaders agreed that these crimes must be dealt with under the doctrine of responsibility to protect the populations. Both the UN General Assembly and the Security Council have repeatedly endorsed the concept of responsibility to protect and the theme has been at the centre of quite a few international actions. We shall be dealing with the concept and offer a critique but it is important to discuss the highlight of the report to better understand the conceptual framework employed, key differences and specific recommendations. It is relevant to mention here that armed conflict is at the root of the displacement crises and an international assistance and protection regime for the IDPs would depend on international cooperation. In cases where the national authorities refuse to or are unable to address causes and consequences of armed conflict, it becomes incumbent for the international community to intervene under a responsibility to protect.

Many commentators contend that ICISS report addresses the question of humanitarian intervention. The report however begins its consideration by refuting such an association. It refers to four cases- Rwanda, Kosova, Somalia and Bosnia- where humanitarian intervention was made, or demanded and contemplated but was given a short shrift. In Rwanda humanitarian intervention, despite the urgency of the situation given the possibility of genocide, was not undertaken. The result was a most brutal massacre of hundreds of thousands of people. According to the report, this was “a failure of international will – of civic courage – at the highest level. Its consequence was not merely a humanitarian catastrophe for Rwanda: the genocide

destabilized the entire Great Lakes region and continues to do so”.⁵⁵ In Kosovo, intervention did happen but it raised major questions of legitimacy of an intervention that was not authorized by the Security Council. It was undertaken by NATO forces. The report refers to many questions that were raised: “How could the bypassing and marginalization of the UN system, by “a coalition of the willing” acting without Security Council approval, possibly be justified? Did the way in which the intervention was carried out in fact worsen the very human rights situation it was trying to rectify?”⁵⁶ Earlier, in 1995, United Nations had failed to prevent the massacre of thousands of civilians who had taken shelter in UN designated and maintained “safe areas” in Srebrenica. The betrayal of the promised protection had shocked the entire world. In Somalia during 1992-93 “an international intervention to save lives and restore order was destroyed by flawed planning, poor execution, and an excessive dependence on military force”.⁵⁷ In fact, as the report mentions, humanitarian interventions have been controversial when they have been undertaken and also when it has not been undertaken. All four of the cases- Rwanda, Kosovo, Bosnia and Somalia have “had a profound effect on how the problem of intervention is viewed, analyzed and characterized”.⁵⁸

Failure of the Security Council to act decisively in Rwanda and Kosovo led Secretary – General to raise some tough questions for the international community, in his address to the General Assembly and in his Millennium Address. He challenged the Member States to “find common ground in upholding the principles of the Charter, and acting in defence of our common humanity” and later in the Millennium Address asked “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”⁵⁹

Report highlights the significant ways in which the world is changing. The plethora of armed conflict made easy by cheap and lethal weapon of

⁵⁵Paragraph 1.1 of ICISS Report

⁵⁶Paragraph 1.2 of ICISS Report.

⁵⁷Paragraph 1.3 of ICISS Report

⁵⁸Paragraph 1.4 of ICISS Report

⁵⁹Cited in ICISS Report, Paragraph 1.6.

destruction in “a convulsive process of state fragmentation and state formation”⁶⁰ in many parts of the world, necessitates rethinking on approaches to security and the role of the states. New set of actors and new set of issues in the post-Cold War world is transforming the international system. An unhappy trend of “contemporary conflict has been the increased vulnerability of civilians, often involving their deliberate targeting”.⁶¹ These conflicts are generating significant displacement and sometimes this is the primary objective of the conflict.

Sovereignty embraces a dual responsibility, externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state⁶² and this “modern understanding of the meaning of sovereignty is of central importance in the Commission’s approach to the question of intervention for human protection purposes”.⁶³ The term “humanitarian intervention” is not suitable as it there is strong antipathy towards any militarization of the word “humanitarian”.⁶⁴ The Commission instead preferred the term “intervention” or even “military intervention” for the purposes of human protection. The Commission felt it is also necessary to re-conceptualize the issues involved with fresh eyes beyond “humanitarian intervention” and embrace the concept of responsibility to protect.

The Commission advocates intervention for human protection purposes and clarifies that it must meet four basic objectives:

- to establish clearer rules, procedures and criteria for determining whether, when and how to intervene;
- to establish the legitimacy of military intervention when necessary and after all other approaches have failed;
- to ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and

⁶⁰ Paragraph 1.20 of ICISS Report

⁶¹ Paragraph 1.19 of ICISS Report

⁶² Paragraph 1.35 of ICISS Report

⁶³ Paragraph 1.36 of ICISS Report

⁶⁴ Paragraph 1.40 of ICISS Report

- to help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace.⁶⁵

The language of the earlier debates on “humanitarian intervention” did not help to carry the debate forward and “the language of past debates arguing for or against a “right to intervene” by one state on the territory of another state is outdated and unhelpful”. Instead the Commission preferred “to talk not of a “right to intervene” but of a “responsibility to protect.”⁶⁶

As mentioned above the conceptual idea of sovereignty as responsibility advocated by Francis M. Deng was referenced by the Commission to deduce and elaborate a responsibility to protect. According to the report: Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a three-fold significance:

First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security”.⁶⁷

The detailed components of the responsibility to protect have been elaborated by the Commission in terms of responsibility to prevent, responsibility to react and responsibility to rebuild. Much attention has been devoted to responsibility to react which would involve use of force in cases of human protection imperative. The Commission considers that implementation of responsibility to protect specially the react component must necessarily dealt be with by the Security Council. However, Commission suggested that the use of veto power should be moderated in decisions related to implement the

⁶⁵Paragraph 2.3 of ICISS Report

⁶⁶Paragraph 2.4 of ICISS Report

⁶⁷ICISS Report.Ibid.

responsibility to protect. The Commission came up with the innovative proposal of activating the General Assembly meeting in extraordinary session on a short notice as provided for under the Uniting for Peace Resolution mechanism adopted in 1950 in situation where the Security Council fails to discharge its responsibilities to protect.⁶⁸

2.3: Humanitarian Intervention

A conventional definition of humanitarian intervention is “the threat or use of force by a state, groups of states or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized rights”.⁶⁹ Humanitarian Intervention has been defined by Holzgrefe as “threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied”.⁷⁰ There is a widespread consensus that systematic human rights violations must be dealt with sternly by the international community. However, there is no consensus on how this may proceed given the tension between the inviolable norm of state sovereignty recognized by international law on the one hand and international human rights, humanitarian law principles of imperative of civilian populations. President Obama raised the issue: “while we need to be modest in our belief that we can remedy every evil, while we need to be mindful that the world is full of unintended consequences, should we really accept the notion that the world is so powerless in the ace of a Rwanda or Srebrenica? If that’s the world that people want to live in, they should say so and reckon with the cold logic of mass graves ... I believe we can embrace a different future.”⁷¹ Earlier in 2009 he had said “I believe that force can be justified on humanitarian

⁶⁸ Paragraph 6.29 of ICISS Report

⁶⁹ Sean D. Murphy, Humanitarian Intervention: The United Nations in an Evolving World Order, University of Pennsylvania Press, 1996. pp.11-12

⁷⁰J. L.Holzgrefe and Robert O. Keohane, eds, Humanitarian Intervention: Ethical, Legal, and Political Dimensions, Cambridge University Press, Cambridge, 2003.

⁷¹President Obama’s September 2013 Speech to the U.N. General Assembly cited in Harold HongjuKoh, “ The War Powers and Humanitarian Intervention”, Houstan Law Review, Vol. 53, No. 4, p. 1006.

grounds, as it was in the Balkans, or in other places that have been scarred by war”.⁷²

Given the stalemate over a possible humanitarian intervention under a responsibility to protect in Syria has deluded the world, it is necessary to contextualize the debate over humanitarian intervention. Question is if international law can be interpreted to allow and account for such intervention. Francis A. Boyle in his important study on U.S. imperialism has concluded that “under international law, humanitarian intervention” is a joke and a fraud that has been repeatedly manipulated and abused by a small number of very powerful countries in the North in order to justify wanton military aggression against and prolonged military occupation of weak countries of the South”.⁷³ After the Vietnamese intervention in Cambodia in 1978, no country supported Vietnam. There was an agreement that Pol Pot regime in Cambodia was a most repressive and reprehensible one but that would not justify Vietnam’s intervention.⁷⁴

In the Corfu Channel Case, International Court of Justice unanimously rejected the British argument in support of the doctrine of intervention, protection and self –help. In the Nicaragua Case, the ICJ rejected the Reagan administration’s contra/terror war against Nicaragua. The ICJ expressly rejected the assertion by the United States that it had... (a) right of military intervention against Nicaragua on the grounds of alleged human rights violations. Hedley Bull wrote: [W]e have a rule of non-intervention because unilateral intervention threatens the harmony and concord of the society of sovereign states. If, however, an intervention expresses the collective will of

⁷²President Obama’s acceptance speech on receiving the Nobel Peace Prize, December 2009, Cited in Koh, Ibid. p. 980.

⁷³Francis A. Boyle, Destroying World Order: U.S. Imperialism in the Middle East before and after September 11th Clarity Press, 2004, p. 106.

⁷⁴See Yong Sok KIM, Responsibility to Protect, Humanitarian Intervention and North Korea, Journal of International Business and Law, Vol.5, Issue 1, 2006. pp. 74-94.

society of states, it may be carried out without bringing that harmony and concord into jeopardy.⁷⁵

Ryan Goodman has presented a detailed justification for humanitarian intervention by trying to debunk the notion that such interventions are nothing but pretext for major power's ambition and desire for dominance. He says that one of the principal objections to legalizing unilateral humanitarian intervention is the concern that aggressive states would use the pretext of humanitarianism to launch wars for ulterior motives. He questions the premise and proceeds to ask should international law permit states to intervene militarily to prevent genocide or a comparable atrocity without the authorization by Security Council?⁷⁶ He agrees that consensus of jurists favor Security Council authorization for humanitarian intervention and notes the ICJ judgment in *Nicaragua v.USA*. Still, Goodman asks: "whether the use of force short of war for humanitarian purposes may reduce the prevalence of wars, and whether the threat to wage war for humanitarian purposes may reduce the prevalence of states engaging in war"?⁷⁷ His study of the issue suggests that states using force for humanitarian purposes should be asked to justify their action. This may "facilitate condition for peace between those states and their prospective targets".⁷⁸ This may temper the behaviour of aggressive states. He goes on to justify unilateral humanitarian intervention: "the concern that aggressive states would exploit a humanitarian exception to justify military aggression should not forestall the legalization of unilateral humanitarian intervention. On the contrary, legalizing unilateral humanitarian intervention could significantly inhibit the recourse to war by such states."⁷⁹

Much discussion on the invocation of responsibility to protect intervention by NATO in Libya has listed the manifold failure of the stated objectives in the aftermath of the intervention. What also needs to be discussed is how

⁷⁵ Hedley Bull, ed., *Intervention in World Politics*, Clarendon Press, 1986, p. 195.

⁷⁶See Ryan Goodman "Humanitarian Intervention and Pretexts for War", *The American Journal of International Law*, Vol.100, No.107, 2006, pp. 107-141.

⁷⁷Ibid. p.112.

⁷⁸Ibid. p.110.

⁷⁹Ibid. p.141.

Western nations with the support of Arab League secured two Security Council Resolutions to enforce a no-fly zone and arms embargo, along with asset freezes, diplomatic engagement, a travel ban and referral for accountability to International Court of Justice, all these were accomplished with the goal of protecting civilians.⁸⁰ President Obama declared in March 2011: when someone like Qadhafi threatens a bloodbath that could destabilize an entire region, and when the international community is prepared to come together to save many thousands of lives, then it's in our national interest to act. And it's our responsibility.⁸¹ The intervention could avert a slaughter of Benghazi and thousands of Libyan lives were saved.

The British Attorney General had presented a justification for the NATO intervention as lawful in Kosovo without authorization of the Security Council but US has always shied away from articulating its legal position on unilateral humanitarian intervention. US [A]dministration never laid out an explanation that use of force would have been consistent with international law.⁸² In Kosovo, NATO intervened and Russia presented a Resolution of disapproval that was rejected by 12 states. Later, by resolution 1244, Security Council approved the Kosovo settlement, effectively ratifying the NATO action under international law.⁸³

There is a need to develop the law and norms of humanitarian intervention to better balance against the dangers of under intervention (e.g., Bosnia and Rwanda). Koh asks: How can we reconcile the tension between this humanitarian impulse and legal constraints imposed by current rules of U.S. and international law"? and proceeds to argue that the "United States can internalize rigorous international law rules to guide lawful humanitarian intervention, in a way that promotes exceptional American leadership in human rights, while adhering to the constitutional ground rules that govern the war powers."⁸⁴ Martha Finnemore has documented that within the international legal order, the multilateral use of force for humanitarian ends is

⁸⁰See Harold Hongju Koh, "The War Powers and Humanitarian Intervention", Houston Law Review, Vol. 53, No. 4, pp. 971-1033.

⁸¹Cited in Koh, *Ibid.* p. 982.

⁸²Harold Hongju Koh, p.1006.

⁸³ *Ibid.*

⁸⁴*Ibid.* pp. 974-975.

perceived far more legitimate than it was only a few decades ago.⁸⁵ Michael Doyle has reviewed the evolution of the study of ethics in the Responsibility to Protect as a “newly legitimate moral minimum of global order’.⁸⁶

Humanitarian interventions since the 1990s have come about due to the changes in the world balance of power. A declining external constraint in the form of countervailing powers made it possible for the US to intervene on humanitarian grounds. Such interventions are likely to be carried out in situations involving less material benefit and low costs of operation. The interveners are generally reluctant to commit ground troops, preferring to use airspace.⁸⁷

The expected high cost involved in any intervention in Syria is a dampener apart from the lack of support from domestic constituency and the US Congress especially in the wake of transition of Libya into a failed state after intervention. Interventions are more likely to succeed if there is a good balance between State-to- Nation. This would mean stability in contrast to imbalance between State-to-Nation. Libya was an example where state to nation balance was considerably weak and therefore post-intervention destabilization ensued.⁸⁸

This is an important question why international intervention has not been undertaken in Syria under R2P. Koh suggests that in fact so many countries and groups are already intervening in Syria on different sides of the civil war. The war has displaced the highest number of civilians in the world. According to Koh, “Any nominally noninterventionist position must acknowledge how much s the world already intervening in Syria. Almost everyone under the sun is intervening in Syria”.⁸⁹ But a legitimate intervention authorized by the Security Council is not available given the opposition of Russia. Under the

⁸⁵ Martha Finnemore, The Purpose of Intervention: Changing Beliefs about the Use of Force, Cornell University Press, 2003.

⁸⁶ Michael W. Doyle, The Question of Intervention: John Stuart Mill and the Responsibility to Protect, Yale University Press, 2015, p. 204.

⁸⁷ See Benny Miller, “The Sources and Effects of Humanitarian Intervention: Realism, Liberalism and the State-to-Nation Imbalance”. Brandeis University, go.brandeis.edu/R2P

⁸⁸ Ibid.

⁸⁹Koh, n.83, p.1029.

circumstances, is it possible to construct a scenario for humanitarian intervention without Security Council authorization by the United States? Syrian crisis is presenting a binary choice between the international law presently constituted and international norm protective of human rights. To Koh, “the nonintervention position of the West may not actually be a pro-peace position, but rather a pro-slaughter position in which the western powers invoke inflexible rules as a reason to do nothing”.⁹⁰To him and many others, it is a not a question of nature of law but rather a function of law as well. We should be able to push the law to what it should be and not leave it here as it is. According to Edmund C. Luck, on the eve of the World Summit in 2005, the US Permanent Representative to the United Nations John Bolton wrote a letter to Member States that that “the Charter has never been interpreted as creating a legal obligation for Security Council members to support enforcement action”. In Bolton’s view the obligation and responsibilities posited under R2P are “not of a legal character” and “we do not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law. We also believe that what the United Nations does in a particular situation should depend on the specific circumstances”. This basically meant that US was unwilling to let go its sovereign right of choice about undertaking humanitarian intervention.⁹¹

Humanitarian intervention is often brandished as a pretext for non-humanitarian purposes. In order to understand the trend of humanitarian intervention, it is better to make a distinction between intention and motive. Intention is “‘state of affairs it seeks to bring about’ and motive is the frame of mind in which agents act- the desires and other passions that propel him”.⁹²

⁹⁰Ibid. p. 1029.

⁹¹Edward C. Luck, “Sovereignty, Choice, and the Responsibility to Protect”, Global Responsibility to Protect Vol. 1, 2009, Martinus Nijhoff Publishers, pp. 10-21.

⁹²Misha Seay “Realism, Liberalism and Humanitarian Intervention: Is There A Middle Ground?”

According to Teson, critics of the doctrine of humanitarian interventions have failed to distinguish between intention and motive. To them, all wars on behalf of human rights are spurious because interveners have non-humanitarian motives. This, according to him, is wrong. “Despite multiple motives, the very intention of saving lives would make an action humanitarian”.⁹³ It can be said that a humanitarian act is defined by its intention and not by its motive.

We can conclude the discussion by quoting Scheffer: “We need not impale ourselves on the horn of a dilemma between respect for sovereignty and the protection of human rights... what is involved is not right of Intervention but the collective obligations of states to bring relief and redress in human rights emergencies”.⁹⁴

2.4: UN High-Level Panel

Secretary-General appointed a High-Level Panel on Threats, Challenges and Change (HLP).⁹⁵ The HLP Report offers a compelling argument in favor of sovereignty as responsibility and the notion of R2P. HLP has suggested guidelines for the use of force in support of R2P. The report recognizes that the United Nations, in particular the Security Council has failed again and again to follow up on its post-conflict and peacebuilding commitments. UN often withdraws from the field before stabilization, emergence of credible institutions and economic reconstruction work has started. It recommended that a Peacebuilding Commission with links to Security Council and Economic and Social Council should be launched to check and counter this propensity. HLP has suggested in line with the report of the ICISS that Security Council should adopt criteria for humanitarian intervention. It suggested threshold criterion and precautionary principles which would moderate the exercise of responsibility to protect principle for humanitarian intervention. These 5 principles are: 1. The principle of Seriousness of Threat.

⁹³F R Teson, Humanitarian Intervention: An Inquiry into Law and Morality, Transnational Publishers, Ardsley, New York, 2005.

⁹⁴David J Scheffer, Towards a Modern Doctrine of Humanitarian Intervention, University of Notre Dam Press, 1996, p. 263.

⁹⁵ General Assembly, A More Secure World: Our Shared Responsibility, A/59/565, 1 December 2004.

2. The proper Purpose Principle. 3. The principle of Last Resort. 4. The proportionality Principle. 5. The Balance of Consequences Principle

HLP reports also calls for a more “democratic and accountable” Security Council and advocates guidelines for intervention and proposes other devices for improving the quality of deliberations in the Council. However, criterion for intervention is a difficult proposition to agree and follow. One of the fundamental premises of political realism is that material power or hard bargaining over interests are all that matter in the Security Council and deliberation and persuasion on the basis of norm count for nothing. In the light of this understanding, it is not necessary to put emphasis on criteria for intervention as the HLP has suggested.⁹⁶

2.5: Secretary-General’s Reports on Responsibility to Protect

UN Secretary-General has been presenting regular yearly reports on responsibility to protect to the General Assembly as a follow up to the outcome of the Millennium Summit, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields. These reports are a statement of the prevailing challenges facing the world and the response mechanism of the UN. The reports provide an overview of the means and methods being employed and contemplated for suitable international action and the role the UN and international community can play in the process. This section seeks to capture the highlight of the annual reports to the extent they relate to and exemplify state of international preparedness to tackle atrocity crimes and other relevant issues.

The mandate for the report of the Secretary-General derives from the three paragraphs of 2005 World Summit Outcome (Paras, 138, 139 and 140) as mentioned in the first such report to the General Assembly in January 2009. The report entitled “Implementing the Responsibility to Protect” refers to the formulation of the conceptual idea of Francis M. Deng and his colleagues on

⁹⁶Ian Johnstone, “Threats, Challenges and Change: The Secretary-General’s High-Level Panel”, Proceedings of the Annual Meeting of American Society of International Law, Vol. 99, No. 30 March- 2 April, 2005. p. 64

“sovereignty as responsibility”⁹⁷ which provided the basis for thinking on the report by International Commission on Intervention and State Sovereignty, co-chaired by Gareth Evans of Australia and Mohamed Sahnoun of Algeria on “Responsibility to Protect”.⁹⁸ Insider account is also available.⁹⁹

Earlier, Secretary-General had appointed a High – Level Panel on Threats, Challenges and Change. Some of the recommendations of the ICISS report were incorporated in the report of the High-Level Panel.¹⁰⁰ Relevant recommendations of the High-Level Panel also formed part of the report of the Secretary-General entitled “In Larger Freedom”.¹⁰¹ These reports provided the material considered by the 2005 World Summit. The General Assembly adopted the Summit Outcome in its resolution 60/1. Security Council too had taken due note of the relevant paras of the Summit Outcome in its resolution 1674 in 2006. The Council endorsed the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. However and as the Secretary-General noted, “the credibility, authority and hence effectiveness of the United Nations in advancing the principles relating to the responsibility to protect depend, in large part, on the consistency with which they are applied”. He further noted that “this is particularly true when military force is used to enforce” the responsibility to protect.¹⁰²

⁹⁷Francis M. Deng et al., Sovereignty as Responsibility: Conflict Management in Africa Brookings Institution Press, Washington D.C. 1996

⁹⁸Paragraph 7, See Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect, International Development Research Centre, Ottawa, 2001, p. vii.

⁹⁹ For an insider account of the work of the Commission and the ideas that shaped it, see Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All, Brookings Institution Press, Washington D.C. 2008. See also Alex J. Bellamy, A Responsibility to Protect: the Global Effort to End Mass Atrocities, Polity Press, Cambridge, 2009.

¹⁰⁰ A/59/565 and Corr.1

¹⁰¹ A/59/565 and Corr.1

¹⁰²Paragraph 62 of Secretary-General’s Report, 2009.

The 2011 report of the Secretary-General focused on the role that regional and sub-regional arrangements can play in implementing the responsibility to protect.¹⁰³

According to the report, the Security Council can undertake extensive use of authority under article 34 of the Charter to investigate any dispute, or any situation which might lead to international frictions or give rise to a dispute”. This authority can be used to add issues related to responsibility to protect in the Council’s messages to government leaders and heads of armed groups.¹⁰⁴The report underlines the need for enhanced collaboration between the UN and regional and sub-regional organizations as “the surest path for advancing the responsibility to protect”.¹⁰⁵

The focus in the 2013 report of the Secretary-General was on the theme of prevention.¹⁰⁶The report discusses the overlap and inter-relationship between atrocity crimes and armed conflict: “Atrocity crimes are more likely to occur during armed conflict, especially internal armed conflict. Armed conflict is itself a source of risk for atrocity crimes, while atrocity crimes can also increase the risk of armed conflict”. Armed conflicts do not necessarily involve atrocity crimes and all atrocity crimes do not take place in the context of an armed conflict. The distinctive aspect of atrocity crime is “the deliberate targeting of specific groups, communities or populations, including persons protected under the Geneva Conventions, and sometimes cycles of reaction and counter-reaction between communities”.¹⁰⁷

The report underlines that “focusing exclusively on conflict prevention would overlook atrocity crimes that occur outside of armed conflict or that are not

¹⁰³The role of regional and sub-regional arrangements in implementing the responsibility to protect, General Assembly, Sixty-fifth session Agenda items 13 and 115, 28 June 2011.

¹⁰⁴Paragraph 34 of 2011 report.

¹⁰⁵Paragraph 44 of the 2011 report.

¹⁰⁶General Assembly, Responsibility to Protect: State Responsibility and Prevention, Sixty-seventh session Agenda items 14 and 113, 9 July 2013.

¹⁰⁷Paragraph 12 of the 2013 report.

necessarily related to armed conflict”.¹⁰⁸ The report explains the atrocity crimes and key distinction between these:

Genocide, war crimes, ethnic cleansing and crimes against humanity have much in common with regard to the specific prohibited acts and thus the associated risk factors. Nevertheless, there are key distinctions. In the case of genocide, the distinction lies in the intent of the perpetrators to “destroy in whole or in part” a national, ethnic, racial or religious group. War crimes can be committed only in the context of armed conflict or occupation. War crimes may include the targeting of civilian infrastructures that are not military objectives and of anyone no longer taking an active part in hostilities as well as the use of weapons prohibited under international law. Crimes against humanity are distinguished by the systematic or widespread nature of the gross human rights violations committed. War crimes, ethnic cleansing and crimes against humanity may be committed in the course of the same event or can be precursors to other atrocity crimes.¹⁰⁹

It needs to be emphasized that these acts are provided for in the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court. All acts constituting the crimes and violations related to the responsibility to protect are prohibited under international customary law. These are binding on all the states and override their treaty obligations. Ethnic cleansing is yet to be defined as a distinct crime under international criminal law but it is “often a result of a combination of acts that could constitute genocide, war crimes or crimes against humanity.

The 2014 report reiterates the principle of collective security for the fulfillment of measures for the responsibility to protect.¹¹⁰

Two paragraphs of the report are central: paras 1 and 13. Each individual state has undertaken an obligation to protect its population from genocide,

¹⁰⁸Paragraph 12 of the 2013 report.

¹⁰⁹Paragraph 14 of the 2013 report.

¹¹⁰ Report of the Secretary-General, Fulfilling our collective responsibility: international assistance and the responsibility to protect, Follow-up to the outcome of the Millennium Summit, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, General Assembly Sixty-eighth session Items 14 and 118 , 11 July 2014.

war crimes, ethnic cleansing and crimes against humanity as per paragraphs 138 and 139 of the 2005 World Summit Outcome. This includes a responsibility to prevent the commission of such acts, support the United Nations in establishing an early warning capability, and assist those which are under stress before crises and conflicts break out. Lastly, Member States confirmed “their readiness to take collective action, in a timely and decisive manner and in accordance with the Charter of the United Nations, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations”. According to the report, a key distinction of the Responsibility to Protect principle is to shift “the discussion from the discretion or right of third parties to intervene to the responsibility that a variety of actors have, at different levels, to assist in protecting potential victims of atrocity crimes”. Thus a framework of collective responsibility pervades the obligations of states for responsibility to protect civilian population from atrocity crimes.¹¹¹

The 2015 report considers responsibility to protect as a vital and enduring commitment.¹¹² The report points out that since the 2005 World Summit, the Security Council has adopted 30 resolutions and six presidential statements that refer to the responsibility to protect. The General Assembly has convened six annual informal interactive dialogues on the subject and The Human Rights Council has adopted 13 resolutions that feature the responsibility to protect. At a regional level, the African Commission on Human and Peoples’ Rights has adopted a resolution on strengthening the responsibility to protect in Africa. Also, the European Parliament has recommended full implementation of the principle by the European Union.¹¹³

The report highlights how concerted engagement in Côte d’Ivoire, Guinea, Kenya and Kyrgyzstan has helped to avert atrocity crimes but also accepts how “outbreaks of intercommunal violence in the Central African Republic and South Sudan represent significant failures to prevent atrocity crimes”.

¹¹¹Paragraph 13 of 2014 report.

¹¹²Report of the Secretary-General, A vital and enduring commitment: implementing the responsibility to protect, Follow-up to the outcome of the Millennium Summit, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, General Assembly Sixty-ninth session Agenda items 13 and 115, 13 July 2015.

¹¹³Paragraph 5 of 2015 report.

Report also notes that ‘international action has not proved effective in addressing the situation in the Democratic People’s Republic of Korea’ despite heightened concern over human rights. In Iraq and the Syrian Arab Republic, ‘the rise of the Islamic State in Iraq and the Levant (ISIL) and other violent extremist groups has resulted in an increase in atrocity crimes and the deliberate targeting of religious minorities’.¹¹⁴

Secretary-General also referred to the brutality of assorted crimes committed by non-state armed groups such as ISIL, Boko Haram and Al-Shabaab and calls for modification of ‘the ways in which [international community] anticipates, prevents and responds to the commission of atrocity crimes’.¹¹⁵ Two specific recommendations in this respect are to update the early warning mechanism ‘updated to reflect the different objectives, ideologies and tactics of non-State armed groups and the conditions under which they are likely to commit atrocity crimes’.¹¹⁶ Secondly, the report calls for ‘enhanced cooperation on structural prevention of atrocity crimes’ and mentions the relevance of United Nations Global Counter-Terrorism Strategy in this respect. The Strategy can be ‘relevant for early prevention, including the emphasis on sustained investment in inclusive, accountable and effective governance, as well as greater efforts to promote dialogue and understanding between civilizations, cultures, peoples and religions’.¹¹⁷

The report is list for the Member States to uphold responsibility to protect. It may not be out of place to quote the recommendations verbatim. Member States should:

- Declare atrocity crime prevention and response a national priority, undertake a national risk assessment and articulate an actionable whole-of-government strategy for both domestic and international policy.
- Expand international and regional focal point networks and empower focal points with the institutional authority and resources necessary to drive policy change.
- Advance prevention by expanding responsive and flexible funding for preventive diplomacy, updating early warning systems to address atrocity

¹¹⁴Paragraph 8 of 2015 report.

¹¹⁵Paragraph 46 of the 2015 report.

¹¹⁶Paragraph 47 of the 2015 report.

¹¹⁷Paragraph 48 of the 2015 report.

crime threats and better connect with mechanisms for early action, regularizing discussion of atrocity crime risk factors in peer review processes, and conducting a review of lessons learned to date. • Include regular consideration of atrocity crime prevention and response in the deliberations and activities of relevant regional institutions and expand the sharing of best practices and lessons learned, both within and across regions. • Provide United Nations peace operations with the military and civilian capabilities necessary to respond rapidly and flexibly to situations at risk of atrocity crimes, and develop training and guidance relevant to the implementation of the responsibility to protect. • Prevent recurrence by tailoring post-conflict peacebuilding to atrocity crime risks, including through support for transitional justice, reconciliation, and dedicated early warning and conflict resolution capacity. • Expand efforts to prevent violent extremism and counter incitement to discrimination, hostility and violence by non-State armed groups, including through cooperation with religious and community leaders and by drawing on new technologies.

The report concludes with six core priorities for the responsibility to protect over the next decade, namely, “(1) signaling political commitment at the national, regional and global levels to protect populations from atrocity crimes; (2) elevating prevention as a core aspect of the responsibility to protect; (3) clarifying and expanding options for timely and decisive response; (4) addressing the risk of recurrence; (5) enhancing regional action to prevent and respond to atrocity crimes; and (6) strengthening international networks dedicated to genocide prevention and the responsibility to protect”.¹¹⁸

Finally, we may consider the 2016 report. This report is aimed at mobilizing collective action.¹¹⁹ There is an acknowledgement that despite considerable progress, world has “fallen woefully short of its aspiration to prevent and

¹¹⁸See Summary of the Report.

¹¹⁹Report of the Secretary-General, Mobilizing collective action: the next decade of the responsibility to protect, Follow-up to the outcome of the Millennium Summit, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, General Assembly Seventieth session Items 15 and 116, 22 July 2016

respond to atrocity crimes”. The world is facing “a more challenging context, in which some States and non-State actors routinely threaten populations and make calculated decisions to disregard their legal obligations and protection responsibilities”. It reminds the Member States that many of the international norms and standards are being flouted. Therefore it is “crucial that Member States remain true to the commitments they made in 2005” on responsibility to protect.¹²⁰

However, “potential power of concerted and principled international action” would prove greater than the challenges.¹²¹ The report goes on to list some of the non-State armed groups and how they “represent a powerful threat to established international norms related to the protection of populations from atrocity crimes”. These groups “take advantage of situations of instability to consolidate their influence”. The report points out how “a combination of weak and fragmented government, the proliferation of armed groups and the rise of violent extremism” has compounded the challenges confronting the civilian population in Libya.¹²²

Secretary-General directly refers to the astronomical refugee numbers at 21.3 million and 40.8 million IDPs in the world. A majority of the world’s displaced persons come from countries that have experienced violence such as Central African Republic, the Democratic Republic of the Congo, Eritrea, Iraq, Nigeria, Somalia, South Sudan, the Sudan, the Syrian Arab Republic and Yemen. These countries have experienced violence where forced displacement has been used as a method International community has been unable to find long-term resettlement options for displaced populations. Importantly, the report mentions: The principle that sovereignty entails responsibility — a cornerstone of the responsibility to protect — was articulated in the early 1990s as a way of addressing the crisis of forced displacement”. In the light of this link, Secretary-General maintains that “we must therefore redouble our commitment to the Guiding Principles on Internal Displacement as well as to

¹²⁰Paragraph 4 of 2016 report.

¹²¹Paragraph 6 of the 2016 report.

¹²²Paragraph 9 of 2016 report.

the obligations set out in the 1951 Convention relating to the Status of Refugees”.¹²³

In a significant pointer, the report blames conflict and violence and human displacement and human rights violations on the door of the States. Accordingly in some cases, “populations are threatened principally by their own governments. United Nations commissions of inquiry have determined that the Governments of the Democratic People’s Republic of Korea, Eritrea and the Syrian Arab Republic have perpetrated crimes against humanity against their own populations.” In South Sudan “factions struggling for power have committed acts that may amount to atrocity crimes”. We also find that “the rise of violent extremism in places such as Iraq, Nigeria, Somalia, the Syrian Arab Republic and Yemen has seen ideologues exploit ethnic and religious divisions for their own ends”.¹²⁴

Political divisions, particularly within the Security Council, are exacerbating the move away from decisive action — whether for prevention or for response. In some contexts where atrocity crimes have been committed, or where populations are at risk, major global Powers support opposing factions and put these allegiances ahead of their protection responsibilities. The founders of the United Nations recognized the importance of harnessing the power of key States to an effective collective security system, but they also expected members of the Security Council to use their power responsibly and in the interests of greater security for all. Today, however, Security Council deliberations frequently fail to generate common solutions and at times serve to deepen discord among Member States. The Security Council may “remain seized” of a matter, but this is of little relevance to suffering populations unless concrete steps forward are taken.

The report notes that Security Council disunity at the early stages of many international crises is a big stumbling block and the world is witnessing an alarming disregard for fundamental tenets of international law”.¹²⁵ Many Member States have not acceded to treaties relevant to the protection of

¹²³Paragraph 10 of the 2016 report.

¹²⁴Paragraph 12 of the 2016 report.

¹²⁵Paragraph 26 of 2016 report.

populations and some countries are disregarding their obligations under the treaties. As an example, the report mentions: “several signatories to the Convention relating to the Status of Refugees have wound back the protection they provide to refugees and asylum seekers at precisely the moment when it is most needed”.¹²⁶ The report laments that “States parties to the Rome Statute are not cooperating fully with the International Criminal Court” and the “Security Council is increasingly reluctant to refer situations to the Court”. These actions “threaten the achievements made in the past and risk a regression to an era of violence without limits”.¹²⁷ Secretary-General accused Syrian Arab Republic “as one of the clearest examples of the lack of accountability for the perpetration of atrocity crimes” and repeated that “Security Council [should] refer the situation in the Syrian Arab Republic to the International Criminal Court”.¹²⁸

2.6: Definition of Atrocity Crimes

The source of R2P is to be found both in customary international law as well as in treaties. As per the agreement in the World Summit Outcome in 2005, the concept was limited to the context of four crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. There is a broad agreement and recognition of the need to prevent and address these and it will be instructive to locate specific international law component in respect of each of these crimes.¹²⁹

On 11 December 1946, the UN General Assembly unanimously passed Resolution 96(I) that condemned genocide as, “the denial of the right of existence of entire human groups,” and tasked a UN committee with drafting a treaty banning the crime. Two years later, on 9 December 1948, the General Assembly unanimously passed the Convention on the Prevention and Punishment of the Crime of Genocide. The International Court of Justice (ICJ), in an advisory opinion about the Genocide Convention, held that the

¹²⁶Paragraph 27 of the 2016 report.

¹²⁷Paragraph 27 of 2016 report.

¹²⁸Paragraph 27 of the 2016 report.

¹²⁹See Brian Barbour and Brian Gorlick, “Embracing the ‘responsibility to protect’: a repertoire of measures including asylum for potential victims”, New Issues in Refugee Research, UNHCR, Research Paper No 159, June 2008, p. 7.

Convention is to be interpreted in line with its origins and purpose. In its opinion the Court found that “the principles underlying the Convention are principles which are recognized by civilized nations as binding on states, even without any conventional obligation”; and recognized “the universal character both of the condemnation of genocide and of the cooperation required ‘in order to liberate mankind from such an odious scourge’ (Preamble to the Convention).” Therefore, the Convention “confirms preexisting legal obligations that amount to international *jus cogens*.”¹³⁰ States are thus obliged to take all measures within their power to prevent the crime of genocide.¹³¹

Article 6(b) of the Charter establishing the Nuremberg Tribunal defined “war crimes” as

... violations of the laws or customs of war ... including, but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.¹³²

More recently, the Rome Statute of the International Criminal Court has laid out the most current definition of “war crimes.” Article 8 recognizes that war crimes include: “Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention; willful killing; torture or inhuman treatment...” and several other specifically enumerated crimes.¹³³

Article 6 of the Charter of the Nuremberg Tribunal defines crimes against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the

¹³⁰Genocide Convention, Art.I & Art. VIII

¹³¹Barbour and Gorlick, n.129, p.8.

¹³²Charter of the International Military Tribunal in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (“Charter of the Nuremberg Tribunal”), 8 August 1945.

¹³³Cited in Barbour and Gorlick, n. 129, p.9.

war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” This “definition required that the crime be committed in connection with war and in connection with another crime within the jurisdiction of the Tribunal”.¹³⁴

A definite definition of war crimes has been provided by ICC:

“[t]he following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecutions against any identifiable group or collectivity on political, national ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under the international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”¹³⁵

The term ‘ethnic cleansing’ is not yet defined in international law. However the concept falls within the definition of “crimes against humanity” in Article 7 of the Statute of the International Criminal Court and Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia. Indeed there is overlap between ‘ethnic cleansing’ and each of the other three enumerated atrocity crimes.

Section 3: R2P: Significance, Critique and Limitations

There is uncertainty whether R2P is a positive duty or merely permissible and what are the consequence of a failure to act to protect. Empirically it is

¹³⁴Ibid. p. 11.

¹³⁵Article 7, Rome Statute.

difficult to establish that states are according their acceptance of R2P. G-77 countries representing 133 states have not voiced support for humanitarian intervention. Independent International Commission on Kosovo had held that NATO's intervention was "illegal but legitimate". State responses and views however, do indicate that states have "accepted certain limitations on their sovereign prerogative to exclude outside actors from interfering in their internal practices regarding human rights, as well as an increased tendency by some western governments to place a higher priority on moral concerns in their foreign policies. But this is different from agreeing that nonconsensual military intervention is warranted to address or correct these practices or to achieve these moral aspirations".¹³⁶

Going by constructivist logic a norm exists if there is a shared expectation that 1. States and international organizations would behave consistently with what the norm prescribes; 2. They recognize a duty and a right to do so and 3. Failure to act will attract criticism from, the society of states.¹³⁷ There are many instances of failure to act but this has not invited any criticism from states. Despite the strong voices of support and a lot of scholarly attention, the concept is not anywhere near acceptance as a norm. This suggests that any norm of humanitarian intervention has not developed. It may be morally desirable in some cases but that would not mean that it is a legitimate practice. Possibly one may say that "humanitarian intervention can be morally desirable/defensible in some situations, and that it has received increased support from many academics, human rights advocates, and some western governments, but it has not received sufficient support among states to be considered legitimate practice or to constitute an international norm".¹³⁸

The ICISS report was perceived by many to be an attempt to create a new norm that would eventually be used to "legalize" humanitarian intervention. It is possible to separate the ICISS Report on R2P from humanitarian intervention. The authors of the Report have taken pains to labor the point that we need to rephrase the language of humanitarian intervention to endow

¹³⁶ Eric A. Heinze, "Humanitarian Intervention, the Responsibility to Protect and Confused Legitimacy", Human Rights and Human Welfare, Vol. 11, Annual 2011, p.16.

¹³⁷ Ibid. p.17

¹³⁸Ibid. p.19.

it with positive connotation in the form of R2P. However, the Report has devoted considerable space to responsibility to react in comparison to responsibility to prevent and responsibility to rebuild. This imbalance in the Report is suggestive of word play. Thus the report devotes only nine pages to prevention compared to 32 pages to the question of intervention.

We need to decouple R2P from its endorsement in the UN Summit Outcome document. A number of differences suggest that the Outcome document has not agreed to some of the formulations in the ICISS Report. Some of the key differences:

1. ICISS Report says R2P transfers from the state to the international community in cases where state is ‘unable or unwilling’ to discharge its protection role for its citizens. The Outcome amended this to cases where the concerned state is “manifestly failing” to do so. Thus a higher threshold for international intervention has been set by the Outcome.
2. ICISS Report maintained that military intervention would meet the criterion of being just in cases of “serious and irreparable harm occurring to human beings, or imminently likely to occur”, including “large-scale loss of life” or “large-scale ethnic cleansing”. World Summit Outcome restricts these to specific circumstances of “genocide, war crimes, ethnic cleansing and crime against humanity”.
3. The Report stipulates that the international community has a responsibility to take action but the Outcome maintains that the international community needs only “be prepared” to take action on a case-by case-basis.
4. The ICISS Report considers action even without Security Council approval but the Outcome considers action only through the Security Council. It also does not favor the ICISS suggestion that in such situations, veto need not be used.¹³⁹

Security Council’s involvement with some of the worst international crises to dominate world attention and international action in the 1990s was premised on the violability of state sovereignty in certain cases. Secretary-General Annan maintained “state frontiers ... should no longer be seen as a watertight protection for war criminals or mass murderers”. International involvement in the deadly civil wars had become a necessity if the UN was to remain

¹³⁹ Ibid.

relevant. R2P is based on the premise that state, and failing them the international community has the responsibility to protect the dignity and rights of people everywhere. R2P was reaffirmed by the Security Council resolution 1674. Resolution 1706 called for the deployment of UN peacekeepers in Darfur, Sudan by applying the R2P principle for the first time in a particular case. International norm of intervention in extreme situation had started developing in the 1990s. As Thakur and Weiss while analyzing the evolution of R2P from an idea to a norm put it: “ The earlier debate about whether humanitarian disasters qualified as ‘threats to international peace and security’ had resolved itself because so many humanitarian crises had been the object of Security Council action for precisely these reasons. Our point of departure in reviewing the thrust of the ICISS should be made clear at the outset: the lack of reaction in Rwanda represents a far more serious threat to international order and justice than the Security Council’s paralysis in Kosovo”.¹⁴⁰The ICISS report gave it a superb articulation in the form of a Responsibility to Protect. No idea has moved so fast and captured popular imagination and international legitimacy within a matter of few years. On the significance of R2P doctrine, , Gareth Evans said in 2007: “In the space of just five short years, a blink of an eye in the history of ideas, the concept of R2P - and with it, above all, the notion that sovereignty was not a license to kill, had, it seemed, evolved from a gleam in a rather obscure international commission's eye, to what now had the pedigree to be described as a broadly accepted international norm, and one with the potential to evolve further into a rule of customary international law.”¹⁴¹

According to Teresa Chataway there are five typical stages in the life cycle of norms: Conception; Diffusion; Cascading/Embeddedness and Contestation and Dissolution. Progress on R2P is contingent on how these different stages are negotiated.¹⁴² Gerath Evans argues that a lot needs to be accomplished as R2P is still “unfinished business”. He says that “with perseverance and application and declaratory resolution, guidelines can become norms, and

¹⁴⁰Ramesh Thakur and Thomas G. Weiss, “R2P: From Idea to Norm – and Action? Global Responsibility to Protect, Vol.1, Issue 1, 2009, pp. 22-53.

¹⁴¹Cited in Barbour and Gorlick, n.129, p.5.

¹⁴²See Teresa Chataway, “Towards Normative Consensus on Responsibility to Protect”, Griffith Law Review, Vol.16, No.1, 2007, pp.193-224.

norms can become accepted principles of customary international law, even if they never see the light of the day as treaty or Charter provisions”.¹⁴³

Given some key distinctions between the R2P formulated by ICISS report and the consensus reflected in Paragraph 138 and 139 of the World Summit Outcome document, it was suggested that the world body has rejected or at least considerably diluted the formulation. It is not surprising that the UN Member States would be much circumvent in their approach. Door has opened up and depending on the exigencies and contingencies of a situation, prospect of implementing R2P has brightened. At the very least, a major conceptual and theoretical breakthrough was achieved.¹⁴⁴

Roberta Cohen has decried the lack of evidence of R2P on the ground. She also notes that Secretary-General’s report of 2009 on R2P does not feature the protection of IDPs. With reference to Kenya she writes:

In the case of Kenya, the first and only country to which R2P was applied, some 1,500 people died and some 600,000 were uprooted prior to international involvement. So R2P was not a preventive measure, but it did succeed in halting the violence and preventing further displacement. But should the story end there or should it extend to ensuring that displaced people are effectively protected in the aftermath of violence? Reports show a lack of security for ethnic groups in areas of return, an absence of planning for those who do not wish to return, inadequate compensation for destroyed homes and property. Moreover, thousands still live in camps and temporary settlements. Yet we don't hear any more about R2P in Kenya. Nor do we hear about the promotion of compliance with the Guiding Principles on Internal Displacement with regard to rebuilding.¹⁴⁵

Susan Harris Rimmer has noted that R2P is cloaked in human security language, but the World Summit Outcome emphasized a very traditional

¹⁴³Cited in Ibid. p.200.

¹⁴⁴ See

https://www.researchgate.net/publication/233638957_R2P_From_Idea_to_Norm-and_Action

¹⁴⁵ See Roberta Cohen, “The Responsibility to Protect: The Human Rights and Humanitarian Dimensions”, Harvard Human Rights Journal Annual Symposium, February 2009.

sense of security and sovereignty.¹⁴⁶ R2P speaks of the importance of the prevention of mass atrocities but Bellamy is right that this does not mean the type of “structural prevention” or human rights violations leading to forcible displacement that refugee and IDP advocates might strive for.¹⁴⁷

David Chandler has offered some fresh perspectives on the ICISS report on R2P. To him, “rather than a moral shift away from the rights of sovereignty, the dominance of the liberal peace thesis, in fact, reflects the new balance of power in the international sphere”. The report seeks justification as “new interventionist norms as a framework for liberal peace are as dependent on the needs of Realpolitik as was the earlier doctrine of sovereign equality and non-intervention”.¹⁴⁸ He argues that the R2P is a liberal justification for intervention and it is Realpolitik and not necessarily moralistic: “The close relationship between Realpolitik and morality is not a contradictory one. The Responsibility to Protect demonstrates that while morality can work in the service of power the opposite relationship cannot apply”.¹⁴⁹ This is why the Commission’s report does not contradict the primacy of the Security Council and does not contemplate intervention against the permanent members of the Council even if all the criterion for intervention provided for in the report are met.

Lou Pingeot and Wolfgang Obenland in their provocative work on R2P entitled “In Whose Name” consider the concept as suffering from “many analytical gaps, problematic assumptions, and controversial solution”.¹⁵⁰ ICISS report’s understanding of R2P permeates the discourse around the doctrine but it was hardly endorsed by the World Summit Outcome. The UN, well aware of the politically sensitive issues raised by R2P’s close links with military intervention, tried to disassociate the two concepts. Construction of

¹⁴⁶ Susan Harris Rimmer, “Refugees, internally displaced persons and the ‘responsibility to protect’”, New Issues in Refugee Research, UNHCR, No. 185, March 2010.

¹⁴⁷ A. J. Bellamy, “Realizing the Responsibility to Protect”, International Studies Perspectives, Vol. 10, No. 2, pp. 111-128.

¹⁴⁸ David Chandler, “The Responsibility to Protect? Imposing the ‘Liberal Peace’ “ International Peacekeeping, Vol.11, No.1, Spring 2004, p.59.

¹⁴⁹ *Ibid.* p.76.

¹⁵⁰ Lou Pingeot and Wolfgang Obenland, In Whose Name? Report of the Global Policy Forum and Rosa Luxemborg Stiftung, New York, May 2014, p.32.

the ICISS report reflects a clear imbalance between the military option and other tools. Under the rubric of the “responsibility to react”, only two pages examine options short of military action, while seven pages are devoted to the military option.¹⁵¹

The concept of “international community” is not clearly defined. In highly contentious situations it is difficult to decide which side is right and which side is wrong. It is not possible to determine who is actually doing what and toward what end. How is it possible to make a determination in such circumstances? In a crisis situation, who is the “international community”. Interests of members of “international community” may also clash. Security Council is itself a divided house more often than not and the question of its representativeness is always disputed. While the world was lead to believe about the existence of weapons of mass destruction (WMD), no such weapon was found and the US intervention had to cling to humanitarian argument for the continuation of the intervention. Critics would further point out that the interest in regime change may be a more fundamental reason than the pretext of protecting the civilians from human rights violations and armed conflict.

R2P doctrine is subjective to interpretation. Its morality driven discourse is more about subjective perception of “right” and “wrong”. “By placing the debates on a moral ground, these terms create an emotionally-charged minefield where questioning the wisdom of intervention can get one accused of being an apologist for mass murderers and genocide”.¹⁵² Gerath Evans in his book on the subject acknowledges that deciding on the countries where the use of violence is necessary is ultimately based on “non-quantifiable and subjective judgment”.¹⁵³

Mahmood Mamdani and others have argued against “winners takes all” approach to tackle armed conflict. Political compromises are often necessary to ensure long term stability and create incentives for the losing side.¹⁵⁴ Alex de Waal has pointed out that “R2P fails to provide a correct analysis of

¹⁵¹Ibid. p.33.

¹⁵² Ibid.p.36

¹⁵³ Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, Brookings Institution Press: Washington D. C., 2008.

¹⁵⁴Mahmood Mamdani, “The Logic of Nuremberg” in London Review of Books, Vol.35, Issue 21,cited in Pinget and Obenland, n. 150, p.37.

conflict dynamics” and thus the correct tools to solve them. R2P may raise expectations before the rebels or the minorities and they may be tempted to work in a direction that fosters invocation of R2P. David Rieff points out the contradiction:

A doctrine of intervention that both claims the moral high ground and clamors its universality but under which the interveners are always from the Global North and the intervened always from the Global South is not moral progress; it is geopolitical business as usual.¹⁵⁵

R2P is an elastic doctrine, concerned with legitimacy rather than legal criterion and since there is no “judicial review” of either the action or inaction by the Security Council, it is unlikely that major powers would be taken to task for their decision or indecision to promote conflict resolution or to implement R2P. R2P proponents disagree that there is any relationship between the doctrine and regime but in most cases, the doctrine would be invoked against the state or the government and possibility of regime change as a goal of the decision to intervene cannot be ruled out. Examples of Holocaust, Cambodia, Rwanda or Sebrenica are usually invoked. These are extreme cases and the choice of these examples shows that the choice is arbitrary.¹⁵⁶ Framing the question between intervention and sovereignty ignores the reality that sovereignty has never prevented intervention when major powers have deemed it fit to intervene. Lack of intervention in the past is usually because of lack of interest and not because of high regard for sovereignty. R2P just makes it easier to intervene where there is already a will to do so.

R2P is not a product of any binding treaty and also does not impose any obligation. At the same time, there is no open opposition to the pledge in Paragraph 138 of the Outcome document that the assembled heads of state and government accept the responsibility to prevent the four crimes and their incitement and “will act in accordance with it”. Limiting R2P to four atrocity crimes was critical to gain acceptance. Edward Luck informs us that it was the suggestion of Ambassador of Pakistan to Jean Ping, the then President of the

¹⁵⁵ David Rieff, “R2P, R.I.P”, New York Times, 7 November 2011.

¹⁵⁶ Lou Pinget and Wolfgang Obenland, n. 150, p.40.

General Assembly to link the atrocity crimes to R2P to achieve a breakthrough in negotiation over drafting of the relevant paragraphs.¹⁵⁷

One way to look at R2P is that it seeks to reinforce one of the essential elements of statehood and sovereignty: the protection of people from organized violence. It does not, in fact, challenge the sovereign authority of states to do something that any of them would admit to wanting to do in the first place.¹⁵⁸

Medecins Sans Frontieres (MSF) has expressed its rejection of R2P as it is a new doctrine of just war: “If the purpose of humanitarian action is to limit the devastation of war, it cannot be used as a justification for new wars”.¹⁵⁹ British parliament voted against an intervention in Syria and US Congress rejected the plan. In 2013, a study by Pew Research Centre found that majority of US citizens agreed with the statement that the US should “mind its own business internationally and let other countries go along the best they can on their own”.

3.1: Moral Hazard Theory

It has been argued that R2P encourages expectations of third-party intervention and thereby creates perverse incentives for vulnerable groups to rebel and provoke a genocidal response. They may not be able to defend themselves but expect to provoke outside intervention. By incentivizing risky behaviour, R2P may end up unintentionally cause genocidal violence. This line of argument against R2P generally referred to as moral hazard theory has its roots in the insurance sector and has been studied at length in economics. The proponents of this theory maintain that far from protecting populations from genocide and mass atrocities, R2P actually causes “genocidal violence” that would not occur otherwise”.¹⁶⁰

¹⁵⁷Edward C. Luck, “Sovereignty, Choice, and the Responsibility to Protect, Global Responsibility to Protect, Vol. 1, 2009, pp. 10-21.

¹⁵⁸ Ibid.

¹⁵⁹Fabrice Weismann, “Not In our Name: Why Medecines Sans Frontieres Does Not Support the Responsibility to Protect”, Criminal Justice Ethics, Vol.29, No. 2, 2010, p. 199.

¹⁶⁰ See Alex J. Bellamy and Paul D. Williams, “On the Limits of Moral Hazard: The ‘Responsibility to Protect’, Armed Conflict and Mass Atrocities, European Journal of International Relations, Vol. 18, No. 3, pp. 539-571.

Promise of R2P may prolong suffering by encouraging repressed groups to resort to armed resistance and reject negotiation and political settlement. R2P fails to protect at-risk population and contributes to violence which it intends to stop. Thus R2P creates moral hazard. Moral hazard occurs when individuals and groups get encouraged in riskier behaviour in anticipation of protection by external powers. Without the promise of such a prospect, individuals would have avoided the riskier behaviour they may undertake.¹⁶¹ In a detailed study to test the arguments advanced by the proponents of moral hazard theory, Bellamy and Williams consider the theory to be “reductionist”. According to them: “ R2P cannot plausibly be described as a remote or (in the cases of Bosnia, Kosovo and Darfur) a proximate cause of genocide. Application of the theory “to conflict management produces a reductionist account of the causes of armed rebellions and genocidal violence and a problematic and overly simplistic understanding of the dynamics of provocation”.¹⁶²

3.2: R2P in Action: Libya

R2P doctrine emerged from the uneven experience with intervention. This unevenness was seen in response to the failure in Rwanda in 1994 and Srebrenica in 1995 and inability to utilize the UN framework for action in Kosovo. With each passing crisis and action /inaction proponents and defenders of R2P are hard pressed to account for the failure of R2P to live up to its expectations. UN’s engagement in Darfur was considered a “failure to protect” and Libyan intervention has been challenged as it morphed into regime change. Hobson writes:

These failings suggest that during its first decade in existence R2P has struggled to transcend the complexities that plague humanitarian action. With each new case, the international community faces what could be termed

¹⁶¹ See A. J. Kuperman, “Rethinking the Responsibility to Protect”, Whitehead Journal of Diplomacy and International Relations, Winter/Spring, pp.33-43. Also, A. J. Kuperman, “The Moral Hazard of International Intervention, Lessons from the Balkans”, International Studies Quarterly, vol. 52, No. 1, pp. 49-80.

¹⁶²Belammi and Williams, n. 163.

as ‘the intervener’s dilemma’: if there is no intervention and disaster follows, the lack of action is widely condemned; but if there is intervention and the manner in which it unfolds subsequently undermines the original humanitarian logic this is also deeply troubling.¹⁶³

R2P’s foothold is not sufficiently strong. Most writings have considered the philosophical and legal dimensions but not sufficiently the practical challenges involved in translating R2P in concrete situations. Intervention is an inherently political act and it is a wrong assumption that politics and R2P applicability can be divorced or seen separately. According to Ann Orford “the turn to protection opens up the questions of who can rightly claim to speak in the name of international community in a given situation, what vision of protection the international community will seek to realize and on whose behalf the responsibility to protect will be exercised.”¹⁶⁴

Good intention may be unraveled by unforeseen consequences. Post-Gaddafi Libya descended into chaos. R2P became entangled with the regime-change agenda of NATO overstepping the mandate of the Security Council. The military intervention in Libya helped remove Gaddafi but could not prevent the slide of the country into chaos. The political aspects of negotiations and compromises were not worked out and the fuller implication of the unfolding scenario was not comprehended well. The Security Council resolution 1973 did not meet with a veto but it encountered 5 abstentions: China, Russia, India, Brazil and Germany. This should have introduced a cautionary note. Some argue that since Gaddafi represented a threat to human rights of Libyan people, it was inevitable that he be removed. NATO support to the rebels overlooked the dismal record of these groups committing human rights violations. Both Amnesty International and Human Rights Watch had pointed to the dangers of these groups’s complicity in violations of human rights against regime supporters and civilians. The presence of Jihadi elements amongst the rebels should have been taken into consideration for

¹⁶³ Christopher Hobson, “Responding to Failure: The Responsibility to Protect After Libya”, *Millennium*, Vol. 44. No. 3, 2016.

¹⁶⁴ Ann Orford, *International Authority and the Responsibility to Protect*, Cambridge University Press, Cambridge, 2011, p. 138.

future ramification. Once Gadaffi was removed, Libya was torn between rival rebels who were united only in opposition to Gadaffi. With Syrian crisis looming large, attention from Libya had shifted. The transitional arrangements in Libya were neither satisfactory nor sustainable. No effort was made for peacebuilding. The political will and resources were in short supply and the overall impression was that R2P has failed, a failure compounded by widespread unrest and lawlessness.

The failure in Libya however, is not a statement of distrust in the R2P. It is not possible in real life terms to comprehend the unforeseen developments. Merit of the doctrine cannot be considered in negative light or the failures of not following through on the implications of use of force and non-implementation of other crucial components. Aspects of prevention possibly could have been stressed more forcefully instead of rapid escalation of international response through punitive measures.

It appears that significant lessons have been drawn from intervention in Libya. Russia has emphasized its opposition to any interventionist policy in Syria. Failure in Libya serves as reference point for Russia's opposition. Other countries are also sounding caution. The Syrian situation is much more demanding of intervention but the failure in Libya has injected pessimism and self-doubt. It appears that Libya has served to whittle down appetite for international action in Syria.

Evaluating the Libyan example, Hobson maintains that "Libyan case offers powerful evidence of our inability to properly comprehend the possible consequences that flow from the use of force. This should promote a humble stance, attuned to the vulnerabilities of those seeking protection, and the risks of further harm that come from military responses. In addition, it means reckoning with failure when it occurs, something that has not been done in the Libyan case".¹⁶⁵ However, what is more important is to recognize the dangers of misplaced expectations. It is not possible to grasp the consequences and importance of unforeseen developments and this should teach everyone to be humble in our approach and a readiness in us to accept responsibilities for failures. Pursuit of good should not suffer just because we are limited in our understanding of conflict dynamics and how the

¹⁶⁵Hobson, n.166, p.4.

relationship between violence and vulnerabilities operate in real world. This may point out to us our limitation. Accepting that with humility, we can still move to find our way forward.¹⁶⁶

3.3: R2P and IDP Protection

The concept of R2P developed in large measure from the efforts to design a system of protection for the IDPs. The intellectual origin of the R2P has been located in the conceptual formulation of Francis M. Deng and Roberta Cohen on sovereignty as responsibility.¹⁶⁷

The trajectory of development of the concept, however, has not suitably considered the situation of the world's IDPs. According to Cohen, "when R2P was adopted by the UN General Assembly in 2005, it was generally expected that the concept would enhance security for IDPs since the concept of sovereignty as responsibility was recognized as its antecedent, and IDPs were so often the victims of R2P related crimes. Failure to apply R2P in situations of internal displacement means that "IDPs at this point in time cannot readily look to this new concept for protection". She criticizes the sidelining the Guiding Principles on Internal Displacement: "The Secretary-General's report on implementing R2P makes no mention of the Guiding Principles even though in the one case where R2P was applied, civil society organizations and Kenya's national human rights commission called for the application of the Principles. The UN legal office reportedly removed the reference from the text on the grounds that the Principles are not 'hard law'".¹⁶⁸ Exclusion of disaster IDPs is also a sore point with Cohen who has

¹⁶⁶ Ibid.

¹⁶⁷Roberta Cohen, "Reconciling R2P with IDP Protection"

<https://www.brookings.edu/articles/reconciling-responsibility-to-protect-with-idp-protection/>For references to earliest formulation, See Roberta Cohen, 'Human Rights Protection for Internally Displaced Persons,' pp. 16-19, which says that 'Sovereignty carries with it a responsibility on the part of governments to protect their citizens,' and discusses the human rights and humanitarian contributions to this concept; and Roberta Cohen, 'Statement to International Journalists Round Table on Human Rights and the United Nations,' United Nations, New York, 14-16 October 1991, which says that 'sovereignty implies humanitarian and human rights obligations by governments to the persons residing on their territories.'

¹⁶⁸Cohen, n.170, p. 8

provided leadership to the development of concepts related to IDP protection. She points out to a speech in Berlin in 2008 by the Secretary-General in which he, warned that “Extending the principle [of R2P] to cover other calamities, such as HIV/AIDS, climate change, or response to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility”. According to her, “By the stroke of a pen the Secretary-General thus ruled out of R2P’s potential protection to the millions of persons expected to be uprooted by disasters and climate change. The exclusion is said to accord with the World Summit Outcome document which omits natural disasters from the R2P formulation even though the ICISS report upon which R2P was based recommended it as a criterion for R2P’s application”.¹⁶⁹

Concluding Observations

The publication of the ICISS report on R2P, the repeated pronouncements of the United Nations to confront atrocity crimes and the regular reports of the Secretary-General on protection of civilians has propelled forward the movement for institutionalizing action for the protection and assistance to the internally displaced. The endorsement of the World Summit Outcome in this respect is a definite and positive achievement. However, the disappointment of the protagonists of R2P over the repeated failure of the international community to effectively address the range of armed conflict and civil war and redress the situation of internal displacement and address the protection needs of the internally displaced is bound to grow with each instance of failure of international action. The humanitarian intervention principle may have triumphed over concerns and sensitivities on state sovereignty but is unable to assert itself on the face of political difficulties.

These difficulties are going to be more pronounced as the international community grapples with the aftereffects of such intervention. The intervention in Libya by NATO forces was successful in changing the political regime but significantly failed to change the conditions on the ground. The international action was legitimate, in response to widespread violence against specific communities and violations of human rights and in contravention of humanitarian principles but to the extent that it was not by

¹⁶⁹Ibid.

the United Nations, the action lacked moral weight. The absence of material interests of the intervening powers did assuage that the principles of responsibility to protect are in operation. However, in the absence of a continuum between human rights, peacebuilding and post-conflict reconciliation and reconstruction it is difficult to conceive of permanence of peace and human security.

Theoretical approaches in IR have enlightened the subject of humanitarian intervention and international norm creation. The interplay between state interests and international norms emphasizing state responsibility are well conceptualized by the Constructivists. Even while the direction of international action to promote human security and to protect the displaced people exemplifies the principles of liberal internationalism, the direction of this movement is not straightforward. Considerations of state interests are no less paramount. These interests are not necessarily defined as material but are increasingly couched in negative terms. It is not about what the intervening power would gain. Rather it is much more about what it may lose by intervening. The norm of humanitarian intervention is not powerful enough, not as yet to accept ethical considerations and moral principles as also constitutive of state interests. When these legitimate considerations are in harmony with international consensus, principally represented through a Security Council authorization, and the price of intervention in terms of troop and resource commitment is not prohibitive, the translation of norms into action may well materialize. This approach builds up on a broader understanding of ethical moorings of realism and the dynamic nature of what constitutes state interest. In short, a realist-constructivist approach has much to offer and contribute to our understanding of the subject.

Chapter IV

Institutional Arrangements for Protection of IDPs

Introduction

The present chapter seeks to locate and analyze the available system for the protection of the internally displaced people of the world. In the absence of a specific binding treaty obliging the states to discharge their responsibilities towards internally displaced, a system of protection and assistance for the IDPs has developed at the international level over the last two decades. While the ultimate responsibility for according such protection rests with the national governments, a plethora of international arrangements have developed in this regard. Governments have been increasingly supportive of such arrangements and a host of organizations and agencies are now involved in protection of the IDPs.

We propose to consider the architecture of such a protection regime centring on the initiative and role of the United Nations in the first section. The General Assembly and the Security Council have given directions for setting up of such a system of protection and the Secretary-General has been regularly reporting on the situation of the internally displaced who are overwhelmingly civilian victims of armed conflict and war. The Chapter discusses some of the initiatives of the General Assembly and the Security Council and then proceeds to analyze the humanitarian architecture under the UN. The role of the Emergency Relief Coordinator and Office of the Coordinator of Humanitarian Affairs (OCHA) are analyzed and the coordination of the Inter-Agency Standing Committee (IASC) is highlighted. A more recent system of protection developed by the IASC through a Cluster Approach that assigns specific responsibilities to different UN agencies in conflict-induced displacement and emergencies is analyzed together with the more recent Transformative Agenda of reform.

Under the Cluster Approach, the principal role for IDP protection has been assigned to United Nations High Commissioner for Refugees (UNHCR). Other UN agencies like United Nations Children's Fund (UNICEF), United Nations Development Program (UNDP), World Health Organization (WHO)

and World Food Program (WFP) also have specific responsibilities under the Cluster Approach. We shall be discussing their role together with that of International Organization for Migration (IOM) in Section 2. The UN humanitarian architecture also involves continuation of the protection role through post-conflict peacebuilding and we shall also discuss the evolving role of UN Peacebuilding Commission (PBC).

The International Committee of Red Cross (ICRC) is the biggest international humanitarian organization outside the UN system. It is also the protector and guardian of international humanitarian law (IHL). The IHL protects civilian populations who are victims of both international and non-international armed conflict. Thus ICRC has a mandate to protect the IDPs and we propose to analyze its position and role for the internally displaced in the Section 3 of this Chapter.

Section 4 discusses the unique position and role of Médecins Sans Frontières (MSF), one of the largest non-governmental organizations of the world.

Section 5 of this Chapter analyses the progress achieved by the international community in creating legal mechanisms for protection of the IDPs. The focus would be on the Great Lakes Pact and the Kampala Convention, the only two binding legal instruments for the internally displaced people, concluded in Africa. This is significant as Africa is home to overwhelming number of the world's internally displaced and the above two legal instruments are the harbinger of possibly a worldwide institutional protection for the internally displaced. The Chapter concludes with some broad observations on the available arrangements and instruments for the protection of IDPs.

Section 1: The UN Architecture

1.1 General Assembly Resolution 2015

General Assembly has been at the centre of international action on internal displacement and the protection of the IDPs and in this direction, the Assembly has adopted many resolutions and empowered different UN

agencies and units to coordinate humanitarian responses. The latest resolution adopted by the Assembly deserves analysis.¹The Assembly deplored the practice of forced displacement and recalled the provisions of the Rome Statute of the International Criminal Court that defines “the deportation or forcible transfer of population as a crime against humanity and the unlawful deportation, transfer or ordering of the displacement of the civilian population as war crimes”. The welcome decision by several regional organizations to address the assistance, protection and development needs of IDPs was appreciated by the Assembly. In this regard, the initiative of the African Union, the International Conference on the Great Lakes Region, the Organization of American States and the Council of Europe was noted by the world body.² Particular emphasis in this regard in the resolution was on the Kampala Convention which marks a “significant step towards strengthening the national and regional normative framework for the protection of and assistance to internally displaced persons in Africa”. The Convention titled African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa builds on the Protocol on the Protection of and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons adopted by the International Conference on the Great Lakes Region. The resolution also expressed appreciation for the fact that “an increasing number of States have adopted domestic legislation and policies dealing with all stages of displacement, encourages States to continue to do so in an inclusive and non-discriminatory way, consistent with the Guiding Principles on Internal Displacement”.³The resolution called upon the States to enhance cooperation and collaboration with the Inter-Agency Standing Committee to achieve appropriate humanitarian responses in emergencies.⁴On the substantive issue of protection, the resolution expressed deep concern at “the threat caused by landmines, explosive remnants of war and improvised explosive devices to internally displaced persons fleeing conflict, impeding, in certain instances, their voluntary return, local

¹Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/489/Add.2)] 70/165, Protection of and assistance to internally displaced persons.

²Para 10 of the Resolution.

³Para 23 of the Resolution.

⁴Para 28 of the Resolution.

integration and resettlement and the safe delivery of humanitarian assistance”.⁵

We may note the increased preoccupation of the world on aspects and issues involving humanitarian action which directly impacts the security and well-being of internally displaced people. Secretary-General has enunciated the principle of “One Humanity, Shared Responsibility” and The World Humanitarian Summit at Istanbul on 23-24 May 2016 was the first step in implementing the agenda for humanity. A High Level round table on Forced Displacement was convened as part of the Summit and there was “a general agreement that a new way of working is needed on internal displacement, in order to meet the humanitarian needs of IDPs while at the same time responding to longer-term needs, reducing their vulnerabilities and support the development of local communities”. Again, the 2030 Agenda for Sustainable Development frames forced displacement as a development issue and promises to “leave no one behind”. The Agenda recognizes that internally displaced populations are “part of an especially vulnerable group requiring special attention, and presents an important opportunity to move towards durable solutions for internal displacement”.

1.2 Protection of Civilians in Armed Conflicts

President of the Security Council had affirmed in 2015 that protection of the civilians remained one of the core issues on the Council’s agenda. The Secretary- General presented his eleventh report on protection of civilians in armed conflict on 18 June 2015. The report “reviews the state of the protection of civilians in key conflict-related crises, identifies existing and emerging protection challenges and highlights ongoing efforts to strengthen the protection of civilians”. The number of people requiring humanitarian assistance has tripled over the last one decade. The overwhelming majority of the vulnerable populations are civilians “affected by armed conflict or complex emergencies, which account for about 80 per cent of the crises requiring an international humanitarian response. Approximately 42 per cent of the world’s poor now live in conflict-affected and fragile States, and that figure is

⁵Para 11 of the Resolution.

expected to rise to 62 per cent by 2030”.⁶The report recommends that The Expert Group on the Protection of Civilians be used “systematically to monitor protection trends in a greater number of situations of concern, including in the absence of peace operations, and to bring to the attention of Council members the most pressing protection challenges facing civilians and possible opportunities to address those challenges”.⁷

A lot of progress has been achieved at the normative level on the protection of civilians (PoC) since 1999 when the Council had recognized this issue to be at the core of its mandate. However, the spread and intensity of armed conflict in many conflict zones like Syria and Yemen shows complete disregard for the normative framework as well as the principles of IHL and IHRL.⁸This is having “a particularly devastating impact on children”.⁹The report mentions about the “mass rape of women in eastern Democratic Republic of the Congo, South Sudan and Sudan, widespread and systematic violence in Iraq and Syrian Arab Republic and sexual assaults on women associated with the political opposition in Burundi”.¹⁰As a measure of punitive action, the Secretary-General announced that “all states repeatedly listed in [my] annual reports on children and armed conflict and on conflict-related sexual violence will be prohibited from participating in United Nations peacekeeping operations”.¹¹

The use of explosive weapons on populated areas (particularly in Libya and Ukraine) and high level of arms and ammunition in circulation are a threat to civilian population in many parts of the world. The highest number of civilian deaths from explosive weapons was recorded in Syria, followed by Yemen, Iraq, Nigeria and Afghanistan. Governments do not want to acknowledge their accountability and “some State parties to the Rome Statute have threatened to withdraw from the Court” (International Criminal

⁶Paragraph 3 of the Report of the Secretary-General on the protection of civilians in armed conflict, 18 June 2015. S/2015/453.

⁷Ibid. Paragraph 70 of the Report.

⁸Report of the Secretary-General on the protection of civilians in armed conflict, S/2016/447, Paragraph 13, 13 May 2016

⁹See Secretary-General’s Report on children and armed conflict (A/70/836S/2016/360).

¹⁰ n. 6, Paragraph 13 of the Report

¹¹Paragraph 15 of the Report.

Court).¹²Intense shelling and air strikes in Yemen is preventing humanitarian access to distressed people and in Syria administrative procedures are constraining the delivery of humanitarian assistance. These restrictions are preventing millions of people from availing assistance and support.¹³The report points out that majority of world's refugees and IDPs are living in urban areas, rather than in camps. Out of a total of 2.2 internally displaced people in Nigeria only 7.5 per cent were living in camp or camp-like sites at the end of 2015.¹⁴Secretary- General emphasized that “safety and protection remained key concerns” as the refugees and IDPs are subject to a range of human rights violations and abuses.

1.3 Security Council's informal Expert Group

Brief reference to the Security Council's Informal Expert Group on the Protection of Civilians may be considered. The Expert Group was established in January 2009 as a follow-up on the recommendations of the Secretary-General on the Protection of Civilians in Armed Conflict. The Office of Coordinator of Humanitarian Affairs (OCHA) provides the background paper and experts from the Member States of Security Council consider a wide range of protection issues. Issues related to protection on the agenda of the Council are usually taken up for in-depth consideration before the Members formally deliberate and decide. Since its establishment, the Expert Group has met several times, and Council members have received comprehensive information on protection of civilians.¹⁵ Council discussions on the protection aspects of most resolutions adopted in the past five years have been considerably aided by deliberations in the Expert Group. Security Council issues and options for action as well as a greater standardization of Council language on protection related issues in its resolutions has been a direct contribution of the Expert Group.¹⁶

¹²Paragraph 23 of the Report.

¹³Paragraph 32 of the Report.

¹⁴Paragraph 44 of the Report.

¹⁵See S/2007/643

¹⁶Also See “Security Council Norms and Practice on the Protection of Civilians in Armed Conflict: Analysis of Normative Developments in Security Council Resolutions 2009-2013”, OCHR Policy Brief

1.4 Office of the Coordinator of Humanitarian Affairs (OCHA)

The OCHA supports the mandate of the Emergency Relief Coordinator (ERC) through a variety of ways, principally functioning as the secretariat. It also works in close partnership with Security Council bodies, UNHCR, UNDP, the Special Rapporteur on the Human Rights of IDPs, protection-related IASC agencies and UN Secretariat organizations to promote the protection and assistance of IDPs.¹⁷OCHA is responsible for bringing together humanitarian actors to ensure a coherent response to emergencies, such as earthquakes, typhoons or conflict, and to assist affected people when they most need relief or protection. As per OCHA:

Key pillar of OCHA's mandate is to coordinate effective and principled humanitarian action in partnership with national and international actors. Humanitarian coordination seeks to improve the effectiveness of humanitarian response by ensuring greater predictability, accountability and partnerships. OCHA leads the international community's efforts to develop a better architecture for the humanitarian system, including strong in-country humanitarian leaders (Humanitarian Coordinators); representative and inclusive Humanitarian Country Teams; an effective and well-coordinated framework within which all humanitarian organizations can contribute systematically; and predictable funding tools.¹⁸

As the coordinator of international humanitarian response, OCHA is responsible for strengthening the following areas its internal response capacity: the capability of the humanitarian coordination system's in-country members and the capacity of national authorities and regional organizations. According to OCHA: “The need for adequate emergency preparedness systems, and the importance of applying a multi-hazard approach, will continue to grow as global threats such as urbanization, food insecurity and

https://docs.unocha.org/sites/dms/Documents/Security%20Council%20Norms_Final%20version%20for%20print%2017%20June%202014.pdf

¹⁷See OCHA <https://www.unocha.org/country/what-we-do/coordination/overview>

¹⁸OCHA <https://www.unocha.org/country/what-we-do/coordination/overview>

climate change become increasingly important drivers of humanitarian need”.¹⁹ Besides, the OCHA is involved in putting together, coordinating and implementing response mechanism by supporting United Nations Resident Coordinator or Humanitarian Coordinator, a senior United Nations official in the country concerned.

According to OCHA, protection broadly encompasses “activities aimed at obtaining full respect for the rights of all individuals in accordance with international law – international humanitarian, human rights, and refugee law – regardless of their age, gender, social ethnic, national, religious, or other background”.²⁰ This definition has been endorsed by the IASC. Broadly speaking, protection refers to protection of civilians (POC) in armed conflict and all the parties to the conflict are responsible for ensuring that civilians’ rights are respected and protected. Protection also refers to “contexts of natural disasters or civil unrest, whereby national authorities have the primary responsibility for the well-being of those affected”. It may be pointed out that the IDPs are very much covered under protection of civilians as IDPs are civilians in the first place. Also an overwhelming number of civilian population affected by armed conflict or generalized violence become internally displaced.

The OCHA works with the global cluster of lead agencies and helps ensure efficient functioning of the humanitarian system. Humanitarian Coordinators and humanitarian country team are guided and supported by the OCHA. Yet another interlinked responsibility of the OCHA is to ensure coordination between clusters and also undertake assessments of needs and put in place a system of monitoring and evaluation.

In 1999, Security Council requested for periodic and dedicated report on protection of civilians from armed conflict from the Secretary-General.²¹ We shall be considering below two such latest reports in details. It may however be pointed out here that in his 2009 report, the Secretary-General identified five core challenges facing civilians caught in armed conflict:

¹⁹ Ibid.

²⁰ Ibid.

²¹ Security Council Resolution S/RES/1265.

- Enhancing compliance of parties to the conflict with their obligations under international law, in particular the conduct of hostilities
- Engagement with non-State armed groups (NSAGs)
- Protecting civilians through UN peacekeeping and other relevant missions
- Humanitarian access
- Enhancing accountability for violations²²

1.5 Emergency Relief Coordinator and Inter-Agency Standing Committee

The Under-Secretary-General and Emergency Relief Coordinator (USG/ERC) is responsible for the oversight of all emergencies requiring United Nations' humanitarian assistance. He also acts as the central focal point for governmental, intergovernmental and non-governmental relief activities. He briefs the Security Council on urgent matters as well.²³

The ERC also leads the Inter-Agency Standing Committee (IASC). The IASC is an inter-agency forum for coordination, policy development and decision-making. The IASC Principles include UN bodies as well as some non-UN humanitarian partners. This Committee is the primary mechanism for the inter-agency coordination of humanitarian assistance. The ERC may appoint a Humanitarian Coordinator (HC) who works with government, international organizations, non-governmental organizations and affected communities in any emergency.

In 1997, the Secretary-General presented the agenda for the UN reform, including the consolidation of the ERC's role. The agenda for reform carried out by the UN in 1997 by the Secretary-General specifically mentioned the ERC's coordination with regards to IDPs. Since then, the Third Committee of the Assembly has regularly highlighted the "central role of the ERC for the

²²OCHA

²³See for example, the statement of Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Stephen O' Brien to the Security Council on the humanitarian situation in Syria, 30 March 2017, https://docs.unocha.org/sites/dms/Documents/ERC_USG%20Stephen%20O'Brien%20Statement%20to%20the%20SecCo%20on%20Syria%20-%2030March2017%20CAD.pdf

coordination of, protection of and assistance to” IDPs.²⁴This leaves the ERC as being the only Office to have specific mandate for the IDPs.

According to the details of the organizational structure for the protection of IDPs, operationally the UNHCR is the Global Protection Cluster lead. UNHCR is responsible for the efforts for the protection of conflict-affected IDPs within the cluster system. UNDP and International Organization for Migration (IOM) also have specific role to provide assistance and protection to IDPs in a variety of contexts. The UN specifically mentions the role of The Internal Displacement Monitoring Centre and the Joint IDP Profiling Service (JIPS) for bringing “crucial expertise and information on the situation of IDPs”. The Special Rapporteur on the Human Rights of IDPs “also plays an important role to mainstream the human rights of IDPs within the UN system and advocacy with Governments and key stakeholders”. Below we would analyze the IASC’s policy on protection.

1.6 IASC’s Policy on Protection

The Principals of IASC issued a statement in December 2013 to the effect that all humanitarian actors have a responsibility to place protection at the center of humanitarian action. The IASC Policy in this regard maintains: “as part of preparedness efforts, immediate and life-saving activities, and throughout the duration of a crisis and beyond, it is [thus] incumbent on Humanitarian Coordinators, Humanitarian Country Teams and clusters to ensure that protection of all persons affected and at-risk [informs] humanitarian decision-making and response, including engagement with States and non-State parties to conflict.” The policy notes that parties to conflict often violate the “principles of distinction, proportion and precaution” in the conduct of hostilities. The primary obligation and responsibility to respect, protect, and fulfill the rights of persons on their territory or under their jurisdiction makes it imperative to uphold responsibilities by national authorities. In armed conflict, non-State armed groups (NSAGs) are also bound to respect international humanitarian law. All the sides to an armed conflict are under “an obligation to distinguish between civilians and fighters in the conduct of hostilities and the obligation to take all feasible precautions to protect the

²⁴Resolution A/RES/70/165.

civilian population and civilian objects under their control against the effects of attacks”.²⁵

A system-wide commitment to make protection central to humanitarian action is required due to the multifaceted nature of threats and complex contexts of different crises situations. According to IASC’s policy, all humanitarian actors can contribute to protection of affected persons by committing to:

- Address protection issues that intersect with their formal mandates and sector-specific responsibilities;
- Engage collectively to achieve meaningful protection outcomes that reduce overall risks to affected persons by decreasing threats, reducing vulnerability and enhancing capacities;
- Mobilize other actors within and beyond the humanitarian system, as appropriate, to contribute to collective protection outcomes; and
- Evaluate commitments and progress towards placing protection at the center of the humanitarian response”.²⁶

IASC periodically reviews the nature of the coordination mechanism in humanitarian action for protection as well as for other emergencies. A “Task Team on Revitalizing Principled Humanitarian Action” conducted a review of the impact of UN integration on humanitarian action. The context of the review was integrated settings defined as “settings where a UN Country Team (UNCT) coexists with a UN peacekeeping operation (PKO) or special political mission (SPM)”. More specifically the review looked at implementation of the UN Integrated Assessment and Planning (IAP) Policy. Its findings are revealing. Firstly, it was found that there is a low familiarity with policy and guidance. This is worrying “given that the UN IAP Policy contains provisions to ensure that integration arrangements take full account of humanitarian considerations and are shaped in a manner that is conducive

²⁵Inter- Agency Standing Committee Policy on Protection in Humanitarian Action, 14 October 2016

²⁶ Ibid.

to humanitarian action”. Secondly, politicization of humanitarian action may happen due to poor understanding and respect for divisions between roles and responsibilities. The Humanitarian Country Team and its respective PKO or SPM may pull in different direction in allocation and decision on prioritization of humanitarian action. The political aspects of the work of the SPM may make it prioritize needs which may favor the government but may not meet the agreement of the HCT. To quote from the review:

The influence of political interests and stabilisation objectives is alarming to humanitarian actors due to integration arrangements. For instance, when areas that have recently been brought under the control of a government are prioritised for humanitarian assistance, questions arise regarding the principle of impartiality. Humanitarian actors worry that they lose independence and control over prioritisation of humanitarian efforts when, for example, a PKO or SPM facilitates or provides armed escorts and air assets only for such areas or when pooled humanitarian fund resources are directed to areas that have recently been brought under government control. PKOs or SPMs may also try to pressure humanitarian actors to support the return of internally displaced persons (IDPs) as part of stabilization strategies. PKOs and SPMs may be unaware of how their actions affect humanitarian principles.²⁷

The review also notes that an independent Humanitarian Coordinator outside the integrated mission structure may favor humanitarian priorities despite political pressure on questions related to relocation of vulnerable population or IDP return, etc. Then there are issues related to “influence of non-humanitarian considerations on the protection of IDPs who seek shelter in PKO bases”. Moreover, there are concerns related to ability and willingness of the Humanitarian Coordinators “to tackle these issues in the face of integration related challenges and pressure from a Special Representative of the Secretary-General (SRSG)”.²⁸ The review notes the “continued confusion on the roles and responsibilities of humanitarian, military, and political actors [and this] remains a challenge hampering humanitarian action”.²⁹

²⁷Inter-Agency Standing Committee Task Force on Revitalizing Principles Humanitarian Action, Review of the Impact of UN Integration on Humanitarian Action, 8 September 2015.

²⁸Ibid. p. 10.

²⁹ Ibid.11.

1.7 Global Protection Cluster

Global Protection Cluster (GPC) is another coordination point for international strategy to protect the internally displaced. GPC “coordinates and provides global level inter-agency policy advice and guidance” and “leads standard and policy setting relating to protection in complex and natural disaster humanitarian emergencies, in particular with regard to the protection of internally displaced persons”. The focus of GPC is to ensure that protection is central to humanitarian action undertaken by the UN agencies. GPC prepares protection Cluster Strategies in respect of the countries affected by emergencies and natural disaster.³⁰

1.8 United Nations’ Cluster Approach and Humanitarian Action

The General Assembly set the present system of international humanitarian coordination by Resolution 46/182 in December 1991.³¹ In order to introduce predictability, accountability, leadership, capacity building and partnership, a set of reform of the humanitarian domain within the UN was undertaken in 2005. An important outcome of the reform was the creation of a Cluster Approach. As per the OCHA, clusters are created “when clear humanitarian needs exist within a sector, when there are numerous actors within sectors and when national authorities need coordination support”. Clusters “provide a clear point of contact and are accountable for adequate and appropriate humanitarian assistance. Clusters create partnerships between international humanitarian actors, national and local authorities, and civil society”. The rationale of the cluster approach comes from the understanding of the importance of coordination: “Coordination is vital in emergencies. Good coordination means less gaps and overlaps in humanitarian organizations’

³⁰ <http://www.globalprotectioncluster.org/en/field-support/protection-strategies.html>

³¹ General Assembly Resolution 46/182 which led to the creation of the Department of Humanitarian Affairs (DHA) A/RES/46/182, 78th Plenary Meeting, 19 December 1991, Strengthening of the coordination of humanitarian emergency assistance of the United Nations.

work. It strives for a needs-based, rather than capacity-driven, response. It aims to ensure a coherent and complementary approach, identifying ways to work together for better collective results”.³²

Previously, the international community had adopted a “collaborative approach” which enjoined all agencies to share responsibility for responding to internal displacement. Jeff Crisp thinks that the system was “designed by default”. He says there was neither the “political will nor the resources existed to create a new agency to address the needs of the internally displaced”.³³ A new agency may duplicate the efforts of different agencies. Besides, the governments would not be persuaded to let a distinct legal entity to involve with their displaced population. The failure of the “collaborative approach” especially evidenced during the crisis in Darfur, Sudan led to a rethink. Walter Kèlin, Secretary –General’s Representative observed that “ the problem in Darfur was that the Collaborative Approach allowed agencies to say “no” to playing specific roles, especially in the area of protection, and gave the Government the possibility to opt for solutions that it found the least threatening”.³⁴

OCHA initiated an urgent humanitarian Response Review in December 2004 and concluded that “the humanitarian response system was designed well over a decade ago. In general, it has stood the test of time well, and while there is no need for major reform we do need a “system upgrade” that makes the tools that we developed in the 1990s work more effectively in the environment of 2006”.³⁵ Agreed division of labor and responsibility amongst the UN agencies marks the Cluster Approach in any conflict-related and non-refugee emergency. Under the arrangement, UNHCR would act as the

³²OCHA , <https://www.unocha.org/legacy/what-we-do/coordination-tools/cluster-coordination>

³³Jeff Crisp, “Forced Displacement in Africa: Dimensions, Difficulties and Policy Directions”, Refugee Survey Quarterly, Vol. 29, No. 3, 2010, p. 25

³⁴Interview with Walter Kèlin ,Forced Migration Review, Vol. 25, 2005, p.25.

³⁵“Humanitarian Response Reform” in OCHA in 2006: Activities and Extra-Budgetary Requirements, OCHA, New York, 2006, p. 1324. This ‘system upgrade’ finally culminated in the introduction of the Cluster Approach by the OCHA.

“cluster lead” in relation to protection, shelter and camp coordination. Nutrition, water and sanitation activities would be led by UNICEF. The health cluster would be led by World Health Organization. World Food Program would assume responsibility for logistics while UNDP is allocated the cluster of “early recovery”.

In November 2016, the IASC issued a guidance note on using the cluster approach to strengthen humanitarian action.³⁶ The Note points out that in certain sectors responses to humanitarian crises have benefitted due to the existence of a lead agency. In some cases there was no lead agency and competition and duplication of efforts harmed efficient response. All this was leading to ad hoc, unpredictable humanitarian responses, with inevitable capacity and response gaps in some areas”.³⁷ In September 2005, the IASC therefore decided to “designate global “cluster leads” – specifically for humanitarian emergencies – in nine sectors or areas of activity”. The system was to be operational especially in humanitarian emergencies. In December 2005, the IASC Principal (agencies/organizations who are members of IASC) welcomed the suggestion “as a mechanism that can help to address identified gaps in response and enhance the quality of humanitarian action”.³⁸

The IASC Note says that the Cluster Approach “is part of a wider reform process aimed at improving the effectiveness of humanitarian response by ensuring greater predictability and accountability, while at the same time strengthening partnerships between NGOs, international organizations, the International Red Cross and Red Crescent Movement and UN agencies”.³⁹ The cluster approach is considered raising the standards in humanitarian response and in this respect the concept of “provider of last resort” is critical to the approach. This means that sector leads would do their utmost to ensure an appropriate response. The Note recognizes that the approach would be “necessarily circumscribed by some basic preconditions that affect any

³⁶See Inter-Agency Standing Committee (IASC) Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response, 24 November 2006.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

framework for humanitarian action, namely unimpeded access, security, and availability of funding”.⁴⁰

Commenting on the significance of the new approach, Dennis McNamara, an UNHCR official remarked: “The cluster approach may not constitute as radical a reform as, for instance, the establishment of a new UN agency with a specific mandate for protecting and assisting IDPs. However, it’s potential for fostering a more predictable, accountable, timely and ultimately more effective international response to the needs of the internally displaced should not be underestimated”.⁴¹

OCHA Evaluation and Studies Section carried out two evaluations of the Cluster Approach, in 2007 and 2010. We will briefly summarize the findings of the evaluations. As per the November 2007 evaluation, the cluster approach “has improved efforts to identify and address gaps within sectoral programming in humanitarian response in the field”. The approach “has helped to foster stronger and more predictable leadership over sectors”. Also “preparedness and surge capacity have improved at the field level”. However, the evaluation did not find any “observable increase in ultimate accountability”. Though partnership with the local NGOs have increased but no significant gains were seen for the local NGOs. On the more important question of response of the host state, the evaluation report notes that “engagement of host states has been mixed, and overall has suffered from insufficient emphasis and strategic focus.” The report underlined that lack of a common fund is an important factor in response and strategic planning and their prioritization.⁴²

⁴⁰ Ibid.

⁴¹Dennis McNamara, “Humanitarian Reform and new Institutional Responses”, Forced Migration Review, Special Issue - Putting IDPs on the Map: Achievements and Challenges, December 2006, p.9.

⁴²Cluster Approach Evaluation, OCHA Evaluation and Studies Section (ESS) November 2007

<https://www.humanitarianresponse.info/system/files/documents/files/Cluster%20Approach%20Evaluation%201.pdf>

A Synthesis Report on Cluster Approach Evaluation was published in April 2010, after about five years of the introduction of the cluster system.⁴³ The report claimed that the approach “strengthens the humanitarian identity of cluster members, thus mobilizing actors and resources for humanitarian assistance”. It notes that Clusters “improve the planning and quality of proposals for major funding appeals, such as the Common Appeals Process (CAP) or Flash Appeals”. At the same time, the report underlines a number of challenges facing the approach and identifies few shortcomings.

Firstly, clusters seem to be working without much reference to national and local actors and “often fail to link with, build on, or support existing coordination and response mechanisms”. Insufficient analysis of local structures and capacities “before cluster implementation, as well as a lack of clear transition and exit criteria and strategies” is often to be blamed for this situation. As a result, “the introduction of clusters has in several cases weakened national and local ownership and capacities. Furthermore, most response clusters do not use or promote participatory approaches”. Secondly, financial dependence of cluster members on their clusters or lead agencies can “threaten humanitarian principles”. In a significant finding, the report notes that clusters are often process-oriented instead of being action-oriented and this can be a major handicap. Finally, the report notes that “Inter-cluster coordination is ineffective in most cases and there is little integration of cross-cutting issues. Multidimensional and cross-cutting issues are neglected in most assessments and are not sufficiently taken into account in the humanitarian response in the case study countries”.⁴⁴

We may briefly note a detailed report of the working of the cluster approach in post-earthquake Haiti. Many of the shortcomings of the approach were

⁴³See [OCHA, Cluster Approach Evaluation : A Synthesis Report](https://www.humanitarianresponse.info/system/files/documents/files/Cluster%20Approach%20Evaluation%202.pdf), April 2010.
<https://www.humanitarianresponse.info/system/files/documents/files/Cluster%20Approach%20Evaluation%202.pdf>

⁴⁴ Ibid.

noticed on the ground by a journalist and she has highlighted these in a most critical manner.⁴⁵

According to her account, the cluster approach is “incomprehensible and dysfunctional”. She quotes Imogen Wall, a communications officer for the U.N. OCHA in Haiti: cluster groups have “no formal decision-making mechanisms or mandates” and the “effectiveness of any given cluster often comes down to the personality or leadership skills of a single individual”. He goes on: “It's the collective action problem, which is a classic philosophical dilemma,” Wall said. “How do you get organizations with wildly different mandates, funding mechanisms, skill sets, experience in the country, relationships with the government—how do you get all of them to work together when you have no power to make them do so”? According to the report, the cluster approach has created a gap between the humanitarian actors and the Haitian people and the government and needs to be addressed.⁴⁶

Overall, despite the problems of the approach, the underlying theme of coordination is valid especially because there are different mandates and different types of expertise with the agencies. Maybe, some of the difficulties and shortcomings would get addressed with the passage of time as the imperative of efficient and effective humanitarian response assumes centre stage.

1.10 The Transformative Agenda of IASC

The IASC recognized that the cluster approach has become “overly process-driven and, in some situations, perceived to potentially undermine rather than enable delivery”. In the light of recognition of weaknesses in the multilateral humanitarian response, the IASC Principals therefore decided “to review the current approach to humanitarian response and make adjustments”⁴⁷building

⁴⁵See Maura R. O'Connor, “The U.N. “Cluster System” is as bad as it sounds”,

http://www.slate.com/articles/news_and_politics/dispatches/features/2011/does_international_aid_keep_haiti_poor/the_un_cluster_system_is_as_bad_as_it_sounds.html

⁴⁶Ibid.

⁴⁷Inter-Agency Standing Committee Transformative Agenda

on the lessons learned in 2010 and 2011. Based on an analysis of current challenges to leadership and coordination, the IASC Principals agreed to “a set of actions that collectively represent a substantive improvement to the current humanitarian response model” in December 2011 and subsequently an agreement was reached for the “Transformative Agenda” which has led to “TA Protocols”. These protocols set the parameters of improved collective action in humanitarian emergencies. Following documents are part of the TA Protocols:

Concept Paper on ‘Empowered Leadership’;
 Humanitarian System-Wide Emergency Activation: definition and procedures;
 Responding to Level 3 Emergencies: What ‘Empowered Leadership’ looks like Reference Module for Cluster Coordination at the Country Level;
 Responding to Level 3 Emergencies: The Humanitarian Program Cycle;
 Concept paper on the Inter-Agency Rapid Response Mechanism;
 Common Framework for Capacity Development for Emergency Preparedness; Operational Framework for Accountability to Affected Populations

According to IASC, these documents set out how all IASC Members will “work together better in emergencies through exercising stronger leadership, establishing effective coordination structures and increasing accountability to people affected by disasters”.⁴⁸

1.10 Peacebuilding Commission and the IDPs

As per the Guiding Principles on Internal Displacement, the internally displaced people may be provided with three durable solutions: return to the IDPs’ place of origin; integration in the area where IDPs have taken refuge; or resettlement to a different part of the country which is different from where the IDPs originated.⁴⁹ Return and reintegration can help prevent further displacement. Finding durable solution would be a necessary element

<https://interagencystandingcommittee.org/iasc-transformative-agenda/news/iasc-principals-letter-transformative-agenda-ta-protocols>

⁴⁸ Ibid.

⁴⁹Articles 28-29 of Guiding Principles on Internal Displacement.

of peacebuilding.⁵⁰ According to O'Neill, peacebuilding is multi-faceted and usually involves, "re-establishing security, demilitarizing armed groups, and re-establishing law and order; reconstruction and economic rehabilitation, including property restitution or compensation for the lost property; and political transition and creating more accountable governance structures."⁵¹ In many post-conflict zones, it is vital to provide "security through demobilization, de-mining, reestablishing law and order, combating impunity etc."⁵² It is important also to further reconciliation between local communities and returnees. No less important is to undertake post-conflict reconstruction and a smooth political transition. Basically, the durable solutions to internal displacement in order to sustain must necessarily involve peacebuilding.

The United Nations and the international community had no experience of undertaking peacebuilding activities in the past. The UN Peacekeeping Operations had specific mandates most of which related to maintain peace and create opportunities for political negotiations and compromises between different stakeholders, principally the states and at times the state and the non-state armed groups. However, thinking on the line of a connection between different steps and stages in conflict resolution was articulated since the 1990s. As authors of a report on UN and Peacebuilding point out:

During the 1990s, an increase in intra-state conflicts generated a growth in focus by the international community on peacebuilding. A sequential approach to the transition from war to peace that had characterized inter-state conflicts did not hold in the complex civil conflicts after the Cold War. Such conflicts did not tend to end in a decisive military victory and post-conflict reconstruction phase, but rather countries were fragile, trapped in cyclical cycles of conflict, with complex causes that repeatedly risked violence flaring as states formed. As international understanding of the links between political, security and development processes underpinning state formation and conflict grew, the UN and other actors started to develop peacebuilding as a field in its own right.⁵³

⁵⁰ William O'Neill, "Internal Displacement and Peacebuilding: Institutional Responses", *Refugee Survey Quarterly*, Vol. 28, No.1, 2009, pp. 151-180.

⁵¹ Ibid. p. 157

⁵² Ibid. p. 158.

⁵³ Sarah Hearn, Alejandra Kubitschek Bujones, Alischa Kugel. "The United Nations "Peacebuilding Architecture": Past, Present and Future", Centre on International Cooperation, New York University, May 2014.

The concept of peacebuilding was first introduced in the 1990s by the then UN Secretary-General Boutros Boutros-Ghali. In his *Agenda for Peace* in 1992 he defined peacebuilding as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.” The UN developed the peacebuilding concept further in the *The Brahimi Report* in 2000 and the report of the Secretary-General’s *High-level Panel on Threats, Challenges, and Change* in 2004 further elaborated and refined the concept of peacebuilding. Earlier, Secretary-General Kofi Annan had noted “a gaping hole” in the efforts to support countries transiting from war to peace. In many countries, peace could not be sustained and all the arrangements and efforts would get wasted. It was thus necessary to create avenues and structure to focus exclusively on aspects of peacebuilding. This understanding of transition was also boosted by the linkages between a conflict situation and the outcome of international efforts to overcome the conflict and usher in peace.

The interlinkages between international peace and security and displacement of civilians, both across the borders as refugee flows and within the state boundaries as internally displaced, was established by numerous resolutions of the Security Council beginning with the decision to establish a no-fly zone in northern Iraq in 1991. Subsequently, Security Council adopted resolutions in this respect in the case of Somalia, Haiti, Rwanda and Bosnia as well. In 2004, Security Council authorized the United Nations Operation in Burundi:

to use all necessary means... to ensure the respect of ceasefire agreements to carry out the disarmament, demobilization and reintegration of combatants, ... to contribute to the necessary security conditions to the creation for the provision of humanitarian assistance, and facilitate the voluntary return of the refugees and internally displaced persons.⁵⁴

Since no organ or agency was specifically mandated in respect of peacebuilding, the Secretary-General mooted the concept of a Peacebuilding Commission (PBC). The Commission was established as an outcome of the

⁵⁴Security Council resolution 1545, S/RES/1545 (2004).

World Summit in 2005 but before that states debated over the details: “a familiar split between the global “North” and “South” over whether the PBC would have a more robust, interventionist mandate, or one that focused more on development and assistance delayed action”.⁵⁵ Member States had a lot of difficulty over agreeing on PBC’s relationship with Security Council and whether all the five permanent members would also be seating on the Commission.

Simultaneous resolutions were moved in both the General Assembly and the Security Council in 2005 creating the PBC. The composition involved seven members of Security Council, seven members elected by the General Assembly, five members chosen as top providers of military personnel and civilian police to UN, seven members elected by Economic and Social Council and five members chosen as top providers of contributions to UN budget etc. The World Bank, International Monetary Fund and other institutional donors would also be part of the PBC’s Organizational Committee together with the countries elected/chosen as above.

The mandate of the PCB as set out in General Assembly and also of the Security Council is as follows:

- to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery;
- to focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development;
- to provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, to develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to postconflict recovery.⁵⁶

According to the PBC, the Assembly and the Council have also stressed on the importance of the Commission to fulfill the following functions in regard to its mandate:

⁵⁵O’Neill, n.49, p. 165.

⁵⁶General Assembly Resolution 60/180; Security Council Resolution 1645 (2005)

- (a) To bring sustained international attention to sustaining peace, and to provide political accompaniment and advocacy to countries affected by conflict, with their consent;
- (b) To promote an integrated, strategic and coherent approach to peacebuilding, noting that security, development and human rights are closely interlinked and mutually reinforcing;
- (c) To serve a bridging role among the principal organs and relevant entities of the United Nations by sharing advice on peacebuilding needs and priorities, in line with the respective competencies and responsibilities of these bodies;
- (d) To serve as a platform to convene all relevant actors within and outside the United Nations, including from Member States, national authorities, United Nations missions and country teams, international, regional and sub-regional organizations, international financial institutions, civil society, women's groups, youth organizations and, where relevant, the private sector and national human rights institutions, in order to provide recommendations and information to improve their coordination, to develop and share good practices in peacebuilding, including on institution-building, and to ensure predictable financing to peacebuilding.⁵⁷

Peace Building Commission (PBC) has the mandate to ensuring that the concerns of the internally displaced are addressed in any peacebuilding activities as it can “convene all relevant actors” including those under the UN system as well as the national authorities. According to O’Neill, “the PBC could hold its country-specific meetings to ensure that the UN agencies design programs to address the manifold problems of IDPs and contribute to peacebuilding. The PBC could also provide a neutral space for those most involved with IDPs...”⁵⁸ He also writes: “by addressing the IDP issue within the context of the Guiding Principles and the Responsibility to Protect, the PBC’s work can enhance conflict prevention or prevent conflict from reigniting”.⁵⁹ In this respect, the role of the PBC can be vital for issues of protection for the IDPs. As PBC maintains:

In order to address the root causes of conflict in the region, the international community must adopt a coherent and holistic approach to peacebuilding and sustaining peace, while simultaneously strengthening its partnership with national authorities. If peace is to be sustained, a

⁵⁷in General Assembly Resolution A/RES/70/262 Security Council Resolution S/RES/2282

⁵⁸O’Neill, n.49, p. 169

⁵⁹Ibid. p.171.

people-centered approach is essential, with attention to governance and inclusion, particularly of youth and women.⁶⁰

Issues related to internal displacement and the conditions of the IDPs are increasingly appearing in peace processes and peace agreements. Peacebuilding efforts necessarily should involve considerations related to protection of the internally displaced.⁶¹ Walter Kàlin, the representative of the SG on IDPs made a submission before the PBC and urged for an integrated development perspective at an early stage of return and recovery and argued that the gap between the humanitarian assistance and support for development should be bridged.⁶² O' Neill has rightly suggested that PBC in its work while dealing with issues of internal displacement and the conditions of the IDPs may fruitfully consider the benchmarks which have been developed to assess national responsibility toward the IDPs by Elizabeth Ferris, Erin Mooney and colleagues.⁶³ The 12 benchmarks are the yardsticks for understanding, analyzing and assessing the preparedness and practice of the countries concerned in regard to internal displacement. These benchmarks can help guide the work of the Commission in its approach to internal displacement and IDPs.

⁶⁰Joint summary of key outcomes by the President of the Security Council and the Chair of the Peacebuilding Commission, Informal interactive dialogue - 19 June 2017 Members of the Security Council; the PBC Chairs; countries on the agenda; Burkina Faso, Cameroon, Chad, Mali, Mauritania, Niger and Nigeria, <http://www.un.org/en/peacebuilding/pdf/oc/SC-PBC%20IID%2019June2017%20-%20Summary%20-%20FINAL.pdf>

⁶¹“Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building”, Brookings-Bern Project on Internal Displacement, Washington D.C. September 2007.

⁶²Walter Kàlin, “Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peacebuilding”, Briefing Paper submitted to the Peacebuilding Commission, Working Group on Lessons Learned, March 2008.

⁶³See Elizabeth Ferris, Erin Mooney and Chareen Stark, From Solidarity to Response: Assessing National Approaches to Internal Displacement Brookings Institution – London School of Economics Project on Internal Displacement, Washington D.C. 2011, www.brookings.edu/idp

There is an enormous potential of the PBC. However, due to the unwieldy composition and “over-loaded expectations”, the Commission has not been able to communicate effectively and mark a presence.⁶⁴ Though it works with all the permanent members of the Security Council, the Commission has not been able to show close working relations with the Council. Also, much of its focus has been to find resources for development activities in war-torn societies and for countries for their post-conflict reconstruction, and therefore enough and concentrated action on the mandate has not fructified.

Section 2: The Protection Agencies

2.1 The United Nations High Commissioner for Refugees (UNHCR)

UNHCR is the lead protection agency for the internally displaced people in the world. Its original mandate however did not include this role. However, since the 1970s, the UNHCR has been involved with displaced people especially in the context of return of the refugees. Since 1990s, this involvement has assumed a much wider engagement and today UNHCR is addressing issues related to internal displacement and the distress of the IDPs in most of the internal displacement situations in the world. This wider responsibility of the UNHCR for the internally displaced however is not expected to dilute or constraint its mandate and activities for the refugees but a connection between the two set of responsibilities and its fallout on the original mandate has been discerned. This dilution of mandate in an overall political environment of erosion of the traditional palliative role of the UNHCR for the refugees has been analyzed in Chapter 1. Here we shall exclusively focus on the evolution of UNHCR’s involvement with the internally displaced, the position and policy of the agency on this subject and the tools of protection employed by UNHCR to extend protection to the IDPs.

Regarding the IDP numbers, it should be noted that IDMC numbers have been referenced as these include internally displaced that do not feature in the numbers collected by the UN agencies. For example, as per IDMC the total

⁶⁴Sarah Hearn n.52.

number of people displaced due to conflict and violence stood at 41.3 million in the world at the end of 2016. As per the UNHCR, the number stood at 36.6 million. UNHCR has explained: “The UNHCR figure is lower than IDMC’s global figure, as not all IDP populations were covered by UNHCR or cluster partners”. Of the 36.6 million IDPs, UNHCR extended assistance to 13.9 million people in 29 countries.⁶⁵

The Office of the UNHCR was established by General Assembly Resolution 428 (V) of 1950. Article 9 of the Statute of the Office annexed to the Resolution, however authorizes the High Commissioner to “engage in such activities (...) as the General Assembly may determine, within the limits of the resources placed at his disposal.” This has been the consistent basis of the Assembly to broaden the competence of UNHCR to include groups of forcibly displaced persons within the scope of the statute. In 1972, the Economic and Social Council (ECOSOC) called on the UNHCR to extend assistance to refugees returning then to southern Sudan and also to “persons displaced within the country”. Subsequently, the General Assembly affirmed this resolution, and appreciated the UNHCR’s “efficient role in the coordination of relief and resettlement operations of refugees and other displaced persons”.

Walter Kelin, the Representative of Secretary- General on IDPs had supported UNHCR taking a more extensive role for the internally displaced. He noted that

“... UNHCR is the organisation with the most experience and capacity to protect and assist persons displaced by armed conflicts who are in camps or to organize IDP returns ... it is difficult to understand why there should not be at least a presumption that the High Commissioner for Refugees should assume responsibility in such situations”.⁶⁶

⁶⁵See [UNHCR, Global Trends, Forced Displacement in 2016](http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html).
<http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>

⁶⁶Cited in Roberta Cohen: “UNHCR: Expanding its Role with IDPs”, [Forced Migration Review](#), IDP Supplement, October 2005, p.9.

The 2000 Position Paper

In March 2000, UNHCR published a position paper explaining its role with IDPs.⁶⁷ The Paper traces the evolution of the agency's involvement with displaced people and offers a rationale for this expanding role. The Paper also describes the operational requirement and conditions for the involvement of UNHCR. Its involvement in a specific situation would require:

- A request or authorization from the Secretary General or a competent principal organ of the UN;
- Consent of the state concerned, and where applicable, other entities in a conflict; access to the affected population;
- Adequate security for staff of UNHCR and implementing partners; clear lines of responsibility and accountability with the ability to intervene directly on protection matters; and
- Adequate resources and capacity.

UNHCR would decide to undertake a specific operation based on its assessment of needs of the internally displaced and it shall work with other organizations to overcome any constraints and obstacles. The agency would also factor if its “protection and solutions expertise” is relevant and if the situation also involves issues related to repatriation and reintegration of refugees. The agency would not like to be involved in situations that may require prolonged humanitarian involvement. This condition makes UNHCR more interested in a solutions-oriented strategy where a political solution to displacement is being worked out.⁶⁸

UNHCR is convinced of the imperative of protection of IDPs as they are also in “refugee like situation”: When refugees and displaced persons are generated by the same causes and straddle the border, not only are the humanitarian needs similar, a solution to the refugee problem cannot usually be found without at the same time resolving the issue of internal displacement.⁶⁹

⁶⁷“Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees”, UNHCR Position Paper, 6 March 2000.

⁶⁸Position Paper, p.3.

⁶⁹Ibid. p.4.

In its work with the refugees and particularly with their return, UNHCR found that “effective reintegration of returnees requires assistance to be extended also to the internally displaced in the same locality or community”. It has been difficult to conceptually distinguish between refugee returnees and internally displaced as in many cases the returnees became internally displaced. Also, “Sometimes refugees have sought asylum across the border in areas where there are also internally displaced. For instance, refugees from Sierra Leone and the internally displaced in Liberia were found, not only living together, but also affected in the same manner by instability in the country of asylum. Not only is it operationally difficult and morally unacceptable to distinguish between people in such a situation, assistance targeting only refugees may aggravate their insecurity”.⁷⁰

In 2000, UNHCR was skeptical and hesitant to get involved in a large-scale way with internally displaced. Besides the question related to specific mandate, the agency was also fighting a widespread perception that it has been diluting its mandate for the refugees and adopting policies of “in – country protection” . As such, the Paper points out that its involvement with IDPs would vary and depend on a set of conditions. These pre-requisite included an understanding of the phase of a displacement situation relationship, if any, with refugee solution, presence of other organizations and finally security considerations.⁷¹The difficulty with involvement in internal displacement situation ultimately boils down to getting involved with national authorities and may possibly in a negative way. This is admitted as much by the UNHCR in the *Paper*: “Protection of the internally displaced can be particularly difficult because the national authorities retain the primary duty and responsibility but are frequently unable or unwilling to extend effective protection. Prevailing conflict often makes security a major problem”.⁷²

⁷⁰Ibid. p.4.

⁷¹Ibid. p.7.

⁷² Ibid.

The UNHCR 2007 Note

In early February 2007, UNHCR brought out a “UNHCR’s Policy Paper on internal displacement.”⁷³ Subsequently, after two weeks, another note was brought out to “complement” the paper which “focuses on the protection aspects of UNHCR’s role and seeks to clarify the more important issues pre-eminent in debate at this point”. The following discussion is based on this Note.⁷⁴

The UNHCR joined the cluster approach of humanitarian action put together by the UN. This was considered to be “in line with its expertise and experience, and given its strong commitment to become a predictable and dependable partner in responding to the plight of the internally displaced”. UNHCR agreed to assume the lead role for the clusters of protection, emergency shelter and camp coordination and management for conflict-induced IDPs.⁷⁵ It may be noted that UNHCR’s engagement with IDPs within the cluster approach is primarily with those displaced due to armed conflict. For natural or human-made disasters, the IASC arrangements involve that consultation among UNHCR, UNICEF and the Office of the High Commissioner for Human Rights (OHCHR) for agreement on which of the three agencies could best assume the lead role for protection.⁷⁶

The context for increased UNHCR involvement and activities is the reality that “humanitarian responses to IDP crises have overall been characterized by neglect, gaps or failures”. This is more acute in crises where the government is either unwilling or unable to take the protection role for its nationals. The

⁷³UNHCR, “Policy Framework and Implementation Strategy: UNHCR’s Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement”, 9 February 2007.

⁷⁴UNHCR, “The Protection of Internally Displaced Persons and the Role of the UNHCR”, Informal Consultative Meeting, 27 February 2007. Also see “UNHCR’s Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement: Policy Framework and Implementation Strategies”, Standing Committee, 39th Meeting, Executive Committee of the High Commissioner’s Programme, EC/58/Sc/CRP.18, 4 June 2007.

⁷⁵UNHCR 27 February 2007, Paragraph 3.

⁷⁶Ibid. Paragraph 21.

situation gets more complicated if the state is itself a party to cause or aggravate conflict and displacement. Moreover, availability of resources and physical control or access to the affected areas may be yet another factor.⁷⁷In almost all displacement situations, physical safety and security are key challenges. Ensuring safety of children and women and preventing their sexual abuse and exploitation, negotiating safe passage for relief vehicles, engaging with local authorities against possible discrimination of minorities or groups perceived to be politically opposed to the government etc are some of the priority work area for the agency. UNHCR also has the lead role in management of IDP camps. This is a critical responsibility and the agency can play a very protective role especially for the children and women in the camps.⁷⁸

UNHCR stresses on strategic coordination with other partners and national authorities. It encourages participating agencies to undertake needs assessments, “employing a community and participatory approach”. UNHCR is also responsible for “ensuring that response strategies maximize capacities and resources among the various actors”. UNHCR is also often to be a “provider of last resort” for critical protection gaps.⁷⁹

UNHCR has clarified repeatedly that its work for the IDPs would not dilute its mandate for the refugees: “It is fundamental to the involvement of UNHCR that its protection activities for IDPs are not considered as substituting the right to seek and enjoy asylum across borders”.⁸⁰ According to UNHCR, “the refugee and IDP functions should not be viewed as contradictory”. The agency is committed to uphold the internationally established right to seek and enjoy asylum while synergizing the two sets of responsibilities”.⁸¹ UNHCR is conscious of any attempt to confine the displaced from crossing over to border and would undertake systematic monitoring of the existence of any such risk. This would include “actions to create “safe” enclaves, with people fleeing the conflict being forced to move or

⁷⁷ Ibid. Paragraph 7.

⁷⁸See Cohen, n.66, p.10.

⁷⁹n. 74, Para 33.

⁸⁰n.74, Paragraph 34.

⁸¹ Ibid. Paragraph 43.

return to these areas within a country of origin”.⁸² UNHCR has also considered arguments that UN protection response for the displaced in a country of origin offers an “internal flight alternative” and hence claim for refugee status may not be entertained by the country of refuge. UNHCR completely rejects this argument and claims that it would also monitor and assess “whether involvement on behalf of IDPs in the country of origin leads to a deterioration of the asylum space for refugees originating from that country, and/or results in pressure to return home”.⁸³

Irrespective of the defense put forward by UNHCR, a co-relation between international involvement with the IDPs and the nature and quantum of refugee-flow does exist. A very large number of IDPs as compared to refugees is one solid indicator. However, this debate has already taken a back seat as conflict-induced displacement has taken the centre stage. Countries at war within their borders are extracting a heavy toll on the capacity of the humanitarian architecture and agencies including on UNHCR which continues to address durable solution for the refugees and at the same time provide critical assistance to the internally displaced.

2.2 United Nations Development Program (UNDP)

The United Nations Development Program (UNDP) has consistently played a role in development and reconstruction. In Chapter II we analyzed UNDP’s involvement and role with the displaced people in Kenya in the mid-1990s. Under the Cluster Approach, the UNDP has been given the responsibility for “Early Recovery”. This is in consonance with its mandate for development as well as its experience. Its mission is to “to help countries in their efforts to achieve sustainable human development by assisting them to build their capacity to design and carry out development programs in poverty eradication, employment creation and sustainable livelihoods, the empowerment of women and the protection and regeneration of the environment, giving first priority to poverty eradication”. UNDP describes itself as having three key roles in reference to mass exoduses: prevention, coping and recovery. It also says that its response to crises rests on “a well-

⁸² Ibid. Paragraph 44.

⁸³ Ibid. Paragraph 46.

coordinated approach that allows the entire organization to work together coherently. The organization develops, maintains and regularly updates a set of response tools and coordination mechanisms to respond quickly, predictably and effectively to crisis in a broad range of contexts”. The crisis response toolbox developed by UNDP “includes fast deployment of first responders and planning teams for recovery, post-disaster and post-conflict needs assessments; and fast-track procedures for procurement and operational support”. The toolbox contains a crisis response package that enables UNDP “to deliver concrete actions on the ground within a few hours of the onset of a crisis. They ensure that resilience-building begins immediately and simultaneously with humanitarian activities...”⁸⁴

UNDP focuses on three broad areas of work in the area of migration and displacement:

1. Developing comprehensive national policy and institutional frameworks for migration.
2. Managing migration for long-term positive development impacts at the sub-national and local level and its efforts focus on leveraging the potential of migration for local sustainable development with an emphasis on joint inter-agency programming and inter-agency solutions and
3. Resilience-based development solutions for migration and displacement in times of crisis, conflict and disaster.⁸⁵

2.3 The United Nations Children’s Fund (UNICEF)

UNICEF is mandated by the UN General Assembly “to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential.” In 1992, its Executive Board reaffirmed that UNICEF should "continue providing emergency assistance to refugee and displaced women and children, particularly those living in

⁸⁴UNDP See UNDP Booklet, Promoting Development Approaches to Migration and Displacement: five UNDP Specific Focus Areas
file:///C:/Users/Mishra/Downloads/UNDP%20Booklet%205%20Things_low_V6.pdf

⁸⁵ Ibid.

areas affected by armed conflict and natural disasters."⁸⁶ Conventions on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women guide the activities of the organization. During the last about four decades, UNICEF also has provided logistical and policy support to a number of emergency operations in favour of displaced persons. According to UNICEF, “the international community is faced with increasingly complex humanitarian crises which place children and women at significant risk”. On average, UNICEF responds to more than two hundred emergencies every year.⁸⁷

A very high percentage of internally displaced populations in every crisis of internal displacement are children and women. UNICEF is the lead agency in respect of water, nutrition and sanitation activities under the Cluster Approach to deal with humanitarian emergencies and plays an important role in protecting internally displaced children.⁸⁸

UNICEF’s humanitarian action encompasses both interventions focused on preparedness for response to save lives and protect rights as well as its contribution to measures to address underlying causes of vulnerability to disasters, fragility and conflict. UNICEF believes that its approach in humanitarian action is based on an understanding of the vulnerabilities of the children:

During emergencies and humanitarian contexts, children are especially vulnerable to disease, malnutrition and violence. Children living in conflict areas are worst off- as demonstrated by the millennium development goals indicators. Countries in armed conflict situations are more likely to be living in extreme poverty, for instance, or not enrolled in primary school; they are also more likely to die before their fifth birthday. Of populations without sanitation and safe drinking water globally, approximately half live in countries affected by conflict. UNICEF focuses on these children and their families – on the essential interventions required for protection, to save lives and to ensure the rights of all children, everywhere. The chaos and insecurity of war

⁸⁶Susan F Martin, “Forced Migration and the Evolving Humanitarian Regime”, New Issues in Refugee Research, UNHCR, Working Paper No. 20, July 2000.

⁸⁷ UNICEF https://www.unicef.org/emergencies/index_68708.html

⁸⁸ Ibid.

threatens or destroys access to food, shelter, social support and health care, and results in increased vulnerability in communities, especially for children.⁸⁹

A latest publication of UNICEF points out that nearly 50 million children have migrated across borders or been forcibly displaced.⁹⁰ About 28 million of these have fled violence and insecurity. These children “may be refugees, internally displaced or migrants, but first and foremost, they are children”. Children in a situation of displacement are at risk from abuse and harm. They often fall a victim to trafficking. Refugee and migrant children “disproportionately face poverty and exclusion at a time when they are in desperate need of essential services and protection’.⁹¹

2.4 The International Organization for Migration (IOM)

The International Organization for Migration (IOM) is a “consistent” part of the collective response system for the displaced people at the international level. Established in 1951, IOM fulfill several functions to meet the needs of the migrants including “the organized transfer of refugees, displaced persons and other individuals in need of migration services” (Article 1, para 1 (b), IOM Constitution). IOM maintains that Constitution of IOM is unique as it is the “only treaty providing a specific mandate for “displaced persons” to an international governmental organization”. For IOM, the term “displaced persons” broadly “includes persons who fall outside the scope of the conventional definition of refugee but who had to leave their homes due to factors such as armed conflicts, widespread violence, natural and/or man-made disasters or violations of human rights”.⁹² The reference in IOM’s Constitution to “displaced persons” encompasses both those who migrate internally and internationally. IOM’s involvement in providing assistance to

⁸⁹ Ibid.

⁹⁰ See Executive Summary, Uprooted: The growing crisis for refugee and migrant children, UNICEF, September 2016.

https://www.unicef.org/publications/index_92710.html

⁹¹ Ibid.

⁹² See Internally Displaced Persons: IOM Policies and Activities, Eighty-Fourth Session, MC/INF/258, 18 November 2002.

internally displaced persons has been approved in resolutions of the governing bodies of the Organization. The 2002 Policy document categorically states its involvement with the internally displaced persons. For example, the problem of internally displaced persons in Latin America was considered a priority area for the Organization by Resolution No. 87 (LXXXVI) of 25 May 1994. Similarly, IOM's Council specifically called upon the Organization "to actively examine how it can assist African countries in solving problems related to mass displacement" as per Resolution No. 859 (LXV) of 25 November 1992.⁹³

The 2017 draft IOM Framework for Addressing Internal Displacement mentions that it is engaged with the "mobility dimensions of a crisis, and its work on internal displacement in crisis, post-crisis and at-risk contexts represents a significant bulk of its activities". In 2015, the IOM's activities in crisis-related operations in 67 countries reached 23 million people. According to the Organization, "this makes IOM one of the largest actors on internal displacement issues globally. Its activities aim to address the root causes of displacement and to strengthen the resilience of individuals, communities and States to withstand external shocks, while also providing rapid, effective and timely needs-based humanitarian assistance that transition strategically into its recovery and development initiatives".⁹⁴

IOM's humanitarian policy affirms the centrality of protection in IOM's humanitarian action. This is significant for the protection of the IDPs. IOM has announced its adherence to the IASC definition of protection as "all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law".⁹⁵ Under the cluster approach of assigning specific mandate to different UN agencies and organizations, adopted in 2005, the IOM has been assigned as the co-lead of the Global Camp Coordination and Camp Management (CCCM) Cluster.

⁹³Ibid.

⁹⁴Draft IOM Framework for Addressing Internal Displacement, Paragraph 5, March 2017.

⁹⁵IOM, Principles for Humanitarian Action, C/106/CRP/20, 12 October 2015.

For IOM, the challenges and opportunities of the current global landscape of internal displacement necessitate “strategic approaches that are contextual, comprehensive, collaborative, evidence-based and innovative”. For IOM, rights are portable and vulnerabilities must be addressed in a holistic and inclusive way. IOM’s contextually based approaches aim “to help people to remain in their communities wherever possible; to protect vulnerable groups from the impacts of displacement at all stages of a crisis; and to minimize the impact of displacement on the communities it affects”.⁹⁶ The Organization’s innovative displacement tracking methodology is used by IDMC and is considered a source of primary data.

An understanding of the IOM’s significant work for the displaced is reflected in its work on return of the displaced people. In 2016, IOM was made the Chair of the United Nations Returns Working Group by the UN Coordinator in Iraq. IOM Iraq’s Displacement Tracking Matrix (DTM) has tracked and confirmed the location of more than 626,600 displaced individuals from Mosul and the numbers of those who are still displaced and those who could return. IOM also commissioned a report “Obstacles to Return”.⁹⁷

The study analyzes the principal push and pulls factors limiting the willingness of IDPs to return to their place of origin in the country. Proximity to the frontline and a perception that instability reigns in the place of origin usually acts as a big obstacles to return. According to the report: “Feelings of trust towards the security actors in control of the areas of origin promotes a higher number of returns, while fear of security actors in the place origin is a strong drawback and reinforces the perceived advantage of staying in displacement”. The potential returnees also fear reprisals in the place of

⁹⁶Paragraph 28, 74, 2017 Framework.

⁹⁷“The Obstacle of Return” report commissioned by IOM

<http://iraqdtm.iom.int/specialreports/obstaclestoreturn06211701.pdf>

origin. A good number of displaced people are unable to return either due to bureaucratic delays in processing their papers or because they have been stopped at checkpoints.⁹⁸ Thomas Lothar Weiss, Chief of Mission of IOM Iraq said:

IOM Iraq remains committed to supporting the delivery of durable solutions in safety and with dignity. This includes assistance to families returning voluntarily, who may face significant challenges in order to rebuild their homes and livelihoods and regain their standard of living. It also includes families who consider displacement a better alternative and continue to try to rebuild their lives away from their homes and communities while they wait for an opportunity to return. And it includes those who have decided to integrate locally.⁹⁹

IOM is emerging as a significant actor and both its experience as well as its inclusive approach is consistent with the development of focus on protection for the displaced. It is possible for other agencies to fall back on IOM whenever it is necessary to understand mixed migration that includes those who are forced migrants as a result of violence and conflict and those who are migrating due to economic vulnerabilities.

Section 3: The ICRC, International Humanitarian Law and IDPs

There is no specific universal instrument to protect the rights of the internally displaced people but international humanitarian law accords and affords protection of civilian victims of war and armed conflict. Internally displaced people are entitled to get the protection of IHL as part of the civilian population. Protection regime for civilians under IHL is quite extensive and therefore the Guiding Principles on Internal Displacement has been enriched by the IHL provision. There is lot of complementarities between IHL and International Human Rights Law (IHRL) and both these streams of law together with analogous provisions in Refugee Law have contributed to the development of the Guiding Principles. The International Committee of the Red Cross (ICRC) is the guardian of the IHL and thus it constitutes an effective non-governmental international body to implement

⁹⁸Ibid.

⁹⁹IOM n.94.

and operationalize the IHL for the assistance needs and protection concerns of the internally displaced people. It is a major actor outside the UN system.

ICRC predates the UN and it is an “impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance”. The Red Cross Movement also consists of International Federation of Red Cross and Red Crescent Societies. At the field level national societies are often instrumental in delivering assistance to internally displaced people. International Federation of Red Cross was created in 1920. It competed with the ICRC for several decades but now with the Seville Agreement in 1997, cooperation and integration within the Red Cross Movement has been achieved. ICRC, Federation and National Societies have agreed to the concepts of lead agency in international relief and lead role in different situations. In situations of armed conflict and internal strife, the ICRC would be the lead Red Cross actor. The Federation has the lead role in relief action for post-conflict situations. IDPs would get covered under this role of the federation in post-conflict situations involving reconstruction and rehabilitation. If the ICRC and the Federation agree, National Societies may become lead Red Cross agencies for international relief efforts.¹⁰⁰

ICRC’s mission – defined in the 1949 Geneva Conventions and their 1977 Additional Protocols and in the 1986 Statutes of the International Movement of the Red Cross and Red Crescent – is “to protect the lives and dignity of victims of war and internal violence and to provide them with assistance” and “to prevent human suffering by promoting and strengthening humanitarian law and universal humanitarian principles”.

Henry Dunant had first suggested that states should adopt a convention protecting the wounded soldiers and those who come to their aid. This led to the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field in 1864. This Convention can be seen as the inception of modern IHL. New Conventions protecting the shipwrecked and prisoners of

¹⁰⁰For details See David P. Forsythe, “Refugees and the Red Cross: An Underdeveloped Dimension of Protection”, New Issues in Refugee Research, UNHCR, Working paper No. 76, January 2003.

war were concluded in subsequent period in 1906, 1929 and 1949. On 12 August 1949, four Geneva Conventions were signed:

- The Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field;
- The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- The Geneva Convention relative to the Treatment of Prisoners of War; and
- The Geneva Convention Relative to the Protection of Civilian persons in Times of War.

Subsequently, these four Geneva Conventions have been supplemented by two Additional Protocols on 8 June 1977:

1. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of the Victims of Internal armed Conflict (Additional Protocol I)
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)

The Four Geneva Conventions and the two Additional Protocols constitute the IHL and it would be our endeavour to locate sources of protection for the IDPs in these instruments and analyze the role of the ICRC providing a significant institutional framework for the protection of the internally displaced. It may be pointed out that the international community has also signed quite a few important Conventions that regulate the conduct of hostility and war and thus have a restraining effect on the parties which would include protection from the prevention of internal displacement. Mention may be made of United Nations Convention on Conventional Weapons of 1980 and the 1997 Ottawa Convention against anti-personnel landmines. Alain Aeschlimann, a former Head of the Protection Division of ICRC maintained that “IDPs are of primary concern to the International Committee of the Red Cross (ICRC). Ensuring their protection lies at the core of its mandate, operational concerns and priorities”. According to him, this statement should be “understood in the broader frame of ICRC's endeavours to act in favour of all war victims and its wariness towards approaches by sectors or categories of victims”. ¹⁰¹According to Françoise Krill, ICRC contributed to the drafting of the Guiding Principles and supports their

¹⁰¹Alain Aeschlimann, “Protection of IDPs: an ICRC view”, *Forced Migration Review*, IDP Supplement, October 2005, pp. 25-26.

dissemination but “it will use them solely when international humanitarian law is not or is only implicitly applicable, or when they afford additional protection”. He points out that “the ICRC has stressed on several occasions that international humanitarian law, which is binding on both State and non-State protagonists in situations of armed conflict, is eminently suited to solving most of the problems of internal displacement on account of such situations”.¹⁰² He also goes on to add: “The ICRC wishes first and foremost to promote the affected communities’ self-sufficiency and will therefore enhance the host population’s ability to absorb the displaced persons. At the same time everything possible will be done to preserve the displaced persons’ coping mechanisms and avoid exacerbating the situation by increasing the disparities between different sections of the population, or to prevent corruption and appropriation by the warring parties of the assistance provided”.¹⁰³

Since armed conflicts are the primary source of displacement, IHL provisions relating to armed conflicts are most important. In all the four Geneva Conventions, Article 3 is common. This Common Article 3 protects the victims of non-international armed conflict. In effect, while the Geneva Conventions are primarily applicable in international armed conflict/war, the effect of Article 3, which is common to all the Conventions, include within its ambit the non-international or internal armed conflict as well. Provisions of IHL that apply to non-international armed conflicts are binding not only on the states but also the non-government armed groups or secessionists as well. Though the Geneva Conventions do not refer to internally displaced persons, they are very much covered under its provisions as civilian persons in time of war or armed conflict. According to the position Paper of ICRC, “While they are displaced, IDPs are entitled to the same protection from the effects of hostilities and the same relief as the rest of the civilian populations”.¹⁰⁴

ICRC maintains that prevention of violation of IHL would itself result in the reduction in the number of IDPs as a result of armed conflict. Under IHL, forcible displacement is prohibited, whether within the borders of the country

¹⁰²Francoise Krill, “The ICRC’s policy on refugees and internally displaced civilians”, IRRC, Vol. 83, No. 843, September 2001, pp. 607-627, p. 620.

¹⁰³Ibid. p.621-622.

¹⁰⁴ICRC Position on Internally Displaced Persons (IDPs), May 2006, p. 2.

or across international borders. Under IHL, displacement or relocation of population can be carried out exceptionally and temporarily when it can be justified by considerations of their security or imperative military necessity.¹⁰⁵ IDPs shall return to their place of origin as soon as the security concerns have ceased to exist in the affected area.

Indiscriminate attacks and attacks directed against civilians are prohibited under IHL. Acts which aim to spread terror among the civilian population are prohibited and similarly reprisals against civilians cannot be carried out. Attacks can only be carried out against combatants and military objects under Law of War. As such, civilian objects and civilians cannot be subject of attack. Starvation of civilians as a method of warfare and destruction of their crop and properties are also prohibited under IHL. In case of occupation (belligerent occupation) of territory, Article 49(I) of Fourth Geneva Convention expressly prohibits “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of Occupying power or to that of any other country, occupied or not”. Also, as per Article 45 (4) “ [i]n no circumstances a protected person be transferred to a country where she may have reason to fear persecution for his or her political opinions or religious beliefs”. This recognition of *non-refoulement* is significant.

Article 3 provides that [p]ersons taking no active part in the hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. The Article also prohibits:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment or torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

¹⁰⁵“Internally Displaced Persons and International Humanitarian Law”, Advisory Service on International Humanitarian Law, ICRC.

A more direct prohibition is part of Article 17 of the Additional Protocol II that provides:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

ICRC is not in favor of categorizing civilians as “IDPs” or non-IDPs: “The ICRC has, on numerous occasions, expressed its concern about the increasing tendency within the humanitarian and donor communities to consider the needs of IDPs and those of the resident population separately. Indeed, segmenting the humanitarian response and splitting beneficiaries into categories – such as IDPs – entails the risk that certain groups of affected persons, possibly those in greatest need, may be neglected”.¹⁰⁶

For the ICRC, protection, in its strictest sense, encompasses all activities aimed at preventing or putting an end to violations of the rights of the individuals by States and other parties to the conflict and preventing and putting to an end to disregard by those parties for their obligations under the IHL and other fundamental rules protecting individuals in situations of violence, in accordance with both the spirit and the law.¹⁰⁷

With regard to protection, ICRC’s main mode of action consists in “persuading the authorities and armed groups, through confidential dialogue, to fulfill their obligation not to displace civilians or commit their violations of the relevant rules of law that would result in displacement. If displacement occurs, the authorities must ensure that IDPs are protected, their rights respected and their essential needs met. They must also promote voluntary return whenever it is safe and whenever adequate living conditions are in place. The ICRC also acts as a neutral intermediary between warring parties

¹⁰⁶ICRC Position, p.4.

¹⁰⁷ Ibid.

in order to facilitate the conclusion of agreements aimed at humanitarian issues, including the plight of IDPs”.¹⁰⁸

ICRC has appreciated the concept of “clusters” launched by the UN Emergency Relief Coordinator in mid-2005. However, it has decided not to participate as part of any “cluster”. Its considered view is reproduced here: “ICRC has closely followed efforts to develop this new cluster approach, particularly in situations of armed conflict where civilian, including IDPs, are protected by IHL and are the traditional beneficiaries of ICRC activities. However, the ICRC does not intend to take the lead for any cluster or be a cluster member, as this would entail accountability to the United Nations”.¹⁰⁹ This of course does not mean that in the field ICRC does not coordinate its activities with UN and non-UN players. Rather, it actively cooperates with other humanitarian organizations in order to “uphold the ICRC’s recognized operational framework and implement the organization’s context-driven approach, guided by the best interests of [affected] people”.¹¹⁰ Systems of protection under refugee law and the IHL are not mutually exclusive but rather “complement and supplement each other” and “so do the mandates of UNHCR and the ICRC”.¹¹¹ Jacob Kellenberger, a former President of the ICRC said: “[t]he Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross have long shared a close relationship based on a determination to uphold standards of protection and operational principles. The interconnection between the two institutions is firmly anchored in historical, legal, and operational aspirations”.¹¹²

Commentators have drawn attention to some of the comparative advantages of ICRC while addressing the problems faced by the internally displaced. Firstly, ICRC bases its work for internally displaced persons on binding treaties, unlike UNHCR and other actors who have to rely on Guiding

¹⁰⁸ Ibid.

¹⁰⁹ ICRC Position, p.6.

¹¹⁰ Ibid.

¹¹¹ Francois Bugnion, “Refugees, Internally Displaced Persons, and International Humanitarian Law, Fordham International Law Journal, Vol. 28, No. 5, 2004. p. 1419.

¹¹² Cited in Bugnion, p. 1419.

Principles which is “soft law”. Secondly, ICRC’s staff strength is unmatched by any other organization. It can undertake activities both for assistance and protection and need not sub-contract work to the NGOs. Thirdly, ICRC can involve itself in a conflict situation in pursuance of its mandate without waiting for authorization from the Secretary-General or General Assembly.¹¹³

A pertinent point in this regard is the role of the ICRC as a neutral intermediary. Since ICRC works on both sides of the political divide in an international or in a non-international armed conflict, it is trusted by “enemy” parties as well. This trustworthiness of ICRC can be of invaluable service for working out compromises and carrying out negotiations in a discreet way.

Forced displacement whether through refugee movement or situation of internal displacement represent a failure to honor commitments under IHL. The IHL is a strong bulwark against displacement. To quote Bugnion: “ the main reason people pack up and leave in time of war are always violations of humanitarian law, whether indiscriminate attacks or attacks deliberately targeting civilians, terrorist attacks, abuse of power, threats of violence, reprisals or deportation”.¹¹⁴In this context, it is important to note that the Guiding Principles on Internal Displacement defines internally displaced persons. IDP is a description and not a status and this was insisted by the ICRC. ICRC believed that IDPs should not be considered as having a separate status in comparison to other individuals, communities and civilians who are equally a victim of armed conflict.

Some important operational and policy questions have been raised with reference to ICRC’s role in assisting and protecting the internally displaced people. Marion Harroff –Tavel questions if the ICRC should not consider movement of persons in more holistic terms instead of categorizing them as “refugees”, “IDPs” or “migrants”? According to her field experience working with internally displaced on behalf of the ICRC, it is not possible to make such categories on the ground. It is also difficult to distinguish IDPs from migrants in urban areas. IHL has ‘little to say about return and reintegration of displaced people and did not apply in many situations of displacement

¹¹³See Krill, p. 623-624.

¹¹⁴Bugnion, p.1420.

where disturbances fall below “armed conflict”.¹¹⁵ ICRC adopts an integrated approach to civilian victims of war and conflict but is it not possible also to deal with specific vulnerabilities attached to displacement. IDPs are not a homogeneous group and as such if it is feasible for the CRC “to more directly address the differentiated needs of vulnerable sectors within the IDP population, such as women, the elderly, children and minorities”. Moreover, it is also necessary to research how the ICRC differentiates the needs arising from patterns of settlement, in urban areas as compared to rural areas, for the camp population and those outside the camps etc.¹¹⁶

Section 4: International NGO Médecins Sans Frontières (MSF)

Médecins Sans Frontières (MSF) is, according to its self-description “an international, independent, medical humanitarian organisation that delivers emergency aid to people affected by armed conflict, epidemics, natural disasters and exclusion from healthcare. MSF offers assistance to people based on need, irrespective of race, religion, gender or political affiliation”. MSF’s actions are guided by “medical ethics and the principles of neutrality and impartiality”. Its work is based on humanitarian principles and MSF is “committed to bringing quality medical care to people caught in crisis, regardless of race, religion or political affiliation”. This introduction to the organization was necessary because of the tremendous value and influence the MSF has been able to bring to the discourse on humanitarianism and its practice. The birth of MSF was premised on recognition that human rights are primary and any worthwhile effort to mitigate suffering should address the causes of suffering as well. Though the organization is neutral and does not “take sides in armed conflicts” and pushes for “independent access to victims of conflict as required under international humanitarian law”, it often speaks out publicly in “an effort to bring a forgotten crisis to public attention, to alert the public to abuses occurring beyond the headlines, to criticize the

¹¹⁵Marion Harroff - Tavel, “Questions to the ICRC on its activities to protect and assist IDPs”, Report of a workshop on “The Role of ICRC in Protecting and Assisting Refugees and Displaced Persons”, Human Rights Consortium and Refugee Law Initiative, London, 20 September 2011.

¹¹⁶ Ibid.

inadequacies of the aid system, or to challenge the diversion of humanitarian aid for political interests”.¹¹⁷

The fiercely independent and outspoken role of MSF in myriad conflict situations around the world has received appreciation and its efforts have also been recognized including conferment of Nobel Peace Prize. French doctors who founded MSF in 1971 believed that there are two sides- right side and the wrong side and it is necessary to make a choice. Neutrality on many issues is morally problematic and “a humanitarian should never be neutral between the slave and the slave owner”.¹¹⁸ Questioning the neutrality between the Igbo community in Biafra fighting for their rights and the Nigerian government attempting to suppress them was the starting point for the MSF movement. Testimony or witnessing (from the French word *temoignage*) led to ‘speaking out’ which has become the core identity of MSF. *Temoignage* “involves an engagement with politics, a willingness to take a political action on behalf of others, creating allies and enemies”.¹¹⁹ There are important practical limitations of impartiality. MSF position is that it is difficult to provide aid say to the IDPs purely on the basis of need as there are so many factors that interfere with the policy. In regard to the MSF’s work with IDPs in Eastern Congo, Scott-Smith referring to a study by Sean Healy and Sandrine Tiller, writes:

[T]he political considerations of the Congolese Government, concerns about instability and insecurity, the ability of an organisation to negotiate independent access, and the proximities of beneficiaries to a road all play their part. In practice, therefore, humanitarian agencies do not respond purely to needs, but end up skewing assistance towards people who have sought refuge in official camps, those who live in government-controlled areas, people who live along good roads, and those close to humanitarian agency compounds.¹²⁰

Many internal displacement situations are regime-induced and it is also quite often that humanitarian aid is diverted and misused as a weapon of control

¹¹⁷ MSF Website

¹¹⁸ Tom Scott-Smith, “Humanitarian Dilemmas in a Mobile World”, Refugee Survey Quarterly, Vol. 35, April 2016, p. 6.

¹¹⁹ Ibid. p. 8

¹²⁰ Ibid. p. 5.

and allurement. Under these circumstances, it is necessary to speak out. Assistance and support to the IDPs are necessary and important but there is no reason to gloss over the misuse. Also it is necessary not to strengthen the perpetrators of violence and genocide through distribution of aid based on ‘need’. MSF was thus critical of humanitarian aid for people who had taken part in genocide in Rwanda. MSF believes that “the debates around migration and border regimes are inherently political, so responding to suffering in accordance with the classical ideal – neutrality, impartiality, independently – is neither possible, nor particularly desirable”.¹²¹ This is an important perspective and MSF being a leading actor in humanitarian arena has a positive role to play not only in terms of assistance but more importantly with regard to protection and human rights concerns of the internally displaced.

Section 5: Regional Legal Framework for IDPs in Africa

5.1 Displacement in Africa

African countries were the first to recognize the individual and Europe-centric orientation of the international refugee regime represented by the 1951 Convention on the Status of Refugees. The Convention was virtually ineffectual on the face of mass exodus of people across borders. The Organization of African Unity (OAU) decided to create a legal framework to regulate large-scale refugee movement in 1969 and drafted the OAU Convention. The Convention redefined the term ‘refugees’ by encompassing a much wider definition to suit the regional African context. The Convention was a precursor of similar undertaking by the Organization of American States (OAS). The current understanding of the term refugees and the causative reasons for refugee-flow broadly mirrors the initiative of the African states. Similarly, the African states have crafted regional legal instruments for the assistance and protection of the internally displaced people. Two initiatives, the Great Lakes Pact and the Kampala Convention are the first two binding inter-governmental treaty for dealing with internal displacement and the issues related to the IDPs. In this section, an overview of internal

¹²¹Ibid. p. 2.

displacement in Africa would be presented. This would be followed by an analysis of the Great Lakes Pact and the Kampala Convention.

Refugee protection principles are under challenge since the 1990s.¹²² Instead of the earlier tradition of hospitality, refugees are increasingly subject of hostility. Rutinwa pointed out in 1999 that African states have become less committed to asylum: “Instead of opening their doors to persons fearing harm in their own States, African countries now prefer refugees to receive protection in “safe zones” or similar areas within their countries of origin”. Refugees get “pseudo-asylum” and there is no guarantee of their security. African States prefer repatriation of refugees “at the earliest opportunity, regardless of the situation in the countries of origin”.¹²³ The erosion of asylum has contributed to increased number of displaced within the borders of the country. The widespread armed conflict in almost all the states involving non-state armed groups, territorial and other material disputes and occasional war between the states and the more recent phenomenon of transnational terrorist organizations have contributed to the growing numbers, vulnerabilities and insecurity of the displaced population.

Walter Kälin, a former Representative of the Secretary- General on IDPs has noted:

African IDPs are among the world’s most vulnerable, at high risk of ongoing armed attack, malnutrition, sexual violence and exploitation, enforced military recruitment, and disease including HIV/AIDS. Following the end of conflict, many struggle to return or to resettle and reintegrate in situations in which infrastructure is lacking and access to basic goods and services, including health and education facilities, remains limited. The internally displaced often face discrimination, and are unable to access food, education and health care. Too often, they lack basic documentation and the ability to exercise their political rights.¹²⁴

¹²²See Jeff Crisp, “Forced Displacement in Africa: Dimensions, Difficulties and Policy Directions”, *Refugee Survey Quarterly*, Vol. 29, No. 3, 2010, pp. 1-27.

¹²³B. Rutinwa, “The End of Asylum? The Changing Nature of Refugee Policies in Africa”, *New Issues in Refugee Research, UNHCR*, Research Paper No. 5, May 1999, p. 2.

¹²⁴Cited in Jessica Wyndham, “The Challenges of Internal Displacement in West Africa”, *Forced Migration Review*, No. 26, p.69.

As per the data released by IDMC in their first separate publication on IDPs in Africa, at the end of 2015, nearly 12.4 million internally displaced people were living in different countries of the continent.¹²⁵ This represents 30 per cent of the global IDP numbers. The concentration of IDPs is highest in East African countries like Somalia, South Sudan and Sudan. Together with the neighboring country of Central African Republic (CAR), the four countries were hosting more than 6.8 million internally displaced. More than 2.4 million people were newly displaced in Africa in 2016. Nigeria has accounted for a large number of displaced. The IDP numbers in Africa are 4 to 5 times than that of the refugees.¹²⁶ However, far more important than the issue of the numbers and location of internally displaced persons are “such factors as the sheer gravity of their situation, their precarious existence and vulnerability, and the dimensions of human rights and humanitarian law required to provide for their physical and material protection, including humanitarian assistance”.¹²⁷

5.2 The Great Lakes Pact and the Protocol on IDPs

The International Conference on Great Lakes Region (ICGLR) was initiated by the United Nations, the African Union and the 11 states of the region in 1996. From 1996 to 2003, diplomatic efforts were made to involve the core countries and the co-opted member states. The Dares Salaam summit of heads of states/government in November 2004 led to the signing of a Declaration on Peace, Security, Democracy and Development (The “Dar es Salaam Declaration”). The Declaration had set out a plan of action to guide the ICGLR process. Adoption of the Pact on Security Stability and Development in the Great Lakes Region (the Great Lakes Pact) was the outcome of this

¹²⁵Africa Report on Internal Displacement, IDMC and Norwegian Refugee Council, 2016.

<http://www.internal-displacement.org/assets/publications/2016/2016-Africa-Report/20161209-IDMC-Africa-report-web-en.pdf>

¹²⁶ Ibid.

¹²⁷Chaloka Beyani, “Recent Developments: The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa”, Journal of African Law, Vol. 50, No. 2, p.189.

plan. The Pact and the 10 legally binding Protocols including the Protocol on the Protection and Assistance to Internally Displaced Persons is a watershed development. Chaloka Beyani who has been deeply involved in the development of African regional legal framework especially the AU Convention points out: “The Great Lakes Protocol represents a specific development that begins to address the lacunae of a legal framework aimed at protecting and assisting internally displaced persons. It establishes the scope of the responsibility of states for the protection of internally displaced persons; outlines the applicable principles of protection and assistance; and lays out obligations for the member states of the International Conference on the Great Lakes to adopt and implement the Guiding Principles on Internal Displacement”.¹²⁸

The objectives of the Protocol are three-fold: 1. Establish a legal framework for the adoption of the Guiding Principles on Internal Displacement and a legal basis for their implementation in national law ; 2. Ensure legal protection of the physical and material needs of IDPs ; and 3. Reinforce member states’ commitment to prevent and eliminate the root causes of displacement.¹²⁹The Guiding Principles are central to the IDP Protocol and these are also annexed to the text. The Protocol requires member states to “adhere to the principles of international humanitarian law and human rights applicable to the protection of internally displaced persons in general, and as reflected in the Guiding Principles, in particular.” It also obliges states to create national instruments for the furtherance of the standards set out in the Guiding Principles and to create a framework for implementation. The signatory states must “specify the organs of government responsible for providing protection and assistance to internally displaced persons, disaster preparedness and the implementation of the legislation incorporating the Guiding Principles.” Finally, the Protocol provides that “member states shall ensure the effective participation of internally displaced persons in the preparation and design” of legislation for the IDPs”.¹³⁰

¹²⁸ Ibid. p. 192

¹²⁹The Great Lakes Pact and the Rights of Displaced People: A Guide for Civil Society, IDMC, NRC, International Refugee Rights Initiative, IDMC, 2008.

¹³⁰For full text of the Pact and all the Protocols
www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm or

The Protocol maintains that national authorities have the primary responsibility for their displaced population but in case of inability or difficulty, “where Governments of member states lack the capacity to protect and assist” IDPs, governments “shall accept and respect the obligation of the organs of the international community to provide protection and assistance to IDPs”. The Protocol also calls on the member states to “provide for the channels of engagement and cooperation between the organs of Government, organs of the United Nations, the African Union, and civil society.” On their part, humanitarian organizations are also obliged to observe and respect the laws of the country where they would operate.¹³¹

A major concern in most of the displacement situations and the setting for the IDPs has been the presence of armed groups and violent criminal gang. The Protocol recognizes that states have an obligation to safeguard and maintain the civilian and humanitarian character of protection and location of internally displaced persons in accordance with international guidelines on the separation of armed elements. States undertake to guarantee the “safe location of IDPs” in conditions of dignity and “away from areas of armed conflict and danger”. It may be noted however that the Protocol is silent on how the IDP population could be separated from the “armed militants”.¹³²

The Great Lakes Pact also contains The Protocol on the Property Rights of Returning Persons. A report on the subject notes: “The Property Protocol represents a commendable effort to assert the property rights of displaced people. It recalls the legal instruments already in force at the international level and emphasizes the need to take into account the needs of vulnerable categories such as women, children and communities with special attachment to their land”.¹³³Four objectives in this regard are: Establishment of the legal principles which govern the recovery of property by displaced people; Creation of a legal basis for resolving disputes relating to property including

¹³¹ Ibid.

¹³²n.109.

¹³³ Ibid.

the identification of both judicial and local traditional mechanisms; Guaranteeing special protection for returning women, children and “communities with special attachment to land”; and Assuring legal remedies for loss or destruction of property of the forcibly displaced” (Article 2). While the objective of the Protocol is to address obstacles to return posed by impediments to the recovery of returnees’ property, question arises as to the settlement of property claims of those who get locally integrated or resettle. According to the report cited above “Limiting the property rights of displaced people to those who return to their places of origin would be in conflict with the Guiding Principles, which provide for the protection of property rights for “returned and/or resettled internally displaced people”⁶⁵ and could put undue pressure on displaced people to return”.¹³⁴

Jacqueline Clopp and Prisca Kamungi have examined ICGLR as a political and diplomatic process and think that main challenge is “how this impacts the potential for the internalization and implementation of the Protocols”. They ask if the Protocol would make any “real difference in people's lives”.¹³⁵ They concede that the member states may have the freedom to decide the appropriate course of what best to do in a specific context but this “also creates a potential loophole for the states to deny rights and obligations to citizens”. They point out how Kenya, which had about 400,000 IDPs when the Protocol was being signed, consistently denied the existence of an IDP problem.¹³⁶ Sudan, which has one of the highest number of IDPs, maintained that it would not recognize or be guided by the “Guiding Principles on Internal Displacement” which were “drafted by lawyers and ‘non-entities’ outside the traditional practice of international law making by the states”.¹³⁷ They further point out: “stemming from such positioning, negotiation and bargaining, the wording of the Pact and the projects were diluted so that many of the contentious elements were dropped from the signed documents or hidden in obscure, imprecise wordings”.¹³⁸

¹³⁴ Ibid.

¹³⁵ Jacqueline Clopp and Prisca Kamungi, “The Challenge of Protecting the Internally Displaced Through ICGLR, Peace and Conflict Management Review, Vol. 1, No. , November 2012.

¹³⁶ See the Section on Kenya in Chapter V

¹³⁷ Clopp and Kamungi, p.5.

¹³⁸ Ibid.

Finally, we may briefly discuss the views of some scholars who think that signing protocols would not improve the conditions of the IDPs. What is required is building of national capacity and political will. Zachary Lomo maintains that the key problem facing the IDPs in Great Lakes “is the absence of strong national systems and local and international commitment to enforcing existing international standards”. He argues that regional mechanisms can be “counter-productive and diversionary and risks allowing external interests to override the real issues”.¹³⁹

Irrespective of the challenges and limitations, there is no denying that the Protocol on the IDPs emerging out of the Great Lakes Pact is a milestone development, being the first binding obligation for the protection of the IDPs. It paved the way for the Kampala Convention.

5.3 The Kampala Convention

Few general observations on the initiatives by the African countries to empower the IDPs through protection of legally binding instruments are in order. The IDPs are vulnerable to be recruited and manipulated by non-state armed groups. They are also easy prey for the criminal gangs and therefore it is in the interest of the states of origin to regulate them. Secondly, the refugee hosting countries are wary of the displaced people crossing over into their borders and exacerbating the pressure on the host state. It would suit them if the internal displacement problem of their neighboring countries does not spill over. It is also possible that repatriation of refugees would get a fillip if the refugee generating country is perceived to be caring and protecting of its internally displaced.

In July 2004, the Executive Council of the AU requested the Commission of the African Union “to collaborate with relevant cooperating partners and other stakeholders to ensure that Internally Displaced Persons are provided with an appropriate legal framework to ensure their adequate protection and

¹³⁹ Z. Lomo, “Regional or National Protection for Great Lakes IDPs?”, Forced Migration Review, Brookings-Bern Special issue, Vol. 14, 2006, pp. 23-25.

assistance”. A draft outline for an IDP convention was finalized by 2006 which was endorsed at a ministerial conference in Ouagadougou. A series of meetings at the government level and consultations with civil society groups of Africa as well as international partners followed. Finally, the draft was adopted at a ministerial meeting in November 2008. The final text of the Convention was adopted at a special summit of the member states of AU in October 2009.¹⁴⁰The Convention takes note of the national legislations as well as the Protocols of the Great Lakes Pact and further builds on these mechanisms. A summary of the significance of the Convention is provided in this report drafted by a host of organizations:

The Kampala Convention is the first regional convention comprehensively to address internal displacement, including prevention, response and durable solutions. It explicitly protects the rights of people displaced by natural disasters, armed conflict, generalized violence, human rights violations and development projects. It reiterates existing international and AU law standards. By reinforcing these norms and bringing them together into one instrument, it offers a unique legal framework to address the specificities of internal displacement on the African continent, and provides a clearer and stronger legal basis for IDP’s protection.¹⁴¹

The AU Convention has been able to transform the “soft law” in existence for more than a decade into “hard law”. It treats “IDPs as subjects of rights instead of victims of circumstances” and as corollary of the rights of the internally displaced, it places specific obligations on the states as well as the non-state actors.¹⁴²

Under the various provisions of the Convention, states undertake to prevent arbitrary displacement, to protect IDPs’ fundamental human rights during displacement and to find durable solutions. States also commit to identify a

¹⁴⁰AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted by the Special Summit of the Union held in Kampala, Uganda, 23 October 2009.

¹⁴¹ECOSOCC, IDMC, NRC, Making the Kampala Convention Work for the IDPs, Guide for Civil Society, July 210, p. 13.

¹⁴² Won Kidane, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, Vanderbilt Journal of Transnational Law, Vol. 44, No. 1, January 2011, p. 53.

national authority or body responsible for responding to internal displacement. Article 3 (d) provides: “State Parties shall [...] respect and ensure respect and protection of the human rights of internally displaced person, including human treatment, non-discrimination, equality and equal protection of law”. Obligations have also been imposed on the non-state armed groups. They are prohibited from carrying out arbitrary displacement, separating family members, restricting the free movement of the displaced, recruiting children or permitting them to take part in hostilities. They are also prohibited from impeding humanitarian assistance and passage of relief aid. The states should enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other actors in providing protection and assistance to IDPs. The Convention provides for measures that states should adopt with regard to registration and personal documentation. States are also enjoined to protect individual, collective and cultural property belonging to the displaced people, whether it was left behind or is in their possession.¹⁴³ One of the highlights of the Convention is the provision in Article 9 (2) (k) “State parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance”. The Convention recognizes the right of the IDPs to voluntarily choose to return home, integrate locally in the area of displacement or to relocate to another part of their country.

The AU Convention does not define rights of the IDPs (as does the Guiding Principles) but it focuses on the obligations of the states and non-state actors not to violate the rights of the people. As we have analyzed before, in Chapter II, the Guiding Principles do not confer a “legal” status on the IDPs. The term is merely a description. However, under the AU Convention, a definition of IDPs is provided which has a legal status. According to Won Kidane, in contrast to the Guiding Principles, the “AU Convention approaches the problem from the perspective of states and non-state actors. But it also provides a legal definition of beneficiaries”.¹⁴⁴ There are other differences between the Guiding Principles and the provisions of the AU Convention. What is important for our purposes is to note the approach of the two documents on international organizations and humanitarian agencies. The

¹⁴³See ECOSOCC et al. n. 140, pp. 14-16.

¹⁴⁴Kidane, p. 58.

Guiding Principles emphasize the rights of the international humanitarian organizations to have access to IDPs. Significantly, the Convention couches the issue from the standpoint of obligations of these organizations and provides: “International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate” (Article 6 (1)). This is an assertion of rights of the states. Though they are under an obligation to provide a “rapid and unimpeded passage of all relief consignments, equipment and personnel”, this is subject to “technical arrangements”. Kidane points out: “The permissible scope of these “technical arrangements” is unclear, especially because of the lack of a provision that directly recognizes the rights of the organizations to have unimpeded access, which the UN Guiding Principles clearly recognizes”.¹⁴⁵

Implementation of the Convention faces some challenges which were identified by a group of international organizations and agencies in 2015, three years after the Convention entered into force. These challenges are:

- The low level of ratification
- The absence or inadequacy of national normative instruments for IDP’s
- A lack of national and sub-national capacity and resources
- Insufficient regional, national and sub-regional coordination
- Limited role for IDPs, affected communities and civil society organization
- Limited capacity for the systematic collection of disaggregated data¹⁴⁶

Policies of the African Union and its landmark Convention is a proof of the significance of forced displacement issues in Africa. According to a scholar, ‘Convention can well be considered as another important transformation of

¹⁴⁵Ibid. p. 70.

¹⁴⁶NRC, IDMC, AU, UNHCR, Global Protection Cluster, Humanitarian Aid and Civil Protection, “Kampala Convention: From Ratification to Domestication and Operationalization”, Workshop Report, 30 November- 2 December 2015, Addis Ababa, p. 10.

thee [Guiding principles] into hard law.¹⁴⁷ He thinks that the “Convention attempted to maintain a delicate balance between the sovereignty of States and their responsibility. It avoided making explicit references to concepts such as ‘humanitarian intervention’, ‘responsibility to protect’, and others mainly out of fear that these references will ‘radicalize’ the text making any future adoption of the Convention extremely difficult”.¹⁴⁸ The continent has developed several “pioneering legislative frameworks and institutional mechanisms related to displacement” but the constraint in the AU system is “the gap between the norms contained in treaties and policies on the one hand, and their effective implementation on the other”.¹⁴⁹

Concluding Observations on International Protection of IDPs

We have undertaken a review of the entire system of international protection and assistance that has developed in the course of last two decades. Never was the severity of armed conflict in the world and its attendant feature displacement so pervasive and complex and it was never before that such a wide and varied system to protect the displaced population put into operation. These developments have given rise to a new discourse of protection and assistance for the civilian population overwhelming numbers of which are desperate victims of displacement. The system of protection is being regularly “upgraded” even while the international capacities to respond to multiple crises are under tremendous strain. The United Nations is playing a very encouraging role, with its norm-setting resolutions, exhortations for cooperation and standardization of responses. The UN agencies have undertaken specific role and responsibilities to mitigate the sufferings of people and reach a measure of support and protection for people trapped within their borders. Non-UN international organizations like the ICRC as well as the MSF, together with multitude of relief, cooperation and solidarity

¹⁴⁷Allehone Mulugeta Abebe, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope and Enforcement Challenges”, Refugee Survey Quarterly, Vol. 29, No. 3, 2010, p. 57.

¹⁴⁸ Ibid.

¹⁴⁹MehariTaddele Maru, The Kampala Convention and its Contributions to International Law, Eleven International Publishing, 2014, p.333 cited in Funn Bruey, Book Review, Journal of Internal Displacement, Vol. 6, No. 1, January 2016, pp. 2-4.

organizations at the international level joined by civil society and non-government organizations at the national level, are all contributing to protection and assistance needs of the displaced people. However, there are significant gaps as evidenced by numerous reports. Aid and support cannot reach a large number of people due to the hostile or indifferent approach of the national authorities. Armed non-state actors are mostly unwilling to respect their obligation. Even while norm-setting is evident and legal instrumentalities are being developed, there is no respite from the violent conflict raging in many parts of the world. In the ultimate analysis, the responsibilities of national authorities are vital and it is imperative that attention to strengthening of national capabilities is stressed. The next two chapters analyze the state practices in situations of internal displacement.

Chapter V

State Practices 1: Colombia, Kenya and Georgia

Section 1: Colombia

Introduction

The political crises and armed conflict in Syria over the last 6 years has displaced Colombia from the position of country having the largest number of IDPs in the world. Colombia had this unfortunate distinction and it is only the sudden massive displacement in Darfur in Sudan in 2009 and in Syria in 2017 that this “record” is beaten. Still, Colombia has massive numbers of IDPs and as percentage of population of a country; the IDP numbers in Colombia is one of the highest in the world. Displacement in Colombia has certain features which are not only unique to the country but have virtually no parallel. Secondly, the system of assistance and protection the country has developed over the past two decades for the country’s millions of IDPs is also not available anywhere in the world. Yet, Colombia struggles with the massive burden of the incessant conflict that has ravaged its countryside and the urban centres for many decades. Even while the Colombians struggle to put the past behind, working relentlessly alongside the government to overcome decades of hatred, political divide, insurgency and guerrilla war, there is no letup in the situations that generate fresh displacement.

Internal displacement in Colombia has been a continuous and steady phenomenon. While there are significant disagreements over historical evolution of internal displacement and there are contested versions of the nature and pattern of displacement, most commentators agree that counting of IDP numbers in the country must begin with 1980s as the base period. One reason why there are wide variations in the IDP numbers accepted by the government and those put forward by the NGOs is the determination of a cut off year for the purpose of counting the numbers. Few more special characteristics of the Colombian displacement are worth noting before we embark on a comprehensive account. One significant aspect is the extremely positive, rather a stellar role played by the legal-judicial system of the country

especially the country's Constitutional Court to initiate, direct and also monitor the system for assistance and protection needs of the IDPs. The weight of positive jurisprudence brought to bear upon the rights of the internally displaced people of the country, its recognition and guarantees provided to the displaced has been able to generate a lot of confidence and hope and also a modest system of assistance and protection. The government is also playing a positive role, attempting to translate the directives of the judiciary and also enacting legislations that have supported the rights of the internally displaced. Mention should also be made of the wider category of "victim" that has been developed by the country within which the IDPs are also provided for their assistance, welfare and protection. Also, Columbia has institutionalized a support system for the IDPs where international organizations and agencies work in tandem and through the government. This feature provides a unique aspect not seen in most of the displacement situations around the world. Predominant model has been organizations and agencies supplementing or even substituting for the role of the government. Despite an overall positive frame for IDPs in Colombia, unfortunate continuation of vestiges of past discord and the new challenges in the form of drug cartels, extraction industry and non-state armed groups of various description and ferocity, internal displacement continues to destabilize and cause human misery. We propose to analyze the crisis of internal displacement, causative factors, conditions of the displaced, national and international responses and other related and relevant considerations to arrive at some understanding of the situation in Colombia.

Colombian President Juan Manuel Santos was awarded the Nobel Peace Prize in 2016 in recognition of the consistent efforts of his government to negotiate a peace agreement with Revolutionary Armed Forces of Colombia (known by its Spanish acronym as FARC) to finally end decades of civil war. The provisions of the agreement were passed by the two Houses of Colombian Congress. However, a referendum held earlier in the country was rejected by the Colombians by a narrow margin over fears that the guerrillas have been given a lot of leeway. The agreement would allow the former guerrillas to return as civilians and begin their life with a clean slate but many of them would be tried by a special court, depending on the nature of the crime they committed against civilian population. Government and FARC were

negotiating an agreement for almost 5 years, since 2012 and as a result severity of internal displacement and the number of internally displaced was showing a downward trend. Since the conclusion of the agreement, new complications have arisen causing some uncertainty and generating some new displacement. The new displacements in 2017 are mostly a result of attempts by the non-FARC guerrillas, former paramilitaries, dissident FARC and criminal gangs to seize the territory left vacant by the FARC and fill in the “vacuum”.¹

1.1:Internal Displacement in Colombia

At the end of 2016, the number of internally displaced due to conflict and violence in Colombia was 7246,000 as per Columbia’s national registry maintained by the government which records the number of IDP victims of conflict. The 2016 peace agreement was a significant achievement but there are major obstacles to return. Most of the IDPs do not prefer return as there are number of years that have elapsed and in many cases land is not available. Character of the land has changed, with large-sized commercial cultivation and other uses of the land being the reality. Some of the armed groups continue to be active both in the countryside and in the urban centres. They are attempting to hold onto their stranglehold and routinely violate human rights. Moreover, issues related to victim’s compensation and restitution of land remains unresolved.

Internal Displacement Monitoring Centre (IDMC) in its annual report for Colombia in 2016 has summarized the reasons for displacement in the country:

People have fled their homes for numerous reasons, including extortion, anti-personnel mines, threats and pressure to collaborate with armed groups, forced recruitment of children by armed groups, and sexual and gender-based violence. The conflict has been marked by gross violations of human rights and international humanitarian law, including extrajudicial executions, forced disappearances, arbitrary detention and torture. Displacing civilians allows the parties to the conflict to gain territorial control, weaken civilian support for the enemy organizations, seize valuable land and transport illegal drugs.

¹IDMC Colombia, <http://www.internal-displacement.org/countries/colombia>

Displacement is therefore both a result of armed conflict and a strategy of the parties to clear land and extend their control and economic gain.²

Internal displacement in the country is a byproduct of the conflict seeds of which were sown in the power struggle and the phase of ‘violence’ that started in the 1950s. Riano –Alcala points out “The Colombian conflict is one of the three longest-lived conflicts in the world. With its interlinking of guerrilla warfare, dirty war and organized crime, its war on drugs, the prevalence of violence of social/everyday life and its regional impact, the situation defies simple analysis”.³ Referring to the role of violence and the extreme suffering of the people, she further writes: “In Colombia, a country with a long-standing multipolar armed conflict, the performance of violence in the form of massacres, selective assassinations, threats, disappearances, rape and forced displacement has turned fear into a powerful language by which the various armed actors communicate with society, reconfigure the landscape and regulate everyday life.”⁴

The guerrilla groups especially the FARC emerged largely as a result of the “violence” in the 1950s and repression unleashed by the National Front government in the 1960s against the “independent republics” where forcibly displaced had taken refuge. Military crackdown against the ‘independent republics’ and the structural inequalities prevalent in Colombia cemented the opposition of the non-state armed groups to the landlords and the government. The FARC had substantial support amongst the forcibly displaced population and it is on the basis of this strength they could continue their high profile guerrilla activity against government forces. However, since 1980s, coca cultivation and its control by the guerrillas sustained them. An alliance with the drug traffickers in the initial years helped both sides before they fell out as the interests of the drug-traffickers and landowners grew complimentary. This happened chiefly because the drug-traffickers invested their huge earnings in cattle ranches and land and in order to preserve their

² Ibid.

³ Pilar Riano-Alcala, “Journeys and landscapes of forced migration: Memorializing fear among refugees and internally displaced Colombians”, European Association of Social Anthropologists, 2008, p.2.

⁴ Ibid. p.1.

newly acquired wealth and possessions, they formed alliance with the landowning class and government authorities. .

The other guerrilla group, the National Liberation Army [ELN] emerged following the political and economic exclusion of certain vocal sections of the society- students, middle class and trade unionists- by the National Front.⁵

Paramilitary groups emerged in the 1980s largely as a result of the perception that a weak state is not in a position to defend the interests of the landed elites and of the private companies. Many of these companies are multinational with huge investment in the resource rich Colombia. Paramilitaries were engaged to take on the guerrillas but they let loose terror, with extrajudicial executions, forced disappearances and torture of people considered sympathetic to the guerrillas. They also indulged in what came to be referred to as ‘social cleansing’ involving killings and torture of people they disapproved including drug addicts, homosexuals, prostitutes and yet other sections of people on the margin of society.⁶

The state apparatus played a supportive role for the paramilitaries and the government was condemned by international organizations. Human Rights Watch found relationship between state and paramilitaries involving “active coordination during military operations”.⁷

There are certain interpretations of displacement that focus on regional supply and labor for market as a causative factor in forced migration of people. According to Robert Muggah, the rational utility-maximizing model suggests that large-scale population displacements were “actually pre-meditated shifts intended to adjust imbalances between regional supply and demand for labor”. Also, the “purposeful behavior” explanation of

⁵“Resisting Displacement by Combatants and Developers: Humanitarian Zones in North-West Colombia”, Norwegian Refugee Council and IDMC Report, November 2007. p. 10.

⁶“Colombia: government “peace process” cements injustice for IDPs”, IDMC Report, June 2006.n. 6, p.12.

⁷Human Rights Watch, September 2001.

displacement suggests that people move to improve their and their family's situation.⁸

1.2: The Nexus

The IDMC report of 2006 pointed out how the guerrillas as well as the paramilitaries became part of the drug nexus: “While both the FARC-EP and ELN emerged in response to structural inequalities, drug trafficking has now permeated all sides of the conflict, rendering it increasingly hard for outsiders to distinguish means from objectives”.⁹ The excessive demand for land in the resource-rich Colombia also played a role in the armed conflict.

Internally displaced people had established a Humanitarian Zone in north-western department of Chocó, near Colombia's border with Panama. These people became displaced after the government launched a major military offensive against the guerrillas in 1996 and in order to protect their land and livelihood, displaced people organized themselves to establish the Zone. Private companies started cultivating African palm on the land left behind by the displaced. As per a report by the Norwegian Refugee Council and IDMC, “there is growing evidence of a pattern of economic interests fuelling forced displacement and other human rights violations in the region”. The allegation is that companies have “commissioned forced displacement and other human rights violations from paramilitary group”, and that they have “taken advantage of forced displacements”.¹⁰ The report concludes: “In the continuing absence of consistent application of the rule of law and the continuing presence of development projects harmful to the restoration of the victims' rights, there can be no sustainable peace”. In the context of Colombia, the report concludes that “development efforts may perpetuate and even aggravate the injustices forced by the conflict's victims”.¹¹

⁸Robert Muggah, “Through the Developmentalist's Looking Glass: Conflict-induced Displacement and Involuntary Resettlement in Colombia”, Journal of Refugee Studies, Vol. 13, No. 2, 2000.

⁹IDMC Report, June 2006. N.6, p. 11

¹⁰Norwegian Refugee Council and IDMC, November 2007. p.4.

¹¹Ibid. p.5.

In 1999, the Inter- American Commission on Human Rights categorically underlined the connection between the state and the activities of the paramilitaries: “The Commission must conclude that the State has played an important role in the development of the paramilitary groups and has not adequately combated those groups. The State is thus responsible, in a global sense, for the existence of the paramilitaries and therefore faces responsibility for the actions carried out by those groups”.¹²

The extremely negative and in fact dubious role played by the paramilitaries has been brought out by the following account of their activities and their links with multinational companies:

While defending the interests of the state and the companies operating in these districts [of Colombia], the paramilitaries have committed the majority of human rights violations reported in the past few years; they are notorious for extreme brutality, involving massacres, torture, kidnappings, extortion and massive displacements of civilians. These violations have been committed mainly as part of an explicit strategy to separate the guerrillas from their popular support base and gain control over land, natural resources and strategic roads. This largely explains the strong co-relation between internal displacement and the presence of multinational companies in Colombia. The regions richest in natural resources are also the ones most prone to internal displacement.¹³

The Colombian state attempted to demobilize the paramilitaries and even while the process was underway, yet other paramilitaries, mostly those who refused, emerged. As a result, a necessary change in the form of governmental control over the resource-rich areas was only a partial success.

1.3:Pattern of Displacement

IDP numbers for Colombia is usually referenced from the government which maintains a national register. Research arm of the Consultancy for Human Rights and Displacement is considered yet another authentic source. Colombia is the only nation in the Western Hemisphere with such a large number of IDPs. It is estimated that about 1/9th of Colombian population is

¹²Organization of American States, Third Report on the Human Rights Situation in Colombia, 1999.Paragraph 303.

¹³NRC and IDMC report, n. 5, p. 12.

internally displaced. Once displaced, most Colombians are displaced for life as return and repatriations are totally absent due to the complex nature of the displacement and causative factors. Displacement in Colombia is protracted which means that the displaced population is forced to continue their displaced condition for number of years. In fact, most displaced people have been in the same condition for generations. It is important to note that the displacement situation in the country has evolved over the decades and the onset of sudden and massive displacement of the type witnessed in many other situations of displacement in the world is not correct of the Colombian situation. Longevity of displacement in Colombia has been characterized as “long-term reality rather than a breaking news story”.¹⁴

Broadly, the direction of the IDP movement is rural to urban. However in recent years urban to urban displacement is also noticed. The anonymity offered by the urban areas is a big incentive for the displaced in a country where targeted killings have been routine. One reason why Colombia’s IDPs have been referred to as “invisible” is the preponderance of the displaced that prefer the anonymity of the urban areas where they can live a scattered life. Unlike other situations of displacement, Colombia does not have IDP camps. In more recent years, certain other features of the displacement pattern have been noticed. The operation of the criminal gangs in the urban areas has resulted in urban to rural, urban to urban and in some cases movement to areas within a city. Reflecting on the Colombia’s situation, World Food Program [WFP] pointed out the deleterious effects of displacement in the country. The IDP situation “hampers economic growth, threatens vital infrastructure, displaces populations, erodes social and cultural cohesion, and generates enormous fiscal costs.”¹⁵With about a tenth of the country’s population struggling to meet the basic requirement of life, the plight of the internally displaced has already compounded the social, economic, and political challenges facing the country.

¹⁴James M Shultz et.al, “Internal displacement in Colombia: Fifteen distinguishing features”, *Disaster Health* Vol. 2, No. 1, January-March 2014.

¹⁵*World Food Programme*, “Colombia Overview.”

<http://www.wfp.org/countries/colombia/overview>

Unlike the situation in many countries, displaced people in Colombia have not moved in large numbers at any given point of time. Most movements have been at the individual and family level and the displaced have moved to urban areas. As such there are no camp and identified areas for the displaced.

1.4: Condition of IDPs

IDPs are severely handicapped in accessing government services, mostly because of lack of identity papers. Assistance provided by the government departments is only basic and not enough. UNHCR in an earlier report on the conditions of IDPs had noted the psychological stress experienced by a large number of the displaced. Experience of violence and resultant trauma has impacted the life conditions of people in a negative way, telling on their health. Since overwhelming number of IDPs are from rural areas and were part of the farming community, they do not possess the skill set required in the labour market in the urban centres and hence the distress condition of the displaced has less chance of recreating and sustaining livelihood options. The activities of the urban criminal gangs also affect negatively the prospects of employment in the informal sector where competition is tough.

Displacement affects the different sections differently. Overwhelming number of women and children amongst the displaced is a pointer to their vulnerabilities. The numbers of internally displaced in the country has overwhelming sections of people from Afro-American descent and those belonging to indigenous communities. They constitute 10.6 and 3.4 per cent of national population respectively but the displacement figures are much too high for these more vulnerable sections of Colombian society.

Question of land is central to all discussion and prescription for internal displacement in the country. Even when some return has been achieved, it has been difficult to sustain as the IDPs may have returned to areas where security situation may not have improved. People need their land but also expect public services in the form of infrastructure- schools, hospitals and roads. All this is part of a comprehensive development plan and difficult to achieve. Basically it is difficult to incentivize return. Letting IDPs entitlement to land in urban areas where they are living is also complicated as it would

clash with the title of the land. It would amount to legalizing title for people who may have occupied the land illegally.

Overall the situation of IDPs is much better in Colombia than it obtains in various other parts of the world. Here the IDPs enjoy a categorical assurance of continued support of the political and judicial system of the country. Government spending on IDPs has gone up more than ten times in the country and more and more legal and administrative measures have been put in their service. The IDPs are part of and subsumed under the broad umbrella of the category now legally recognized as victims. This is reassuring for the IDPs as their situation is not glossed over but this has also meant that the distinctiveness of the IDP category has been “lost”. Particular needs of the IDPs as displaced people may be overlooked with this approach.

The Guardian highlighted the shortcomings of the authorities in a report in 2013:

“a crisis of protection, where IDPs pushing for rights to land restitution have been attacked, especially by paramilitaries in league with the new landowners; bureaucratic under-capacity worsened by the tangle of the various programmes; and the basic problem of implementing care and support in the middle of a conflict where the government has incomplete control of the country.”¹⁶

1.5: National Response

Colombia has an elaborate and complex system of support for its IDPs. The national system for integrated IDP assistance (SNAPID) is the principal focal point and it is coordinated by Accio’n Social, the chief government agency for social action and international cooperation. Government assistance is limited to those registered as IDPs in the unified IDP register. IDPs not included in the unified IDP register (RUPD), either because their applications were rejected or because they did not make the requisite declaration, are not entitled to assistance. They can however receive assistance from the non-

¹⁶ObinnaAnyadike, “Colombia’s internally displaced people caught in corridor of instability,” *The Guardian*, 12 August 2013. <http://www.theguardian.com/global-development/2013/aug/12/colombia-internally-displaced-people-instability>

governmental organizations.¹⁷ Colombia's national law, policies and government's positive approach at the central level are not matched with the actual situation in the diverse municipalities and yet other areas inhabited by the IDPs. There are visible gaps at the provincial and municipal level with weak resource base, lack of political will and corruption as effective barriers to implement the laws and policies for the IDPs.

International organizations have played their due role in supporting the government to help the IDPs. Both WFP and ICRC have made modest contribution. The constant advocacy role of international agencies and NGOs pressed the government to fulfill its commitments and they kept a constant vigil on the activities of the non-state groups and their violations of human rights as well. International actors have supported the positive changes government has attempted to bring about both to conclude the peace process and to provide an enhanced system of assistance and justice for the IDPs. By offering valuable advices and extending technical support, these actors have contributed their bit in the overall process. The focus has been on "institutional strengthening" instead of direct support to the IDPs.

1.6: National Law and Quest for Justice

In 2011, Colombia passed a historic law that allowed reparations to the victims of the country's longstanding conflict. The measure was hailed as a significant milestone in providing for transnational justice and was compared with the example of South Africa. South Africa had promulgated laws to achieve truth, peace, justice and reconciliation. The timing of such a law in Colombia was extraordinary as the country was still reeling under the effects of conflict and the attendant human rights violations and human displacement.

The 2011 Victims' Law had some antecedents. For years, prior to passing of the Victims' Law, legislation in Colombia "vacillated between acknowledging

¹⁷Angela Consuelo Carrillo, "Internal Displacement in Columbia: Humanitarian, Economic and Social Consequences in Urban Settings and Current Challenges", International Review of the Red Cross, Vol. 91, No. 875, September 2009.

victims' rights and facilitating processes of victimization, at most granting weak protections to the injured". In 1997, Congress passed Law 387 that accepted the responsibility of the state for the displaced population. However, "the law did not establish a principle of victims' rights to be free from displacement, nor did it create a State responsibility to impose protective mechanisms".¹⁸

Even while the Congress was passing progressive legislations, the dubious role of the government apparatus in facilitating the hold of the paramilitaries and support of their notorious ways was documented by the human rights organizations and even the Inter-American Court of Human Rights. However, the Constitutional Court of Colombia started taking a pro-active position. Law of Peace and Justice was passed in 2005 that provided for the demobilization of the paramilitaries and a system of reparation to the victims' of conflict. The process for seeking reparations was complex and certain requirements were hard to meet. For example, victims were expected to have filed complaints with the authorities detailing the circumstances leading to their displacement and the people or group responsible for their distress. Fear of retaliation served to dissuade a large number of the victims from filing effective complaints leading to rejection of their application. The pressure to reform the law mounted by the civil society and NGOs and criticism of the lacunae in the law and difficulties of their implementation were voiced by international agencies and human rights groups. Colombia's Constitutional Court's several ruling reflected these criticism and concerns. The Court has declared the situation of the IDPs as constituting an unconstitutional state of affairs. Government was asked to provide for laws for restitution of land as well as take steps to implement land reforms. This constituted the backdrop of the Victims' Law of 2011 which aimed to facilitate truth and justice. Summers has summarized the salient aspect of the Law:

The Law deals both broadly with the rights of all victims, including those who have been disappeared, murdered, or have suffered other serious violations of human rights, as well as specifically with the rights of those who have been displaced. All victims are granted rights to

¹⁸Nicole Summers, "Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict", *Harvard Human Rights Journal*, Vol. 25, p. 223.

damages, restitution of prior living conditions, a range of social services, and special protections in legal proceedings. Those who have been displaced are entitled to the return of their land or, in certain circumstances, to an equivalent plot of land or monetary compensation. The Law also includes symbolic reparation measures, such as the creation of a national day of memory and the collection of oral testimonies to preserve historical memory.¹⁹

Peace process in Colombia had a tortuous journey. The final settlement in 2016 was the outcome of a process that involved many years. One aspect of the process was the involvement of the victims and their organization in the negotiation. An online platform was created and based on a process of selection at different levels, some of the victims and their organizations found space to directly contribute to the negotiations which were held in Havana, Cuba and the entire process was overseen by UNDP and the University of Colombia.

A Summary

The attainment of peace in Columbia between the government and FARC may pave the way for Colombia moving in the direction of a post-conflict society. Government would like to close the “displacement file” and is committing significant resources for supporting the victims of conflict including the IDPs. The country needs to move away from the negative image it acquired as a land of conflict and cocaine. While assistance to the IDPs in Colombia has been fair, major shortcoming in areas of prevention, protection and solution has not been overcome. Though it would be a long drawn out process but positive attempts by the government to extend their control over the entire territory of the country may herald a new beginning for Colombia. Certain sections of former guerrillas are not happy and neither are a section of paramilitaries and it will be early to say if the unfortunate saga of forced displacement in the country would stop. In the first six months of 2017, about 70,000 people have been newly displaced. This is not a good sign but hopefully this is part of the transitional process the country is going through.

¹⁹Summers, *Ibid.* pp. 225-226.

Section 2: Kenya

Introduction

Kenya was possibly not ready to embrace multiparty democracy when it was introduced in the 1990s. The then President Daniel Arap Moi had predicted that the exercise would become a casualty of ethnic violence. He himself proceeded to script the contours of such a conflict between his ethnic group Kalenjin against the Kikuyus who had rallied against his rule and were seen siding with the opposition. Violence has visited Kenya at every five years of interval, on the eve of elections or in its aftermath centring on allegations of manipulation of electoral result. The latest crisis has emerged after a stay on the election results, prompted by allegations of manipulation by the ruling party, by the Supreme Court of the country. A fresh election for the office of the President is scheduled in October 2017. Back in 2007 too, the background of the extensive ethnic-political clashes that left several hundred people dead and more than 600, 000 internally displaced, was the opposition's charge that vote tabulation was manipulated. The same allegations this time has been upheld by the Supreme Court which has ordered a fresh election.

Kenya is considered one of the stable countries in the war-torn Great Lakes region and Horn of Africa. Its international standing and the reach of its diplomatic efforts to bring peace to many African countries has often been praised. It has also been able to develop relatively better governance institutions and has a vibrant civil society and many active non-government organizations. Kenya has taken a number of steps to institutionalize the responsibility of the government and endow the internally displaced people with certain rights. A national Policy on IDP was drafted and finally adopted. The country has signed the Great Lakes Pact which has specific provisions for IDPs. Kenya is also a signatory to the Kampala Convention which in fact is the first international Convention protective of the rights of the displaced. All these positive attributes notwithstanding, the country has been a hotbed of forced displacements which are orchestrated by defined and identified persons and groups who have long enjoyed immunity from prosecution.

Accountability for forced displacement of people has been a consistent demand but never ensured.

2.1: Elections, Violence and Displacement

The principal reason for violence and consequent displacement is the extremely contested multiparty system reluctantly introduced by politicians who perfected displacement and disenfranchisement of targeted ethnic groups as their key strategy to deny their opposition prospects in the elections. The link between elections and violence and displacement in Kenya is well documented. However this link is triggered in relation to ethnic communities' support for particular parties and coalition at the time of election. There is no consistency in the support for a party by a specific ethnic group. Rather, it keeps on changing and negotiations and bargains have often succeeded in ensuring changed political loyalty at the time of election. Pre-election violence in 1991 and 1997 and then the post-election violence in 2007- 2008, displaced sizeable numbers. Generally the Kenyans assert their political preferences along ethnic lines and the Constitutional requirement that the President-elect must secure at least 25 per cent votes in at least 5 out of the 8 provinces has meant that violence (and consequent displacement) is directed along ethnic lines to depopulate regions of supporters of rival political parties in order to exclude people from voting. Displacement would release land which could be distributed as a price for loyalty.

However, the ethnic rivalry and violence in the context of elections is usually played out on the emotive and life-sustaining issue of land. With only 24 per cent of arable land, the intense competition over ownership has been a crucial determinant of politics and political control in the Kenyan society. Given its standing in Africa, and comparatively better developed legal instruments and institutions, government has been shy of admitting large-scale displacement and usually tries to accept only minimum of numbers.

Prisca Kamungi has provided a view on the co-relationship between elections and violence and internal displacement: Election in 1992- IDPs 300,000. 1997 election, 150,000 IDPs, 2002 election, 20,000 IDPs and 2007 election, a total

of 663,921 IDPs.²⁰It should be noted however that elections in 2012 and 2017 were mired in some controversy and 2017 election result has already been stayed by Kenya's Supreme Court but no significant internal displacement has occurred.

Most analysts consider ethnic divisions as the principal reason for the periodic unrest in the country and link it with electoral politics. There are 41 ethnic groups in Kenya with the Kikuyu tribe constituting about 22 per cent of population. They are more educated and relatively prosperous and a source of much resentment amongst the other ethnic groups. It is said that politics of adjustment and alliances between the different groups sets the backdrop of any electoral contest. This would be clear if we take a look at the detailed vote share of the main candidates in the Presidential elections in August 2007. There are counties where both the candidates have polled almost equal percentage of votes. Obviously these counties have mixed population but in overwhelming number of counties one candidate or the other has polled more than 90 per cent of votes, suggesting that people have voted along ethnic lines.

However, few would argue that it is not tribalism and ethnic division but rather weak government institutions that are responsible for the unrest.²¹

It has been shown that regional disparity, weak resource distribution mechanism, a growing inequality and corruption are sapping the efforts to strengthen democracy and foster economic development. The political system concentrates almost all the powers in the office of the President and "winner takes all" arrangement leaves no role for the opposition. Despite a vibrant civil society, active media, moderate economic progress and overall positive standing of Kenya amongst countries of East Africa, the power transition has always accompanied violence and division.

²⁰Prisca Kamungi, "Municipalities and IDPS Outside of Camps: The Case of Kenya's 'Integrated' Displaced Persons", The Brookings Institution – London School For Economics Project on Internal Displacement, May 2013

²¹Stephanie Hanson "Understanding Kenya's Politics", Backgrounder, Council on Foreign Relations, <https://www.cfr.org/backgrounder/understanding-kenyas-politics>

2.2: Displacement in the 1990s and the UNDP's DPP

UNDP had undertaken a Displaced Persons program (DPP) in Kenya in 1991. This aspect has also been touched briefly in Chapter II. Below we examine the review of the program by Human Rights Watch. The program was undertaken after the Kenyan government led by President Daniel Arap Moi who was forced to accept a multiparty system. The government and the ruling party adopted a calculated policy against ethnic groups who were seen associated with the Opposition. Members of Kikuyu, Luhya and Luo ethnic groups were targeted for systematic attacks and expulsion from their houses and communities in the provinces of Nyanza, Western and Rift Valley. More than 1500 Kenyans died in the clashes and about 30,000 people were displaced.²² President Moi's Kalenjais group and the Massai were given support and protection in the ethnic clashes. In 1993, UNDP took the initiative to create a \$ 20 million reconciliation and reintegration program for the internally displaced. The program was to be jointly administered with the Kenyan government and its aim was "the reintegration of displaced population into local communities, prevention of renewed tensions and promotion of the process of reconciliation". Material assistance was extended and some progress in reintegration efforts was achieved but the government continued to intimidate the displaced and "took no action to work with the UNDP to seek long-term solution for redress and prevention, particularly in regard to the issue of land registration and tenure".²³

The DPP had not been structured to include safeguards against government control and manipulation. UNDP had not secured any initial written commitment from the government regarding free access to the displaced people, safeguards for their physical safety and basic human rights and free passage of humanitarian assistance for them. This greatly circumscribed UNDP's operation which had "ignored the political, human rights, and development dimensions of displacement", proceeding on the assumption that all that was necessary was to provide relief supplies to enable people to return

²²Human Rights Watch, Africa, Failing the Internally Displaced: The UNDP Displaced Persons Programme in Kenya, 1997, p.5.

²³Binaifer Nowrojee, "Human Rights and UN Programmes for Internally Displaced People: A Kenya Case Study", in Rights Have No Borders: Worldwide Internal Displacement, Norwegian Refugee Council- Global IDP Survey, 1998, p.107.

while doing nothing about the “ political causes of displacement and the attendant human rights violations that needed to be addressed”.²⁴

The government attempted to sabotage the entire program. It took measures to disperse the identifiable groups of displaced. UNDP did not raise objections as it did not want to jeopardize its program. It did not address the issue of government accountability for its wrong policies and abuse of authority. Fraudulent land transfers and land sale under duress continued but the agency did not push the government towards land reform legislation. This further disempowered the IDPs and contributed to the removal of certain groups from the Rift Valley province.²⁵

About 2000 Kikuyu were forcibly expelled from the Maela camp in the middle of the night on 24 December 1994 after a police raid. This was done without any intimation to the UNDP. The expelled people were dumped at different and scattered location.²⁶UNDP could not secure the return of the people to the Maela camp and could not pressurize the government in punishing the officials responsible. UNDP lost its credibility. Its role and performance was criticized by the local NGOs and the DPP formally ended in November 1995.

There are important lessons here. Providing relief is not sufficient. Securing and upholding the human rights of the affected population is no less important. The DPP had placed the greatest emphasis on relief. This was the easiest and the least controversial part of the program. But UNDP neglected “protection, human rights and long-term needs, which would have required (UNDP) to adopt a more critical advocacy role in relation to the Kenyan government”.²⁷

2.3: 2007-2008 Displacement

In the post-election violence in 2007- 2008, a total of 663,921 people were displaced in the count the government and UNHCR jointly took. Earlier, the

²⁴Ibid. p. 108.

²⁵See World Refugee Survey, US Committee for Refugees, 1996, p. 53.

²⁶Ibid.

²⁷Failing the Internally Displaced, n. 22, p. 10-11.

government estimates had only about half of this figure. Many camps were set up for the displaced but this accommodated just about the majority of the IDPs. A large numbers could not even get into the camps in the absence of proper documents evidencing their ownership of land. It was not possible for the all victims of violence and displaced to “prove” their credentials and in any case, a big section of the displaced had no land and no paper to show for it. Consequently they were excluded both from the assistance made available by the government and international agencies as well as not even counted as IDPs. A large number of arrangements without government support had come up and many people lived a life on the margins of society.

During 2007-2008, people were displaced as they “belonged to ethnic community that was persecuted in rival party’s political stronghold”.²⁸A graphic account of the cycle of violence along ethnic lines in Nairobi municipality area is provided by Kamungi:“ [M]embers of the Kikuyu community that was associated with the Party of National Unity were forced to flee from Mathare and Kibera informal settlements by Luo supporters of the Orange Democratic Movement. In Dandora and Kariobangi, members of the Luo and Kikuyu communities displaced each other, creating largely ethnically-homogenous urban slums”.²⁹The co-relation is brought up succinctly:

Since the transition to multipartyism in the 1990s, internal displacement in Kenya has been part of political strategies to retain or win political power. Cycles of aggression and antagonist articulation of ethnic identity of perceived hostile voters have enmeshed grievances over unequal land distribution into political discourses of exclusion. Increased use of hate speech, intimidation and inability to recover from the effects of cyclic violence has encouraged ethnic Balkanisation in some areas and institutions. ...pervasive impunity for all perpetrators and lack of political will to address perceived marginalization and landlessness has made durable solutions impractical for the majority of internally displaced persons.³⁰

²⁸Kamungi, n.20, p. 6.

²⁹ Ibid.

³⁰Prisca Mbura Kamungi, “The Politics of Displacement in Multiparty Kenya”, Journal of Contemporary African Studies, Vol. 27, No. 3, pp. 345-364.

Government launched a resettlement program for the IDPs in May 2008 called Operation Rudi Nyumbani (Operation Return Home) and also started a program to cash incentivize return. Thousands of people returned voluntarily but those who demanded confidence building measures as a pre-condition of return were nonetheless pushed out. Government applied a lot of pressure including scaling down the rations and cutting off the water supply and so on. Many IDPs did not receive the promised financial support as the distribution process was vitiated by corrupt practices and embezzlement of funds. The resettlement program did not turn out to be a success given the hostility of local communities. Peacebuilding efforts and confidence-building measures were not undertaken before the resettlement and even neighbors were not welcoming of IDPs in some cases. No less serious has been the situation of IDPs who continued to live in camps which were officially closed. Many different categories of people – landless, dispossessed, abandoned spouses, orphan continue to live in closed camps as well as set for slums in urban areas.

International agencies have not been sufficiently vocal against the arbitrary manner of closing the camps by the government. It seemed that they would rather not offend the authorities and as such government version, though publicly disputed by civil society organizations was not challenged in any effective way. Government does not recognize the existence of IDPs and “national and international NGOs, donors and the UN maintained a disciplined silence on this “sensitive issue”.³¹

2.4: The “Integrated” IDPs

A major differentiation in the treatment of IDPs in Kenya is those displaced who were put in camps and those who are “integrated” IDPs. The latter category included almost 50 per cent of the displaced but the provision for assistance for them was not extended to begin with and took years to implement. So even while the government claimed in 2010 that the IDPs have all been resettled, the fact remained that government came under intense pressure to ensure a system of assistance for the “integrated” IDPs. The use of

³¹Kamungi, n. 29, p. 358, p.1.

the word “integrated IDPs” is widespread in Kenya and refers to “those who are living dispersed among communities – whether with relatives and friends or in rented accommodation usually in urban and peri-urban areas”.³² This basically means all the IDPs who are living outside the camps. It is incorrect that “integrated” IDPs do not have needs related to their displacement. Because they are largely invisible, it is difficult to get a clear picture of these needs. Approximately 127,000 IDPs were in Nyanza province and this group was most vocal in demanding assistance and compensation. Davis Malombe, Deputy executive Director of the Kenya Human Rights Commission said: “within the IDPs (from 2007-08), we have such forgotten categories as the urban IDPs, integrated IDPs and IDPs who moved to other places other than the main camps in rift valley and other unofficially recognised places”.³³

These issues have been a major stumbling block in counting the numbers of internally displaced. Kamungi writes: “Kenya’s IDPs may well be over a million given the government’s tendency to minimize the numbers of IDPs and the fact that estimates focused on the 2007 encamped IDPs, excluding the 1991-1997 caseload, thousands who scattered into urban areas or social support networks.”³⁴

Government functionaries like Andrew Mondoh, Kenya’s permanent secretary for special programs said that the government intended to settle all the IDPs categorized as “integrated” and that they would also be paid the assistance.³⁵ An IDMC report of 2010 points out that “in countries where IDPs were living in both gathered and dispersed settings, national authorities and humanitarian actors were twice as likely to provide assistance and protection to IDPs in gathered settings than to those in dispersed settings.”³⁶

³²Prisca Kamungi, “Municipalities and IDPS Outside of Camps: The Case of Kenya’s ‘Integrated’ Displaced Persons”, The Brookings Institution – London School For Economics Project on Internal Displacement, May 2013.

³³Lilian Ochieng, Kenya’s Forgotten IDPs,

<https://iwpr.net/global-voices/kenyas-forgotten-idps>

³⁴N.29.

³⁵Ochieng, n.32.

³⁶ See Internal Displacement Monitoring Centre (IDMC), Internal Displacement: Global Overview of Trends and Developments in 2010, March 2011, p. 13.

Responses to the needs of the non-camp IDPs are generally ad hoc but Kenya is not the only country where non-camp IDPs are in great numbers. In fact, it is the same situation in many countries. This makes it all the more necessary to focus on this category of internally displaced.³⁷

An aspect of ‘integrated’ IDPs could be seen in the reluctance of many people to identify themselves as IDP. Interviews conducted with people in Nairobi found that “IDPs who were relatively better off and who has managed to insert themselves into society were averse to identifying themselves as IDPs. Many people including IDPs, hosts and observers said it was “an insult’ to be called IDP and that living in a camp meant one owned nothing or had no one: “it means you have nothing and are of no value to anybody, that you are to be taken care of by an impersonal ‘government’.”³⁸ Another pertinent aspect related to ‘integrated’ IDPs is the issue of family separation. While it is common in situations of displacement for families to get separated, in some cases it is a deliberate strategy, a form of coping mechanism that IDPs adopt. A poignant example was provided by a lady interviewed by Kamungi is worth quoting: “My two oldest sons have gone back to the farm in the Rift valley, where they produce and send food to me to feed these three children and pay my rent. My three sisters have taken my other children, one each, to help them to school”.³⁹

The volatile nature of displacement carried out on ethnic-political line has meant that divisions persist even after displacement:

[D]isplaced Kalenjin did not move into IDP camps, which were dominated by PNU supporters who were predominantly Kikuyu. Due to the ethnic voting pattern, all Kalenjin were seen as ODM supporters and Kikuyu as aligned to PNU. IDP camps were therefore dominated by Kikuyu and characterized as out of bounds for ethnic groups associated with ODM. Due to social censure, Kalenjin were unwilling to associate

³⁷Inter-Agency Standing Committee (IASC), 7th Working Group Meeting, “Internally displaced persons outside camps: achieving a more equitable humanitarian response”, WO/1006/3492/7, IASC, WO/1006/3492/7,

www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-54_en.pdf

³⁸n.20.

³⁹Ibid. p.11.

themselves with PNU and by extension, IDP camps. The possibility of mixing victims from all ethnic groups in the same camp was remote; therefore Kalenjin IDPs remained outside of camps. Secondly, due to the pattern of displacement, there was wide public perception that the Kalenjin were, collectively and individually, the main perpetrators of violence in Eldoret and the wider Rift Valley province. Perceived perpetrators were seen as undeserving of assistance. ‘Victims from other tribes said that assisting perceived perpetrators was equivalent to rewarding impunity.’⁴⁰

One important reason why IDPs tend to prefer living in urban areas is the sense of security. Rural areas are more prone to outburst of violence. Urban areas provide for some anonymity and also “safety in numbers”. Control of the government authorities is considered better and it is preferable to “get mixed” and avoid identification. The condition in urban areas however is fraught with difficulties and uncertainties with regard to access to government services as well as in finding job. Besides, the organized and violent gangs are a constant source of insecurity in the municipalities. The role of municipalities in affording services however needs to be strengthened. The government has not given any role to local bodies in managing internal displacement but it is the municipalities that bear the brunt of IDP influx. As such, this neglected area of IDP care and assistance needs to be underlined.⁴¹

2.5: A Normative Framework

Kenya did not have a coherent and comprehensive legal and policy framework for the assistance and protection of the IDPs. However, that lacuna has now been bridged and the country has adopted quite a progressive legal framework in more recent years. The advocacy role of the civil society and human rights groups was instrumental in achieving the consensus required. The fact that Kenya had signed the Great Lakes Pact and Kampala Convention helped the journey of the legislation. Lucy Kiama and Frederik Koome who themselves were much involved in the entire process have detailed the process concluding in the legal instrument.⁴² A Protection Working Group was set up in 2009 as a follow up of the meeting attended by

⁴⁰Ibid. 13.

⁴¹Ibid. p.27.

⁴²Lucy Kiama and Frederik Koome, “Internal Displacement in Kenya: The Quest for Durable Solutions”, Forced Migration Review, No. 45, pp. 92-94.

INGOs, CSOs, relevant government ministries, UN agencies, Kenya National Commission on Human Rights and IDP community representatives to establish a policy framework for IDPs. The work involved “capacity building for government actors on the UN Guiding Principles, lobbying, and developing an IDP legal and policy framework”.⁴³ After a national stakeholders’ review forum, such a policy was finalized in partnership with the Ministry of State for Special Programs. This initiative was running in parallel with the work of a Parliamentary Select Committee on resettlement of IDPs. Refugee Consortium of Kenya convened a meeting where the members of the Standing Committee and representatives of the Protection Working Group exchanged their respective work. The Minister of Special Programs also attended the meeting and this greatly facilitated subsequent adoption of an agreed framework. The Bill was passed in the National Assembly and received the assent of the Kenyan President on 31st December 2012.

Kenya’s IDP Act, Prevention, Protection and Assistance to Internally Displaced Persons Act is a result of painstaking efforts of many stakeholders and it could see the light of the day due to concerted action. The government also played a positive role. The Act can be seen in the context of Kenya’s international commitment for the IDPs as per the Great Lakes Pact and flow from its signing of the Kampala Convention. The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons commits member states to “prevent and eliminate the root causes of displacement.” It also commits member states to adopt and implement the Guiding Principles on Internal Displacement. However, there is some measure of hesitation in ratifying the Convention on the ground that since national legislation has already been adopted; it would not add anything additional for Kenya’s IDPs if the Kampala Convention gets ratified. The provisions of the Pact, the Convention as well as Guiding Principles are reflected in the IDP Act. However, a comprehensive study report of IDMC on the normative framework for IDPS in Kenya argues that:

[T]he ratification of the Kampala Convention would create an opportunity to integrate and uphold those additional protection standards that have been introduced by the Kampala Convention. If

⁴³Ibid. p. 93.

Kenya were to ratify the Kampala Convention, it may be necessary to revise the draft IDP policy to ensure consistency with the convention's requirements, and consider eventual amendments to the IDP act and/or other relevant legislation.¹² For example, the IDP act might need to be integrated to include reference to the role of 'non-state armed groups'. An important aspect of the Kampala Convention is also the fact that, by endorsing a collaborative approach, it holds all actors, including non-state armed groups, accountable and requires of them to contribute to respond to IDPs' needs.⁴⁴

2.6: National Responsibility Benchmark

An important publication brought out in 2011 to examine the progress, challenges and obstacles faced in implementing national measures and standards for the IDPs against 12 benchmarks as part of a Framework for National Responsibility is generous in assessing the performance of Kenya and sketches a positive picture.⁴⁵

The government of Kenya accepts the existence of IDPs and has taken measures to raise national awareness. The Kenya National Dialogue and Reconciliation provided for measures to address internal displacement and to mitigate the effects of displacement. In early 2008, the government developed the National Reconciliation and Emergency Social and Economic Recovery Strategy to expedite early recovery and facilitate attainment of durable solutions for displaced. The National Accord reached in the aftermath of 2007-2008 violence and displacement sought to address the "root causes" of displacement-inducing violence through legal and institutional reforms and measures to resolve the land question and address poverty, unemployment and inequality.⁴⁶ The National Cohesion and Integration Commission (NCIC) was established in 2009 to promote reconciliation and it works to prevent violence and displacement by monitoring hate speech. This has been a serious

⁴⁴IDMC "A review of the normative framework in Kenya relating to the protection of IDPs", August 2015, p.10.

⁴⁵ See Elizabeth Ferris, Erin Mooney and Chareen Stark, From Responsibility to Response: Assessing National Approaches to Internal Displacement Brookings Institution – London School of Economics Project on Internal Displacement, Washington D.C. 2011, pp. 239-258, www.brookings.edu/idp

⁴⁶ Ibid.

problem in the past and was a most damaging instrument by politicians in their attempts to mobilize violence against opponents. Impunity and lack of accountability for acts of inciting violence and perpetrating atrocity has been a problem in Kenya. In 2010, the International Criminal Court (ICC) began investigations into the Kenya situation. The ICC intervened after it became clear that the government was unwilling to cooperate to hold senior politicians responsible and guilty.⁴⁷

The National Responsibility Framework accepts that the government cooperates with the international community. It “invites and accepts assistance from the international community to help address the IDP problem and takes measures to ensure that international actors enjoy safe and unimpeded access to the internally displaced” and “authorities allow international programs assisting IDPs in all parts of the country. International actors have unimpeded access to IDPs and return sites; they do not have to deal with bureaucratic delays”.⁴⁸

The Kenya National Dialogue and Reconciliation signed by President and Prime Minister in 2008, acknowledged that IDP problem must be addressed. The government formed a National Accord Implementation Committee, which formulated the National Reconciliation and Emergency Social and Economic Recovery Strategy that worked to outline short-term and long-term steps towards reconstruction with particular focus on resettlement and rehabilitation of IDPs. In March 2008, the two made “a much-publicized symbolic unity tour” of the Rift Valley to signal the end of violence and to encourage IDPs to return home.⁴⁹The Kenya National Dialogue and Reconciliation took the lead in replacing the documents lost during the violence. New documents have been issued. The IDPs are able to vote and in 2010, in the run up to the referendum, election authorities set up voter registration centres near camps and the displaced were encouraged to register. The 2010 Constitution of Kenya contains the Bill of Rights that recognizes and protects the fundamental rights and freedoms of the individual

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

citizen—including IDPs—and sets out the mechanisms for enforcing those rights and freedoms.

The Framework document has been critical of the efforts to close the camps without investing enough in confidence-building measures:

There is concern that the government has focused on the return process at the expense of finding other durable solutions; it seems preoccupied with “making camps disappear.” IDPs leaving camps have not necessarily returned to their former homes due to lingering insecurity and lack of social cohesion. While a substantial number of IDPs have unimpeded access to their farms, others have ended up in transit sites and urban areas while others have returned to camps. The government has also tended to focus on landowning IDPs and to attach durable solutions to land; there is no clear strategy for dealing with landless IDPs, such as squatters and non-farmers, who are unable to return for some reason.⁵⁰

A Summary

It appears that Kenya has left behind its inglorious link between the elections and violence and displacement. The 2017 elections to the office of President have been held to be disputed and a fresh election has been ordered by the Court but fortunately violence has not accompanied the controversy. Secondly, the government has developed robust mechanisms to address internal displacement through legislative measures. The legal standards obtained are internationally comparable. Thirdly, competitive electoral democracy has infused the value of negotiations and political compromises and this would have a salutary effect on the prospects of Kenya as a young modern democracy. Lastly, issues related to urban and “integrated” IDPs still remain. Kenya would need to address regional disparities as well as rethink devolution to more power and resources to institutions of local self-government.

⁵⁰ Ibid.

Section 3: Georgia

Introduction

Internally displaced people in Georgia are a byproduct of an international war, between Russian Federation and Georgia, both part of the former USSR. It is not necessary for us to get into the causes of war between the two countries but it may be noted that contestation over boundaries, issues of nationality, rights of the minorities and secessionist tendencies in different parts of the independent republics in the post-Soviet space generated dispute, conflict and even war. Two of Georgia's regions wanted to secede and they had the political and eventually military backing of Russian Federation. We are interested in analyzing the situation of internal displacement and conditions of the IDPs in the wake of secession by Abkhazia and Tskhinvali. There are two distinct phases- in the early 1990s and then again in 2008- in the displacement of the people. The disintegration of the Soviet Union had left a legacy of disputed borders and boundaries and a most difficult question of nationality for a large group of people. Ethnic and linguistic minorities were caught in between the claims and counter-claims of the newly emerged countries regarding inclusion of territories. Clashes and armed conflicts in two regions of Georgia, Tskhinvali in the north during 1991-92 and Abkhazia in the west during 1992-93 led to displacement of about 300,000 people. The affected people were mainly of Georgian origin. The details of the displacement in the 1990s are given in the Georgia chapter of National Responsibility Framework publication: The conflict in Abkhazia displaced some 240,000 people. A vast majority of the displaced are ethnic Georgians who were displaced from Abkhazia into other parts of Georgia. Smaller-scale short-term displacement also occurred within Abkhazia. The conflict in South Ossetia displaced an estimated 60,000 people, of whom approximately 20,000 became IDPs: some 10,000 ethnic Georgians fled the conflict region into areas of the country under the control of the government of Georgia while 5,000 ethnic Ossets were displaced within South Ossetia and were joined by a further 5,000 Ossets who fled into South Ossetia from other parts of Georgia. In addition, some 40,000 people, mostly ethnic Ossets fleeing the conflict in South Ossetia, crossed the border into the Russian Federation region of North

Ossetia. Some displacement occurred in 1998 and 2004 too but it has not been possible to determine the scale and numbers.⁵¹

Again, war between Russia and Georgia in 2008 led to displacement of approximately 135,000 people. A big chunk of this group has not been able to return as their villages have been destroyed and there is a continuous Russian military presence.

There is virtually no possibility of any political reconciliation and as such the attendant consequence in the form of displacement may never be reversed even if the conflict may not continue or reignited. With no resolution to the conflicts and return still largely impossible for IDPs, displacement has become protracted for the IDPs.

3.1: IDPs in Georgia

Georgia's population is only about 4 million (December 2016). Number of internally displaced is 206,600. This constitutes about 5 per cent of the total population. The numbers have been derived from the registration exercise undertaken by the government in 2013. The complexity of return of Georgian IDPs is different from the situations elsewhere. Here, internal displacement took place from a breakaway region which is not under the control of Georgia and the "breakaway republics" are militarily backed by a powerful neighbor Russia. A glimpse of the complexity can be read in the country profile of Georgia by the IDMC. This is with reference to the problem of "return": "With the exception of the Abkhaz district of Gali, the *de facto* authorities in South Ossetia and Abkhazia refuse to allow IDPs to return on the basis that a large influx of Georgians would upset the ethnic balance and compromise security. Over the years, tens of thousands of IDPs have returned to Gali, though many movements have been seasonal in order to cultivate land, with families maintaining two residences. Most returnees have been able to retain their registration documents as IDPs. These are issued and only recognized by the Georgian government, allowing them to continue to access rights and

⁵¹See Elizabeth Ferris, Erin Mooney and Chareen Stark, From Solidarity to Response: Assessing National Approaches to Internal Displacement Brookings Institution – London School of Economics Project on Internal Displacement, Washington D.C. 2011, pp. 179-229. www.brookings.edu/idp

benefits in Georgia proper”.⁵²Since Georgian government does not accept that return have taken place, it continues to count the “returnees” as IDPs. Interestingly thereby, the returnees continue to retain their IDP status in Georgia and are eligible for entitlements granted to IDPs. In 2006, UNHCR had brokered an understanding between Georgia and the *de facto* Abkhaz authorities to conduct data verification. UN Security Council had also encouraged the process. However, no progress could be made on the modalities to implement the agreement. Therefore, both “the occurrence and sustainability of returns to Abkhazia remains a contentious issue among the parties to the conflict and a stumbling block in the conflict resolution process”.⁵³

In 1996, the government adopted the Law of Georgia on Forcibly Displaced Persons–Persecuted Persons. This was possibly the first national legislation addressing the issue of internally displaced people. In 2007, government adopted the State Strategy on Internally Displaced Persons. The 1996 legislation was much ahead of its time as specific and direct reference to internal displacement and the rights of the internally displaced were clearly spelt out. The 2007 State Strategy enjoined that state authorities should be guided by Constitution of Georgia, legislations of the country and the UN Guiding Principles on Internal Displacement while implementing the Strategy. The Strategy includes an express affirmation that “IDPs shall be protected against illegal eviction.” The strategy notes that “from the legal viewpoint, IDPs have all the rights as other citizens of Georgia” and that “it is necessary to create the conditions or to eradicate the hindering factors, for IDPs to enjoy legal, political, living and socio-economic conditions like other citizens of Georgia.” In 2010, the Ministry of Refugees and Accommodation was officially renamed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees as responsible for ensuring the implementation of the law. Thus the ministry is the focal point of national government for responding to internal displacement. The law affirms that “the rights of IDPs are protected by the State.” Further, it specifies that “[a]ny illegal action of the authorities may be appealed to

⁵²IDMC, Georgia

⁵³Mooney, n.50, p. 189.

higher authorities or to the court” and that any violation of the law on IDPs is punishable by law. Georgia’s law on IDP was amended in 2014 to reflect the judgment of the country’s Constitutional Court that all Georgians displaced by armed conflict and not only those displaced from “occupied territories” should qualify as IDPs. This decision helped about 300 displaced people from South Ossetia in 2008 to register themselves as IDPs.⁵⁴

Some observers have noted that the approach of the Georgian government towards the IDPs of the 2008 August War was distinct from those who were displaced in the early 1990s. Post-2008 IDPs were resettled with prompt and generous support. However, it was only belatedly that government extended the same quantum of support for those displaced earlier. There are two reasons. Firstly, the country had just become independent and did not have the resources necessary or the IDPs in the 1990s. Secondly, there was an expectation that return may be possible. It was realized though much later that this may not happen.⁵⁵

3.2: The Question of Return

This “frozen conflict” however has yielded to some return of the displaced people. It is politically not feasible for Georgia to accept this but about 45,000 to 50,000 people returned to Gali region of Abkhazia. Several thousand IDPs also returned to South Ossetia under the supervision of UNHCR during 1997 to 2005. IDP figures accepted by government of Georgia are on the higher side- based on the numbers of displaced when people fled in the 1990s. Subsequently a lot of displaced did return. Accepting this would tantamount to accepting the de facto control of the Russia backed authorities in South Ossetia and Abkhazia and hence not a good political proposition. Of course, there is also the issue that Georgia does not control South Osetta and Abkhazia and hence cannot either organize or help return.

It has already been pointed out the near impossibility of safe and dignified return of the IDPs. Should they choose to return, they would be returning not

⁵⁴IDMC, n.51.

⁵⁵See, Lilia, “IDPs in Georgia: Still Waiting for Better Life”
<http://caucasusedition.net/analysis/idps-in-georgia-still-waiting-for-better-life/>

to another part of their country but rather to areas which proclaim their “independence” from Georgia? Under the circumstances, return is doubtful. It has not been sustainable for those who had earlier returned to areas near the dividing line with South Ossetia. They have been prevented from accessing homes, land, water and livelihood because of the construction of a 50 kilometre fence along the “border” guarded by the security forces of South Ossetia and Russia. A feeling of insecurity pervades the border areas.

3.3: Geography of Housing

The lived experience of IDPs living in collective centres and in individual accommodation is quite different. There are various handicaps and obstacles encounter by people in both the settings. Therefore, this aspect deserves appreciation. Peter Kabachnik and colleagues highlight the importance of socio-spatial lens that can provide “deeper insight into human security and people’s lived experiences”.⁵⁶ They argue that it is possible to “improve human security by refining our knowledge of the internally displaced persons’ experiences by highlighting spatial processes”.⁵⁷ The IDP population is not a homogenous group. They have different resources, livelihood strategies and rely on different social network to cope up with their situation. In the context of Georgia, very high number of people outside collective centres necessitates an analysis of regional disparities and local specificities. Researchers have pointed: “Those living in private accommodation can vary greatly in terms of living space, living conditions, and security of tenure. Furthermore, they may not be better off in all respects, in part because they often become invisible to aid programs and thus their hardships remain unaccounted for and thus unaddressed”.⁵⁸ Moreover, “they may not be better off in all respects, in part because they often become invisible to aid programs and thus their hardships remain unaccounted for and thus unaddressed”. More numbers of IDPs in Georgia live in private accommodation but due to the “invisibility of life in private accommodation for IDPs from Abkhazia and the prominence of

⁵⁶Peter Kabachnik, Beth Mitchneck, Loga V. Mayorova and Joanna Regulaska, “ The Multiple Geographies of Internal Displacement: The Case of Georgia, Refugee Survey Quarterly, Vo. 30, No. 4, pp. 1-30, 2014.

⁵⁷Ibid. p.1.

⁵⁸Ibid. p.3.

collective centres in the public imagination, IDPs in private accommodation have far fewer opportunities to encounter assistance through a government program or an NGO worker”.⁵⁹

Allocation of housing units to the IDPs has been controversial for two reasons. Firstly, it has involved evictions from the present dwelling place. At times, displaced people have complained that sufficient notice has not been served. Secondly, the allotment of housing to areas that are not suitable is another sore point. The difficulty of communication from the allocated area, loss of social contact and negative fallout on employment opportunities are other reasons why the new housing arrangements have not won the approval of the IDPs. A constant complaint has been the reluctance of officials to take displaced people into confidence in decisions about their welfare. Housing for the displaced is after all a most visible and directly beneficial aspect of government’s commitment and policies. However, this approach neglects the social aspects of integration and ‘perceives “housing to be the sole issue to deal with”. But as Gogishvili notes “the public approval that might come from the physical provision of housing is much higher than the political benefits from the complicated process of socio-economic integration which might go unnoticed by the general public”.⁶⁰A reliance on a universal approach and identical planning for housing for the IDPs and especially when these new locations are in remote areas would leave IDPs fewer opportunities for social contact outside their neighborhood. This would undercut their options as mobility would get affected, both in terms of transportation cost as well as in terms of employment opportunities. This approach, Gogishvili thinks, allows the “state officials [to] keep exercising their control over them which proved to be important for central government to reach various political goals on different scales”.⁶¹

⁵⁹Ibid. p. 28.

⁶⁰David Gogishvili, “Urban dimensions of internal displacement in Georgia: The phenomenon and the housing policy”,

<http://www.rc21.org/en/conferences/urbino2015/>

⁶¹ Ibid.

3.4: International Support

International community does not recognize the break-away regions as “independent”. They are very much part of Georgia. This position has been reflected time and again and most recently in June 2017 when the General Assembly passed a resolution to this effect once again. We shall consider the resolution below. Government of Georgia is very receptive to international support and funding for its plan for the IDPs. In fact, drawing international assistance is also consistent with Georgia’s position in its conflict with the break-away regions which are fully backed by Russia. Therefore, international organizations enjoy quick and privileged access to government officials responsible for the IDPs. European Commission and USAID have been major donors. UNHCR is also active and at some point, it helped in the return process of the some few thousand of IDPs generated in 1990s. Ministry for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia implements plans for the IDPs but it suffers from paucity of human resources and also faces financial constraints. There are complaints that the ministry does not receive adequate support from other ministries. Georgian media have been accused of not highlighting the problems faced by the IDPs. This results from several reasons. The country is not much interested in giving publicity to the problems of the IDPs as it’s “international image’ may get tarnished. Secondly, there is extreme political divide along political party line in Georgia and media houses have traditionally supported one or the other side. Since, the IDPs are not a prime contested electoral issue; attention to their suffering is not prioritized.

3.5: Special Rapporteurs Recommendations

Special Rapporteur on the Human Rights of Internally Displaced Persons Chaloka Beyani undertook a follow-up mission to Georgia in June 2013. This was in accordance with his mandate contained in Human Rights Council resolution 14/6 and was at the invitation of the Government of Georgia. Earlier, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons had visited Georgia in 2005, 2008, 2009 and 2010. Mr. Biyani made a number of observations and recommendations in

regard to protection of IDPs in the country. We may briefly analyze the points raised by the Special Rapporteur (SR) in this section.⁶²

It needs to be emphasized that SR expressed his appreciation and satisfaction in the efforts of the national authorities of the country. Nonetheless, he pointed out certain areas for further improvement and measures. According to his report, “further joint efforts are necessary to overcome the obstacles to durable solutions”. An inclusive integrated approach is necessary for all the IDPs irrespective of whether they were displaced in the 1990s or in the subsequent period. It is in this context that he noted: “there is an urgent need to improve the living conditions and livelihood opportunities of internally displaced persons who were displaced in the early 1990s, and who are still living in collective centres in deplorable conditions”.⁶³ The new registration exercise for the IDPs which started in August 2013 is a welcome development as it would help in addressing the special needs and identify opportunities for durable solutions for all the IDPs. Importantly, the government was requested to ensure that needs of IDPs who live in private accommodation be also addressed after the registration process is completed. Noting that most of the IDPs are living in poor living conditions and lack employment opportunities, SP urged the government “to integrate internally displaced persons into broader development plans and initiatives, rather than developing a comprehensive strategy on livelihoods for internally displaced persons only”.

A point repeatedly emphasized by NGOs who work with the IDPs in Georgia is the need to involve the IDPS in the decision process on issues affecting them. The SR echoed this felt need when he encouraged the government “to consult with internally displaced persons and enable their involvement in decisions affecting them. This is of the utmost importance in establishing conditions and means for achieving durable solutions for internally displaced

⁶²Report of the Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Georgia (10-14 June 2013), Commission on Human Rights, A/HRC/26/33/Add.1

⁶³Ibid.

persons in safety and dignity, based on their informed and voluntary choice of durable solutions.⁶⁴ Yet another issue of concern for the IDP community and their leaders has been the rights of IDPs to housing, land and property. The UN official reminded the government that “internally displaced persons are entitled to restitution of or compensation for their property, regardless of whether they choose to return, integrate locally or resettle elsewhere”.⁶⁵ This reminder was important as there is a thinking that government would like to substitute decisions of the IDPs as per its policy. It was necessary to emphasize that this was not in accordance with the standard set by the United Nations.

The Special Rapporteur strongly condemned the “installation of the coiled razor wire fence along the administrative boundary line of the Tskhinvali region/ South Ossetia, Georgia”. This would deprive the IDPs freedom of movement and livelihoods, as well as prevent their access to land and property. The decision of the Constitutional Court of Georgia that internally displaced persons from “villages adjacent to the Tskhinvali region/ South Ossetia, Georgia, are entitled to the same rights as internally displaced persons from that region” is a significant pronouncement protective of the rights of the IDPs and the Special Rapporteur expressed his satisfaction for this decision.

3.6: General Assembly Resolution, 2017

UN General Assembly has passed a resolution on 1 June 2017 recognizing right of return for refugees and internally displaced persons in Georgia, no matter their ethnicity.⁶⁶ The resolution was passed with 80 votes in favor, 14 against and 61 abstentions. The General Assembly recognized the right of return of all internally displaced persons and refugees in Georgia and their descendants, regardless of ethnicity, to their homes throughout that country, including Abkhazia and the Tskhinvali region/South Ossetia.

⁶⁴Ibid.

⁶⁵Ibid.

⁶⁶General Assembly, Seventy first session, 85th Meeting, GA/11919, I June 2017.

Georgia introduced the resolution that “aimed to galvanize international support for the rights of displaced people in Georgia, the overwhelming majority of whom had indicated their wish to voluntarily return. The resolution stood for three principles: securing the rights of the displaced, the unacceptability of forced demographic changes, and the need for unimpeded humanitarian access”. Georgian representative maintained that “security and human rights situation in the occupied territories had been exacerbated by the installation of razor-wire fences, kidnappings, arbitrary detentions, property seizures, and restrictions on movement, residence and native language education — all on the grounds of ethnic origin. The closure of entry and exit points across the occupation line by the regime in Abkhazia had severely restricted the freedom of movement and impeded the return of internally displaced persons and refugees to their homes”.⁶⁷

The representative of the Russian Federation said that the aims of the resolution are “strictly political, underpinned not by a legitimate desire to help the affected people, but rather to support the aggressive policies of Georgia’s Government”. He also said; “promoting the draft under humanitarian auspices ignored the real needs of those who had been forcibly displaced, making it impossible for parties to have substantive discussions and seriously damaging the Geneva discussions by undermining the concept behind them”. According to Russian Federation “using the situation for political aims contravened the Geneva International Discussions, delayed resolution of the humanitarian situation and damaged trust among people in the affected regions”.⁶⁸

The context for this resolution was the attempt to hold a “referendum” to rename the Tskhinvali region as the “Republic of South Ossetia — State of Alania” which was supported by Russia. In 2008, both Russia and Georgia had agreed to continue talks to resolve issues and this resolution may prejudice the ongoing Geneva negotiations between the two sides as pointed out by Brazil which abstained.⁶⁹

⁶⁷Ibid.

⁶⁸Ibid.

⁶⁹Ibid.

3.7: Frozen Conflict

The Georgian IDPs are from Abkhazia and South Ossetia, both break-away regions. Authorities in these two regions who are in *de facto* control of the territory are not recognized internationally but they have the full support of Russian Federation. Georgia is not in a position to wrest control of the two regions and when it attempted to assert its control in South Ossetia in 2008, Russian forces overwhelmed it. The ensuing war caused displacement. Those who fled into Georgia proper are considered as IDPs by Georgia but this displacement is not from a territory which is under the *de facto* control of Georgia. Had these regions been recognized, these displaced people into Georgia would have been considered as refugees. But here the displaced do not have a place to “return”. They are in a legal limbo. Almost the same situation obtains with regard to Azerbaijan’s territory Nagorno-Karabakh which is run “independently” aligned with Armenia. The Azarbaizan government would not take effective steps to resettle those who have fled from Nagorno-Karabakhin the fear it would constitute an acceptance of Armenian claim over the region. More than two decades have elapsed but such situations and the associated conflict especially in post-Soviet space have remained frozen. This is basically a situation of *de jure* vs. *de facto* sovereignty. The plight of the people caught in this type of a situation is doubly troubling. The point has been well explained by Even Welber:

This combination of political disincentives to find appropriate and durable solutions to the plight of persons displaced by frozen conflicts and the weak international legal regime protecting IDPs forces such individuals into an indeterminate state. De jure governments are reluctant to protect them for fear of acknowledging the de facto independence of a separatist state, and no international legal regime sufficiently binds such governments to act to integrate them – despite that voluntary return and resettlement are obviously not viable or available alternatives.⁷⁰

⁷⁰Even Welber, “Displaced from Countries that Don’t Exist: IDPs, Refugees, and Frozen Conflicts”, <https://forcedmigrationforum.com/2017/04/07/displaced-from-countries-that-dont-exist-idps-or-refugees-in-frozen-conflicts/>

A Summary

In conclusion we may point out that the IDP situation in Georgia is markedly different than in any other country. The government has lost effective control over the break-away “republics” and therefore cannot work on return as a solution. Local integration is the only viable solution and in recent years, government has proceeded to provide housing to all the IDPs and continues with other assistance. It cooperates with international organizations and agencies and has a well-developed legal framework to address the problem of internal displacement. However, there is no possibility of political reconciliation between Georgia and Russia and as such the displaced people of ethnic Georgian origin would continue to locally integrate instead of harboring any prospect of return to their own home and habitat.

Remarks on State Practices

Concern with worldwide internal displacement and with the plight of the internally displaced people necessitates effective measures to address causes of displacement and redress the sufferings of the uprooted. Though the international attention to the problem was articulated from the standpoint of responsibility of the national authorities and of the international community in case of an unwillingness and inability of the State to do so, there was no demand or articulation for the substitution of the role of the state. Rather, the Guiding Principles call for a strengthened role of the state in this respect. At the same time, there is no denying that prior to international articulation of the issues involved in internal displacement; state authorities were either complicit or complacent on this subject and the distress of the millions within the border of their own countries. Much has changed in the last about two decades. This is reflected in not only an enhanced awareness of internal displacement and rights of the displaced, state authorities are also attempting to translate their responsibilities into legislative enactments.

The three countries chosen for a detailed study of their practices are markedly different, in terms of the context of displacement of people and the evolution of the responses of the governments towards the IDPs. The life-cycle of displacement also varies. While Colombia has problem of internal displacement over many decades, in the case of Kenya it has been generally related to interplay of electoral politics and violence since 1990s. The internal

displacement in Georgia relates to the loss of control over territory by the country due to secessionist uprising by break-away regions supported by a powerful neighbor, Russian Federation. What is common in all these countries' practices is an open embrace of international standards of IDP protection in more recent years. While Georgia introduced legislative measures for the IDPs in mid-1990s, Colombia has experimented with enhanced assistance and protection for the internally displaced through a positive and active intervention of its Constitutional Court and legislative branch past over last 15 years. Kenya has been in the forefront of accepting international obligations for the internally displaced people and its acceptance of the Great Lakes Pact and the Kampala Convention is now reflected in a well-articulated national legislation and policies. The international norm of responsibility toward the IDPs has found acceptance in all these countries though the time periods, triggering factors, and motivations vary.

Chapter VI

State Practices II: Turkey, Sri Lanka and Myanmar

Section 1: Turkey

Introduction

Turkey has long been acknowledged as the most difficult of the countries for information and research on internal displacement. Despite more than a million IDPs in the wake of decade –long conflict between the armed militants of the Kurdish minority and the Turkish government, internal displacement was stoically denied by the authorities. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Francis M. Deng was allowed a visit to the country by the government after much procrastination. This development could come about in the backdrop of Turkey's desire to join European Union which required a series of compliance including on human rights record. In the wake of Francis M. Deng's visit and his several recommendations, government decided to implement a plethora of measures on issue related to internal displacement and the severe conditions of the displaced. These measures were quite strong on paper but the approach of the government was not considered sincere by the international agencies and the local NGOs. Security situation continued to deteriorate and a number of obstacles were erected making it difficult to certify good implementation of agreed course of action by the government. During 2013- 2015, a ceasefire between the Kurdish rebels and the government security forces ignited the prospects of return of the displaced but over last two years, the ceasefire has yielded to renewed fighting and as a result fresh displacements have occurred.

The more recent context has been provided by the ongoing conflict in Syria where Kurds are also involved. The Turkish Kurds have been demanding approach and passage to those fighting in Syria but the government has taken a hard line position against them, often carrying out bombing against the Kurd position. Turkey fears the emergence of a separate independent Kurdistan which the Kurds of Turkey, Iraq, Syria and Iran may all join hands to build. A separate homeland for Kurds was one of the intended

arrangements in the post- First World War but the rise of Kemal Ataturk in Turkey ensured that this could not happen. Since then, the Kurd minorities in all these countries have been rising in armed resurrection, for autonomy and also for independence. They suffered much under the dictatorial regime of Saddam Hussein in Iraq. International action authorized by Security Council was undertaken in early 1990s to protect them in northern Iraq. Presently, the Kurds are fighting extensively against the ISIL in Iraq and Syria.

Turkey has transformed itself, from a parliamentary system to executive presidency through a referendum that was held in 2017 after immunity for the parliamentary deputies for criminal investigation was cancelled. More than dozen members of Parliament have been sent to jail and hundreds of journalists have been detained. The crackdown has affected all the parties of the Opposition but it has severely hit national pro-Kurdish party, People's Democratic Party (HDP) and its regional sister party, Democratic Regions Party (DBP). Government has also taken control of 82 municipalities in the Kurdish populated regions of the country where some elected mayors and other officials have also been jailed on various charges.¹

1.1: Internal Displacement in Turkey

Figures in regard to internal displacement in Turkey are at best guesstimates. It has been difficult to ascertain the numbers due to the dispersed nature of displacement which occurred during 1885 to 1997. IDMC provides a figure of 204, 000 persons displaced for the year 2016 and a total of 1,108,000 IDPs due to violence and conflict.²

According to a submission of IDMC to the European Union in 2013:“Between 950,000 and 1,200,000 people were forced or obliged to flee their homes in the south-eastern part of Turkey from 1985 to 1997 during an armed struggle between the Partiya Karkerên Kurdistan (Workers Party of Kurdistan, PKK) and government security forces. Internal displacement

¹Human Rights Watch “Crackdown on Kurdish Opposition”, 20 March 2017.

<https://www.hrw.org/news/2017/03/20/turkey-crackdown-kurdish-opposition>

²IDMC Turkey , <http://www.internal-displacement.org/countries/turkey>

resulted from the evacuation of villages during counter-insurgency operations, evictions and killings by the PKK, food embargoes, and bans on using pasture imposed by the security forces”.³ This figure is much closer to that accepted by the government but for the civil society and NGOs in Turkey, a much higher number of people were displaced during that period. IDMC has clarified that it’s “estimates include several different caseloads, including one prior to 2016, reported by Hacettepe University in 2006. IDMC’s figures are also based on more up-to-date information obtained from the International Crisis Group and a Turkish NGO that covers the end of 2015 to 2016. This data covers three cities in southeastern Turkey where round-the-clock ‘curfews’ were put into place, forcing people to flee”.⁴

Government had commissioned a report on IDPs from Hacettepe University which estimated the number of displaced between 954,000 and 1.2 million people. This displacement had occurred during the period 1986 to 2005 and consisted mostly of the Kurdish minorities. Government of Turkey has not officially endorsed the number. Earlier, the government had put the number of IDPs at 378,000. NGOs have reported a figure between one and three million. These huge differences have prompted the IDMC to say “Turkey’s internal displacement figures are outdated and disputed”.⁵

One reason for the wide variation in numbers is because government tends to count as IDPs only those who were evacuated from villages and hamlets in the northeast of the country. It discounts the number of people who had to flee due to the military offensive between the government forces and the PKK.

1.2: The Internally Displaced

Internal displacement in Turkey was part of a deliberate military strategy. Villages were evacuated from the remote, mountainous areas to help the

³Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) for consideration by the EU Enlargement Directorate-General, Turkey, 20 May 2013, Paragraph 2.

⁴<http://www.internal-displacement.org/countries/turkey>

⁵<http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/turkey/summary>

security forces to maintain “field domination”. The idea was to cut off the rebel PKK from the Kurd peasantry and to deny them support and succor from the villages. Stopping the recruitment into the rebel fold was yet another objective. This measure was carried out in a most brutal manner, without notices to the villagers. Those who objected or resisted were summarily executed. Village guards were recruited under the supervision of the military to oversee eviction and evacuation. A summary of the harsh measures is provided by Dilek Kurban:

The army believed that its full control required a territory without people, in order to deprive the PKK of the logistical support it received from peasants and to prevent Kurdish youth from joining the organization. The implementation of this doctrine was not limited to rural areas, but also extended to urban centers in the region. Displacement was also punitive because it targeted villages that refused to side with the state in the war, and were therefore assumed to be providing shelter, food supplies, and recruits to the PKK. In many cases, villagers were displaced by the military for their refusal to join the village guard force and fight against the PKK. In some cases, advance notice was given to the displaced, while in others they were told to leave immediately after watching state security forces burn down their houses and village.⁶

Internally displaced in Turkey did not receive any worthwhile support from the authorities. They were left to fend for themselves. Most of them tried to live in the urban areas as close to their home as possible. The extent of pressure on the Turkish urban areas can be seen in this account “Since the 1990s, the major cities in the south east have been inundated with villagers from the regions, with a consequential effect on the city’s original habitants. Van currently has 380,000 citizens of Turkish nationality, of which 200,000 are IDPs. In Bostaniçi district, official figures show that 14,000 people – 90 per cent of the inhabitants - are IDPs. In fact it is believed that the figure is actually closer to 18, 000”.⁷

⁶Dilek Kurban, “Reparations and Displacement in Turkey: Lessons Learned from the Compensation Law”, Brookings-LSE Project on Internal Displacement, July 2012.

⁷ “The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights - An Update”, Kurdish Human Rights Project (KHRP) and Bar Human Rights Committee of England Wales, December 2006.

Many IDPs benefitted from a green card system that provided free health care to the poorest members of the population. Government however did not take any steps for their local integration. In mid-1990s, government decided on a village rehabilitation project. In 2004, it enacted a law on compensation for the victims of violence and in 2006 it adopted an action plan for the Van province. As per DMC, around 187,000 people returned at the end of 2009. Data for subsequent years are not available. Since considerable number of years has elapsed, prospects of large-scale return are weak.

1.3: International Response

Roberta Cohen had characterized Turkey as one of the “hard cases” with reference to internal displacement and the condition of the IDPs. The government was simply dismissive of human rights aspects of its armed conflict with PKK. Writing in 1999, she pointed out: “Despite repeated promises, the government has taken few steps to facilitate the return of forcibly displaced Kurds to their homes, assist them to resettle, or compensate them for the loss of their property. Nor does it allow others to help. The only local humanitarian NGO allowed to operate in the southeast has been shut down. No international NGO has been permitted entry. Even ICRC has been unable to operate in Turkey”.⁸ She however noted that the government possibly would start yielding as it is interested in joining the EU. This could be an important leverage and the international community should press hard on the human rights and displacement issues and seek Turkey’s compliance to international standards.⁹UNDP has been the main interlocutor on IDPs with Turkey government.

Information on international assistance for the IDPs in the country is not available as the government is not willing to publicize issues related to displacement. Even though the government has admitted to the presence of IDPs, it has not admitted its own responsibility for the displacement. It blames the ‘terrorist’ activities of the rebel forces for the situation which even

⁸Roberta Cohen, *Hard Cases: Internal displacement in Turkey, Burma and Algeria*, Forced Migration Review, December 1999.

⁹Cohen, *Ibid*.

necessitated evacuation of the civilians for security reasons. The IDMC submission before the European Commission in 2013 noted: “Turkey is also subject to several shortcomings with respect to internal displacement during the reporting period. There is still no national strategy to address IDPs’ needs, the effectiveness of the compensation system for IDPs has still to be improved and there also continues to be a failure by the Turkish government to develop a justice-based approach to forced displacement. The omission of state agents from the jurisdiction of the law remains an obstacle to reconciliation, a key criterion for durable solutions to displacement”.¹⁰The EU’s annual report in 2013 with regard to Turkey meeting accession criterion did not find sufficient progress. It noted that government has taken measures to reduce discrimination against the Kurds but emphasized that a national action plan was required to resolve the displacement situation.

Representative of the Secretary-General on Internally Displaced Persons (RSG), Francis Deng made his first visit to Turkey in May 2002. For the government of Turkey, it was a reversal of its earlier policy not even to acknowledge internal displacement in the country to go to the extent of inviting Francis M. Deng. The visit and the subsequent report submitted to the Commission on Human Rights containing findings and recommendations was significant as it helped open the door for advocacy and protection of the IDPs in the country who had suffered extensively and without any support whatsoever. The report led to the introduction of certain positive measures by the government. We shall analyze the broad issue areas identified in the report and the government response to these issues.

1.4: Framework Document

Government of Turkey enacted the “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” in 2004. It also initiated a study by the Hacettepe university entitled “Study on Migration and the Displaced Population in Turkey” and a government policy framework in August 2005. UNDP and other UN bodies provided consultancy and other

¹⁰Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) for consideration by the EU Enlargement Directorate-General, Turkey, 20 May 2013, Paragraph 4.

technical support to the government which also signed an agreement with UNDP titled “Support to the Development of an IDP Programme in Turkey”.

The framework for the government strategy entitled “Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey” was issued by the government as a special “Decision of Principle” in August 2005. This laid down the principles that will shape the final strategy to be adopted. The document does not deal with the details of the implementation but provides an indication of the approach of the government. The framework document was not made available to the NGOs and the general public. It was primarily intended to be distributed to the international audience. Nonetheless, when the framework document came out in the public domain, it received mixed reaction. There was an appreciation that finally government was set to address internal displacement in a serious manner. It was also noted that in the absence of details of implementation, there is no way of checking how the government especially the ministry of interior which was the nodal ministry would translate the framework into concrete action.

A report by Turkish Economic and Social Studies Foundation (TESEV) accepts that “the government for the first time officially recognizes the definition of internal displacement as laid down in the Guiding Principles”.¹¹The document lists the objectives which include “ensuring voluntary returns in safety; facilitating the necessary conditions for return and supporting development projects; seeking ways to provide assistance to facilitate IDPs’ integration in their new places of settlement; and reviewing legislation on return and integration.”¹² As per the document, return would be voluntary and would not require permission of the authorities. However, it also provides that the IDPs should notify the authorities and assures that complaints against the village guards hampering return would be addressed

¹¹See for a detailed analysis on all aspects of internal displacement, the report by a leading think tank of Turkey, TESEV and Norwegian Refugee Council, ‘Overcoming a Legacy of Mistrust: Towards Reconciliation Between the State and the Displaced’, Norwegian Refugee Council, May 2006.

¹²Ibid. p.15.

and the danger posed by landmines would also be addressed in the return areas.

The biggest drawback of the framework document is that people who fled their villages in the wake of effects of armed conflict and generalized violence may not be covered as the focus is on people displaced as a result of eviction and evacuation. Yet another issue with the policy document is the focus on creating “central villages”. This would mean that the IDPs may not be able to return to their home and village. Rather they may be concentrated in certain villages. Obviously, the government was thinking in terms of security as it would be easier to deal with the people and or problems if there are central points, instead of the dispersed population group in small numbers scattered all over. Government seemed to be more interested to encourage concentrated settlements to ease the public services instead of resettlement in hamlets.

1.5: Compensation Law

Government of Turkey also enacted a Compensation Law. The law “aims to indemnify persons for material damages since 1987 “arising from acts of terror or from measures taken to fight against terror”, and provides compensation to anyone who has sustained losses due to terrorism or anti-terror activities, including (but not limited to) IDPs, members of the armed forces, the police and the village guards”.¹³ Assessments commissions, principally composed of government officials and also including a lawyer would decide on reparations for losses involving damage to moveable or immovable property, damage to the life and body of the person, and damage sustained due to inability to access one’s property. The commission and the applicants can arrive at a friendly settlement or the applicants can challenge the compensation amount. A large number of applications were filled and several thousand people also received compensation. However, a number of applications were rejected on various grounds. These grounds are pointer to the limitations of the law. The limitation in Article 1 of the law “to losses “arising from acts of terror or from measures taken to fight against terror”

¹³TESEV, p.33.

risks excluding in practice IDPs who were not directly evicted by the PKK or the security forces but who were obliged to flee due to the effects of the conflict in the area”.¹⁴ Yet another problem area with the law is the temporal limit. The law states its applicability from 1987 when martial law was promulgated. However, displacement started since 1984 when PKK begun its armed struggle and the government attempted to suppress it. Therefore, exclusion of people who fled during 1984-87 from claiming compensation under the law seems to be arbitrary. One explanation that people had a choice to file case and claim before 1987 when martial law was imposed is not correct as some of the affected provinces were under provincial martial law.¹⁵

Though the government embarked on a policy to offer compensation for violence and conflict, the number of beneficiaries is much less than the number who suffered. In 2013, the European Court of Human Rights (ECtHR) directed the government to pay compensation to people who suffered disappearance, torture and death of their relatives in the 1990s. Commenting on the efficacy of some of the measures Turkish government adopted to mitigate the distress of the IDPs, an update points out

In common with the Return to Village and Rehabilitation Project, Law 5233 has the potential to provide adequate and effective reparation for those who suffered as a result of being displaced during the 1990s. Yet, in practice, the compensation awards are frequently delayed, minimized and/or denied. In the words of Cevat Aktaş, Law 5233 is being used not only ‘to abolish direct applications to ECtHR’ and therefore improve Turkey’s appalling human rights record before that institution, but also to persuade the European Commission that Turkey is instituting the reforms necessary for the EU accession process. In fact, Law 5233 is a paper reform which fails to meet the applicable international standards.¹⁶

1.6: Security Issues

Turkey had instituted a system of “village guards” as part of anti-insurgency operations. The guards were recruited, paid and worked under the security forces. They mainly worked to ensure the cooperation of the villagers with

¹⁴Ibid.

¹⁵Ibid. p.34.

¹⁶ “The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights - An Update”, Kurdish Human Rights Project (KHRP) and Bar Human Rights Committee of England Wales, December 2006.

the security forces, identify dissenters, oversee village evacuation and carry out the dirty work on behalf of the state. This degenerated into abuses of power and there are serious allegations against the guards of eliminating people considered sympathetic to the rebels, indulging in extortion and other illegal activities. The question of disbanding them and arrange for their rehabilitation was one of the prime demands of the civil society and NGOs who were fighting for human rights and to prevent displacement.

Another issue that was central to all discussions on the return of the internally displaced was the landmines. The landmines and unexploded ordnance was a big risk. Security forces had laid down these mines in order to inflict damages on the rebel. But these posed a threat to everyone, particularly the villagers and acted as a big disincentive in any plan for the return of the villagers to their home and villages. Since there was no statistics available at the central level about the location of the landmines, it was also not possible to defuse these.

1.7: Current Developments

Since 2013 the Government and the PKK were holding a truce. Peace process was boosted when jailed PKK leader, Abdullah Öcalan gave his nod for peace negotiations. A ten-point peace plan, Dolmabahce agreement, was announced by the government and the HDP (reportedly with PKK backing). But President Erdogan's ambition to expand his power via constitutional changes that would transition the system from parliamentary to presidential was opposed by his parliamentary rival and especially by the Kurdish party HDP. The elections saw HDP garnering more than 13 per cent votes and this unnerved the President.

In 2015, International Crisis Group was optimistic of a political settlement in Turkey with PKK. It wrote: "Geopolitics also seemed opportune: the PKK (with its "Syrian offshoot", PYD) and the Turkish state arguably needed each other to contain the Islamic State (IS) threat. A peace process breakthrough was also more important than ever for Washington; though the U.S. considers the PKK a terrorist organization, the anti-IS coalition needs to

cooperate tactically with PKK-linked Syrian Kurds while also needing Ankara's agreement to use military assets in Turkey such as the Incirlik Air Base for anti-IS airstrikes".¹⁷ Soon, however, the peace process collapsed and the battle lines got drawn once again. Stanley Weiss quotes the *New York Times* that Erdogan appears "more interested in smashing his Kurdish opponents than he is in defeating the Islamic State extremists in Syria and Iraq."¹⁸ For example, "when ISIS launched a massive assault on the Syrian town of Kobani, just across the Turkish border, Turkish tanks massed on the border—yet did nothing. Turkey's very first airstrikes sent one sortie to attack ISIS in Syria, compared to 150 sorties against Kurdish targets".¹⁹

Conclusion

Armed conflict spanning more than two decades has left a void and a legacy of mistrust towards the state. Civil society and IDP community are not trusting of the intentions of the government. The government did take certain steps but these were considered "paper work" by some vocal groups. In the absence of a political resolution of the conflict, the broader aspects of human rights protection, peace and reconciliation may not succeed. Deng's report did not touch upon the vital issue of reconciliation possibly in the hope that this would be a logical process once the government starts addressing internal displacement.²⁰

Notwithstanding the limitations of the measures undertaken by the government of Turkey, at least recognition of internal displacement and some steps for compensating for the hardship of the people was seen as a welcome development. However, there was also the expectation that a process of reconciliation would also be undertaken. The sidestepping of the issue of justice for people who have suffered disappearances and extermination of their

¹⁷Niger Goksel, "A New Cycle Begins in Turkey-PKK Conflict", *International Crisis Group*, <http://blog.crisisgroup.org/europe-central-asia/2015/08/11/a-new-cycle-begins-in-turkey-pkk-conflict/>

¹⁸Stanley Weiss, Turkey and the Kurds Need an Antwerp Agreement http://www.huffingtonpost.com/stanley-weiss/turkey-and-the-kurds-need_b_7966640.html

¹⁹ Ibid.

²⁰ See, TESEV, n. 11.

family members can hardly be ignored if social peace is to be achieved and government wants to build a relationship based on trust. The impunity granted to the security forces must be reexamined in the light of several documented instances of brutality in the eastern and southeastern provinces of the country.

The ebb and flow in the relationship between the government and the Kurdish separatists have informed the government's overall approach to internal displacement of the minority Kurds. Yet another conditioning factor has been Turkey's approach to membership of the European Union. Both these issues definitely are central to security and national ambition of the country but to the extent that they impinge on the rights of the internally displaced, it leaves a big question mark on the sincerity and seriousness of the authorities.

It has been difficult to access source material for internal displacement and the conditions of the IDPs of Turkey. In the same way that material was almost non-existent prior to the lifting of martial law in 1999; the present situation is also witnessing a void. In the light of developments last one year, the issue of human rights has again gained prominence in international quarters. Thousands of people are under arrest. Opposition members of Parliament have been jailed. There are new restrictions imposed in the eastern and southeastern provinces. Activities of PKK has also intensified and the larger question of a Kurdistan territory is once again in the horizons especially in the light of tremendous successes registered by the Kurds on the Iraqi front in the fight against ISIL. The Syrian crisis has directly impacted Turkey with about 3 million Syrian refugees on its territory. These developments have completely dwarfed the issue of internal displacement and those pertaining to the conditions and rights of the IDPs. Fresh displacements of more than two hundred thousand people have been reported. Given the overall scenario and a fast deteriorating security situation, issues related to IDPs have not only taken a back seat but are ominously absent in the public domain.

Section 2: Myanmar

Introduction

Writing in 1999, Roberta Cohen had considered Myanmar as one of the “hard” cases on issues related to internal displacement and access to the internally displaced people. Not much has changed in this broad characterization of the country where military has directly ruled for long 50 years and still controls the lever of power. The country has generated significant number of refugees over the decades and a large number of people have remained internally displaced for long period of time. The recent influx of Rohingya refugees into Bangladesh and to some extent in India has served to remind the world about the vulnerabilities and precarious existence of more than a million of refugees and possibly equal number of internally displaced in the country. Rohingyas are not the only distinct group of people who have been living a life on the margins in Myanmar. There are a number of ethnic groups who have been fighting the central authority of the country over many decades especially in the remote border areas of the country. The national government had exercised only notional control over these areas and whenever attempts are made to bring these regions and areas under effective control, Tatmadaw, the Myanmar’s military, has faced armed resistance by insurgent forces.

According to the figures released by the Office of the Coordinator of Humanitarian Affairs (OCHA) for Myanmar, 8.5 million people are living in conflict areas in the country. The OCHA estimated that 1,020,000 needed humanitarian assistance in 2016 and it sought to raise US\$190 million for the purpose.²¹ As per the latest figures of the IDMC, for 2017, Myanmar has 35,000 new displacements and the IDP stock of 644,000 takes the total closer to 6,77,0000 people as IDPs due to conflict and violence.²²

²¹OCHA, Myanmar: Humanitarian Response Plan, January-December 2016, UN & Partners and Humanitarian Country Teams,

December 2015.<https://reliefweb.int/report/myanmar/2016-myanmar-humanitarian-response-plan-january-december-2016-enmy>

²²IDMC Myanmar<http://www.internal-displacement.org/countries/myanmar>

2.1: Political Background

Burma gained independence in 1948 and reeled under communist insurgency and experimented with a turbulent decade of parliamentary politics. Burma military, Tatmadaw assumed control during 1958-1961 and consolidated its control with a coup d' etat by General Ne Win in 1962. During his reign, Burma was virtually cut – off from the rest of the world. Demand for reintroduction of democracy in the country was brutally suppressed by the military who also deposed General Win. The power was to be exercised directly by State Law and Order Restoration Council (SLORC) under an authoritarian system of governance. The name of the country was changed from Burma to Myanmar. In 1989, Communist Party of Burma collapsed. This allowed the Tatmadaw to concentrate their campaign against the ethnic insurgents in the northern and eastern border areas of the country. Many ceasefires were agreed between the military and the insurgents during 1989-1995.²³

Afterwards, SLORC was replaced by yet another system known as State Peace and Development Council (SPDC). Certain reform measures in the political domain followed and League for Democracy was elected to govern. However, the transfer of power to the elected government was delayed and diluted. Finally, parliamentary system has been ushered in but there is a reservation of 25 per cent of seats for the military. The leader of the League, the long-time voice of the opposition, Aung San Suu Kyi could not become President due to the requirement in Myanmar's Constitution to debar people whose children's have foreign passport. Since she is married to a British citizen and her children have British passport, she was declared ineligible to be President. To overcome this limitation, a post of State Counselor has been created with her as the incumbent.

2.2: Internal Displacement

Internal displacement in Myanmar is not caused only due to armed conflict, especially in the eastern borderlands. Rather, “the shifting nature of conflict in

²³Ashley South, “Burma: The Changing Nature of Displacement Crises”, Refugee Studies Centre, University of Oxford, RSC Working Paper No. 39, February 2007.

Burma... has structured a range of inter-linked displacement crises”.²⁴ Ashley South has found it necessary to identify three main types of forced migration in and from the country: 1. Armed conflict-induced displacement; 2. State/society-induced displacement and 3. Livelihood/vulnerability –induced displacement. Much of the research on displacement has focused on eastern borders of the country, mostly because of possibility of access from Thailand. Research has also focused on displacements related to armed conflicts. There is a need to focus on non-armed conflict related areas too as extensive relocation of population groups has been carried out by the government ostensibly to facilitate development over the years since mid-1990s.²⁵ There is a direct element of coercion in these relocation programs.

It is important to make distinctions between displacement situations given the different time period and complexities. Also, different situation obtains in different parts of the country. The causative factors responsible for displacement are also different. For example, the Rohingya issue is concentrated in western Myanmar and the reasons for their displacement are different than those for ethnic communities like the Karens and the Shans. Ashley South and Kim Jolliffe have presented a typology of forced migration in Myanmar. In the context of IDPs, they have distinguished between IDPs in new ceasefire areas (EAG-dominated areas that are not formally demarcated; IDPs newly displaced by armed conflict; IDPs in long-established ceasefire areas; IDPs in government controlled relocation sites and IDPs in urban and peri-urban settlements.²⁶

IDP population estimates depends on how one tries to understand displacement. Thai-Burma Border Consortium (TBBC), a prominent organization involved with the Burmese refugees as well as IDPs had reported a total of 500,000 IDPs in eastern Burma in 2006. These included 287,000 people in ceasefire areas, 95,000 in areas directly affected by armed conflict (IDPs in hiding), and 118,000 people in government-controlled

²⁴Ibid. p.3.

²⁵ Ibid.

²⁶ Ashley South and Kim Jolliffe, “Forced Migration and the Myanmar Peace Process”, New Issues in Refugee Research, UNHCR, Research Paper 274, February 2015.

relocation sites.²⁷ Much has changed since then but the IDP numbers for the country is above 677,000 people.

2.3: Civil Strife

A number of Ethnic Armed Groups (EAGs) have been active in Myanmar over the decades. They have been engaged in armed conflict with the authorities and maintaining significant political authority in remote border areas. Since the 1970s, even though the physical hold of the insurgent groups have weakened but they continue to maintain strong association with the communities they represent. Tatmadaw's "four-cuts" counter-insurgency operations damaged the authority and hold of these groups to a certain extent but their presence and activities have not ceased. The "four-cuts" strategy was developed to deny insurgent organizations' access to civilian communities and support. This involved forcibly moving the perceived supporters and sympathizers from out of "black" areas where they could support the insurgents into "white" government controlled areas where they could not. Contested or mixed authority areas were designated as "brown". "On some occasions, "brown" or "black" areas were designated "free-fire zones" and civilians forced to flee for fear of detention, summary execution or other forms of violence".²⁸

Intense fighting in northern Myanmar broke out in 2011 and there were occasional disruption in southeast Myanmar as well. In western Myanmar, in the Arakan region, disturbances and displacement has been endemic and both in 2012 as well as in 2017, a very large number of Rohingyas were displaced and overwhelming number of these people have taken refuge in Bangladesh and some numbers also in India. Estimated number of people who remain internally displaced in Kachin and northern Shan states is about 96,400. About half of these people live in areas beyond government control where most international organizations do not have access. National and local NGOs have access to people who are living in camps.²⁹ Conflict between Myanmar

²⁷Ashley South n. 23. p.6.

²⁸ Ashley South and Kim Jolliffe, "Forced Migration and the Myanmar Peace Process", New Issues in Refugee Research, UNHCR, Research Paper 274, February 2015, p.12.

²⁹OCHA Humanitarian Response Plan 2016.

army and the Myanmar National Democratic Alliance army (MNDAA) in February 2015 led to the displacement of about 80,000 people. Most of those displaced crossed the border into China. Following the announcement of a unilateral ceasefire by MNDAA in June 2015, most of these people have returned. In October 2015, following a fight between the army and the Shan State Army North (SSA-N) about 6,000 people were displaced.³⁰

Myanmar government has initiated a process to achieve peace with numerous EAGs. Election of a military-backed semi-civilian government in November 2010 ended the monopoly of power of the military which had replaced the Ne Win regime in 1987. A coalition of 17 EAGs is involved in negotiations through the Nationwide Ceasefire Coordination Team (NCCT). Shan and Wa armed groups are involved in bilateral negotiations. Government wants to achieve a Nationwide Ceasefire Agreement (NCA). The ceasefire and the peace process is a good opportunity for the conflict-affected population to return.³¹ Many displaced people have started to return to their place of origin but the ceasefire is fragile. NCA negotiations have addressed refugee and IDP issues only in general terms and both the government and the EAGs are participating in pilot projects to resettle IDPs. However, instead of registering further progress, situation has deteriorated as a number of conflict areas have reopened in 2016. According to the UN Special Rapporteur on the situation of human rights in Myanmar, “[t]he displacement of minorities is one indicator of the degree to which their rights are respected, protected and fulfilled.”³²

2.4: Situation of the Rohingyas

A brief consideration of Rohingyas refugees needs to be presented given the nature of persecution they have suffered and the discriminatory practices adapted by the Myanmar government toward them. Situation of the minority

<https://reliefweb.int/report/myanmar/2016-myanmar-humanitarian-response-plan-january-december-2016-enmy>

³⁰ Ibid.

³¹ South and Jolliffe, n.28, p. 12.

³² Quoted in “Stakeholder report by the Internal Displacement Monitoring Centre (IDMC) to the Universal Periodic Review” mechanism established by the Human Rights Council in Resolution 5/1 of 18 June 2007 for consideration at the 23rd session of the UPR Working Group (2-13 November 2015) (Second Cycle) Myanmar 23 March 2015, p.3.

Muslim Rohingya community has been critical over the decades. Movements of the Rohingyas are severely restricted. Their flight into Bangladesh is usually through smuggling networks and they are vulnerable to human trafficking. The August-September 2017 flight of over 400,000 people into Bangladesh and some numbers into India builds on patterns on forced displacement of the Rohingyas. The 2017 August crackdown on these people are a continuation of attacks against them over the decades. They were deprived of nationality by a discriminatory Citizenship Law in 1982. In 1991-1992, Tatmadaw launched a brutal attack on the Rohingyas forcing them to flee to Bangladesh. Despite the reluctance of the refugees, most of them were repatriated to Myanmar in mid-late 1990s under an agreement which also involved the UNHCR. Amnesty International pointed out in 2004 how the Rohingyas “continue to suffer from multiple restrictions and human rights violations{Including} forced eviction and house destruction; land confiscation and various forms of extortion and arbitrary taxation including financial restrictions on marriages. Rohingyas continue to be used as forced laborers on roads and military camps.... In addition, the vast majority are of effectively denied Myanmar citizenship, rendering them stateless”.³³

According to a World Bank report of November 2014, Rakhine is one of the least developed areas of Myanmar, having the highest poverty rate on the country: 78 per cent as compared to 37.5 per cent nationally. According to OCHA, “inter-communal tensions in Rakhine are a result of historical tensions and issues of identity and ethnicity. These are fuelled by a combination of factors including chronic poverty, competition over economic resources, restrictions on freedom of movement, lack of documentation and discriminatory practices”.³⁴

Government refers to Rohingyas as “Bengali Muslims” and has denied them citizenship based on the discriminatory provisions of the 1982 Citizenship Law. Majority of the internally displaced people live in “long-houses” or collective shelters in Rakhine. During 2014, the government drafted the

³³Amnesty International, “Myanmar- The Rohingya Minority – Fundamental Rights Denied”, May 2004.

³⁴OCHA Humanitarian Response Plan 2016.

Rakhine state action plan. This includes measures to assist IDPs. It also provides for their permanent relocation to new sites and the delivery of relief to relocation sites. As per the IDMC, “It is not clear if the IDP’s right to freedom of movement will be respected in case of relocation, as the plan potentially discriminates against Muslim IDPs, and enforces a permanent separation of Buddhist and Muslim communities. As it is based on citizenship rights, the plan further discriminates against most IDPs in Rakhine state as they are stateless, leaving them once in a legal limbo”.³⁵

Under pressure from the international community, Myanmar has said that it would take back the refugees who have taken refuge in neighboring countries but certain “conditions” would apply. Government has not specified these “conditions” but there is a possibility that the repatriation would be linked to citizenship. How would it be possible for these stateless people who are debarred from citizenship to produce documents proving their nationality? Secondly, the refugees are not interested in return. Bangladesh government would nonetheless try to push for their repatriation. There is every possibility that these people would get relocated to government-controlled sites and their freedom of movement and access to services would be restricted. In such a scenario, these returnees are going to join the ranks of internally displaced people of the country. This is a frightening prospect for the refugees and a challenge to the resolve of the international community to find solutions to their situation.

2.5: The Return

Access to hitherto inaccessible areas due to conflict is now opening up for two reasons: the peace process and the private companies’ considering investments in agribusiness. In some cases, the displaced people are returning so as to preempt others from dispossessing them of their right over land. ‘In some cases, at least, IDP and refuge return may constitute a form of land rights protection’.³⁶ The contestation over land has been severe:

³⁵IDMC Myanmar, <http://www.internal-displacement.org/countries/myanmar>

³⁶ n. 28, p. 24.

During the years of armed conflict, in many areas where people had fled, land remained more-or-less vacant, as control was actively contested by the Myanmar army and the EAGs, and/or because of landmine contamination. In this sense, displaced communities have considered EAG's as protectors of their homeland, preventing the Tatmadaw or government from occupying abandoned settlements or farms. In other cases, the Tatmadaw would prevent EAG's and their supposed civilian supporters from re-accessing their lands and settlements by contaminating the areas with landmines, and/or setting up new camps nearby.³⁷

Peace process may open up avenues for negotiations at the local level about land tenure insecurity. Forced migrants may get repossession of their land or even offered new lands by the authorities. Those without land may need resettlement programs. Some joint projects for IDPs have been established between the government and KNU, KNPP and KIO, with the support of international agencies.³⁸ It will be necessary to reach convergence between the government authorities and local units of the EAGs to agree on land ownership.

The issue of provision of services is yet another factor in return of the displaced people. Since the displacement in most cases have been for a prolonged period, it is not necessary that the forced migrants would necessarily prefer return to land of origin as they have succeeded in securing opportunities in their areas of settlement. Many people have been working in different capacities in the area where they have fled to and it is not clear that their present position would be regularized in the area of return. This has led to splitting of the family members, some continuing in their resent place and others returning to claim their land and other properties.

A relevant question is when displacement comes to an end? Inter-Agency Standing Committee (IASC) states that “a durable solution is achieved when internally displaced persons have no longer any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement”. In the context of IDP return in Myanmar this understanding of the end of

³⁷ South and Jillafe, n.28, pp.23-24.

³⁸ Ibid.p. 25.

displacement may not be relevant as displacement has been a continuous process and the return has also happened many a times over for many people. There is no certainty that return would be sustainable. This is one reason why many a times return is undertaken by select family members while others continue to be located in their new settlement. Therefore, “in contexts, where people have been forced to move just once or a few times, this (IASC definition) may be a viable scenario, but it rarely reflects the reality of protracted displacement. Research indicates that displaced populations in and from southeast Myanmar has often moved dozens, or even several scores of times, sometimes over protracted period of several decades. Where individual or community has been displaced more than 100 times, over a period of up to half-a-century, what does it mean to return home?”³⁹

2.6: An Alternate Perspective on Displacement

The nature of displacement in Myanmar does not necessarily fit into different compacts that are in vogue from the perspective of international organizations and agencies engaged in assistance and protection of internally displaced in the country. Often, the political changes involving new leadership at the governmental level need not necessarily mean an alleviation of the sufferings of the people. Just because elections have been held and the National League of Democracy has come to power it would not end the causes and consequences of displacement. The humanitarian agencies and organizations may consider grant of access to the displaced people as significant but this approach fails to takes into the voices of the indigenous people and their alternative political perspectives.⁴⁰

Predominantly rural population of the country is less interested in “high profile issues singled by the international press” but more concerned about the local-level implementation of state policies.⁴¹ Hull considers national-

³⁹ Ibid. p.28.

⁴⁰ Hull Stephen, “ The “Everyday Politics” of IDP Protection in Karen State”, Journal of Current Southeast Asian Affairs, Vol.28, No. 2, 2009, Published by German Institute of Global and Area Studies, Institute of Asian Studies and Hamburg University Press, pp. 7-21.

⁴¹ Views of Ardeth Maung Thawngmung cited in Hull above, p. 9.

level political reform and the availability of access to the displaced people as not enough for addressing Myanmar's humanitarian concerns. This approach privileges "elite politics and perpetuate top-down models of intervention which marginalize local voices".⁴² His extensive studies in the Karen state has convinced him of the value of local resistance strategies adopted by the displaced as most effective IDP protection measure. He challenges the state-centric notion of "neutrality" and the attempts to marginalize "everyday politics".

Under the military rule, local military units were expected to "meet their basic logistical needs locally, rather than rely on the central supply system". This effectively meant that military was asked to source its needs from rural areas through means and methods that was oppressive. This included confiscation of lands from peasants, regular demands for money and forced labor. The non-state armed groups also relied on rural community and economy to sustain their operations to some extent. All this lead to rural improvisation and the villagers would often go into hiding. This "displacement into hiding represents a form of resistance to exploitative military rule and furthermore, reduces the resource base of local army units". Describing the strategies of the villagers, Hull writes:

In response to [] attacks, displaced villagers in hiding have adopted a range of strategies that support their efforts to evade state control. These include establishing covert hiding sites and hill-side farm fields in the forest, hiding food stores in preparation for expected displacement, accessing indigenous mobile health teams delivering ad cross-border from Thailand, setting up temporary schools in the forest to educate children, trading at clandestine "jungle markets" with villagers from SPDC-controlled areas, and utilizing advanced warning systems to relay information about SPDC troop movements and locations between displaced communities.⁴³

This form of resistance may not be unique to Myanmar as many situations of displacement in the world involve a struggle between the resilience and copying mechanism employed by people on the one hand and the military machine of the state. In Myanmar, as Hull notes when the resistance fails or is insufficient, villagers "may flee to IDP hiding sites, urban areas inside the

⁴² Ibid. p.9.

⁴³ Ibid. p. 13.

country, refugee camps in Thailand or seek work as migrant labourers abroad”.⁴⁴ The international protection regime prioritizes the capacity and responsibility of the national authorities in IDP protection but it is a moot question if this approach is suitable in the context of a “state-society conflict”. Hull concludes by maintaining that “Prioritisation of state initiatives also misses the opportunities for strengthening grass-roots protection networks that support long-term goals of peace-building and democratisation”.⁴⁵

2.7: Human Rights Perspective

Human rights NGOs have offered a persistent critique of Myanmar government’s policies and practices. They have accused the successive governments of trampling down people’s movement and violations of international law, principles and standards of conduct against ethnic minorities. Below we will briefly highlight a critical perspective recently articulated by a Tokyo-based group, *Human Rights Now* which speaks for the rights of the civilians of Kachin and Shan states.⁴⁶ A ceasefire in the Kachin conflict that started in 1962 was announced in 1994 but it broke down in 2011. The resumed armed conflict since then has led to forced displacement of over 100,000 civilians and there has been “widespread and illegal use of systematic rape, extrajudicial killings, torture, forced labor, land takings, landmines, child soldiers and other human rights violations” by Myanmar military. In his report “conflict-related Sexual Violence” to the Security Council, The UN Secretary-General Ban Ki-moon called on the government of Myanmar to “fully investigate and respond to current and historical human rights violations and abuses, including crimes of sexual violence”.⁴⁷ Civilians are often subjected to force labor as porters to carry weapons and provisions of the soldiers. They are also used as human minesweeper, guides in conflict areas and as sexual slaves. Civilians are often dispossessed of their land by security forces. Forcibly displaced people who are in the areas controlled by EAGs like KIA do not have access to aid and relief by international

⁴⁴ Ibid. p.15.

⁴⁵ Ibid. p.16.

⁴⁶ “Myanmar’s Human Rights and Humanitarian Violations in Kachin State and its Duty to Investigate, Prosecute, and Provide Victims with Remedies”, Human Rights Now, Tokyo, 27 October 2016.

⁴⁷ UN Security Council, “Conflict-related sexual violence”, S/2015/203, 23 March 2015.

humanitarian organizations as government as limited their access only to government-controlled areas. There is complete immunity for the security forces who are violating international humanitarian and human rights law. Their action may even be considered as constituting war crimes or crimes against humanity. The law gives immunity to perpetrators of human rights violations. According to *Human Rights Now* “Myanmar’s Constitution section 445 gives immunity from any “proceeding”, such as persecution, to “any member of the Government , in respect of any act done in the execution of their respective duties”. The clause has been applied by the military to all members of the military, soldiers and officers, for any action including criminal conduct. However, both IHL and IHRL have the general principle that legality in domestic law does not excuse violations of international law”.⁴⁸

2.8: Restitution of Land

The question of land, its possession and dispossession by the farming community is central to displacement issues in Myanmar. Myanmar’s people have suffered many decades of forced displacement and confiscation of their land. It is through a policy of land restitution that historic injustices may be rectified. In many post-conflict countries, restitution of land has been considered a progressive measure that can contribute to more durable basis for peace. Redressing past acts of confiscation of land has been attempted or still underway in diverse countries such as Bosnia-Herzegovina, Colombia, El Salvador and Hungary. Myanmar’s National Land Use Policy of 2016 has the potential to emerge as a significant gain from the democratic opening the country has made in recent years.⁴⁹ A number of government bodies have been set up to help steer the entire process of addressing the problem of land confiscation. Ethnic groups fighting the government forces have included issues related to land as part of their agenda in negotiations with the government. Peace processes currently underway in Myanmar are crucially tied up with the solution of the claims over land. An important Presidential Directive in 2015 has sought to curtail the propensity and practice of armed

⁴⁸ n. 45, p.6.

⁴⁹ See “Restitution in Myanmar: Building Lasting Peace, National Reconciliation and Economic Prosperity Through a Comprehensive Housing, Land and Property Restitution Programme”, Displacement Solutions and Norwegian Refugee Council, March 2017.

forces to confiscate land from farmers and at times leasing these lands to others. Besides, the military has always been exaggerating their need of land for various activities and the Directive seeks to limit such propensity.

There are no reliable figures regarding the land confiscated over the decades. Nor is there any map that can guide the process of locating, estimating and then retrieving the land for the purposes of restitution. A very large number of people in the country have already filled claims. The numbers of claimants are quite large and issues related to ownership are complicated. Many years and even decades have elapsed between the period of dispossession and the present possibility of restitution. Ownership pattern, availability of documents or otherwise and the present character of land are all issues that have a bearing on the question of restitution. A detailed study commissioned by Displacement Solutions and Norwegian Refugee Council and published in March 2017 on the restitution of land concludes that “a single, consolidated and legally consistent approach to restitution” should be taken toward all those whose land was grabbed and those who had to abandon land due to conflict and those whose land has been contaminated by land mines.⁵⁰

Concerns have been expressed by some groups skeptical of claims of the government to address these issues. For example, Human Rights Now, advocacy group acting on behalf of civilians of Kachin and Shan states has said: “There are significant problems with the program including capacity limitations; the fact that land may be divided or sold many times; and documents are often incomplete, lost or destroyed. Further there are concerns that the military not respect the government’s efforts and continue the practice and impede land reforms and restitution.”⁵¹ The possible opposition may also come from vested interests around land, represented both by private companies as well as by the ethnic insurgent groups who may not like certain aspects of the policy especially those aspects that would eventually dilute their hold.

⁵⁰ Ibid. Executive Summary, p. 5.

⁵¹ Human Rights Now, n. 45, p.5

2.9: Humanitarian Access

For many years, Myanmar refused to allow access to international and humanitarian organizations wishing to be involved to aid and support the needs of the internally displaced in the country. In recent years, the government authorities have been more amenable and humanitarian agencies have been granted permission in many cases. In 1999, Myanmar was considered to be one of the “tough nuts to crack” on issues related to internal displacement.⁵² Situation has vastly improved but government wishes to control access to the forced migrants, whether IDPs or returnee refugees. Regular access to the IDPs in government-controlled areas has been permitted but such access is tightly regulated in non-government controlled areas. Conditions are imposed on travel of personnel and usually there is considerable delay in grant of permissions. Government also does not allow access to areas where armed conflict is ongoing. Over time, local NGOs’ access to all areas has improved and it is through them that international agencies try to provide aid and assistance where a direct access is not granted. Much of the support for the displaced people especially on the eastern border areas is routed through the cross-border network between Thailand and eastern Myanmar. The issue of access depends on the situation and the “comfort level” of the authorities. In December 2016 OCHA reported that “Humanitarian access within and beyond the Government controlled areas dramatically deteriorated in 2016, reducing affected people’s access to humanitarian assistance as well as protection monitoring”.⁵³

United Nations has urged Myanmar to end violence against the Rohingya Muslims. UN Secretary-General Antonio Guterres has described the situation in Arakan as constituting “ethnic cleansing” as about one-third of the

⁵² See, “Tough Nuts to Crack”: Dealing with Difficult Situations of Internal Displacement, Working Paper by Roberta Cohen, Conference, 28 January 1999. https://www.brookings.edu/wp-content/uploads/2012/04/19990128_DifficultSituations.pdf

⁵³ UN OCHA, Myanmar Humanitarian Needs Overview 2017, 20 December 2016.

minority population of the province had to flee the country. He has called for the recognition of the right to return for everyone who had to flee.⁵⁴

MSF has called on the authorities to grant access to the distressed internally displaced population of Arakan. In a statement on 18 September 2017, MSF said that about 120,000 internally displaced people in central Rakhine are entirely dependent on humanitarian assistance as there are travel restrictions on these people. International staff is not being granted permission to travel to the affected areas and national staffs are afraid of working due to threats. Local NGOs have also been accused by Myanmar officials for “colluding with ARSA”. The statement quotes Benoit De Gryse, MSF’s Operations Manager for MSF in Myanmar that “Myanmar is moving towards a new modus operandi putting the delivery of humanitarian aid under the government’s exclusive control, which is likely to result in even more severe administrative and access constraints than ever”.⁵⁵

Conclusion

Overall situation of the displaced people in Myanmar has been improving but there are serious concerns about the longevity and sustainability of the peace processes and the resultant positive impact on the situation of the displaced. Though civilians are in formal control of the government, it is doubtful if they can pressure the military to give up on their entrenched position. The Tatmadaw is also represented in the parliament and it is not certain if they would allow any significant policy turn that disadvantages their hold and power. It is however correct that in the past few years a number of positive steps have been taken by the democratic government in favor of peace processes and for mitigating the sufferings of people. It is a big question if these initiatives and steps could be sustained. It seems all the gains the new civilian government had made past few years with the peace processes, more openness to the humanitarian organizations and a slew of legislative measures

⁵⁴[Reutershttps://in.reuters.com/article/myanmar-rohingya/u-n-chief-security-council-call-on-myanmar-to-end-violence-idINKCN1BO0B9](https://in.reuters.com/article/myanmar-rohingya/u-n-chief-security-council-call-on-myanmar-to-end-violence-idINKCN1BO0B9)

⁵⁵[MSF, 18 September 2017. http://www.msf.org/en/article/myanmar-international-humanitarian-access-rakhine-state-must-urgently-be-permitted](http://www.msf.org/en/article/myanmar-international-humanitarian-access-rakhine-state-must-urgently-be-permitted)

and executive action to remedy the past injustices including with the law on restitution have been squandered by the insensitive handling of the Rohingya issue. Marginalization of the Rohingyas is sought to be countered by armed action by organizations such as Arakan Rohingya Salvation Army. The government is within its right to respond to security challenges but it also has a duty towards nationals who cannot be disenfranchised and rendered stateless. Government has a responsibility for promoting reconciliation and securing peace in all the parts of the country. The peace dividend should not bypass the minority Rohingyas.

Section 3: Syria

Introduction

Armed conflict and war in Syria has generated a massive internal displacement crisis which has no precedence in the world. The country has the inglorious distinction of having the highest numbers of internally displaced people. The forced movement of people, across the borders into neighboring countries like Jordan, Lebanon, Iraq, Turkey, Egypt and also to various European countries has exerted a tremendous strain on the capacity of the refugee-receiving countries, affected and impacted their domestic politics and has drawn international actors into an extensive conflict in Syria that rages past about seven years. Millions of civilian caught in the conflict have fled to relative safety across borders but millions of people are trapped within the country, unable to access the borders and displaced in various parts of the country. The international community has been unable to respond effectively and decisively given the political division amongst the leading members of the Security Council. Some of the permanent members of the Council are themselves participant in the conflict process, siding with one or the other side in the conflict. About 6.3 million Syrian IDPs constitute the single largest IDP population of any country in the world. Though Colombia also has one of the largest IDP populations of the world, displacement in Colombia has been generated over decades, not as a result of one continuous series of development triggered by a civil war. The UNHCR estimates there are 4.53 million people in Syria who are hard to reach and are in besieged

areas, requiring assistance and protection. IDMC report points to the magnitude of the crisis:

Syria is now in its sixth year of an armed conflict and protection crisis with no end in sight. With four of the five permanent members of the UN Security Council actively engaged in hostilities, over half of the country's pre-war populations have been forced to flee their homes since the outbreak of the conflict in 2011, amounting to one of the largest displacement crises since World War Two.⁵⁶

3.1: Conflict Context

Peaceful protest and demonstration in support of the principles of accountability and transparency of Arab Spring in early 2011 in Syria was the trigger for the series of developments that culminated in a full-scale armed conflict engulfing the country. The arrest and ill-treatment of children who had called for the ouster of Bashar-al-Assad by the authorities in the Dara'a, a city in south Syria, galvanized protest across the country. Military laid a siege of the city and used repressive measures. The government interestingly lifted the emergency laws which were in operation for past 50 years. It also promised to reinstate nationality status to the Kurds who were stateless. At the same time, government allowed the military to use lethal force to quell the growing protest. A large number of cities – Baniyas, Tafas, Talkalakh, Rastan, Homs and Talbiseh – were besieged and machine guns were used to quell the anti-government protests.⁵⁷

The highhanded manner by which relatively subdued protest by youngsters was confronted by the Syrian government led to spread and consolidation of voices of opposition and resistance to the government. In August 2011, Security Council condemned Syrian government's use of force and violations of human rights. Opposition was mounted by Free Syrian Army which had the tacit support of the western countries. Soon, however, Islamists and jihadist also joined the resistance. These groups gained prominence quite fast with the support of majority population of the Sunnis and backed with financial resources of countries like Qatar and Saudi Arabia. Opposition

⁵⁶IDMC, Syria, <http://www.internal-displacement.org/countries/syria>

⁵⁷IDMC and Norwegian Refugee Council Report, "Syria: Forsaken IDPs adrift inside a fragmenting state", p. 3.

groups established their control over large swathes of Syrian territory, especially around the city of Aleppo and Idlib. A Kurdish armed group, People's Protection Units (YPG) established its sway in the northeast of the country. By July 2012, violence spread to Damascus, the capital city and as well Aleppo, economic hub of the country. What was initially considered "temporary and sparse" displacement, people fleeing to surrounding areas or nearby urban centres from conflict zones, soon developed permanence. By mid-2012, the ICRC declared that the "threshold for an armed civil conflict had been met".⁵⁸

Battle lines got drawn along sectarian lines, between the secular opposition (FSY, YPG) and the fundamentalist groups (ISIL, al-Nusra Front). A number of clashes between these groups further compounded the insecurity of the civilian population in the control of these groups. Minorities and foreigners were targeted by the fundamentalist groups in most brutal ways.

The Hezbollah of Lebanon and Iran supported the government of Bashar al-Assad. With the support of Hezbollah, Syrian security forces reestablished their control over areas bordering Lebanon. Russia, a traditional ally of the Syrian regime also started supporting the regime with military advisors and equipment. Russian vetoes were exercised 8 times to prevent Security Council action. Even China used its veto six times to shield the Syrian regime. In contrast, the western countries hesitated to extend all out support for the moderate opposition. President Barack Obama had issued a warning to the Syrian government not to "cross the red line". The threat was in the context of possible use of chemical weapons by the government forces. However, when reports emerged in 2013 of the Syrian army's use of chemical weapons, the US administration did not deem it necessary to follow on the threat. Instead, the administration decided to go by the assurance of Russia that it would persuade the Syrian government to dismantle its chemical weapons stockpile. This effectively meant that the West was ready to look the other

⁵⁸ See Shannon Doocy et al, "Internal Displacement and the Syrian Crisis: An Analysis of Trends from 2011–2014",

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4589969/>

way even when the government forces were using heavy artillery against the civilian population.

This stance demoralized the moderate opposition fighting the Syrian autocracy and emboldened the more determined, better equipped and well resourced Islamist groups challenging the government forces. Several considerations were involved. UK and Germany were not ready to join any international coalition that commits ground troops and involves more directly in the civil war. Also, the entry of the Islamic State (IS) forces against the government and the well-publicized stories of their inhuman ways and brutalities introduced an element of caution. It was found no less but rather much more important to address the growing clout and the expansion of the IS forces. Syrian government was constantly harping on the threat posed by the terrorists and how it is rather a choice between the Syrian regime and the opposition dominated by the IS and its different affiliates. The sustained victory of the Islamists was considered a greater threat and it was an open question if it is possible to counter both the Syrian government forces and the IS at the same time. President Obama possibly reasoned that Russia, Hezbollah and Iran have much more a stake in the civil war on the side of the government than the US and Western countries would have and the coalition of support to the government on the ground is overwhelming. It may not be possible to get involved in a decisive way and emerge as an arbiter of the outcome in the civil war.

In 2015, Russia decided to intervene directly to bolster support for Syrian government. Government forces were ceding ground and losing territorial control including some of the key cities. Russian intervention in the civil war helped turned the tide against the opposition forces. Russia justified its involvement citing the imperative to counter the listed terrorist forces as the IS and the al-Nusra Front. However, it emerged that the Russian air strikes were targeting the opposition stronghold of the moderates (even those being supported by the West) much more than those of the Jihadists. Involvement of Russia has meant that there is no possibility of a military intervention by the West in Syria as that would pit the Russian forces directly in combat. The Russian support was crucial in the major victory of the Syrian forces in retaking of Aleppo city in December 2016. The victory in Aleppo has more or

less dashed the hope of the rebels to overthrow Assad. This has also cemented Russia's role as a main player in the negotiations for a settlement as and when it materializes. As Tim Eaton has put it: "with the US and its western allies having ceded the initiative, it now appears that Western marginalization in Syria could leave Russia and Iran to negotiate with Turkey an eventual settlement to the war".⁵⁹

3.2: Non-intervention

The US and other western powers were also launching air strikes against the Jihadist stronghold. However, this also had the effect of strengthening the Syrian government's fight against the rebels.

A question arises why the US hesitated to intervene in Syria where thousands of civilians were killed and almost half of the country's population displaced. Anne-Marie Slaughter, a former official of the State Department had called for humanitarian corridors and safe haven to be established in Syria, especially in the border areas. She thought if necessary these measures should be established even forcibly. John McCain, a former presidential candidate also argued in favor of coordinated military airstrikes against the Syrian forces.

America under Obama, however, preferred a political settlement, provision of humanitarian aid and considered diplomacy more valuable than overt intervention. It was thought necessary to consider the "balance of consequences". This basically meant that an intervention may spiral into a conflict engulfing the entire Middle East. Intervention may even aggravate the conflict and would not aid in mitigating the sufferings of the people in any drastic way. The rise of the ISIL in Iraq and then into Syria where they were fighting the government forces upset the calculations. After all, the Syrian government was fighting the ISIL and weakening it may even strengthen the terrorist group which was massacring the minorities, aid workers and civilians on a regular basis. Any action consequence of which may benefit the

⁵⁹Tim Eaton, "six decisive points that changed Syria's war", BBC, 15 March 2017.

ISIL and other groups such as al-Nusra may indeed be counterproductive. The American interests were not directly impacted and therefore the cost of intervention would be difficult to justify especially when it was apparent that ground troops have to be committed. Besides, the lack of support from the key allies was another reason. Thirdly, the experience, both in Iraq and Libya were not salutary to an approach that privileges intervention in Syria. Lastly, the counterterrorism perspective, the overall significance of limiting the spread of IS was yet another reason. After all, the Syrian authorities were fighting the IS and the al-Nusra Front and it was not certain that downfall of Assad would not embolden them further. US had a very hard choice to make. While none of the choices were acceptable, in the absence of material gain and at a great cost, it did not make sense to intervene in a war outcome of which was uncertain.⁶⁰

3.3: Internal Displacement

Syria's civil war and the resultant refugee crises impacting the migration policies and the domestic politics of Western European countries made international headlines and led to a global outcry. But this highlight was at the cost of much more greater numbers of displaced within Syria. More worrisome was that aid workers and other humanitarian workers were not able to access many remote areas with significant number of displaced, in urgent need of emergency relief. Many aid workers have been killed in Syria. Escape from conflict and violence has been tough for the affected population and also dangerous. A large number of people in Syria have been killed en route while escaping to what they thought secure areas. As Mooney has noted, "most of the nearly 3 million refugees who have sought asylum in other countries were first displaced internally, en route to crossing a border". She says, "for the people forced to flee, the internal and external displacement crises are often intersecting parts of the same story".⁶¹

⁶⁰See Barbara Plett Usher, "Obama's Syria Legacy: Measured Diplomacy, Strategic Explosion", *BBC*, 13 January 2017.
<http://www.bbc.com/news/world-us-canada-38297343>

⁶¹ Erin Mooney, "The Inside Story: Internal Displacement in Syria", *Forced Migration Review*

Easy facilitation did enable a large number of displaced to flee to the neighboring countries but this access gradually closed and the numbers of IDPs steadily rose. Due to their proximity to areas of violence, IDPs have faced unprecedented vulnerabilities. Children have been used as human shield and recruited in large numbers in fighting especially by the rebel groups. The sectarian nature of conflict in the country has been a prime reason for the widespread displacement. People have moved away from areas dominated by people practicing different faith. Displacement is being used to depopulate the area and as a “tool of sectarian cleansing”. With the conflict affecting almost all the parts of the country, displacement pattern showed a distinct sectarian orientation as people “fled beyond their original governorates and moved wherever they had relatives in safer areas. Minorities sought safety from combat among their kinfolk. Kurds fled from Sheikh Maqsoud to Hasakeh under Kurdish control and Christians and Alawis fled central region, mainly for the coastal cities of Tartous and Latakia. Such patterns of displacement raised concerns that IDPs were possibly contributing to the creation of sectarian enclaves or consolidating ethnically homogeneous communities”.⁶² As early as November 2011, just into seven or eight months of the start of the conflict, the a report of the International Crisis Group (ICG) stated, ...” communal instincts and in certain instances, genuine threats are inducing citizens to resettle in like-minded areas, producing a worrying pattern of sectarian segregation”.⁶³

The Independent International Commission of Inquiry for the Syrian Arab Republic was established by the UN Human Rights Council in August 2011. The Commission has detailed:

widespread attacks on civilians” including: murder, summary executions, massacres, detention of civilians including children, systematic torture,

<http://www.fmreview.org/syria/mooney.html>

⁶²IDMC and NRC Report, “Syria: Forsaken IDPs adrift inside a fragmenting state”, 21 October 2014. p. 8.

⁶³International Crisis Group (ICG), ‘Syria’s Metastasising Conflicts’, Report No. 143, Middle East and North Africa, 27 June 2013.

<https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/syria-s-metastasing-conflicts>

rape and other sexual violence, recruitment and use of children in hostilities, enforced disappearance, hostage taking, sniper attacks, chemical weapons attacks against civilians, and targeted attacks on hospitals, medical personnel and journalists – committed with impunity by government forces as well as by non-state armed groups.⁶⁴

The extreme brutalities of Islamic fundamentalist groups such as al-Nusra, Tawhid Brigade, Islamic Front and ISIL against the minorities in the areas of their control forced the Christians, Turkmen and Alwawis to flee to safer areas. The siege of the cities, both by the government forces and the opposition created an extremely dangerous situation for the civilians trapped inside. Many of these besieged areas did not provide for even a window to reach humanitarian assistance from outside. The use of barrel bombs fitted with explosives and shrapnel by the Syrian authorities from December 2013 onwards was increasingly directed at urban areas and led to extensive casualties amongst the civilians. The June 2014 report of the Commission of Investigation accused the government forces of targeting areas populated by civilians including by the internally displaced people. By June 2014, “close to half of the entire population had fled their homes, with close to a third of the population displaced within Syria, the remainder having crossed into neighboring countries”.⁶⁵ Special Rapporteur on the Human Rights of IDPs maintained that the parties to the conflict have not only failed to protect the civilians from displacement but by targeting the areas of their refuge with the aim to evacuate the areas, they have denied the displaced people any protection whatsoever during displacement as well. The Rapporteur also noted that indiscriminate attacks on densely populated areas and forcible displacement, constituted a “tactic of war”.⁶⁶

The conflict has a cascading effect on Syrian economy. In many respects, the economy may never recover to the pre-conflict stage. Dependence on public

⁶⁴ See their 7th report, 12 February 2014, and 8th report, 27 August 2014,

www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx

⁶⁵ IDMC and NRC report, n. 62, p. 5.

⁶⁶ UN General Assembly, A/67/2013, 15 July 2013, Agenda item No. 69(a).
http://www.ohchr.org/Documents/Issues/IDPersons/A_67_931Syria_report.pdf

support whether from the government or from the international agencies has gone up and the situation may only worsen. Refugees and IDPs may not be able to return to their houses ever as thousands of buildings have been damaged. The Syrian forces have razed thousands of residential buildings in Damascus and other cities without any reason but possibly as a form of collective punishment. Human Rights Watch pointed out in January 2014 that such large-scale destruction of property including of archives and cadastral records would hamper any effort for documentation in a post-conflict situation. The situation of people in poor neighborhood to obtain tenure security would be particularly difficult.⁶⁷

Hospitals and medical personnel have also been targeted by both the sides. Physicians for Human Rights revealed that “government forces committed 90 percent of the confirmed 150 attacks on 124 facilities between March 2011 and March 2014, which have devastated the country’s health system”.⁶⁸ Healthcare personnel and facilities have been targeted as a tactic of war. This has driven healthcare and services to clandestine, underground and makeshift arrangements to avoid attack. Many doctors and other health personnel have “fled the country, are internally displaced, have perished in the conflict, or have been arrested, imprisoned, tortured or killed by the regime as they are deemed ‘enemies of the regime’ for providing assistance to the injured”.⁶⁹

Government of Syria is extremely sensitive on the issue of state sovereignty. In fact, it does not even recognize the category of IDPs. It prefers to use description such as “affected populations who have moved to other areas” and

⁶⁷Human Rights Watch, “Razed to the Ground: Syria’s Unlawful Neighborhood Demolitions, 2012-2013”, 30 January 2014.

<https://www.hrw.org/report/2014/01/30/razed-ground/syrias-unlawful-neighborhood-demolitions-2012-2013>

⁶⁸Simon Adams, “Failure to Protect: Syria and the UN Security Council”, Global Centre for the Responsibility to Protect, Occasional Paper 5, March 2015. p. 9.

⁶⁹Elizabeth Ferris, Kamal Kirisci and Salman Sheikh, “The Syrian Crisis: Massive Displacement, Dire Needs and a Shortage of Solutions”, Foreign Policy, Brookings Institution, 18 September 2013, p. 13.

“moved from their home”. This situation is supposed to be a result of “terrorism”. IDP locations have been depicted as “hotbeds of terrorism”.⁷⁰

Numbers and Figures

IDP numbers are invariably disputed. In the context of an ongoing war where displacement is a daily occurrence, it is all the more difficult to be sanguine about the numbers. As an IDMC report points out: “Monitoring internal displacement in Syria has been seriously hampered by the volatility of the frontlines and the intensity of the armed conflict. The scale and the nature of displacement have been additional challenges”.⁷¹ Therefore, data on displacement has remained ‘partial and often unverifiable’ In July 2012, Al Jazeera had reported 500,000 IDPs citing the estimate of Syrian Arab Red Crescent Society (SARC) whereas SARC’s estimate was 1.5 million IDPs and this was quoted by UN Special Rapporteur! In any case, the data related to an ongoing conflict generally becomes outdated. In the Syrian context, both refugees and IDPs have returned, sometimes to fight and sometimes under the impression that situation has improved. Then, on few occasion that ceasefire was implemented, unspecified numbers of IDPs returned, and soon thereafter they became internally displaced again. To quote the IDMC report: ‘the task of confirming IDP figures in the midst of a civil war continues to be a serious challenge. Four years into the conflict, the picture of displacement remains patchy, limited by access restrictions. The data collection process remains politically tainted by reliance on authorities who themselves played the central role in causing displacement’.⁷²

Migrants and Refugees in Syria

Apart from the refugee-flow from Syria and the internally displaced, the Syrian conflict has also impacted the large number of migrant workers who were working in the country. The number is huge as only a certain proportion of these workers were registered. Many of these people were in

⁷⁰IDMC and NRC report, n. 62, p. 13.

⁷¹ Ibid. p. 7.

⁷²Ibid. p. 7.

Syria as undocumented migrants. Besides, there were about 500,000 Palestinian refugees living in Syria. These refugees are registered with United Nations Relief and Works Agency (UNRWA). UNRWA estimated that at the end of August 2013 “approximately 50 percent of registered Palestine refugees in Syria had been displaced either in the country or to neighboring countries”.⁷³ The refugees have been under tremendous pressure to take side in the civil war. The UN Relief and Works Agency (UNRWA) which is mandated for the Palestinian refugees pointed out that “every Palestine refugee camp in Syria has been affected by the conflict and that their civilian character and neutrality are no longer respected. The destruction of homes in Palestine refugee camps, the violence, the loss of livelihoods and the exhaustion of savings and assets have forced many to flee their communities. Most Palestine refugees have become internally displaced persons (IDPs) and have been turned back by border officials when seeking protection in neighboring states”.⁷⁴

3.4: UN and the Syrian Conflict

The Syrian conflict has exposed the limitations of the Security Council. Instead of a resolute stand against mass killings of the civilians and even the use of chemical weapons, the Council prevaricated. Its permanent members were deeply divided and despite a continuous preoccupation, the Council was unable to either negotiate a political settlement or take specific action. The doctrine of Responsibility to Protect which was meant to be invoked in regard to atrocity crimes could not gain acceptance given the steadfast refusal of Russia which was often also joined by China. Repeated veto exercised by the two countries in fact strengthened the immunity of the Syrian authorities and convinced them that international intervention cannot deter them from achieving a military resolution of the conflict against the rebels and other opposition. The progression of the conflict and especially the use of airstrikes

⁷³UNRWA, Voices from Syria,

<http://www.unrwa.org/voicesfromSyria>

⁷⁴ Ibid.

against opposition held areas targeting the civilians in fact saw an escalation after each stalemate in the Security Council.⁷⁵

The UN Human Rights Council published nine major reports on systematic and widespread violations of human rights in Syria. It argued that pro-government forces “continue to conduct widespread attacks on civilians, systematically committing murder, torture, rape and enforced disappearance as crimes against humanity”. The forces have also committed war crimes. Some of the armed opposition groups have also indulged in crimes including “murder, executions without due process, torture, hostage taking” and other violations of international humanitarian law. Commission of Investigation has even argued that it is the Security Council which “bears responsibility for allowing the warring parties to violate these rules with impunity”.⁷⁶

Kofi Annan was appointed joint UN-Arab League Special Envoy to find peaceful means to arrive at an agreement. This appointment was made with the consent of the Syrian government. Annan Plan consisted of recommendations to implement a ceasefire, withdrawal of government troops and tanks from cities, release of political detainees, freedom of movement of journalists, freedom of association and the right to demonstrate, provision of humanitarian assistance to besieged civilians and initiation of political negotiations. Instead of ceasefire, attacks continued. The Annan plan could not be implemented and later, Annan resigned his responsibility.

Security Council also attempted to put together a UN Supervision Mission (UNSMIS) in 2012. But the presence of the Mission could not be established throughout the country. The Mission was to oversee the implementation of the ceasefire but due to the obduracy, delay and even opposition of the government, UNSMIS was unable to establish its presence and authority. Norwegian Robert Mood who headed the Mission later pointed out: “my deployment was unarmed, had a weak mandate, followed passive rules of engagement, and operated within a political six-point plan that was challenging to translate to field realities without full commitment from all

⁷⁵See, for a detailed review, Simon Adams, n. 68.

⁷⁶Ibid. p. 9.

parties, including the UN Security Council”.⁷⁷ The mission was forced to suspend its activities within months of deployment.

After the failure of the Annan Plan as well as the withdrawal of the UNSMIS, political negotiations were given yet another try through the “Geneva Process” in 2014. This was also a non-starter and Lakhdar Brahimi who had replaced Kofi Annan as the joint UN-Arab League Special Envoy also resigned. The impunity with which the Syrian authorities were carrying out torture and extermination of detained political supporters of the opposition groups had led to an international outcry. A loud demand to refer the Syrian authorities to the International Criminal Court (ICC) was strongly voiced. An initiative of France to this effect was vetoed by Russia and China in the Security Council. France has started arguing that the veto should not be used by the permanent members when the issue relates to atrocity crimes. There is a growing recognition of this demand at the international level. However, none of these has deterred the Syrian authorities or for that matter its influential backers.

The failure of the Security Council to take a unanimous decision and undertake or authorize decisive action in Syria led the General Assembly to step in. The Assembly has by substantial majorities deplored the Council’s inability to find a political solution, both in 2012 and 2013.⁷⁸ Most of the UN members have asserted the need for stronger action, both in the Council as well in the Assembly. The foreign minister of Guatemala in the course of a debate in the Council said:

Non-intervention in the internal affairs of sovereign states and the respect for their territorial integrity are cardinal principles of our foreign policy. But we also acknowledge the obligation of all States to observe certain norms of conduct in relations to their own populations... That is why, in an era in when the principle of the Responsibility to Protect is being questioned, we are not ashamed to affirm that, with some nuances that we have explained in other forums, we support the principle.⁷⁹

⁷⁷Ibid. p. 12.

⁷⁸Elizabeth Ferris et al, n. 69.

⁷⁹Cited in Simon Adams, n. 68, p.?

Security Council adopted Resolution 2332 on 21 December 2016 and demanded that “all parties, in particular the Syrian authorities immediately comply with their obligations under international law, including international humanitarian law and international human rights law as applicable”. The Resolution requested the “Syrian authorities to expeditiously respond to all requests for cross-line deliveries submitted by the United Nations and their implementing partners and to give such requests positive consideration”. Resolution maintains that “*the* situation will continue to deteriorate further in the absence of a political solution to the Syrian conflict”, and demanded “a Syrian-led and Syrian-owned political transition”, to “end the conflict in Syria”.⁸⁰

Russia's Position

It is true that Russia repeatedly blocked all the resolutions of the Council that could have been binding, either allowing for a determination under Chapter VII of the Charter or even one that could be the basis for an intervention by interested coalition of states. The interests of Russia and its motivation, however, need to be analyzed carefully. Russia is alarmed to any possibility which strengthens the Islamist extremists as that would also negatively impact northern Caucasus. Secondly, Syria and its rulers have been traditional allies, in fact one of the very few in the region and it does not serve Russia's interest to help overthrow the Syrian regime. Besides, Syria has been one of the top importers of Russian military hardware. Though Russia had backed the Annan Plan and later it had convinced the US of its intention to get Syria dismantle its chemical weapons stockpile, President Putin would not commit to any action that would jeopardize the government of Syria in any drastic way. So much is the extend of Russian commitment to Syria that it decided to actively participate in the war on the side of Syria in 2015 when the regime looked vulnerable on the face of sustained territorial gains of the rebel forces.

⁸⁰Security Council Resolution 2332, 21 December 2016.

<https://www.un.org/press/en/2016/sc12651.doc.htm>

3.5: Humanitarian Access

By late 2013, more than 25 percent of Syria's population was displaced, as refugees or internally. Over the last three years, the numbers have steadily climbed, with about half of the population displaced. It has been exceedingly difficult for the humanitarian actors to reach relief and aid to the displaced civilians. The UN OCHA has estimated that more than 11 million Syrians are in need of humanitarian assistance. In October 2013, President of Security Council had issued a statement emphasizing "the obligation to distinguish between civilian populations and combatants and the prohibition against indiscriminate attacks". The statement pointed out that Syrian authorities have the primary responsibility to protect their populations and urged all parties to facilitate safe and unhindered humanitarian access.⁸¹ In February, the Security Council passed a resolution by unanimous vote in the same vein.

Governmental regulation of aid for distribution to the civilians and the crumbling infrastructure to enable aid to reach various areas has been a serious problem. Government did not allow the local NGOs to work in government-controlled territory and humanitarian organizations need to be authorized to distribute emergency relief. The numbers of local groups allowed to work with humanitarian organizations are limited, and they operate at full capacity. The humanitarian actors have limited reach. However, civilians have obtained aid and assistance from three sources: the Syrian diaspora, countries "sympathizing" with the opposition (Saudi Arabia, France, Turkey, Qatar and others) and political and religious solidarity networks".⁸² Aid is vulnerable to targeted bombings. Russian airstrikes in December 2015 in northern Syria "paralyzed various aid routes, which have been repeatedly dysfunctional both within Syria and across its border due to crumbling infrastructure from attacks. The fragile and strictly regulated aid network thus creates a situation in which access to services is simply not consistently available by formal or legal means, not only within Syria"⁸³ but also for the millions of refugees in Turkey, Lebanon, Iraq and other places.

⁸¹Simon Adams, n. 68, p. 18.

⁸²MSF 2013 in Cited in Molly S. Burns, "Economic Consequences of Conflict, displacement and Humanitarian Aid: Implications for Syria", International Development, Community and Environment (IDCE), Paper 69, Clark University, p.16.

⁸³ Molly S. Burns, Ibid.

International organizations have mostly worked through Syrian Arab Red Crescent Society in the country. Humanitarian hubs have also been established in Homs and Tartous. There have been “inter-agency cross-line convoys into areas which had previously been accessible. Security-related impediments to access include active fighting and military operations, closure of key access routes and formal and informal checkpoints. In addition, an increasing number of humanitarian workers and UN staff members have been killed, injured or kidnapped and attacks on goods and facilities including UN vehicles have multiplied. The world Food Programme was unable to access its warehouses in Damascus for a month due to fighting in the area”.⁸⁴ Enforced besiegement of areas has been resorted to by both the government forces as well the opposition groups. Both sides have cut off access to areas thought to be dominated by the forces of the other side. In between, the civilians have been left to live a miserable life. As usual in other contexts and situations of displacement, areas that need humanitarian assistance much more and on an emergency basis are not easy to access. In the context of Syrian conflict, deliberate strategy of both sides has been to obstruct and try to deny assistance and support to areas controlled by the other side.

The role of the United Nations aid agencies has been criticized by international NGOs. The government was obstructing aid but it was considered as if it is a “genuine partner”. UN agencies collaborated with the Syrian government on the Humanitarian Assistance Response Plan (HARP) and Syria Humanitarian Assistance Response Plan (SHARP) which failed to take account of the need of civilians and IDPs in rebel-held areas. These plans were “Prepared in Coordination between the Syrian Government, United Nations System and Other Humanitarian Actors in Syria” as per the UN OCHA.⁸⁵

In December 2013, MSF criticized UN agencies for “giving up efforts to negotiate cross-border access to populations in opposition areas invoking the risk of government reprisals against their activities in Damascus”.⁸⁶

⁸⁴Ferris, n. 69, p.16.

⁸⁵See OCHAhttp://www.who.int/hac/Revision_2013_Syria_HARP.pdf

⁸⁶MSF Statement of 18 December 2013.

<http://www.msf.org/en/article/syria-urgent-need-cross-border-aid>

According to Dr Joanne Liu, MSF's International President "If the Syrian government remains the main channel for the overwhelming majority of international humanitarian aid, millions of people will continue to be deprived of adequate assistance". The MSF statement also noted:

U.N. agencies and international organisations are subject to tight controls imposed by the Syrian government, which limits or prohibits the distribution of humanitarian aid — particularly medical aid — in opposition-controlled areas. These obstacles have led to a total blockage of humanitarian aid for people living in enclaves controlled by opposition groups and surrounded by government forces, such as in the Ghouta region. Furthermore, the five to seven million people living in opposition-held territories close to Syria's international borders receive no medical aid and minimal material assistance from Damascus, underscoring the urgent need for increased cross-border aid deliveries.⁸⁷

It was only in July 2014 that UN first delivered relief to rebel-held areas when a convoy of nine trucks crossed into Bab Al-Salam into Syria from Turkey. The latest development on the issue of humanitarian access to Syria involves the arrival of UN supplies in Deir-ez-Zor city on 14 September 2017. The city was besieged by ISIL for three years. The supply would help approximately 93,500 on an immediate basis.⁸⁸

According to OCHA, as of August 2017, 540,000 civilians are living in 11 besieged locations in Syria and they are in need of humanitarian relief. 4 million "people in need live in hard-to-reach areas that humanitarian actors are unable to reach in a sustained manner through available modalities". OCHA has also pointed out that following the adoption of Security Council resolution 2165 in 2014, the UN has conducted more than 467 cross-border convoys to reach assistance.⁸⁹

⁸⁷ Ibid.

⁸⁸ OCHA Syria: United Nations aid supplies arrive in besieged areas of Deir-ez-Zor city, <http://www.unocha.org/country/top-stories/all-stories/syria-united-nations-aid-supplies-arrive-besieged-areas-deir-ez-zor-city>

⁸⁹OCHA Syria

<http://www.unocha.org/syrian-arab-republic/syria-country-profile/about-crisis#>

3.6: Syrian Refugees

A brief discussion and analysis of the situation and condition of the refugees from Syria may be considered. Jordan, Lebanon, Turkey, Iraq and to some extent Egypt have hosted Syrian refugees. The Western European countries have also admitted large number of refugees especially in the light of restrictive admission policies they have been following past more than two decades.

Lebanon

Jordan and Lebanon are relatively smaller countries and it is really difficult to accommodate huge numbers of refugees. Both aspect, political stability and economic consequences, need to be weighed. In Lebanon, approximately out of every 5 Lebanon citizens, there is a Syrian refugee. Lebanon had been quite generous in refugee admission. It earned appreciation for its non-encampment policies for the refugees. But as a recent study points out: “closer scrutiny ... suggests that these policies were not the result of any particular, intentional Government approach to Syrian refugees, but are rather symptomatic of the current political stalemate. This impasse within constitutional institutions has paralyzed public policy on Syrian displacement, and in fact led to the Government having no strategy at all to responds to the influx of refugees in the early stages of Syrian displacement.⁹⁰ Over time, the country has attempted to put in obstruction to admittance and started on a course to gradually decrease the number of refugees. It should also been noted that Hezbollah, the influential political player and a significant armed group has been directly supporting the Syrian regime. In fact, its fighters have also joined the civil war on behalf of government forces. The General Security Office in Lebanon which looks after border management is close to the Syrian establishment.

⁹⁰For a detailed consideration See, Maja Janmyr, “Precarity in Exile: The Legal Status of Syrian Refugees in Lebanon”, Refugee Studies Quarterly, Vol. 35, 2016, pp. 58-78.

Jordan

Political stability of countries like Jordan and Lebanon has been directly impacted by the refugee flow from Syria. Jordan has seen “dramatic and massive influx of refugees and the growing importance of Jordanian –Syrian border in terms of movement of weapons and fighters, including jihadists, into Syria”. FN Ferris, p. 25. Except for the Palestinians refugees in Syria, Jordan has been more than welcoming of the Syrian refugees. The Syrian opposition, especially Free Syrian Army (FSA) uses Jordanian refugee camps for various purposes. However, the refugees are not only settled in camps, they are also dispersed among local communities in great numbers. Ferris and colleagues note: “Like the situation of the internally displaced Syrians, the situation of Syrian refugees in Jordan is not static. People are constantly moving, from the camps to the towns, sometimes returning to the camp when they cannot pay rent. And thousands of Syrian refugees have returned to Syria – some to fight, some to check their homes, some because they have heard it is now safer”.⁹¹

Turkey

Though Turkey and Syria had enjoyed comfortable relationship in recent past, the civil war with all its attendant consequences has polarized the relationship. Turkey had called for stepping down of Bashar and went to the extent of recognizing the Syrian National Council as the representative of the opposition in Syria. Turkey openly supports the opposition and is an active player in organizing support for them. Government of Recep Tayyip Erodgan has earned the opposition of his citizens for antagonizing Iran, Iraq, Hezbollah as well as Russia by the government’s anti-Assad position. Turkey is accused of supporting radical salafist groups in Syria. A large number of Syrian refugees mainly Sunni Turks and Sunny Arabs have found refuge in the country. The ethnic-religious differences in Turkey have been exacerbated by the policies of the government which is seen to be asserting its Sunny identity. These developments “raise concerns that the crisis in Syria and the

⁹¹Ferris, n. 69, p. 28.

Turkish government response could complicate minority Alevi and majority Sunny relations in Turkey”.⁹²

Another major issue is the Kurdish question. The Kurds are a significant minority in Turkey and generally have been at odds with the government. Government’s repression of the Kurd population especially in the backdrop of the secessionist struggle of Kurdish armed groups has been a source of perennial instability in the country. Millions of Kurds have also been displaced. The Syrian civil war in which the Kurds are also a player is having ramifications for the position of the Kurds in Turkey. Most of the Syrian Kurds went to Iraq as refugees in areas dominated by the Kurds there. Turkey was not welcoming of the Syrian Kurds but it was also necessary for Turkey to ensure that they remain part of opposition to the Syria government.

Turkey has granted temporary protection to the refugees. A large number of refugee camps have been set up on Turkey-Syria border. Many international NGOs are working in these camps which are along the southern border of Turkey and inside northern Syria. A large number of refugees are also living outside the camps. The country may have an open door policy towards the refugees but Turkish officials are not sure how long they would be able to sustain the economic costs and burden of the refugees. Given the growing numbers of refugees, the government decided to limit entry and this has led to many makeshift camps for the IDPs along the border.

Iraq

Iraqi Prime Minister Nouri al-Maliki has admitted that terrorism and sectarian violence in Iraq are also linked to Syria: “The internal situation in Syria is playing a major role with what’s happening in Iraq”.⁹³ Overwhelming number of Syrian refugees is in Kurdistan Regional Government (KRG) area in northern Iraq. This has important regional dimension as the leaders of the KRG are also positioning themselves not only

⁹²Ibid. p. 35.

⁹³Cited in Ferris, n. 69, p. 30.

as the leader of the Iraqi Kurds but of other Kurds as well. This definitely would strain ties with Turkey. Iran also has sizeable Kurd population. The Kurds may very much like to realize the dream of a separate sovereign state encompassing the Kurd dominated areas in the adjacent countries.

Egypt

Egypt did allow Syrian refugees to enter its territory in 2012. Refugees were given three months visitor visas upon arrival which could be extended every six months. However, with the ouster of Egyptian President Muhammad Morsi, the situation of the Syrian refugees became precarious. According to Ferris, “Syrians were [subjected] to a full-fledged state media campaign against them, violence, destruction of Syrian-owned businesses, and increased arbitrary detentions, including of asylum seekers and legal residents. Syrians have been accused of joining sides or even taking up arms against Egyptian Muslim Brotherhood in Egypt’s political unrest”.⁹⁴ All this led many Syrian refugees to leave Egypt and some of those have even gone back to Damascus.

Observations

Syrian conflict is unique in many respects. The post-Cold War consensus amongst the permanent members of the Council is now virtually over. Secondly, the civil war and the conflict are for the control of government authority. Apart from the involvement of non-state armed groups pitted against the government, international political actors, Western countries and Russia, are supporting opposing sides. They, however, are also cooperating to some extent in regard to military measures against ISIL. Thirdly, determination of Bashar to hold on to power in the country has led him to adopt extreme forceful means including the use of globally banned chemical weapons against opposition. So even if there is difficult consensus in the Council on some agreed principles, effective international action inside Syria is almost impossible. While humanitarian action would get support and some measure of assistance to the people trapped within the country may receive a fillip, actual implementation of Council’s expectations may not fructify.

⁹⁴Ibid. p. 43.

Few important issues that have characterized the discussion on the impact of the large Syrian refugee numbers may be pointed out. Syrian civil war has impacted political stability and domestic politics of the refugee hosting states. Though it is a civil war in Syria, a host of actors, nation states as well as transnational groups such as ISIL are involved. Saudi Arabia and Qatar have been actively backing the opposition. Turkey is doing the same. On the other side we have Hezbollah in Lebanon, Iran and Russia who are firmly supporting the Syrian government. The Western countries are in support of the secular opposition to Bashar's government but they are equally determined to obstruct and eliminate the ISIL and al-Nusra Front who are in the frontline of opposition to government forces. In a way, the Syrian civil war is being played out at the regional and indeed at the international level. Thirdly, the Western countries who agreed to host Syrian refugees find their domestic politics significantly impacted. The grant of asylum to the refugees has led to vociferous opposition and in quite a few countries far right groups have mobilized public opinion against immigration policies of their governments.⁹⁵ In contrast to the European countries, Syria's neighbors have bore the brunt of refugee influx and a burden-sharing mechanism to defray the cost and compensate these countries is highly needed.

Conclusion: State Practices of Turkey, Myanmar and Syria

This Chapter analyzed the conflict context, displacement crises, national and international responses, issues related to humanitarian access and conditions of the internally displaced people in Turkey, Myanmar and Syria. We have also briefly touched upon the issue of the refugees, in the context of Myanmar and Syria. Turkey has emerged as a refugee-hosting state whereas both Myanmar and Syria are refugee-producing states. The inter-connection between refugee-flow and IDPs is direct in the case of Syria. In the context of Myanmar, both aspects are related though different regions within the countries have different manifestation of the relationship. All the three countries are extremely sensitive over the issue of state sovereignty. Turkey had long denied existence of a substantive IDP population. Myanmar controls

⁹⁵See Nicole Ostrand, "The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom and the United States", *Journal on Migration and Human Security*, Vol. 3, No.3, 2015, pp. 255-279.

access to the internally displaced and permits aid and assistance to its displaced nationals only through the mechanism set up and monitored by its officials. Syria is averse to description of the displaced civilians as IDPs and prefers to see the problem from the standpoint of its security being engendered by “terrorist” groups whose activities have led people to “move away from home”. In all the three countries, internal displacement has resulted largely as a consequence of security policy adopted by the ruling establishment. Largely, governments themselves have been responsible for generating displacement. In Turkey and to some extent in Myanmar, displacement is a result of government’s “anti-secessionist” military operations and mostly directed against the minorities. In Myanmar, it is also due to the arbitrary and discriminatory practices resorted to by the government against minorities, whether religious or ethnic minorities. In the case of Syria, priorities of regime survival have dictated a heavy handed approach to localized disturbances which snowballed into a major armed conflict. All the three countries studied in this Chapter have a “strong” government and as a result despite these countries generating significant displacement, international community has not been able to respond to the plight of the internally displaced and other conflict-affected civilian population. While Turkey was moving in the direction of some reform and attempting to reach accommodation with the internally displaced people, the course of developments in domestic politics has overturned these initiatives over the last couple of years. Similarly, Myanmar which was engaged in negotiations for peace with various disaffected ethnic communities has squandered the gains with its inhumane handling of the minority Rohingyas. Both Myanmar and Syria remain protected from enforcement action or from the implementation of any international obligation to uphold Responsibility to Protect due to the support they have from two of the permanent members of the Security Council, namely, Russian Federation and China. This however has not absolved them from international scrutiny and condemnation. The international norms protective of civilian population and internally displaced have not weakened. Rather, the ruthless and brutal ways of both Myanmar and Syria have further reinforced the imperative of human protection principles and commitment to the rights of the internally displaced.

Conclusion

The examination and analysis of the wide scope of this research work has revolved around the issue of appropriate international policy for protecting the human rights and affording protection to the internally displaced. The work has been carried out in relation to four major research questions and a hypothesis advanced to be tested through examination of relevant material and an understanding and examination of state practices. The content has been presented in six different but interconnected Chapters with each of the Chapter content distributed in sections and sub-sections. The content was selected based on their possible exposition of the problems and research questions raised. We shall attempt to summarize the key findings in respect of analysis of the content of the Chapters and then specifically address the research questions raised and the hypothesis advanced.

Forced Migration and Refugee Regime

Chapter 1 surveyed the field of forced migration in order to contextualize the problem of forced displacement and highlight the situation and conditions of the various categories of affected people. The focus was on an expanded understanding of forced migration both as a field of study as well as for underlining the need for protection and assistance for the victims. The conflict-induced internal displacement is a direct byproduct of armed conflicts and a general disinterestedness in upholding the protection regime for the regime. Both the context and content of refugee regime has evolved in the last few decades. The underlying reasons involve a sharpening of ideas related to protection of state interests - political, economic and strategic- under threat from a burgeoning refugee population. The various attempts to contain refugee flows in an era of “donor fatigue” necessitate adoption of policies and measures that prioritizes “in-country protection”. A positive co-relation between the erosion of refugee protection principles and the phenomenal growth in the number of internally displaced can be seen. This, coupled with an unprecedented unraveling of state boundaries and armed challenges to existing political regimes across continents, makes forced displacement within the national borders catapulted to a global crisis requiring adjustments of international policies and a reordering of the existing mechanism for

international peace and security. The crisis of internal displacement and the global attention to the conditions of the internally displaced persons especially in the light of a concern for human protection and for the principles of human rights therefore justifiably becomes a matter of international policy. Both international law and humanitarian principles combine to synergize focus on the conditions of the internally displaced and generate a movement to address their protection and assistance needs.

Armed Conflict and Displacement

The transformation of armed conflicts into complex and massive emergencies in more recent decades has been possible due to easy availability of weapons of destruction, transnational support base of many armed groups and employment of a deliberate military strategy to create panic, flight and displacement. The plethora of intra-state conflict is sustained by a strong ethnic/political identity and is often secessionist in nature. The inability of many governments to effectively stem the challenge of non-state armed groups to its authority has further compounded the issues involved. Civilians are the primary victims of violence and conflict. The non-state armed groups with distinct ethnic identity and political goals have also emerged as agents of persecution against members of other ethnic groups and political opponents. Chapter II attempted to capture the magnitude of the crisis of internal displacement, largely propelled by devastating armed conflicts and the inability of the national sovereign authorities to contain the resultant violence and displacement of civilians. The protracted displacement as a consequence of deadly armed conflicts in 7 countries – Afghanistan, Iraq, Democratic Republic of Congo, South Sudan, Nigeria, Ethiopia and Yemen- was also analyzed. We also found how governments have been an active agent in these conflicts and how displacement is linked to the question of state survival and regime interest.

The international responses to these crises and their consequences have also evolved, in a robust direction. The conceptualization of sovereignty as entailing responsibilities toward the citizens has significantly impacted the international response. International humanitarian and human rights laws have been creatively interpreted to accentuate national obligations to respect international law and the fast developing norm of protection of civilians.

Urgency in this respect has been upheld by the UN Security Council in linking refugee-flows and internal displacement with maintenance of international peace and security. The developments in the international response have been strengthened by the Guiding Principles on Internal Displacement drafted in various stages with the encouragement of UN Human Rights Commission and the UN General Assembly. The Guiding Principles have become the new international norm for the protection of and assistance to the internally displaced people. The Principles advantage the role of the national authorities but also enjoin an obligation on them to accept international humanitarian support to redress the sufferings of the affected population. The Principles endow the internally displaced with a set of rights that increasingly would find favor in national policies and laws irrespective of the prevarication of the authorities concerned. Their unwillingness to uphold their obligations would invite international humanitarian action. In case of an inability to protect the displaced and provide for their assistance, the national authorities can request for international assistance which they should facilitate. The realm of international action, both humanitarian as well as in the form of intervention, may possibly open up if national authorities fail their responsibilities.

Understanding Humanitarian Intervention

Chapter III analyzed the problematic of humanitarian intervention especially in the light of the publication of the ICISS report on R2P, the repeated pronouncements of the United Nations to confront atrocity crimes and the regular reports of the Secretary-General on protection of civilians. These developments have propelled forward the movement for institutionalizing action for the protection and assistance to the internally displaced. The endorsement of the World Summit Outcome in this respect is a definite and positive achievement. These pertinent developments constitute the backdrop for understanding humanitarian intervention for human security purposes and for improving the conditions of the IDPs.

Theoretical approaches in IR have enlightened the subject of humanitarian intervention and international norm creation. The interplay between state interests and international norms emphasizing state responsibility are well conceptualized by the Constructivists. Even while the direction of

international action to promote human security and to protect the displaced people exemplifies the principles of liberal internationalism, the direction of this movement is not straightforward. Considerations of state interests are no less paramount. These interests are not necessarily defined as material but are increasingly couched in negative terms. It is not about what the intervening power would gain. Rather it is much more about what it may lose by intervening. The norm of humanitarian intervention is not powerful enough, not as yet to accept ethical considerations and moral principles as also constitutive of state interests. However, when these legitimate considerations are in harmony with international consensus, principally represented through a Security Council authorization, and the price of intervention in terms of troop and resource commitment is not prohibitive, the translation of norms into action may well materialize. This approach builds on a broader understanding of ethical moorings of realism and the dynamic nature of what constitutes state interest.

International Arrangements

Chapter IV reviews the entire system of international protection and assistance that has developed in the course of last two decades. Never was the severity of armed conflicts in the world and its attendant feature displacement so pervasive and complex, and it was never before that such a wide and varied system to protect the displaced population put into operation at the international level. These developments have given rise to a new discourse of protection and assistance for the civilian population overwhelming numbers of whom are desperate victims of displacement. The system of protection is being regularly “upgraded” even while the international capacities to respond to multiple crises are under tremendous strain. The United Nations is playing a very encouraging role, with its norm-setting resolutions, exhortations for cooperation and standardization of responses. The UN agencies have undertaken specific role and responsibilities to mitigate the sufferings of people and provide a measure of support and protection for people trapped within their borders. Non-UN international organizations like the ICRC as well as the MSF, together with multitude of relief, cooperation and solidarity organizations at the international level, joined by civil society and non-government organizations at the national level, are all contributing to protection and assistance needs of the displaced people.

However, there are significant gaps as evidenced by numerous reports. Aid and support cannot reach a large number of people due to the hostile or indifferent approach of the national authorities. Urban IDPs and non-camp IDPs are usually left out of protection and assistance network. Armed non-state actors are mostly unwilling to respect their obligation. Even while norm-setting is evident and legal instrumentalities are being developed, there is no respite from the violent conflict raging in many parts of the world.

Should UNHCR be governed by the original mandate to provide protection to the refugees or should the mandate be expanded to reflect increased responsibility of the agency over the last two decades? The newly evolved tasks and responsibilities of the UNHCR for a wide array of vulnerable and displaced people including the lead role for IDP protection entrusted to it in 2005, possibly requires a strong legal and institutional base. The UN, principally through the General Assembly and the Security Council, has empowered the UNHCR in this direction to a considerable extent. The question is, if the UN authorizations enlarging the scope and responsibilities of the UNHCR should not be enacted in a focused and systematic way to remove the ambiguities and address criticism of ad-hoc nature of the scope enlargement process? The restrictive nature of refugee definition in the 1951 Convention was too glaring and UNHCR policy frame as well as practices on the ground had changed considerably by the 1970s. Though the core of refugee protection mandate has remained unchanged, the substance of both policy and practices has undergone a vast transformation in the 1990s. It is important to reflect the reality of UNHCR's policy and activities and tune these with specific legal instruments. Tweaking policies on an ad hoc basis to meet the dynamic nature of forced displacement cannot be a substitute for carving out a more definitive legal basis for the world's largest organization. An additional protocol to the Convention may be considered.

State Practices: 6 Countries

Chapters V and VI presented a detailed study of the practices of 6 countries. These countries- Colombia, Kenya and Georgia in Chapter V and Turkey, Myanmar and Syria in Chapter VI are markedly different, in terms of the context of displacement of people and the evolution of the responses of the governments towards the IDPs. The life-cycle of displacement in these

countries also varies. While Colombia has problem of internal displacement over many decades, in the case of Kenya it has been generally related to interplay of electoral politics and violence since 1990s. The internal displacement in Georgia relates to the loss of control over territory by the country due to secessionist uprising by break-away regions supported by a powerful neighbor, Russian Federation.

What is common in all these countries' practices is an open embrace of international standards of IDP protection in recent years. While Georgia introduced legislative measures for the IDPs in mid-1990s, Colombia has experimented with enhanced assistance and protection for the internally displaced through a positive and active intervention of its Constitutional Court and legislative branch past over last 15 years. Kenya has been in the forefront of accepting international obligations for the internally displaced people and its acceptance of the Great Lakes Pact and the Kampala Convention is now reflected in a well-developed national legislation and policies. The international norm of responsibility toward the IDPs has found acceptance in all these countries though the time periods, triggering factors, and motivations vary.

In contrast, Chapter VI analyzed the conflict context, displacement crises, national and international responses, issues related to humanitarian access and conditions of the internally displaced people in Turkey, Myanmar and Syria. Turkey has emerged as a refugee-hosting state whereas both Myanmar and Syria are refugee-producing states (Syria has also hosted large number of Palestinian refugees over the decades). The inter-connection between refugee-flow and IDPs is direct in the case of Syria. In the context of Myanmar, both aspects are related though different regions within the countries have different manifestation of the relationship. All the three countries are extremely sensitive over the issue of state sovereignty. Turkey had long denied existence of a substantive IDP population. Myanmar controls access to the internally displaced and permits aid and assistance to its displaced nationals only through the mechanism set up and monitored by its officials. Syria is averse to description of the displaced civilians as IDPs and prefers to see the problem from the standpoint of its security being engendered by "terrorist" groups whose activities have led people to "move away from home". In all the three countries, internal displacement has resulted largely as

a consequence of security policy adopted by the ruling establishment. Mostly, governments themselves have been responsible for generating displacement. In Turkey and to some extent in Myanmar, displacement is a result of government's "anti-secessionist" military operations and mostly directed against the ethnic and religious minorities. In the case of Syria, priorities of regime survival have dictated a heavy handed approach to localized disturbances which snowballed into a major armed conflict.

All the three countries studied in this Chapter have a "strong" government and as a result despite these countries' generating significant displacement, international community has not been able to respond to the plight of the internally displaced and other conflict-affected civilian population in an effective way. While Turkey was moving in the direction of some reform and attempting to reach accommodation with the IDPs, the course of developments in domestic politics has overturned these initiatives over the last couple of years. Similarly, Myanmar, which was engaged in negotiations for peace with various disaffected ethnic communities, has squandered the gains with its inhumane handling of the minority Rohingyas. Both Myanmar and Syria remain protected from enforcement action or from the implementation of any international obligation to uphold Responsibility to Protect due to the support they have from two of the permanent members of the Security Council, namely, Russian Federation and China. This, however, has not absolved them from international scrutiny and condemnation. The international norms protective of civilian population and internally displaced have not weakened. Rather, the ruthless and brutal ways of both Myanmar and Syria have further reinforced the imperative of human protection principles and commitment to the rights of the internally displaced.

Research Question 1

The answer to the research question about framework of IDP protection and the extent of reflection of the protection and assistance framework in national practices is following: Research establishes a fast developing recognition of the framework and a growing acceptance of minimum standards of IDP protection by various countries. Variations are strong but movement toward a minimum threshold is gaining acceptance. Many countries have adopted

specific national legislation to protect and assist the internally displaced. The adoption of the Great Lakes Pact and the Kampala Convention represent significant advancement. The Outcome Summit Declaration has prioritized protection of the IDPs in the context of international responsibility to protect population from the 4 declared atrocity crimes- genocide, war crimes, crimes against humanity and ethnic cleansing. Confining the operation of the R2P principle only in regard to atrocity crimes may suggest (and has been interpreted) a dilution of the concept. This was probably a necessary price to be paid for achieving consensus of the entire international community.

There are significant gaps in international protection and assistance to the IDPs as evidenced by numerous reports. Aid and support cannot reach a large number of people due to the hostile or indifferent approach of the national authorities. Armed non-state actors are mostly unwilling to respect their obligation. Even while norm-setting is evident and legal instrumentalities are being developed, there is no respite from the violent conflict raging in many parts of the world.

This brings us to the question of varying responses of the national authorities. The measure of success in advancing legal framework for IDP protection must necessarily locate the issue in state practices. In the case of protracted displacement in 7 countries, it is evident that either the state policies are responsible for generating displacement or the state is increasingly incapable to meet the challenges to its authority. The issue of control over the government is the prime factor in armed conflicts and the warring sides are often using displacement as a deliberate strategy to browbeat their opposition. Again, states are generally welcoming of international humanitarian assistance for the IDPs but they are equally determined to control access and regulate the activities of humanitarian actors on their territory. In the ultimate analysis, the responsibilities of national authorities are vital and it is imperative that attention to strengthening of national capabilities is stressed.

Research Question 2

The second research question raised was to what extent protection and assistance to IDPs have been realized. Answer to this question would include considerations of the situation and conditions of the internally displaced

people. Conclusion of this research work is that developments in this regard have been disjointed as necessary political endorsements to substantially improve the conditions of the IDPs do not exist. Governments are extremely wary of “interference” and like to regulate humanitarian access and assistance. Though the numbers of international actors have multiplied and the international machinery is well geared to take on the challenge of reaching the IDPs, several practical and logistics impediment severely constrain the activities of UN agencies and humanitarian organizations. To the extent that regime interest, armed conflicts and displacement are intertwined, progress is often slow, and haphazard, depending on the situation and political-security interests at stake. Another issue is availability of funding. Despite numerous attempts, a world reserve of fund to address contingency and emergency situation has not materialized. Funding is specific to programs of humanitarian response strategy, usually coordinated by the Office of the Coordinator of humanitarian affairs (OCHA). In deference to the principle of state sovereignty, these response strategy and plans are drawn in consultation with the concerned government. In situations where the state itself is a party to the ongoing conflict and may be responsible for displacing its nationals, it is doubtful if international assistance would not get skewed, diverted or even used as leverage in the conflict.

Two salient issues deserve consideration. In the same way that international refugee protection regime faced the dilemma of “refugee camp” or “no camp”; it is debatable if the IDPs should be encamped. This definitely helps count numbers, strategize better for provisions and to organize return. Governments and agencies are much comfortable with such an arrangement. But the very nature of forced internal displacement militates against such an arrangement. In fact, most displaced do not live in the camps for a variety of reasons. There is growing evidence to support the contention that a large number of internally displaced prefer to stay with friends/relatives or disperse in urban settings. Increasing pressure on host families and local community that support the IDPs has raised the question if the protection and assistance should also not be extended to those who are non-camp IDPs.

The other issue is about the reach of the international agencies and organizations. It has been found that the internally displaced receive assistance in relation to their distance from roads. This suggests that a large

number of IDPs in distant and inaccessible regions would generally be left out of the protection and assistance net. A related issue is reaching assistance to the IDPs who are in areas/regions experiencing active military operation. The areas which are cut off, hard-to-reach and towns and cities besieged by armed forces are in most need of humanitarian assistance but the IDPs trapped in these areas are the group that receives least amount of assistance, if any at all.

Research Question 3

To the third question if the international norm of sovereignty is susceptible to human rights and protection concerns and can accommodate demands for action for IDP protection, the answer is yes. We can discern a positive correlation between sovereignty principle and developing norm of IDP protection. More countries are adopting policies to recognize the challenge of internal displacement in their territories and increased acceptance of international assistance and development of joint programs on a collaborative basis can be seen. Earlier hostility toward international scrutiny of their human rights record and their treatment of internally displaced and even to the offer of international assistance are no longer considered necessary by sovereign states. Few examples may substantiate the conclusion. Security Council has authorized international enforcement action in many cases including in north Iraq, Bosnia, Somalia and Haiti. While countries have expressed reservations on certain aspects of UN involvement but there has been no protest or opposition on the ground of interference in domestic jurisdiction. While NATO action in Kosovo was not authorized by the Security Council, no country offered to defend the principle of state sovereignty. Again, the application of R2P in the Libya case by NATO was not opposed on the ground of the sovereignty principle. Russia and China had abstained. Even they did not oppose the relevant Security Council resolution in this regard. Heads of States/Governments have already reached a consensus in favor of international action on the ground of atrocity crimes. Also, even when Security Council decision making has been held up due to disagreement on substantive issue of taking international action in situations of armed conflicts and resultant displacement, governments have invariably agreed to take a unanimous stand in favor of unimpeded humanitarian access for the international humanitarian actors. However, there is no agreed

formulation for international action for the protection and assistance to the IDPs. The decision is entirely specific to a particular situation. There are no cases where international action has been undertaken or authorized for operationalizing R2P. The lessons from Libyan intervention have served to dilute any appetite for such a course especially when approach of the major powers has differed. Syria presents a difficult proposition for international action as the major powers and permanent members of the Security Council are themselves taking active part in the hostilities.

The international strategy for deepening states' commitment to protect the IDPs is not premised on automatic response. Mechanism for such a response especially if it involves use of international force is also not available. Progress therefore is not in a straight line but a groundswell of support does exist to propel action as and when necessary and possible. A useful distinction in this respect is presented in the contrast between a legitimate action and a legal action. International action or intervention to protect and support IDPs is increasingly considered legitimate even when the action may not be held to be "legal", in the absence of express authorization of the Security Council.

Research Question 4

To the final research question about the prospects of development of international norm supporting international action to secure IDP protection, the answer is in the affirmative though with a lot of reservations. Much depends on the nature of the crisis leading to displacement, the state of international decision-making through the Security Council, a cost-benefit analysis of international intervention and finally whether the government facing international action is strong or weak. This may be elaborated.

In our technology-endowed, mobile and interconnected world, it is almost impossible to control and restrict access to information on the ground situation pertaining to violation of human rights, violence and conflict. A sophisticated system of information collection and dissemination is readily available especially with the UN agencies. The latest example is provided by the immediate response of the UN agencies and indeed of the Security Council to the situation in Myanmar where the minority Rohingya community was forced to cross over into Bangladesh in the wake of violence against them. It is a different matter that a particular decision of the Security Council may not

be “strong” or may be conciliatory. It is also possible that the Security Council may err in taking a decision or a course of action. In Rwanda, instead of responding to the impending crisis, the Security Council rushed to dilute the mandate of its Peacekeeping Force stationed in the country. The situation was repaired soon, within a month, but it was too late to stop the genocide. In Libya, the expectations of the NATO-led intervention proved to be completely wrong as the post-Gaddafi Libya slide to chaos and anarchy. In Syria, a military intervention authorized by the Security Council is impossible due to lack of understanding amongst the permanent members. In the early years of the civil war, in 2012-2013, it was thought that the US may intervene to oust the Bashar regime to arrest the grave humanitarian crisis developing in the country. The US decided not to launch a full-scale intervention after considering the cost involved and the benefit that may accrue. The non-intervention in Syria, therefore, is guided not by considerations of state sovereignty but it is premised on realpolitik.

It is, however, necessary to make distinctions. The so-called “strong” states which would not accept their responsibility are also “susceptible” to international persuasion or pressure. Turkey had to recognize the existence of the problem of internal displacement. This recognition may be due to the conditions for accession to treaties admitting Turkey into European Union. The Myanmar government has brought in a law to restitute land to people who were displaced. Its government maintains that the minority Rohingyas are supporting ‘terrorism’ but sooner or later the government is bound to negotiate with Bangladesh for the repatriation of the refugees. After all, there is a cost of non-cooperation with international public opinion and requests/demands of the UN bodies.

Therefore, international norms supporting international action to secure IDP protection has gained support and would get further strengthened. The dynamics of domestic politics in various states would also propel acceptance and recognition of the principle.

The Hypothesis

The hypothesis of this study may be reproduced here: “International community” does not have a right to interfere in the internal affairs of a sovereign state. The UN Charter prohibits “interference” in the domestic

jurisdiction of member states. As such, internal displacement is to be regulated by the state and not by the “international community”.

The hypothesis of this study underlined state sovereignty and autonomy of state decision-making for the internally displaced. The research does not validate the proposition. National governments are not immune to influences of the broad changes sweeping the world in favor of accountability, good governance standards and a minimum respect for human rights. If these standards are not in conflict with regime stability, there is a trend to co-opt these values to the extent necessary. There is also contestation over the reign of the government amongst political parties/ethnic groups based on ideological, political grounds and over control of resources and economy. The ruling regime is expected to cater to the needs of the people consistent with their human rights. Should they disregard or discount these values, they would be subjected to protest and opposition. It is possible that the opposition forces do not believe in these values either; but the fact that opposition to the regime would be mounted in the name of democracy, human security and welfare of citizens is itself a triumph for these values.

Moreover, if the legitimacy of the regime is doubtful and it is actively contested, the national authorities would cooperate with international agencies for two reasons. Firstly, to secure international assistance and leverage it for their own purposes and secondly, to forestall the possibility of rivals and rebels taking advantage of the international attention and outcry. It is in this context that we can appreciate the changes in the stance and policy of many countries which had earlier rallied against international scrutiny and often denied the existence of internally displaced people. They no longer consider doing it either necessary or consider it as interference any longer. As such, the general trend is to work in cooperation with international agencies. The situation is different, however, if the regime faces extreme upheaval and non-state armed groups or opposition groups are increasingly in a commanding position. The policy of the national authorities may be different and much would depend on their perception of the nature and direction of international assistance. Yet another issue is the important difference between IDP assistance and IDP protection. The approach of the national authorities would generally be positive with provision of assistance but it may not be comfortable with protection which spells as human rights and empowerment.

Most states believe and have openly expressed themselves in favor of expressing their sovereignty as a function of responsibility toward their nationals. This principle has gained widespread recognition and sovereign states, even if they think otherwise, would not claim that their rule is divorced from the wellbeing and aspiration of their people. This understanding of the nature of state power is itself a significant acceptance of limitations on sovereignty.

Developments in the international arena in the last few decades have demonstrated the feeble nature of international norm of sovereignty. The UN Charter prohibition of “interference in domestic jurisdiction” is qualified in the same Article 2 Para 7 that this restriction on the UN would not prejudice enforcement action by the Security Council. The Security Council has been able to successfully link displacement situations with threat to international peace and security and international action to uphold such a linkage has not been contested by sovereign states. Also, gradual recognition of the Guiding Principles on Internal Displacement which calls for international assistance for the internally displaced if necessary, shows that a norm internalization process is at work. The recognition of the principle of sovereignty as responsibility and the norm of international assistance for the internally displaced persons has been achieved in a relatively short period of time. A number of states consider it their duty to participate in international assistance programs for the victims of armed conflicts and are not hesitant to voice their disapproval of policy and practices that jeopardize human security on a massive scale. It is correct that considerations of state interest usually outweigh support for morality and ethics. This formulation, however, fails to account for interest formation of the states based on non-material consideration as well.

There is no doubt that the term or expression “international community” is difficult to be defined and could serve as a pretext for action and activities which are neither international nor in the interests of the global community of human beings. However, to the extent that states accept international obligations under treaties including the provisions of the UN Charter, they are bound to uphold decisions of the UN Security Council or the very least

acquiesce to the decision. In this respect, obligations under Articles 25 and 48 of the UN Charter are specific indeed. Apart from the legal aspects arising out of the membership and obligations under the UN, there are international standards, force of public opinion and call for solidarity with the persecuted, oppressed and displaced that together also constitutes the notion of international community.

The Responsibility to Protect doctrine and its indirect endorsement in regard to genocide, war crimes, the crime against humanity and ethnic cleansing by the Outcome Summit document by the Heads of States/Governments is also significant. The state sovereignty holds but it is showing signs of decay and is no longer an effective barrier to international scrutiny, international action and international intervention in respect of at least the four named crimes which all generate displacement and call for assistance and protection to the IDPs.

Some caveats and reservations may also be pointed out.

The disappointment of the protagonists of R2P over the repeated failure of the international community to effectively address the range of armed conflicts and civil war and redress the situation of internal displacement, and address the protection needs of the internally displaced, is bound to grow with each instance of failure of international action. The humanitarian intervention principle may have triumphed over concerns and sensitivities on state sovereignty but is unable to assert itself on the face of political difficulties.

These difficulties are going to be more pronounced as the international community grapples with the aftereffects of such intervention. The intervention in Libya by NATO forces was successful in changing the political regime but significantly failed to change the conditions on the ground. The international action was legitimate, in response to widespread violence against specific communities and violations of human rights and in contravention of humanitarian principles, but to the extent that it was not by the United Nations, the action lacked moral weight. The absence of material interests of the intervening powers did assuage that the principles of responsibility to protect are in operation. However, in the absence of a continuum between human rights, peacebuilding and post-conflict

reconciliation and reconstruction it is difficult to conceive of permanence of peace and human security. It is an onerous responsibility but an imperative that the global community of nation-states and the organizational system they have created, whether the United Nations or other forum and instrumentalities of interdependence, should necessarily strive to attain.

Two considerations are relevant. There is no reason to consider the existing content of international law to be static. Law is not only about *what*. It is also about the desirable direction. In the way that the principle of “sovereignty as responsibility” has gained broad acceptance, similarly the world has categorically taken a stand against atrocity crimes, and an International Criminal Court has been set up, it is equally possible that automaticity of international responses to address the challenge of internal displacement and protection of the internally displaced persons would become a reality. Secondly, the process of international norm creation is by definition an evolutionary process and a process that prioritizes consensus. The evolution of the present arrangement of protection for the internally displaced has been built on such processes. These processes are gaining in strength and the contestation with state sovereignty may be contentious and the process may receive occasional setback but the forward momentum of international norm protecting victims of violence and conflict would ultimately triumph.

The “Invisible Majority”

Out of 65.3 million people forcibly displaced from their home in the world, more than 41 million people are internally displaced. This translates to 60 percent of all displaced and means that the IDPs are the “invisible majority” of all forcibly displaced persons. The Emergency Relief Coordinator of the United Nations and other signatories to an open letter to all the UN Member States on 22 September 2017 have highlighted the plight of the “invisible majority” of the displaced by calling on all countries to step up “efforts to meet the immediate protection and assistance needs of IDPs” and address “the long-term political and development challenges resulting from internal displacement”. The signatories also pointed out that it would be “a great failure of humanity to limit whom we help based on lines on a map. Our work is guided by humanity and humanity has no borders. We must do all we can to ensure that no group is neglected. We must leave no one behind”.

I would like to conclude by quoting the former UN High Commissioner for Refugees and the present Secretary-General of the United Nations, Antonio Guterres, who has said:

We are witnessing a paradigm change, an unchecked slide into an era in which the scale of global forced displacement as well as the response required is now clearly dwarfing anything seen before [...] With huge shortages of funding and wide gaps in the global regime for protecting victims of war, people in need of compassion, aid and refuge are being abandoned. [...] For an age of unprecedented mass displacement, we need an unprecedented humanitarian response and a renewed global commitment to tolerance and protection for people fleeing conflict and persecution.*

*“Worldwide Displacement Hits All Time High as War and Persecution Increase”, UNHCR News Stories, 18 Jun. 2015, <http://www.unhcr.org/558193896.html>

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