

Introduction

Whereas the number of refugees assisted by the Office of the United Nations High Commissioner for Refugees (UNHCR) had fallen to 10.6 million by the end of 2002,¹ the number of internally displaced persons was estimated to be about 20–25 million at the same date.² Internally displaced persons not only outnumber, by far, refugees, they also raise some of the most urgent human rights and humanitarian problems of our time and present a serious challenge to prevailing conceptions of sovereignty and intervention. They can be found on all continents, but especially in Sub-Saharan Africa, the Middle East, the former Yugoslavia and in the republics of the former Soviet Union. Some countries are particularly affected, such as Sudan with an estimated 4 million internally displaced. In 2003, other countries such as Colombia, the Democratic Republic of Congo, Iraq and Turkey hosted up to, or even more than, a million internally displaced persons each.³ The refugee definition contained in the 1951 Refugee Convention,⁴ as modified by the 1967 Protocol,⁵ indicates that internally displaced persons are not refugees because they are still within their country of origin. They have not crossed a frontier, which is a precondition of refugeehood.

Until the beginning of the 1990s, internally displaced persons were defined negatively: they were people who had fled their homes, but who

¹ See UNHCR, *Statistical Yearbook 2002: Trends in Displacement, Protection and Solutions* (Geneva: UNHCR, 2004), Table I.1.

² See *Internally Displaced Persons, Report of the Representative of the Secretary-General, Mr Francis M. Deng*, E/CN.4/2002/95, 16 January 2002 (hereinafter *2002 Deng Report*), para. 2.

³ See figures at http://www.idpproject.org/global_overview.htm.

⁴ Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 150 (hereinafter the 1951 Convention).

⁵ Protocol Relating to the Status of Refugees, 1967, 606 UNTS 267 (hereinafter the 1967 Protocol).

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were not refugees (having remained within their country). It is only recently that some efforts have been made to devise a comprehensive definition of internally displaced persons. An important step was taken in 1992 when the UN Secretary-General proposed a working definition.⁶ That definition was revised in 1998 and the Guiding Principles on Internal Displacement now define internally displaced persons as:

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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.⁷

While not defined as refugees, internally displaced persons have been dealt with by refugee structures such as UNHCR which provides protection and assistance to them (mostly in returnee-linked programmes), when they are found in the same areas as refugees, and when it considers that this forms an integral part of a comprehensive solution to the refugee problem.⁸ However, some concern has been expressed over such arrangements.⁹ Internal displacement is linked with the refugee problem, in so far as it often constitutes a preliminary step towards external displacement, but the phenomenon also has specific characteristics and can raise special problems which cannot be solved by traditional methods of protection used in the refugee context. Internal displacement constitutes a distinct problem which has to be dealt with not only in conjunction with the refugee problem, but also separately as it raises issues of a different nature.¹⁰

This introduction examines the origins, nature and scope of the problem. Some historical background is then given as to how the UN came to deal with the issue in the 1990s. The overall analysis is placed in the context of containment policies implemented by refugee-receiving states which seek to shift the emphasis away from asylum to in-country protection. This raises the question as to whether the recent focus on internally displaced persons risks undermining the institution of asylum.

⁶ See *Analytical Report of the Secretary-General on Internally Displaced Persons*, E/CN.4/1992/23, 14 February 1992 (hereinafter the *Analytical Report*), para. 17.

⁷ *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 11 February 1998. See Annex 1 below.

⁸ See Chapter 3, first section. ⁹ See Chapter 3, second section.

¹⁰ See R. Cohen and F. M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institution, 1998), 26–9.

Internal displacement and containment policies

Internal displacement has always existed and often takes place prior to external displacement which is seen as the last option. Indeed, in situations of danger, people generally prefer to stay within their own community or at least within their own country, close to their homes, envisaging return. Sometimes, people are not able to leave the country because they have limited means of transportation. Moreover, external displacement may not be an option, because when population movements spill over into neighbouring countries, some countries close their borders, as Turkey did when Iraqi Kurds were fleeing repression in Iraq in 1991.¹¹ In doing so, such states assert their 'power to admit or exclude aliens [which] is inherent in sovereignty',¹² power which is now curtailed by the principle of *non-refoulement*.¹³ Refugee flows are sometimes contained by the state of origin which may not wish to see its citizens fleeing abroad, fearing that an exodus might bring about negative publicity for the government, as well as a loss of skills and resources for the country. Moreover, the existence of opponents to the regime abroad creates the possibility of a threat of activities from the countries where they may find refuge.

Although internal displacement is not a new phenomenon, it reached dramatic dimensions after the Cold War. The attitude amongst Western states towards refugees has changed considerably since the 1980s. Refugees had a more important strategic role to play during the Cold War era: welcoming refugees fleeing countries of the opposite bloc was a political act designed to demonstrate the failures of that political system in protecting its own citizens.¹⁴ Refugees no longer play that strategic role and are now viewed more as a threat rather than as political pawns. This has led to the recent trends of containment of refugee flows within countries of origin and the accompanying shift in language which is critical in the debate on internal displacement.

One also has to point to the effects of the globalisation of transport networks, which presents an opportunity for refugees to reach the territories of developed countries, and has modified the nature of

¹¹ See Turkey's statement in the debate leading to the adoption of SC Res. 588, SCOR, S/PV2982, 5 April 1991, 6.

¹² J. H. Carens, 'Aliens and Citizens: The Case for Open Borders' (1987) 49 *Review of Politics* 251 at 251.

¹³ Article 33(1) of the 1951 Convention.

¹⁴ See J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 *Harvard International Law Journal* 129 at 148–51.

population movements. This has prompted a change of response from potential refugee-receiving countries. Refugees are not only subject to *refoulement* by neighbouring countries, but also by other potential refugee-receiving countries further afield which seek to deter people from entering their territory by implementing policies such as visa requirements, carrier sanctions and concepts such as safe country of origin and safe third country, and curtailing work possibilities and welfare benefits for those who do manage to arrive. In addition, conflicts around the world often involve the targeting of civilians and thus produce situations of internal displacement and humanitarian crises. All these various factors explain the recent explosion in the numbers of internally displaced persons and the correlative decline in the numbers of refugees mentioned above.

The problem of internal displacement is a sensitive one, because it is linked to the willingness of refugee-receiving states to contain refugee flows within the countries of origin. While asserting humanitarian motives, these states may focus on in-country protection simply to preclude their asylum obligations from being activated. By preventing the border-crossing of the populations necessary to activate the obligations contained in the 1951 Convention, states avoid these obligations.

The potential danger of focusing on in-country protection is that of undermining the right to seek asylum abroad, which represents 'an indispensable instrument for the international protection of refugees'.¹⁵ It has been repeated on several occasions that activities on behalf of internally displaced persons 'must not undermine the institution of asylum'.¹⁶ Protection activities undertaken in favour of internally displaced persons which are aimed at securing in-country protection should not amount to a pre-emptive denial of the possibility to seek asylum abroad.

As a result, the increase in the concern for internally displaced persons can be explained by two reasons of a very different nature, one being humanitarian and the other more political and self-serving, namely to prevent internally displaced persons from becoming refugees. One may conclude that obstacles to population movements are now more political than geographical. Nevertheless, the current interest in internally displaced persons is not solely motivated by the intentions of states trying to prevent cross-border movements into their territory, and the terms of the debate are actually more complex than this.

¹⁵ GA Res. 48/116, 20 December 1993.

¹⁶ GA Res. 50/195, 22 December 1995.

The urgent need for protection is a matter of human rights protection. The link between refugee protection and human rights protection has long been established,¹⁷ and a similar link exists between the protection of internally displaced persons and human rights protection. The challenge is to ensure that attempts to improve the international response to crises of internal displacement do not undermine the established refugee protection system.

Some refugee commentators believe that this cannot be avoided and that there is an 'implicit and dangerous logic' in the IDP concept which only serves to divert attention from the refugee problem.¹⁸ There is clearly some resistance to the emergence of a new displacement regime which extends beyond the confines of the international refugee regime which is characterised by a higher and 'comforting' degree of legal certainty. One must concede that, as Suhrke argues, the new discourse on internally displaced persons may reflect a certain political agenda and that it is crucial that IDP researchers 'unpack the concepts, policies and justifications used by political actors when they define IDPs and develop mechanisms to offer them assistance and protection'.¹⁹ Adelman shares these words of caution.²⁰ This work will endeavour to carefully uncover any political agenda that may underline the legal and policy debates over internal displacement.

Nevertheless, it is suggested here that attempts made to improve the protection of those who could not or did not wish to leave their country should not necessarily be seen as a negative development. Obviously, there is nothing wrong with the idea of improving protection for persons who have been displaced by armed conflict and human rights violations, and avoiding further displacement and suffering. The important issue is that the option of asylum always remains available to these people and that assistance and protection activities for internally displaced persons are never used as a justification for restricting, or even denying,

¹⁷ See for instance *Study on Human Rights and Mass Exoduses*, E/CN.4/1503, 31 December 1981, or J. Hathaway, 'Reconceiving Refugee Law as Human Rights Protection', in K. E. Mahoney and P. Mahoney (eds.), *Human Rights in the Twenty-First Century: A Global Challenge* (Dordrecht: Martinus Nijhoff Publishers, 1993), 659–78.

¹⁸ See M. Barutciski, 'Tension Between the Refugee Concept and the IDP Debate', *Forced Migration Review*, vol. 3, December 1998, 14.

¹⁹ A. Suhrke, 'Reflections on Regime Change', in Norwegian University of Science and Technology, *Researching Internal Displacement: State of the Art*, Conference Report, 7–8 February 2003, Trondheim, Norway, 15.

²⁰ See H. Adelman, 'What is the Place of IDP Research in Refugee Studies?', in Norwegian University of Science and Technology, *ibid.*, 14.

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the right to asylum and/or enforcing the premature application of the right of return of refugees to their country of origin. Fitzpatrick suggested that it is difficult to prevent an adverse impact on refugee law, partly because there is limited UNHCR participation in the Commission on Human Rights and the Security Council which are the main international fora of discussion of IDP rights.²¹ Nevertheless, UNHCR should not be seen as the only defender of refugee rights and all those dealing with internally displaced persons should also remain concerned with refugee rights.

The present study attempts to take a more optimistic stance by offering a more in-depth analysis of the phenomenon of internal displacement and the responses to the problem, while also analysing the possible implications for the international refugee regime. The research is based on the assumption that protection of internally displaced persons and protection of refugees are distinct but also related. It also assumes that more IDP protection should not inevitably undermine refugee protection. In many cases, most internally displaced persons do not actually wish to leave their country unless they feel compelled to do so in order to ensure their own safety. Sometimes, they are trapped in conflict zones and are unable to leave the country anyway, in which case the provision of IDP protection cannot amount to containment. As a result, there can often be no contradiction between drawing international attention to the plight of the internally displaced and upholding the international refugee protection regime.

A problem of international concern

One of the first situations of large-scale internal displacement to attract international concern was that of Sudan in the early 1970s. Following the 1972 Addis Ababa Agreement putting an end to a protracted civil war and which provided for the return and resettlement of refugees and internally displaced persons,²² the Economic and Social Council requested that UNHCR coordinate humanitarian assistance on behalf of these populations: it referred to ‘the assistance required for voluntary repatriation, rehabilitation and resettlement of the refugees returning

²¹ See J. Fitzpatrick, ‘Human Rights and Forced Displacement: Converging Standards’, in A. F. Bayefsky and J. Fitzpatrick (eds.), *Human Rights and Forced Displacement* (The Hague: Kluwer Law International, 2000), 3–25 at 13.

²² See F. M. Deng, *Protecting the Dispossessed, a Challenge for the International Community* (Washington DC: Brookings Institution, 1993), 71.

from abroad, *as well as* of persons displaced within the country' (emphasis added).²³ One can note that the expression 'internally displaced persons' was not yet in use in 1972. A few months later, the General Assembly encouraged UNHCR to pursue its efforts on behalf of 'refugees and other displaced persons', referring here to internally displaced persons, in Sudan.²⁴ Beyond Sudan, what really put the issue on the international agenda was the change of political circumstances at the end of the Cold War as explained above.

The extensive media coverage given to the intervention undertaken by a coalition of states led by the United States with the implicit authorisation of the Security Council²⁵ to protect Kurds in northern Iraq in the spring of 1991 brought international attention to the plight of the internally displaced.²⁶ 'Operation Provide Comfort' marked a turning-point because it led to an increase of attention being paid by UN organs to the issue of internal displacement.²⁷ During the first half of the 1990s, several other humanitarian crises of unprecedented scale and involving significant numbers of internally displaced persons appeared around the world in, for instance, the Great Lakes region (Rwanda, Burundi, Democratic Republic of Congo), the former Yugoslavia and, again, in Sudan. This demonstrated that the Kurdish episode was not an isolated incident. It was considered morally unacceptable to provide protection and assistance to refugees, but not to internally displaced persons who were living alongside the former, and sometimes in the same camps. Moreover, it has been demonstrated that internally displaced persons often find themselves in worse conditions than refugees, due to the fact that they can be out of reach of international aid agencies. As a result, the death rates among internally displaced persons can be higher than those of refugees and certainly much higher than those of non-displaced living in the same country.²⁸

²³ ECOSOC Res. 1705 (LIII), 27 July 1972.

²⁴ GA Res. 2958 (XXVII), 12 December 1972. ²⁵ SC Res. 688, 5 April 1991.

²⁶ See P. Malanczuk, 'The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War' (1991) 2 *European Journal of International Law* 114, and H. Adelman, 'Humanitarian Intervention: The Case of the Kurds' (1992) 4 *International Journal of Refugee Law* 4.

²⁷ See OCHA Internal Displacement Unit, *No Refuge: The Challenge of Internal Displacement* (New York and Geneva: United Nations, 2003), 17.

²⁸ For a comparison between mortality rates in refugee populations and among internally displaced persons, see M. J. Toole and R. J. Waldman, 'The Public Health Aspects of Complex Emergencies and Refugee Situations' (1997) 18 *Annual Review of Public Health* 283 at 289–91.

Assistance and protection activities have traditionally been seen as distinct, but the UN has been trying to put as much emphasis on the humanitarian aspect of the problem as on its human rights aspect. The advocacy efforts and direct involvement with internally displaced persons of the NGO community (but also of small states such as Austria and Norway)²⁹ have contributed to raising awareness of the problem of internal displacement at the Commission on Human Rights.³⁰ Two major international conferences focusing on refugees and displaced persons also examined the issue of internal displacement. The first was the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED) which took place in Oslo in December 1988. It was followed by the International Conference on Central American Refugees (CIREFCA) in May 1989.³¹

In March 1991, the Commission on Human Rights requested that the Secretary-General prepare a report on internally displaced persons.³² This important report prompted a much more active involvement of the UN, as a whole, in the issue.³³ It defined the scope of the problem and called for more vigorous action, which resulted in the appointment of a Special Representative on Internally Displaced Persons. Mr Francis Deng has assumed this position since then. The first aspect of his mandate is to analyse the normative framework of protection for internally displaced persons. This resulted in the drafting of the 'Compilation and Analysis of Legal Norms',³⁴ which led to the formulation of the 'Guiding Principles on Internal Displacement' already mentioned above. The second aspect of the mandate is to review the existing institutional framework and seek means of improving coordination between the various UN agencies. The third and final aspect of his mandate consists of on-site visits. So far, the Special Representative has visited more than twenty countries where large internal movements of population have occurred.³⁵ These

²⁹ See for instance OCHA Internal Displacement Unit, *No Refuge*, 20.

³⁰ See S. Bagshaw, *Developing the Guiding Principles on Internal Displacement: The Role of a Global Public Policy Network*, case study for the UN vision project on global public policy networks, <http://www.gppi.net/cms/public/86880753f4f7e096dd8b747195113f6cbagshaw%20gpp%202000.pdf>, 5–11.

³¹ For more detail on SARRED and CIREFCA, see K. Hakata, *La protection internationale des personnes déplacées à l'intérieur de leur propre pays*, thèse de doctorat en droit, Université de Genève, February 1998, 20–5.

³² See CHR Res. 1991/25, 5 March 1991. ³³ See the *Analytical Report*, note 6 above.

³⁴ E/CN.4/1996/52/Add.2, 5 December 1995.

³⁵ See the list in Brookings Institution, *International Symposium on the Mandate of the Representative of the UN Secretary-General on Internally Displaced Persons: Taking Stock and Charting the Future*, Vienna, Austria, 12–13 December 2002, Annex 5.

visits have documented several situations of internal displacement and are also part of his role in raising awareness of this problem. During each visit, he meets representatives of the government in order to discuss means of improving the situation of the internally displaced. The implementation of his recommendations by governments is now systematically reviewed.³⁶ However, the governments which are less willing to invite the Special Representative are also those who are implicated in the most problematic situations of internal displacement.³⁷

The mandate of the Special Representative on internally displaced persons has now been established for more than ten years and one can safely say that its achievements are far from negligible.³⁸ Francis Deng has truly acted as a ‘catalyst’ for drawing international and national attention to the issue of internal displacement, in particular through the drafting and dissemination of the Guiding Principles. Nevertheless, he has had mainly an advocacy role, and the margin of progress in improving protection and assistance to the internally displaced in *operational* terms is still wide.

Analysing the problem of internal displacement within a human rights framework

This book argues that the issue of internal displacement is not merely a humanitarian problem, but needs to be discussed within a wider human rights context. Consequently, an analysis of the UN’s response to this problem must draw on a human rights framework. Such an approach is required by the UN Charter and the Secretary-General’s commitment to integrate human rights into the UN’s work.

In order to support the above statement, several key issues need to be addressed. What distinguishes internally displaced persons from refugees? Why should the internally displaced not benefit from the protection regime established for refugees under the 1951 Convention, but be considered more broadly as victims of human rights abuses? These questions will be dealt with in Chapter 1 which explores the conceptual similarities and differences between refugees and internally displaced

³⁶ See 2002 Deng Report, note 2 above, para. 88.

³⁷ CHR Res. 1997/39, 11 April 1997, called upon governments to cooperate with the Special Representative.

³⁸ See *Internally Displaced Persons, Report of the Representative of the Secretary-General, Mr Francis M. Deng*, E/CN.4/2003/86, 21 January 2003.

persons. Since Chapter 1 concludes that internally displaced persons do not require a specific legal status under international law, Chapter 2 proceeds to analyse the legal framework applicable to situations of internal displacement. Part of that framework draws heavily on international human rights law and international humanitarian law.

As explained above, the increase in the numbers of internally displaced persons following the Cold War, as well as the new emphasis on providing in-country protection, prompted the UN to tackle the issue in the 1990s. Chapter 3 examines the UN's understanding of the IDP issue and, in doing so, explores the implications of a human rights approach to the problem of internal displacement on the nature of institutional responses to that problem. More particularly, how does a human rights approach inform the ongoing debate over institutional responsibilities for the internally displaced within the UN system? The scope of the research is limited to the study of the UN system not only for reasons of space and time, but also because of its primary policy role and the fact that states generally delegate responsibility to the organisation in this area. Nevertheless, non-governmental organisations (NGOs) as well as regional organisations and military organisations such as NATO also play a very active role in providing protection and assistance to the internally displaced.

Whereas Chapter 3 puts the focus on agencies' stated approaches to internal displacement, Chapter 4 examines field activities and the extent to which they reflect some of the flaws in the UN's understanding of the problem of internal displacement. It evaluates the efficiency of measures undertaken to protect internally displaced persons from human rights violations, including forced displacement. Some suggestions are made on how field activities can be pursued within a human rights framework and produce a more effective response to the protection needs of internally displaced persons.

This book does not intend to review all national situations of internal displacement.³⁹ Nevertheless, Chapter 5 is a case study on internal displacement in Bosnia and Herzegovina which illustrates the limits of field activities that are pursued in isolation from a human rights framework and goals. The case study examines how the issues addressed in previous chapters were dealt with in the specific context of Bosnia and

³⁹ For such a review, see Global IDP Survey, *Internally Displaced People, a Global Survey* (London: Earthscan Publications Ltd, 2002, 2nd ed.).