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FAILURE OF THE INTERNATIONAL LAW ADDRESSING INTERNAL DISPLACEMENT: THE UN GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT AS A ‘STORY’

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LLM in International Law with Medical Law and Ethics

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Chapter 1. Introduction

'The Special Rapporteur considers that internally displaced persons are frequently the least, the last and the lost in terms of national and international attention to their plight. It is a core priority of the mandate holder to promote visibility and effective protection for all internally displaced persons, including those who have become invisible or neglected, the most vulnerable, and those facing the greatest challenges resulting from their displacement'.¹

As the twentieth anniversary of the UN Guiding Principles on Internal Displacement ('the Principles') fast approaches, the Human Rights Council is getting ready to commemorate the Principles with a panel discussion.² The Report of the Special Rapporteur on the human rights of internally displaced persons (IDPs) states that they still suffer due to inadequate protection provided at the national, regional and international levels, even though there are now legal instruments that are based on the Principles, such as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) and national laws.

The Principles are deemed as a success story by many scholars and international organisations. They are credited with making a contribution to changing the traditional concept of sovereignty to include respect for human rights,³ filling the international legal gap for the protection of the internally displaced,⁴ widespread domestication by many states into their national laws,⁵ gaining international authority,⁶ and setting an international standard for the protection of IDPs.⁷ According to Sérgio Vieira de Mello, the late but highly influential Brazilian United Nations diplomat to who, according to Francis Deng, 'all who are concerned with plight of internally displaced remain forever grateful to',⁸ the Principles help with raising awareness and mobilise support, and enable field workers to come up with solutions and assist governments to provide

¹ United Nations General Assembly, Thirty-fifth session 'Report of the Special Rapporteur on the human rights of internally displaced persons' UN Doc A/HRC/35/27, 7, 24.

² United Nations General Assembly, Thirty-fifth session 'Panel Discussion on the Human Rights of Internally Displaced Persons in Commemoration of the Twentieth Anniversary of the Guiding Principles on Internal Displacement' (2017) UN Doc A/HRC/35/L.7, 21.

³ Thomas G. Weiss, 'Internal exiles: what next for internally displaced persons?' (2003) 24(3) Third World Quarterly 429, 433.

⁴ Roberta Cohen, 'The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting' (2004) 10 Global Governance 459, 467.

⁵ Thomas G. Weiss, 'Internal exiles: what next for internally displaced persons?' (2003) 24 Third World Quarterly 429, 434.

⁶ Roberta Cohen, 'The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting' (2004) 10 Global Governance 459, 459.

⁷ *ibid*, 477.

⁸ Roberta Cohen, 'Dear to his Heart: Internally Displaced Persons' (2004) 17 Journal of Refugee Studies 367, 369.

security and wellbeing of the IDPs.⁹ But if all of this is true, then why so close to its 20th anniversary the IDPs still suffering from lack of adequate protection, attention and awareness? There is an apparent fall in the attention of international community and academia to internal displacement from the level a decade ago.¹⁰ Since the numbers are still on the rise, it is not the end of internal displacement that is different, and so what is the cause of this fall in attention? Are internally displaced people in better condition?

The thesis will conclude that firstly, the sovereignty concept's erosion only matters for the Global South not North, and is only invoked when convenient for the Global North; as can be seen from the ongoing gross human rights violations and global lack of response. Secondly, on the UN level, internal displacement is less valued, as can be seen in its operational failures and the demotion from Representative Secretary General to Special Rapporteur status of the UN official responsible for IDPs. Thirdly, the adoption of the Principles does not amount to practical improvements, since they are usually not implemented, which is the real problem. Fourthly, academic attention to IDPs is not what it used to be in the 1990s and it is now focused on climate change. This dissertation will argue that the Principles should have created an international awareness and a political climate that would encourage collaboration and solidarity between the Global North and the South, and become effective instruments for IDPs, and that the plight of IDPs rather than the interests of the states should be the prime focus.

The first chapter analyse whether IDPs deserve international attention as much as refugees or the non-displaced population in the same community. It will then focus on definitions of and reasons for internal displacement. The second will examine why international attention is not purely humanitarian, looking at the development of refugee law and the origins of protection afforded to IDPs, which will lead to questions of sovereignty. The third chapter will be on sovereignty, the doctrines of the responsibility to protect, the implications for IDPs, the relationship between the Global North and South and the lack of enforcement. The conclusions will be presented in Chapter six.

⁹ Sergip Vieira de Mello, 'Foreword to the Guiding Principles by Under-Secretary-General for Humanitarian Affairs' in Guiding Principles on Internal Displacement (1998), 1.

¹⁰ Jeff Crisp, 'Focus on Refugees Risks Neglecting the Internally Displaced' (Chatham House The Royal Institute of International Affairs, 18 May 2017) <<https://www.chathamhouse.org/expert/comment/focus-refugees-risks-neglecting-internally-displaced>> accessed 18 August 2017

1.1 Methodology

The dissertation will be conducted using desk research and will be based on the third world approach to international law (TWAIL).

The TWAIL approach is a way of considering the history, structure and development of a legal subject from the perspective of the Global South or third world states.¹¹ This approach aims to emancipate the poor and the oppressed in the third world by constructing an international law that would pave the way to a life of dignity for all people and not just those in the Global North.¹²

Whether or not TWAIL constitutes a legal methodology, strictly speaking, is debatable;¹³ however, it offers valuable insights into topics in international law. This dissertation will adopt the method which is used by most of the scholars of TWAIL,¹⁴ by not looking at the history, structures and norms from the mainstream Global North's perspective, but rather conducting a critical legal analysis through the eyes of the Global South.

¹¹ B.S. Chimni, 'The Past, Present and Future of International Law: A Critical Third World Approach' (2007) 8 *Melbourne Journal of International Law* 499 p.499

¹² *Ibid* p.450

¹³ Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10 *International Community Law Review* 371 p.372

¹⁴ *Ibid* p.377

Chapter 2. Why IDPs are important

'Further, my experience with the work of the mandate demonstrates to me that the crisis is greater than statistical evidence shows. My country missions around the world reveal that there are real human beings with tragic faces behind those statistics'.¹⁵

This chapter will begin by addressing the plight of IDPs firstly, to show that there are real human beings who are suffering and cannot find the aid or protection that they deserve. The comparison between refugees, IDPs and non-displaced members of the displacement-affected community will be analysed to show that IDPs deserve to be a special category of concern. The second section will be on the identification and description of IDPs.

2.1 The plight of IDPs

According to the *Global Report on Internal Displacement 2017* (GRID report), 31.1 million IDPs were produced due to conflict, violence and disasters in 2016, which almost equates to one person fleeing per second.¹⁶ The total number of IDPs counted by the Internal Displacement Monitoring Centre (IDMC) in 2016 reached 40.3 million,¹⁷ whereas the numbers of refugees reached 22.5 million.¹⁸ Guistiniani claims that IDPs are a pressing concern for the international community since the numbers are high and human rights violations that IDPs suffer are gross.¹⁹ A note of caution should be borne in mind concerning the statistics provided above since, as with numbers of refugees,²⁰ counting IDPs is a challenging and highly political task since the numbers of IDPs affect the state, belligerent groups, and humanitarian agencies, and may be over- or understated according to the interests of the party concerned.²¹

The human suffering and the conditions which people who are categorised as IDPs live in calls for the attention of humanity. For example, in Wau, South Sudan, more than 13,000 IDPs live in St Mary's Cathedral and there is no food because food aid stopped after three people from the

¹⁵ Francis M. Deng, 'The Global Challenge of Internal Displacement' (2001) 5 *The Institute for Global Legal Studies Inaugural Colloquium: The UN and the Protection of Human Rights* 141, p.142.

¹⁶ Internal Displacement Monitoring Centre (IDMC), 'Global Report on Internal Displacement' (Internal Displacement Monitoring Centre 2017) <<http://www.internal-displacement.org/global-report/grid2017>> accessed 16 August 2017, p.9

¹⁷ *ibid*, p.10.

¹⁸ United Nations High Commissioner for Refugees, 'Global Displacement Trends Forced Displacement in 2016' (United Nations Commissioner for Refugees) <<http://www.unhcr.org/globaltrends2016/>> accessed 18 August 2017, 2.

¹⁹ Flavia Zorzi Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 *Denver Journal of International Law and Policy* 347, p.347.

²⁰ Jeff Crisp, "'Who has counted the refugees?'" UNHCR and the Politics of Numbers' (1999) *New Issues in Refugee Research Working Paper No. 12* <<http://www.refworld.org/pdfid/4ff58e4b2.pdf>> accessed 12 August 2017, p.16.

²¹ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998) p.32.

World Food Programme (WFP) were killed.²² Another example is attacks on IDP camps, such as the one happened on 24 July 2017 in northern Nigeria which resulted in at least 8 people's deaths,²³ or the one on 12 October 2016 in Kaga Bandoro, Central African Republic, where 37 were killed and 435 huts were burned down.²⁴ IDPs are also faced with severe health problems, and according to the World Health Organisation (WHO) the hepatitis E outbreak in Borneo State is concentrated among IDPs;²⁵ acute malnutrition, diarrhoea, malaria, and hepatitis E are also prevalent amongst IDPs in Nigeria.²⁶

'He puts his arms around his two boys, Raoul, two and Ramazani, five. 'I found my boys standing alone, crying and afraid'. As he ran off with them, he saw his wife down the street. She had been brutally murdered by militia fighters, dozens of whom were nearby'.²⁷

This excerpt from the website of United Nations High Commissioner for Refugee (UNHCR) was posted on 14 July 2017 about a 25-year-old teacher and father of two, who had never seen conflict before the day he lost his wife, his daughter and all of his possessions.²⁸ He is an internally displaced person (IDP), like 1.3 million others at Democratic Republic of Congo's Kasai region.²⁹ He now sleeps at the IDP camp on the bare floor with sometimes 50 people in the same room.³⁰ However, this story could also belong to a refugee since IDPs and refugees usually suffer from similar threats and problems.³¹ This similarity resulting from flight is so significant that the UK Secretary of State for International Development, Hillary Ben, asked in his speech which was motivated by atrocities committed at Darfur:

²² Stefanie Gliniski, 'Cathedral Becomes Refuge of Last Resort for South Sudan's Displaced' (IRIN 15 August 2017) <<https://www.irinnews.org/feature/2017/08/15/cathedral-becomes-refuge-last-resort-south-sudan-s-displaced>> accessed 25 August 2017

²³ UN News Service, 'UN Chief Condemns Suicide Attacks on Camps in North-eastern Nigeria' (25 July 2017) <<http://www.refworld.org/docid/597757b74.html>> accessed 25 July 2017

²⁴ Human Rights Watch, 'Central African Republic: Kaga-Bandoro IDP Camp' (Human Rights Watch, 31 October 2016) <<https://www.hrw.org/video-photos/satellite-imagery/2016/10/31/central-african-republic-kaga-bandoro-idp-camp>> accessed 15 July 2017

²⁵ World Health Organization Regional Office for Africa, Weekly Bulletin on Outbreaks and Other Emergencies Week 31: 29 July – 04 August 2017 Data as reported by 17:00; 04 August 2017 (2017), 4.

²⁶ *ibid*, 7

²⁷ Andreas Kirchhof, 'Violence Engulfs Congo's once-peaceful Kasai Region' (United Nations High Commissioner of Refugees, 14 July 2017) <<http://www.unhcr.org/uk/news/latest/2017/7/596765c84/violence-engulfs-congos-once-peaceful-kasai-region.html?query=idp>> accessed 15 July 2017

²⁸ *ibid*

²⁹ *ibid*

³⁰ *ibid*

³¹ Walter Kälin, 'Internal displacement' in Elena Fiddian-Qasimiyeh, Gil Loescher, Katy Long, and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 163, p.165-166

'Is it really sensible that we have different systems for dealing with people fleeing their homes depending on whether they happen to have crossed an international border?'³²

This section will identify why IDPs should be a special category of concern. Firstly, the debates around whether IDPs differ from refugees and other people who suffer from human rights violations but remain within their habitual places of residence will be examined. This will help to explain the unique needs of IDPs and will set the stage for following section where reasons for displacement will be examined.

Hathaway³³ answered Benn's question in the affirmative, claiming that crossing a border puts refugees in a position where the international community is able to protect them, whereas IDPs remain under the protection of their original state. Barutciski³⁴ asserts that the established international order is based on sovereign states and refugee law is based on being included or excluded on the basic premise of borders, which differs from human rights law and hence there is a clear difference in the position of the international community. Kalin³⁵ points out that crossing a border differentiates the protection that a person enjoys, and that IDPs can only enjoy international protection as a subsidiary mechanism, never as a primary protection even in situations where the state authority is largely absent. Cohen³⁶ claims that IDPs who are displaced are displaced usually because of their own state's unwillingness or inability to protect them, and this should prompt international response as with situations of genocide or ethnic cleansing, as the state's sovereignty is impaired. Rutinwa³⁷ contends that access to IDPs are not always in conflict with state sovereignty, since the state might consent or a decision of UN Security Council might legitimise intervention. He also claims that, even in refugee situations, the international community is not free to act since the authority lies with the host state.³⁸

Therefore, the first difference between IDPs and refugees is the crossing of an international border. According to Barutciski and Hathaway, international order is based on sovereign states which gives importance to the borders. Kalin's point about the difference of the nature of protection provided also reiterates this difference. International protection provided to refugees is a

³² Hillary Benn, 'Reform of the international humanitarian system' (Overseas Development Institute, London 2004)

³³ James C. Hathaway, 'Forced Migration Studies: Could We Agree Just to 'Date'?' (2007) 20 *Journal of Refugee Studies* 349, 353

³⁴ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, p.12

³⁵ Walter Kälin, 'Internal displacement' in Elena Fiddian-Qasimiyeh, Gil Loescher, Katy Long, and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 163, p.165

³⁶ Roberta Cohen, 'Response to Hathaway' (2007) 20 *Journal of Refugee Studies* 370, 371

³⁷ Bonaventure Rutinwa, 'How tense is the tension between the refugee concept and the IDP debate?' (1999) 4 *Forced Migration Review* 29, 29

³⁸ *ibid*

'surrogate' protection while IDPs get 'complementary' protection, which is connected to international world order which will be discussed further below.³⁹ It should be highlighted that, to agree with Cohen and Rutinwa therefore firstly there is a need to accept that the sovereignty concept had changed and borders have lost their importance which is not the case and which will be addressed in detail below. Hence, the first distinction from refugees that has to be acknowledged when thinking about protection of IDPs is the feature of not crossing of an international border.

The other point made by Hathaway was that reasons for displacement for refugees is discrimination due to their inalienable features such as their religion or ethnicity whereas only a subset of IDPs suffer from this condition.⁴⁰ However, Adelman and McGrath argues against this proposition pointing out to difference between convention refugees, which Hathaway describes above and humanitarian refugees who cross the border of their state due to conflict.⁴¹ In this sense, humanitarian refugees have more similarities with IDPs rather than Convention refugees who flee because of discrimination.⁴² Cohen also agrees with Adelman and McGrath claiming that the majority of the refugees that provided aid by UNHCR are the ones who run from armed conflict not because of individualised discrimination.⁴³ Hathaway responds to these counter claims by stating that the refugee status has evolved to include conflict situations in an individualised way by judiciary interpretation and UNHCR is still able to help the refugees from non-signatory states by its use of good offices or specific agreements with the state.⁴⁴ Barutciski, faintly similar to Hathaway, argues that protection offered to refugees historically is not about the plight of the refugee but the refugees lack of protection from her state of origin which will be detailed below.⁴⁵

Hathaway's claim on focusing individual plight and Barutciski's claim of historically disregarding the plight of refugees are valid. However, Hathaway's claim of refugees being more deserving to protection than IDPs due to discrimination is not right as Cohen's argument suggests that refugees similar to IDPs also flee from conflict, generalised violence and internal strife.

³⁹ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 25.

⁴⁰ James C. Hathaway, 'Forced Migration Studies: Could We Agree Just to 'Date'?' (2007) 20 *Journal of Refugee Studies* 349, p.352, p.358.

⁴¹ Howard Adelman and Susan McGrath, 'To date or to marry: that is the question' (2007) 20 *J Refugee Stud* 376, 377.

⁴² *ibid* 378.

⁴³ Roberta Cohen, 'Response to Hathaway' (2007) 20 *Journal of Refugee Studies* 370, 370.

⁴⁴ James C. Hathaway, 'Rejoinder Debate' (2007) 20 *Journal of Refugee Studies* 385, p.388.

⁴⁵ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 12.

Another point also made by Hathaway is that IDPs have much more in common with people who suffer from human rights abuses but are not displaced within the same community than refugees.⁴⁶ He furthermore asks why if international community is able to interfere to another State because of IDPs suffering why the same international community do not interfere to other states for other human rights abuses.⁴⁷ Barutciski also questions the same thing.⁴⁸

This argument is countered by DeWind⁴⁹ who states that, although this argument is persuasive, it can also be made for any category of people including women, children, migrant workers or refugees. Cohen⁵⁰ argues that, by the virtue of losing their places of habitual residence, IDPs have unique needs that differ from the others within the same community. These include living in camps, suffering from the consequences of losing documents and property, and risk of return to dangerous zones. Along the same lines, Kalin⁵¹ points out that this debate is not of practical value since IDPs are recognised as a specific category of concern by the international community, which is exemplified in the recognition of the Principles as an important tool and their adoption at different levels such as the Kampala Convention. Kalin further argues that the specific needs of IDPs are driven by their displacement, which he bases on the 'reports on country missions by the Representatives of the Secretary-General and the Special Rapporteur on (the Human Rights of) Internally Displaced Persons'.⁵² These include protection against displacement; ability to leave the danger zone, reach safety and not being forced to return to danger; finding temporary shelter; and protection against discrimination due to displacement.⁵³ Even though both Kalin and Cohen also note that not every IDP suffers from the same vulnerabilities, there are common problems, such as lower rates of literacy in Afghanistan IDPs or poverty in Columbian IDPs.⁵⁴

Hence, it can be concluded that IDPs do have unique needs and vulnerabilities that should be addressed. However, this is not to say that non-displaced human rights violation sufferers should be neglected. Addressing need in affected communities must be while providing aid to IDPs, and

⁴⁶ James C. Hathaway, 'Forced Migration Studies: Could We Agree Just to 'Date'?' (2007) 20 *Journal of Refugee Studies* 349, 361.

⁴⁷ James C. Hathaway, 'Rejoinder Debate' (2007) 20 *Journal of Refugee Studies* 385, 386.

⁴⁸ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 13.

⁴⁹ Josh DeWind, 'Response to Hathaway' (2007) 20 *Journal of Refugee Studies* 381, 383.

⁵⁰ Roberta Cohen, 'Response to Hathaway' (2007) 20 *Journal of Refugee Studies* 370, 374.

⁵¹ Walter Kälin, 'Internal displacement' in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 163, 166.

⁵² *ibid*, 167.

⁵³ *ibid*, 168.

⁵⁴ *ibid*, 167.

an integrated approach would be beneficial.⁵⁵ They are no more deserving, but their unique needs should be targeted.

2.2 Defining IDPs

'Categories in themselves can be meaningless (and even negative to the extent that labels are reductive or may mask the heterogeneity of a group); it is the corresponding entitlements which give them particular significance. The definitions are essentially for legal purposes'.⁵⁶

The Principles do not define IDPs, but rather describe them. There is still no international consensus on the identification of IDPs⁵⁷ or their common features.⁵⁸ However, what can be inferred from the common usage of the term is that the movement is involuntary and it does not go beyond the state's international borders.⁵⁹ Basing IDPs only on these two features would render it too broad a category since it would encapsulate, for example, people who are evicted from their homes because of their inability to pay their debts, even though they do not suffer from any violations to their human rights. Hence, any description or definition should be narrow enough to leave people who do not need protection out, but broad enough to encapsulate all the people who need protection.

The first attempt at defining IDPs was made in 1992 by United Nations Secretary General.⁶⁰ In this definition, the movement has to be sudden or unexpected, and the people who moved have to be in large numbers. The reasons for displacement included 'armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster'.⁶¹ The inclusion of natural and man-made disasters was commended by Mooney⁶² and by Cohen and Deng⁶³ for enabling the protection to reach more widely. However, Cohen suggested that these reasons should be qualified to exclude those who are not suffering from government persecution or human rights

⁵⁵ *ibid*, 168.

⁵⁶ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 11.

⁵⁷ Menaka Lecamwasam, 'The Internally Displaced in South Asia: Lessons from Kampala' (2014) 15 *Asia-Pacific Journal on Human Rights and the Law* 147, 151.

⁵⁸ M. Rafiqul Islam, 'The Sudanese Darfur Crisis and Internally Displaced Persons in International Law: The Least Protection for the Most Vulnerable' (2006) 18 *International Journal of Refugee Law* 354, 354.

⁵⁹ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998), 16.

⁶⁰ Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern' (2005) 24 *Refugee Survey Quarterly* 9, 10.

⁶¹ United Nations Economic and Social Council on Human Rights, Forty-eight session 'Analytical Report of the Secretary-General on Internally Displaced Persons' (1992) UN Doc E/CN.4/1992/23, 17.

⁶² Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern' (2005) 24 *Refugee Survey Quarterly* 9, 10.

⁶³ Cohen, Roberta, 1940-, author. and Deng, Francis Mading, 1938-, author., 'Masses in flight : the global crisis of internal displacement' (1998), 17.

violations because they can get aid from both international community and their government.⁶⁴ The constraints relating to numbers and time were found to be too restrictive since these limitations would exclude many instances of displacement that would otherwise be included in the concept such as in Burma, Ethiopia, Iraq and Bosnia,⁶⁵ because people do not always move in large numbers for a variety of reasons, including not attracting attention, as seen in Columbia.⁶⁶ In addition, looking for unexpected or sudden movement would exclude displacement that would occur over time, such as in Iraq,⁶⁷ and using the term 'forced to flee' is too restrictive due to cases where IDPs were not fleeing, but had been forced to leave their places of habitual residence as in Bosnia or obliged to leave to avoid being harmed in violent conflicts.⁶⁸

The Principles' identification of the concept of IDPs is:

'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 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'.⁶⁹

This description is adopted in its entirety in the Kampala Convention.⁷⁰ Abebe observes that by not situating the description in the body of the Principles, but rather in the introduction, the 'normative significance' of the description was softened since the aim was not to confer the category with a legal status.⁷¹ Regarding the Kampala Convention's adoption, Giustianni points out to that using this description was an attempt by the drafters to not give a legal status to IDPs, but to address their needs without discrimination.⁷² Giving legal status to IDPs may result in them being subjected to stigmatisation and discrimination.⁷³ Kidane points out that the Kampala

⁶⁴ Roberta Cohen, 'Roberta Cohen, 'Protecting the Internally Displaced', World Refugee Survey 1996, pp. 21-23' in B. S. Chimni (ed), International Refugee Law A Reader (2nd edn, Tejeshwar Singh for Sage Publications India Pvt Ltd 2002), 407.

⁶⁵ Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern' (2005) 24 Refugee Survey Quarterly 9, 11.

⁶⁶ Roberta Cohen and Francis M. Deng, Masses in Flight (The Brookings Institution 1998) 17.

⁶⁷ *ibid.*

⁶⁸ Roberta Cohen, 'Roberta Cohen, 'Protecting the Internally Displaced', World Refugee Survey 1996, pp. 21-23' in B. S. Chimni (ed), International Refugee Law A Reader (2nd edn, Tejeshwar Singh for Sage Publications India Pvt Ltd 2002) 406.

⁶⁹ 'Guiding principles on internal displacement' in (1999).

⁷⁰ African Union. 'African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)' (2009) Report, African Union, Kampala, Art 1(k).

⁷¹ Allehone M. Abebe, The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement (Routledge 2017)

⁷² Flavia Zorzi Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 Denver Journal of International Law and Policy 347, 354.

⁷³ IDMC, Norwegian Refugee Council(NRC) and Brookings-LSE Project on Internal Displacement, National Instruments on Internal Displacement: A Guide to their Development (NRC, IDMC and Brookings-LSE Project on Internal Displacement 2013), 62.

Convention transforms the description into a legal definition and its collective approach will be discussed later.⁷⁴ The ending of the displacement is another point that there is no consensus on.⁷⁵ Some argue that the displacement ends when IDPs return to their homes voluntarily, or when the problem that resulted in the displacement is overcome. Others claim that the displacement ends when the IDPs are secure and have established new lives in their original places of residence.⁷⁶

Reasons for internal displacement are usually diverse and complicated to identify.⁷⁷ According to Deng and Cohen, 'IDPs can rarely be neatly categorised as having only one distinct cause. Usually there are multiple, overlapping, and interrelated reasons explaining displacement'.⁷⁸ However, in this section the focus will be on those that produce the most IDPs: conflict, natural or man-made disasters, and systematic violations of human rights.

Differences relating to the identity of people such as ethnic or religious differences are usually not the cause of armed conflict, but they serve as a cover for problems relating to distribution of scarce resources or sharing power.⁷⁹ Conflict and violence are the leading causes of displacement. According to the Internal Displacement Monitoring Centre's 2017 mid-year provisional numbers,⁸⁰ there are 4.6 million newly-displaced, most of them from Democratic Republic of Congo, Iraq, Syria and Philippines.

Natural disasters produce IDPs because states sometimes use natural disasters as a way to discriminate against or violate the human rights of certain groups to which they are politically opposed.⁸¹ Natural disasters due to climate change have gained importance, which is evident in the *Report of Secretary-General on Outcome of the World Humanitarian Summit*.⁸² Climate change can manifest itself as sudden onset disasters, slow onset disasters, environmental degradation, submersion and destruction of small island states, tensions due to scarcity of resources, and turning places to high risk zones for human habitation.⁸³ Sudden onset disasters usually result in movement within state borders and thus the creation of IDPs. Hurricane Harvey

⁷⁴ Won Kidane, 'Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention' (2011) 44 *Vanderbilt Journal of Transnational Law* 1, 58.

⁷⁵ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998), p.35.

⁷⁶ *ibid.*, 37.

⁷⁷ *ibid.*, 23.

⁷⁸ *ibid.*, 23.

⁷⁹ *ibid.*, 21.

⁸⁰ IDMC, 'Provisional Mid-year figures Internal displacement in 2017' (Internal Displacement Monitoring Centre 2017) <<http://www.internal-displacement.org/library/publications/2017/midyear-figures-2017>> accessed 16 August 2017

⁸¹ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998) 16.

⁸² United Nations General Assembly, Seventy-first session 'Outcome of the World Humanitarian Summit Report of the Secretary-General' (2016) UN Doc A/71/35, 26.

⁸³ Walter Kälin, 'Conceptualising Climate-Induced Displacement' in Jane McAdam (ed) *Climate Change and Displacement: Multidisciplinary Perspectives* (Bloomsbury Publishing 2010), 86-92.

in the United States is one of the most recent disasters that has not been added to the figures yet. Ferris, in her article about Hurricane Harvey, points out the consequences of disasters such as poverty and the needs of IDPs after a sudden onset disaster. She argues that the recovery process is not just the immediate relief aid, but is a long process that needs to address issues such as lost documentation.⁸⁴ Slow onset disasters and tensions caused by scarcity of resources are often related to climate change, and movement from high risk zones also produces IDPs.⁸⁵

Man-made disasters include nuclear or chemical accidents or development projects.⁸⁶ Internal displacement caused by development projects receives less attention and protection, which renders these IDPs invisible because development projects are usually considered to be in the public interest where the attested modernisation and economic growth by transnational corporations and nation states is assumed to be the logic of the world.⁸⁷ Juma claims that international community is more interested in displacement caused by conflicts and there is a belief that IDPs do not suffer from lack of access to judicial structures.⁸⁸ Guistiniani argues that displacement caused by development projects is one of the main reasons that displacement occurs, and claims that this may result in a situation where the displacement would cause conflict over resources which would lead more people to be displaced.⁸⁹ Guistiniani also points out that displacement caused by development projects generally goes unaddressed since sacrificing the most marginalised and vulnerable for the public interest makes states and international organisations pay less attention to it.⁹⁰

Even though it is not counted as a leading reason for displacement, closing borders is another reason that IDPs emerge since people are left with no choice but to move to a relatively safe place within the borders of their own state.⁹¹

⁸⁴ Elizabeth Ferris, 'Harvey's Displaced: A Long Haul to Recovery' (ISIM Blog Georgetown University Edmund A. Walsh School of Foreign Service, 29 August 2017) <<http://blogisim.tumblr.com/post/164760002915/harveys-displaced-a-long-haul-to-recovery> > accessed 30 August 2017

⁸⁵ Walter Kälin, 'Conceptualising Climate-Induced Displacement' in Jane McAdam (ed) *Climate Change and Displacement: Multidisciplinary Perspectives* (Bloomsbury Publishing 2010), 86-92.

⁸⁶ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998), 16-17

⁸⁷ Laurence Juma, 'Protection of development-induced internally displaced persons under the African Charter: the case of the Endorois community of Northern Kenya' (2013) 46 *Comparative and International Law Journal of Southern Africa* 211, 211.

⁸⁸ *ibid* 211-212.

⁸⁹ Flavia Zorzi Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 *Denver Journal of International Law and Policy* 347, 355.

⁹⁰ *ibid*, 355.

⁹¹ Elizabeth Ferris, 'Internal Displacement and the Right to Seek Asylum' (2008) 27 *Refugee Survey Quarterly* 76, 80.

Chapter 3. The international focus on internal displacement

To understand why international focus on IDPs is not purely based on humanitarian values, it has to be examined in its historical and political context. As Chimni suggests, UNHCR's knowledge creation and dissemination function did not receive the attention that it deserved by scholars because of the prevalence of the positivist approach, but to fully grasp UNHCR's position it has to be examined within its historical and political context.⁹² When looked from a historical and political perspective, it can be seen that the UNHCR's knowledge production and dissemination function is under the control of the Global North, which uses it to legitimise and serve their interests, including in the promotion of the internalist approach in the post-Cold War era, seen in the right to remain, in-country protection and safe havens.⁹³ Hence, in this section, the background of IDPs and refugee law will be examined to show that the development of the Principles or the focus on IDPs did not happen in a vacuum, but was built around the Global North's interests.

3.1 During the Cold War

Cold War politics and the UNHCR's mandate remained depoliticised as international refugee law traditionally approached things from a positivist view and socio-economic aspects did not receive attention. According to Chimni, this approach was better suited to the needs of the Global North.⁹⁴ However, a positivist approach to law, since it separates the legal from the political and social, disarms it against power.⁹⁵

In the nineteenth century, refugee protection was dealt by individual states and no international treaty was needed since it was considered an internal affair.⁹⁶ The reason international attention was needed was the dramatic increase in the number of refugees during and after World War 1.⁹⁷ This need was filled by 1922 Arrangements or 'Nansen Passports', which provided legal identity to Russians and was the beginning of international refugee law.⁹⁸ Until The 1951 Convention Relating to the Status of Refugees (1951 Convention) defined refugee status and

⁹² B. S. Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 *Journal of Refugee Studies* 350, 366

⁹³ *ibid*, 366-367.

⁹⁴ *ibid*, 353.

⁹⁵ *ibid*, 355.

⁹⁶ Phil Orchard, 'The Contested Origins of Internal Displacement' (2016) 28 *International Journal Of Refugee Law* 210, 213.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*.

created the UNHCR, according to Phuong there was no general refugee definition, but there were definitions which targeted specific groups or situations.⁹⁹ Orchard points out that there was a distinct commonality between those arrangements, which was the loss of the protection of the origin state.¹⁰⁰ Orchard further notes that the Arrangements definition showed that the international community had an understanding of the refugee concept, but they wanted to limit the refugees that they wanted to help based on category.¹⁰¹

Deng claims that the birth of 1951 Convention and the creation of UNHCR lies in the displacement caused by World War 2, where millions were uprooted from their places of origin to seek safety abroad or to flee persecution, either way losing the protection of their origin states.¹⁰²

The 1951 Convention definition was made by the Global North and was affected by Cold War politics. According to Phuong, the definition was made so that it would allow people fleeing from Communism to make use of it, which illustrates its political nature.¹⁰³ In the preparation phase of the 1951 Convention, countries such as Greece brought up IDPs but the protection they sought was not of a legal nature but more material. This was opposed by France and the US, claiming that the nature of IDPs' problem differed from those of refugees, and hence could not be addressed under 1951 Convention.¹⁰⁴ Phuong claims that the inclusion suggested was not about expanding refugee definition to encompass IDPs, but acknowledging IDPs under the 1951 Convention.¹⁰⁵

Hathaway argues that protection of the Refugee Convention did not extend to the IDPs since, even though they needed protection and were the subject of 'humanitarian concern', their problems were different to those of refugees who had lost the protection of their government.¹⁰⁶ The 1951 Convention separates refugees from other forced migrants to address the issues that were unique to them, not to confer on them a special status or suggest that refugees deserve more protection than others.¹⁰⁷ The Convention also establishes that states should treat refugees

⁹⁹ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 16

¹⁰⁰ Phil Orchard, 'The Contested Origins of Internal Displacement' (2016) 28 *International Journal Of Refugee Law* 210, 215.

¹⁰¹ *Ibid.*

¹⁰² Francis M. Deng, 'Frontiers of Sovereignty: A Framework of Protection, Assistance, and Development for the Internally Displaced' (1995) 8 *Leiden Journal of International Law* 249, 256.

¹⁰³ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 16-23.

¹⁰⁴ *ibid* 23.

¹⁰⁵ *Ibid.*

¹⁰⁶ James C. Hathaway and Michelle Foster, 'Alienage', *The Law of Refugee Status* (2nd edn Cambridge University Press 2014), 17.

¹⁰⁷ *ibid*, 21.

as they treat their own citizens, and since IDPs still have their status as citizens, this protection is irrelevant.¹⁰⁸ Barutciski reiterates this point, claiming that the protection provided by the international community was bestowing refugees with some right to get better treatment than visitors or tourists in the host state.¹⁰⁹ He also claims that international protection in the refugee context refers to legal protection which is needed for the refugee to survive until a durable solution is found, and it is not about the abuse or violations of their human rights.¹¹⁰

With the exception of protection of private property rights, the rights secured in the Convention are of no use to IDPs since they guarantee rights that refugees are lacking by the virtue of them being outside of their state without their state's protection.¹¹¹ Barutciski claims that the rights given to refugees would not mean anything to IDPs, since they are still citizens.¹¹² On non-refoulement, Barutciski echoes Hathaway's point and asks what good non-refoulement brings to IDPs, and how obligating the state which caused the displacement in the first place to not send IDPs to a dangerous part of the country would work.¹¹³ Another reason Hathaway points out is the fear among drafters of the Convention of some states' shifting responsibility to the international community, draining already limited resources.¹¹⁴

The other problem with the inclusion of the IDPs to Convention is the issue of sovereignty, according to Hathaway.¹¹⁵ He highlights that in the early 1950s when the Convention was drafted, intrusion to a states' sovereign territory due to humanitarian concerns to protect its citizens from itself was unthinkable.¹¹⁶ However, Barutciski also reminds us that protection for IDPs which would entail intervention is problematic due to concerns about 'territorial integrity'.¹¹⁷ Barutciski also claims that IDP protection is related to 'humanitarian intervention', which is focusing on the basic needs of survival such as food, which should be addressed on an operational level.¹¹⁸ On this claim, however, Barutciski should be reminded of the 'well-fed dead' phenomenon, which

¹⁰⁸ *ibid*, 22.

¹⁰⁹ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 12.

¹¹⁰ *ibid*.

¹¹¹ James C. Hathaway and Michelle Foster, 'Alienage', *The Law of Refugee Status* (2nd edn Cambridge University Press 2014), p.22.

¹¹² Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 12.

¹¹³ *ibid*, 12.

¹¹⁴ James C. Hathaway and Michelle Foster, 'Alienage', *The Law of Refugee Status* (2nd edn Cambridge University Press 2014), p.18.

¹¹⁵ *ibid*, 18.

¹¹⁶ *ibid*.

¹¹⁷ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 13.

¹¹⁸ *Ibid*.

occurs when people do not have their human rights protected but are kept alive by being supplied with basic necessities of life.¹¹⁹ Rutinwa agrees that concerns over sovereignty at the time of drafting the 1951 Convention were legitimate.¹²⁰

Orchard claims that the reason for the exclusion of IDPs from the 1951 Convention was because of the US government's deliberate actions.¹²¹ According to him, the US government wanted to limit the UN's involvement with refugees because it wanted to cut the cost of aid to refugees which were a Western European problem, and create its own institutions that would focus on aiding communist refugees.¹²² The issue of sovereignty was not raised earlier in the debates and the US government's pursuit of excluding IDPs was not a result of depriving them of legal protection, but of US's concerns on providing them with material assistance.¹²³

Orchard's argument has merit. The US government's actions played a role in exclusion of IDPs from the treaty, since US was the super power of the time with control over resources, but Hathaway's and Barutciski's arguments also have merit. Inclusion of IDPs in the 1951 Convention would have been of no value to IDPs as they would not have gained anything from a treaty designed to give protection to those who lacked the protection of their own government.

3.2 After the Cold War

During the Cold War refugees had both geopolitical and ideological value, and so the difference between refugees from Europe and the Third World even though still present.¹²⁴ With the end of the Cold War, refugees lost their value for the Global North, which led to the creation of the 'myth of difference',¹²⁵ which is the alleged difference between the refugee influxes before and after 1960s, or in other words between European refugees and refugees from the third world.¹²⁶ These differences are the differences in number of people who flee and the failure of post-1960s refugees to satisfy particular criteria: abuse of refugeehood by economic migrants due to developments in transportation and communication; the shift in reasons for flight from international wars to internal wars; and different definition of refugee in 1969 OAU refugee

¹¹⁹ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998) p.10

¹²⁰ Bonaventure Rutinwa, 'How tense is the tension between the refugee concept and the IDP debate?' (1999) 4 *Forced Migration Review* 29, 30.

¹²¹ Phil Orchard, 'The Contested Origins of Internal Displacement' (2016) 28 *International Journal Of Refugee Law* 210, 212-224.

¹²² *Ibid.*

¹²³ *ibid* 232.

¹²⁴ B. S. Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 *Journal of Refugee Studies* 350, 355.

¹²⁵ *ibid*, 351.

¹²⁶ *ibid*, 356.

convention from the 1951 Convention.¹²⁷ Chimni argues that there is no difference between pre- and post-1960s migrants, and that the numbers did not rise. There was abuse of the system, but it went unnoticed because there was less scrutiny by receiving states due to refugees' ideological value.¹²⁸ However, this 'myth of difference' was employed by Global North to legitimise refusing entry by showcasing the new refugees who are not as white as them and abusers of hospitality.¹²⁹ The UNHCR's knowledge creation and dissemination function did not receive the attention that it deserves because of the prevalence of the positivist approach, but to fully grasp the UNHCR's position, Chimni argues, it has to be examined within the historical and political context from which it originated.¹³⁰ When looked at from a historical and political perspective, the UNHCR's knowledge production and dissemination function is under the control of the Global North, which uses it to legitimise and serve their interests, which is the internalist approach as can be deduced from UNHCR's approach to and promotion of right to remain, in-country protection and safe havens in the post-Cold War era.¹³¹

With the loss of value of refugees for the Global North, the root causes of displacement gained importance. However, the root causes from source external to the state of origin continue to be overlooked because attention paid to external sources would be in conflict with the Global North's desire to keep out refugees since external sources of the root causes would make the Global North liable to the Third World.¹³² Chimni claims that this approach does not capture the complex reality of the reasons for refugee movements, and consequently, root causes of displacement are portrayed as internal problems of the state of origin by the Global North.¹³³ This internalist approach, which is in Global North's interest post-Cold War, have shifted the durable solution promoted for refugees from resettlement to voluntary repatriation under the claims that alienation and separation of the person from their country is inhumane.¹³⁴ However, there is no research data to back these claims.¹³⁵ Chimni argues that regressive policies in the Global North are the reason for the refugees to want repatriation, hence the voluntary aspect of the repatriation is actually an illusion and what is promoted is involuntary repatriation.¹³⁶ Holding the state of origin accountable for the creation of the root causes has led to the state responsibility concept, which

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *ibid.*, 357.

¹³⁰ *ibid.*, 366.

¹³¹ *ibid.*, 366-367.

¹³² *ibid.*, 360.

¹³³ *ibid.*, 361.

¹³⁴ *ibid.*, 364.

¹³⁵ *ibid.*

¹³⁶ *ibid.*, 365.

only applies to the state of origin, hence IDPs come into the spotlight.¹³⁷ Other reasons for international attention include rising numbers, the development of telecommunications and increased media attention.¹³⁸ Goodwin-Gil claims that, until the end of the Cold War, the UN's 1951 organisational model for refugees was fit for purpose. However, with the end of the Cold War and the rapid globalisation of the world economy, the idea of the 'common public order' arose which turned the spotlight on IDPs.¹³⁹ Their plight was taken in to consideration by the UN Commission on Human Rights in 1992, and Francis Deng was appointed to examine and analyse existing international human rights law, humanitarian and refugee law to identify whether the protection afforded by these instruments covered the needs and applied to IDPs, and legal gaps in their protection.¹⁴⁰ The study resulted in a further request by the Commission on Human Rights to create a legal framework, which led to the creation of the Principles on Internal Displacement.¹⁴¹

¹³⁷ *ibid*, 362.

¹³⁸ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998) p.3-4

¹³⁹ Guy S. Goodwin-Gill, 'International Protection and Assistance for Refugees and the Displaced: Institutional Challenges and United Nations Reform' (Refugee Studies Centre Workshop, 'Refugee Protection in International Law: Contemporary Challenges', Oxford 2006), p.4

¹⁴⁰ Flavia Zorzi Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 *Denver Journal of International Law and Policy* 347, 348

¹⁴¹ *ibid*, 349

Chapter 4. Sovereignty – responsibility to protect – *sovereignty as responsibility*

One of the most debated subjects related to international protection of the internally displaced is the tension between the internal and the international; the sovereignty of the territorial state and interference by the international community.¹⁴² Deng and his team first looked for a way to mediate between sovereignty and international aid, and this led to the creation of the principle of '*sovereignty as responsibility*'¹⁴³ which lies in the heart of the Principles¹⁴⁴ and the doctrine of 'responsibility to protect' (R2P). This chapter will examine *sovereignty as responsibility* and how it is employed under the R2P doctrine to demonstrate that the *sovereignty as responsibility* principle is not used for the protection of IDPs, or to create a feeling of obligation towards them, or to create a political climate that would lead to the creation of political will.

4.1 From traditional sovereignty to *sovereignty as responsibility*

Academic sources often state that sovereignty, territorial integrity and non-intervention are cardinal rules of international law.¹⁴⁵ Sovereignty originated as a description of the authority of the monarch over their subjects, population and territory, which was only limited by the monarch's own will. Hence sovereignty was the power to control, and positioned the sovereign above the law and the sovereign's will gave law its legitimacy. Even though government differed from monarchy to democracy, in each the government was expected to bring order and stability to its territory and population using sovereign powers. This traditional understanding of sovereignty was enshrined in 1648 Treaty of Westphalia as all sovereign states were deemed to have absolute authority over their own territory and all were to be treated as equals.¹⁴⁶ The Westphalian world order of nation-states placed importance on the borders which divided national identities that would otherwise clash. Inside the state, the sovereign government created unity by imposing a national identity, and relations with other states were based on the individual state's interests.¹⁴⁷ Under this model the most accepted attributes in international law for an entity to be identified as

¹⁴² Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 208

¹⁴³ Francis M. Deng, 'Internally Displaced Populations: The Paradox of National Responsibility' (2007) MIT Center for International Studies Audit of the Conventional Wisdom 1

¹⁴⁴ *ibid*, 3

¹⁴⁵ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, p.24

¹⁴⁶ Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 *Third World Quarterly* 739, 740

¹⁴⁷ James G. March and Johan P. Olsen, 'The institutional dynamics of international political orders' (1998) 52 *International organization* 943, 944-945

a state are enshrined in the Montevideo Convention on Rights and Duties of States, 1933.¹⁴⁸ These are, permanent population, defined territory, government and capacity to enter into relations with other states.¹⁴⁹ The Arbitration Commission of the European Conference on Yugoslavia in Opinion No. 1 states that 'such a state is characterised by sovereignty',¹⁵⁰ although this traditional model of sovereignty was created by and for the Global North: the non-European, Global South, did not enjoy sovereignty because of colonialism.¹⁵¹ After World War 1, the Global North started to promote sovereign nation states being created in previously colonised Africa, Asia and the Americas through the League of Nations, although under the Mandate system they would still serve the former colonial masters.¹⁵² This action of the Global North sought to transform the previously colonised or Global South to include an economic order of its own devising.¹⁵³ Signed in 1945, the United Nations founding treaty, the UN Charter, was built on the principle of the sovereign equality of states (Article 2(1)) and territorial integrity (Article 2(4)) which leads to non-interference in internal affairs (Article 2(7)) with by the UN (Charter VII).¹⁵⁴

The atrocities which humanity suffered in World War 2 resulted in the limiting and erosion of sovereignty, since sovereignty was deemed to be limited by 'fundamental values of human dignity'.¹⁵⁵ During the Second World War when Hitler committed unimaginable atrocities within the states' territory and with impunity, and this led to development of international human rights instruments.¹⁵⁶ Those instruments were the rights and values enshrined in the body of human rights law and which became the Universal Declaration of Human Rights 1948 and the twin covenants of the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966. These new standards, however, lay dormant until the late 1970s and early 1980s.¹⁵⁷ Even though many states signed the treaties and committed to the human rights principles, they still only adhered to them to the extent that they

¹⁴⁸ Montevideo Convention on the Rights and Duties of States (adopted:26 December 1933 entered into force 26 December 1934) 165 LNTS 19; 49 Stat 3097

¹⁴⁹ Malcolm N. Shaw, *International law* (7th edn, Cambridge University Press 2014), 144

¹⁵⁰ *ibid*

¹⁵¹ Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 *Third World Quarterly* 739, p.740,742

¹⁵² *ibid*, 747

¹⁵³ *ibid*, 748-749

¹⁵⁴ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, p.212-213

¹⁵⁵ Francis M. Deng, 'From 'Sovereignty as Responsibility' to the 'Responsibility to Protect'' (2010) 2 *Global Responsibility to Protect* 353, 357

¹⁵⁶ Louis Henkin, 'That S Word: Sovereignty, and Globalization, and Human Rights, Et Cetera' (1999) 68 *Fordham Law Review* 1, p.4

¹⁵⁷ Samuel Moyn, 'Human Rights in History' in *Human Rights and the Uses of History* (Verso, 2014), 69-86, 74

wished, hence retaining their sovereign powers.¹⁵⁸ The principle of non-interference has also evolved with the international human rights instruments.¹⁵⁹ Using these instruments, the international community, or the Global North, gained access to the citizens without the intermediary state.¹⁶⁰ However, the Global South also gained ground in sovereignty claims due to the rise of self-determination policies.¹⁶¹

International attention to IDPs grew because of their growing numbers and the risk of them spilling across borders and disrupting the stability of the international or regional order, which is also in line with the preoccupation of the international community to keep people within their own country, thereby preventing refugee flows. Since then, the traditional concept of sovereignty has been eroded by the ease of access afforded by the Security Council to IDPs and others in way of relief corridors, the use of force and cross-border operations.¹⁶² The starting of the erosion of sovereignty after the end of World War 2 with emphasis on human rights gained momentum with the end of the Cold War because internal and regional conflicts were not seen as proxy wars, but within their own regional and national contexts where nation-building caused identity conflicts within states as one identity tried to cast itself as the overarching national identity by suppressing the other.¹⁶³ This erosion of sovereignty caused unrest in some states because their 'domestic performance' rendered them vulnerable to interference.¹⁶⁴ Those with poor performance were of the Global South. The poor performance was caused by colonialism, since the borders after colonisation were not drawn with the involvement of the nations, but on the Global North's whims which ignited identity clashes and internal strife.¹⁶⁵ Due to its colonial past, the Global South approached any kind of interference with scepticism.¹⁶⁶ Consequently, this re-emergence of the

¹⁵⁸ Louis Henkin, 'That S Word: Sovereignty, and Globalization, and Human Rights, Et Cetera' (1999) 68 *Fordham Law Review* 1, 5

¹⁵⁹ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 213

¹⁶⁰ Jacqueline Bhabha, 'Embodied Rights: Gender Persecution, State Sovereignty and Refugees' (1996) 9 *Public Culture* 3, 5-6

¹⁶¹ Samuel Moyn, 'Human Rights in History' in *Human Rights and the Uses of History* (Verso, 2014), 69-86., 75-76

¹⁶² Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 *Global Responsibility to Protect* 15, 17

¹⁶³ Francis M. Deng, 'Internally Displaced Populations: The Paradox of National Responsibility' (2007) *MIT Center for International Studies Audit of the Conventional Wisdom* 1, p.3

¹⁶⁴ Francis M. Deng, 'From 'Sovereignty as Responsibility' to the 'Responsibility to Protect'' (2010) 2 *Global Responsibility to Protect* 353, 356

¹⁶⁵ Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 *Third World Quarterly* 739, 747-749, Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 210

¹⁶⁶ Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 *Third World Quarterly* 739, 749

sovereignty concept resulted in the need to reconcile sovereignty with the human rights values pursued by the Global North.¹⁶⁷

Phuong claims that protection of human rights is increasingly not considered to be an internal issue, which shows derogation from the concept of absolute sovereignty to state accountability.¹⁶⁸ The sovereignty concept has been eroded to involve 'responsibility' due to new meaning it possessed which was built up by Deng and Cohen to persuade states to protect their own displaced people.¹⁶⁹ Sovereignty as responsibility exists at two levels. On the first, the state is designated as the primary responsibility-holder of its population's wellbeing by the virtue of its sovereignty. This level is agreed by all governments and is the level where the unease about erosion of sovereignty is addressed. The second focuses on situations where the state is unable to protect its citizens within its borders, which obliges it to seek international help. Hence, to keep its good standing and legitimisation as a sovereign state in the international community, it seeks and accepts international aid.¹⁷⁰ The Principles' foundation lies in the *sovereignty as responsibility* concept, which can be deduced from Principles 3, 25 and 27 where it is stated that offers of aid should not be considered as unfriendly actions or interference in the state's internal affairs, and that aid should not be withheld due to authorities' unwillingness or inability.¹⁷¹

4.2 Responsibility to protect

According to Thakur,¹⁷² from 1945 to 2005 the non-intervention principle loosened as the pursuance of human rights hardened. The International Commission on Intervention and State Sovereignty (ICISS) was founded in the early 2000s and championed by Canadian state officials to address the issue of reconciling protection of people from human rights violations and respecting the principle of state sovereignty.¹⁷³ This development occurred in response to the

¹⁶⁷ Roberta Cohen, 'Humanitarian Imperatives are Transforming Sovereignty' (2008) 16 ILSA Quart 14, p.14-15

¹⁶⁸ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 214

¹⁶⁹ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 International Affairs 615, p.619; Francis M. Deng, 'Frontiers of Sovereignty: A Framework of Protection, Assistance, and Development for the Internally Displaced' (1995) 8 Leiden Journal of International Law 249, 258

¹⁷⁰ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 International Affairs 615, 619

¹⁷¹ Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 Global Responsibility to Protect 15, 20

¹⁷² Ramesh Thakur, 'The Responsibility to Protect at 15' (2016) 92 International Affairs 415, 420

¹⁷³ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 International Affairs 615, 620s

1999 conflict in Kosovo, where military intervention by NATO left Kosovar IDPs without aid and worsened their situation.¹⁷⁴ Hence, tarnished humanitarian intervention needed to be redeemed.

Humanitarian intervention, which is the predecessor of R2P, focused on the 'right to intervene' whereas R2P focused on the responsibility of the citizen-state relationship which bridged the gap between non-interference and human rights and led to the acceptance of the R2P at the World Summit in 2005.¹⁷⁵ Use of humanitarian intervention was to circumvent United Nations involvement, while R2P cannot be applied without the involvement of the UN.¹⁷⁶ Bellamy criticises the principle of *sovereignty as responsibility*, pointing out that when, by whom and under what circumstances the sovereignty would be deemed forfeit is not clear, and at best points out to the United Nations Security Council, which is the Global North's fortress, as the higher power who would put the global common good above the national interests of the individual member states.¹⁷⁷ Chimni's argument that United Nations knowledge production and dissemination function is poor also comes into play here and is reiterated by Thakur, and has led to a great deal of literature on R2P since the UN and its primary funders endorsed the doctrine of R2P.¹⁷⁸

The ICISS report focussed on how R2P overrides the principle of non-interference by focusing on the necessities of protection for people under gross violations of human rights.¹⁷⁹ The report also included how non-violent preventive measures and measures for rebuilding after the human rights violations can be applied, and thresholds and precautionary principles to legitimise intervention and deal with deadlocks on Security Council which also aimed to prevent abuses of humanitarian causes by the member states.¹⁸⁰ Bellamy claims that neither the ICISS report nor *sovereignty as responsibility* is fully reflected in the agreed form from the World Summit 2005 or its reaffirmation by Security Council at 2006.¹⁸¹ Cohen claims that R2P adopted by the UN General Assembly in 2005 is similar to sovereignty as it places the responsibility for protection of its population to the state and puts additional responsibility to international community to support the state to fulfil its

¹⁷⁴ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 228-230

¹⁷⁵ Ramesh Thakur, 'The Responsibility to Protect at 15' (2016) 92 *International Affairs* 415, 417-418

¹⁷⁶ *ibid*, 418

¹⁷⁷ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 *International Affairs* 615, 620; Ramesh Thakur, 'R2P after Libya and Syria: Engaging Emerging Powers' (2013) 36 *The Washington Quarterly* 61, 72

¹⁷⁸ Ramesh Thakur, 'The Responsibility to Protect at 15' (2016) 92 *International Affairs* 415, 418; B. S. Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 *Journal of Refugee Studies* 350, 366

¹⁷⁹ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 *International Affairs* 615, 620

¹⁸⁰ *ibid*, 621

¹⁸¹ *ibid*, 622, 627

responsibility.¹⁸² It also shifts the responsibility from the state when it is unable to discharge it and allows the international community to use methods ranging from the diplomatic to the use of force under Chapter VII of the UN Charter.¹⁸³ Application of R2P is confined to four particular crimes which are war crimes, crimes against humanity, genocide and ethnic cleansing.¹⁸⁴ There is also the problem of reaching a consensus on whether the atrocities amount to these crimes in the Security Council, as demonstrated by the situation in Darfur.¹⁸⁵

Phuong claims that the R2P discourse may reconceptualise the position of IDPs from state's point of view from enemy to individuals who they are obliged to protect.¹⁸⁶ However, states may also try to hide the situation of their IDPs to avoid interference. However, the concept of forfeiture of sovereignty under R2P does not always justify or require intervention, but supporting the state to deal with IDPs by reinforcing the state's own instruments of protection.¹⁸⁷ Bellamy endorses this view, claiming that R2P does not find support from some states since it is assumed that it is just an underhand way of 'non-consensual military intervention', which it is not.¹⁸⁸ Cohen and Mooney claim that this misconception of R2P which equates it with military action is detrimental to its use for the protection of IDPs because it is interpreted as a smoke-screen for interference in internal affairs.¹⁸⁹

Cohen suggests that R2P can be employed for the protection needs of IDPs if certain adjustments are made in the application of the concept. She proposes that the IDPs' needs are also integrated into R2P strategy by the Office of the Secretary General and policies for IDP protection are taken into consideration and the employed strategy addresses all of the phases of the displacement, rather than just the emergency phase. National responsibility for IDPs should be reiterated, promoting the Principles, broadening the scope of R2P to include natural disasters, creating better international and regional institutions devoted to IDPs that could be used when R2P is applied. Dialogue should be encouraged with insurgent groups as a form of protection for IDPs, and

¹⁸² Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 Global Responsibility to Protect 15, 21

¹⁸³ *ibid*, 21

¹⁸⁴ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 International Affairs 615, 623

¹⁸⁵ *ibid*, 627

¹⁸⁶ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2005) accessed 16 August 2017, 218

¹⁸⁷ *ibid*, 218

¹⁸⁸ Alex J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' (2008) 84 International Affairs 615, 616

¹⁸⁹ Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 Global Responsibility to Protect 15, 27; Erin Mooney, 'The Guiding Principles and the Responsibility to Protect' (2008) Forced Migration Review (Special issue GP 10: Ten Years of the Guiding Principles on Internal Displacement) December 11, 14

conciliation of human rights with humanitarian objectives and understanding of the concept of R2P as not depending solely on military action. The international protection capacity that is well trained to engage when military action is called for will allow R2P to aid IDPs.¹⁹⁰ Even though there is a clear link between the Principles and R2P, as both stem from the principle of *sovereignty as responsibility*, scholars such as Abebe warn against associating IDPs with R2P, since it would be detrimental to the acceptance of the Principles.¹⁹¹

When looking at the application of R2P, there are two distinct cases, Kenya and Libya. R2P was invoked for post-election conflicts in Kenya after the presidential election on 27 December 2007 led to violence.¹⁹² Demonstration against the rigged elections began, and the government used excessive force on demonstrators and forced relocation of opposition voters took place.¹⁹³ Ethnic clashes and governmental use of force led to around 1,000 deaths and 300,000 to 400,000 displacements.¹⁹⁴ Kofi Annan, the former UN-Secretary General, did not employ R2P language in mediation talks, but he claimed that R2P was how he saw the situation.¹⁹⁵ Since military action was not needed, the permanent members of Security Council were not able to obstruct the application and the authorities in Kenya did want the international attention, no use was made of it and so it is difficult to claim that it was successful or it can be used in other situations such as DRC, Darfur or Sri Lanka.¹⁹⁶ That R2P was applied in Kenya is contested by Junk, who points out that what was done in Kenya was a successful mediation by Annan and as R2P afterwards, not prior or during the events that took place.¹⁹⁷ Application in Kenya also failed to address post-conflict situations which led to protracted internal displacement.¹⁹⁸ Cohen argues that R2P includes 'responsibility to rebuild' which means that the international community should help the state to regain its capacity to protect its citizens. In Kenya, with the exception of small-scale

¹⁹⁰ Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 *Global Responsibility to Protect* 15, 31-37

¹⁹¹ Allehone M. Abebe, *The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement* (Routledge 2017)

¹⁹² Johannes Langer, 'The responsibility to protect: Kenya's post-electoral crisis' (2011) 19 *Journal of International Service* 1, 9

¹⁹³ *ibid*, 10

¹⁹⁴ Alex J. Bellamy, 'The Responsibility to Protect—Five Years On' (2010) 24 *Ethics & International Affairs* 143, 154

¹⁹⁵ Michael W Doyle, 'The Politics of Global Humanitarianism: The Responsibility to Protect Before and After Libya' (2016) 53 *International Politics* 14, 20

¹⁹⁶ Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 *Global Responsibility to Protect* 15, 21-23

¹⁹⁷ Julian Junk, 'Bringing the Non-coercive Dimensions of R2P to the Fore: The Case of Kenya' (2016) 30 *Global Society* 54, 61

¹⁹⁸ Roberta Cohen, 'Reconciling R2P with IDP Protection Special Issue: Protecting IDPs and Refugees' (2010) 2 *Global Responsibility to Protect* 15, 23-24

projects to provide for the basic needs of IDPs and establish groundwork for some returns by the UN Peacebuilding Commission, there was no strategy for a durable solution.¹⁹⁹

Turning to Libya, the UN Security Council passed two resolutions concerning the situation. Resolution 1973 involved no-fly zones, an arms embargo, a ban on flights, asset freezing and measures to protect civilians by member states.²⁰⁰ Resolution 1973 allowed military intervention without the consent of the Libyan state. The crisis was the result of the Arab Spring during which political demonstrations spread throughout the region. Demonstrations in Libya turned violent when the opposition established an Interim National Council, and conflicts between the government and this group resulted in deaths of many civilians.²⁰¹ Resolution 1970 was rejected by Gaddafi's government, and the situation for civilians worsened when armed government forces overcame the rebel forces and the government publicly threatened civilians in Benghazi.²⁰² The Arab Spring also led to clashes in Syria between the Al-Assad government and rebels, which has led to many deaths, including children.²⁰³ However, there is no intervention by the UN for geopolitical and strategic reasons.²⁰⁴

Application of R2P still remains selective and under the influence of the Global North, which does not accept its responsibility for creating atrocities, and only acts out when it has something to gain. For example, Thakur argues²⁰⁵ that the ISIS occupation of areas of Syria and Iraq and the nightmares they have unleashed on communities such as Yazidis has its roots in the invasion of Iraq in 2003 and the support for the war at Syria by providing arms and training in 2011, hence the responsibility falls on external sources and not just to the state in which the atrocities have taken place. Like the approach to IDPs' plight, R2P or *sovereignty as responsibility* only focus on the state which faces the consequences of the external effects. Hence the implementation does not show solidarity with people of the Global South, but rather it furthers the interests of the dominant Global North.

¹⁹⁹ *ibid*, 24

²⁰⁰ United Nations Security Council, Resolution 1973 (2011) (17 March 2011) UN Doc S/RES/1973 (2011), pp.4,6,13, 17,19

²⁰¹ Alex J. Bellamy and Paul D. Williams, 'The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect' (2011) 87 *International Affairs* 825, 838

²⁰² *ibid*, 838-839

²⁰³ Gabriele Lombardo, 'The responsibility to protect and the lack of intervention in Syria between the protection of human rights and geopolitical strategies' (2015) 19 *The International Journal of Human Rights* 1190, 1192

²⁰⁴ *ibid*, 1194

²⁰⁵ Ramesh Thakur, 'The Responsibility to Protect at 15' (2016) 92 *International Affairs* 415, 421

Chapter 5. Guiding Principles on internal displacement

In the previous chapter, the *sovereignty as responsibility* principle and its failure in the context of R2P was illustrated. The understanding of *sovereignty as responsibility* only comes when the consequences of the principle are felt by the state which is suffering from the displacement or gross human rights violations. The Global North's sovereignty never depends on its responsibility, whereas Global South's sovereignty is both dependent on its responsibility and the whims of Global North.

In this chapter, the Principles, which are founded on the principle of *sovereignty as responsibility*, will be examined, exploring how the Principles can be successful when the founding principle is not. Implementation of the Principles as regional and national instruments has failed, as will be seen from the cases of Turkey and Columbia.

5.1 Features and structure of the Guiding Principles

When Deng was appointed as the Special Representative by the Secretary-General after the call by the United Nations Commission on Human Rights in 1992, he gathered legal experts to analyse the existing rights and come up with a normative framework. Protecting IDPs falls to the international community because the IDPs' governments have usually caused or allowed the human rights violations and are unwilling or unable to meet their needs.²⁰⁶ Even though there are guarantees under international human rights law and international humanitarian law to address the needs of IDPs, because they are dispersed and the legal instruments do not specifically mention IDPs it is difficult for stakeholders to pinpoint the applicable guarantee.²⁰⁷ There are also intrinsic shortcomings in the instruments which undermine their capability to be of help to IDPs. These include state reservations to or non-ratification of human rights instruments, the legal instruments' failure to address non-state actors, and the inapplicability of international humanitarian law in situations where there are no conflicts.²⁰⁸ Therefore a separate international legal instrument which meets the rights of and focuses on IDPs is needed, be it a binding treaty or a soft-law document.

A separate legal document that would state the rights of the IDPs which are articulated in a number of instruments of human rights and humanitarian law has been opposed in some

²⁰⁶ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998), p74

²⁰⁷ *ibid*, 74

²⁰⁸ *ibid*, 74-75

quarters.²⁰⁹ It is argued that a separate legal document would undermine the protection provided by international human rights and humanitarian law instruments, and could lead to discrimination against other groups which are also suffering from human rights violations.²¹⁰ Barutciski argues that international human rights law and international humanitarian law already serve different needs, where the former employs a political discourse and the latter is non-political, hence more neutral. Merging both into a single document would thus deprive the humanitarian law of its neutrality.²¹¹ To the argument that repetition of existing rights would diminish their value, Rutinwa answers that restating rights targeting IDPs is beneficial and has been done for other categories, such as women and children. He goes on that targeting enables ease of access to the relevant material for interested parties, and clarification and amplification of existing rights enables better enforcement, which are also the aims of the Principles.²¹² Deng and Cohen also argue that compilation of the dispersed rights under one normative framework concerning IDPs would reinforce the existing rights by making them more effective, easing access to applicable law.²¹³ The process of compilation would also elucidate the legal gaps and grey areas where IDPs lack protection.²¹⁴ Cohen also claims that the adherence to the existing law of the legal team which prepared the Principles helped their recognition by international organisations and states alike, since the rights mentioned were already inherent in the international treaties which they had signed.²¹⁵ Therefore, keeping in mind the exclusion of IDPs from the 1951 Refugee Convention, a separate legal document would be beneficial and an appropriate way to address the needs of IDPs.

The second point to consider is the nature of this proposed legal document; binding or non-binding. Cohen points out that, at the time of preparation of the Principles, the choice was made in favour of a soft law document because states were not inclined to sign a treaty which would took a long time in preparation, when there was already sufficient coverage under international law.²¹⁶ Hence, the Principles are a non-binding soft-law document.

²⁰⁹ *ibid*, 74

²¹⁰ *ibid*, 74

²¹¹ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate' (1998) 3 *Forced Migration Review* 11, 12

²¹² Bonaventure Rutinwa, 'How tense is the tension between the refugee concept and the IDP debate?' (1999) 4 *Forced Migration Review* 29, 31

²¹³ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998), p.75

²¹⁴ *ibid*, 75

²¹⁵ Walter Kälin, 'Hardening Soft Law: Implementation of the Guiding Principles on Internal Displacement' (Proceedings of the Annual Meeting-American Society of International Law 2008) 187, 189

²¹⁶ *ibid*

Soft law instruments have both advantages and disadvantages. They do not provide enforcement mechanisms and may result in compromise of their principles, but are accepted as a step towards hard law. The Principles are also seen as a step towards hard law.²¹⁷ However, soft law instruments also have advantages, such as overriding stalling by states, overcoming issues such as challenging state sovereignty, strengthening NGOs, and clarifying vague or general norms that already exist.²¹⁸ Entwisle claims that soft law instruments may be important tools for creating change,²¹⁹ while Orchard focuses on the norm-generating features of soft law such as the ready structures for the domestication of the norms and having a more comprehensive scope than the hard law instruments when the issue to be addressed is very sensitive.²²⁰ The Principles were prepared, not by negotiation between states, but by the work of experts.²²¹ They emphasise that state sovereignty entails responsibility of the state to protect IDPs by demonstrating existing obligations, not creating new ones.²²² Carr acknowledges that the Principles, because they are soft law, have no legal value, but she claims that being a framework enables states to create their own laws, which is of great value.²²³

Thus, as a separate non-binding document, the Principles on Internal Displacement came into existence. Orchard claims the Principles constitute a clear protection regime for IDPs since it is widely accepted at the international, regional and national levels, as seen by UN organs, the Kampala Convention and domestication into national legal instruments.²²⁴ Kalin claims that, because of the recognition of the Principles by the 2005 World Summit, regional adoption and incorporation into national legal frameworks, the resistance to an international treaty has subsided.²²⁵

The Principles is comprised of thirty sections distilled by analogy from international human rights law, humanitarian law and refugee law which are structured to address the displacement phrases

²¹⁷ Jon Bennett, 'Rights and Borders' (1999) 4 *Forced Migration Review* 33, 33

²¹⁸ PHIL ORCHARD, 'Protection of internally displaced persons: soft law as a norm-generating mechanism' (2010) 36(2) *Rev Int Stud* 281, 286

²¹⁹ Hannah Entwisle, 'Tracing Cascades: The Normative Development of the U.N. Guiding Principles on Internal Displacement' (2004) 19 *Georgetown Immigration Law Journal* 369, 373

²²⁰ P Phil Orchard, 'Protection of Internally Displaced Persons: Soft Law as a Norm-generating Mechanism' (2010) 36 *Review of International Studies* 281, 287

²²¹, 187

²²² Rhodri C. Williams and Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (Brookings-Bern Project on Internal Displacement 2008), p.3

²²³ Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 *International Journal of Refugee Law* 34, 35

²²⁴ Phil Orchard, 'The Contested Origins of Internal Displacement' (2016) 28 *International Journal Of Refugee Law* 210, p.210-211

²²⁵ Walter Kälin, 'Hardening Soft Law: Implementation of the Guiding Principles on Internal Displacement' (Proceedings of the Annual Meeting-American Society of International Law 2008) 187, 187

from pre-displacement to return, resettlement and reintegration.²²⁶ Section I sets out the description of IDPs (see Chapter 1), and Principle 2 states that they should not be detrimental to the right to seek asylum. Principle 3 codifies the *sovereignty as responsibility* principle, reiterating that the primary responsibility falls on national authorities. Section II (Principles 5 to 9) addresses the pre-displacement phase and the right to be protected against arbitrary displacement (Principle 6) and *sovereignty as responsibility*, which is the responsibility of international actors (Principle 5). It also states the circumstances under which it can occur (Principles 7 and 8) and that it should be considered only as a last resort. Section III (Principles 10 to 23) applies to the displacement phase, and restates customary law and the related human rights norms, and specifies how these can be employed for IDPs.²²⁷ Section IV addresses humanitarian assistance (Principles 24 to 27). Principle 25 reiterates that the primary responsibility to provide assistance falls to the state, and the offers of assistance from international organisations or other actors should not be seen either as interference in internal affairs or as unfriendly action. Finally, Section V (Principles 28 to 30) addresses the phase after the displacement, and focuses on return, resettlement and reintegration.

5.2 Implementation of the Guiding Principles at regional and national levels

The ad hoc nature of international assistance for IDPs puts great importance on the legal responses to IDPs by domestic and regional legal systems.²²⁸ Consequently, the Principles seek to be adopted into municipal laws and regional treaties. In this section, their adoption at the regional level as the Kampala Convention and the national level in Columbia and Turkey will be examined to show whether or not they are useful.

5.3 The regional level – the Kampala Convention

Regional organisations and UN organisations are mentioned and encouraged in the UN's Charter.²²⁹ Since regional organisations are both local and international, their unique status puts them in an important position where they are able to make important social and political change.²³⁰

²²⁶ Walter Kälin, 'The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool' (2005) 24 Refugee Survey Quarterly 27, 28

²²⁷ Robert K. Goldman, 'Internal Displacement, the Guiding Principles on Internal Displacement, the Principles Normative Status, and the Need for their Effective Domestic Implementation in Colombia.' (2009) 2 ACDI-Anuario Colombiano de Derecho Internacional 59, 68

²²⁸ Roberta Cohen and Francis M. Deng, *Masses in Flight* (The Brookings Institution 1998), p72

²²⁹ Leslie Claire Bailey, 'Out of Africa: Toward Regional Solutions for Internal Displacement' (2014) 39 Brooklyn Journal of International Law 353, p.365

²³⁰ *ibid*, 367

Regional cooperation to address a specific issues via a regional organisation creates harmony within the region, and better relationships between states which decreases conflict, thus helping the security and peace of the region.²³¹ Regional human rights instruments' ratification rates are higher, since the states of the region find more voice and are able to contribute more effectively in the preparation of the instruments.²³² Since the instrument is prepared by states who are in the same region, culturally its content is more appropriate and anxieties caused by the Global North's ideological interventions can be circumvented.²³³

Internal displacement has been addressed at the regional level by the African Union, first with its *Pact on Security, Stability, and Development in Great Lakes Region* in December 2006. This includes two protocols: *the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons* and the *Great Lakes Protocol on the Property Rights of Returning Persons*.²³⁴ The signatories pledged to adopt and implement the Principles at the national level, and the protocols adapted the Principles to emphasise the responsibilities of the states.²³⁵ These steps by the African Union showed the international community that Africa, who suffers from grave IDP situations, wants to take serious and effective steps to address the problem. They culminated in the signing of the *AU Convention for the Prevention of Internal Displacement and the Protection of and Assistance to Internally Displaced Persons in Africa* (the Kampala Convention) at the end of the Special Summit of the African Union held in Kampala, Uganda.²³⁶

The Organisation of African Unity, which was the predecessor of the African Union, drafted the *Convention Governing the Specific Aspects of Refugee Problems in Africa* in 1969 which, because of the political climate of the times, employed a wide definition of refugee and an 'open door' policy. However internal conflicts caused IDP numbers to raise and resulted in the closing of that door, which contributed to the increasing numbers of IDPs destabilising the entire region, hence prompting the African authorities to devise legal instruments to address the issue.²³⁷

The Kampala Convention was the first legal instrument that states came together to prepare, unlike the Principles where drafters were consisted of legal experts.²³⁸ However, the Kampala

²³¹ *ibid*, 369

²³² Menaka Lecomwasam, 'The Internally Displaced in South Asia: Lessons from Kampala' (2014) 15 *Asia-Pacific Journal on Human Rights and the Law* 147, 150

²³³ *ibid*

²³⁴ Flavia Zorzi Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 *Denver Journal of International Law and Policy* 347, 352

²³⁵ *ibid*, 352

²³⁶ *ibid*, 350

²³⁷ *ibid*, 351

²³⁸ *ibid*, 353

Convention did not have the preparatory process of the Principles. The only preparation documents that illuminate the understanding of the Kampala Convention are the ones that the AU Commission produced, however they do not have detailed information.²³⁹

The Kampala Convention, Guistiniani argues, shows that African states acknowledge that the issue of IDPs, if goes unaddressed at the national level, can become a concern that is worthy of international attention since the Kampala Convention allows the interference of the African Union when international crimes are committed against IDPs and assigns responsibilities to the Union to support the states and protect and assist IDPs.²⁴⁰ The Convention conceptualised IDPs as a problem that needs to be addressed by cooperation between regional actors, including the state the African Union, local organisations and neighbouring states.²⁴¹

The Kampala Convention came into force by ratification in Swaziland on 6 December 2012 as the first hard law instrument in the world concerning IDPs.²⁴² The Convention's approach to rights is a good example of its regionality. The Convention's view of IDPs differs from that of the Principles since it employs a rights-based approach which positions them as subjects rather than victims.²⁴³ Because of colonialism, peoples who were independent from one another were pushed together in colonial states which then become decolonised on the models imported from Europe of nation states. However, the people did not have the same history as Europeans, and the focus on individuals' rights rather than collective rights did not resonate with the Africans. For example, in the *African Charter on Human and People's Rights* this view is employed by unification of civil and political, socioeconomic, and cultural and collective rights.²⁴⁴ Consequently, one of the differences between the Kampala Convention and the Principles is that the Convention presents the obligations of states and non-state actors, whereas the Principles recount the rights of the individual IDPs.²⁴⁵ In other words, the Kampala Convention is about the duties of the states, whereas the Principles are about rights.²⁴⁶ The oversight mechanism in the Convention was the

²³⁹ Allehone M. Abebe, *The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement* (Routledge 2017)

²⁴⁰ Flavia Zorzi Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 *Denver Journal of International Law and Policy* 347, 352-353

²⁴¹ Leslie Claire Bailey, 'Out of Africa: Toward Regional Solutions for Internal Displacement' (2014) 39 *Brooklyn Journal of International Law* 353, 360

²⁴² *ibid*, 359-360

²⁴³ Won Kidane, 'Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention' (2011) 44 *Vanderbilt Journal of Transnational Law* 1, 53

²⁴⁴ *ibid*, 55-56

²⁴⁵ *ibid*, 56

²⁴⁶ *ibid*, 58

first time that such a mechanism was brought up in negotiations in the African Union.²⁴⁷ Article 4(h) of the *Constitutive Act of the African Union* gives the African Union the ability to intervene in a member state when atrocities such as war crimes, genocide and crimes against humanity are committed.²⁴⁸ The African Union's right to intervene is repeated in Article 8 of the Kampala Convention, however it is limited. The shortcomings of the Kampala Convention can be counted as unwillingness of the state parties to ratify the Convention, a lack of a strong enforcement mechanism for the Convention, and the questionable power of intervention of the African Union.²⁴⁹ While the Kampala Convention is an impressive step towards the protection of the IDPs, it is lacking in enforcement as can be seen from case of the Democratic Republic of Congo (DRC).

5.3.1 Democratic Republic of Congo

DRC has huge potential to be a rich country, as it possesses vast amounts of natural resources. However, the state has been crippled by ongoing internal conflict for more than 20 years.²⁵⁰ Even possessing natural resources has contributed to displacement, since members of the both state and non-state armed forces engage in their illegal exploitation, such as burning down villages near diamond mines.²⁵¹

The government of the DRC was and is aware of the devastating scale of IDPs, as has the Ministry of Social Affairs, Humanitarian Action and National Solidarity which is tasked with giving assistance to IDPs.²⁵² The Ministry of Interior also has responsibility to assist.²⁵³ Alongside these two ministries there is also the Comité National pour les Réfugiés within the Ministry of Interior, which consists of representatives from 9 different ministries and has offices in six provinces and was established in 2002 to provide protection and assistance to both IDPs and refugees.²⁵⁴ This committee is closer to the UNHCR than the government, and acts as the implementation organ of the UNHCR.²⁵⁵

²⁴⁷ Leslie Claire Bailey, 'Out of Africa: Toward Regional Solutions for Internal Displacement' (2014) 39 Brooklyn Journal of International Law 353, 392

²⁴⁸ *ibid*, 372-374

²⁴⁹ *ibid*, 377

²⁵⁰ IDMC, 'Democratic Republic of the Congo' (IDMC, June 2017) < <http://www.internal-displacement.org/countries/drc/>> accessed 15 August 2017

²⁵¹ Greta Zeender and Jacob Rothing, 'Displacement Trends in DRC' (2010) 36 Forced Migration Review 10, 10

²⁵² United Nations Human Rights Council, Eight-session 'Report Submitted by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin' UN Doc A/HRC/8/6/Add.3, 24

²⁵³ Melanie Wissing, 'As DRC Ratifies the Kampala Convention, IDMC asks: What difference will it make?' (IDMC, 24 July 2014) < <http://www.internal-displacement.org/library/expert-opinion/2014/as-drc-ratifies-the-kampala-convention-idmc-asks-what-difference-will-it-make>> accessed 20 August 2017

²⁵⁴ Stacey White, *Now What?: The International Response to Internal Displacement in the Democratic Republic of the Congo* (Brookings Institution 2014), 10

²⁵⁵ *ibid*, 10

The DRC government, even though criticised for lacking technical capacity, political will and financial resources, has taken steps to construct its national institutional and legal frameworks for addressing the needs of IDPs.²⁵⁶ For example, the DRC ratified the Kampala Convention in July 2014. However, the DRC had already signed the Great Lakes Convention, which did not improve the protection of IDPs.²⁵⁷

The humanitarian engagement which is the primary tool of the international community to address the needs of IDPs has not translated to durable solutions to their problems and did not manage to challenge the 'well-fed dead' phenomenon.²⁵⁸ The focus of the efforts of the international community reflected in UN programmes has remained on emergency aid and delivery of food.²⁵⁹ These efforts are also focused on IDPs who live in camps since they are easier to access.²⁶⁰ At the time of the 2014 report on Congo by Brookings, it was argued that after a 10 year presence, the international community had just started initiatives that were about community-based interventions to promote voluntary return and address land disputes and others to understand the 'coping strategies of IDPs' or the 'dynamics of displacement'.²⁶¹ In the report concerning displacement in the DRC, it is stated that IDPs' needs are not well understood or addressed.²⁶² It is also said that host communities are vulnerable and the recognition of who is displaced and who is not is lacking as they are not easily differentiable.²⁶³

Internal Displacement Monitoring Center estimated that there were more than two million displaced in the DRC in 2016.²⁶⁴ The UN Security Council has remained greatly concerned about the numbers of the IDPs, and has reiterated its demand for UN to access the IDPs since it is still hindered.²⁶⁵ There is no mention of the internally displaced in the DRC in the African Union General Assembly Decisions.²⁶⁶ The only paragraph relating to DRC is about the elections process.²⁶⁷ Therefore, the ratification of the Kampala Convention did not change anything, since

²⁵⁶ *ibid*, 9

²⁵⁷ *ibid*, 11

²⁵⁸ *ibid* P14

²⁵⁹ *ibid* P17

²⁶⁰ *ibid*, 19

²⁶¹ *ibid*, 23

²⁶² *ibid* P26

²⁶³ *ibid* P26

²⁶⁴ IDMC, 'Democratic Republic of the Congo' (IDMC, June 2017) < <http://www.internal-displacement.org/countries/drc/> accessed 15 August 2017

²⁶⁵ United Nations Security Council, Resolution 2348 (2017) (31 March 2011) UN Doc S/RES/2348 (2017), 41

²⁶⁶ African Union 'Decisions, Declarations and Resolution of the Assembly of the Union Twenty-Eight Ordinary Session' (AU Addis Ababa 2017)

²⁶⁷ African Union 'Decision on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa' (AU Addis Ababa 2017) CL Doc. Assembly/AU/6(XXVIII), 4

it was not implemented by the DRC government and the international community and regional states did nothing to help DRC, and so it did not improve the protection for IDPs.

5.3.2 National application of the Guiding Principles

States have the primary responsibility towards IDPs concerning their protection needs due to their sovereignty. Consequently, producing national legal instruments to address the protection needs of IDPs is a sovereign task, which allows the state to assume its responsibility without the international community's pressure.²⁶⁸ A national instrument may benefit the state since it would improve efficiency of the response to IDPs needs and prevent protracted displacement situations which put a lot of strain on already limited resources.²⁶⁹

The Principles can be adopted as a whole into national law, but they were not designed for that.²⁷⁰ Since they only state norms and not how those norms should apply or be disseminated, it gives states the ability to claim that they have laws in place that are concurrent to the international principles. However, the population remains unaware of their rights since usually there are no consultation processes, institutions do not know whether or not they should act since there is no mechanism in place in the principles, and the specific needs of the IDPs remain unaddressed since the principles are intentionally general.²⁷¹

Partial adoption of the Principles by the development of domestic laws and regulations to address causes of displacement is the most used means of adoption of the Principles.²⁷² This method allows more contribution, dissemination and implementation, since the law is tailored for the specific needs for the affected population which allows them ownership of the law hence increasing dissemination, and produces a detailed scheme for implementation.²⁷³ Since this method focuses on a particular right or a cause of displacement, it can leave many uncovered areas which diminishes its effectiveness.²⁷⁴ Also, providing protection to some of the internally displaced but not to others would create tensions between the IDPs themselves.²⁷⁵

²⁶⁸ Nina Schrepfer, 'Addressing Internal Displacement through National Laws and Policies: A Plea for a Promising Means of Protection' (2012) 24 International Journal Of Refugee Law 667, 673

²⁶⁹ *ibid*, 674

²⁷⁰ Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 International Journal of Refugee Law 34, 36

²⁷¹ *ibid*

²⁷² *ibid*

²⁷³ *ibid* p.37

²⁷⁴ *ibid*, 37

²⁷⁵ *ibid*, 37

In this section, full adoption and partial adoption of the Principles to national laws will be examined in Colombia and Turkey, since both have been internationally commended for their efforts, which would suggest that it is seen as successful.

5.3.2.1 Columbia

According to the UNHCR, there are 7.3 million registered IDPs in Colombia.²⁷⁶ The reasons for their displacement range from psychological, physical and sexual violence against civilians by illegal armed groups, and confrontations between and within security forces, guerrillas and illegal armed groups.²⁷⁷ Colombian legislation on IDPs is regarded as the most successful attempt to adopt the Principles,²⁷⁸ but because of the high numbers even the vast number of policies and case law regarding IDPs cannot sufficiently protect them.²⁷⁹ In this section, the focus will be on another argument for the insufficient enforcement and protection of IDPs which is presented by Fadnes and Horst.²⁸⁰ They argue that the history of the displacement in Colombia is due to competition over land and the vast gap between the social classes which results in non-implementation of enacted laws, since IDPs are mostly from the rural areas which renders them less well educated and poorer, whereas the urban population are more educated, richer and belong to the landowning class.²⁸¹ Fadnes and Horst point out that the enactors of the law and political elite are also from the landowner class, and do not care for the worker class which leads to non-implementation.²⁸²

Law 387²⁸³ of 1997 is the main legislation about IDPs in Colombia through which the state acknowledges both IDPs' rights and its own responsibility towards them.²⁸⁴ Law 387 is also the foundation document for the *National Plan for Integral Attention of Displaced Persons* which is the institutional framework for IDPs.²⁸⁵ While covering most of the Principles, the law also provides

²⁷⁶ UNHCR, 'Columbia Situation Update' (UNHCR, February 2017) <<http://www.refworld.org/docid/58b6d1604.html>> accessed 30 August 2017

²⁷⁷ United States Department of State, '2016 Country Reports on Human Rights Practices – Colombia' (United States Department of State, 3 March 2017) <<http://www.refworld.org/docid/58ec8a53a.html>>

²⁷⁸ Ellen Fadnes and Cindy Horst, 'Responses to Internal Displacement in Columbia: Guided by What Principles?' (2009) 26 *Refuge: Canada's Journal on Refugees* 111, 111

²⁷⁹ Open Society Justice Initiative, *Born in the Americas The Promise and Practice of Nationality Laws in Brazil, Chile, and Colombia* (Open Society Foundations 2017), 65

²⁸⁰ Ellen Fadnes and Cindy Horst, 'Responses to Internal Displacement in Columbia: Guided by What Principles?' (2009) 26 *Refuge: Canada's Journal on Refugees* 111, 113

²⁸¹ *ibid*, 111-113

²⁸² *ibid*, 113

²⁸³ Ley 387 de 1997 *Diario Oficial* No. 43,091 of July 24, 1997

²⁸⁴ Roberto Vidal-López, 'Truth-telling and internal displacement in Colombia' (2012) *Case Studies on Transitional Justice and Displacement*, 8

²⁸⁵ Ellen Fadnes and Cindy Horst, 'Responses to Internal Displacement in Columbia: Guided by What Principles?' (2009) 26 *Refuge: Canada's Journal on Refugees* 111, 113

mechanisms for implementation.²⁸⁶ In addition to Law 387, Colombia also enacted Law 1448 on June 2011 which addresses IDPs in the victims category. However, since IDPs were covered under another law, how would this repetitive protection benefit IDPs is unknown.²⁸⁷

Prior to enactment of Law 387 the judiciary had already begun to address the violations against the rights of the IDPs.²⁸⁸ A 1991 Constitutional change introduced the 'tutela' system which let Colombians receive an immediate judicial injunction against the violations of their basic rights by issuing a complaint against any public authority.²⁸⁹ This system and numerous petitions ended up before the Constitutional Court²⁹⁰ which handed down a landmark ruling that the treatment of IDPs amounted to an 'unconstitutional state of affairs', which in turn enable the Court to issue orders to government targeting the whole IDP community and establish an enforcement mechanism which allowed the Court to be involved with IDPs, even after the execution of the decision.²⁹¹ However, the government did not abide by the ruling and the judiciary did not take further action to make the government implement the law.²⁹²

Law 387 does not cover all IDPs. The law limits its scope to people who are displaced due to the internal conflict.²⁹³ Secondly, Law 387 provides IDPs with humanitarian assistance, although Carr argues that not many IDPs benefited from this law and the ones who made use of it did not benefit sufficiently.²⁹⁴ One of the problems with Law 387 is the time it takes an IDP to register with the relevant authorities to be eligible for the aid, which is more than the legally allowed time of 15 days.²⁹⁵ Also, being eligible for humanitarian aid does not mean that registered IDPs can access it immediately, and it can take more than six months.²⁹⁶ The aid provided is also limited to three months.²⁹⁷ Hence, the provided humanitarian aid is not available immediately and is ignorant of the fact that many IDPs would not want to be registered for fear of discrimination.²⁹⁸ The

²⁸⁶ Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 *International Journal of Refugee Law* 34, 38

²⁸⁷ Roberto Vidal-López. 'Truth-telling and internal displacement in Colombia' (2012) *Case Studies on Transitional Justice and Displacement*, 8

²⁸⁸ *ibid*

²⁸⁹ Ellen Fadnes and Cindy Horst, 'Responses to Internal Displacement in Columbia: Guided by What Principles?' (2009) 26 *Refuge: Canada's Journal on Refugees* 111, 114

²⁹⁰ *ibid*

²⁹¹ Roberto Vidal-López. 'Truth-telling and internal displacement in Colombia' (2012) *Case Studies on Transitional Justice and Displacement* , 8

²⁹² Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 *International Journal of Refugee Law* 34, 40

²⁹³ *ibid*, 39

²⁹⁴ *ibid*, 42

²⁹⁵ *ibid*

²⁹⁶ *ibid*

²⁹⁷ *ibid*

²⁹⁸ *ibid*

Constitutional Court addressed this issue in 2007, finding the three month limit to be unconstitutional.²⁹⁹

According to Carr, 'laws are only as good as their capacity to have them effectively enforced, and this capacity remains sadly lacking in many places'.³⁰⁰ The celebration and regard for the comprehensive legislation and adoption of the Principles hides the implementation issue, as we have seen.³⁰¹

5.3.3 Turkey

There are two separate opinions amongst scholars on the reasons of IDPs among the Kurdish people in Turkey in the 1990s. First, pressure on the people from both sides – the government and the Kurdish Workers' Party – to choose sides left people in a difficult position, consequently obliging them to leave. Second, the Turkish government planned the displacement of the Kurds in the 1980s, and the conflict was used as an excuse.³⁰² In 1987, the state declared emergency rule in eastern and south-eastern regions of Turkey and appointed government-supporting civilians as village guards to enforce more control over the region.³⁰³ In this period many gross violations of human rights took place in the region, including disappearances, sexual abuse, killings, torture, evacuations and the burning down of villages.³⁰⁴ Consequently, people of the region, who are mostly Kurds, were forced or felt obliged to flee.

The Turkish government did not acknowledge the internal displacement that was taking place, and several international, regional and national organisations were raising concerns.³⁰⁵ However, with the EU accession process in 1999, the Turkish Government's stance changed and it took a more cooperative outlook with the international community which led the government to invite the then UN Representative Secretary-General on Internal Displacement, Francis Deng, to visit in 2002.³⁰⁶ In his report, Deng had several recommendations one of which welcomed the development of legislation which would provide compensation for the displaced, but he did not

²⁹⁹ Roberto Vidal-López, 'Truth-Telling and Internal Displacement in Colombia' (2012) Case Studies on Transitional Justice and Displacement, 115

³⁰⁰ Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 International Journal of Refugee Law 34, 41

³⁰¹ Roberto Vidal-López, 'Truth-Telling and Internal Displacement in Colombia' (2012) Case Studies on Transitional Justice and Displacement, 118

³⁰² Ayşe Betül Çelik, 'State, Non-Governmental and International Organizations in the Possible Peace Process in Turkey's Conflict-Induced Displacement' (2013) 26 Journal of Refugee Studies 1, 8

³⁰³ *ibid*

³⁰⁴ *ibid*

³⁰⁵ United Nations Economic and Social Council Commission on Human Rights, Fifty-ninth session 'Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2002/56' (27 November 2002) UN Doc E/CN.4/2003/86/Add.2, 2

³⁰⁶ Dilek Kurban, 'Reparations and Displacement in Turkey Lessons Learned from the Compensation Law' (2012), 8

include any recommendations for further compliance with the Principles or creation of a comprehensive national framework.³⁰⁷

Turkey incorporated the Principles into its national legislation, partially by adopting the Law on the Compensation of Losses Arising from Terrorism and the Fight Against Terrorism (the Compensation Law).³⁰⁸ The Turkish government also established a framework of *Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey* and launched the Van Action Plan in 2006 which provided service delivery to IDPs.³⁰⁹ Carr claims that the Compensation Law is well established, even though there are still shortcomings in the involved approach of the state authorities, since to resolve difficulties concerning implementation, the Government issued guidelines and began the training of the relevant authorities.³¹⁰ Carr also points out that effective implementation is still lacking, and the government's adoption of the Compensation law also is not because of the IDPs.

First of all, there is no definition of IDPs in Turkish legislation. The Compensation Law's scope covers only people who have suffered material harm from the terrorist actions, or activities against terrorism;³¹¹ people who are displaced because of urban regeneration projects, natural or man-made disasters are out of its scope. The literature around the subject also demonstrates that IDPs are a problem which belongs to the Kurdish people in Turkey,³¹² which hides other IDPs, especially those who are displaced due to urban regeneration projects. Hence, the numbers provided and the extent of IDPs in Turkey is unknown. Secondly, what the law provides for these people is to cover material damage to property and compensate for the loss of revenue in the cases of injury, disability and death.³¹³

At the time of the passing of the Compensation Law, there were 1,500 cases pending at the European Court of Human Rights against the Turkish government which, with the demands of EU accession, pressurised the Government pass the Compensation Law.³¹⁴ After the Compensation

³⁰⁷ United Nations Economic and Social Council Commission on Human Rights, Fifty-ninth session 'Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2002/56' (27 November 2002) UN Doc E/CN.4/2003/86/Add.2, 44

³⁰⁸ Turkish Law No. 5233, Official Gazette No. 25535, July 27, 2004, enacted July 17, 2004.

³⁰⁹ Ayşe Betül Çelik, 'State, Non-Governmental and International Organizations in the Possible Peace Process in Turkey's Conflict-Induced Displacement' (2013) 26 *Journal of Refugee Studies* 1, 9

³¹⁰ Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 *International Journal of Refugee Law* 34, 41

³¹¹ Turkish Law No. 5233, Official Gazette No. 25535, July 27, 2004, enacted July 17, 2004. art.1-2

³¹² Dilek Kurban, 'Reparations and Displacement in Turkey Lessons Learned from the Compensation Law' (2012)

³¹³ Turkish Law No. 5233, Official Gazette No. 25535, July 27, 2004, enacted July 17, 2004 Art 1,2,9

³¹⁴ Dilek Kurban, 'Reparations and Displacement in Turkey Lessons Learned from the Compensation Law' (2012), 14

Law 800 passed, the pending cases were declared inadmissible after *İçyer v. Turkey*³¹⁵ declared the Compensation Law and the mechanism provided by the law as an appropriate and accessible remedy.³¹⁶ However, according to Kurban, 'while the law partially compensates the displaced, it fails to fully and effectively repair the harms that they have suffered'.³¹⁷

Turkey's implementation of the Guiding Principles to its legislation is limited to the Compensation Law, but it is debatable whether IDPs in Turkey even know that they are IDPs in the sense of the description provided by the Principles. Adoption of the Compensation Law was not intended to address the needs of all IDPs, nor to acknowledge the rights of the IDPs but because of the political interests of the state. The curfews imposed by the state on south-eastern provinces of Turkey are also causing displacement and violation of many other human rights of the people.³¹⁸ According to IDMC at least 204,000 people were displaced in Turkey due to curfews that mainly happened in 2016.³¹⁹ Another thing that happened in 2016, a one-hour flight away from where the curfews were imposed, was the World Humanitarian Summit where world leaders committed themselves to halving the numbers of the IDPs by 2030, and where UN Special Rapporteur on Human Rights of IDPs, Chaloka Beyani, was present.³²⁰ There was no mention of the IDP situation, and Turkey has taken no steps to create a comprehensive legal framework to address IDPs since then. Hence, the partial adoption of the Principles addressing reparation is not implemented for the wellbeing of IDPs, or to address their issues.

³¹⁵ *İçyer v. Turkey* App no: 18888/02 (ECtHR, 12 January 2006)

³¹⁶ European Court of Human Rights 'İçyer v. Turkey Case Inadmissible' (09 February 2006) Press release - 070(2006)

³¹⁷ Dilek Kurban, 'Reparations and Displacement in Turkey Lessons Learned from the Compensation Law' (2012)

³¹⁸ Türkiye İnsan Hakları Vakfı, 'Curfews in Turkey Between the Dates 16 August 2015 – 1 June 2017' (Türkiye İnsan Hakları Vakfı, 1 June 2017) <<http://en.tihv.org.tr/curfews-in-turkey-between-the-dates-16-august-2015-1-june-2017>> accessed 5 September 2017

³¹⁹ IDMC, 'Turkey: Figures Analysis' (IDMC) <<http://www.internal-displacement.org/assets/country-profiles/TUR-Turkey-Figures-Analysis.pdf>> accessed 15 August 2017

³²⁰ Chaloka Beyani, 'Announcement Plenary Remarks' (İstanbul, 23 May 2016)

<http://www.agendaforhumanity.org/sites/default/files/resources/2017/Jul/Statement_by_Chaloka_Beyani_Announcement_Plenary.pdf> accessed 10 August 2017, Alexandra Bilak and Justin Ginetti, 'Driving Global Efforts to Reduce Internal Displacement: Thoughts from Istanbul' (IDMC, 24 May 2016) <<http://www.internal-displacement.org/library/expert-opinion/2016/driving-global-efforts-to-reduce-internal-displacement-thoughts-from-istanbul>> accessed 14 August 2017

Chapter 6. Summary and Conclusions

The Principles should have created an international awareness, a political climate that would inspire collaboration and solidarity between the Global North and the South as effective instruments for IDPs to address the plight of the internally displaced due to humanitarian concerns, and not for the interests of the states.

The first chapter concluded that IDPs deserve international attention as much as refugees and should be distinguished from non-displaced population in the same community by the virtue of the issues they face. It identified the concept of IDPs and the reasons for displacement, and established that IDPs differ from refugees. However, this difference does not mean that they are less deserving. The second chapter exposed why international attention is not purely humanitarian, looking at history and showing the development of refugee law and origins of the protection afforded to IDPs. It concluded that the interest in IDPs by the international community was not about helping people, but rather it was built around the Global North's political agendas and interests, such as promotion of internal solutions after the Cold War.

Then the third chapter examined sovereignty, the *responsibility to protect* doctrine and *sovereignty as responsibility* principle and their implications for IDPs and the relationship between Global North and South. It is demonstrated that traditional sovereignty's transformation to *sovereignty as responsibility* did not receive any input from the Global South, which was a subject of neo-liberal policies of the Global North. It went on to the application of the *sovereignty as responsibility* principle in R2P doctrine, and demonstrated that R2P still remains selective and under the influence of the Global North which proved that the *sovereignty as responsibility* principle is not a solid basis for the needs of the Global South.

The fourth chapter was on the Principles themselves. It started with showing the features and structure of the Principles went on to examine their adoption at the regional and national levels, and whether implementation at these levels provided protection to IDPs. It showed that adoption in the DRC, Colombia and Turkey had not brought much change in IDPs' lives due to a lack of political will.

According to Crisp:

'The influential Brookings Institution Project on Internal Displacement has been closed due to a lack of financial and political support. The special representative's post has been downgraded to that of a special rapporteur. The 25-page New York Declaration formulated at the UN General Assembly summit last year included just

one short paragraph on IDPs, based on 'the possibility that such persons might seek protection and assistance in other countries as refugees or migrants'.³²¹

Hence, the future for IDPs looks bleak. However, UN Secretary General Ban Ki Moon proposed convening a World Humanitarian Summit³²² which took place on 23-24 May 2016 in İstanbul, Turkey.³²³ In the outcome document, under the 'leave no one behind' core commitment, internal displacement was addressed within reducing forced displacement, and to reduce numbers of internally displaced by half by 2030 was one of the core commitments. Integrating IDPs into national and local development plans, supporting national efforts to create legal and policy frameworks for the protection of IDPs, and meeting both short and long-term needs of the IDPs, refugees and host communities were among the other commitments. Nevertheless, remembering the World Summit Outcome 2005 and the establishment of R2P, one is left more in a state of hope than of expectation about the future of IDPs. The number of IDPs can be halved by 2030. Moreover, it can be halved even by tomorrow by only focusing on, for example climate-change-induced IDPs, or IDPs in certain regions but not others. For example, there are people in Turkey who were forced to leave their places of habitual residence because of development projects;³²⁴ however, they are not considered as IDPs or counted in the official number of IDPs, due to the scope of Turkish legislation on IDPs. They will be unaware of being IDPs, even though they are IDPs within the 'description' of the Principles.

Possibly, public awareness campaigns within IDP populations would allow them to bring pressure against their governments and create the political will to address the issue. Knowing their rights would enable them to access those rights, which would lead to rules that come from within and are thus more suited to the needs of the population. Also, as Carr states,³²⁵ this would be good for the internally displaced since they would be contributing to the process. However, to create public awareness one needs funds, and funds lie with the Global North. As Chimni points out,³²⁶ international human rights organisations serve the neo-liberal agenda by curbing radical social

³²¹ Jeff Crisp, 'Focus on Refugees Risks Neglecting the Internally Displaced' (Chatham House The Royal Institute of International Affairs, 18 May 2017) <<https://www.chathamhouse.org/expert/comment/focus-refugees-risks-neglecting-internally-displaced>> accessed 18 August 2017

³²² United Nations Secretary-General, 'Secretary-General's Remarks to the General Assembly on his Five-Year Action Agenda: "The Future We Want"' (United Nations Secretary-General, 25 January 2012) <<https://www.un.org/sg/en/content/sg/statement/2012-01-25/secretary-generals-remarks-general-assembly-his-five-year-action>> accessed 20 August 2017

³²³ World Humanitarian Summit, 'World Humanitarian Summit 2016' (World Humanitarian Summit) <<http://agendaforhumanity.org/summit>> accessed 20 August 2017

³²⁴ B. Oktem Unsal, 'Impacts of the Tarlaşaşı Urban Renewal Project: (Forced) Eviction, Dispossession and Deepening Poverty' (2015) 193 WIT Transactions on Ecology and Environment 45, p.54-55

³²⁵ Susan Carr, 'From Theory to Practice: National and Regional Application of the Guiding Principles' (2009) 21 International Journal of Refugee Law 34, 47

³²⁶ B. S. Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) 15 European Journal of International Law 1, 11

movements in the third world, by redefining them and by putting private rights above collective rights. Hence, a genuine third world movement to achieve the necessary funding cannot be conducted and as long as the change does not come from within the people it cannot be sustainable or useful, as can be seen from the Colombia example that is given above.

Therefore, I conclude that what was achieved by the Principles and its advocates has started to fade, and the international community does not care about the plight of the IDPs. What is important for the international community is what the Global North wants it to be. Consequently, what the Principles achieved was to create a smoke screen; an illusion of attention to the plight of the internally displaced while providing another arrow in the arsenal of the wealthy states, the Global North, to avoid their responsibilities towards refugees, and to interfere, when convenient for them, in the internal affairs of the Global South.

International law should not be a weapon in the hands of the oppressor but a facilitator of solidarity and dialogue between states; therefore, rather than promoting the Guiding Principles, a platform for discussion and solidarity between the Global North and the Global South should be facilitated. I believe academia can become important in facilitating this positive environment, which would not only help IDPs but everyone whose human rights have been violated, by pointing out the responsibilities of the Global North in creating IDPs. This approach maybe especially useful for the DRC example. However, most of the funding for academic studies comes from the Global North as well.

I leave the final remarks to the great poet and human being Nazım Hikmet:

“And if we're hungry, tired, covered with blood,
and still being crushed like grapes for our wine,
the fault is yours –
I can hardly bring myself to say it,
but most of the fault, my dear brother, is yours.”³²⁷

³²⁷ Nazım Hikmet Ran, 'The Strangest Creature on Earth' (1947)
<<https://www.marxists.org/subject/art/literature/nazim/strangestcreature.html>> accessed 19 August 2017

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