

In this Debate section, we publish four responses to Michael Barutciski's article on 'Tensions between the refugee concept and the IDP debate' from issue 3 of *Forced Migration Review*.

## How tense is the tension between the refugee concept and the IDP debate?

by Bonaventure Rutinwa

In FMR 3, Michael Barutciski notes the attempt to extend to IDPs similar protection as that accorded to refugees and argues that such a development is unnecessary and undesirable giving the following reasons. First, refugees are a distinct category of persons whose important quality is being outside their countries of origin. IDPs do not meet this qualification and there were good reasons why they were excluded from the benefits of the 1951 UN Convention on Refugees. Second, refugees being foreigners, many rights accorded to them are restricted and it does not make sense to extend rights so restricted to IDPs who are citizens in their own country. Third, the extension of refugee protection to encompass IDPs goes against the way in which High Commissioners for Refugees have traditionally approached their mandate. Fourth, the attempt to bring IDPs within the refugee regime may have negative consequences on refugees such as reinforcing *non-entrée* policies. Fifth and finally, the IDP debate adds nothing to the existing legal regime which is adequate to cover their situation. These arguments are examined in turn below.

### (1) The distinctness of refugees and IDPs as conceptual and legal categories

In rejecting the assimilation of IDPs to refugees much emphasis was put on the definition of a refugee under the 1951

UN Convention on Refugees and within it the requirement that a refugee must be outside his/her country of origin: "...by being outside their country, refugees are in a fundamentally different situation according to the international legal order. One important consequence of this simple fact is that the international community's access to IDPs can be limited or qualified. This is not the case with refugees."

The basis of this assertion appears to be that IDPs cannot be accessed by the international community without the sovereignty of that state being violated. However, it is not the case that every time the international community accesses IDPs the sovereignty of their state is violated. Such access is possible with the consent of the sovereign state or under the authority of the Security Council in which case it would not amount to a violation. Indeed, even in the case of refugees, no member of the international community other than the country on whose territory the refugees are located has an automatic right of access to them. Other actors, with the possible exception of UNHCR, must have the permission of the host state.

On the same point of definition, Barutciski's article notes that: "*Being a victim of displacement is not the quality that has historically justified additional human rights protection for refugees.*"

*It is rather the quality of being a foreigner who has escaped persecution."*<sup>12</sup>

This statement does not adequately state the essence of refugeehood. Being a foreigner who has escaped persecution is not *per se* the reason that justifies refugee protection but alienage from the persecutor state as a result of which the persecuted person requires surrogate protection from other members of the international community. It is arguable that a person who is internally displaced because of fear at the hands of his own state or who finds himself in a remote area at the seams of a disintegrating state where no recognised authority exercises any powers is to all intents and purposes alienated from his state and deserving of surrogate protection.

The article rightly notes that those who drafted the 1951 Convention on Refugees were much more concerned with providing legal protection and status to externally displaced people. However, being outside the country was not as such the primary consideration why only persons so situated were singled out for refugee protection. James Hathaway's *The Law of Refugee Status* is among the best monographs on the definition sections of the 1951 Convention. In this book, the author notes that during the drafting of the Convention, the question as to whether protection should be extended to all displaced people or restricted to those outside their countries of origin was considered and the latter option was taken for three reasons.

The first reason was limited resources. The second reason was to prevent states from shifting the responsibility of the well-being of their populations to other states, which in turn would have discouraged other states from participating in the Convention scheme. The third and, according to Hathaway, the most fundamental reason was anxiety that any attempt to respond to the needs of internal refugees would constitute an infringement of the national sovereignty of the state within which the refugees resided.

Thus, none of the three factors which dictated the exclusion of internal refugees was so much a matter of conceptual principle. While resource-related restrictions may have been justified in the post-war era, they are indefensible in this age of universal human rights - including the right to life - particularly when they may be manipulated by quite wealthy countries to keep endangered destitute people off their shores.

The only reason that retains validity is one of non-intervention into the internal affairs of the states on whose territories IDPs are found. However, even the shield of non-intervention is no longer as impregnable as it was 50 years ago before the era of human rights. Moreover, as already pointed out, not every intervention on behalf of IDPs would constitute a violation of the principle of non-intervention.

## (2) Is it appropriate to extend refugee rights to IDPs?

The article rightly notes that some of the rights accorded to refugees under the refugee conventions are qualified and questions whether it would be appropriate to require the state which has displaced its population to accord to them such restricted rights. This argument seems to be based on the assumption that if the IDPs were to be brought within the ambit of international protection, they would be accorded exactly the same rights as refugees. But this is not what the advocates for IDP rights are calling for. For example, while the 1951 Convention gives refugees a qualified right to work, Principle 22 of the Guiding Principles on Internal Displacement extends to IDPs an unrestricted "right to seek freely opportunities for employment and to participate in economic activities."<sup>3</sup>

It is also argued that refugee rights under the Convention include entitlements that enable refugees to survive in a foreign country where they do not have citizenship rights, and that accordingly these rights would be redundant if granted to citizens in their own state. In effect this is the same argument, advanced later in the article, that the rights sought to be extended to IDPs are

already provided for under other existing rules. This argument will be examined in the last section of this review.

## (3) How have High Commissioners for Refugees traditionally approached their mandate?

As further evidence of the separateness of the issues of refugees and IDPs, the article notes that, since its inception, the Office of the High Commissioner for Refugees has always concentrated on refugee protection and refrained from activities of interventionist type such as attempting to prevent refugee flows or to assist persons still in their own countries. The article gives the example of Fridtjof Nansen but the experience of one High Commissioner is not enough to establish the "traditional approach" as implied in the subtitle of the section in which the example appears. There are other High Commissioners, such as James McDonald, who did not follow Nansen's approach of non-intervention.

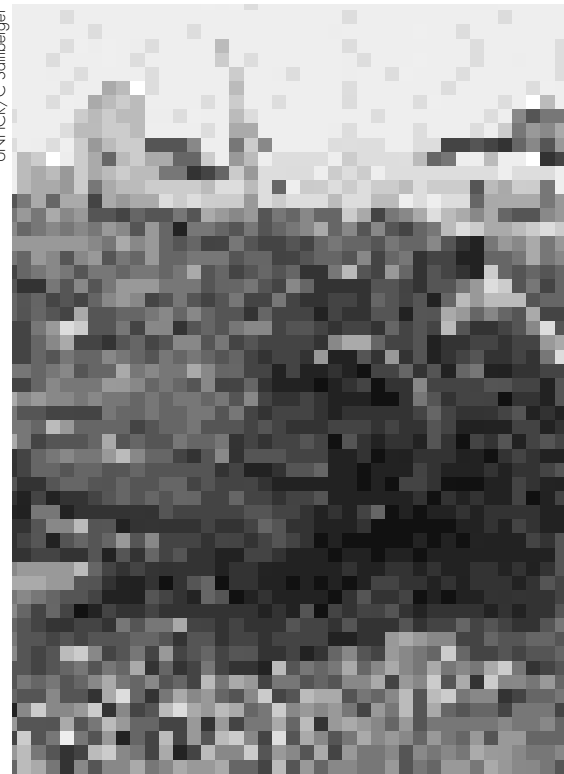
Furthermore, since 1972, High Commissioners have accepted responsibility to offer assistance to IDPs and other persons not answering the description of a refugee under the 1951 Convention. Although this intervention has been with the consent of the state involved, it is, as Hathaway rightly points out, "nonetheless indicative of an enhanced recognition of an international role in the protection of internal refugees."<sup>4</sup> Since the 1990s, UNHCR has been regularly asked to extend its services to IDPs. So significant has been the role of UNHCR in the wider issue of displacement that as of January 1997 almost half the persons of concern to UNHCR were not refugees: 36 per cent were inside their own countries, of whom 21 per cent were IDPs and 15 per cent returnees.<sup>5</sup>

Of course one could say that this involvement with IDPs by the present High Commissioner is precisely the issue. However, as pointed out, UNHCR has been involved with non-refugees since 1972, over 26 of its almost 50 years' existence. To exclude the practice of an institution over half of its life in determining its "traditional approach" raises the question as to when one tradition ends and a new one begins.

## (4) The consequences of adopting the IDP category

The article notes that when calls for the plight of IDPs to be addressed were first made in the 1990s, the idea was that many perceived legal gaps would be filled by the drafting of an international treaty protecting IDPs and that displacement itself would be outlawed by the promotion of a so called 'right to remain' or 'right not to be displaced'. This, according to Barutciski, may have been used to reinforce *non-entrée* policies and justify containment strategies. While it is true that the IDP debate was in part influenced by a growing interna-

UNHCR/C. Saillberger



IDP children, Angola

tional interest in the prevention of cross-border movements and the protection of IDPs, it is erroneous to suggest that this was the practical expression of 'the right to remain' except when this notion is misconceived. This author subscribes to Goodwin-Gill's conception of the right to remain as comprising the "sense of not having to become a refugee, not having to flee, not being displaced by force or want, together with the felt security that comes with being protected."<sup>6</sup> If there is to be any objection to the right to

remain thus conceived, it is that it is presently difficult to realise.

Moreover, whatever might have been the thinking on the notion of IDPs in the early 1990s, as presently understood the concept does not exclude or substitute asylum. The Guiding Principles provide expressly that the Principles shall not be interpreted as restricting, modifying or impairing the rights of individuals under international and municipal law and in particular: "...these Principles are without prejudice to the right to seek and enjoy asylum in other countries."<sup>7</sup> *Non-entrée* policies will have no place if this principle is faithfully complied with.



By contrast, it is the emphasis on the condition of being outside ones country in order to become a refugee which actually has encouraged States to adopt *non-entrée* policies. Devices such as visa requirements and carriers' liability are designed to ensure that persecuted persons who meet all other criteria for being refugees do not fulfil that magical condition of crossing international frontiers and become the responsibility of the international community. Alienage is the only condition in the refugee definition which potential host states can control and manipulate. If there is a device

that requires to be reconsidered in the interest of refugees, it is not the concept of IDPs but the strict adherence to the requirement of alienage.

**(5) Do the IDP debate and the Guiding Principles contribute anything to international protection?**

It is finally argued in the article that all matters sought to be covered by the concept of IDPs are already adequately addressed by existing international law and that the Guiding Principles noted above do not fill any legal gap; they simply state and interpret existing norms. While it is true that the Principles largely reflect existing law - a fact which is admitted in the Principles' own introduction - this does not diminish their significance. The mere fact that certain matters are already covered under other areas of law is not a good reason why they cannot be embodied in a code. If that were the case, there would have been no need for instruments like the Convention on Elimination of Discrimination Against Women or the Convention on the Rights of the Child, as all the matters they cover are already provided for under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights (the international bill of rights). Even many of the provisions of the 1951 Convention were already part of general international law. Moreover, even if this Convention were to be revisited today, as has been proposed in some circles, no one would argue that its provisions such as those relating to non-discrimination, right to property, movement, religion and association, etc should be pruned because these rights now already apply to everyone under the international bill of rights.

There are good reasons why sometimes it is deemed necessary to introduce specialised and targeted instruments even though they may enshrine matters already covered under other instruments. The first reason is collecting together principles scattered in various instruments in order to provide easily accessible guidance to those who are supposed to apply them as well as those who are supposed to benefit from them. The other and more important reason is to

amplify and clarify how provisions found in instruments of a general nature apply to specific categories of people or in specific situations and in certain instances to enhance compliance and enforcement. These are the stated objectives of the Guiding Principles and to the extent to which these objectives are met, that is the contribution of the Principles to enhancing the system of international protection for IDPs.

**Conclusion**

While it is true that, from a legal point of view, refugees and IDPs are different groups of persons, the distinction between them is neither conceptual nor one of principle. Furthermore, the detrimental effect of widening the ambit of international protection to encompass IDPs in refugee protection is a matter of perception rather than reality. Fears that the assimilation of the notions of refugee and IDP would undermine the protection of refugees are based on the false assumption that extension of international protection to IDPs necessarily implies restricting protection for genuine refugees. However, this need not be the case. Recently, UNHCR has increasingly been involved with IDPs and this does not seem to have affected its ability to mobilise resources for refugees or its capacity to offer them protection. Provided that resources are made available, and proper guidelines applied, there should be no problem in dealing with the plight of refugees and IDPs together. It is for this reason that the publication of the Guiding Principles on International Displacement is a welcome development.

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Notes

1. Barutcsiski M 'Tensions between the refugee concept and the IDP debate', *Forced Migration Review*, No 3, December 1998, p12.
2. Ibid
3. Guiding Principles on Internal Displacement, Principle 22, p11.
4. Hathaway
5. UNHCR, *State of the World's Refugees, 1997-1998*, p2. See also pp116-118 for UNHCR's recent involvement with IDPs and its own guiding principles.
6. Goodwin-Gill S 'The right to leave, the right to return and the question of a right to remain' in Gowland-Debbas, V, *The Problem of Refugees in the Light of Contemporary International Law Issues* (1995), 93-108 at p104.
7. Guiding Principles on Internal Displacement, Principle 2, p2.

# What may be borrowed; what is new?

by Michael Kingsley-Nyinah

The last few years have seen a virtual explosion in interest in the humanitarian response to internal displacement. The reason for this lies in the sad reality that existing international law has failed to prevent alarming increases in the numbers and suffering of IDPs. It is this failure which has inspired the scramble for fresh approaches to issues of internal displacement.

In the eyes of a sceptic, however, the recent storm of conferences, promotional activities and writings on internal displacement issues may sometimes take on the appearance of a 'bandwagon' or 'growth industry'. Michael Barutciski's article is a timely reminder that current approaches to the issue do not as yet command unanimous approval, and that advocates for these approaches - both within and outside the United Nations - will do well to articulate their concepts and methods more carefully.

In this vein, the article in question makes a number of pertinent points. It argues for scrupulous observance of the legal and practical distinctions between internal displacement and the state of refugeehood. It points out that the mere articulation of standards for the protection of IDPs does not guarantee the observance of those standards, particularly in environments where human rights and humanitarian law are deliberately and severely violated. The article also calls for circumspection in the approach to the protection of IDPs. In an era where states frequently seek ways to abridge or avoid compliance with basic principles of refugee protection, the protection of IDPs may be liable to be a ruse to further restrict refugee protection.

The article is valuable because it sounds a note of caution to those who may be hasty or too sweeping in drawing a connection between refugee protection and the protection of IDPs. It is also a wake-up call to those who may be inclined by

complacency to overlook the pressing challenge of translating the Guiding Principles on Internal Displacement into practice.

My difficulties with Barutciski's piece lie more in the area of method than of substance, in that its prescriptions, while valid in themselves, are erected on questionable premises. My concern is that those premises do not accurately reflect important aspects of current approaches to internal displacement. This brief review focuses on the author's statements regarding the 'extension' of the refugee regime to cover IDPs, and his assertion that the Guiding Principles do not fill any legal gap. Both of these views are open to serious challenge.

## (1) Is the refugee regime really 'extended' to cover IDPs?

The article conveys the misleading impression that "the extension of the refugee regime to encompass internal displacement" is, in fact, actually being attempted, or that advocates for a protection regime for IDPs are blind to the need to distinguish between asylum issues and those of internal displacement. This is simply not the case. For reasons which are persuasively argued in the article itself, the refugee regime is, by definition, incapable of extension as such. This is largely because the 1951 Convention would make little sense if it were transported wholesale into the world of internal displacement. Moreover, all existing legal definitions of 'refugee' require departure from the country of origin as the trigger for refugee protection, and the frontiers of the country of origin remains a *sine qua non* and defining feature of refugee status.

The distinct character of the refugee protection regime is clearly recognised in the Guiding Principles. The words "...and who have not crossed an internationally recognised frontier" appear in

the description of persons who fall within its scope. In particular, the Guiding Principles stipulate that a person's right to seek and enjoy asylum in other countries is not compromised by the fact of being internally displaced (Principles 2 and 15).

Resolutions of the General Assembly and Executive Committee Conclusions which set the parameters for UNHCR's involvement with IDPs have consistently affirmed that such involvement should not detract from refugee protection. This emphasis is echoed in UNHCR's instructions to field offices.

The evidence suggests that the distinctions between the refugee realm and the world of internal displacement are fully recognised. As Barutciski's article does not adequately acknowledge such evidence, it lacks balance, and leaves the reader with the wrong impression that 'extension' of the refugee regime is already underway.

Observing the distinctions between the refugee regime and the protection of IDPs should not mean that the concepts and mechanisms of refugee protection cannot, with appropriate adjustments and due care, be placed at the service of IDPs. Neither should the distinctions preclude allusive or symbolic comparisons between the situation and needs of refugees and that of other persons in need of international protection.

To take one example, the essence of the *non-refoulement* principle of refugee protection is that persons should not be forcibly returned to situations where their lives or safety may be threatened. It is not difficult to imagine current situations of internal displacement (Colombia, for example, comes to mind) in which respect for this precept would enhance the safety and security of IDPs. While the difficulties of ensuring compliance will doubtless remain a major concern, these difficulties do not diminish the relevance of *non-refoulement* to the protection of IDPs. Such borrowing or adaptation certainly does not entail extending - much less undermining - the refugee regime.

## (2) What's new in the Guiding Principles?

One must take issue with Barutciski's assertion that "the Guiding Principles on Internal Displacement do not really fill any legal gap; they simply state and interpret existing norms." This assertion is contradicted by a respectable body of opinion. In 1996, the Secretary-General's Representative for Internally Displaced Persons submitted a Compilation and Analysis of Legal Norms relevant to the Protection of Internally Displaced Persons (E/CN.4/1996/52/Add.2) to the Commission on Human Rights. The Compilation extensively analysed existing law and concluded that there were indeed a few areas on which legal protection for IDPs was either inadequate or absent.

According to the Compilation, gaps were to be found in such areas as the restitution of - or adequate compensation for - property lost as a consequence of internal displacement; the duty of states to accept offers of assistance and intervention from humanitarian organisations; and the duties of non-state actors regarding the protection of IDPs. Apart from these, the Compilation also identified a number of areas where general norms existed, but where there was a need to reaffirm or articulate specific rights to address protection needs peculiar to the internal displacement context. These included the areas of return to situations of imminent danger; non-discrimination; protection in situations of disturbances or disasters which fall below the threshold for the application of the Geneva Conventions and allow for derogation from human rights guarantees; and acts by dissident forces not covered by Protocol II to the Geneva Conventions.

Barutciski's denial of any novelty to the Guiding Principles is belied to the extent that they directly address gaps identified in the Compilation. This indicates that the potential contribution of the Guiding Principles to existing law should have received more careful attention than was accorded it in his article.

## (3) Conclusion

The harsh reality of today is that despite well-developed frameworks of human rights and humanitarian law, arbitrary

displacement continues to occur, bringing immense human suffering in its wake. This is the reality which has prompted the search for new approaches. In this search, there is no reason why the cumulative experience of refugee protection cannot be seen as a valuable resource of principles, concepts and strategies which may, with appropriate adaptation, be applied to shore up the protection of IDPs. The absolute precondition for such borrowing is that the unique character and sanctity of refugee protection should be respected and safeguarded, and that the asylum institution should not be distorted or compromised in the name of protection for those internally displaced.

In the final analysis, we should remind ourselves that our fine points of scholarly polemics should not be ends in themselves. The most urgent need is to concentrate on the translation of protection standards into protection for IDPs. This will remain the real challenge for many years to come.

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## Rights and borders:

by Jon Bennett

Michael Barutciski's argument in the article entitled 'Tensions between the refugee concept and the IDP debate' in FMR 3 is persuasive on two accounts. First, he rightly identifies the essence of the refugee concept: that of being a foreigner in need of specific legal protection measures. It is not by virtue of being displaced that the refugee conventions are activated; rather, it is by virtue of having crossed a border. Second, Barutciski is correct in suggesting that the notion of protection under the refugee conventions presupposes that sovereignty is not contravened. In other words, once refugees leave their country, international

agencies entrusted with their protection do not have to face the wrath of a sovereign nation for intervening on its territory.

The IDP debate, however, did not emerge from a concern to extend the refugee regime, as Barutciski implies. True, it examined closely the legal apparatus of that regime, but it also looked at human rights laws and conventions as well as international humanitarian law. In some respects it is useful to divide the imperatives for assistance and protection. The crucial questions are these: can international assistance (food, shelter, medicine) circumvent borders? And if so, might we not also develop a set of protection measures specific to IDPs which simply reconfirm existing national and international law? The UN Guiding Principles on Internal Displacement are a composite restatement of existing laws; they are not 'additional'. Indeed, rather than being a convention or declaration, they have been very carefully drafted as 'guidelines' with, as yet, no clear notion of how they might be imposed, other than by consensus and persuasion. They are welcomed by, for instance, the ICRC whose field mission is to advocate respect for existing international humanitarian law conventions. But they can also be used as a starting point in the debate over how the UN and NGOs might advocate and improve upon their own measures to protect displaced civilians.

These are early days. The UN's Inter-Agency Standing Committee has already begun to explore 'best practice' in the assistance and protection of IDPs. Individual UN agencies (notably UNICEF and WFP) are undertaking a review of their own practices in this regard. The wider issues of intervention and sovereignty, while useful in themselves, cannot be allowed to forestall very practical measures that can be taken on the ground. Heaven forbid that IDPs in Kosovo, Angola or Burma should have to wait for consensus among legal experts before their plight is addressed.

*Jon Bennett is currently undertaking a review of the World Food Programme's policies and approaches to IDPs.*

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# Protection and assistance to IDPs

by Marc Vincent

Michael Barutciski's article raised some interesting points but several of its assertions were somewhat mystifying – especially those that painted endeavours for improved IDP protection as an attempt to extend, divert or weaken the refugee protection regime. No one has ever suggested “expanding the refugee definition to include IDPs” or that refugees and IDPs are synonymous terms within the concept of legal protection. Such assertions or implied arguments tend to confuse the issue more than clarify it. Is Mr Barutciski “inventing” arguments only to be able to dismantle them?

What advocates for IDPs have consistently argued is that there should be a comprehensive approach to problems of displacement that addresses both the protection and assistance needs of IDPs and takes into account the fact that governments are ultimately responsible for protection of their own citizens, including IDPs. Unfortunately the reality is that IDPs, frequently victimised by their own governments, fall through gaps in international law which leave them isolated and defenceless. Without blurring the distinction between refugees and IDPs, the international community must continue to find ways to improve both protection and assistance to IDPs. Among the responses has been the formation of the Guiding Principles on Internal Displacement.

The argument that there are no significant and specific forms of legal protection that could be granted to IDPs that do not exist already in international law is not correct. [This point is argued above by Michael Kingsley-Nyinah.] The Guiding Principles attempt to address gaps in legal protection but are also an attempt to provide governments and international organisations with guidance on how to respond to the needs of IDPs. For example, Principle 15 of the Guiding Principles states there is a right to be protected against forcible return to

areas of danger. Although human rights law provisions on freedom of movement do provide limited protection to IDPs, by stating clearly that governments should not force people to areas where their lives would be at risk, the Principle not only strengthens the concept of freedom of movement but also provides clear guidance to governments.

Barutciski argues that the Principles are meaningless since the non-state actor that displaces communities as a political tactic or the state that displaces individuals through human rights abuse is not likely to abide by a non-binding “ideal”. This is, at best, short sighted. It is true that the Principles are difficult to enforce but this is equally true of large sections of international law. If international law was articulated only for situations where states were expected to abide, then most international law as we know it would disappear. The point is to establish international as well as national recognition that it is unacceptable that, for example, a state move IDPs at gunpoint from a camp to act as a human buffer zone in another part of the country.

The article's approach relies heavily on historical reference that bears little resemblance to today's crises of displacement. The lesson on Fridtjof Nansen and his strategy for the High Commissioner's mandate in 1921 is far too removed from today's reality to be of much assistance, and ignores new developments within the refugee protection regime. What is clear is that the increasing complexity of displacement makes it impossible to approach protection or assistance according to a pattern Nansen used in Turkey over 70 years ago or according to the conditions prevalent in post World War II Europe.

The assertion, for example, that it is not possible to combine the promotion of the concept of asylum with interventions in internal political problems that cause displacement flies in the face of the policy

of refugee protection as it has evolved and is currently defined by the UN High Commissioner for Refugees. In modern crises, refugee protection does not stop at the border when a refugee returns but in fact continues long after a refugee has returned. Obviously the search for durable solutions requires much more attention to the situation of human rights within the country of origin if refugees and other displaced people are to be able to rebuild their lives with any hope of sustainability.

While it is understandable to maintain a legal distinction between IDPs, refugees and other victims of violence, operational realities in return situations often make categorisation a frustrating and empty process with limited gain. In most of its return experiences UNHCR has found it necessary to look at assistance and protection from a community perspective.

It can be healthy and instructive to reconceptualise an issue but it is also important to maintain perspective. What is the point of protection – is it to define and protect laudable legal principles that bear no resemblance to reality? Or is it to respond to crisis and help victims? The entirely legal definition of protection is a thing of the past and debating whether refugee rights become “incoherent” once refugees cross borders loses sight of modern developments as well as the fact that these people are victims and need protection.

In the end, limiting UNHCR's protection role to what it was in the 1920s or limiting protection of IDPs to existing law does not provide much hope for the world's currently displaced populations.

**Marc Vincent, Coordinator of the Global IDP Survey**

# Questioning the tensions between the 'refugee' and 'IDP' concepts: a rebuttal

by Michael Barutciski

In his reaction to my article, Vincent claims that I have 'invented' an argument so that I can easily refute it. Both he and Bennett emphasise that no one suggests the refugee regime should be expanded to include IDPs. No one? Rutinwa does in his reaction to my article.... as does Luke Lee in an oft-cited article published in the *Journal of Refugee Studies* (Vol 9, No 1, 1996). Even the UN High Commissioner for Refugees has made recent speeches hinting that her mandate could be extended more generally to include internal displacement. Anyone familiar with the academic debates of the early 1990s will remember that the relevance of the distinction between refugees and IDPs was often questioned in order to encourage similar forms of protection for all victims of displacement.

Kingsley-Nyinah suggests my article is not balanced because it does not acknowledge the evidence suggesting that 'the distinctions between the refugee realm and the world of internal displacement are fully recognised'. This is difficult to do when the UN High Commissioner for Refugees makes statements such as the following: "Take Kosovo, for example. There, the categorisation of those who flee their homes into refugees, internally displaced or other groups is not very significant, given that all those who flee try to reach the nearest secure area, irrespective of the status they will acquire in doing so" (October 1998). While many UN lawyers are now well aware of the need to distinguish refugees from IDPs, some specialists have apparently not grasped why the distinction makes sense. Kingsley-Nyinah also claims that my article leaves the false impression that an expansion of the refugee regime is currently under-

way. To the extent that UNHCR's mandate now includes many activities in countries of origin that were not part of the original asylum-centred statutory mandate, it is relatively clear that the regime is expanding. This is not necessarily a negative development; the article simply tries to raise some problems in the work that this expansion entails.

The attempts to counter my historical arguments for a more cautious approach appear somewhat unconvincing. Vincent simply states that Nansen's work cannot be compared to today's crises, but he does not actually advance any arguments. It is indeed difficult to ignore the similarities between the 'ethnic cleansing' and population exchanges of the Balkans in the 1990s and Asia Minor in the 1920s. Let us hope that international actors have at least considered the various policy responses explored throughout the century. Likewise, the reference made by Rutinwa to High Commissioner James McDonald simply confirms my argument about non-political activities - precisely because McDonald resigned in 1936 following the publication of his criticisms. It was in a sense his 'parting shot'.

The legal arguments against my position are also somewhat imprecisely articulated. Rutinwa's summary of my points and presentation of counter-arguments indicate that he has largely misread the nuances in my article. Kingsley-Nyinah appears to accept the main thrust and prescriptive elements of the article but raises objections "in the area of method" because the prescriptions are apparently "erected on questionable premises". He identifies two "questionable premises". The first concerns the regime extension issue addressed above. The second

concerns an ancillary statement of mine: "the Guiding Principles on Internal Displacement do not really fill any legal gap; they simply state and interpret existing norms". Yet the qualification "really" is important in this context. In the preceding sentence I state that "there are no significant and specific forms of legal protection that could be granted to IDPs that do not already exist in international law". Kingsley-Nyinah slightly misrepresents my view when he claims that I make the "assertion that the Guiding Principles on Internal Displacement do not fill any legal gap". While Vincent also notes perceived gaps in international law, I maintain they are not significant and specific to IDP situations. In the current context in which respect for even fundamental norms is problematic, it seems to me that the additional rules drafted in Geneva or New York are of limited relevance. It should also be recognised that these new rules concern issues that affect all civilian populations in times of conflict and not only those that have been displaced. As I mention in my article, all these situations already involve recognised infringements of human rights law. The basic problems of asylum-seeking or humanitarian intervention are not new and I remain unconvinced that we significantly advance the debate by adding the 'new' rights identified in the responses by Vincent or Kingsley-Nyinah.

Yet Kingsley-Nyinah and Bennett are right in underlining that the debate should not become overly 'academic' and should keep a clear focus on ground realities. It is precisely in this spirit that the article seeks to make certain general conceptual comments and warn practitioners that their difficult work is unlikely to change in any fundamental way despite the positive developments in legal drafting.

Please send any comments on articles in this issue to the Editors by the beginning of July (see p2 for contact details).