

ties. Education and training programmes have failed to confront successfully the physical reality of abundant resources available at no (financial) cost to the refugees.

Under such circumstances it is argued that the principal option available is to boost protection, enforcement and regulation of access to resources. Meaningful deterrents must be put in place to create a situation of restricted access to resources that are physically abundant. This may involve systems of forest guards, alongside concerted support to government and local institutions to better enforce regulations on wood cutting, charcoal making and poaching. The emphasis is on control and containment of refugee access to natural resources, a situation to which they will inevitably respond with greater efficiency in care and use.

Camps with scarce natural resources

Where natural resources around a camp are already degraded the focus of environmental programmes should be radically different. Refugees should be helped to gain access to limited forest products on a sustainable basis. Guided cutting in carefully identified source areas can help meet domestic demand in an environmentally sensitive manner. Environmental education can supplement existing knowledge on energy-saving techniques. The emphasis is on the replenishment and efficient use of depleted resources by the refugees.

Conclusion

Environmental programmes could benefit from leaving behind the traditional focus on tree planting and stoves. Though simple and easily monitored from the point of view of hardware dissemination, such programmes are unlikely to bring real benefits where resources around a settlement are abundant. Environmental programmes should be adaptable, locally specific and based on a long-term vision for each refugee settlement site. Blanket regional policies are not helpful in this regard.

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Tensions between the refugee concept and the IDP debate

by Michael Barutciski

Refugee advocates committed to the promotion of asylum and combating the xenophobia that has reduced possibilities for refuge in host countries should be concerned about the recent debate surrounding the issue of internally displaced people (IDPs).

It is becoming increasingly common for commentators to argue that focusing exclusively on asylum situations ignores the realities of forced migration and represents a restricted view of displacement.

While it may be understandable to seek a comprehensive approach to humanitarian crises, the distinctiveness and importance of the particular problems that are addressed by the term 'refugee', as defined in international legal instruments, should not be ignored. Refugee protection involves issues that are quite distinct from work related to IDPs and general human rights law. There is a natural tendency for human rights advocates to want to extend protection, yet the irony is that such extensions may sometimes be counter-productive. This article suggests that the extension of the refugee regime to encompass internal displacement is actually detrimental to the traditional asylum option that is central to refugeehood.

For some actors (eg aid workers or academics), the new emphasis on a holistic approach to displacement stems from the apparent similarities between the plight of IDPs and refugees (ie externally displaced). For others (eg northern governmental funders), the new interest in internal displacement results from the reluctance of host populations to have contact with refugees and a desire to deal with forced migration in terms of containment. The common denominator

is that the refugee field's specificity in promoting asylum and combating xenophobia appears de-emphasised. Contrary to the aspirations often implied by advocates of IDP rights, a clear distinction should be drawn between the 'refugee regime' and situations of internal displacement.

Why do we have definitions for 'refugees' and 'IDPs'?

Concern about the humanitarian response to the plight of IDPs often arises from a certain uneasiness with the definition of the 'refugee' and its exclusion of many seemingly deserving displacement victims. The reason why a distinct category known as 'refugees' was created appears to be increasingly unclear for many observers. 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. For example, it was decided that a particular group of individuals who fear persecution on account of civil or political status and who escape their countries should be considered as refugees and accorded a specific set of rights that distinguishes them from other foreigners.

Social scientists who suggest that the reality of displacement is the same whether one is a refugee or an IDP are

forgetting one critical distinction in the plight of these two groups that have fled human rights abuses: 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.

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 that is addressed by international refugee law. In that perspective, those who still insist that we should be working to bring the refugee and IDP categories closer together are missing an important point: the kinds of rights granted to refugees would not make sense for displaced persons who are still in their country of origin. Refugee rights include basic socio-economic entitlements that allow them to survive in a foreign country where they do not have citizenship rights. These rights would be redundant if granted to citizens in their own states. If a government is responsible for having internally displaced its own people in the first place, is it useful to insist that it gives partial rights to employment or access to certain types of welfare benefits?

Refugees also benefit from the fundamental principle of *non-refoulement*, which means they cannot be sent to a country where they fear persecution. Is the international community going to insist that states cannot send their IDPs to a dangerous border? Yet this attempt at drawing analogies has been encouraged by the IDP debate. For example, researchers at the UN Centre for Human Rights are still trying to create a norm of internal *non-refoulement*. The curiosity of this notion is striking: does it make sense to impose a new obligation on a state prohibiting it from sending IDPs to dangerous parts of its territory, even though that state is responsible for not enforcing basic human rights that made the IDPs flee in the first place? The violations of human rights have already occurred – is it necessary to introduce more repetitive rights? There currently exists a vast body of human rights law and additional rights may undermine the persuasive strength and credibility of those existing. It is the basic issue of enforcement that has always been problematic and needs to be seriously con-

sidered if there is a genuine commitment to addressing the 'root causes' of displacement.

Thus, the idea of expanding the refugee definition to include IDPs simply does not make sense because the term 'refugee' addresses a particular situation that is characterised by being a foreigner in a host country. There is not one specific right found in the 1951 Geneva Convention relating to the Status of Refugees that could logically be applied to displaced persons who have not

Extending the refugee regime to include IDPs is not so obvious once we start looking at specifics...

escaped their own country. The whole Convention is based on the notion of having fled one's country. That is the condition or situation that is being addressed: not displacement or human rights violations *per se*, but rather the fact of being stranded outside one's country without the formal protection that comes from being the national of a particular state. Given that people in this situation do not benefit from the rights that normally follow from citizenship in the host state, they have to be provided with some sort of international protection. In effect, the international community has decided that the host state cannot treat this particular group of foreigners as tourists or visitors with minimal rights in the local community.

That is what has historically been meant by the expression 'international protection' in the refugee context. A close look at the way this term has been introduced in refugee legal documents in the 1920s indicates that it refers essentially to legal protection, and more specifically the type of legal protection that allows a needy foreigner to survive in a host state until a durable solution is found to his/her particular situation. It is not protection from human rights abuses so that the person does not have to flee in the first place. That is a fundamentally different problem and if it is termed 'protection' we must acknowledge that it involves a distinct context.

Extending the refugee regime to include IDPs is not so obvious once we start looking at specifics beyond the superficial appearance which suggests that displacement is the same whether one manages to cross a border or not. In fact, there is a big difference related to whether that border has been crossed.

Do rights really have no borders?

The expression 'rights have no borders' has been increasingly used in the context of forced migration. If the expression is meant to show support for moving beyond an international system based on sovereign states with their own territories, then it is understandable. But if it is supposed to be a statement of fact, is it really accurate?

Given Norway's central contribution to the creation of the international refugee regime, the Norwegian Refugee Council, among others, may like to reflect on its use of phrases such as 'rights have no borders'. The late Professor Atle Grahl-Madsen from Norway is generally recognised as one of the grandfathers of international refugee law and he was very clear on this question of borders: the border is of critical importance. He has written that if one foot crosses the border, then refugee rights apply; if the border is not crossed, then the 1951 Refugee Convention cannot be invoked.

In this context, it is worth remembering the basic principle of the United Nations that prohibits member states from interfering in the internal affairs of another state. Refugee law is distinct from other areas of human rights law in that it involves many questions related to immigration law, an area in which states are very careful about guarding their sovereignty. These refugee rights would be conceptually incoherent if there were no borders. Refugee law was always about something more specific than the general preoccupations of human rights law: it is about membership and inclusion or exclusion from communities. It addresses questions or problems such as the following: What rights do we give to these needy people who are in our community? Do we give them the rights of permanent residence? Do we limit their access to the kinds of rights that lead to integration?

The creation of a distinct category of 'internal refugees' and identification of specific rights that would make sense if applied to those individuals that do not

escape their country might be appropriate. However, it is necessary to have a closer look at what rights that do not already exist in international law could possibly be granted to this particular group. Also, consideration should be given as to whether it is appropriate to single out those displaced for additional human rights protection as opposed to war victims who are not displaced (eg poor villagers caught in a conflict but who cannot escape their village). Given that there is not necessarily a clear differentiation in needs, why grant additional rights to IDPs but not other war-affected populations? In any event, it becomes clear that these issues are really about the old problem of humanitarian intervention, regardless of the new language currently being introduced. For all the innovation being attached to the IDP debate, we know that states have already codified in other areas of international law the standards they are willing to accept regarding armed conflict and interventions. That some groups may sometimes be more vulnerable in particular scenarios is a matter for operational priorities, not for legal or conceptual development.

How have High Commissioners for Refugees traditionally approached their mandate?

When the Office of the first High Commissioner for Refugees was created, the emphasis on non-political activities was very important and helps explain why refugee protection was considered distinct from interventionist type activities. Shortly after the Norwegian explorer Fridtjof Nansen was named the first High Commissioner for Refugees in 1921, he was asked to deal with the consequences of Kemal Ataturk's counter-offensive against the Greek Army in Asia Minor. Nansen was not asked to stop the outflow of refugees or challenge the Turkish leaders for the large number of Greeks they were uprooting, nor were the UK, France and Italy going to send soldiers to stop the mass displacement. Given that there was no willingness on the part of the international community to engage in coercive action, Nansen was sent to deal with alleviating the plight of people who had to flee - essentially by helping them resettle. Privately, we know he was furious about what the Turks were doing, but publicly he did not say anything so that he could go about his 'humanitarian' work effectively. He did not have the necessary military commit-

ment, so he was very prudent in his relations with the belligerents. The general idea behind the origins of the High Commissioner's post was that it is necessary to be seen as non-political and humanitarian in order to facilitate work that concerns the promotion of asylum. That is not possible if the asylum promotion activities are coupled with direct interventions in the internal political problems that cause displacement. Yet this is exactly what results from work with IDPs.

In this context, it is worthwhile pointing out some of the very different approaches of international humanitarian law, international human rights law and international refugee law. **International humanitarian law** is concerned to a large extent with intervening in armed conflicts and convincing the belligerents that it is in their interest to respect certain basic laws of war relating to POWs, medical personnel, non-combatants, etc. It involves an extreme effort at being neutral and impartial, and that is why the International Committee of the Red Cross, which has been developing its prudent and discrete interventions since the nineteenth century, is the main international agency involved in this type of work. **International human rights law**, on the other hand, is almost the opposite in that it may involve condemning governments that do not protect the basic rights of people on their territory. The inter-governmental bodies and NGOs that engage in this work often have a strong political mandate because it may be necessary to challenge governments in order to assure the protection of threatened peoples. The starting point of **international refugee law** is that human rights violations have already occurred and that victims have fled the country of origin. The objective is to convince an asylum state to respect minimal standards for certain foreigners who do not benefit from some other national protection. In this sense, refugee law can be seen as a last resort if people cannot be sure that their human rights will be respected in their own country: the option of voting with their feet. All these legal approaches can certainly be interrelated, yet it would not necessarily be productive to involve the same organisation in these very distinct activities.

If there is no specific legal regime for IDPs, it does not mean that there are no legal standards that apply to internal displacement. All human beings benefit



Fridtjof Nansen, first High Commissioner for Refugees

from general international human rights law. If IDPs are caught in situations that are characterised as 'armed conflicts', they also benefit from international humanitarian law. These areas of international law basically cover all legal protection needs. Despite the implied suggestion in *Internally Displaced People: A Global Survey* (p 3)¹, there are no significant and specific forms of legal protection that could be granted to IDPs that do not already exist in international law. Consequently, the Guiding Principles on Internal Displacement presented to the UN Commission on Human Rights in 1998 do not really fill any legal gap; they simply state and interpret existing norms.

What does the 'IDP' concept really contribute?

The question we must ask ourselves is whether this term 'IDP' is particularly useful, especially given that from a legal perspective it is difficult to see what additional guarantees can be added that do not already exist. If we cannot grant particular rights, what is the point of having a designated category? It may be appropriate to acknowledge that the expression 'IDP' has succeeded in drawing international awareness to a serious forced migration problem that should not be ignored. If that is true, then it is a considerable achievement and may be the main contribution of the IDP debate in the 1990s.

However, if that is essentially what the IDP debate has contributed, it should be

remembered that this is a considerably more minor contribution than that which was originally anticipated by IDP advocates at the beginning of the 1990s. At the time it was suggested 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'. All this may have created a good amount of conceptual confusion, encouraged inaccurate interpretations of international law, contributed to false expectations and resulted in the dilution of the UN refugee agency's asylum mandate. Moreover, there is reason to suspect that it has been used to reinforce *non-entrée* policies by states and justify containment strategies. After all, allowing victims of human rights violations to access asylum states would be contrary to promoting their 'right to remain' (as was argued by European politicians during the Bosnian conflict).

The implicit and dangerous logic is that if a new category called 'IDPs' is granted supposedly new protection under international law, then there is no reason to allow those displaced to become cross-border refugees. Even if the protection does not contain anything substantively new, its formal expression can reduce commitments regarding the availability of temporary refuge across borders. Put bluntly: if the development of IDP norms does not substantively advance the international community's attempts to deal with humanitarian crises and intervene in troubled countries, then the current debate and re-focus on internal displacement would represent little more than capitulation to *non-entrée* and containment strategies to the extent that it de-emphasises the external asylum option.

This is not necessarily to suggest that competing protection concerns exist and that international attention should only focus on one group of displacement victims. (If that were the case, it could seem logical to concentrate resources on IDPs instead of refugees because statistics indicate internal displacement is significantly higher than external displacement.) There are clearly many humanitarian needs in various parts of the world for which the international community should develop genuine response mechanisms. Intervention, however, has always been problematic because it raises complex issues of territorial sovereignty. It has historically been at best *ad hoc* and unreliable. While it is possible that the creation of an 'IDP'

category may encourage international involvement in troubled countries, recent practice does not provide evidence that these interventions will be more constructive or effective. The development of humanitarian intervention norms remains, nevertheless, crucial long-term work deserving of the clear political commitment to make concepts such as 'preventive protection' and responses to 'IDPs' and 'root causes' truly sustainable policy options. However, any failures at this level should not be imputed to supposed problems with the international refugee regime. The goal of the refugee regime is to promote asylum for victims who cannot return to their country, not to prevent conflict or human rights violations.

Until the international community develops effective mechanisms for intervening in troubled countries, we should remember that states generally have unqualified access to the individuals who have escaped, and are in a position to offer refuge. Consequently, in concrete terms, our genuine commitments to victims of displacement can largely be measured by our engagement in favour of asylum.

In essence, an appropriate overall approach should be twofold: development of fair interventionist principles (that necessarily affect IDPs) and, in case their application fails, preservation of the possibility for cross-border flight and external refuge. However, humanitarian intervention and asylum are two distinct areas that deserve to be clearly distinguished and not confused. Work with IDPs falls within the former and the refugee community is not necessarily the appropriate partner for this endeavour. As long as these distinctions are recognised and the relevance of refugee protection principles is appreciated, there is no reason why a holistic understanding of forced migration should not include general issues related to prevention of conflict and human rights violations.

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¹ *Internally displaced People: A Global Survey*, Global IDP Survey/Norwegian refugee Council, 1998. ISBN 1-85383-521-8 (free to FMR subscribers).

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