The politics of internal displacement and options for institutional reform

by

David Turton[*]

Abstract: The 'global crisis' of internal displacement became a key area of policy making for Northern states in the 1990s, when they saw themselves faced with a rising tide of asylum seekers and economic migrants fleeing from civil wars and ethnic violence. The institutional response to the perceived crisis, however, proved less than adequate for two main reasons. First, it focused on a series of ad hoc measures to improve 'inter-agency collaboration' rather than on radical reform of the humanitarian system; and second, the category 'IDP' lacks both a legal definition and a clearly identifiable empirical referent. Neither of these deficiencies has been corrected by the latest attempt to improve the coordination of humanitarian response activities, the so-called "cluster approach", introduced in 2005. It is suggested that this situation has persisted because it suites the key players who decide on the rules of the game - donor states and international humanitarian agencies. In order to identify different options for radical reform, therefore, we need to begin from a Rawlsian "original position", in which the political and institutional interests of states and humanitarian agencies are set on one side, and the rights of the displaced themselves are treated as paramount.

The term "internally displaced person", or "IDP", first appeared in the humanitarian literature in the late 1980s. During the following decade, a number of closely interrelated geopolitical events and processes came together to focus the attention of the international community – meaning the rich, industrialised northern states – on the "problem" of internal displacement in the developing world. It was during this decade that internal displacement became for these states a key area of policy making. I take it for granted that the policies and practices of states in relation to both the "refugee problem" and the "IDP problem" should not be seen as the response of an already existing and stable system of territorial states to an entirely external crisis. Rather, they should be seen as instruments of statecraft (Soguk 1999, pp. 9-14), enabling the territorial state system to reproduce itself as the dominant political organising principle of the modern world. Like refugees during the early twentieth century (Turton 2005, pp. 501-502), IDPs during the late twentieth century were as much the product of the developing nation-state system as they were of large-scale population movements, and the institutional

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[*] David Turton was formerly Director of the Refugee Studies Centre at the University of Oxford, where he is now a senior Research Fellow in the African Studies Centre.

arrangements that were put in place to deal with the perceived problem were as much constitutive of it as they were a response to it.

I begin by asking why preoccupation with the "global crisis" (Cohen and Deng 1998) of internal displacement is of such relatively recent origin. I then describe the institutional arrangements put in place to deal with the crisis since the appointment of the first Representative of the UN Secretary General on Internal Displacement in 1992. To the outsider at least, these arrangements look like a mish-mash of more or less ad hoc measures, designed to meet the needs and interests of the institutional and state actors rather than of the displaced themselves. Next, I describe some of the unintended and undesirable consequences of singling out "conflict generated" IDPs as a special category of vulnerable people. Finally, I consider various options for reforming the organisational structures through which the international community provides assistance and protection to both the internally and "externally" displaced. I conclude that one of these options is particularly worthy of consideration, on the grounds that it derives most obviously from an "original humanitarian position" in which the interests of the displaced are paramount[1].

The historical context

The main features of the historical conjuncture that made internal displacement such a "hot topic" in the 1990s may be grouped under three headings: (a) the end of the post-World War II bi-polar world order; (b) a dramatic increase in the number of asylum applications being made to the governments of Northern states in the early 1990s, and the accompanying phenomenon of "mixed flows"; and (c) the erosion of the concept of territorial sovereignty.

The end of the Cold War had at least three relevant consequences. First, there was no longer a strategic incentive for the once opposing powers to maintain high levels of political, economic and military support for their former client states. This led to a marked increase in internal war and state breakdown in the developing world, with millions of people being left stranded, within the borders of their own states but outside the effective protection or assistance of their own governments. According to Cohen and Deng (1998, p. 3), in 1997 20 million people were internally displaced by conflict worldwide. Since then the official estimates have continued to rise, reaching 27.1 million in 2009 (International Displacement Monitoring Centre 2010). Second, "humanitarian intervention" in the affairs of such states became a practical possibility, since the intervening powers no longer risked confrontation with a nuclear-armed superpower. And third, the main strategic consideration that had motivated Western states to accept refugees onto

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[1] The argument presented in this article was first developed as part of my contribution to an evaluation of assistance to internally displaced persons in Afghanistan, carried out in 2004 on behalf of the Danish Ministry of International Development (DANIDA) and a number of European donor states (Marsden and Turton 2004; Borton et al. 2005).

their territories during the Cold War – the ideological battle with communism – no longer applied[2].

Just as asylum applicants were losing their political attractiveness to rich Northern states, so the numbers of those reaching these states from the South increased dramatically. Western European governments, for example, were faced with an increase in annual asylum applications from around 200,000 in 1989 to around 700,000 in 1992 (UNHCR 2000, pp. 156-58). This was the result, partly of improvements in transport and communication and partly of the protracted civil conflicts that erupted in various parts of the world during these years. But it also reflected the growing use being made by economic migrants of the "asylum route", in order to get round the obstacles to legal migration that European states had been putting in place since the economic recession of the 1970s.

One consequence of these increased numbers and "mixed flows" was the imposition of ever stricter asylum controls by Northern states, which had the unintended consequence of encouraging the growth of an increasingly enterprising and effective global industry in trafficking and people smuggling. A second consequence was a re-focusing of the international refugee regime on containment rather than asylum – that is, on preventing refugee flows from occurring in the first place and, when they did occur, on confining refugees to their regions of origin (or protecting their "right to remain") and ensuring that they returned to their home states as quickly as possible. In 1991, Sadako Ogata, the then High Commissioner for Refugees, famously predicted that the 1990s would be "the decade of voluntary repatriation" (Loescher 2000, p. 280). It was no coincidence, then, that this was also the decade during which the provision of assistance and protection to the internally displaced moved to the top of the international humanitarian agenda. Indeed, it is the view of at least one leading refugee lawyer, James Hathaway, that

> the main impetus for official interest in the IDP category is the determination of powerful states to avoid refugee flows. Specifically, if those already "on the move" can be dealt with before they cross a border, governments on the outside can avoid legal obligations towards them (2007, p. 386).

The 1951 UN Convention Relating to the Status of Refugees was firmly based on the assumption that the application of international law was strictly circumscribed by the principle of territorial sovereignty. This is why refugees are defined in the Convention as persons who are not only unable or unwilling to avail themselves of the protection of their own state, but who are also outside the territorial jurisdiction of that state. According to Hathaway,

> While it was increasingly accepted in the early 1950s that the world community had a legitimate right to set standards and scrutinize the human rights record of the various countries, it was unthinkable that refugee law would intervene in the territory of a state to protect citizens from their own government" (1991, quoted in Chimni 2000, pp. 400-401).

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[2] The role of refugee policy as a weapon in the Cold War armoury of Western powers is illustrated by the fact that all but 925 of the 233,436 refugees admitted to the United States between 1956 and 1968 were from communist countries (Loescher 1993, p. 59).

The exclusion of the internally displaced from the 1951 Convention, then, was a matter of pragmatism, not principle.

What was unthinkable in the 1950s, however, had become distinctly thinkable by the 1990s. The key historical event that is widely credited with having put internal displacement at the forefront of international attention in the early 1990s was the intervention of the US and its allies in Northern Iraq in 1991 (Newland et al. 2003, pp. 16-17; Suhrke 2003, p. 15). In April of that year the UN Security Council passed resolution 688, calling on Iraq to allow immediate international humanitarian access to nearly a million displaced Kurds who had been prevented from crossing the border into Turkey. The resolution was interpreted by the US and its allies as authorization to intervene militarily to establish "security zones" for the Kurds, without the consent of the Iraqi government.

This action was made possible, of course, by the recent defeat of Iraq in the first Gulf War, and by the end of the bi-polar world order. But it also reflected the fact that the principle of territorial sovereignty had itself been coming under increasing pressure during the 1970s and 80s from two main sources. First, the globalisation of the world economy was making it increasingly difficult for states to control the financial, capital and trade flows that determined the well-being of their citizens. Second, the globalisation of human rights was encouraging a "popular" or "republican" interpretation of sovereignty, and the consequent notion that a state's territorial sovereignty could be legitimately infringed if its government was violating the human rights of its citizens.

The 1951 Convention Relating to the Status of Refugees, with its 1967 Protocol, was able to provide a "hard" legal framework for the international refugee regime, because it was firmly based on the principle of territorial sovereignty. The gradual chipping away at this principle, by the processes and events described above, opened the way for the international community to take a formal interest in the protection of those who were displaced within the borders of their own states. But sovereignty remains a highly sensitive issue, not least amongst the economically more vulnerable and politically weaker states of the South which are most likely to be affected by internal conflict. Predictably then, and as we shall see next, the international regime established in the 1990s for the protection of the internally displaced was much "softer" in its normative framework, and much less coherent and predictable in its institutional arrangements, than the regime established in the 1950s for the protection of refugees.

The institutional context

When Frances Deng, a former Sudanese diplomat and foreign minister, became the first Representative of the UN Secretary General on Internally Displaced Persons in 1992, one of his main tasks was to oversee the development of a legal framework for the protection of IDPs. This process was chaired by Walter Kälin, an international human rights lawyer[3], and resulted in a set of thirty "Guiding

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[3] Kälin succeeded Deng as the Secretary General's Representative on Internal Displacement in 2004.

Principles" which were presented to the UN in 1998. As their name implies, the principles are not binding. They were not negotiated by states but put together by a group of independent experts. Nor do they fill a legal gap in the protection of the rights of the internally displaced (Barutciski 1998). Rather, they combine various existing provisions of international human rights law and international humanitarian law, which relate to the protection of the internally displaced. The definition of internal displacement contained in the Guiding Principles, therefore, does not amount to a legal status and is open to a wide range of interpretations, depending on the particular circumstances of each case. Who then, is an internally displaced person?

In the language of everyday speech, the answer is obvious: anyone who has been forced to move, by whatever cause, from his or her home, and yet remains within the borders of his or her own country. In the Guiding Principles[4] , however, an internally displaced person is defined, "for the purposes of these Principles", as someone who has been forced to move "*in particular*" by armed conflict, generalised violence, human rights violations and "natural or human-made disasters." According to Roberta Cohen, one of the main architects and interpreters of the Principles, their "essential" purpose is to "help identify persons who should be of concern to the international community because they are basically in a refugee-like situation within their own country" (Cohen 1996, quoted by Chimni 2000, p. 407). The inclusion of people who have fled their homes because of natural disasters is meant to cater for cases where governments respond to such disasters in ways that discriminate against certain groups "on political or ethnic grounds or by violating their human rights in other ways" (Cohen 2000, p. 82).

The emphasis of the Guiding Principles definition, therefore, is not so much on displacement *per se*, nor even on the physical location of the displaced person within the borders of his or her own country, but on making sure that such a person is provided with the formal protection that comes from being a citizen of a particular state. This can be the only reason why the largest category of internally displaced people in the world today, forced resettlers, or those displaced by development projects, are not listed amongst those whom the Guiding Principles "particularly" refer to. For these are people who have been moved for the benefit of the wider community, in accordance with the domestic law of "eminent domain", and who remain, theoretically at least, under the protection of the government which moved them[5].

It follows that the Guiding Principles do not so much define internal displacement (which can be done easily enough, as above, in a single short sentence), as draw attention to the circumstances that make a large minority of internally displaced people of particular concern to the international community. It also follows that the label "IDP", in so far as it is intended to reflect the letter and

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[4] http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

[5] The most recent global estimate of people displaced every year by large-scale infrastructural development projects such as roads and dams is fifteen million, or three hundred million over the last twenty years (Cernea and Mathur 2008, p. 20).

spirit of the Guiding Principles, is not the acronym it appears to be. It is not a convenient shorthand for "internally displaced person", but the name of a sub-category of internally displaced persons, made up of those who are, or should be, of interest to the international community because they are in a "refugee-like" situation.

So why not call them "internal refugees"? This would have two conceptual advantages. First, it would reflect the all important "refugee-like" situation of the people being referred to, thereby putting the emphasis on the fact that they are in need of international protection rather than that they are simply displaced within their own country. Second, it would make clear the rationale for not including in this category the largest single group of internally displaced persons world-wide, namely those displaced by development projects. But the logic which dictates the use of "displaced" rather than "refugee" for people who are in a "refugee-like" situation without having crossed an international border is a practical rather than a conceptual one. It has to do with a concern not to undermine the protection available to the refugee in international law. This makes "alienage", the presence of the unprotected person outside his or her own country and therefore "uniquely within the protective ambit of the international community" (Hathaway 2007, p. 350), an essential element of the legal definition of a refugee. If the element of alienage were dropped from the definition, it is argued, there would be less pressure on states to meet their existing obligations to "external" refugees under international law, thus weakening the institution of asylum.

Distinguishing between "internally displaced persons" and "IDPs", and treating the latter, in effect, as a sub-category of the former, can usefully clarify the vexed question, "When does displacement end?" (Mooney 2003). Phrased in this way, the question is not so much vexed as unanswerable, since the condition of being displaced, whether outside or inside one's own country, is essentially a subjective one: there can be no external, objective criteria for determining when displacement has come to an end. The real (in the sense of answerable) question is "When does a displaced person cease to be of special concern to the international community?" Or, in the case of the internally displaced, "When does an internally displaced person cease to be an IDP"? The answer would seem to be clear. An internally displaced person ceases to be of concern to the international community, and therefore ceases to be an IDP, if and when the national authorities are able and willing to provide him or her with a "normal level of legal and physical protection" (Newland et al. 2003, p. 98). Deciding what a "normal" level of protection is, of course, and whether it is actually available to the population in question, will be a matter of weighing up the circumstances of each particular case – a process in which the affected population will ideally participate. But there seems no reason to insist that this protection must be available in the displaced person's place of origin, even if he or she wishes to return there.

The appointment of Francis Deng as the Secretary General's Representative on internal displacement in 1992 was only one of several steps taken by the UN in the early 1990s to improve the coordination of humanitarian assistance. These efforts continued and intensified throughout the decade, as a confusing (at least to the outsider) array of "focal points", "reference points", "senior advisors", "special

coordinators", "inter-agency committees" and "inter-agency networks" made their appearance. The need to find ways of improving the response of the UN system to the needs of the internally displaced was at the centre of this flurry of activity.

In 1991 the post of UN Emergency Relief Coordinator (ERC) had been created and an Inter-Agency Standing Committee (IASC), with representatives from all operational intergovernmental agencies, had been set up with the aim of improving the coordination of emergency assistance. In the following year, not only was the post of Representative of the Secretary General (RSG) on Internally Displaced Persons established, but the Inter-Agency Standing Committee designated the Emergency Relief Coordinator as the UN "reference point" for IDPs. In 1993, in his first report to the UN Human Rights Commission, Francis Deng recommended the creation of a new UN agency, or the mandating of an existing one, to "cater more specifically to the needs of IDPs" (quoted in Newland et al. 2003, p. 22). Neither suggestion was taken up. Instead, the Inter-Agency Standing Committee committed itself firmly to what became known as "the collaborative approach", under the overall coordination of the Emergency Relief Coordinator.

In 1997 the Emergency Relief Coordinator, as head of the newly created Office for the Coordination of Humanitarian Affairs (UNOCHA), was reaffirmed as the "focal point" for ensuring cooperation and collaboration between existing agencies in meeting the needs of IDPs. In 1998 a Senior IDP Advisor was appointed within UNOCHA to liaise with "focal points" in operational agencies. In 2000, a "Senior Inter-Agency Network on Internal Displacement" was set up to make proposals for further improvements in the institutional response to internal displacement. This followed a dramatic intervention by Richard Holbrooke, the then US Ambassador to the UN, who had used a session of the Security Council, in December 1999, to lambaste the UN for its reliance on inter-agency collaboration, rather than on the leadership of a dedicated organisation, to meet the needs of what he called "internal refugees".

In April 2001 the final report of the "Special Coordinator" of the Senior Network on Internal Displacement concluded that inter-agency collaboration remained the best – or perhaps the only feasible – option for the UN in responding to the needs of the internally displaced. The result was the setting up of yet another non-operational body to monitor, review, identify gaps, advocate and make recommendations - the Internal Displacement Unit (re-named in 2004 the Inter-Agency Internal Displacement Division (IDD)), which began its work, within UNOCHA, in January 2002. In 2003 the Division carried out two studies – a "Protection Survey" and an "IDP Response Matrix" – which found that "significant problems remained in the implementation of the collaborative response" (McNamara 2006, p. 9). An independent evaluation of the Division, carried out in September and October 2003, concluded that its activities up to then had "not amounted to positive change in how the UN responds to internal displacement" (Tanner and Stites 2004, p. 27).

There was wide agreement at this time that, despite determined efforts to improve the coordination of humanitarian assistance since the early 1990s, IDPs continued to fall between the gaps in the institutional mandates of the various agencies. Gill Loescher identified the failings of the "collaborative approach" as

unpredictability, operational delays, duplication of effort, the neglect of protection and insufficient support for "post conflict" development.

> No UN agency can be counted on to respond automatically when there is a crisis involving massive internal displacement. Agencies choose the situations in which they will become involved in the light of their mandates, resources and interests […]. This collaborative approach has often been constrained by delays, duplication of effort and programmes, neglect of protection issues, and insufficient support for reintegration and post-conflict development efforts […] It is still the case that there exists only a weak and incoherent arrangement at the international level for internally displaced. (Loescher 2000, pp. 208-10)

A few years later, in commenting on new guidance issued by the Emergency Relief Coordinator "for developing an IDP response strategy", Susan Martin wrote:

> While a clear improvement in setting out the steps to be taken, the new plan still does not address a fundamental problem with the collaborative approach. No actor within the UN system has an obligation to respond to the assistance and protection needs of IDPs. The ERC has powers of persuasion that may, in many cases, encourage one or more agencies to offer its help to IDPs, but the ERC has no authority to order compliance. Nor does the ERC have funding to offer to make the decision to respond more appealing. As long as no UN body has the mandate and, hence, the obligation to assist and, more importantly protect IDPs, gaps are likely to remain (2004, p. 312).

At this point, then, thirteen years after the creation of the post of Emergency Relief Coordinator and the setting up of the Inter-Agency Standing Committee, and twelve years after the appointment of a representative to the Secretary General on internal displacement, the "collaborative approach" was widely regarded as a failure. This recognition, coupled with the slowness and inadequacy of the international response to the crisis in Darfur, was one of the driving forces of a review of the humanitarian response system commissioned by the Emergency Relief Coordinator in late 2004.

The principal conclusion drawn from this review was that certain key areas, or "problem sectors" (MacNamara 2006, p. 9) of humanitarian activity should be assigned in advance to specific lead agencies, so that leadership of the humanitarian response in these areas would be both predictable and accountable to the affected populations. Nine areas of concern, now called 'clusters', were identified. These included three areas affecting "conflict-generated IDPs" for which UNHCR was designated the "cluster lead": (a) camp coordination and management, (b) emergency shelter and (c) protection.

So now there was a new game in town, the "cluster approach". This was essentially another sector-based coordination system, but this time with clearly designated lead-organisations. Since 2005, when the cluster approach was launched in the DRC, Liberia, Somalia and Uganda, the Inter-Agency Standing Committee has commissioned two evaluations of its performance. Both reported positively, but with notably faint praise, as can be seen from the following conclusion of the most recent of these evaluations.

> The introduction of the cluster approach is an organizational change process that requires up-front investments and generates benefits over time. Five years into that process and based on largely qualitative evidence collected in six countries, the evaluation team concludes that these investments are beginning to pay off as the benefits generated by the cluster approach to date already slightly outweigh its costs and shortcomings (Streets et al. 2010, p. 10).

In view of the fact that lack of accountability had been one of the key failings of the humanitarian system which the cluster approach was intended to put right, it is also notable that,

> the evaluation team found no evidence or examples of clusters actively promoting participatory or community-based approaches among their members […] cluster work plans and strategies were in most cases not discussed with or validated by affected populations (Streets et al. 2010, p. 25).

And yet the changes introduced into the humanitarian response system in 2005 must be considered a bench mark in the evolution of the international response to the "global IDP crisis". Now, for the first time, there was a UN agency that was committed to respond in a predictable way to the protection and assistance needs of "conflict generated" IDPs. This was, in effect, a highly belated response to Francis Deng's recommendation, made in his first report on IDPs to the UN Human Rights Committee in 1993, that their protection should be made the responsibility of a new, or existing, UN agency. Whether that agency should have been the UNHCR is another matter. There is a clear potential conflict of interest between the UNHCR's founding mandate to assist and protect those who have escaped from harm by crossing an international border, and its new commitment, under the "cluster approach", to be the "first port of call" and "provider of last resort" for those who are displaced within the borders of their own state.

If "the main impetus for official interest in the IDP category is the determination of powerful states to avoid refugee flows" (Hathaway 2007, p. 386), then the designation of UNHCR as the "global lead" for IDP assistance and protection can only play into the hands of receiving states who wish to promote the alternative of "internal flight". In short, how will UNHCR ensure that, by involving itself in IDP protection and assistance - a highly attractive option from the point of view of its own access to donor funds - it does not undermine the right of potential refugees to seek asylum? In a form of words which is predictably more obfuscating than clarifying, Erica Feller, UNHCR's Assistant High Commissioner for Protection, reflected this conundrum when she described UNHCR's policy on IDPs as having "evolved from being one of 'no, unless certain conditions are met' to 'yes, unless specific conditions arise'" (Feller 2008, p. 11). What these conditions are, or might become, has yet to be spelt out in detail, but one thing we can be sure of is that, in deciding whether to say "yes" or "no" to involvement in a particular IDP emergency, UNHCR will be under strong pressure to act in accordance with the interests of its donor states and with its own institutional and financial advantage.

The unintended consequences of focusing on IDPs

In the debate about how to improve the effectiveness of the international community's response to IDP emergencies, the adequacy and usefulness of the IDP category itself has rarely been questioned. And yet not only does this concept lack a legal definition, but it also lacks a clearly identifiable empirical referent. Indeed, the Guiding Principles definition seems to have been deliberately formulated to

allow the concept to be extended, as required, to include virtually any form of displacement, provided only that it was contained within the borders of a single state. Before going on, therefore, to identify various options for radical institutional reform, beyond the mere improvement of inter-agency cooperation, it is worth considering some of the undesirable and unintended consequences that result from the use of the ill-defined IDP concept to separate out a special category of "people in need", or "people of concern".

Like all labels used for the purpose of regimenting large numbers of people, the IDP label is reductionist, in the sense that it reduces the diversity of individuals to a single characteristic, a characteristic, moreover, which they themselves would not normally use to identify themselves. This *homogenizing* and de-personalizing effect of the IDP label has obvious bureaucratic advantages for the labellers, but it can also mask huge differences in the social, economic and demographic characteristics of the labelled, as well as in the causes and consequences of their displacement. In other words, members of the IDP category may be internally divided along lines which are far more significant and meaningful to them than is the mere fact of being displaced. But does this really matter, when the overriding need is to provide assistance and protection to people in desperate and urgent need? I believe that it does, because it allows the "problem" of internal displacement to be presented in predominantly quantitative terms, as a simple matter of numbers, rather than in qualitative terms, as a matter of responding to the particular vulnerabilities, needs and aspirations of individuals and families.

A second possible undesirable consequence of the label is that it may contribute to the *stigmatizing* of IDPs as people out of place in their own country – people who do not belong where they are and do not have a right to stay there. This may not only help to create, or at least exacerbate, prejudice against them amongst the "host" population but it may also be used by the authorities to justify putting obstacles in the way of their local integration.

A third unintended consequence of the label is that it may promote and lend credence to the often politically convenient idea that people are "naturally" rooted in a single place of origin, and that the obvious, most desired and most "durable" solution to the situation of displacement is return to the place of origin. This *localising* effect of the IDP label is based on a false and simplistic understanding of the meaning of "home" in human social life and on a failure to appreciate that locality is not a given, a pre-existing stage upon which social activities are enacted, but a product of those activities. As Arjun Appadurai (1996) has cogently argued, human beings are always and everywhere – in refugee camps and urban slums as much as in the middle-class suburbs of big cities – engaged in a constant, if subconscious, process of what he calls "locality production". This is literally an everyday activity which has the effect of producing a sense of place or "neighbourhood", where meaningful social interaction is made possible by shared understandings and shared interpretations of action. Contrasting the concept of home, understood in this sense, with the concept of "homeland", Xenos (1996, p. 243) writes that homes "can be made and remade wherever there is space for them", whereas "Homelands are places that are unchanging and to which one must return no matter how hostile they may be to the returnee".

The rationale for separating out the internally displaced from other vulnerable people is that they are, by definition, likely to be especially vulnerable. But they are also likely to be a highly heterogeneous population – economically as well as in other ways – and to be living amongst, or near, people who are at least as vulnerable as they are. Singling out IDPs as a special category of vulnerable and needy people, therefore, may have the effect of diverting attention from others who are in as much, or greater need, and creating tensions and antagonisms between those living in IDP camps and others. It may also divert attention from members of the IDPs' communities of origin, who may not have been able to move, partly because they did not have the necessary economic resources and social connections.

This *privileging* effect is the fourth unintended consequence of the IDP label. In a paper setting out a framework for the joint evaluation of assistance to IDPs for which the original version of this paper was written, Buchanan-Smith and colleagues (2003) suggest a way round this problem. It should be recognised, they write, that the reason for focusing on IDPs is not to grant them a privileged status, but to identify their numbers and whereabouts in order to ensure that their needs are not ignored. The trouble with this formulation is that it is difficult to tell the difference between, on the one hand, granting the internally displaced a privileged status and, on the other, singling them out from others who may be at least as vulnerable, to ensure that *their* needs are not ignored. It is not clear, therefore, how this suggested resolution can help in overcoming the disadvantages of treating IDPs as a subcategory of people in special need.

The combined effect of these different, but closely connected, unintended consequences of the IDP label is that the problem comes to be defined in quantitative terms: the more IDPs, the bigger the problem. "Solving" the IDP problem, therefore, comes to mean reducing the number of people officially included in this ambiguous category, rather than reducing vulnerability levels in the population at large. If it is assumed, furthermore, that what displaced people generally want is to return home, and that home is a specific geographical location, the problem becomes an even more narrowly focused and largely technical one – namely how to encourage as many as possible to return to their places of origin. We can add to this the sometimes less than subtle political pressures exerted by donor states and local authorities in favour of "return and reintegration". Any agency which depends heavily on donor and host governments for its ability to maintain and reproduce itself will therefore have a powerful incentive to ensure that all the assistance it gives to IDPs is linked as directly as possible to return. In these circumstances, the line between "enabling" or, in the jargon used by the UNHCR, "facilitating" return, and deliberately encouraging it, must be very difficult to draw (Turton and Marsden 2002).

Reforming the system from an "original humanitarian position"

It is clear that efforts to deal with deficiencies in the provision of assistance and protection to IDPs, including the most recent "cluster approach", have consisted overwhelmingly in a succession of measures designed to improve "inter-agency

collaboration", rather than in radical reform. One must conclude that this is because the key players like it this way. For this is a game in which the rules are decided upon by the players, who include states and humanitarian organisations but not the displaced themselves, and in which the interests of the most powerful players tend to coincide with those of the weakest. One attraction of the "collaborative approach" for states was that it allowed them room for manoeuvre when it came to deciding which agencies to fund, up to what level and in which particular emergencies. The attraction for agencies was that, with no one agency having permanent responsibility for IDPs, they had the freedom and flexibility to compete, or not to compete, for a greater or lesser "market share"[6] in each new IDP emergency. Perhaps the main potential benefit of the cluster approach, from the point of view of IDPs themselves, is that it should make this scramble for market share in every new emergency a thing of the past.

In order to identify different options for radical reform then, it is important not to start from 'where we are now', which is how humanitarian reform has been managed up to now, but from an imagined "original position" (Rawls 1971) in which the interests and prejudices of the institutional actors are set on one side.

> […] the original position is the appropriate initial status quo which insures that the fundamental agreements reached in it are fair […] (p. 17) […] We should insure […] that particular inclinations and aspirations, and persons' conceptions of their good do not affect the principles adopted. The aim is to rule out those principles that it would be rational to propose for acceptance […] only if one knew certain things that are irrelevant from the stand point of justice [...] (p. 18) […] One excludes the knowledge […] which sets men at odds and allows them to be guided by their prejudices (p. 19).

We also need to recognise that governments and humanitarian agencies, like all social institutions, will attempt to use whatever system is put in place to advance their own interests. The system needs to be designed, therefore, with sufficient in-built checks and balances to ensure that opportunities for the players to put their political and institutional interests ahead of those whom they are officially serving are kept to a minimum.

We can construct such an original position by distinguishing between two categories of need – assistance (especially emergency relief) and protection – and two categories of displaced people – those who have crossed and those who have not crossed an international border. These distinctions combine to give us two intersecting axes, and four theoretically separate institutional mandates, namely protection for refugees, protection for the internally displaced, assistance for refugees and assistance for the internally displaced (Fig. 1).

The next step is to ask whether the needs of refugees and the internally displaced for assistance and protection would be addressed more effectively if two or more of these mandates were combined under the roof of a single agency. Let us begin with the refugee/IDP axis. Arguments for making a single agency responsible for refugees and IDPs are usually based on the undoubted similarities in their situations and experiences, the only difference often being that refugees

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[6] The term 'market share' was freely used in this context by staff at UNHCR's Geneva HQ during discussions I had with them while preparing the original version of this paper in 2004.

happen to have crossed an international border. But, for those who take the opposite view, this difference is utterly fundamental. Because of its significance in international law, they argue, any blurring of the distinction between refugees and the internally displaced risks diluting the protection available to refugees and thus weakening the institution of asylum. The case has been made by Michael Barutciski as follows.

> 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 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 […] That is what has historically been meant by the expression 'international protection' in the refugee context […] It is not protection from human rights abuses so that the person does not have to flee in the first place (1998, p. 12).

On the specific issue of extending UNHCR's mandate to include the internally displaced, Guy Goodwin-Gill writes that,

> UNHCR has no legal basis to protect internally displaced people, but must proceed by the consent of the sovereign state and any *de facto* fighting force exercising control over the territory in question….As soon as [it] accepts mandates from others, such as the UN Secretary General…it steps into a political minefield, replete with conflicts of interest, and must pay the political price; so too, unfortunately, must its principal constituency" (2000, p. 28).

Turning now to the protection/assistance axis, the argument for making the same agency responsible for both assistance and protection is usually based on the assumption that assistance activities can be a means – even a necessary means – of providing protection. The mere presence of a humanitarian organisation, the argument runs, can be a source of protection, while the provision of assistance may be the only way of gaining access to the population in need of protection. Those opposed to this view argue that an agency's protection activities, such as monitoring human rights abuses, may get overlooked, or under-emphasised, because they jeopardize its assistance activities. This is because "protection activities are often seen as political and therefore incompatible with the required neutrality of humanitarian aid" (Newland et al. 2003). Protection may also suffer because of the relative visibility of assistance activities and their apparent political neutrality, which makes funding them politically attractive to donors. Even dedicated protection agencies, therefore, may be strongly tempted to take on an increased assistance role, and then to justify this on the grounds that "you can't do protection without doing assistance".

Depending on the weight we give to these arguments, we can now identify the following options for organisational reform.

Option 1

If we are convinced that it is in the best interests of the displaced to keep a clear institutional separation not only between refugees and IDPs but also between

assistance and protection activities, we will recommend that each of the four mandates is made the responsibility of a different organisation (Fig. 1).

Option 2

If we are convinced that it is in the best interests of the displaced for one organisation to provide protection and assistance for both refugees and IDPs, we will recommend one organisation for all four mandates (Fig. 2). This, in essence, is the result of the decision to make UNHCR the "cluster lead" for providing assistance and protection to "conflict generated" IDPs. A more thorough-going version of this option, involving the creation of a new agency to replace UNHCR, was recently proposed by Susan Martin.

> The consolidation of assistance and protection responsibilities for all forced migrants into a new organization – the UN High Commissioner for Forced Migrants (HCFM) – would significantly improve responses to forced migration. This agency would replace UNHCR. Its mandate would include refugees….as well as individuals internally and externally displaced because of repression, conflict, natural disasters, environmental degradation and development-induced displacement (2004, p. 314).

Making one agency responsible for all displaced people would certainly address the major failings of the collaborative approach, such as unpredictability, operational delays, competition for "market share" among different agencies, and duplication of effort. The danger with this proposal, however, is that it could take us – or rather, it could take the displaced – out of the frying pan and into the fire. The problem is not that it would result in a mammoth organisation, with enormous responsibilities, but that those responsibilities would be so varied as to be potentially in contradiction with each other. As Goodwin-Gill put it, in his comments, quoted above, on the advisability of extending UNHCR's mandate to include IDPs, the organisation would be likely to find itself in a permanent "legal and political minefield", with the displaced being the main losers.

Option 3

If we are convinced that it is in the best interests of the displaced to keep a clear institutional separation between refugees and IDPs, but to combine responsibility for assistance and protection, we will recommend two organisations, one to provide assistance and protection to refugees and one to provide assistance and protection to IDPs (Fig. 3).

Option 4

If we are convinced that it is in the best interests of the displaced to keep a clear institutional separation between assistance and protection, but to combine responsibility for refugees and IDPs, we will recommend two organisations, one to provide assistance to refugees and IDPs and the other to provide protection to refugees and IDPs (Fig. 4)

The above options are based on two assumptions: first that the arguments for and against keeping an institutional separation between refugees and IDPs apply with equal force to the provision of both protection and assistance; and second, that the arguments for and against separating assistance from protection apply with equal force to refugees and IDPs. The second assumption seems reasonable. But the first is open to question. This is because protection activities relate centrally to the difference in legal status between refugees and IDPs, while the assistance needs of the two categories are likely, in today's world, to be virtually identical. This leads to a final option that needs to be considered.

Option 5

If we are convinced that the argument for keeping a clear institutional separation between refugees and IDPs applies to protection but not to assistance; and if we are also convinced that it is an important rule of thumb to make different agencies responsible for protection and assistance, we will recommend three organisations, one providing protection to refugees, one providing protection to IDPs and one providing assistance to both (Fig. 5). This fits closely a proposal made by William Maley (2003), the purpose of which, however, was to address the protection needs of refugees, rather than the deficiencies of the collaborative approach to internal displacement.

Starting from the contention that "Refugee protection is in need of revival" (p. 319), Maley argues that the UNHCR should refocus its concerns on protection: "The Department of International Protection should be at the heart of the UNHCR, complemented by key staff from regional bureaus and a revitalized Centre for Documentation and Research" (p. 319). This would be accompanied by the creation of a new operational agency, based on the amalgamation of "chunks of both UNHCR and OCHA" (p. 320), which would have responsibility for the provision of assistance to both refugees and IDPs, including repatriation assistance. This new agency would represent the re-emergence of the old UN Disaster Relief Organisation (UNDRO). Maley gives it the name "United Nations Refugee and Disaster Organisation" (UNRDO), its crucial difference from UNDRO being that it would have its own field staff and operational capacity. The result of this refocusing of the UNHCR mandate on protection would favour the growth within it of "an organizational *culture* of protection", which is "unlikely to take hold in an organization with widely diverse and potentially conflicting priorities" (p. 321). This in turn would result in a more independent UNHCR, able "to act fearlessly to shame those states that violate their commitments under international refugee law and other relevant international instruments of which refugees may also be beneficiaries" (p. 321).

I am more inclined towards Maley's proposal than Martin's because it is more obviously rooted in an original position in which the rights and interests of the displaced themselves are treated as paramount. It is difficult to believe that reliance on ad hoc "inter-agency collaboration" would have been seriously contemplated as a desirable policy option if the debate about how best to provide protection and

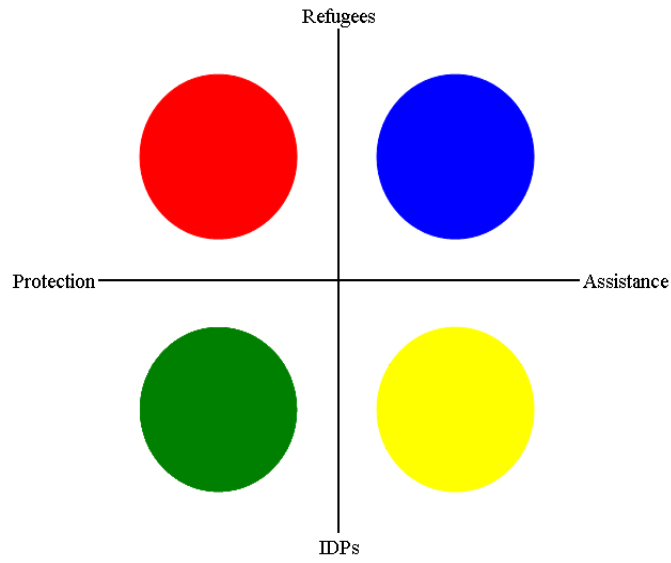assistance for the internally displaced had started out from such an original position.

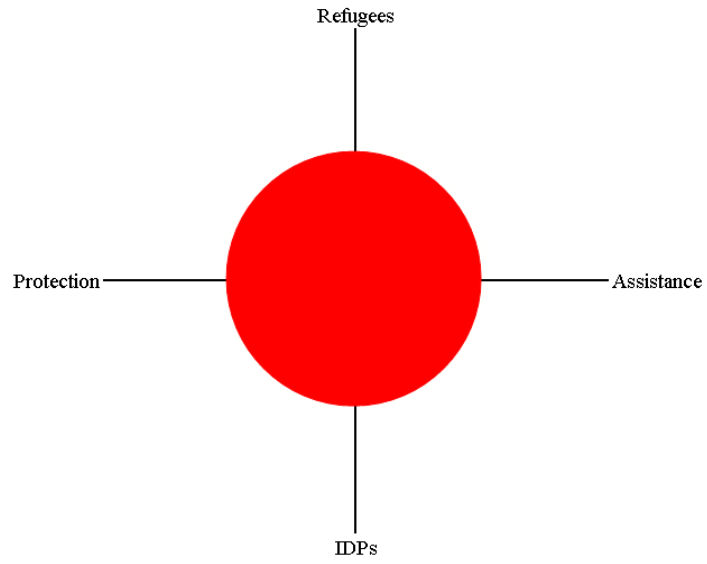**Figure 1: Four institutional mandates in the "original position"**

Refugees

Protection —————— Assistance

IDPs

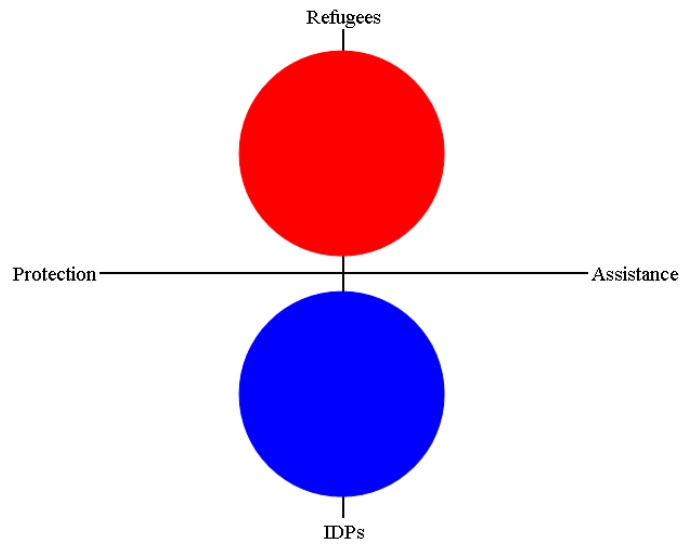**Figure 2: Option 2 - one organisation, four mandates.**

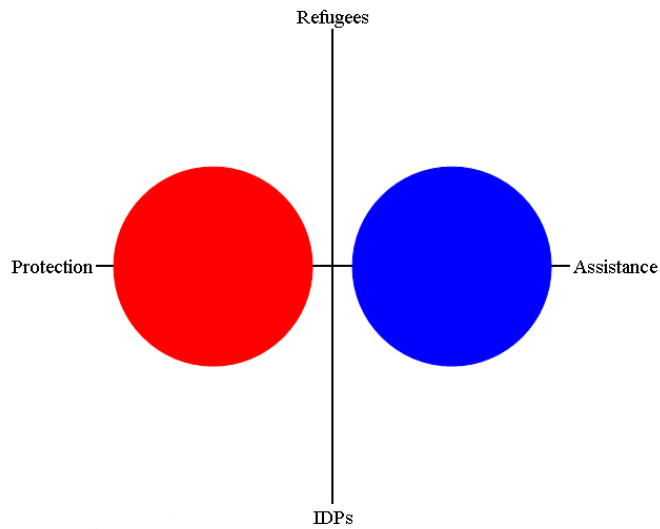**Figure 3: Option 3 – two organisations, one for refugees and one for IDPs.**

Figure 4: Option 4 – two organisations, one to provide protection to refugees and IDPs and one to provide assistance to refugees and IDPs.
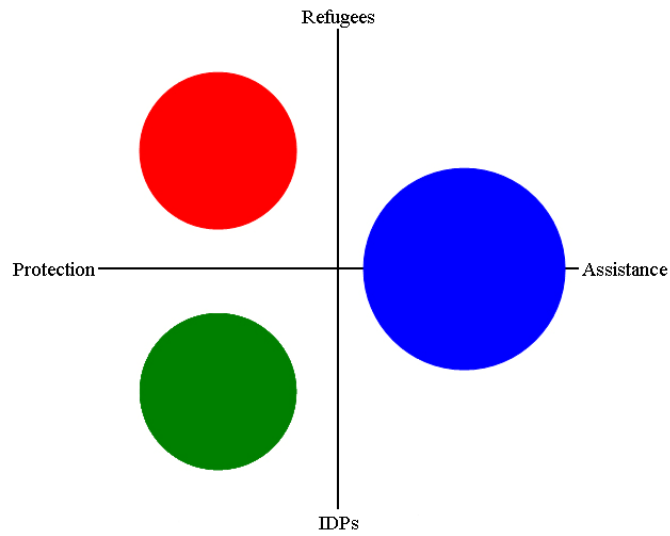
Figure 5: Option 5 – three organisations, one providing protection to refugees, one providing protection to IDPs and one providing assistance to both.

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