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PROTECTION OF INTERNALLY DISPLACED PERSONS: AN INTERNATIONAL LEGAL OBLIGATION?

Abstract:

This article examines the phenomenon of internal displacement from the perspective of the existing legal framework and those measures which should guarantee protection for internally displaced populations worldwide. With this aim in mind, the article begins by assessing the role of international law and try to ascertain which legal norms are applicable to protect internally displaced persons. As a second step, it analyzes the question of responsibility for the protection of internally displaced persons, i.e. whether this lies with the state of origin through its national law, or rather with the international community, and examines the relevant provisions of international law. While concluding and identifying the existing gaps in the current legislation, the article demonstrates that internally displaced persons should become the objects of a specific system of law and legal protection. At the same time, the text intends to contribute to the contemporary debate promoting efforts to strengthen the protection of internally displaced persons and to disseminate knowledge about this vulnerable group of people.

Keywords: IDP, internal conflict, internally displaced person, internal displacement, international human rights law, international humanitarian law, international refugee law

INTRODUCTION

Internal displacement is one of the most pressing humanitarian, human rights and security problems faced today by the international community. On a global scale, the number of internally displaced persons (IDPs) forced to move by armed conflicts, generalised violence and human rights violations increased, as of December 2014, to an estimated 38 million (the highest number of IDPs noted since 1994).¹ Among the

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¹ The statistics are based on the analysis presented in the Annual Report of Internal Displacement Monitoring Center: *Global Overview 2015: People internally displaced by conflict and violence*, Internal Displacement Monitoring Center (IDMC), May 2015.

countries with the largest internal displacements in 2014 were: Syria, Colombia, Iraq, the Democratic Republic of the Congo, Sudan, Pakistan and Nigeria.² In addition, the internal displacement in Ukraine has been one of the most recent large movements of people, with at least 1,236,500 already displaced from their homes due to the armed conflict (as of March 2015).³ However, this number can even be twice higher as not all displaced persons registered themselves in the centralised registration system created by the Ukrainian governmental authorities in October 2014.

As a rapidly increasing phenomenon, internal displacement is putting intense pressure on international law and its capacity for adaptation to the new realities and challenges. There is an urgent need to assess the role that international law, and particularly international human rights law (IHRL) and international humanitarian law (IHL), plays in developing an acceptable legal framework of rules governing this area. The present article focuses mainly on identifying the applicable principles and norms of international law and shows that, unlike with respect to refugees, there is no separate international convention directly protecting the rights of IDPs.⁴ Their protection is still not linked to any special normative model, but depends on the analogical application of pre-existing norms of IHRL, IHL, and international refugee law (IRL). In current framework of international law the primary responsibility to protect IDPs should rest on the IDPs' state of origin. However, the reality demonstrates that the national authorities of states of origin are usually unable or unwilling to protect their IDPs, although the reasons for this vary. For instance, in situations of internal armed conflict, governments may not have control over all parts of the country. In these situations, IDPs are often found in areas under the control of non-state actors and out of reach of governmental assistance and protection.

The present article focuses on the avenues available in international law for the protection of IDPs when adequate protection is unavailable at the national level. It tries to identify which provisions of international law can guarantee the legal protection of IDPs. The growing international concern for internal displacement arises from the dramatic increase in the number of IDPs, who currently almost triple the global population of refugees.⁵ IDPs and refugees are often forced to abandon their places of origin for similar reasons. In such situations, it would seem that crossing an internationally recognized border should no longer represent a necessary condition to gain access to international protection. The international community, however, has not yet adequately

² The statistics based on analyses and monitoring of the IDMC, April 2015.

³ State of play as of March 2015, based on the figures provided by the IDMC.

⁴ The recently ratified African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012), together with its predecessor the Pact on Security, Stability and Development in the Great Lakes Region (adopted 15 December 2006, entered into force 21 June 2008), may be viewed as turning points towards creation of binding legal documents. However, they are only regionally binding acts with a limited scope of application.

⁵ Pursuant to the statistics of the United Nations High Commissioner for Refugees (UNHCR) there were about 13 million refugees worldwide in the middle of 2014.

responded to the humanitarian crisis created by the global phenomenon of internal displacement. Importantly, states of origin typically refuse to acknowledge situations of internal displacement due to a fear that the international community will intervene in their internal affairs. This is particularly true in cases in which the national authorities themselves are responsible for the violence and human rights causing the displacement. At the same time, the estimated number of IDPs receiving no meaningful humanitarian assistance and facing indifference or hostility from their governments is growing each year. Taking this into account, it seems that the phenomenon of internal displacement has developed to the point that it can no longer be treated exclusively as a national internal issue. This article thus tries to determine the extent to which international law addresses the issue of protecting the needs of IDPs, and in particular analyses the role of international human rights, humanitarian and refugee law in the context of internal displacement and international protection guaranteed for IDPs. It demonstrates that internal displacement is not only a problem of domestic jurisdiction, but rather has become an area of concern for international law.

1. THE RELATIONSHIP BETWEEN THE CONCEPTS OF REFUGEE AND INTERNALLY DISPLACED PERSON

There are two main differences between the status of refugees and that of IDPs. The first is the fact that, unlike IDPs, refugees enjoy a proper legal status;⁶ the second is represented by the transboundary element, which exists only for refugees. It was not until the last decade of the 20th century that the term “internally displaced person” came into regular usage and that international attention turned toward the potential creation of an international system to deal with IDPs.

The first important step in defining an IDP was the creation of the United Nations Guiding Principles on Internal Displacement in 1998 (UN Guiding Principles).⁷ This major international document addressing the issue of internal displacement applies to “persons or groups of persons who have been forced or obliged to flee or to leave their

⁶ Art. 1 of the Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954, 189 UNTS 137) provides that “the term ‘refugee’ shall apply to any person owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term ‘the country of his nationality’ shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”

⁷ United Nations Guiding Principles on Internal Displacement, contained in the Annex of document E/CN.4/1998/53/Add.2, 11 February 1998.

homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognized State border.” This definition concentrates in large part on people who, if they had crossed an international border, would qualify as refugees. Essential parts of the definition of an IDP are duplications of several international documents addressing refugee issues, like the 1969 Organisation of African Union Convention governing the Specific Aspects of Refugee Problems in Africa⁸ and the Cartagena Declaration,⁹ as well as the more restricted definition of the 1951 Refugee Convention.¹⁰ What is particularly significant in the definition in the UN Guiding Principles is that it also includes those who would not have earlier qualified as refugees, for example, those displaced by natural or human-made disasters. Furthermore, the expression “in particular” signals that the list of causes of internal displacement is not exhaustive.

According to E. Mooney, the phenomenon of internal displacement takes into account more factors than the flow of refugees. Despite the fact the IDPs are very often called “internal refugees”, the concept of internal displacement encompasses additional causes of displacement which go beyond situations applicable to the flow of refugees. The internally displaced are grouped by one definition to the existence of a variety of causes of displacement which are followed by violations of their fundamental human rights. They present two similarities: 1) their displacement was forced, and 2) they stay within the borders of their state of origin. However, it should be underlined that this definition of IDP is descriptive, not legal, as it does not give a special legal status for IDPs in comparison to the position of refugees in the international legal system.¹¹

Refugee status entitles its holders to certain rights and international protection, while being an IDP does not create a special legal status because internally displaced are still under the jurisdiction of their own government and may not claim any rights additional to those enjoyed by their compatriots. Furthermore, IDPs remain within the borders of their own country.¹² In practice, however, the division between these two groups of displaced people may be vague and overlapping, because when refugees return to their country of origin they are often unable to go back to their homes or communities, thus becoming IDPs. In rejecting the assimilation of the category of IDPs to refugees, much emphasis has been put on the definition of “refugee” under the 1951 Refugee

⁸ The Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974), 1001 UNTS 45.

⁹ Cartagena Declaration on Refugees, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, 22 November 1984, pp. 190-193.

¹⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137.

¹¹ E. Mooney, *The concept of internal displacement and the case for Internally Displaced Persons as a category of concern*, 24(3) Refugee Survey Quarterly 4 (2005).

¹² J.C. Hathaway, *The Law of Refugee Status*, Butterworths, Toronto: 1991.

Convention and the requirement that a refugee must be outside his/her country of origin. By being outside their country of origin, refugees are in a fundamentally different situation than IDPs according to international law. One important consequence of this fact is that the international community's access to IDPs can be much more limited, or subject to more conditions, than its access to refugees.¹³

The specificity of the phenomenon of internal displacement creates a need to guarantee special protection for IDPs, mainly but not solely due to the lack of will or capacity on the part of their own governments to provide proper assistance to their displaced citizens. Critically, however, though IDPs and refugees have different legal statuses, the consequences and causes of both displacements have a common character. IDPs and refugees alike are frequently displaced to places foreign to their cultures, where the local people come from a different ethnic, religious or linguistic group. Like refugees, IDPs may feel like aliens in their dislocations, and not infrequently are viewed as strangers and a threat to the local structures surrounding them. In light of these parallels between the displaced groups, debates have raged over the question whether IDPs and refugees should be treated as a single category and protected by one and the same international organisation.¹⁴ At the present time, the United Nations High Commissioner for Refugees (UNHCR) provides protection to IDPs. However, these actions have no legal basis in the statutory provisions of the Office. The UNHCR's policy on internal displacement derives from the fact that IDPs, like other citizens, are entitled to protection under national law, IHRL and IHL throughout the whole displacement process. In view of this, the Office has stated its readiness to work with national and international actors that are engaged in the establishment of laws and mechanisms that safeguard the rights of IDPs. From its side, the UNHCR guarantees that all of its activities with regard to the IDP issue conform to the norms of IHRL, IHL and the UN Guiding Principles. It is also noteworthy that the scope of the UNHCR's engagement with IDPs is mainly limited to internal displacement induced by armed conflicts. In internal displacement caused by natural disasters the UNHCR shares a key role with other UN bodies, i.e. the Office of the High Commissioner for Human Rights (OHCHR) and United Nations Children's Fund (UNICEF). It does not take a primary role and it usually gets involved based on the presence of refugees intermingled among persons displaced by natural disasters. For instance, when disaster happens at a close distance to a refugee camp, the UNHCR tries to provide at least minimum assistance. However, unlike for refugees, there is still no single international institution that explicitly addresses the protection, assistance and special needs of the internally displaced. Several UN humanitarian and human rights bodies and various international NGOs are engaged in providing assistance, protection, and development aid for the internally displaced. None of these organizations, however, has a global

¹³ M. Barutciski, *Tensions between the refugee concept and the IDP debate*, 3 *Forced Migration Review* 11 (1998), p. 12; B. Rutinwa, *How tense is the tension between the refugee concept and the IDP debate?* 4 *Forced Migration Review* 29 (1999).

¹⁴ C. Brun, *Internal Displacement*, *Forced Migration Online (FMO)*, October 2005, pp. 2-3.

mandate to protect and assist IDPs. The international community tried to find a compromise solution in the creation of a collaborative approach and by making better use of existing institutional mandates. The collaborative approach requires that the capabilities of many international organizations are to be coordinated to address the problem of internal displacement. However, it should be underlined that the lack of resources and of political will to create a new international institution would seem to limit the international response and the options available for reacting.

With reference to the scope of the definition of IDP, some counter views can be also identified in the literature. In the opinion of M. Barutciski, and contrary to the opinions of experts in humanitarian aid and some scholars, a demarcation between the refugee and IDP regime should be made. The advocates of the holistic approach to treating both categories of the displaced persons seem to miss a significant element, which is that immediately upon crossing an internationally recognised border refugees become protected by specific international legal instruments and a specific legal order. Hence, the protection of human rights of refugees would not have the same value if it were to be made entirely applicable to IDPs, as refugees are rather viewed as aliens in a foreign state. The human rights provided for them aim at allowing refugees to survive outside their state of origin, where they do not possess citizenship. Thus, according to Barutciski, amending the definition of refugee by the insertion of an internally displaced category would seem to be superfluous in light of the fact that the notion of “refugee” denotes a displaced person in the territory of a foreign state. As Barutciski stressed, a fundamental international act being the legal foundation for international refugee law, that is, the 1951 Refugee Convention, is entirely based on the concept of flow from the state of origin. The idea of the 1951 Refugee Convention was to establish protection for displaced people in a place where they cannot benefit from the rights which are normally guaranteed to citizens of a country.¹⁵ It is clear that although IDPs and refugees may be entitled to the same scope of human rights, protection of IDPs is limited by national sovereignty and by the internal policies of states of origin. This is aggravated by the fact that normally internal displacement is driven by armed conflicts, serious disturbances and the institutional collapse of a state of origin, all circumstances that may constitute permissible justifications for the derogation of basic human rights standards. Furthermore, notwithstanding the similarities with respect to the need for assistance of both categories of displaced persons, IDPs are still confronted with many constraints as regards their legal and institutional protection and this is not the case for refugees.

In sum, none of the proposed definitions of internally displaced persons included in the relevant international instruments is a legal definition, in contrast to the definition of refugee included in the 1951 Refugee Convention and other international legal documents. One may reasonably assume that it would be necessary to formulate a proper legal definition of IDPs in order to entitle them to legal rights.

¹⁵ Barutciski, *supra* note 13, pp. 12-13.

2. APPLICABLE FRAMEWORK OF INTERNATIONAL LAW

As has been shown, IDPs do not enjoy a specific legal protection under international law that is exclusively applicable to them. However, there is no doubt that the principles of IHRL and IHL apply to IDPs in the course of conflict situations, and that the IHRL is also applicable in times of peace. Nonetheless, the specific needs of IDPs still tend to be neglected. Unlike refugees, IDPs do not benefit from a special international legal system exclusively geared to ensuring their protection and assistance. This absence of legal protection of IDPs comes from gaps in the international legal system, the first stemming from a lack of explicit provisions identifying the needs of IDPs, and the second related to the fact that the already existing general norms have not been adapted to the special needs of internally displaced persons.

Notwithstanding the existence of two multilateral instruments of legally binding force pertaining to internal displacement, an internationally binding legal document that establishes the full scope of IDP protection still awaits formulation. The above-mentioned instruments of legally binding force – the Pact on Security, Stability and Development in the Great Lakes Region¹⁶ (Great Lakes Pact) and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)¹⁷ – are documents with limited scope that cover only some regions of the African continent. Besides, the Kampala Convention, although a significant step in regional assurance for IDPs and a formulation of legal obligations for states, entered into force on 6 December 2012 but has been ratified by only 22 African states (as of December 2014) since its adoption in October 2009.

Hence IDPs are not protected by a single legal international regime. The UN Guiding Principles, which are based upon IHL, IHRL and analogous IRL, are an example of “soft”, non-binding law with no sanctions system nor implementation procedures. The UN Guiding Principles do not attempt to explicitly address the gaps in the legal protection of IDPs, but they do restate the existing international laws related to them and attempt to provide governments and international organizations with guidance on how to respond to the needs of IDPs.

Reality demonstrates that the international law has not succeeded in preventing internal displacement. This fact results from the incomplete nature of this protection machinery, in particular the deficiencies of the international legal system as regards the implementation and enforcement of states’ obligations under international law. As individuals who have not left their own country, IDPs remain entitled to the full range of human rights that are applicable to the citizens of that country. The challenge, however, is to identify those guarantees and concepts in existing international law that could

¹⁶ The Pact on Security, Stability and Development in the Great Lakes Region (adopted 15 December 2006, entered into force 21 June 2008).

¹⁷ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012), available at <http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

relate to the special needs of IDPs and which may provide some protection for IDPs in particular situations. The human rights standards found in the most significant international legal acts, for instance the Universal Declaration of Human Rights (UDHR), the UN International Covenant on Civil and Political Rights (ICCPR) and the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), should apply to them. Many human rights, however, may be derogated in times of national emergencies. In addition, governments which create situations resulting in internal displacement, or which are not sympathetic to the plight of those displaced for ethnic, religious, or political reasons, are generally unwilling to provide displaced persons with the rights found in international human rights instruments. Furthermore, IHRL does not directly address specific situations, such as the prohibition of forcible displacement and access to humanitarian assistance.¹⁸

As regards the complementarity of international humanitarian and human rights systems, the United Nations Human Rights Committee stated that

the ICCPR applies also in situations of armed conflict to which the rules of IHL are applicable. While, in respect of certain rights of ICCPR, more specific rules of IHL may be specially relevant for the purposes of the interpretation of ICCPR rights, both spheres of law are complementary, not mutually exclusive.¹⁹

The above-mentioned Committee does not use the term *lex specialis*, but refers to the more specific norms of IHL. By avoiding the *lex specialis* approach, the Committee seems to imply that there is no need to choose one branch of law over the other, but rather relies on their simultaneous and harmonious application. According to this approach, as IHRL and IHL are two branches of law that have a common objective of protecting persons, they should be harmonised and interpreted in such a way that they complement and reinforce each other. In some cases, IHL will specify the extant rules and their interpretation, while in other cases it will be IHRL, depending on which branch of law is more detailed and adapted to a given situation.²⁰ In this context, it is worth noting that in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*²¹ the International Court of Justice (ICJ) also underscored the supplementary application of IHL and IHRL in armed conflict situations.

2.1. Implications of International Human Rights Law

As highlighted at the beginning of this section, the phenomenon of internal displacement under international law cannot be elaborated without reference to the hu-

¹⁸ A. Balmano, *Protecting the Internally Displaced under International Humanitarian Law*, 2(2) The Human Rights Brief 4 (1995).

¹⁹ The UN Human Rights Committee, *General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

²⁰ S. Weill, *Interaction between humanitarian law and human rights in armed conflicts*, Geneva Academy of International Humanitarian Law and Human Rights, 2009.

²¹ ICL, *Legal Consequences of the Construction of a Wall* (Advisory Opinion) 2004, available at <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>.

man rights legal system. There is an undeniable interface between internal displacement and human rights, first and foremost because infringements of international human rights are the primary reason for arbitrary displacement. As stated by the experts of the UNHCR, this is applicable both to persons leaving their places of origin individually and to people fleeing in groups. The human rights of displaced persons can be violated intentionally in domestic conflict by concurrent parties. Their infringement can be also provoked and influenced by poverty.²² In 1992, the UN Commission on Human Rights²³ declared in its Resolution 1992/73²⁴ that the IDP concept is, at its core, a human rights issue. With a view to further sharpening the focus on the needs for protection of IDPs, the UN Commission on Human Rights strengthened the human rights aspects of the mandate of the Representative of the UN Secretary-General on IDPs by explicitly adding a reference to “human rights” to the mandate-holder’s title.²⁵ It was thus within the human rights framework of the UN that the plight of the internally displaced came onto the international agenda and some international consensus around the issue was established. However, in the academic discourse there are also other existing interpretations of the position of IHRL towards the protection of IDPs. For instance, according to R. Murray, international law relating to the protection of refugees and displaced persons on the one hand, and IHRL on the other, have traditionally occupied separate spheres with their own institutions and mechanisms.²⁶

IHRL, which is applicable both in times of peace and in situations of armed conflict, can provide important protection to IDPs. It aims both to prevent displacement and to ensure the basic rights of displaced persons. Among the rights of particular importance for the prevention of displacement are the prohibitions on torture, cruel, inhuman or degrading treatment or punishment, and the right to peaceful enjoyment of property and to home and family life. These rights must be granted to everyone without discrimination, including discrimination on the grounds of displacement. In addition to being protected by international human rights mechanisms implemented (at least in theory) in their state of origin, the rights of IDPs should also be guaranteed by the standards of customary international law binding upon all states. Importantly, situations involving the protection of human rights are present in all phases of the process of internal displacement that is, starting from its cause, to the particular circumstances and conditions, including reasons for extension, and ending with long-lasting solutions. Pursuant to the provisions of the fundamental human rights treaties and instruments having their basis in the provisions of the UDHR, states have an obliga-

²² United Nations High Commissioner for Refugees, *The State of the World's Refugees: The Fifty Years of Humanitarian Action*, Oxford University Press, Oxford: 2000, p. 150.

²³ Replaced on 15 March 2006 by the UN Human Rights Council.

²⁴ UN Commission on Human Rights, *Resolution 1992/73, Internally displaced person*, E/CN.4/RES/1992/73.

²⁵ UN Commission on Human Rights, *Resolution 2004/55, Internally displaced person*, E/CN.4/RES/2004/55.

²⁶ R. Murray, *Refugees and Internally Displaced Persons and Human Rights: The African System*, 24(2) Refugee Survey Quarterly 56 (2005).

tion to guarantee universally recognised human rights to all their citizens. These are indispensable for their well-being and dignity.²⁷

However, some authors argue that IHRL does not provide adequate protection for IDPs, inasmuch as it permits derogation in times of national emergency or internal strife and does not bind insurgent forces. It should be noted that this derogation is not applicable to the violation of core rights,²⁸ such as right to life, prohibition of torture or cruel, inhuman or degrading treatment, prohibition of slavery, etc. (specified in Art. 4 of ICCPR). Furthermore, no derogation exists from prohibitions against hostage-taking, abductions or unacknowledged detention, protection against genocide, discrimination, forcible deportation and displacement by expulsion.²⁹ However, the system of derogations can vary within international human rights instruments of a regional scope. The African Charter on Human and People's Rights³⁰ contains no derogation from the rights it guarantees. The American Convention on Human Rights³¹ allows derogation in times of "war, public danger, or other emergency that threatens the independence or security of a State Party." The European Convention on Human Rights³² permits derogation in time of war or other public emergency threatening the life of the nation. In sum, the regional international human rights treaties are not homogeneous in character. Aspects of protection vary from treaty to treaty, and each treaty contains a different enumeration of inalienable rights. However, according to L.T. Lee:

[T]o the extent that their basic human rights have been violated, all human beings are entitled to protection and assistance whether as refugees abroad or as IDPs within their own countries. Equal rights for all individuals, be they nationals or aliens, refugees or IDPs are implied in all universal and regional human rights instruments through the use of such terms as all human beings, everyone, no one or all. Hence, not a single right in the UDHR, for example, is specified or implied as belonging only to refugees, but not to internally displaced persons.³³

According to the provisions of the Manual on Field Practice in Internal Displacement³⁴ of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),

²⁷ E. Mooney, *Bringing the end into sight for internally displaced persons*, 17 *Forced Migration Review* 4 (2003).

²⁸ So-called "peremptory norms" (*jus cogens*) – those human rights which cannot be derogated for the reasons of national security under any conditions.

²⁹ General Comment No. 29 of the Human Rights Committee, adopted at the 1950th meeting of the Committee on 24 July 2001, ICCPR doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001.

³⁰ African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986), 1520 UNTS.

³¹ The American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978), 1144 UNTS.

³² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended).

³³ L.T. Lee, *The Refugee Convention and Internally Displaced Persons*, 13(3) *International Journal of Refugee Law* 363 (2001).

³⁴ The entire text of the OCHA Manual on Field Practice in Internal Displacement is available at http://www.reliefweb.int/ocha_ol/pub/IDP (accessed 30 April 2015).

IDPs are not only victims in need of protection, but holders of rights to whom duties are owed by both the national and international authorities. Nevertheless, as is clearly stated in Art. 4 of the ICCPR, in times of public emergency that threaten the life of the nation (the existence of which is officially proclaimed), the state parties to the ICCPR may take measures in derogation of their obligations under the ICCPR to the extent such measures are strictly required by the exigencies of the situation and provided that they are not inconsistent with their other obligations under international law and do not involve discrimination solely on the basis of race, colour, sex, language, religion or social origin. However, according to Art. 4 no derogation from Arts. 6, 7, 8 (para. 1 and 2), 11, 15, 16 and 18 of the ICCPR may be made. This means that the following human rights can be distinguished as non-derogable: a) right to life; b) right to be free of slavery or servitude; c) right to be free of torture and cruel and inhuman treatment; d) right to be free of arbitrary detention; e) right to recognition everywhere as a person before the law; and f) right to religious freedom and freedom of speech and conscience.

As already described, IDPs do not have a special status in international law. Instead, they enjoy the rights guaranteed by IHRL to all human beings. These include the aforementioned non-derogable human rights and many others, including: the right to integrity and dignity of the person, non-discrimination, liberty of movement, respect for family life, an adequate standard of living (including access to basic humanitarian needs), medical care, access to legal remedies, possession of property, participation in public life and education.³⁵

In recent decades, the proliferation of IHRL standards has been accompanied by a broad range of mechanisms that monitor, supervise and, on occasion, enforce these standards. At the international level, compliance is monitored by UN treaty bodies such as the committees established by the main human rights treaties, and by non-treaty-based bodies such as the UN Human Rights Council, whose work often has a direct impact on the protection of displaced people. Organizations such as the UNHCR, with their extensive field presence, have a responsibility to cooperate with these bodies, subject to considerations of security and confidentiality. Moreover, since its creation the UNHCR has emphasized the importance of national human rights structures. It has actively promoted the creation of national human rights bodies that support and implement international standards. These national institutions are becoming increasingly important partners for the UNHCR in the promotion and protection not only of refugees', but also IDPs' rights.³⁶

Summarizing the discussion so far, no mention is made of the special needs and rights of IDPs in the existing legally binding human rights treaties. However, notwithstanding their status, IDPs are entitled to the human rights legal protection applicable for all human beings. These provisions however seem sometimes insufficient for providing

³⁵ D. Fisher, *Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates*, Brookings Institution – University of Bern Project on Internal Displacement, June 2006, pp. 24-25.

³⁶ UNHCR, *supra* note 21, p. 150.

comprehensive legal protection for various groups of displaced people. While human rights impose direct obligations on states and state actors, they can be subject to restrictions and derogations. Some human rights however are non-derogable, such as the right to life, freedom from torture and slavery, freedom of thought, conscience and religion, and prohibition of retroactive application of penal law. During peacetime, IHRL is applicable in its entirety. In the course of civil disturbances or riots IHRL is also applicable, though the suspension of certain rights may be justified. In situations of international armed conflict, IHRL law is applicable internally, but it is possible to suspend certain rights and political and civil liberties of citizens.

2.2. Implications of international humanitarian law

As mentioned in the previous sections of this article, the marginalised plight of IDPs should not be addressed in isolation from the enforcement of IHL. IHL, such as the law of armed conflict or law of war and their effects, aims generally at limiting the effects of war on people and property and protecting particularly vulnerable persons. Since war is one of the main causes of internal displacement the primary issue in the area of IHL is, within the context of internal displacement, to identify the extent to which IHL protects IDPs. This is the focus of the present section.

States have always been limited in the ways in which they conduct armed conflicts – from adherence to national laws and bilateral treaties to the observance of international customary law. In this regard, IHL may be described as a hybrid of sorts, a combination of treaty law and customary law.

Two types of armed conflict lie at the root of internal displacement: a) international armed conflict and b) internal armed conflict. International armed conflicts are conflicts between two or more states. The four Geneva Conventions of 1949 and Additional Protocol I of 1977³⁷ deal extensively with the humanitarian issues which arise from such conflicts. For example, the Fourth Convention stipulates, *inter alia*, the rights and duties of an occupying power that is a state whose armed forces control part or all of the territory of another state. However, reality demonstrates that modern armed conflicts do not in general have an international character. Rather, they take place in the territory of one state and often governments from other, mainly neighbouring, states support either insurgent forces or the governmental authorities of the state involved in internal conflict. With regard to the legal provisions covering non-international conflicts they are defined by the common Art. 3 contained in the four 1949 Geneva Conventions, which binds both the governmental national authorities and insurgent forces. The Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts of 1977³⁸ also provides some additional obligations. Its aim was to bolster the strength

³⁷ Four Geneva Conventions (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, 135, 85, 31, and the Additional Protocol Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

³⁸ Additional Protocol Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609.

of Art. 3; however it has a narrow scope as it is applicable only when insurgent forces formally control a part of a state's territory.³⁹

The four Geneva Conventions, the two Protocols, and the Hague Conventions of 1899 and 1907 are sources of customary IHL applicable to all countries. Unlike human rights treaties, which often have a monitoring body to which individuals and states can submit complaints, IHL relies much more on informal procedures. The Geneva Conventions and their Additional Protocols require the state parties to them to adopt a number of measures in order to assure their compliance with these treaties. Some of these measures have to be taken in peacetime, others in the course of an armed conflict.⁴⁰ With regard to displaced persons, the Geneva Conventions and their Additional Protocols, which form the legal basis of contemporary IHL, contain only a few provisions referring to refugees or stateless persons, and none directly referring to IDPs. Hence it may seem that IHL has little concern for refugees and stateless persons, and none at all for IDPs. However, displaced persons, whatever the causes of their displacement, are generally civilians. As such, they are protected by the provisions relating to the protection of civilians in time of war.⁴¹

As mentioned above, IHL is applicable in situations of armed conflict, whether international or non-international. A more limited range of rules apply to internal armed conflicts and are laid down in the common Art. 3 of the four Geneva Conventions as well as in Additional Protocol II. It prohibits "at any time and in any place whatsoever" specific acts against persons taking no active part in hostilities, including members of armed forces who have laid down their arms, or who have become sick, wounded, or detained. These acts encompass include violence to life and person, including murder, mutilation, cruel treatment, torture, carrying out of executions without judgment, taking of hostages, and outrages upon personal dignity such as humiliating and degrading treatment. Protected persons must be treated humanely at all times. By its terms, common Art. 3 explicitly protects persons during an internal armed conflict, such as a civil war. However, it is now well established that it also applies to international conflicts. The ICJ, the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) all consider the protections identified by Art. 3 to apply to international conflicts. Art. 3 is also considered to be a part of customary international law. This means that countries are bound to follow the means of protection laid down in this article. In the Nicaragua and the Corfu Channel cases, the ICJ found that the provisions of common Art. 3 "constitute a minimum yardstick" in any armed conflict because they can be seen as the "elementary considerations of humanity."⁴² Furthermore, Art. 3 provides protection to persons not taking an active part in the hostilities by prescribing

³⁹ S. Carnes, *International Humanitarian Law*, Study Guides, Human Rights Education Associates (HREA), 2002.

⁴⁰ *Ibidem*.

⁴¹ Mooney, *supra* note 26, pp. 10-17.

⁴² ICJ, *Corfu Channel Case (UK v. Albania)* (Merits) [1949] ICJ Rep. 4; ICJ, *Nicaragua case (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep. 14.

their humane treatment in all circumstances, without any adverse distinction based on race, colour, religion or faith, birth, wealth, sex, or any other similar criteria.⁴³

IHL does not, however, cover internal tensions or disturbances such as isolated acts of violence. This law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting. However, internal displacement occurs also in this former type of armed tension, and IHL does not guarantee protection for IDPs under these circumstances. On the other hand, when internal displacement occurs in situations of armed conflict, whether inter-state or domestic in character, IHL comes into effect. Many provisions of IHL reflect and reinforce protections provided for under IHRL, because a number of human rights guarantees may be significantly limited or even derogated in situations of armed conflict. As some authors state, the protection provided by IHL in these circumstances is particularly valuable. Moreover, IHL contains norms clearly prohibiting displacement, which is not the case in IHRL. In addition, whereas IHRL is generally binding only on states and their agents, IHL specifically applies not only to states but also to insurgent forces.⁴⁴

The above-mentioned analysis bring us back to the main question, i.e.: how does IHL protect internally displaced persons? First, it protects the entire civilian population against indiscriminate violence during armed conflict.⁴⁵ In particular, it stipulates that attacks must be limited strictly to combatants and military objectives, namely to “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”⁴⁶ IHL provides protection for IDPs in situations of armed conflict, whether internal or international. This protection is not accorded to them on the basis of their special status of as internally displaced persons though. Instead, IDPs are protected by humanitarian legal norms only because they are civilians involved in armed conflict taking place in their state of origin. Taking into account that the phenomenon of internal displacement often is correlated with times of conflict, the 1949 Geneva Conventions and their Additional Protocols were an important source for the UN Guiding Principles. However, only the forced displacement of civilians for illegitimate reasons is prohibited under IHL and can be prosecuted as a war crime. Pursuant to the provisions of Art. 17(1) of Additional Protocol II, the displacement of the civilian population is not prohibited “if the security of the civilians involved or imperative military reasons so demand.” Illegitimate reasons are those which are not indicated by the exceptions in Additional Protocol II.

⁴³ I. M. Rafiqul, *The Sudanese Darfur Crisis and Internally Displaced Persons in International Law: The Least Protection for the Most Vulnerable*, 18(2) International Journal of Refugee Law 354 (2006).

⁴⁴ Mooney, *supra* note 26, pp. 10-18.

⁴⁵ See the Additional Protocol (I) Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Arts. 51.2, 4 and 5; Additional Protocol (II) Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, Art. 13.3.

⁴⁶ Protocol I (1977), Art. 52.2.

2.3. Analogies to the framework of international refugee law

IRL consists of the rules defining the legal status and treatment of refugees who, fearing persecution, are outside of their state of nationality and are unable to avail themselves of its protection. This system of international law is not directly applicable to the situation of IDPs who remain, by definition, within the borders of their state of nationality. However, IRL can be applied as a point of reference and used by analogy for the establishment and application of its standards to internally displaced persons as well. People who are forced to flee their homes and cross an international border come under the protection of the 1951 Refugee Convention, its 1967 Protocol,⁴⁷ or the 1969 Organization of African Union Convention governing the Specific Aspects of Refugee Problems in Africa. Some scholars argue that the focus of the international community today should be on “forced displacement”, while avoiding making a rigid distinction between IDPs and refugees, as such a distinction overlooks a practical interconnectedness between these two groups of displaced people.

Refugee status entitles individuals to certain rights and international protection, while internal displacement does not create an international legal status because this category of displaced persons is still under the jurisdiction of their own government and may not claim any rights additional to those shared by their compatriots. In accordance with the opinion of W. Kälin,⁴⁸ despite the fact that IDPs are often forced to leave their homes and thus find themselves in refugee-like situations, IRL is nevertheless not directly applicable to them, because international law defines refugees as persons who have fled across an international border and are in need of international protection by virtue of their being abroad and having no access to the protection provided by their national authorities. However, by analogy IRL may be somewhat useful in proposing rules and establishing guidelines to protect the needs of IDPs. Several UN documents, such as the Guidelines on the Protection of Refugee Women⁴⁹ or the Guidelines on Protection and Care of Refugee Children⁵⁰ have inspired some of the UN Guiding Principles. Nevertheless, one must also take into account the fact that by definition refugees are not citizens of the host country, whereas IDPs remain in their state of origin and are usually citizens of that state. As many of the norms and guidelines relating to the status of refugees guarantee refugees equal treatment only with *aliens* in the country of refuge, an analogous application of these provisions would deprive many IDPs of the rights they have as citizens of their own country and would in fact be disadvantageous for them.⁵¹

Nonetheless, reference to IRL by analogy may be highly relevant for developing the standards for the protection of persons in refugee-like situations in circumstances

⁴⁷ The 1967 Protocol is attached to United Nations General Assembly Resolution 2198 (XXI) of 16 December 1967.

⁴⁸ W. Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., The American Society of International Law & Brookings Institution, Washington DC: 2008.

⁴⁹ UNHCR, *Guidelines on the Protection of Refugee Women*, Geneva: 1991.

⁵⁰ UNHCR, *Refugee Children: Guidelines on Protection and Care*, Geneva: 1994.

⁵¹ Kälin, *supra* note 48.

and India, for example, have used the claim of state sovereignty to reject international offers for protection and assistance in addressing situations of internal displacement. The opposition of states of origin to international interference is by no means limited to the continent of Asia. For instance, the governments of Sudan, Rwanda, Zimbabwe and Eritrea have all kept foreign engagement in IDP situations to a minimum, even though they are unable or unwilling to provide sufficient protection themselves.⁵⁴

As a general rule, the responsibility to provide adequate protection for citizens rests on the relevant states of origin and their national authorities. Their role should be to establish comprehensive policies enabling governmental bodies to guarantee the basic needs and rights of vulnerable persons. However, in practice the states concerned very often lack the political will, capacities or sufficient resources to provide such support to their populations. In such cases, the intervention of the international community could serve as a supplementary tool. In these situations, the negligence or failure of the national state to provide proper protection to individuals in need makes the involvement of the international community in ensuring the basic rights and needs of vulnerable persons seemingly self-explanatory. However, in light of the serious international consequences of such interventions, it is important to note that they should always be legally justified and not based only on moral and ethical premises. They should rather identify their origin in the obligation to protect human rights in cases of an evident breach of legal rules and requirements. International actors have certain responsibilities towards persons in need of international protection, and these obligations are defined in the numerous international legal acts. Peacekeeping missions can serve as one example of an intervention based on the collective accountability of the international community. They are exceptionally launched on the basis of a specific decision of the UN Security Council pursuant to its prerogative defined in the Chapter VII of the UN Charter.⁵⁵ In this context it is worth noting, as argued by F. Francioni, that the development of IHL through the Geneva Conventions of 1949 and their Additional Protocols of 1977 constructed a system of balancing military force and respect for human dignity in the conduct of hostilities. This balancing dilemma is particularly visible with respect to *jus ad bellum*, that is, the right of a state, a group of states or an international organization to resort to military force in another society for compelling humanitarian reasons. Such situations present the dilemma where the ban on the use of force and the protection of human rights collide, and no clear international consensus has yet been reached in this regard.⁵⁶

In recent years some innovations have appeared in both the doctrine and state practices related to attaching to the concept of state sovereignty a category of responsibility

⁵⁴ Internal Displacement Monitoring Center, *Internal Displacement: Global Overview of Trends and Developments in 2009*, Geneva: 2010.

⁵⁵ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

⁵⁶ F. Francioni, *Balancing the prohibition of force with the need to protect human rights: A methodological approach*, [in:] E. Cannizzaro, P. Palchetti (eds.), *Customary International Law on the Use of Force: A Methodological Approach*, Martinus Nijhoff, Leiden: 2005, pp. 269-92.

towards its citizens. It is argued that in cases in which states view their functioning as autonomous and independent actors, they should guarantee their citizens full protection of all granted rights and needs. Further, when the national system of protection fails to guarantee good governance to its population, the rejection of external assistance can easily create a humanitarian crisis. As some scholars argue, the system of human rights protection can no longer be considered an individual competence of national authorities. Syria serves as a current example, where the government refuses to allow humanitarian assistance to IDPs by international organisations in the absence of the specific consent of national authorities. This is an issue that is blocking the current peace negotiations supported by the United Nations. There are more than 7.6 million IDPs in Syria (half of whom are children) who were forced to leave their homes and livelihoods due to internal uprisings and domestic conflict in the course of 2014. At present, Syria is experiencing one of the world's largest and the most tragic and pressing internal displacement crisis. Hundreds of thousands of men, women and children have lost their homes and have moved throughout the country. Strikingly, no acknowledgement of this has yet been made by the Syrian authorities. As a consequence there is a limited, even non-existent, role of international organisations in providing assistance and support to IDPs and other groups of vulnerable people in Syria. The Special Rapporteur on the Human Rights of IDPs tried to compel the relevant national authorities of Syria to give unlimited access to humanitarian, refugee and human rights organizations to assist IDPs. However, many Syrian regions (e.g., rural Damascus) still suffer from a lack of any humanitarian aid, whether international or national. The need for food, water and medical services is of particular and urgent importance.⁵⁷ In general, while international organisations can be of support in providing protection to the internally displaced, they cannot serve as a substitute for national governments and their responsibilities. In the case of Ukraine, its national authorities tried to develop some mechanism to provide assistance to the displaced Ukrainian citizens due to the recent disturbances in the country. In this regard, the Ukrainian government adopted Resolution 509 in October 2014,⁵⁸ which introduced a registration system for IDPs. In accordance with its provisions, the local service departments are responsible for implementing the registration procedure and for paying benefits to IDPs. Furthermore, also in October 2014 the Verkhovna Rada of Ukraine (the Supreme Council of Ukraine) ratified the Law of Ukraine "On ensuring of rights and freedoms of internally displaced persons",⁵⁹ stipulating numerous legal provisions on the protection of IDPs, including: the right to return, prevention of displacement, non-discrimination aspects, etc. However, due to the existing deficiencies related to the establishment of a common

⁵⁷ State of play as of December 2014, based on figures provided by the Office for the Coordination of Humanitarian Affairs (OCHA).

⁵⁸ The Cabinet of Ministers of Ukraine Resolution 509 on registration of internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area, as of 1 October 2014.

⁵⁹ The Law of Ukraine "On ensuring of rights and freedoms of internally displaced persons", ratified by the Verkhovna Rada of Ukraine on 20 October 2014, No. 1706-VII.

definition of an IDP as well as to some limitations in governmental capacity, the implementation of the existing legal provisions remains insufficient. There are two different definitions of IDPs stipulated by the provisions of the Resolution 509 and the Law “On ensuring of rights and freedoms of internally displaced persons”. Pursuant to Art. 1(1) of the latter, an IDP is a citizen of Ukraine, permanently residing in Ukraine, that was forced to or voluntarily left one’s residence place as a result of or in order to avoid the negative impact of armed conflict, temporary occupation, situations of general violence, mass violations of human rights and disasters of natural or human-made origin. In this context, it is important to notice that this constraint, i.e. the limitation of the Law’s applicability only to citizens of the country of origin, is not provided in the UN Guiding Principles on Internal Displacement. This is also not envisaged in the provisions of the Resolution 509, as its Art. 1 stipulates that the registration certificate is a document issued not only to citizens of Ukraine, but also to foreigners and stateless persons permanently residing on the territory of Ukraine, IDPs from the temporarily occupied territory and anti-terrorist operation areas. These discrepancies in the existing definitions create some misunderstandings in the proper distribution of assistance to IDPs and in deciding who should be covered by this governmentally-guaranteed protection. Furthermore, some deficiencies exist with respect to the lack of an adequate procedure regarding reunification of families. Art. 11 of the Law “On ensuring of rights and freedoms of internally displaced persons” stipulates the obligation of the central executive body responsible for implementation of state migration policy to facilitate the reunification of families of IDPs through providing such persons with information regarding the factual residence of their family members. This provision is highly insufficient as it does not fully guarantee the right to family unity defined in the international legal instruments. Also, the very important right of all displaced persons to be properly compensated for any dispossession of their property is not comprehensively addressed by the newly adopted Ukrainian law. Analysing the existing legal framework, it seems that the national authorities of Ukraine still need to improve their implementation of the Law “On ensuring of rights and freedoms of internally displaced persons” to bring it into alignment with the international procedures defined, in particular, by the UN Guiding Principles on Internal Displacement.

In general, there are many deficiencies in the capacity of national and regional authorities ability to manage and guarantee the necessary basic assistance and aid to IDPs. The existing national legal frameworks should be in line with the standards defined by the IHL and IHRL, in particular with respect to the guarantees related to the distinction between combatants and civilians, the latter including displaced persons. Furthermore, taking into consideration that internal and international conflicts are the major causes of internal displacement crises, several possible consequences of such activities (e.g., occupation of a territory inhabited by an internally displaced population) should be noted and dealt with. Pursuant to international legal rules and regulations the occupying power is obliged to respect the provisions of the IHL and IHRL on the basis of the primary responsibility put on national authorities for the protection of IDPs.

In the above context, and with reference to the concept of a shared responsibility and the solidarity principle, the temporary protection offered by the EU legislation to displaced populations, particularly those coming to Europe from Syria and Ukraine, could be a significant example of a way to provide proper assistance to displaced people desperately in need of prompt international protection. Already in 2001 the European Council issued the so-called “Temporary Protection Directive” (2001/55/EC)⁶⁰ with the purpose to provide a legal framework and minimum standards for responses to the mass displacement of persons who are unable to return to their country of origin for a variety of reasons. Mass flows of refugees fleeing from the territory of the former Yugoslavia at that time provoked the EU to find a more comprehensive response and prompt solutions. One of the most significant developments introduced by the Directive is its wide scope of application, as it is applicable not only to displaced persons located in the EU territory, but also it includes provisions permitting the entry into Europe of those persons who are outside its territory. Its Art. 2(d) introduces the definition of “mass influx”, which means the arrival in the EU of a large number of displaced persons who come from a specific country or geographical area, whether their arrival in the EU is spontaneous or aided, for example, through an evacuation programme. Furthermore, its Art. 8(3) states that the Member States shall, if necessary, provide persons admitted into their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. In this context, formalities must be reduced to a minimum because of the urgency of the situation. Visas should be either free of charge or their cost reduced to a minimum.

As regards the procedure for granting the temporary protection, it should be initiated by the European Council by prior identification of a group of displaced persons in need of prompt assistance due to an ongoing crisis in their country of origin. As a next step, the EU Member States participating in the procedure should allow legal entry into their territory to the people from the previously designated group(s). The displaced people benefiting from this kind of protection would be allowed to stay in the territory of a receiving Member State for a period of one year. This period could be renewed in case no improvement in the country of origin has been observed, while in case of a positive development in the country of origin the people concerned could safely return to their homes. The most important element in the whole procedure is its non-complex structure, as it does not require determination of the status of the displaced person, which involves a much more difficult process. It should also be emphasised here that the temporary protection mechanism should be supported by or simultaneously launched with resettlement programmes and humanitarian admission projects.

However, despite the effort of the EU legislator the Temporary Protection Directive has never been activated and the question arises whether, in the context of the

⁶⁰ Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, [2006] OJ L 212/12-212/23 .

current internal displacement crises in Syria and Ukraine, the implementation of its provisions might be the most adequate and reasonable solution for providing *ad hoc* protection for the most vulnerable displaced persons trying to reach EU territory. The urgency of the issue as demonstrated above constitutes a strong impetus, motivation and recommendation to the EU to improve the existing legal ways to reach its territory.

CONCLUSIONS

The general aim of the present article has been to examine the international legal measures guaranteeing protection for internally displaced populations worldwide. A thorough examination of the internal displacement issue makes it crystal clear that this represents one of the most difficult humanitarian challenges for the international community today. The article represents an attempt to offer a concise elaboration of the challenges related to international protection in situations of internal displacement. The existing international legal frameworks for the protection of IDPs have been examined, including some real-life examples of the constraints related to the protection of IDPs, i.e. displacements in Syria and Ukraine. Providing protection for IDPs remains one of the most complex challenges in the world of sovereign states, and in the article I have presented some of the myriad facets pertaining to the international protection of IDPs viewed from the normative perspective.

The practice shows that the currently available legal provisions are too often not respected by either the states of origin or the international community. An examination of the current state of play with respect to internal displacement worldwide makes it apparent that IDPs can no longer be protected exclusively by their state of origin. In cases of an incapacity or failure of that state, the promotion and protection of IDPs' human rights should become an international concern and be covered by the shared competences of the international community. Unfortunately, the current political reality does not reflect this seemingly self-explanatory premise. In spite of the fact that numerous obligations directly or indirectly influencing the situation of IDPs have already been defined in several international legal instruments, these are widely not respected by the majority of aligned states. Millions of civilians have been involuntarily caught up in various conflicts against their will, and due to the fact they have not crossed an internationally recognized border they are not provided with the level of legal protection guaranteed to refugees who have left their home states. Despite some innovations in this area, like the adoption of the UN Guiding Principles on Internal Displacement, there remain numerous constraints and lacunae in the existing system of protection. The recognised and highly descriptive definition of an "internally displaced person" set forth in the UN Guiding Principles on Internal Displacement serves as an example of the currently existing gaps, together with a lack of a special status in international law for this category of displaced persons.

The level of international awareness of the internal displacement issue is rapidly growing, but there is little evidence that this awareness has been translated into improvements in the living conditions of the global IDP population. Taking the number of IDPs as a key indicator of the effectiveness of the international response, it may be fairly argued that the international community has failed, both in preventing new crises that cause displacement as well as in creating the conditions for their safe return, rehabilitation and other durable solutions. In the European reality, the introduction of a temporary protection mechanism could constitute both a significant remedy and the EU's response to the most alarming current displacement crises, in particular in Syria and Ukraine. The introduction of such a mechanism could visibly promote the sharing of responsibilities in the EU and would potentially guarantee protection to many more displaced persons. What distinguishes IDPs and should make them a matter of concern to the international community is the coercion that impels their movement, their subjection to human rights abuses emanating from their displacement, and most importantly, their lack of protection by the national authorities of their own countries. Clear definitions of IDPs and their rights could help to identify those people who should be of special concern to the international community, raise awareness of their plight, and facilitate the work of governments and private organizations seeking to increase protection and assistance for IDPs.⁶¹ As individuals who have not left their own country, IDPs are entitled to the full range of human rights applicable in their state of origin. The challenge seems to be in identification of these guarantees and the concepts implicit in existing international law that respond to the special needs of IDPs. The reality clearly demonstrates that the international law system does not serve to prevent internal displacement. This fact results from the incomplete nature of the protection machinery, in particular the deficiencies of the legal system as regards the implementation and enforcement of states' obligations under international law.

Unlike refugees, IDPs do not benefit from a specific international system of law exclusively devoted to ensuring their protection and rights. No specific and international legally binding convention protects their rights. The above-mentioned Kampala Convention, while a significant step toward providing guarantees for IDPs and formulating legal obligations for states, is still only a regional legal instrument.

As regards the notion of responsibility for the protection of IDPs, the UN Guiding Principles on Internal Displacement explicitly mention the rights of IDPs and the obligations of governments toward these populations. Principle 3 states that national authorities have a primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. However, the desired and/or required international response is still not clearly set forth in the international legal documents with respect to the international community's adequate reaction in the face of situations where the national authorities are not able to protect their IDPs, especially when they are a primary cause of their displacement.

⁶¹ F. Bugnion, *Humanitarian Law and the Protection of Refugees*, International Committee of the Red Cross, Geneva: 2005, pp. 2-3.

Finally, it seems clear that the creation of a separate legal instrument with an international and binding scope, comparable to the 1951 Refugee Convention, could be a first step toward improving the existing situation. It should be emphasized once again that in situations where the relationship between state and citizen has broken down, international humanitarian protection could and should help compensate for the absence of national protection and provide affected populations with a degree of security which they would otherwise lack. In this connection, the grounds for international involvement, mainly via the establishment of international legal instruments identifying the protection standards for IDPs, lie primarily in the breach of contract between the internally displaced citizens and a state that cannot meet its obligations toward them.