The Responsibility to Protect Applied to Internally Displaced Persons

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To my parents,
With love

Table of Contents

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Thank God for everything.

This is my dream come true.

Thank you for the path, the encounters, the gifts, the trust, the lessons, the love, the light.

To my parents, thank you for your unconditional love, for your support, for believing in me.

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Let's go...

Abbreviations

AMIS	African Union Mission in the Sudan
ECOSOC	United Nations Economic and Social Council
ERC	Emergency Relief Coordinator
EU	European Union
DPSS	Displacement Protection Support Section
FAO	Food and Agriculture Organisation (UN specialised agency)
GATT	General Agreement on Tariffs and Trade
HC	Humanitarian Coordinator (in humanitarian operations)
HLP	United Nations' Secretary-General's High Level Panel on Threats, Challenges and Change (report: "*A more secure world: Our shared responsibility*")
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICG	International Crisis Group (NGO)
ICISS	International Commission on Intervention and State Sovereignty (produced the 'Responsibility to Protect' report)
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDD	Inter-Agency Internal Displacement Division
IDP	Internally Displaced Person
IDMC	Internal Displacement Monitoring Centre (NGO)
IFRC	International Federation of Red Cross and Red Crescent Societies
IOM	International Organisation for Migration
IRO	International Refugee Organisation (predecessor of UNHCR)

GA	United Nations General Assembly
MSF	Médecins sans Frontières (NGO)
NATO	North Atlantic Treaty Organisation
NGO	Non governmental organisation
NRC	Norwegian Refugee Council (NGO)
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	United Nations High Commissioner for Human Rights (also referred to as 'Office of the High Commissioner for Human Rights')
OSCE	Organisation for Security and Cooperation in Europe
RC	Resident Coordinator (in humanitarian operations)
R2P	Responsibility to Protect (norm and report)
RSG	Representative of the UN Secretary-General
SC	United Nations Security Council
UN	United Nations
UNAMID	African Union/United Nations hybrid operation in Darfur
UNAMIS	United Nations Advance Mission in the Sudan
UNDP	United Nations Development Programme (UN specialised agency)
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMIS	United Nations Mission in Sudan (Darfur)
UNSG	United Nations' Secretary-General
US	United States
WFM	World Federalist Movement (NGO)
WFP	World Food Programme (UN specialised agency)
WHO	World Health Organisation
WTO	World Trade Organisation

Abstract

The attempt to reconcile humanitarian intervention and state sovereignty is an ongoing challenge in international relations. Security and human rights concerns are set in perspective of the principle of non-intervention, as codified in international law and in the practice of the current international order. The issues at stake are sensitive and varied involving political, strategic, moral, legal and operational considerations.

The Responsibility to Protect concept provides insights into the question of whether intervention can be considered to protect the victims of persecution, by stating that military intervention must be assessed according to specific criteria, and only undertaken in limited circumstances.

This dissertation examines the link between the responsibility to protect concept and internally displaced persons, by reference to work published on humanitarian intervention, ethics, international law, human rights, internal displacement, and elite interviews.

The present research challenges the notion that there are only a few, limited, theoretical explanations to international relations, by demonstrating that norms can also emerge from practice and current realities. It argues that the responsibility to protect is applicable to internal displacement situations, and that there has been a process of normative development relating to the responsibility to protect, which has impacted the current status of international relations.

Introduction

The choice of a topic dealing with an optimistic view of how International Relations can contribute to protect and assist civilians mirrors the author's belief that ideas shape the context of international order and that, with hope and efforts, they can become a reality. The research hypothesis of this dissertation is that the Responsibility to Protect applies to internally displaced persons.

The author's interest in migration and internal displacement issues originates in the story of her family. Indeed, on both mother and father's sides, her grand-parents migrated and started over again. Family origins can thus be found in Prussia, Switzerland, India and Pakistan. Hearing of these movements triggered a fascination for migration and refugee issues, and for the international legal framework pertaining to these areas. This also led the author to pursue a specialisation in migration and refugee studies at the undergraduate and graduate levels of academic studies.

Upon first reading about the Responsibility to Protect in an article published in *Foreign Affairs*, the author of this thesis wondered how, in such a politicised world context, one could consider addressing humanitarian intervention in a new way. After reading the Responsibility to Protect Report, the idea seemed workable and one which the author wished to pursue through academic work. Indeed, what better issues to deal with than building blocs in International Relations such as sovereignty, intervention – and even better, reconciling both. A new challenge had emerged.

Moreover, the fact that internal displacement was a phenomenon which had forced itself in international order as a 'practical' reality – before any theoretical solutions had been considered – seemed like a great challenge to investigate in research at the doctoral level.

This is an exercise bringing theory to practice, wishful thinking to reality. It is also an attempt to demonstrate that peace and well-being, just like souls, know no borders. It is hoped that this research work will generate thought, and action.

Chapter 1 Contrasting Current Trends

Humanitarian intervention and sovereignty are two aspects of tension in international affairs. The current international order is based on sovereignty, as enshrined in the United Nations Charter, the most essential legal and political text in current international relations. The debate surrounding humanitarian intervention involves claims to sovereignty, and to its corollary – the norm of non-intervention, or non-interference in the internal affairs of a state. This research endeavour will focus on humanitarian intervention, the responsibility to protect, and internally displaced persons. Human rights and protection debates are at the centre of these aspects. Human security concerns and the protection of individuals and their rights are contrasting trends in International Relations. How can we ensure the security and the respect for the human rights of individuals? How can we protect citizens from their own governments? Why do some states push aside the protection of human rights for political reasons, and why are states reluctant to take action, when there is a lack of protection in practice?

Research Question and Argument

As stated above, the research question of this dissertation is that the Responsibility to Protect applies to internally displaced persons. This begs the question: what should it not? Indeed, internally displaced persons are by definition vulnerable, 'trapped' within their own state, and unprotected. However, as the analysis will demonstrate, although this may be quite obvious in theory, it has not been the case in practice in internal displacement-related crises.

This thesis aims at proving that the Responsibility to Protect definitely applies to internal displacement, not only through theoretical considerations, but also by presenting the argument that the concept may in practice be relevant to cases of internal displacement, such as Darfur. To this aim, the research question will be framed by presenting the development of the Responsibility to Protect norm and by illustrating how it could have been used in practice.

Originality of the Research

The originality of this project is twofold. First, it deals with new facts and existing data, and investigates these in an original manner. Second, it considers the application of the responsibility to protect to internally displaced persons. This is a new approach altogether. Moreover, the elite interviews conducted in relation to confirming hypotheses and information contained in this thesis also contribute to its originality. The consideration of aspects drawn from politics, international law, international relations and human rights, linked to internal displacement is the main innovation of this dissertation.

Theoretical Perspective

The theoretical perspective through which this research endeavour will consider international relations is that of liberal internationalism.[1] Consideration will therefore be given to – among others – issues such as peace and conflict, peace and democracy, human rights, international law, the interdependence of states and cooperation between them, the importance of changes and developments in international relations, and the role of international organisations. This theoretical lens will be adopted throughout this dissertation.

Structure

This thesis will be structured along the main issues, which constitute the core elements of focus of humanitarian intervention, namely internal displacement and the responsibility to protect concept. This first chapter sets the background and context by identifying the key concepts. As such, concepts, problems and issues are identified and this prepares the reader to direct his/her attention in a more focused manner across the following chapters. Throughout this research project, the aim is also to point to originality, in the sense of drawing together the responsibility to

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[1] See Grotius, Hugo. *De jure belli ac pacis libri tres* and Tuck, Richard (Ed.). Hugo Grotius, *The Rights of War and Peace 3 vols (1625,* Indianapolis: Liberty Fund, 2005, for a link with Just War, which will be discussed later in this dissertation. See the work of Jeremy Bentham and Emmanuel Kant, for example Kant, Immanuel. *Perpetual Peace.* London and New York: Penguin Books, 2009 paperback edition) and Franceschet, Antonio. *Kant and Liberal Internationalism: Sovereignty, Justice and Global Reform.* New York: Palgrave MacMillan, 2002. See Aksu, Esref. *Early Notions of Global Governance:* Selected Eighteenth-Century Proposals for Perpetual Peace with Rousseau, Bentham and Kant. Cardiff: University of Wales Press. 2008; McGrew, Anthony. 'Liberal Internationalism: Between Realism and Cosmopolitanism' *in* Held, David and McGrew, Anthony (Eds.) *Governing Globalization: Power, Authority and Global Governance.* Cambridge: Polity Press. 2002, pp. 267-289.

protect context to internal displacement cases. Indeed, such work has not been carried out previously[2]. This should be kept in mind, in bearing with the efforts to reiterate the relation between these two issues.

In order to prove the hypothesis, the dissertation will open with a chapter about the current trends of international order and the international system and setting the context of the responsibility to protect concept, while further sub-sections will address the features of wars, the responsibility to protect concept and the current protection and political trends in international relations, in relation to humanitarian intervention and state sovereignty.

Chapter two presents the discussions relating to the term 'humanitarian', provides the international legal background of humanitarian intervention, ethical and moral aspects, and goes in depth into the different types of humanitarian intervention, namely military, non-military and preventive intervention, and the protection of civilians. This provides a normative context for the discussion of the responsibility to protect concept as well as a ground in international law, and opens the discussion which follows in the chapter about internally displaced persons.

Chapter three identifies the differences between internally displaced persons, refugees, migrants and asylum seekers. It also provides details as to the location of internally displaced persons, as well as insights into the causes of internal displacement. This links in to chapter four and the responsibility to protect concept, with particular focus on the content, the background and the impact of the responsibility to protect report and the development of the concept from its inception through the United Nations system, the involvement of academics and non-governmental organisations in the early stages of the responsibility to protect, its

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[2] The association of the responsibility to protect theory and internal displacement had not been addressed previously. At the time of initiating the thesis, and throughout the research endeavour, this has been monitored. A specific discussion of internal displacement and related issues, in parallel to the responsibility to protect, and potential problems linked to the application of the norm to internal displacement, has not been developed.
Francis Deng's use of the concept of 'sovereignty as responsibility' in the case of internally displaced persons referring to the primary responsibility of the state involved can, however, be traced before the publication of the *Responsibility to Protect* report of the International Commission on Intervention and State Sovereignty. Some authors did make references to Deng's work in relation to IDPs in certain chapters of their books, but these publications were released in 2008 and 2009.
See Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities,* Cambridge: Polity Press, 2009, pp. 21-23 and 27.
See also Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All.* Washington D.C.: Brookings Institution Press, 2008, pp. 35-37.

content and links to other norms, the difficulties linked to its application in practice, and details of how the concept was translated into the World Summit Outcome.

Chapter five presents the institutional framework for internally displaced persons, discusses the problems encountered in operational terms by the United Nations agencies involved with internal displacement, reviews the various actors and bodies involved and their mandates, and analyses how this has an impact upon the assistance and protection of internally displaced persons. The sixth chapter on Darfur, which remains speculative since it applies the responsibility to protect concept from a theoretical perspective after the facts have unfolded, sheds light on the practical hindrances of applying the responsibility to protect to reality and on the aspects which required further thought and attention. Finally, the concluding chapter sets out to assess what has been discussed throughout the dissertation and opens the debate by pointing to aspects beyond the responsibility to protect and internally displaced persons which are of concern in light of the current state of international relations. The closing chapter presents trends and recommendations specifically related to internally displaced persons and the responsibility to protect norm which have been identified throughout the research endeavour as problematic or unresolved.

Research Method

The research was based on books, articles, reviews and documentation. The sources used in this research work were major contributions on internally displaced persons, refugees, ethics, humanitarian intervention, the responsibility to protect. The International Commission on Intervention and State Sovereignty's Report, *The Responsibility to Protect*, and the ICISS Research Essays were a primary bibliographic source[3].

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[3] International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*: Report of the International Commission on Intervention and State Sovereignty. Ottawa, Canada: International Development Research Centre. December 2001, available at: http://www.iciss.ca/report2-en.asp (accessed May 23, 2009). Hereafter, the Report will be referred to as *The Responsibility to Protect.*
The ICISS research essays, background and bibliography were used a main bibliographic reference and research method. However, quotes are not drawn from the essays, aiming at avoiding repetition and duplication. See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Research Essays*, Part I. Ottawa: International Development Research Centre, 2001 (available at: http://www.iciss.ca/consult-en.asp).

The figures and data relating to internally displaced persons were drawn from the most recent sources at the time of writing, namely the Global IDP Project, the Brookings Institution, UNHCR's databases, IOM, NGO publications, journals and periodicals such as the *International Journal of Refugee Law*, the *Journal of Refugee Studies*, *Forced Migration Review*, the *World Refugee Survey*, the *International Review of the Red Cross*, *Foreign Affairs*, publications of the International Federation of Red Cross and Red Crescent Societies and UNHCR's *State of the World's Refugees*. The various Internet resources used were the Global IDP Project, the US Committee for Refugees, the Oxford Refugee Studies Programme. International relations and international law textbooks, and the Guiding Principles on Internal Displacement, equally served as a basis of study. The sources pertaining to internal displacement can be grouped into two categories, theoretical and country or region-specific. Indeed, certain sources deal with internal displacement from a theoretical point of view, whereas the documentation from non-governmental organisations usually consider region or country-specific situations. For the chapter on Darfur, documents and resolutions of the United Nations were used extensively, as well as reports from non-governmental organisations.

The bibliographic coverage of humanitarian intervention integrated a multi-disciplinary approach, drawing sources from the fields of international relations, international law, and ethics. These aspects were necessary to capture the wide spectrum of publications available, and to address the issue as a whole.

The difficulty lay in the lack of sources dealing with the responsibility to protect and internal displacement. This is the novelty in this research endeavour, but complicated the task of researching both issues separately as a first step.

The author was in New York to attend the annual meeting of the Academic Council of the United Nations (ACUNS) from June 6-9, 2007. Several interviews were scheduled at the same time. Other interviews were conducted with professionals in Geneva and Berne or by telephone. The interviews were requested with professionals and experts in the field of international politics, international law, NGO experts and academics. The interviews served to provide confirmation and completeness to the project, as well as to gather the opinion of specialists on problematic research issues. The questions asked during the interview were open-

ended questions and the number of these depended on the time granted by each interviewee. Moreover, only the most relevant questions were asked of each interviewee. The answers of the interviewees were inserted into the relevant sections of the thesis. Consent was sought from each interviewee to produce these responses, either by quoting the person, in cases where this is agreed to, or anonymously. The responses of the interviewees as well as any further information provided remain confidential, and were used only within the context of the research project, on a basis approved by the interviewee. Interviewees were also notified that the interviews would be referenced in the thesis.

Existing Academic Literature on the Responsibility to Protect

The publications of Gareth Evans, Thomas Weiss, Ramesh Thakur, Alex Bellamy and Francis Deng[4] are among the most essential contributions to the existing academic literature and debate on the Responsibility to Protect. ICISS Commissioners Gareth Evans and Ramesh Thakur, and Thomas Weiss (ICISS Research Director), have brought the concept to the forefront of the scene. United Nations documents such as the World Summit Outcome document, but also the former UN Secretary General's reports[5], provided increased visibility and exposure of the responsibility to protect norm.

Moreover, non-governmental organisations such as the International Crisis Group[6], the International Coalition for the Responsibility to Protect[7], the World Federalist Movement – the Institute for Global Policy[8], the City University of New York and the Ralph Bunche Institute for International Studies[9] have also made efforts to promote the concept and contribute to the discussion.

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[4] All of which can be found in the Bibliography at the end of this dissertation.

[5] United Nations General Assembly World Summit Outcome Document, *op.cit.*
A more secure world: Our shared responsibility. Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change. New York: United Nations. UN document A/59/565, General Assembly, 59th session. 2004.
Annan, Kofi. *In larger freedom: towards development, security and human rights for all.* 21 March 2005. New York: United Nations document A/59/2005, A/59/2005 Add. 1 and Add.2. Available at: http://www.un.org/largerfreedom (accessed January 13, 2009).

[6] Gareth Evans was the former President of the International Crisis Group, remains President Emeritus and on the Board, http://www.crisisgroup.org/home/index.cfm?id=4521

[7] http://www.responsibilitytoprotect.org/

[8] http://www.wfm-igp.org/site/

[9] Thomas G. Weiss is Presidential Professor of Political Science at the CUNY and Director of the Ralph Bunche Institute.

Critique of the Responsibility to Protect Doctrine

Several authors have raised objections to the responsibility to protect concept. This has been the case of David Chandler, Philip Cunliffe, Karina Pawlowska, Oliver P. Richmond and Laura Zanotti.[10]

David Chandler is very critical of the responsibility to protect concept.[11] He states that there is a gap between what R2P promised and the reality.[12] In many occasions, his reading seems simplistic[13] and does not take account of the differing contexts.[14] For example, what was the promise that the Responsibility to Protect Report was supposed to fill? The primary aim was to conceptualise sovereignty and

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[10] See Chandler, David. 'The responsibility to protect? Imposing the "Liberal Peace"', *International Peacekeeping*, 2004, Vol. 11, No. 1, Special Issue: Peace Operations and Global Order, pp. 59-81.
Chandler, David. 'Unravelling the Paradox of "The Responsibility to Protect"', *Irish Studies in International Affairs*, Vol. 20, No. 0, 2009, pp. 27-39.
Particular attention will be devoted to the work of Chandler, as his critiques also address the liberal internationalist theoretical perspective.
Cunliffe, Philip. 'Sovereignty and the politics of responsibility' *in* Bickerton, Christopher J; Cunliffe, Philip and Gourevitch, Alexander. *Politics Without Sovereignty: A Critique of Contemporary International Relations*. London: University College London Press. 2007, pp. 39-57.
Newman, Edward; Paris, Roland and Richmond, Oliver P. (Eds.) *New Perspectives on Liberal Peacebuilding*. New York: United Nations University Press. 2009.
Pawlowska, Karina. 'Humanitarian Intervention: Transforming the discourse', *International Peacekeeping*, Vol. 12, no 4, December 2005, pp. 487-502.
Richmond, Oliver P. *Peace in International Relations*. New York: Routledge. 2008.
Richmond, Oliver P. 'Reclaiming Peace in International Relations', *Millennium: Journal of International Studies*, Vol. 36, No. 3, 2008, pp. 439-470.
Richmond, Oliver P. *The Transformation of Peace*. Basingstoke: Palgrave Macmillan. 2007.
Richmond, Oliver P. 'Understanding the Liberal Peace', *Conflict, Security and Development*, Vol. 6, Issue 3, October 2006, pp. 291-314.
Zanotti, Laura. 'Bio-Politics, International Governmentality and the Reorganization of Political Action from Below: Integrated UN Peacekeeping and NGOs'. Paper prepared for the submission at the 2009 International Studies Association, New York.
Zanotti, Laura. "Protecting humans, governing international disorder: Integrated UN peacekeeping and NGOs." Paper prepared for the SHUR Final Conference LUISS University, Rome, Italy, June 4-6, 2009 (http://www.luiss.it/shur/wp-content/uploads/2009/05/zanotti.pdf) .

Zanotti, Laura. "Imagining Democracy, Building Unsustainable Institutions: The UN Peacekeeping Operation in Haiti," *Security Dialogue*, 2008, 39, 5, 539-561.
Zanotti, Laura. 'Taming Chaos: A Foucauldian View of UN Peacekeeping, Democracy and Normalization', *International Peacekeeping* 13(2) 2006: 150-167.

[11] In an earlier article, Chandler puts forward the argument that the responsibility to protect is part of a new current aimed at imposing the 'liberal peace'. See Chandler, David. 'The responsibility to protect? Imposing the "Liberal Peace"', *op. cit.*

[12] Chandler, David. 'Unravelling the Paradox of "The Responsibility to Protect"', *op. cit.*

[13] At times, Chandler uses quotes from the Responsibility to Protect Report (ICISS) out of their context to make a point. This is confusing and annoying.

[14] The ICISS original Responsibility to Protect Report was commissioned out of the UN context, and was thus not framed in a political context. The World Summit Outcome document was to be adopted at the World Summit by UN members, and was subject to a political lobby.

intervention in a new perspective, for a specific audience and setting the debate in a new framework. Regarding the High-Level Panel's Report, Chandler sees the separation between R2P language and the use of force as a strategy by Kofi Annan to gain support for the concept. However, as Bellamy explains

> In order to distinguish the R2P from humanitarian intervention and the use of force still further, Annan changed the R2P's place in the broader reform agenda. The HLP had placed the R2P in a chapter on 'collective security' and under the banner 'Use of Force', primarily in an attempt to sell the concept as a device for re-characterising humanitarian intervention. Annan separated the commitment to the R2P from the proposal for criteria, placing the former in a section on the rule of law and leaving the latter in a section on the use of force. He did this in order to reinforce the view that the R2P was not only about the use of force... This underlined the broader moral principle and helped to distance the R2P from 'humanitarian intervention' – an attempt to head off potential criticism from the NAM and G77.[15]

Chandler's main critique was the lack of concrete measures, and the absence of criteria and guidelines for the use of force and for Security Council action in relation to the responsibility to protect norm, as adopted at the World Summit[16]. Indeed, Gareth Evans and others involved[17] in the process provided input on the main priorities of R2P and on how it could be applied only after 2005. As Bellamy notes,

> We need to know more about what needs to be done to prevent genocide, to protect civilians, to deter spoilers and to foster dialogue; and we need to know what sorts of practical measures can achieve these goals.[18]

Chandler also questions what the responsibility to protect, as outlined in the World Summit Outcome document, adds to the dimension in the absence of such criteria or guidelines: "In this context, the application of R2P seems little different from a non-R2P response to international crisis situations where mass atrocities are occurring or seem possible".[19] Several points counter this vision. Indeed, the difference between an R2P and a non-R2P response is in the way to approach the

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[15] Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit*, p. 76.

[16] Commentators expressed their disappointment with the World Summit Outcome document and the fact that the responsibility to protect original (ICISS) components had not been included. See for example Byers, Michael. 'High Ground Lost on UN's responsibility to protect', *Winnipeg Free Press*, 18 September 2005.
Some of these aspects had been tackled in the ICISS original report but were dropped at the World Summit as it was feared that, had they been included, the reference to the responsibility to protect may have been dropped altogether.

[17] Donald Steinberg, Ramesh Thakur and Alex Bellamy, according to the interviews conducted with them.

[18] Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, p. 197.

[19] Chandler, David. 'Unravelling the Paradox of "The Responsibility to Protect"', *op. cit.*, p. 31.

problem (from the victims' point of view), accountability (for taking action and for not taking action), in the fact that R2P does have the effect of soft law[20], and as Chandler himself acknowledges, in the international pressure that the concept puts on governments when a crisis is designated as 'an R2P situation', such as Kenya in 2007.[21]

In the case of internally displaced persons, for example, when states "fail to act in a morally responsible manner and abuse the human rights of their citizens"[22] they would be threatened by action on behalf of the community of states. Here, the rights and lives of citizens are the focus, and this would be viewed as an emergency situation, requiring action for 'human protection purposes' and additional pressure put on the government of the state in which the crisis is unfolding. Crises with an internal displacement component are illustrations that the state in question is not fulfilling its obligations, both towards its citizens and as a member of the community of states or the United Nations: the 'bottom up approach'. The tension between sovereignty and protection is at its height.

> Sovereignty then means accountability to two separate constituencies: internally, to one's own population; and internationally, to the community of responsible states and in the form of compliance with human rights and humanitarian agreements. Proponents of this view argue that sovereignty is not absolute but contingent. When a government massively abuses the fundamental rights of its citizens, its sovereignty is temporarily suspended.[23]

According to some authors, the responsibility to protect norm is redundant, since other instruments exist which have already provided a context for the elements contained in the doctrine. In this regard, the Genocide Convention condemns genocide under international law and is part of the international legal framework applicable and agreed to by states.[24] It could therefore be argued that, in light of the Genocide Convention, the United Nations World Summit Outcome Document's mention that "[e]ach individual State has the responsibility to protect its populations

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[20] For a detailed explanation of 'soft law', see footnote 46.

[21] "In this case, R2P was seen to facilitate international pressure on the Kenyan government and to provide a discursive framework for international diplomatic involvement." Chandler, David. 'Unravelling the Paradox of "The Responsibility to Protect"', *op. cit.*, p. 31.

[22] Chandler, David. 'The responsibility to protect? Imposing the "Liberal Peace"', *op. cit.*, p. 63.

[23] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Research Essays*, Part I, *op. cit.*, p. 11

[24] The Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948. It is a treaty and is part of customary international law.

from genocide" and that "[members of the United Nations] accept that responsibility and will act in accordance with it"[25] is a replication of a pre-existing commitment.

Scholars also argue that the responsibility to protect doctrine can be perceived as a way of drawing attention away from the powerful states in order to 'police' the weaker ones or a hidden agenda to retain power[26]. Commentators seem skeptical about the application of the doctrine to the third world only, mirroring the feeling that the responsibility to protect would not be used in cases when more powerful countries would be involved.[27]

Another critique has been put forward pertaining to the fact that the responsibility to protect concept has lost some credibility by failing to address existing discourses in a more comprehensive manner. It is certainly the case that the responsibility to protect could not, at least in the main (ICISS) Report, refer to everything, although this may have been useful if referred to in the Research and Background documents. Laura Zanotti argues that the millennium discourses evolved around the intrusion of the community of states in what had traditionally been the sphere of states and that

> ...the organizing concept for collective security in the United Nations programmatic documents shifted from 'good governance' to 'human security' and the responsibility to protect populations...
> New millennium discourses of security made populations central both as victims and as perpetrators of menaces.[28]

Alynna J. Lyon makes an interesting contribution to the debate[29] by studying the context within which norms emerge, and she presents a model aimed at assessing

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[25] United Nations General Assembly World Summit Outcome Document. UN document A/60/L.1, September 15, 2005, paragraph 138 (hereafter referred to as 'United Nations World Summit Outcome document or World Summit Outcome document').
[26] This is the view of the Realist current of thought., which places an emphasis on the absence of international government and 'anarchy'. For a discussion about Realism, see for example Burchill, Scott; Linklater, Andrew; Devetak, Richard; Donnelly, Jack; Nardin, Terry; Paterson, Matthew; Reus-Smit, Christian and True, Jacqui. *Theories of International Relations*. 4th ed. Basingstoke and New York: Palgrave Macmillan. 2009, pp. 31-56.
[27] See, for example, Newman, Michael. 'Revisiting the "Responsibility to Protect"', *The Political Quarterly*,Vol. 80, No. 1, January/March 2009, pp. 92-100.
[28] Zanotti, Laura. 'Bio-Politics, International Governmentality and the Reorganization of Political Action from Below: Integrated UN Peacekeeping and NGOs', *op. cit.*, pp. 10-11.
[29] Lyon, Alynna J. 'Global Good Samaritans: When do we Heed "the Responsibility to Protect"?', *Irish Studies in International Affairs*, Vol. 20, No. 0, 2009, pp. 41-54.

whether the domestic and international context is favourable for an intervention.[30] Lyon has a point in that norms "are part of larger domestic and international political structures" and that

> restraints are part of a dynamic and evolving international and domestic milieu that will also influence the feasibility of establishing and committing to a particular humanitarian operation.[31]

In order to illustrate the interdependence between wars, internally displaced persons and humanitarian intervention, a hypothetical practical example[32] is analysed. Country A is politically unstable, since its ruler, Mr. Leader, is carrying out policies which are unfavourable to a part of the population (the Zebras). Mr. Leader faces an upsurge by the Zebras to take over power, and dictates changes in the government's policies. The Horses (the other strong group among the local population of country A) disagree and would like to take over and replace Mr. Leader by their own ruler. Mr. Leader loses control, the Zebras and the Horses start to fight, and this turns out to be a civil war, an internal conflict. The Zebras manage to impose their leader, Mr. Zebra, who replaces Mr. Leader as the new ruler of country A.

The Horses, defeated, are now the oppressed people within their home country. The Zebras persecute the Horses, and threaten to kill them. The Horses, frightened, leave their homes and flee to remote areas, where the Zebras are less likely to find them. However, the Horses remain within the borders of country A, and are *de facto* internally displaced. Country B (neighbour of country A), in fear of a spill over of Horses into its territory, requests the assistance of the international community.

The UN Security Council holds a special session to address the situation in Country A, which is not a permanent member. After a debate lasting several hours, the UN adopts a resolution recalling the principles of international law set out in the UN Charter, human rights treaties, and requesting the UN Member States to take action to put an end to the persecution of the Horses. As soon as he learns of this, Mr. Zebra declares that the UN forces (or any other group or individual country

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[30] *Ibid*, pp. 53. Lyon's model considers domestic forces within donor states, public opinion, the media, consensus, historical milieu, international factors, mitigating factors, etc.
[31] *Ibid.*, p. 46.
[32] Country names will be replaced by letters, and internal groups will be referred to as 'Zebras and Horses', to show their similarities and slight differences. These names are purely imaginative, and were chosen at random.

forces) are not welcome, since country A has not requested any assistance from the international community, and that this is a matter of internal affairs. Mr. Zebra also sends a message to country B, making it clear that the Horses are within country A's territory, and thus country B should not fear any violation of its boundaries, as this issue shall be settled shortly. Both Mr. Zebra's statements are claims to state sovereignty.

The Horses remain trapped within their own country, with little access to resources. They set up a small camp-style facility, where women, the elderly and children can find shelter. The men bring water and search for food in the later part of the day, when the heat allows it. The international community, through the UN, is debating the situation, as UN organisations and agencies raise concerns for the health, safety and assistance requirements of the Horse population. WHO prepares a communiqué on the water, sanitation and general health conditions of the Horses, with an emphasis on potential diseases. UNICEF and WFP call for an urgent solution, in light of the number of infants' and children's lives at stake. NGOs around the world address communications to the organisations and through the media, voicing their concerns.

UNHCR warns of a new crisis, and requests immediate assistance mechanisms to be implemented. Country B offers assistance, and the provision of basic goods of primary importance. *Médecins sans Frontières* sets up an emergency unit, and states that it can despatch a team within hours. It also launches a call to other NGOs, governments and the international community as a whole to donate resources, to draw attention to this urgent situation. Amnesty International and Human Rights Watch make similar appeals, and alert their regional offices to remain on stand-by. The UN agency heads meet in New York and Geneva. Finally, the mandate is given to the Office of the Coordination of Humanitarian Affairs (OCHA). OCHA in Geneva which initiates discussions with the UN, its agencies, NGOs, the Norwegian Refugee Council and the International Committee of the Red Cross (ICRC), and maintains contact with country A, through Mr. Zebra and his advisors.

A press conference is scheduled later the same day, and the next morning all the major international newspapers, television and radio broadcasts cover the situation in country A, with reference to the Horses. Mr. Zebra is kept abreast and is furious, he decides to set an ultimatum for the Horses, who must submit to his rule

or they will suffer the consequences. The ICRC delegates are ready to leave upon short notice, and the office closest to country A is preparing items of first necessity. OCHA contacts Mr. Zebra to establish diplomatic ties, and tries to convince him to come to a negotiation table. He refuses to have a representative of the Horses at the meeting, but agrees to hold discussions with senior officials of the UN, OCHA and UNICEF. The ICRC and *Médecins sans Frontières* also try to contact him, but he refuses to have a separate meeting, and instead invites them to join in the OCHA-sponsored meeting. At this sitting, the senior officials try to gather as much information about the exact location, needs, composition and conditions of the Horse population. Each party presents its point of view and requests Mr. Zebra to allow access and assistance to the Horses. At first, he repeatedly refuses, but the ICRC and MSF manage to negotiate medical and basic food and water provisions. UNICEF and WFP will also be granted access to the Horse population. Early next morning, MSF, ICRC, UNICEF and OCHA officials arrive at the camp of the Horses. Scared, the Horses hide and prepare to fight back. The OCHA and ICRC representatives explain the reasons of their presence, and start providing emergency medical care, for women, children and the elderly in priority. The delegates are faced with a particularly delicate situation, with cases of dehydration, diarrhoea, dysentery, fever and infections. Upon their return, the representatives hold a briefing of the situation of the Horse population. OCHA immediately plans a workshop, and invites all actors involved to participate. The UN headquarters and agencies are kept up to date through written and oral communications. The OCHA-sponsored Working Group gives its recommendations, which are immediately delivered to regional and international offices.

The UN holds an emergency session pertaining to the state of affairs in country A at which the representatives of the ICRC and OCHA from Geneva are present. It concludes that progress has been made through the contact established with Mr. Zebra and decides to pursue its operations in country A, renews OCHA's mandate as the lead operational agency, and refers the matter to the Secretary-General for consideration. A lasting solution to the plight of the internally displaced persons has to be found, and OCHA, UNHCR, NGOs and the Danish, Norwegian and Swiss governments are collaborating with the UN to find responses, funds and durable arrangements. In the meantime, the Horses are being assisted, have access to food, water and medical care, as well as to basic sanitation facilities.

This description, which remains non-exhaustive and may not apply to all internal displacement cases, provides a clearer picture of all the weight contained in the word "humanitarian". It also enables an understanding of the administrative, financial, organisational and practical difficulties which internal displacement situations trigger. Past occurrences of humanitarian crises which generated internal displacement could be quoted using the hypothetical events presented in this example. Hopefully, the fictitious example of "country A" has given rise to a series of questions. It will be a starting point to help identify problems, gaps and ill-treated or shadowed areas. Moreover, it enables the visualisation of a dynamic situation, which is not limited in time and demonstrates the application of a concept in practice. This speculative demonstration was aimed at presenting some of the features dealt with in the coming chapters, showing that events unfold rapidly and in parallel. It may be difficult, in this context, to address all elements of a crisis from a humanitarian, emergency, pragmatic and operational perspective as will be detailed further. Finally, this example does give an idea of the interdependence of, and sheds light on, the themes and topics, which will be discussed in this research project.

Some of the challenging questions to be addressed in this first chapter are the ways in which the world has changed, the current trends and main features of international order, and the issues with which the international community must deal. This chapter proposes to examine these elements, as well as to introduce two essential concepts for the subsequent core themes, human rights and protection. It will consider the international order of the late 1990s-early 2000 years as well as the international system, and present the 'novel' aspects related thereto, before moving to the consideration of the international human rights regime and the concerns related to the protection of the rights of individuals and citizens.

1 The International Order of the late 1990s – early 2000 years

This first section will attempt to briefly depict the international order of the late 1990s and early 2000 years. This will provide a framework of understanding as well as a brief introduction to some of the topics to be discussed in further chapters. This is also the best way to tackle the core issue of the international security dilemma versus the growing concern for the rights of individuals.

1.1 Political and Strategic Features

Collective Security Today

The international context of the creation of the United Nations, in 1945, was very different from the international order of today. The founders of the United Nations intended to save the succeeding generations from the scourge of war as they had known it, fought between great powers. According to the Report of the High-Level Panel on Threats, Challenges and Change,

> The central challenge for the twenty-first century is to fashion a new and broader understanding ...of what collective security means – and of all the responsibilities, commitments, strategies and institutions that come with it if a collective security system is to be effective, efficient and equitable Collective strategies, collective institutions and a sense of collective responsibility are indispensable.
> The case for collective security today rests on three basic pillars. Today's threats recognize no national boundaries, are connected, and must be addressed at the global and regional as well as national levels. No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats. And it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbours.[33]

As the passage above indicates, the conflicts of today know no boundaries, and may derive from national, rather than international, roots. There are more internal or civil wars today than before. According to research done by the Department of Peace and Conflict Research at Uppsala University and at the International Peace Research Institute in Oslo, in 2002, there was one current inter-State war versus 30 civil wars.[34] The Human Security Centre at the University of British Columbia publishes

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[33] *A more secure world: Our Shared Responsibility.* Report of the Secretary-General's High-level Panel on Threats, Challenges and Change. New York: United Nations. 2004, "Part 1: Towards a New Security Consensus, Synopsis", p. 9.

[34] Figure taken from *A more secure world:* Our Shared Responsibility, p. 11.

similar statistics[35], and sets the number of internal armed conflicts at approximately 28 in 2006, while the number of interstate armed conflicts is nil. Interestingly enough, the Centre provides a breakdown by region, which clearly demonstrates that the largest number of internal armed conflicts taking place between 1946 and 2006 were in Asia (38) and Africa (36). In 2003, Africa had the most cases of state-based armed conflicts (25), and the second highest number of one-sided armed conflicts (11) across all regions.[36]

The Position of the United States on the International Scene Today: Foreign Policy Issues

The current state of international relations is novel, in that there is no 'enemy' in the sense of an 'enemy state', no threat perception from a state or a group of states. There is a perception that 'terrorism' is a threat to the international order, although the exact location of those involved is not in one country, but it is rather a transnational phenomenon. Former US President George W. Bush argued that certain states belonged to an 'axis of evil'. This, coupled with other factors, has led to the 'war on terror'. The United States is currently the only 'superpower'. Indeed, the European Union, particularly since the inclusion of new members, is not united on foreign policy issues, as the example of the war against Iraq has shown.

The United States' foreign policy under former President George W. Bush's administration has created unfortunate precedents on the international scene in regard to international law and multilateralism. Indeed, the US interventions in Iraq and Afghanistan have contributed to undermine the credibility of the United Nations, and that of intervention for human protection purposes.

1.2 Human Rights and the Protection of Individuals: The Security and Protection Debate

Under international law, states have national and territorial jurisdiction over their citizens. According to the responsibility to protect concept,

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[35] *Human Security Report 2005: War and Peace in the 21st Century.* Human Security Centre, University of British Columbia, Canada. Oxford and New York: Oxford University Press. 2005.

[36] According to the *Human Security Report* (page 67), non-state armed conflicts are "conflicts in which one of the warring parties is a government and which incur at least 25 battle-related deaths per year. One-sided armed conflicts are defined as 'the deliberate unopposed slaughter of at least 25 civilians in one year by a government or political group', they include 'genocides, politicides and other violent assaults on civilians'.

> It is acknowledged that sovereignty implies a dual responsibility: externally - to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people in the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship.[37]

Moreover, in traditional international legal thinking, all human beings are believed to be entitled to rights by the simple fact of 'being human'.[38] The large body of human rights norms and treaties also referred to as 'the international human rights regime'[39] has been in place since the end of the 1940s, and it would be a fallacy to argue that the contemporary revival of the debate on human rights is linked to new developments. In fact, the language of 'protection' is closely linked to that of human rights, with the idea that states are not only accountable to the international community as a whole for the respect of the human rights of their citizens, but also to these citizens for upholding their protection, as clearly expressed in the Responsibility to Protect Report:

> First, [this concept] implies that state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of the state are responsible for their actions: that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.[40]

As such, a sovereign state has the duty to ensure the security of its citizens.

Here is the tough question: what does security mean, what does it imply? Many answers can be offered: the freedom from fear, the absence of physical threat, a peaceful environment, the guarantee of human rights, the lack of violence and

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[37] International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*: Report of the International Commission on Intervention and State Sovereignty. Ottawa, Canada: International Development Research Centre. December 2001, para. 1.35, p. 8, available at: http://www.iciss.ca/report2-en.asp (accessed May 23, 2009). Hereafter, the Report will be referred to as *The Responsibility to Protect.*

[38] For a discussion on natural law, see Shaw, Malcolm N. *International Law.* 5th ed. Cambridge: Cambridge University Press, 2003, pp. 24-26.

[39] There is an extensive body of international human rights legal instruments, ranging from the Universal Declaration of Human Rights, the Covenants on Civil and Political, Economic and Social Rights, the Convention on the Rights of the Child, the Convention on the Elimination of the Racial Discrimination, the Convention against Torture, Women, the Genocide Convention, the Refugee Convention, the European Convention on Human Rights.

[40] *The Responsibility to Protect, op. cit*, para. 2.15.

crime, an environment free of conflict and politically stable, an effective government, a prosperous environment.

Many academics argue that guaranteeing 'primary' human rights to its citizens is a necessary condition of human security for states

> A basic right, argues Shue, can be seen as 'everyone's minimum reasonable demand upon the rest of humanity' (p. 19) and this can be broken down into two components: *security* rights, that is, the right not to be subjected to murder, torture, mayhem, rape or assault, and *subsistence* rights, that is, the right to minimal economic security 'unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter and minimum preventive public health care' (p. 23). Shue's point is that all other rights rest on these basic rights. Without physical security and the wherewithal for subsistence, no one is in a position to exercise any other kind of right, and therefore any individual is entitled to demand of all other individuals ('the rest of humanity') that his or her needs in this respect be met.[41]

In other words, should a state be unable or unwilling to protect and promote the human rights of its citizens, the latter should have a way to resort to means to ensure their human rights, and their 'basic' or 'security' rights in particular. This is the core argument of the 'sovereignty as responsibility' debate initiated by Francis Deng in the early 1990s.[42]

1.3 The Power of Ideas

One of the main strengths of the current international order is that new ideas are welcome but not the revival of old ideas such as fundamentalism. Indeed, there is a realisation that new challenges require fresh thinking, new ways of conceiving the world, and increased open-mindedness, and this is also reflected in the United Nations system.[43] As Jean-Marc Coicaud observed, the analysis of international organisations, in combination with International Relations, Political Science and International Law, enables scholars to infer how norms evolve and how states interact.[44]

In recent years, many reports, publications and conferences have focused on new themes, thereby enlarging the scope of the work of the United Nations to include new areas. This 'collective brainstorming' effort led to the creation of

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[41] Brown, Chris. *Sovereignty, Rights and Justice: International Political Theory Today.* Oxford: Blackwell, 2002, pp. 122-123.

[42] Deng, Francis M; Kimaro, Sadikiel; Lyons, Terrence; Rothchild, Donald; Zartman, I. William. *Sovereignty as Responsibility: Conflict Management in Africa.* Washington D.C.: Brookings. 1996.

[43] Although, one may argue, new ideas and change are not always implemented in practice.

[44] Coicaud, Jean-Marc. "Current Mainstream Thinking in International Relations". Talk at the 2007 ACUNS Meeting on June 7, 2007.

several commissions or expert committees, as well as to a self-criticism by the organisation on several occasions.

The current realities of the world force high-ranking officials to deal with different issues, and perhaps, find new priorities on which to focus. Civil society is now more interested in what leaders do, how they are accountable, what their achievements are and what their legacy will be. The United Nations leader is no exception, and the incumbent has to be as much of a 'doer' as of a 'thinker'.

Kofi Annan's Contribution to the 'Responsibility to Protect'

The charisma of the previous United Nations' Secretary-General, Mr Kofi Annan, has contributed to the international order of the late 1990s to the first years of the twenty-first century, and left a strong print. Indeed, Mr Annan made a personal commitment to many causes, including the promotion of the Responsibility to Protect doctrine and report. On several occasions, Mr Annan made the plea to the international community, as represented in the United Nations, to adhere to the core principles of the Responsibility to Protect, to promote its norms and terms, as well as to engage in upholding these as part of the UN terms, language and 'jargon'. There are several reasons, which can explain this involvement. Firstly, Mr Annan had been Secretary-General for two terms and was nearing the end of his second term in office. He was perceived as a quiet but effective, passionate, man. He knew that this was probably his last effort that could generate attention. Moreover, Mr Annan sincerely believed in the responsibility to protect, as can be evidenced by his numerous declarations and speeches addressing the matter. Thus, he had the possibility to draw attention to a concept which he had at heart and which was of his making, since Mr Annan was the one who famously asked, at the UN General Assembly in 2000:

> if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?[45]

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[45] "But to the critics I would pose this question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity? We confront a real dilemma. Few would disagree that both the defence of humanity and the defence of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict. Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But surely no legal principle—not even sovereignty—can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them

The government of Canada established the International Commission on Intervention and State Sovereignty, ICISS, to respond to the challenge presented by the Secretary-General. Thereafter, the Secretary-General had a privileged role to play in pursuing these ideas and in promoting them on the world scene. This turned out to be a key element in the dissemination of the responsibility to protect principles. In fact, as will be explained in the next section, five years after this statement, the responsibility to protect was endorsed at the 2005 UN World Summit, and thereby officially entered into the United Nations' terminology and official statements. This leads to the second reason for Mr Annan's will to see the responsibility to protect become part of UN rhetoric and practice: he knew that by so doing, this would become part of customary international law. Indeed, by making repeated statements, and by including references to the principles, the responsibility to protect would become soft law.[46] In fact, since this was towards the end of the Secretary-General's term in office, he is remembered for including the responsibility to protect terminology and reference in key United Nations assemblies and documents, bringing the responsibility to protect - a non-United Nations initiative originally - to one which was spearheaded by the Secretary-General.

> Kofi Annan has put the authority of his office behind Responsibility to Protect, describing it as the 'most comprehensive and carefully thought out response to date' to the challenge of 'humanitarian intervention'. According to Annan, it takes away the last remaining excuses for the international community to do nothing when confronted with atrocities again. We believe that it will help the world to be better prepared – conceptually, normatively,

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have been exhausted, the Security Council has a moral duty to act on behalf of the international community. The fact that we cannot protect people everywhere is no reason for doing nothing when we can. Armed intervention must always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished" United Nations, *Millennium Report of the Secretary-General: We the Peoples : The Role of the United Nations in the 21st Century*. New York: United Nations Department of Public Information, 2000, Chapter IV: Freedom from Fear, p. 48. Available at http://www.un.org/millennium/sg/report/full.htm (accessed January 16, 2009).

[46] Soft law is defined as "guidelines of conduct...which are neither strictly binding norms of law, nor completely irrelevant political maxims, and operate in a grey zone between law and politics... Such provisions can be found, for example, in treaties not yet in force or in resolutions of international conferences or organizations, which lack legally binding quality" *in* Malanczuk, Peter. *Akehurst's Modern Introduction to International Law*. 7th revised ed. New York: Routledge. 1997, p. 54.
"It is sometimes argued more generally that particular non-binding instruments or documents or non-binding provisions in treaties form a special category that may be termed 'soft law'. This terminology is meant to indicate that the instrument or provision in question is not in itself 'law', but its importance within the general framework of international legal development is such that particular attention requires to be paid to it. 'Soft law' is not law. That needs to be emphasised, but a document, for example, does not need to constitute a binding treaty before it can exercise an influence in international politics... The use of such documents, whether termed, for example, recommendations, guidelines, codes of practice or standards, is significant in signalling the evolution and establishment of guidelines, which may ultimately be converted into legally binding rules. They are important and influential, but do not in themselves constitute legal norms." in Shaw, *op. cit.*, pp. 110-111.

> organisationally and operationally – to meet the challenge, wherever and whenever it arises again, as assuredly it will.[47]

2 The International System

What characterises the international system of today? Several topics come to mind - globalisation, multilateralism, the United States as the major political power, China and the European Union as key partners, economic power, internal wars, world trade, the absence of borders, civil society, threats to international peace and security, aggression, judicial processes and the like. Many of these issues will be dealt with in this chapter, which serves both as introduction and as context setting[48].

2.1 Globalisation

Far from a 'clash of civilisations' as suggested by Huntington[49], the world order as we know it today is defined through altered features, such as the interconnectedness of people, the increased frequency of exchanges, the access to and nature of information, the diversity of communication means, the access to and frequency of travel, exposure of images through the media, the rise of public opinion in politics, the increased participation by civil society in socio-economic and political affairs of the state and the international community. Indeed, the 'vulgarisation' of issues of importance on the international scene, such as environment, ecology, the fate of people who are 'far away', and the proximity brought to these realities, are salient features of the post-1990s.

It is therefore necessary to use a working definition of 'globalisation':

> Globalization refers to the multiplicity of linkages and interconnections between states and societies which make up the present world system. It describes the process by which events, decisions, and activities in one part of the world come to have significant consequences for individuals and communities in quite distant parts of the globe. Globalization has two distinct phenomena: scope (or stretching), and intensity (or deepening). On the one hand, it defines a set of processes which embrace most of the globe or which operate worldwide; the concept therefore has a spatial connotation. On the other hand it also implies an intensification in the levels of

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[47] Thakur, Ramesh. "No More Rwandas: Intervention, Sovereignty and the Responsibility to Protect", *Humanitarian Exchange Magazine*, Issue 26, Humanitarian Practice Network, March 2004, p.7, available at: http://www.odihpn.org/report.asp?id=2605 (accessed January 23, 2009).

[48] Of course, all of these problems will not be discussed but they will be referred to when appropriate to explain the underlying international context of international relations.

[49] Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order.* 2003 and Huntington, Samuel P. "The Clash of Civilizations?", *Foreign Affairs,* Vol. 72, No. 3, Summer 1993.

> interaction, interconnectedness or interdependence between the states and societies which constitute the world community. Accordingly, alongside the stretching goes a deepening of global processes.[50]

Although there are many definitions of globalisation, the literature seems to agree that it mainly refers to a set of processes and interconnectedness linking the world, as shown in the table below, adapted from *Limits to Competition.*

Table 1: Concepts of Globalisation

Category	Main elements/processes
1. Globalisation of finances and capital ownership	Deregulation of financial markets, international mobility of capital, rise of mergers and acquisitions. The globalisation of shareholding is at its initial stage.
2. Globalisation of markets and strategies	Integration of business activities on a worldwide scale, establishment of integrated operations abroad (incl. R&D and financing), search for components, strategic alliances.
3. Globalisation of technology and knowledge	Technology is the primary enzyme: the rise of information technology and telecommunications enables the rise of global networks within the same firm, and between different firms. Globalisation as the process of universalisation of 'Toyotism'/lean production.
4. Globalisation of modes of life and consumption patterns; globalisation of culture	Transfer and transplantation of predominant modes of life. Equalisation of consumption patterns. The role of the media. Transformation of culture in "cultural food", "cultural products". GATT rules applied to cultural flows.
5. Globalisation of regulatory capabilities and governance	The diminished role of national governments and parliaments. Attempts to design a new generation of rules and institutions for global governance.
6. Globalisation as the political unification of the world	State-centred analysis of the integration of world societies into a global political and economic system led by a core power.
7. Globalisation of perception and consciousness	Socio-cultural processes as centred on "One Earth", the "globalist" movement, planetary citizenship.

Source: The Group of Lisbon. *Limits to Competition.* Cambridge (Mass, USA): Massachusetts Institute of Technology, 1995, p. 20, table based on Ruigrok, W. and van Tulder, R. *The Ideology of Interdependence*, Ph.D. dissertation, University of Amsterdam, June 1993.

[50] The Group of Lisbon. *Limits to Competition.* Cambridge (Mass, USA): Massachusetts Institute of Technology, 1995, pp. 19-20; quoted from McGrew, Anthony and Lewis, Paul et al., *Globalization and the Nation-states.* Cambridge: Polity Press, 1992, p. 22.

On reflection, the key elements endorsed in our analysis include exchanges, communication, interconnectedness, social and economic linkages, information, travel, and media. As shown in the table above, there seems to be a relationship between the ease of movement, facilitated access to information, the increasing importance of civil society and public opinion in international affairs, and the growth of non-state actors and their emergence on the international scene on armed conflicts and on the international system. These elements do appear to change the lens through which the world is viewed, but do not threaten state sovereignty.

2.2 Territorial Sovereignty

An important element of international relations in the post-Cold War era is that of 'territory'. The fall of the Berlin Wall, as a symbol of the decline of the Communist regimes in Eastern Europe, cannot be separated from a change in values. Ideologies of the Second World War, and the regimes subsequently put in place, changed. This is linked to citizens gaining access to information and other ideas, cultures, opinions and ways. Combined with the above is the phenomenon of disintegration of the state/people entities created by the treaties and negotiations of the two World Wars and their aftermath.[51] Instances are numerous, as evidenced in the former Yugoslavia, Central Asia, and Russia.

The question may arise of how the international community responds and reacts to such issues. What can the United Nations do, and to what extent does it respond to these challenges? The first thing to note is that the current international order, although very different in nature from that of 1945 at the time of the creation of the United Nations, shares the same foundations, namely states. Indeed, international relations refer to the study of the interactions between states. Thus, states remain the main actors on the international scene, and are the subjects of the international community. In this context, state sovereignty remains the main tenet of international relations today[52]. This is enshrined in the United Nations Charter, in Article 2:

> 1. The Organization is based on the principle of the sovereign equality of all of its Members.

[51] Decolonisation processes are included here.

[52] In this sense, the international order of today dates back to the Peace of Westphalia of 1648, and is often referred to as 'the Westphalian order'.

2.3 International Rules and Organisations

The rules governing the international order of today are those which govern the relations of states, namely international law[53]. The body of norms and laws which are applicable to states and to individuals (since as has been stated a greater role is played by individuals on the international scene), consists of treaties, international custom, statutes and regulations of the international criminal tribunals and norms implemented by international organisations. The United Nations Charter is often referred to by experts as the prevailing instrument of international law in its relatively recent and codified form.

Through its main bodies, the United Nations serves as the guarantor of the maintenance of peace and security, the only world body where political affairs may be discussed in a plenary (General Assembly), the regulator of international conflicts, the mediator towards the pacific settlement of disputes (Security Council), the provider of good offices (Secretary-General), the reference centre for economic and social issues as well as development, the seat of the international judiciary function (International Court of Justice), the recipient of all treaties (Secretariat). Moreover, through its network of agencies and affiliated organisations[54], the UN also centralises all rules and implementation policies, and contributes to the promulgation of declarations, resolutions, covenants and speeches, statements; thereby creating both hard law (treaties) and international customary law.

The six principal organs of the United Nations[55] are complemented by a constellation of agencies and organisations working in various areas.[56] The role of

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[53] Some commentators would perhaps argue that rules and international organisations are only one of the factors of international order, and that power is another. This would be the case for the realist theoretical school, for example. International Relations theories will not be discussed in this analysis. For further information, see Wight, Gabriele and Porter, Brian (Eds.). *International Theory: The Three Traditions, Martin Wight.* London: Leicester University Press, Royal Institute of International Affairs, 1996, pp. 30-48; Bull, Hedley (Ed.). *Systems of States.* Leicester: Leicester University Press and LSE. 1977.

[54] Refugee law, the international human rights regime, economic, monetary and trade laws, laws of the sea, health laws, international criminal law, labour laws, telecommunication policies, environmental laws, disarmament policies, trademark and intellectual property laws.

[55] General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, Secretariat.

[56] These are referred to as 'specialised agencies' and are established in accordance with the UN Charter, Article 7.2. Examples are the World Health Organisation (WHO), the Food and Agriculture Organisation (FAO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

the 'specialised agencies' is to ensure that the field to which they are devoted is coherently addressed across the UN system.

The 'Jackson Report', *A Study of the Capacity of the UN Development System*, was published in 1969. British UN official Robert Jackson was entrusted by the Governing Council of the United Nations Development Programme with the task of preparing a report to enhance the UN's development activities and manage resources appropriately. Although the report's scope covered development issues, it unveiled problems which affected other UN agencies and organisations, such as the lack of coordination within the system, the need to work with organisations outside the UN system[57], gaps in data processing and data management and the like. Jackson concluded that the UN can be assimilated to a 'system without a brain'

> For many years, I have looked for the 'brain', which guides the policies and operations of the UN development system. The search has been in vain. Here and there throughout the system there are offices and units collecting the information available, but there is no group (or 'Brain Trust',) which is constantly monitoring the present operation, learning from experience, grasping at all that science and technology has to offer, launching new ideas and methods, challenging established practices, and provoking thought inside and outside the system. Deprived of such a vital stimulus, it is obvious that the best use cannot be made of the sources available to the operation.... the UN development system has tried to wage a war on want for many years with very little organized 'brain' to guide it. Its absence may well be the greatest constraint of all on capacity. Without it, the future evolution of the UN development system could easily repeat the history of the dinosaur.[58]

These aspects were reconsidered through several attempts to assess need for reform at the United Nations at later stages[59], namely by then UN Secretary-General Boutros Boutros-Ghali who presented proposals for a complete reform of the United Nations as the structural, procedural and functional levels in his "Agenda for Reform"[60]; by former Secretary-General Kofi Annan in his 1997 *Renewing the*

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[57] The report mentions inter-governmental organisations but not non-governmental organisations.

[58] Jackson, Robert. *A Study of the Capacity of the UN Development System* Section I, pp. 12-13. Quoted from "International Organizations and the Generation of the Will to Change: the information systems required", *UAI Study Papers INF/5*, February 1970. Available at: http://www.laetusinpraesens.org/docs/infwill/inf2.php (accessed January 26, 2009).

[59] See von Freiesleben, Jonas, *Managing Change at the United Nations*, New York: Centre for UN Reform Education, April 2008. Chapter 3: "System-wide Coherence", pp. 37-54. Available at: http://www.centerforunreform.org/ (accessed January 26, 2009).

[60] See Boutros-Ghali, Boutros. *Confronting new challenges : report on the work of the Organization from the Forty-ninth to the Fiftieth Session of the General Assembly.* New York: United Nations. 1995; Boutros-Ghali, Boutros. "*Peut-on réformer les Nations unies?*" Paris: Le Seuil *Pouvoirs*. Vol. 2, no. 109, 2004, pp. 5-14 available at: http://www.cairn.info/article.php?ID_REVUE=POUV&ID_NUMPUBLIE=POUV_109&ID_ARTIC

United Nations: A Programme for Reform[61], in the Triennial Comprehensive Policy Review of Operational Activities for Development of the UN System (TCPR) 2001, 2004 and 2007[62]; the World Summit Outcome Document which identified four areas of priority and a need for system-wide coherence[63] and the *High-level Panel on System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment*" launched by Kofi Annan in 2006[64].

2.4 Rules of War and Peace

There are a number of international laws and norms which regulate not only the relations of states, but also the relations of states and individuals: "International law... is primarily formulated by international agreements, which create rules binding upon the signatories, and customary rules, which are basically state practices recognised by the community at large as laying down patterns of conduct that have to be complied with"[65].

As has been explained, the current international order is characterised by features which differ from that of the 1950s. Nevertheless, this should not imply that what had been established can be disregarded. Indeed, the foundations of international law and the rules and norms pertaining to conflict were codified in the 19th and 20th centuries. These laws are not only relevant but are still in effect today, and provide the body of what is often referred to as 'the laws of war', 'the rules governing armed conflict', or international humanitarian law:

> Equally referred to as the law of war, the law of armed conflict, the laws of customs of war, international humanitarian law is a complex intertwining of multilateral treaties, of customary law (natural law), of declarations, of projects, of resolutions of international organisations, of legal decisions and

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LE=POUV_109_0005 (accessed January 26, 2009) for further background on the suggested reform. Security Council reform was already an issue at the time.

[61] Annan, Kofi A. *Renewing the United Nations: A Programme for Reform*. New York: United Nations, UN Document A/51/950. 1997.

[62] See United Nations, Department of Economic and Social Affairs, Office for ECOSOC Support and Coordination, "About the TCPR", available at: http://www.un.org/esa/coordination/tcpr.htm and http://www.un.org/esa/coordination/tcpr.htm (accessed January 26, 2009).

[63] World Summit Outcome Document, UN General Assembly Document A/60/L.1, 20 September 2005: policy, operational activities, humanitarian assistance, environmental activities, paras. 168-169.

[64] The Panel delivered a report in November 2006, *"Delivering as One,"* UN Document A/61/583. In the summer of 2007, member states mandated to consider the issues uncovered by the Panel and discussed 'humanitarian issues and recovery' and system-wide coherence, with a particular focus on internally displaced persons, interestingly. At this meeting, it was highlighted that UNHCR should take on a leading role for internal displacement coordination across the UN.

[65] Shaw, Malcolm N, *op. cit.*, p. 6.

> of reports of expert commissions. Its aim is to constrain the effects of war. It did not pertain, originally, to times of peace or the right to resort to war. It defines a body of rules, which become applicable once a war has started...[66]

This is important in the context of international order, since these norms are applicable to all states, notwithstanding their size or power, and no state can deny them.[67] Of course, states may not be in agreement with all the rules of international law. It is rare, however, that states would object to the whole body of international law, although they may occasionally object to certain norms.[68]

War Crimes and Crimes against Humanity

In times of peace and war, international human rights, which are part of international law, are also applicable, since these are part of the international system, as discussed above. In fact, certain violations of human rights pertain to customary international law: genocide, torture, slavery and discrimination.[69]

Crimes against humanity are defined by the Rome Statute of the International Criminal Court as:

> For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
> (a) Murder;
> (b) Extermination;
> (c) Enslavement;
> (d) Deportation or forcible transfer of population;
> (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
> (f) Torture;
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
> (i) Enforced disappearance of persons;
> (j) The crime of apartheid;

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[66] Ternon, Yves. *Guerres et Génocides au XXe siècle: Architectures de la Violence de Masse.* Paris: Odile Jacob, 2007, p. 36, free translation.

[67] There are norms of international law which derive from the signature and ratification of treaties and others which cannot be derogated from since they form part of the body of rules accepted by all members of the international community: i.e. treaties, general principles of international law, international customary law / state practice and *jus cogens*. For a complete discussion on these issues, see Shaw, Malcolm N, *op. cit.*, pp. 66-115 (sources of international law) and p. 850 (*jus cogens*).

[68] *Ibid*, pp. 10-11.

[69] *Ibid*, p. 257.

> (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[70]

War crimes are defined as:

> For the purpose of this Statute, 'war crimes' means:
> (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention...
> b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law...
> (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause...
> (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
> (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law...
> (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.[71]

War crimes are acts of criminal liability and occur in time of war. They target members of the armed forces and civilians. Crimes against humanity take place in time of peace, target victims, and are assimilated as attempting to the essence of humanity.[72] Crimes against humanity are considered a 'universal' crime. War crimes are pertinent both in cases of internal and international armed conflict.

International Humanitarian Law

During a war, civilians are protected by international humanitarian law. The Four Geneva Conventions of 1949, and the Two Additional Protocols of 1977 form the basis of international humanitarian law, which derive from the time of Henry

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[70] Rome Statute of the International Criminal Court, article 7. Available at: http://untreaty.un.org/cod/icc/statute/romefra.htm (accessed January 24, 2009).
[71] *Ibid.*, article 8. Other sub-elements are included in the definition of war crimes, but for reasons of space were not included here.
[72] Legal experts argue that crimes against humanity are forbidden because they are in violation of *jus cogens*, or peremptory norms of international law. See Shaw, *op. cit.*

Dunant, a Swiss businessman who was at the Battle of Solferino in 1859.[73] International humanitarian law, although conceived in the nineteenth century, already made a distinction between international and non-international armed conflicts. Thus, the Four Geneva Conventions and Protocol I deal with international armed conflict, or war between two or more states; whereas Article 3 (common to all Four Geneva Conventions) and Protocol II have to do with situations of internal armed conflict.

The fact that Common Article 3 was included is a very powerful tool for the protection of civilians in times of war, and this must be seen in light of the historical context of 1949, when the Conventions were signed.[74] Still today, international humanitarian law, as well as the work of the International Committee of the Red Cross, remains highly respected. There is a continuity to be found in the work towards the protection of civilians in times of armed conflict.

> The post-cold war normative context gives purpose and meaning to actions that were politically inconceivable not long ago. It shapes the rights and duties states believe they have, the goals they value, and the means they believe are effective and legitimate to achieve these goals.[75]

Now that the context of international order and the international system has been described, the next section will discuss some of the new features of wars. This will lead to the understanding of why a normative framework such as the responsibility to protect was needed, how it has developed, how it applies to internally displaced persons, what can be suggested to address and prevent some of the crises.

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[73] Dunant, Henry. *Un Souvenir de Solferino.* Geneva: Slatkine. 1980. Also available in English at www.icrc.org.

[74] In 1948, the UN adopted the Universal Declaration on Human Rights. This is also one year before the adoption of the Convention relating to the Status of Refugees, and remains in the context of the aftermath of the Second World War.

[75] Finnemore, M. *The Purpose of Intervention: Changing Beliefs about the Use of Force.* Ithaca, N.Y.: Cornell University Press, 2003, quoted in Seybolt, Taylor B. *Humanitarian Military Intervention: The Conditions for Success and Failure.* Oxford: Oxford University Press, 2007, p. 8.

3 New Features of Wars: The Winds of Change

> It is not so much that new elements have appeared as it is that elements thought extinct or tangential have come to the fore or been combined in ways that were previously unremarkable or unknown. Hence, change is quantitatively significant or the elements are combined in such previously unfamiliar ways that many of the current generation of wars can be considered new.[76]

Many scholars argue that the diminution in number of large-scale, inter-state (international) wars from the current scene of international relations is a 'new' element of international order. Certain norms and laws pertaining to international armed conflict are in place since the end of the First World War or even since the 19th century.[77] The attributes of war have changed, as have its subjects.

3.1 The Prevalence of Internal Conflicts

Today, there are more internal (intra-state) than international (inter-state) conflicts: "With 254 intrastate and 91 interstate cases, respectively, more than two thirds of the conflicts monitored in 2008 were internal conflicts"[78]. This implies features such as ways of waging war, unpredictable parameters, and situations of internal chaos. The causes of such internal trouble are varied, ranging from ethnic strife, economic disparities, regional geopolitics, political divisions and turmoil and the search for identity. However, in most cases, the consequences are relatively similar: human rights violations or threats to human rights, insecurity, displacement, casualties and trauma which constitute the second element that characterises the international order.

New features of wars have thus appeared on the international scene today. Some of these are particularly relevant for the research topics under consideration, such as the prevalence of civilians as the targets and victims of wars, the increased

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[76] Hoffman, Peter J. and Weiss, Thomas G. *Sword & Salve: Confronting New Wars and Humanitarian Crises*. Lanham (MD, USA): Rowman and Littlefield. New Millennium Books in International Studies, 2006, p. 57.

[77] The Kellogg-Briand Pact and the Hague Conventions.

[78] *Conflict Barometer 2008*, Heidelberg Institute for International Conflict Research, 2008. Available at: www.hiik.de/en/konfliktbarometer/index.html (accessed May 20, 2009).
According to the *Armed Conflicts Report 2008*, 26 of the 30 conflicts in the world in 2007 were hosted within a country. See the *Armed Conflicts Report 2008,* Project Ploughshares, Canada. Statistics available at: http://www.ploughshares.ca/libraries/ACRText/Summary2007.pdf (accessed May 23, 2009).

role of non-state actors and of civil society and the fact that state borders are less meaningful in armed conflict. All of these aspects have forced international actors to adapt to new situations and challenges, and to endorse new ways of dealing with the features of the wars of today. At this point, the issues discussed above, such as human security and the idea of moving beyond sovereignty when a state does not fulfill its responsibility to protect its citizens and their rights, take on their full meaning. In other words, the international order of today must reconcile issues critical to the past systems, and the new features of wars.

> A new approach to security is needed because the analytic frameworks that have traditionally explained wars between states – and prescribed policies to prevent them – are largely irrelevant to violent conflicts *within* states. The latter now make up more than 95% of armed conflicts.[79]

Armed conflict in the current international scene may occur because of a government killing civilians or committing mass violations of human rights, genocide, threats to international peace and security and the like. However, what 'threats to international peace and security' mean today may involve various elements - the spillover of refugees, threats to the security of citizens, weak national institutions, ethnic differences, and the collapse of states as well as humanitarian crises and emergencies. These are among the facets to be discussed in the following chapters.

3.2 Civilians as War Victims

Armed conflict today, in many cases, targets civilians. Indeed, as was the case in Rwanda for example, a specific ethnic group carries out attacks against another. In many cases, the government is the perpetrator of violence and civilians are the main victims of internal armed conflict, since no external party is directly involved. This is undeniably a feature of the internal conflicts of the 1990s and early 2000 years. Since governments benefit from the norm of non-intervention in internal affairs granted by the United Nations Charter[80] and are the primary guardians of their citizens' rights, the protection of civilians in times of armed conflict falls under their responsibility. The main argument at this point is that, if a state is unable or

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[79] *Human Security Report 2005*, *op. cit.*, p. viii.

[80] UN Charter, Chapter 1: Purposes and Principles, Article 2.7: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state..."

unwilling to live up to this responsibility, that responsibility shall be forfeited to the international community as a whole, so that the civilians and their lives are adequately protected: this is the core principle of the 'responsibility to protect'.

> At few times in history have so many people been on the move. The extent of human mobility today is blurring the traditional distinctions between refugees, internally displaced people, and international immigrants.[81]

Refugees and internally displaced persons are among the most vulnerable groups of civilians, due to their status in cases of forced displacement, and to the collapse of the meaning of borders, in the case of refugees. The latter are forced to flee from their place of origin or residence and to look for a safer location in a neighbouring country. Internally displaced persons are forced to move, in most cases for the same reasons as refugees, but remain confined within the borders of their state of origin or habitual residence, while the latter may be the perpetrator of attacks and armed conflict. Because of this major legal and policy distinction, internally displaced persons are more prone to violence and human rights abuses and to lack of protection, as a civilian group of victims. This is an essential question in the human security debate and in the responsibility to protect argument. When civilians are no longer protected by their state, and are not entitled to formal international legal framework, the world cannot sit idly by and wait for human lives to be taken.

3.3 'Human' and 'Humanitarian' Concerns: Human Security at Stake - Definition of Human Security

National security relates to threats to a state's security, whereas human security pertains to the protection of individuals and their rights. There seems to be confusion around the definition and scope of what human security encompasses:

> Human security is a relatively new concept, now widely used to describe the complex of interrelated threats associated with civil war, genocide and the displacement of populations.
> All proponents of human security agree that its primary goal is the protection of individuals. However, consensus breaks down over precisely what threats individuals should be protected from. Proponents of the 'narrow' concept of human security focus on violent threats to individuals... Proponents of the 'broad' concept of human security argue that the threat agenda should include hunger, disease and natural disasters because these kill far more people than war, genocide and terrorism combined.[82]

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[81] Guterres, António. "Millions Uprooted: Saving Refugees and the Displaced", *Foreign Affairs*, Vol. 87, No. 5, September/October 2008, p. 90.
[82] *Human Security Report 2005, op. cit.*, p. viii.

The Commission on Human Security[83], established in 2001, provides a definition of human security.

> The Commission on Human Security's definition of human security: to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment. Human security means protecting fundamental freedoms— freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.[84]

Ban Ki-moon explains the difference between the responsibility to protect and human security.[85]

> RtoP should also be distinguished from its conceptual cousin, human security. The latter, which is broader, posits that policy should take into account the security of people, not just of States, across the whole range of possible threats.

The 'Responsibility to Protect' also addresses human security

> Human security means the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms. The growing recognition worldwide that concepts of security must include people as well as states has marked an important shift in international thinking during the past decade.[86]

Human security is defined in the broad sense as 'freedom from want' and in the narrow sense as 'freedom from fear'[87]. This distinction crystallised in the United

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[83] The Commission on Human Security was established by the Government of Japan. It consisted of two Co-Chairs, Sadako Ogata and Amartya Sen and 10 other Commissioners. The Commission delivered its final report, *Human Security Now*, in May 2003. For further information, see http://www.humansecurity-chs.org/ (accessed January 27, 2009). For the full report of the Commission, see http://www.humansecurity-chs.org/finalreport/index.html (accessed January 27, 2009).

[84] Commission on Human Security. *Human Security Now.* New York: Commission on Human Security, 2003, p. 4.

[85] Ki-moon, Ban. "Responsible Sovereignty: International Cooperation for a Changed World", Speech delivered in Berlin, 15 July 2008, available at: http://www.globalpolicy.org/component/content/article/154/26074.html (accessed June 3, 2009).

[86] *The Responsibility to Protect, op. cit.*, para. 2.21.

[87] Franklin D. Roosevelt articulated the 'four freedoms' in his Address to Congress on January 6, 1941

> In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.
> The first is freedom of speech and expression – everywhere in the world.
> The second is freedom of every person to worship God in his own way – everywhere in the world.

Nations Development Programme's *Human Security Report* of 1994.[88] The freedom from want aspect is closely linked to development, whereas freedom from fear is in essence freedom from threats to life and from violence.[89] Security from threats to life can be associated to the promotion of human rights and the lack of violations of these rights, and in turn to 'protection' of individuals. This corroborates the trend of thought which emphasises that people, citizens and individuals are at the forefront of international order concerns[90].

Increased Visibility of 'Human' Suffering and Insecurity

Not only are wars more murderous for civilians, they are also more visible. Due to the increased availability and exchange of information, connected to the globalisation processes and to the wider media coverage currently offered, humanitarian emergencies and threats to human security are more publicised. In fact, the more the crisis will 'attract' viewers, the larger its chances to be broadcast at prime time hours. This is what happened to the Darfur crisis.[91]

3.4 'The Responsibility to Protect' In a Title

> The third is freedom from want – which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world.
> The fourth is freedom from fear – which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor – anywhere in the world.

Available at: http://www.fdrlibrary.marist.edu/od4frees.html (accessed May 23, 2009).

[88] UNDP, *Human Development Report*. New York, Oxford: Oxford University Press, 1994. Available at: http://hdr.undp.org/en/reports/global/hdr1994/chapters/ (accessed January 29, 2009): "There have always been two major components of human security: freedom from fear and freedom from want" (p. 24).

[89] This latter aspect will be of interest in this analysis.

[90] "Human security means protecting fundamental freedoms. It means protecting people from critical and pervasive threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that, when combined, give people the building blocks for survival, livelihood and dignity. Human security is far more than the absence of violent conflict. It encompasses human rights, good governance and access to economic opportunity, education and health care. It is a concept that comprehensively addresses both 'freedom from fear' and 'freedom from want' and is based on a framework that emphasizes both 'protection' and 'empowerment'", quoted from OCHA's Internet site, available at: http://ochaonline.un.org/tabid/2421/Default.aspx (accessed January 27, 2009).

[91] The chaotic Darfur situation was not new at the time the public came to know about it. On the contrary, it had been lasting for a long time. However, because there were now images of children and people starving and who did not benefit from care, and also due to the media coverage, the world came to see what was occurring in Darfur.

Interestingly enough, the power of terminology and new ways of thinking about human security have led academics to revive the debate. Indeed, the terms 'security' and 'protection' are very often associated with human rights and humanitarian concerns. The momentum generated by the September 11, 2001 events enabled the consideration of 'human security' issues, since the words now carried a more dramatic note. It became easier to use the word 'humanitarian', which is very often confused or disliked[92], even in the names of UN-related agencies and in other circles. Here, one must note a very important point, when discussing terminology. The Responsibility to Protect report's title was extremely well chosen. Indeed, the International Commission on Intervention and State Sovereignty (ICISS)[93] debated about this, since it had to be subtle enough not to divulge its content at first sight, and explicit enough to say it all in a title. The association of the concepts of responsibility, a clear reference to sovereignty although without saying so, and of protection, a direct reference to human rights and human security terminology, are well thought.

In light of what has been presented in the sections above, the question of whether humanitarian intervention can be undertaken for 'human protection' purposes arises. This raises issues at the ethical, moral, legal, and operational levels. Indeed, what is the moral threshold? How many lives 'must be lost'? Is the intervention really only based on 'human' and security motives? Will the intervention save lives, or improve the conditions for the victims? What legal precedent does this set for future interventions and similar cases? Have other political and strategic measures been exhausted, before considering intervention? What is the prospect for a durable and lasting peace after a potential intervention? Who will ensure the transition? What are the operational plans? These are among the points which will be addressed in the next sub-chapter on the responsibility to protect.

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[92] This is particularly the case when it is associated with 'intervention'.

[93] The International Commission on Intervention and State Sovereignty, or ICISS, was established by the government of Canada as an independent body composed of twelve commissioners. The ICISS's one year mandate aimed at "Reconciling the international community's responsibility to act in the face of massive violations of humanitarian norms while respecting the sovereign rights of states poses a unique challenge. The Commission was an independent international body designed to help bridge the two concepts. Its one year mandate was to build a broader understanding of these issues and to foster a global political consensus on how to move towards action within the UN system", according to the ICISS Internet site: http://www.iciss.ca/about-en.asp (accessed May 23, 2009).

4 The Responsibility to Protect Concept

In August-September 2000, the International Commission on Intervention and State Sovereignty was established in response to the challenge put forward by the UN Secretary-General to reconcile the issues of state sovereignty and humanitarian intervention. The Commission, set up under the auspices of the Canadian government, had the mandate to

> promote a comprehensive global debate on the relationship between intervention and state sovereignty. Its aim has been to build a broader understanding of these issues; to reconcile the international community's responsibility to act in the face of massive violations of humanitarian norms while respecting the sovereign rights of states; and to foster a global political consensus on how to move towards more effective action within the UN system.[94]

To achieve this, a total of twelve commissioners from different regions and backgrounds were appointed.[95] Between the autumn of 2000 and June 2001, the Commission held five meetings in several different locations. In 2001, the members of the Commission met at eleven regional roundtables[96], in order to discuss the draft report that they were to submit as the conclusions of the encounters.

The fact that Canada is the 'champion' of the 'Responsibility to Protect' is interesting for two reasons. Canada is among the middle powers and has a definite foreign policy interest in taking initiatives linked to the promotion of peace, human security and human rights.[97] Canada had struggled with the intervention in Kosovo, this probably also contributed to the country taking the lead in response to the challenge raised by Kofi Annan. Moreover, Canada is also very much involved in

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[94] International Commission on Intervention and State Sovereignty website, under "About the Commission", "Frequently Asked Questions", at www.dfait-maeci.gc.ca/iciss-ciise/faq-en.asp. Quoted from the website's text.

[95] Gareth Evans and Mohamed Sahnoun, Co-Chairs; Gisèle Côté-Harper, Lee Hamilton, Michael Ignatieff, Vladimir Lukin, Klaus Naumann, Cyril Ramaphosa, Fidel Ramos, Cornelio Sommaruga, Eduardo Stein and Ramesh Thakur.

[96] Ottawa, January 15; Geneva, January 30-31; London, February 3; Maputo, March 4; Washington DC, May 2; Santiago, May 4; Cairo, May 21; Paris, May 23; New Delhi, June 10; Beijing, June 14; St-Petersburg, July 16.

[97] In this respect, the example of the Global Ban on Anti-Personnel Landmines is pertinent. Canada was the initiator of this movement, which ultimately led to the adoption of the *Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction*, which was signed in Ottawa in 1997 and entered into force in 1999.

the 'Human Security Network'[98] activities, which include security policies focused on the protection and security of the individual.

4.1 The ICISS Report: the normative framework is laid down[99]

The report produced by the International Commission on Intervention and State Sovereignty in 2001, entitled *The Responsibility to Protect*, is

> about the so-called 'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive - and in particular military - action, against another state for the purpose of protecting people at risk in that other state. The Commission was asked to wrestle with the whole range of questions - legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinions around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.
> The report's central theme is 'The Responsibility to Protect', the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.[100]

The 'Responsibility to Protect' Report contains eight sections.[101]. The core elements of the concept are contained within the three following issue sections: the Responsibility to Prevent, the Responsibility to React, the Responsibility to Rebuild.

While the Responsibility to Prevent mainly looks at how to prevent crisis situations, with a focus on the causes of humanitarian catastrophes, the Responsibility to React deals with the concrete and practical steps to justify, plan

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[98] "The Human Security Network (HSN) is a group of like-minded countries from all regions of the world that, at the level of Foreign Ministers, maintains dialogue on questions pertaining to human security. The Network includes Austria, Canada, Chile, Costa Rica, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, Thailand and South Africa as an observer. The Network has a unique inter-regional and multiple agenda perspective with strong links to civil society and academia. The Network emerged from the landmines campaign and was formally launched at a Ministerial meeting in Norway in 1999. An informal, flexible mechanism, the Human Security Network identifies concrete areas for collective action. It pursues security policies that focus on the protection and security requirement of the individual and society through promoting freedom from fear and freedom from want. The Network plays a catalytic role by bringing international attention to new and emerging issues. By applying a human security perspective to international problems, the Network aims to energize political processes aimed at preventing or solving conflicts and promoting peace and development". Quoted from the Human Security Network's Internet site: http://www.humansecuritynetwork.org/network-e.php (accessed January 20, 2009).

[99] For a discussion regarding the responsibility to protect as concept, principle or norm, see Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, pp. 4-7.

[100] International Commission's website, under ICISS Report, at http://www.dfait-maeci.gc.ca/iciss-ciise/report-en.asp. Quoted from the website's text.

[101] The Policy Challenge; A New Approach; the Responsibility to Prevent; the Responsibility to React; the Responsibility to Rebuild; The Question of Authority; the Operational Dimension; the Way Forward (and two appendixes).

and coordinate operational humanitarian intervention (intervention for human concern purposes). The Responsibility to Rebuild provides guidelines for post-intervention situations, and argues that any type of intervention should be undertaken by the right authority, that is, under the umbrella of the UN Security Council.

The Responsibility to React allows for military intervention only in two cases, namely:

A. **large scale loss of life**, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or

B. **large scale "ethnic cleansing"**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

Both these cases are applicable to internal displacement. Military intervention in response to civil war in cases of internal displacement would, however, require satisfaction of the precautionary principles contained in the normative framework, which will be explained in this thesis, in line with just war principles. The aims of the 'Responsibility to Protect' are shown in the table below.

Table 2: Objectives of the 'Responsibility to Protect'

1. Provide clear rules, procedures and criteria for determining whether and how to intervene
2. Establish the legitimacy of the intervention
3. Ensure that military intervention is undertaken for the purposes proposed, is effective and is carried out with careful attention to human costs
4. Eliminate the causes of conflict and encourage durable and sustainable peace

Source: adapted from the International Commission on Intervention and State Sovereignty, ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.* Ottawa: International Development Research Centre, December 2001, p. 11

The relevance of the responsibility to protect principles to the normative debate surrounding humanitarian intervention and state sovereignty will be demonstrated throughout this research endeavour. Marc Saxer identifies the contribution of the 'Responsibility to Protect' at the political, legal and policy levels.[102]

> As a political instrument, R2P attempts to overcome the divisive North South debates over 'humanitarian interventions' and build a broad

[102] Saxer, Marc. "The Politics of the Responsibility to Protect". Dialogue on Globalization, *Friedrich Ebert Stiftung Briefing Paper 2*, April 2008, p.2.

> consensus on how the international community can deal with cases of mass atrocities occurring in internal conflicts. In this respect, it aims to resolve ideological blockades – beyond geopolitical or economic interests – and regain the capacity to act for the United Nations in cases where timely action is needed most.
>
> On a legal level, R2P attempts to reconcile two sometimes diverging principles of international law: state sovereignty and human rights. On a policy level, it addresses the proliferation of state failure and violent internal conflict with all its implications internally, in the region and on a global level.

Thus, the intervention must be carried out for the right reason, with the right intention (to avert human suffering); as a last resort, when all non-military means have been considered and exhausted, including peaceful resolution of the crisis and diplomacy; with proportional means, in terms of scale, duration and intensity, for human protection purposes; with reasonable prospects of averting or alleviating the suffering which justified the intervention; under the appropriate authority, the United Nations Security Council; with a clear mandate and clear objectives; under a central military command, in accordance with agreed guidelines and operational principles; in coordination with international and regional organisations.

The 'Responsibility to Protect' doctrine attracts attention for several reasons. Firstly, it deals with sovereignty and humanitarian issues. These are traditional building blocks in International Relations, and also relate to International Law and International Humanitarian Law. Furthermore, the idea of a focus from the victims' point of view is essential for internally displaced persons, who cannot voice their plea on the international scene. The military intervention pre-conditions offer a pertinent opportunity to test concept against practice.

The current international order requires accountability of the political and judiciary functions. The responsibility for citizens lies with the state authorities, as a 'built-in' feature of sovereignty. Nevertheless, there is a corollary responsibility, which falls upon the international community to ensure that protection and assistance are granted, that large-scale loss of life and suffering are put to an end, and that basic human rights are upheld. The consideration of current aspects, emerging challenges and of all the above-mentioned issues is, therefore, a necessity.

4.2 Relevance of the Responsibility to Protect Concept to Internally Displaced Persons

How can the 'Responsibility to Protect' principles be relevant to IDPs? According to the Report of the International Commission on Intervention and State Sovereignty, the basic principles of the concept are twofold. "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself." "Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."

From the above-mentioned elements related to the civilian population of a state, it seems obvious that IDPs are concerned by this normative framework, for the following reasons: IDPs belong to the civilian population of a state; they have not crossed an international border and *ipso facto* remain within the jurisdiction of their country of origin or residence. Francis Deng, the former UN Representative of the Secretary-General on Internally Displaced Persons, stated:

> For the internally displaced, this [...] concept [sovereignty as responsibility] has the potential for bridging national, regional and international responses to this global crisis and thereby build an effective and comprehensive system for ensuring their protection.[103]

A wide ranging discussion took place on the need for operational or inter-agency collaboration to optimise the protection and assistance dimension related to IDPs.[104] This has been illustrated by the various efforts to integrate internally displaced persons within the scope of UNHCR's activities, to synchronise the roles of international and non-governmental organisations in order to avoid duplication of efforts, and to canalise responsibilities. Both academics and professionals have expressed their views on this matter and, whereas some were of the opinion that to

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[103] Francis M. Deng, "The Plight of the Internally Displaced: A Challenge to the International Community". Article presented to the UN High Level Panel on Threats, Challenges and Change, April 8, 2004.

[104] Former UN Secretary-General Annan declared: "Internal displacement has emerged as one of the great human tragedies of our time. It has also created an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis...protection should be central to the international response and [with] assistance should be provided in a comprehensive way that brings together the humanitarian, human rights, and development components of the United Nations". "Preface", Deng, Francis M. *Masses in Flight: The Global Crisis of Internal Displacement*. Washington D.C.: Brookings Institution, 1998.

centralise all IDP-related activities under the umbrella of the High Commissioner for Refugees would be wise, it seemed that for others, given the dimension of the worldwide phenomena, it would be preferable to grant responsibility for IDPs to a specific unit. This became a reality when the Unit on Internal Displacement was created within the Office for the Coordination of Humanitarian Affairs (OCHA), and was given the mandate of cooperating with all the organisations, agencies, NGOs and often actors involved in internal displacement cases. This has enabled a more centralised effort, and in collaboration with the dedication of non-governmental organisations, such as the Norwegian Refugee Council/Global IDP Project and the Brookings Institution, the general knowledge of internal displacement and related issues has been broadened.

As stated in 2004 by Simon Bagshaw and Diane Paul, in their evaluation of the protection of internally displaced persons within the UN framework,

> The UN's approach to the protection of internally displaced persons is still largely *ad hoc* and driven more by the personalities and convictions of individuals on the ground than by an institutional, systemwide agenda.[105]

Related to this point is the creation of a new mechanism to integrate IDP issues into all relevant areas including human rights, humanitarian concerns and the like. In November 2003, the UN Secretary-General announced the creation of a 16-member High-Level Panel to study Global Security Threats, and recommend necessary changes.[106] Subsequently, at its 60th session held in March-April 2004, the Commission on Human Rights unanimously adopted a resolution (2004/55)

> Request[ing] the Secretary-General, in effectively building upon the work of the Representative of the Secretary-General on internally displaced persons, to establish a mechanism that will address the complex problem of internal displacement, in particular by mainstreaming the human rights of the internally displaced into all relevant parts of the United Nations system.[107]

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[105] Bagshaw, Simon and Paul, Diane. "*Protect or Neglect? – Towards a More Effective United Nations Approach to the Protection of Internally Displaced Persons*", The Brookings-SAIS Project on Internal Displacement and the UN Office of the Coordination of Humanitarian Affairs/Inter-Agency Internal Displacement Division, November 2004, p. 3. Available at: http://www.reliefweb.int/rw/lib.nsf/db900SID/OCHA-69DEXE?OpenDocument (accessed January 27, 2009).

[106] UN Press Release SG/A/857, November 4, 2003. This had been announced in the Secretary-General's address to the General Assembly on September 23, 2003. The terms of reference of the Panel state that it should consider collective action related to global challenges, identify future threats to international peace and security, and make recommendations as to any changes which need to take place.

[107] UN Economic and Social Council document E/CN.4/2004/L.11/Add.5, 21 April 2004. Commission on Human Rights 60th session, agenda item 21(b), Resolution 2004/55.

Recent developments will be discussed in later chapters. In 2004, Dr. Walter Kälin, Professor at the Faculty of Law of the University of Berne, Switzerland, was appointed the new UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.

The application of the concept to IDPs will focus on areas where the principles converge with the practice. It will seek to prove that certain pre-conditions for military intervention should be met prior to any action and it will highlight difficulties in its application. Furthermore, it will look to identify deficiencies and discrepancies in the responsibility to protect principles; demonstrate that internally displaced persons can become a threat to international peace and security and confirm its relevance to this situation, and accordingly allow for suggested improvements or amendments.

Intervention for human protection purposes, or on humanitarian grounds, has been very difficult to implement in recent years. Obviously, few states would wish to see a right to interfere in their internal affairs become widespread. Intervention for humanitarian motives would also create a precedent and imply that the international community can intervene where and when it deems necessary. The essential point here is that intervention for humanitarian motives should not become a constant practice, and that definite pre-conditions should be formulated to ensure that this is not abused. This is the argument set forward by those who claim that intervention can only take place under the auspices of the United Nations, with prior authorisation and clearance. Other scholars argue that there is an obligation – moral or ethical in nature – on the part of the international community to intervene when and where gross violations of human rights are occurring. This tension between the two asserted views will be one of the major points of discussion in the early chapters of this thesis. Resolution 688 of 5 April 1991 regarding the situation of the Kurds in Iraq[108] will definitely be a strong point to argue, since it condemns the repression of civilians, and states that the consequences thereof could threaten international peace

[108] Full text of the Resolution available at http://www.un.org/Docs/scres/1991/scres91.htm (accessed January 27, 2009). See in particular operative paragraphs 1 and 3. This Resolution was not adopted under Chapter VII of the UN Charter but in its 'shadow', since Resolution 687 (3 April 1991) was adopted under Chapter VII, and involves military intervention.

and security. This can certainly serve as a basis for future considerations of humanitarian intervention.

The key issue will be to determine whether all the suggested changes and essential elements of the concept can be applied. The least realistic proposal is that the permanent members of the UN Security Council abstain from using their veto power. In a situation where a state is responsible for internal displacement, it is unthinkable that other supporting states (supposing the responsible state is not represented in the Security Council) or that this very state (if belonging to the permanent members' 'club') would let go of the veto power and allow for intervention. This seems to be a weakness in the normative framework, and a preliminary obstacle in the research.

The aim of this research is to demonstrate that the 'Responsibility to Protect' concept is applicable to internally displaced persons and should become a benchmark for any consideration of intervention for human protection purposes, and to demonstrate that 'humanitarian intervention' should be carried out in line with certain fundamental principles and closely monitored prior, during and after the operations are carried out. It is expected that the Responsibility to Protect will match, with a few exceptions, all conditions and requirements related to dealing with IDPs. Another issue to be considered is the setting of priorities for the internally displaced. The preliminary outlook of the research is very positive, as the normative framework has been developed through broad consultations, and has involved experts from various fields and backgrounds, to ensure that all cases are taken into consideration. Thus, internal displacement has been foreseen as one of the conditions to which the responsibility to protect norm is applicable.

5 Preliminary Conclusions

The notion that humanitarian intervention, the responsibility to protect and related concerns are definitely applicable to internally displaced persons[109] should draw policy-makers, academics and field actors to integrate these into practical application.

> The theory and practice of international relations are full of dilemmas related to the allocation of responsibility. Consider the presence of genocide, starvation, HIV epidemics, and global warming. Each raises a multitude of questions on the character of responsibility. Who is responsible to take action in response to these problems? What possible limits exist for the scope of our responsibility in a global context as opposed to in more bounded communities such as the state and the family?
> International relations theorists have traditionally dealt mainly with relations between states, and not paid much attention to examining the spheres of responsibility of a broader category of actors in world politics. The end of bipolarity led, however, to an ambition to give the responsibility to protect human rights a more prominent role in international politics[110].

5.1 Conflict Prevention Strategies

In recent years, several reports have focused on the prevention of conflict, in line with the argument that development and conflict prevention are clear priorities for the United Nations for both the short and long-term. This is the case of the Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change[111], and of the Secretary-General's Millennium Summit Report[112], the Secretary-General's Action Plan to Prevent Genocide[113] and the World Bank Report[114]. Indeed, the Report of the High-Level Panel on Threats, Challenges and

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[109] This is the main hypothesis of this research endeavour.
[110] Bexell, Magdalena. 2005. *Exploring Responsibility: Public and Private in Human Rights Protection.* Lund: University of Lund, Department of Sociology. Lund Political Studies Vol. 135, p. 1.
[111] *A More Secure World: Our Shared Responsibility, op. cit.*
[112] Annan Kofi A. 2000. *We the Peoples: The Role of the United Nations in the 21st Century.* United Nations: Department of Public Information. Available at http://www.un.org/millennium/sg/report/full.htm (accessed January 12, 2008).
[113] United Nations' Secretary-General Kofi Annan. *Action Plan to Prevent Genocide.* UN Doc. SG/SM/9197, HR/CN/1077. 7 April 2004.
[114] Collier, Paul. "Breaking the Conflict Trap: Civil War and Development Policy", *The World Bank Policy Research Report.* Washington D.C.: World Bank and Oxford University Press, 2003.

Change, in its main body and in Annex I, 'Summary of Recommendations', provides elements of conflict prevention, through the clusters[115].

In most cases, the build-up towards the disintegration of the situation and the initiation of conflict or grave violations of human rights is preceded by signs, as Susan Woodward suggests: "The moment of breakdown into high-intensity or large-scale violence, the moment normally coded as war and noticed by outsiders, is most frequently due to some 'trigger'".[116] If this is the case, then it seems that a close monitoring of cases and situations, where these 'triggers' are either known or suspected to exist, could lead to an early recognition of a problematic situation and in turn to preventive action. A large number of non-governmental organisations specialise in country-specific or region-specific issues, and could be a first source of information. The International Crisis Group, for example, conducts extensive and regular research on the situations of crises around the world. The ICG's website[117] provides details of where these crises are taking place, and the ICG's monthly review, *CrisisWatch*[118], provides insights into the evolution of the situation. Of course, mention is made of this organisation, since its credibility is high, which sets it in a prime position to be a source of information. The International Crisis Group also hosts the *CrisisWatch* database and provides regular reports on countries and regions which are at risk of a crisis. The International Federation of Red Cross and Red Crescent Societies also works on crisis monitoring. However, it is important to

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[115] Respectively, economic and social threats, including poverty, infectious disease and environmental degradation; inter-State conflict; internal conflict, including civil war, genocide and other large-scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; transnational organised crime.

[116] Woodward, Susan L. 'Do the Root Causes of Civil War Matter ? On Using Knowledge to Improve Peacebuilding Interventions', *Journal of Intervention and Statebuilding*, 2007, Vol. 1, No. 2, p. 158.

[117] www.icg.org or www.crisisgroup.org

[118] *CrisisWatch* is a 12-page monthly bulletin designed to provide busy readers in the policy community, media, business and interested general public with a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world. Published at the beginning of each calendar month, *CrisisWatch*

- summarises briefly developments during the previous month in some 70 situations of current or potential conflict, listed alphabetically by region, providing references and links to more detailed information sources;
- assesses whether the overall situation in each case has, during the previous month, significantly deteriorated, significantly improved, or on balance remained more or less unchanged;
- alerts readers to situations where, in the coming month, there is a particular risk of new or significantly escalated conflict, or a particular conflict resolution opportunity (noting that in some instances there may in fact be both); and
- summarises Crisis Group reports and briefing papers that have been published in the last month.

gain access to local knowledge and information as well, since many conflicts have a regional or local component, which can only be assessed by experts. This was the case, for example, of the crises in Rwanda and Darfur (Sudan), where the lack of local understanding would have precluded those involved from being able to act.

5.2 The Responsibility to Protect: Norm Development

It is particularly relevant for international relations scholars, as well as for political scientists and international lawyers, to consider the process of norm setting and how this has developed in the case of the responsibility to protect. From a challenge put forward by then UN Secretary-General Kofi Annan to the international community in 2000, the 'responsibility to protect' concept has expanded to be included in discussions both within and outside the United Nations.

Francis Deng and his colleagues coined the expression 'sovereignty as responsibility' in the 1990s[119]. Deng's argument was that states are sovereign on the international scene, since national sovereignty is granted through international law to members of the international community. However, the related aspect of responsibility, both to their citizens and to the other members of the international community, also has a weighting. The novelty of the concept is that states are bound to follow the rules of 'good citizenship' among each other, as well as to uphold certain rights and fulfil duties towards their citizens. Deng also linked the notion of responsibility to that of protection in another instance[120]. Thus, his focus and interest was on victims of conflict, their rights as citizens, and on persons who were displaced within their own country. These also happen to be the key themes of the responsibility to protect concept.

From the time that the International Commission on Intervention and State Sovereignty published its report, *The Responsibility to Protect*, this terminology – as well as its inherent principles – became familiar within various circles. The advocacy and promotion of the concept carried out by the ICISS Commissioners[121]

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[119] See Cohen, Roberta. "Human Rights Protection for Internally Displaced Persons", Refugee Policy Group, June 1991 and Deng, Francis M. et al. *Sovereignty as Responsibility: Conflict Management in Africa.* Washington, D.C.: Brookings Institution, 1996.

[120] Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community.* Washington D.C.: Brookings Institution, 1993.

[121] Most notably Gareth Evans, Mohamed Sahnoun, Cornelio Sommaruga and Ramesh Thakur, as well as Thomas Weiss, who chaired the research group which assisted the Commission.

between 2001 and today is impressive. Despite the events taking place in the last quarter of the year 2001 and reduced attention devoted to the responsibility to protect at the time of its release, its authors made tremendous efforts to publicise the most important features of the normative framework – the three main aspects of prevention, reaction and rebuilding, and the positioning of the debate from the perspective of the victims and the importance of state responsibility for protection of its citizens. Through conferences, articles[122], speeches and dissemination, the advocates of the responsibility to protect promoted their work, unfailingly responding to those who questioned its potential in light of the events of September 2001 and explaining the tenets of the concept. The Commissioners now needed a way to secure endorsement. This was done through the Secretary-General, who was a known supporter of the responsibility to protect concept. Indeed, the 2004 Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change[123] refers to sovereignty as responsibility. In 2005, at the UN World Summit, world leaders endorsed the responsibility to protect in the World Summit Outcome document.[124]

In this case, the United Nations served as a catalyst for a normative framework which originated outside the doors of the UN[125]. Moreover, since the responsibility to protect was mentioned in both these United Nations documents, it now belongs to soft law[126], which also contributes to the normative development of the concept. More references have been made to the responsibility to protect in UN Security Council resolutions[127]. Moreover, non-governmental organisations have actively engaged in information activities. This has not only made civil society and the general public aware of the responsibility to protect, but has also put pressure on states to use the terminology and to react to the concept. A further development is the nomination of Francis Deng as the Secretary-General's Special Adviser for the Prevention of Genocide and Mass Atrocities in May 2007.

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[122] The most noted of which was the one published in Foreign Affairs in November/December 2002: Gareth Evans and Mohamed Sahnoun, 'The Responsibility to Protect', *Foreign Affairs*, Vol. 81, Issue 6, November/December 2002.

[123] *A more secure world: Our shared responsibility, op. cit.*, paras. 29 and 30.

[124] World Summit Outcome Document, *op. cit.*, paras. 138-139.

[125] Quite ironically, from a Commission set up by a government. The government of Canada should be recognised as the one that heard the plea of the then UN Secretary-General, and responded to it, in a spirit of engaging on the path to new ideas, new challenges and securing momentum for this idea.

[126] For a detailed explanation of 'soft law', see footnote 46.

[127] Notably in preambular paragraphs of resolutions relating to the situation in Darfur.

> No idea has moved faster in the international normative arena than "the responsibility to protect". This ... details the steady journey of this idea from a gleam in a small group's eyes to acceptance as a norm of international behavior by the leaders of the whole global community – the idea that when it comes to the fundamental issues of human security involved in genocide, ethnic cleansing, and other major crimes against humanity, the rights of individual humans trump the sovereignty of the thuggish states in which they live.[128]

The next chapter will focus on humanitarian intervention by addressing the international system and state sovereignty, definitional aspects, ethical and moral considerations, the law of humanitarian intervention, international humanitarian law and the protection of civilians, the role of the Security Council and further issues for consideration.

> It is easy to see how so-called humanitarian intervention, used in place of the U.N. process, opens up broad opportunities to justify the use of force based on subjective evaluations and without any of the Security Council's restraint. This could lead to unintended, disastrous results.[129]

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[128] Evans, Gareth. "Foreword" *in* Weiss, Thomas G. *Humanitarian Intervention: Ideas in Action.* Cambridge: Polity Press, 2007, p. X.

[129] Primakov, Yevgeny. "UN Process, Not Humanitarian Intervention, Is World's Best Hope", *New Perspectives Quarterly*, 2 September 2004. Available at: http://www.digitalnpq.org/global_services/global%20viewpoint/02-09-04primakov.html (accessed January 23, 2009).

Chapter 2 Humanitarian Intervention

Sovereignty and humanitarian intervention are at the core of international relations, and the attempt to reconcile these two dimensions is key to the responsibility to protect concept. The importance of humanitarian intervention – or the lack of will to conduct 'intervention of human purposes' as put by the ICISS Responsibility to Protect Report – justifies this chapter devoted to defining and considering ethical, moral and political aspects related to humanitarian intervention. In fact, it would have been unthinkable to carry out research related to the responsibility to protect, internally displaced persons, internal conflicts, civilians, state sovereignty, Just War, international humanitarian law and human rights without addressing humanitarian intervention and this chapter aims to present the facets of these issues.[130]

In 2000, UN Secretary-General Kofi Annan asked the international community:

> ...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?[131]

In hindsight of the genocide which took place in Rwanda in 1994-1995, the following interrogations seem pertinent:

> But what, if anything, should the international community have done to stop the carnage? Did it have a moral duty to intervene? Did it have a legal right to do so? What should it have done if the United Nations Security Council had refused to authorize a military intervention? If it had a duty to intervene, how could it have overcome the political barriers to intervention? And, most importantly, what measures should be taken to prevent similar catastrophes in the future?[132]

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[130] Most of the literature pertaining to humanitarian intervention deals with these issues, although in most cases not with all of them in one place. Thus, a particular focus was set on gathering various sources from different perspectives: politics, international relations, international law, peace and war studies, philosophy and ethics.

[131] *The Responsibility to Protect, op. cit.*, "Foreword", p. vii.

[132] Holzgrefe, J. L. "The humanitarian intervention debate" *in* Holzgrefe, J.L. and Keohane, Robert O. *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Cambridge: Cambridge University Press, 2003, p. 17.

Gareth Evans also points out that "if there is one thing as bad as using military force when we should not, it is *not* using military force when we *should*."[133]

These questions provide a focus for the analysis that will follow in this chapter. Section 1 will provide a working definition of humanitarian intervention and set the context of sovereignty and the international state system. Section 2 lays the background of international law pertaining to the discussion on humanitarian intervention: it will allow for the consideration of the UN Charter and other international law provisions, the role of the Security Council, the international human rights regime, laws of war and international humanitarian law. Section 3 links moral and ethical considerations through an enquiry into values, collective conscience, global civil society, the human suffering threshold and arguments against intervention. This will lead into section 4, the central issue of this chapter, namely military intervention: what is it, when is it permitted and under which circumstances, who decides of whether it should take place, how long should it last and what are the stakes and interests involved? A further section will identify what has changed since September 11, 2001, and how this affects intervention both at the conceptual and at the practical levels. Finally, the chapter will come to a close with a summary of findings and conclusions.[134]

1 Definitions

A look at the various definitions of humanitarian intervention provides an insight into the complexity of the matter. Jennifer Welsh provides the following definition: "coercive interference in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering"[135]. Holzgrefe states that intervention is "the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state

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[133] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, op. cit.*, p. 128.

[134] Case studies are not included in this analysis. For further information and case studies, see Wheeler, Nicholas J. *Saving Strangers: Humanitarian Intervention in International Society.* Oxford, New York: Oxford University Press, 2000.

[135] Welsh, Jennifer M. "Introduction" in Welsh, Jennifer M. (Ed.). *Humanitarian Intervention.* Oxford: Oxford University Press, 2004, p. 3.

within whose territory force is applied"[136]. Hassner, in Moore's *Hard Choices*, describes the range of possible elements of definition:

> The term *humanitarian* in the notion of "humanitarian intervention" is itself open to a whole spectrum of interpretations. The broadest includes any form of intervention against any form of human suffering, whether caused by flood, famine, war, civil conflict, or tyranny. The narrowest one implies staying away from the political and the military dimensions from states and coercion altogether. It postulates that an intervention ceases to be humanitarian if its motives include a selfish calculus of economic or strategic interests, or if its means or consequences lead it to choose sides to be selective among its beneficiaries, or even worse, to threaten or inflict suffering or death in the name of protection and peace[137].

Beat Schweizer, from the International Committee of the Red Cross, defines humanitarian intervention as "military operations with the primary aim of protecting or assisting victims of violence"[138]. Jean-Hervé Bradol defines intervention as "the use of armed force against one of the parties to the conflict followed by international stewardship of 'liberated' territories. It is conducted under the banner of collective security and universal morality in a context – with the exception of Iraq – of massive violence against civilian populations."[139]

1.1 'Humanitarian' intervention, or intervention for 'human protection purposes'

From the above, several elements can be inferred. Interventions are generally carried out on a third party's territory and they may involve the use of or threat of use of force. The use of such force is justified by the violation of human rights or by human suffering. In addition, there appears to be disagreement among scholars on the qualification 'humanitarian'. Does 'humanitarian' refer to the intervention itself? How can a case of forced intervention in a third party state be qualified as 'humanitarian'? Or does the word only apply to the rationale of the intervention, namely its justification and purpose? In the latter case, this would imply that the

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[136] Holzgrefe, *op. cit.*, p.18.

[137] Hassner, Pierre. "From War and Peace to Violence and Intervention: Permanent Moral Dilemmas under Changing Political and Technological Conditions" *in* Moore, Jonathan (Ed.). *Hard Choices: Moral Dilemmas in Humanitarian Intervention.* Lanham and Oxford: Rowman and Littlefield, 1998, p. 16.

[138] Schweizer, Beat. "Moral dilemmas for humanitarianism in the era of 'humanitarian' military interventions" , *International Review of the Red Cross*, Vol. 86, No. 855, September 2004, p. 554.

[139] Bradol, Jean-Hervé. "Introduction: The Sacrificial International Order and Humanitarian Action" in Weissman, Fabrice (Ed.). *In the Shadow of 'Just Wars': Violence, Politics and Humanitarian Action.* London: Hurst & Company, 2004, pp. 1-22.

adjective points to intervention for humanitarian, or 'human protection'[140], purposes, against the will of a party or government. "That military force for human protection remains a policy option at all represents new and crucial middle ground in international relations."[141]

The *'ingérence humanitaire'* and *'droit d'ingérence'* debates

The 'French doctors' movement[142] has published extensively on what Bernard Kouchner[143] and Mario Bettati[144] referred to as *l'ingérence humanitaire*[145].

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[140] For an explanation of the use of the expression 'for human protection purposes', see *The Responsibility to Protect*, p. 16:

> 2.25 The emerging principle in question is that intervention for human protection purposes, including military intervention in extreme cases, is supportable when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator. The Security Council itself has been increasingly prepared in recent years to act on this basis, most obviously in Somalia, defining what was essentially an internal situation as constituting a threat to international peace and security such as to justify enforcement action under Chapter VII of the UN Charter. This is also the basis on which the interventions by the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone were essentially justified by the interveners, as was the intervention mounted without Security Council authorization by NATO allies in Kosovo.
>
> 2.26 The notion that there is an emerging guiding principle in favour of military intervention for human protection purposes is also supported by a wide variety of legal sources – including sources that exist independently of any duties, responsibilities or authority that may be derived from Chapter VII of the UN Charter. These legal foundations include fundamental natural law principles, – the human rights provisions of the UN Charter, – the Universal Declaration of Human Rights together with the Genocide Convention, – the Geneva Conventions and Additional Protocols on international humanitarian law, – the statute of the International Criminal Court and a number of other international human rights and human protection agreements and covenants. Some of the ramifications and consequences of these developments will be addressed again in Chapter 6 of this report as part of the examination of the question of authority.
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> 2.27 Based on our reading of state practice, Security Council precedent, established norms, emerging guiding principles, and evolving customary international law, the Commission believes that the Charter's strong bias against military intervention is not to be regarded as absolute when decisive action is required on human protection grounds. The degree of legitimacy accorded to intervention will usually turn on the answers to such questions as the purpose, the means, the exhaustion of other avenues of redress against grievances, the proportionality of the riposte to the initiating provocation, and the agency of authorization. These are all questions that will recur: for present purposes the point is simply that there is a large and accumulating body of law and practice which supports the notion that, whatever form the exercise of that responsibility may properly take, members of the broad community of states do have a responsibility to protect both their own citizens and those of other states as well.

[141] Weiss, Thomas G. "R2P After 9/11 and the World Summit", *Wisconsin International Law Journal*, Vol. 24, No. 3, 2006, p. 746.

[142] This refers to the non-governmental organisation *Médecins sans Frontières* ('Doctors without Borders', founded in 1971) and the movement it generated from the 1970s addressing humanitarian assistance, exposing humanitarian crises to the media and civil society and dealing with local politicians. Aid workers were seen as a voice which could be trusted to describe the realities occurring in humanitarian crises and as heard by the international community.

[143] Bernard Kouchner, a doctor and a French politician, is the co-founder of *Médecins sans Frontières*.

This concept emerged after the conflict in Biafra, Nigeria, where Kouchner was working for the Red Cross as a doctor. Kouchner, claiming that the neutrality and the lack of political involvement of the Red Cross hampered the assistance to the victims, was involved in the creation of *Médecins sans Frontières.*

The idea behind the concept is that certain situations, those threatening the health of civilians in particular, are too precarious and could lead to the negation of state sovereignty.[146] The well-being of civilians and public health matters are held to be primary matters by advocates of the concept, above concerns of state boundaries and non-intervention[147]. *Médecins du Monde* consolidated this idea with the *droit d'ingérence*, adopted in 1987 and applied to interventions thereafter.

Humanitarian Intervention and Armed Conflict

Looking beyond the literal meaning of words, it is essential to capture the dimension of humanitarian intervention that links it to conflict[148]. In fact, this is the most crucial element: in most of the cases discussed in this chapter, it will be clear that intervention is associated with conflict. Even in the sources used for this research theme, the analyses provided were closely intertwined with discussions around the ethics and the law(s) of war. This explains the fact that separate sections of this chapter are devoted to these issues. The focus on war and humanitarian intervention will not surprise the reader, in the context of research in International

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[144] Mario Bettati, a professor of law, has published with Bernard Kouchner on this theme. See Bettati, Mario; Kouchner, Bernard et al. *Le devoir d'ingérence.* Paris : Denoël. 1987. See also Bettati, Mario. *Le droit d'ingérence.* Paris: Odile Jacob, 1996.

[145] The concept was also linked to the 'right to interfere' attributed to Jean-François Revel, which refers to the right of one or more states to interfere in another state's affairs if a higher authority has granted such a right; and to the 'duty to interfere' of states when mandated to provide assistance by a higher authority.

[146] See Allen, Tim and Styan, David. "A Right to interfere? Bernard Kouchner and the new humanitarianism", *Journal of International Development,* Vol. 12, 2000, pp. 825-842.

[147] See Bortolotti, Dan. *Hope in Hell: Inside the World of Doctors without Borders.* New York: Firefly Books. 2004. See Brauman, Rony. *Aider, sauver: Pourquoi, comment?* Paris: Bayard, 2006. The idea was pushed further by the other NGO co-founded by Bernard Kouchner in 1980, *Médecins du monde*, after he had left *Médecins sans frontières* over disagreement with MSF's policies and after he witnessed a lack of support on behalf of MSF over an operation in Vietnam. In 1990, *Médecins du Monde* promulgates the European Charter of Humanitarian Action which states that:
"I affirm that the principle of *non-ingérence* [sic] finishes precisely where the risk of non-assistance arises..." "Charte européenne de l'action humanitaire", free translation.

[148] Natural disasters as causes of humanitarian disasters will not be dealt with in this research. Indeed, genocide, war crimes, ethnic cleansing and crimes against humanity (as specified in the 2005 World Summit Outcome Document) are, in general, not linked to natural disasters. As Gareth Evans points out: "The short answer is that natural disasters, as such, are not R2P situations... But they are not normally, on the face of it, about protecting people from 'genocide, war crimes, ethnic cleansing, and crimes against humanity.' See Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, op. cit.*, pp. 65-66.

Relations. Indeed, the challenge here is to shed new light on humanitarian intervention in the context of internally displaced persons. As will be demonstrated throughout this and the next chapters, the link between humanitarian intervention, ethics and legal issues, are at the centre of the 'Responsibility to Protect' concept and unquestionably apply to internally displaced persons.

It is also extremely important to note that the discussion surrounding humanitarian intervention is very sensitive. Indeed, claims to sovereignty and non-interference in the internal affairs of states are common when the debate unfolds.

> The terrain on which the conceptual and policy context over 'humanitarian intervention' has been fought is essentially normative. It takes the form of norm development, from the established norm of non-intervention to a claimed emerging new norm of 'humanitarian intervention'. The United Nations lies at the heart of this contest both metaphorically and literally. The UN Charter, more than any other single document in the world, encapsulates and articulates the agreed consensus on the prevailing norms that give structure and meaning to the foundations of world order. And the international community comes together physically primarily within the hallowed halls of the United Nations. It is not surprising, therefore, that the UN should be the epicentre of the interplay between changing norms and shifting state practice.[149]

This is the subject of the next sub-chapter on the international system, state sovereignty and political realities.

2 The International System, State Sovereignty and Political Concerns

> State sovereignty is the bedrock principle of the modern international system that provides order and stability. Thus, the international community should not weaken states nor undermine the principle of sovereignty, but strengthen the institutions of states by making them legitimate and empowering of people, respectful and protective of their rights.[150]

Traditionally, International Relations teach that the basis of international society is the state system[151]. One step further breaks the international community down into a main element: the state. The law governing the relations between states,

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[149] Thakur, Ramesh. "In Defence of The Responsibility to Protect", *The International Journal of Human Rights*, Vol. 7, No. 3. Autumn 2003, p. 161.

[150] Thakur, Ramesh. "Towards a Less Imperfect State of the World: The Gulf between North and South", *op. cit.*, p. 6.

[151] The various theoretical schools view humanitarian intervention through different lenses, and object to it or are in favour, based on different argumentation. These are summarised in Wheeler, Nicholas J. *Saving Strangers, op. cit.*, pp. 21-52.

or international law, considers states as its main subjects[152]. Indeed, all the states of international society (provided they are recognised and sovereign) enjoy rights. This is embodied in the United Nations Charter, Article 2.1:

> 1. The Organization is based on the principle of the sovereign equality of all its Members.
> 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

This is an important element, worth noting for the remaining of the forthcoming issues: in theory, states are equal, whatever their size and strength. As will be demonstrated later on in this chapter, in practice however, some states enjoy greater weight than others.

Nevertheless, although states do enjoy rights and privileges granted by international law[153], they are also limited in their sovereignty by the UN Charter, in Article 2.4:

> 2.4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Furthermore, when a UN Member State has suffered an attack, it is entitled to the right of self-defence under Article 51 of the UN Charter:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

This article can be referred to in cases of multilateral action against the aggressor state. "The classic unitary conception of sovereignty is the doctrine that sovereign states exercise both internal supremacy over all other authorities within a given territory, and external independence of outside authorities"[154].

A sovereign state thus has the following characteristics, in light of international law and of the above discussion: a defined territory, a population, an effective authority, rights and duties deriving from membership of the United

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[152] Nevertheless international lawyers now tend to agree that individuals are also subjects of international law. For a detailed discussion, see Brown, Chris and Ainley, Kirsten. *Understanding International Relations*. 3rd ed. Basingstoke: Palgrave & Macmillan, 2005.

[153] Under international law provisions, states are granted the right to conclude and enter into treaties, for example.

[154] Keohane, R. "Political Authority after Intervention" *in* Holzgrefe and Keohane, *op. cit.* p. 282.

Nations and of international society[155]. It also carries duties, towards the international community, as described earlier, and towards its citizens. This is a relatively 'modern' concept, and it has recently been promoted through various reports, most notably the 'Responsibility to Protect', the main theme of which is that the responsibility to protect its citizens, is a corollary of state sovereignty. In this case, individuals and citizens are at the heart of the debate, since the postulate of the Report is that states must guarantee the protection of their own population(s) in order to enjoy the privileges of sovereignty. As Nicholas Wheeler states,

> Sovereignty – and its logical corollary the rule of non-intervention – remains the dominant legitimating principle. However, it is no longer conceived as an inherent right. Instead, states that claim this entitlement must recognize concomitant responsibilities for the protection of citizens[156].

In other words, 'domestic' sovereignty can no longer be viewed in isolation from 'international, legal' sovereignty, implying that what happens within the borders of a state also contributes to its standing in international society. In this sense, the role of states is changing and individuals have gained some space on the international 'state-bound' scene.

> Sovereignty, however, does not have to mean that a state can behave in any way it wants toward its own citizens without consequence. Sovereignty carries with it a responsibility on the part of governments to protect its citizens. In becoming part of the United Nations system, governments assume the obligation to promote and protect the human rights of those who reside in their territory. If this obligation is a meaningful one, then on what grounds is international intervention justified in behalf of that citizenry?[157]

To the extent that traditional, Westphalian, views of sovereignty are now leaving way to new definitions of 'domestic' sovereignty, it is useful to be aware of Krasner's four categories of 'unbundling' sovereignty: domestic, interdependence, international legal, and Westphalian sovereignty[158]. He does have a point, in the sense that the different categories of sovereignty do not necessarily fit together and

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[155] As identified by the 1934 Montevideo Convention on the Rights and Duties of States. There are currently 192 UN Member States, the list of which is available at: http://www.un.org/members/list.shtml (accessed January 12, 2009).

[156] Wheeler, Nicholas J. "The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society" *in* Welsh, Jennifer M., *op. cit.*, p. 37.

[157] Cohen, Roberta. "Human Rights Protection for Internally Displaced Persons", *op. cit.*, p. 17.

[158] For a summary, see Keohane, Robert O. in Holzgrefe, J.L. and Keohane, Robert O., *op cit.*, p. 285. For a complete discussion, see Krasner, Stephen D. *Sovereignty: Organized Hypocrisy.* Princeton: Princeton University Press, 1999, p. 20.

can be untangled. In some instances, states may exercise only one of these aspects of sovereignty.

The claim presented in the 'Responsibility to Protect' Report is different since it proposes that, should a state be unwilling or unable to protect its citizens, that responsibility yields to the international community. Just as the duty to assist a person in danger exists in the private sphere, there is a similar duty at the level of states, by which no state can turn away from gross violations of human rights or widespread human suffering[159]:

> if limits on how states may treat their own residents on their own territory are to be effective, states must also be limited, in specific ways, concerning which ill-treatment of residents within the territories of other states they are free to ignore[160].

The provision, and guarantee, of human rights then becomes the main assessment criterion of a 'good' state. The final elements of focus of this section are the political aspects linked to sovereignty and intervention.

How can we define power? In the realm of sovereignty and intervention, where is the might? One argument consists in saying that states will not bother even to consider intervention if it is not in their interest or in line with some political or economic stakes. A related concern would be that a state would feel the urge to take action only if its national interest were at stake (this would be a realist's view). Political economists would hold the view that the main intergovernmental organisations, the International Monetary Fund, the World Bank and the World Trade Organisation hold the tenets of power. The truth may lie in a blend of all these hypotheses, but the question may also be asked in a different way: why do certain states and citizens not receive the same attention as others? How does the possession of resources, economic and trade opportunities, political and cultural ties, investment and development potential, frame political concerns?

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[159] See Welsh's definition of humanitarian intervention, presented in the opening section of this chapter.

[160] Shue, Henry. "Limiting Sovereignty" *in* Welsh, *op cit.*, p. 11.

3 Ethical and Moral Considerations

> Who should intervene, with what authority, using what kind and degree of force – these are hard questions, and they are now the central questions of war and morality.[161]

International society is based on collective values. One may also argue that the bond that links states together is based on ethical and moral principles. International lawyers argue that 'natural law' purports to describe the essence of legal rights, which should be upheld in international relations. This section on ethical and moral considerations, as well as its presentation after the political context has been set – and before international law provisions are discussed – is crucial. Indeed, this part of the research will shed light on the links between ethics, politics and law. The foundations of the Responsibility to Protect and the need to protect civilians and citizens of the state – the core concepts underlying this thesis – will here be tied together.

Looking through the political lens, it can be argued that since states are the main actors in international relations, they are *ipso facto* the providers of rights and duties to their citizens. In other words, what happens if a state cannot, or will not, fulfil this duty? The answer depends on how the functions of a state are defined: is the state meant to promote and encourage the advancement of its members, or is the state entitled to pursue the aim of promoting national interest? Differing views in international political theory provide both answers[162]. Another important question is whether every state agrees as to what constitutes 'good' or 'bad', right or wrong. Who is the ultimate authority to decide on this? A good example is the notion of 'cultural relativism' of human rights, or the argument that there is no such thing as 'universal' human rights and that culture and society have an impact on the hierarchy of rights. This debate has been upheld in regard to Asian states, when the question of universal human nature, behaviour and values, was brought up.

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[161] Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations.* 3rd ed. New York: Basic Books, 1992, *"Preface to the Third Edition"*, p. xii.
Walzer offers insights into the moral argumentation of humanitarian intervention backed by concrete illustrations.

[162] See, for example, Burchill, Scott; Devetak, Richard; Linklater, Andrew et al. *Theories of International Relations.* 2nd ed. Basingstoke: Palgrave & Macmillan, 2001.

Obviously, not all human beings believe that the same rights have the same importance. Similarly, different cultures and religions abide by specific values[163].

> Interventions do not only violate the sovereignty of any given target state; they also challenge the principle of a society of states resting on a system of well understood and habitually obeyed rules.[164]

3.1. Just War

The main theory in International Relations relating to morality and war can be traced back to St. Augustine's Just War theory. The foundations of this current are to be found in the religious and historical context of the 16th century. Nevertheless, as will be demonstrated in the Chapter on the Responsibility to Protect, the tenets of the Just War theory are clearly still applicable today, with no religious connotation.

The Just War discussion unveils two distinct concepts: *jus ad bellum* and *jus in bello*. The *jus ad bellum* criteria govern the rules for resort to war, while the *jus in bello* principles provide rules for the conduct of war. The table below provides a representation of which elements are pertinent to each aspect of the Just War theory, and these will be discussed hereafter.

Table 3: Principles of Just War Theory

Jus ad Bellum	*Jus in Bello*
Just Cause	Proportionality
Legitimate Authority	Discrimination
Right Intentions	
Likelihood of Success	
Proportionality	
Last Resort	

[163] There is something in common to all cultures, religions, as argued by Lepard (in Lepard, Brain D. *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*. University Park: Pennsylvania State University Press, 2002) which is the right to life and the right to security, deemed essential for all human beings..

[164] Thakur, Ramesh. "Towards a Less Imperfect State of the World: The Gulf between North and South", *op. cit.*, p. 6.

Source: adapted from Bellamy, Alex J. *Just Wars: From Cicero to Iraq*. Cambridge: Polity Press. 2006.

Jus ad Bellum: Just Cause

When discussing just cause, several elements are the subject of debate among experts. The question of when it is 'right' to go to war is at the forefront of these discussions.

> The traditional phrase 'just cause' is a vague one, and as it stands it might appear to give no guidance at all. Slightly more specific and more helpful is the formulation that war is permissible only if it is fought to right a specific wrong. This at least imposes the requirement that the ruler declaring war must be able to point to the wrong which the enemy has committed, and thus gives something less than carte blanche[165].

The issues with just cause are presented in the table below.

Table 4: Just Cause Issues

Can an intervention be 'just'?
Are there any political motives or stakes involved?
Do the countries involved in the intervention have any historical ties with the country in which the intervention will take place?
Will the cause of the problem be averted by the intervention?
Are the lives of population of the state in the country in which the intervention will take place jeopardised?
What would occur if no intervention takes place?
Will more lives be lost if there is no intervention?
What is the ultimate 'just cause' for which this intervention will be carried out?
Will the intervention 'correct the wrong' which has been committed initially?
Can it be justified under international law?

Source: Amina Nasir

When just cause is considered, the question of the threshold of human suffering also arises[166]. Indeed, to the extent that human lives will be lost in an intervention, even

[165] Norman, Richard. *Ethics, Killing and War*. Cambridge: Cambridge University Press, 1995, p. 119.
[166] See section on the International Human Rights Regime, later in this Chapter.

if this can save more lives in the short to long-term, the question of intervention should be weighed with extreme caution.

The essentials of just cause and the application of these principles in practice will be dealt with in the next chapter, on the Responsibility to Protect. At this point, however, it is important to note that the original ICISS formulation of 'just cause threshold' was intended to remind of the Just War foundations, and to point to just cause issues and considerations necessary when justifying the resort to war.

Jus in Bello: Discrimination

> *[Jus in bello]* is concerned with identifying the morally acceptable modes of conduct in war, and the moral restrictions on how wars should be fought. Even if one is justified in resorting to war, there are, according to the theory, limits on what is morally acceptable to do in order to achieve victory. Traditionally, the most important of these limits has been set by the principle of non-combatant immunity – the principle that it is wrong to attack or kill non-combatants. The distinction between combatants and non-combatants is the distinction between members of the armed forces and the civilian population[167].

The main considerations relating to the principle of discrimination are discussed in the context of international humanitarian law, in sub-chapter 2.4.2 further on, in the context of the law applicable to armed conflict and the Geneva Conventions and Additional Protocols which form the body of international humanitarian law. In essence, civilian populations should not be involved in fighting and should not be the targets of killings during an intervention. The Red Cross movement provides practical advice on how to distinguish between civilians and combatants members of the armed forces[168]. In practice, private houses, schools, hospitals, clinics, churches should not be targeted. Rather, preliminary attacks should be carried out on military infrastructure which is not closely located to civilian facilities.

4 International Law Relating to Humanitarian Intervention

As described earlier in this chapter, the international legal provisions contained in the United Nations Charter relating to humanitarian intervention are set out in Articles 2.4, 2.7 and 51. States cannot derogate from these provisions:

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[167] Norman, Richard, *op. cit.*, p. 159.

[168] See, for example, the explanation of the emblems of the Red Cross, to be worn visibly at all times by Red Cross personnel, or the guidelines on establishing hospitals and visibly marking them with signs to indicate to the military that they should not be the targets of any attacks.

> In addition to codifying and crystallizing a number of customary rules, including a prohibition on the use of force and the right of self-defence, the Charter explicitly states that it prevails over all other treaties. Accordingly, countries cannot exempt themselves from the provisions of the UN Charter[169].

These norms have become part of customary international law[170]. Furthermore, the rules governing the use of force have achieved the status of *jus cogens*[171], or peremptory norms of international law.

4.1 The United Nations Security Council and Collective Security

As Article 2.7 of the Charter states, and as re-iterated in Article 24,

> 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

The United Nations Security Council[172] therefore bears responsibility for the maintenance of international peace and security. This remains a contested notion[173], but a central one both in international law and international relations. This duty was crystallised in 'collective security', or the capacity to represent and act on behalf of all members of the international community, in an effective manner[174]. The United Nations Charter is the guarantor of collective security, as explained by John Groom:

> At the political heart of the UN Charter is the notion of collective security which is based on the simple idea that all the states of the world should come together to set out the rules that would hence-forth [sic] govern their interactions and, of crucial importance, of ways of changing those rules. Great significance lies in the third notion that if a state does not follow the rules, then the others, in concert, have the right to employ sanctions, including military coercion, to ensure that the offending state will conform to the rules and the agreed methods for changing them.[175]

The Security Council has at its disposal two main instruments to maintain or restore international peace and security: UN Charter Chapter VI, 'Pacific Settlement

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[169] Byers, Michael. *War Law*. London: Atlantic Book, 2005, p. 6.
[170] This is the case for treaties, which are part of customary international law.
[171] For a complete discussion of *jus cogens*, see Brownlie, Ian. *Principles of Public International Law*. 5th ed. Oxford: Oxford University Press, 1999, pp. 511-517.
[172] Hereafter abbreviated as 'the Security Council'.
[173] As will be described in a later section of this chapter (section 5).
[174] The efficiency of the Security Council is taken here as implying dealing with issues.
[175] Groom, AJR. "The Security Council: A Case for Change by Stealth", Extract from *Liber Amicorum Victor-Yves Ghebali*: Conflicts, security and cooperation. Edited by Vincent Chetail. Brussels: Bruylant, 2007, p. 279.

of Disputes', and Chapter VII, 'Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'. Chapter VI (Articles 33-38) relates to measures such as negotiation, good offices, and mediation *short of the use of force*. Chapter VII, on the other hand, in Articles 39-51, foresees a series of measures including Article 41 which, while there is no use of force, there can be an interruption of economic relations, means of communication and the severance of diplomatic relations. Article 42 on the other hand does foresee the use of force by air, sea or land (including but not limited to demonstrations, blockade, operations)[176]. Simon Chesterman provides a summary of these measures:

> It is, however, useful to delineate some basic conceptual categories in the different forms of delegation adopted by the Security Council. Broadly, five classes of action can be identified:
> (i) Article 42 action by the Security Council using troops contributed pursuant to Article 43 agreements;
> (ii) Action under command of the Secretary-General;
> (iii) Action by any state;
> (iv) Action by regional arrangements[177].

The Security Council can bring any issue before its Members, through its mandate provided for in Article 39, which reads:

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

This is an essential element and needs to be remembered in light of the forthcoming discussion of what constitutes a threat to international peace and security. As Gareth Evans states clearly in an excellent article, "there is, in short, no doubt about the legal capacity of the Security Council to declare effectively anything it wants as a threat to international peace and security, and to authorise military action accordingly"[178]. In order to comprehend the range of activities fulfilled by the Security Council, it is necessary to create a (non-exhaustive) list of what tasks it has accomplished in post-Cold War years and how this has affected its mandate.

The first task of the Security Council is to identify and sanction potential threats to international peace and security. Since the early 1990s, the decline in the

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[176] For a complete discussion of Security Council powers, see Chesterman, Simon. *Just War or Just Peace: Humanitarian Intervention and International Law*. Oxford: Oxford University Press, 2001, pp. 112-217.
[177] Chesterman, Simon. *Ibid.*, p .171.
[178] Evans, Gareth. "When is it Right to Fight?", *Survival*, vol. 46, no. 3, Autumn 2004, p. 68.

use of the veto power by the five permanent Members of the Security Council[179] was seen as a sign of enhanced 'collective' collaboration, or at least as a reflection of the current context of international relations.[180]. With two exceptions during the Cold War which require mention[181], the post-1990 activities[182] of the Security Council have increasingly focused on including new considerations in the traditional concept of 'threat to international peace and security'.

Table 5: Security Council Action from 1990 to 1999

Period	Number of Meetings	Number of Resolutions Adopted	Chapter VII Resolutions	Authorisations to use force	Peacekeeping
1946-1989	2,903	646	24	2	17
1990-1999	1,183	638	166	9	42

Source: Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.* Oxford: Oxford University Press, 2001, p. 121

Passing resolutions and drawing international attention to threats to international peace and security are only some instances of enhanced Security Council activities. Indeed, in 1993 and 1994, the Security Council created, under Chapter VII of the UN Charter, two ad hoc International Criminal Tribunals: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Finally, the Security Council drew attention to cases when it was "concerned" by threats to international peace and security. The Council was demonstrating its ability to adapt to current developments in international relations (there were few occurrences of inter-state wars, at this time), and stated:

> The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of

[179] There are twelve occurrences of a cast veto by the US between 1996 and 2008 compared to 58 vetoes between 1976 and 1995 (during the Cold War). See Evans, Gareth. *op. cit.*, p. 62 and Global Policy Forum for updated figures, available at: http://www.globalpolicy.org/security/data/vetotab.htm (accessed May 23, 2009).

[180] Although it could also be that states avoid a veto by not pushing matters to a vote when they fear that a veto will be cast.

[181] 'Peacekeeping' and the 'Uniting for Peace' Resolution are groundbreaking developments in the Security Council's activities. For a detailed discussion, see Chesterman, *op cit.*, p. 118 ff.

[182] The number of Security Council resolutions pertaining to threats to international peace and security, that is the number of Chapter VII Resolutions, between 1990 and 2002 was of 247, which amounted to 93% of the total number of Security Council Chapter VII Resolutions (267) passed between 1990 and 2002. Evans, Gareth. *op. cit.*, p. 62.

> instability in the economic, social, humanitarian and ecological fields have become threats to peace and security[183].

Simon Chesterman further identifies three areas of threats to international peace and security of concern to the Security Council – "internal armed conflicts, humanitarian crises and disruption of democracy"[184]. Other scholars seem to agree with these cases as constituting threats to international peace and security[185]: the cases of Angola, East Timor, Haiti, Iraq, Sierra Leone, Somalia, the former Yugoslavia, Zaire are but some of these examples. This leads to the consideration of the international human rights regime, and to the discussion around the inclusion of human rights violations as a threat to international peace and security[186].

Internal Conflicts as a Threat to International Peace and Security

The issue of the legitimacy of humanitarian intervention in the context of internal displacement will be preceded by the definition of what constitutes a threat to international peace and security. Indeed, internally displaced persons are *ipso facto* within their country of origin or habitual residence, and therefore the cases of interest are those of internal conflict. The question can be formulated as follows: when does internal conflict become a threat to international peace and security?

In the post-Cold War period, the Security Council has deemed the following examples of internal conflict as threats to international peace and security - civil war, large-scale human suffering and gross and massive violations of human rights. Moreover, if the internal conflict could have spill over effects or have international repercussions, it may be considered as a threat to international peace and security. Examples are Rwanda and Zaire, Rwanda and Iraq and Kosovo. It should be noted that, in most cases, internal conflicts involve large-scale human suffering and gross violations of human rights. Nevertheless, in this discussion, two other cases may not be forgotten - genocide and ethnic cleansing[187]. Both are threats to international

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[183] Security Council Summit Statement Concerning the Council's Responsibility in the Maintenance of International Peace and Security, 47 UN SCOR, UN Document S/23500 (1992).
[184] Chesterman, Simon, *op cit.*, p. 128 ff.
[185] See Byers, Michael, *op. cit.*, pp. 25-39, mentioning humanitarian crises, civil strife, famine, internal crises.
[186] The discussion about the Security Council is, however, not closed, as it will be addressed further when analysing its proposed reform.
[187] Genocide is defined, in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), as: "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;

peace and security, and are included in the conditions under which military intervention can be envisaged, as set out by the International Commission on Intervention and State Sovereignty in its Report.

Legitimacy of Humanitarian Intervention

If one of the two instances mentioned above[188] occurs, is humanitarian intervention justified? Not that easily, in fact:

> The notion of legitimacy – is the intervention justifiable? – is a multidisciplinary concept referring to moral-philosophical, political as well as general legal principles[189].

A variety of factors are at play to implement an intervention. The most political of which is the Security Council's – and, in particular, the five permanent Members' agreement or lack of veto – commitment to take action. A consideration of what possible measures are conceivable, once agreement has been reached that a situation is a threat to international peace and security, will be the object of the following sections including measures with UN Security Council authorisation and measures short of such authorisation.

> The main issue here is whether force is used in accordance with the U.N. Charter, or whether its use circumvents the U.N. Security Council. A majority of states, including Russia, are in favor of preserving the U.N. mechanism and have spoken out clearly on this mater [sic] in recent years at every session of the U.N. General Assembly. A minority -- primarily the United States and few NATO members -- believe that humanitarian intervention requires a departure from U.N. procedure. They feel that the U.N. process, unwieldy because of the right to veto, only slows down and occasionally blocks the swift action that is sometimes needed.[190]

Measures taken with UN Security Council Authorisation

Once the Security Council has pointed to the existence of a threat to international peace and security, under Article 39 of the UN Charter (Chapter VII), it has the power to make recommendations and take measures involving mediation,

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(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group."

[188] Civil wars, large-scale human suffering, gross and massive violations of human rights, genocide, ethnic cleansing.

[189] Danish Institute for International Affairs, *Humanitarian Intervention: Legal and Political Aspects*, Copenhagen: Danish Institute for International Affairs, 1999, p. 24.

[190] Primakov, Yevgeny. "UN Process, Not Humanitarian Intervention, Is World's Best Hope", *New Perspectives Quarterly*, Vol. 25, No. 4, 2 September 2004. Available at: http://www.digitalnpq.org/global_services/global%20viewpoint/02-09-04primakov.html (accessed May 16, 2009).

economic sanctions, good offices or military action. Thereafter, the Security Council may give authorisation including the use of force to one or several states, or to a regional organisation (Chapter VIII, Article 53). Once the Security Council has granted the authorisation, any action undertaken is legal under international law, provided action remains within the scope of the Security Council's authorisation, as formalised in the relevant Security Council Resolutions.

Table 6: United Nations Charter Chapters VI and VII Measures

Non-military	Military
Arms embargo	Any measures deemed necessary
Economic sanctions	Military action
Good offices	
Mediation	

Source: UN Charter Chapters VI and VII.

Breakdown of Intervention into Phases

The breakdown of intervention into several phases would be helpful in order to weigh and assess each element and any moment during the operations. The flow chart on the next page provides a description of how this process should be carried out: one step needs to be complete before the next can be reached. Thus, planning should not start before the decision-making phase is complete. Similarly, the implementation phase cannot be initiated before the legal and political mandate has been clearly stated. However, this does not necessarily involve heavy time constraints, since the decision-making phase could be speedy. Moreover, once this process has been followed, its practice should be smoother, since interventions require quick decisions and solutions. The aim is to provide assistance within the legal, ethical and political international context, so as to alleviate suffering and prevent further human loss.

Phases of Intervention

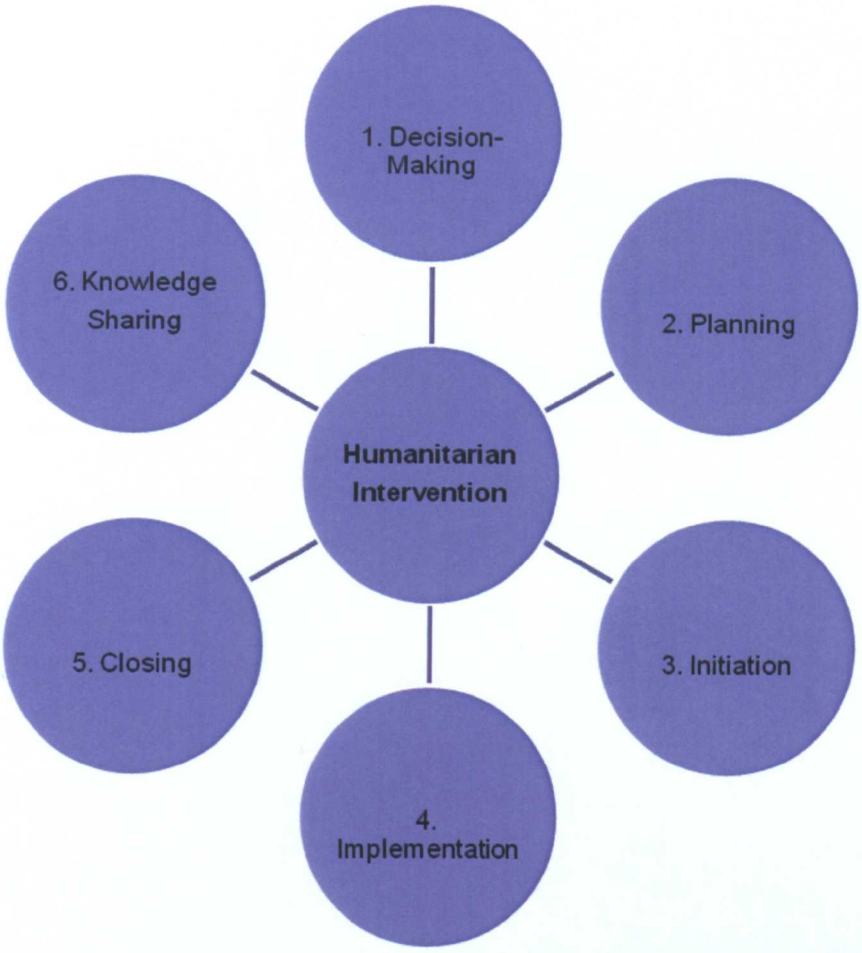

Table 7: Breakdown of Intervention into Phases

1. Decision-making -countries -Security Council -European Union -NATO
2. Planning -duration -required resources -who does what / authority -limits (legal, military) -applicable legal provisions -UN Resolution or other provisions
3. Initiation -monitoring during first two phases -documentation -communication exchanges -rapid evaluation system in the field -liaison with other actors in the field, e.g. non-governmental organisations
4. Implementation -use of force (or not) -taking action
5. Closing -reports, memos -archiving of documents -UN follow up
6. Knowledge Sharing -theoretical -operational -knowledge and information sharing

Source: Amina Nasir

The planning phase is, undoubtedly, the most important. Of course, at the very first stages, the operational aspects may rely on estimates in terms of resources and duration. However, the legal provisions and mandate must be clearly set out and understood by all parties. This is also an important step for another reason: the statistics and figures which can be collected in the aftermath of the operation, in terms of resources required, length and operational effectiveness are extremely pertinent to analysts who may use these for several purposes[191].

The importance of the last two phases should not be underestimated. The closing phase is the most important of the two, in the sense of keeping track of the achieved targets weighted against the initial mandate and objectives, the proper archiving of documents and other communications so that the operation may be audited or traced, and to allow the UN or any other party to follow up, should certain issues remain pending. The lessons learned phase is equally necessary to avoid making the same mistakes and to keep track of best practice details that could be useful. An example of this step is the Commission on Kosovo's Report, which provides insight into what could have been improved and what went well, in hindsight.

The 'positive peace' aim of the UN Charter, as discussed by Kolb, is long-term, durable, peace. Thus, instead of dealing with 'negative peace', or the breaking of peace and the use of "ambulatory measures"[192], it seems wise to seek alternative, durable solutions. This is valid, in particular, for situations of extreme urgency and imminent threats to human lives.

> So as to avoid having to remedy a situation once it is too late, when peace has already been suspended, the UN Charter unveils a durable peace strategy by seeking to eliminate the root causes of conflict. This preventive strategy, which aims at suppressing the causes of conflict such as poverty or political oppression, is designated as 'positive peace': the maintenance of peace is sought by long-term action eliminating the causes of conflict[193].

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[191] For example, political/military/strategy analysts will then have data to make simulations of the resources needed for a certain type of operation. This can, in turn, help those engaged in the strategic planning since the statistics may reveal that the efficiency of this operation was compromised by the lack of staff, military personnel etc.

[192] Kolb, Robert. *Ius contra bellum: Le droit international relatif au maintien de la paix. Collection de droit international public.* Basle: Helbing & Lichtenhahn; Brussels: Bruylant, 2003, p. 54, free translation.

[193] *Ibid.*, p. 52, free translation.

What should be done if the Security Council fails to act?

Most scholars agree that the Security Council is the authority mandated to provide suggestions or authorise intervention. However, decisions of what to do in case the Security Council fails to act are not easy, since they involve many disciplines, as mentioned above.

The reasons leading to a deadlock in the Security Council can be as follows. Firstly, a vote on an item brought to the Security Council requires acceptance by nine of the fifteen Members in the Council at that time[194], and the absence of a veto by the five permanent Members (China, France, Russia, United Kingdom, United States) [195], and that the issue at stake is a threat to international peace and security.[196]

If this 'first veto' is applied, the issue will not be brought further. If there is no veto at this stage, the Security Council will meet to discuss a potential threat to international peace and security, and the five permanent Members may veto[197] any resolution or decision with immediate implication of no further action. Secondly, Members of the Security Council may not agree as to what action should be taken. For example, some Members may favour Security Council action under Chapter VI, whereas others would encourage Chapter VII enforcement measures. This situation requires further discussion. The proceedings of Security Council meetings provide insight into Members' views in such cases.

Finally, the Security Council may not wish to take action in order to avoid setting a precedent, both politically and legally. Indeed, since customary law takes into account the practice of states and of the Security Council, taking action under

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[194] This generally involves 'out of the room' or 'corridor' lobbying by the permanent Members.

[195] This presupposes that the five permanent Members agree to discuss the issue and do not use their 'double veto power', the first of which may be applied to halt consideration of the matter. This may be the case, for instance, when one of the five Members' interests are (directly or indirectly) involved, or if a state wishes to prevent other states from taking up the matter.

[196] At this point, it is important to recall the fact that, an abstention or the absence of a permanent member's delegate in the meeting room at the time of voting, are not considered as a veto. "A change of great substance has been in the interpretation of Article 27.3 [of the UN Charter] which states that a Resolution requires the "concurring votes of the permanent members of the Security Council". In practice, it has been accepted that concurrence is not necessary and that only a negative vote will be treated as a veto. Thus an abstention or an absence by a permanent member of the Security Council will, if other conditions are fulfilled, not lead to the defeat of a resolution." See Groom, AJR. "The Security Council: A Case for Change by Stealth" *op. cit.*, p. 288.
For example, the Russian delegate at the Security Council in 1950 was out of the room at the time of the voting (this was the 'empty chair policy' of the USSR since January 1950, linked to a political disagreement over Chinese representation), and thus did not cast a veto the authorisation of measures against Korea, which the USSR would have done, had the delegate been present.

[197] This 'second' phase of the veto is what is actually most commonly referred to as the 'veto power' and is considered as the core political element of the Security Council procedures.

certain circumstances may imply that this becomes a case that can be referred to in a similar occurrence at a later stage. This also explains the fact that states are careful with the statements made in United Nations fora, the content of which may either indicate that they are drifting away from a line of practice, or on the contrary that their approach follows a specific pattern of behaviour.[198]

The study of measures available to react when the Security Council fails to act will involve the consideration of five theoretical strategies[199].

Table 8: Theoretical Measures if the Security Council Fails to Act

Status quo strategy = exclusive reliance on the Security Council for action	Ad hoc strategy = humanitarian intervention as "emergency exit"
Status quo plus strategy = reliance on the Security Council for action, plus pressure on the SC that if it does not react, humanitarian intervention may take place without authorisation (consensus-building)	
Exception strategy = subsidiary right of humanitarian intervention	General right strategy = general right of humanitarian intervention

Source: Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects*. Copenhagen: Danish Institute of International Affairs. 1999, pp. 111-120 and Stromseth, Jane, in Holzgrefe, J.L. and Keohane, Robert O. *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Cambridge: Cambridge University Press, 2003, "Rethinking humanitarian intervention: the case for incremental change", pp. 241-272

These proposals aim at providing solutions, in the medium to long-term, in cases when the Security Council does not take action[200]. The problem here is twofold: this model does not place the victims at the centre of the issue and does not offer an immediate solution to inaction within the Security Council.

Paradoxically, within the current realm of international relations, there is a need to address situations in which the Security Council is blocked, but at the same

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[198] By explicitly commenting on their action or point of view in a recorded statement, states provide matter for customary law.

[199] For a detailed discussion of these strategies, see the Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects*, *op. cit.*, pp. 111-120; and Stromseth, Jane, in Holzgrefe, J.L. and Keohane, Robert O., *op. cit.*, "Rethinking humanitarian intervention: the case for incremental change", pp. 241-272.

[200] The status quo strategy favours exclusive reliance on the Security Council to authorise humanitarian intervention, and is therefore in accordance with the present practice and norms of international law. The authors of the Danish Report added a "status quo plus" strategy, whereby further pressure would be exerted on the Security Council and if it does not take action, intervention may still take place, thus striking a balance between legal and political concerns, and protection. The ad hoc strategy puts forward moral grounds stating that humanitarian intervention may be undertaken in extreme cases of a blocked Security Council, as an 'emergency exit' from the norms, but not as a regular practice. Therefore, this strategy does not challenge international law provisions, nor the core authority of the Security Council.

time, the Security Council must retain its core responsibility for maintaining or restoring international peace and security, and thus remain the sole authoritative source to agree to humanitarian intervention. The next section will deal with the important proposals made to address the practical and ethical issues of what can be done if a humanitarian intervention is required.[201]

4.2 International Humanitarian Law

> *International humanitarian law* – also called the *law of armed conflict* and previously known as the *law of war* – is a special branch of law governing situations of armed conflict – in a word, war. International humanitarian law seeks to mitigate the effects of war, first in that it limits the choice of means and methods of conducting military operations, and secondly in that it obliges the belligerents to spare persons who do not or no longer participate in hostile actions[202].

International humanitarian law[203] belongs to public international law. However, it is advisable to distinguish between the application of international legal provisions in the context of armed conflict, which is what international humanitarian law deals with, and the regulations of conflict *stricto sensu*, the principles of which have been discussed earlier.

> In addition to prescribing laws governing resort to force (*jus ad bellum*), international law also seeks to regulate the conduct of hostilities (*jus in bello*). These principles cover, for example, the treatment of prisoners of war, civilians in occupied territory, sick and wounded personnel, prohibited methods of warfare and human rights in situations of conflict[204].

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[201] For a discussion of intervention authorised or unautorised by the Security Council, see Stein, Mark S. "*Unauthorised Humanitarian Intervention*" in Paul, E. F.; Miller Jr, F D. and Paul, J. (Eds.). *Morality and Politics*. Cambridge: Cambridge University Press, 2004, pp. 14-38.

[202] Gasser, Hans-Peter. "International Humanitarian Law" in Haug, Hans. *Humanity for All: The International Red Cross and Red Crescent Movement*. Berne, Stuttgart & Vienna: Paul Haupt Publishers, 1993, p. 491.

[203] For a complete discussion, see Kolb, Robert and Hyde, Richard. *An Introduction to the International Law of Armed Conflict*. Portland: Hart Publishing, 2008.

[204] Shaw, Malcolm M., *op cit.*, p. 1054.

International humanitarian law[205] was codified in the 1949 Four Geneva Conventions and the 1977 Two Additional Protocols to the Geneva Conventions: the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Third Geneva Convention Relative to the Treatment of Prisoners of War; the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War; and the First Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I, 8 June 1977) and the Second Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II, 8 June 1977)[206]. International humanitarian law applies to international armed conflict as well as to situations of internal armed conflict.

International humanitarian law derives from what Henry Dunant, a businessman from Geneva[207], initiated upon his return from the Battle of Solferino

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[205] International humanitarian law is also referred to as 'humanitarian law', 'law of war' or 'law of armed conflict'. International humanitarian law guides the conduct of hostilities, sets restrictions on the means of warfare, and seeks to protect the victims of armed conflict and civilians. International humanitarian law must not be confused, however, with the laws of war, sub-divided into two categories, *jus ad bellum* and *jus in bello*. While *jus ad bellum* deals with the (justification to) resort to war (as contained in the United Nations Charter), *jus in bello* is concerned with the laws governing the conduct of war. International humanitarian law deals with *jus in bello*.
International humanitarian law used to be sub-divided into the 'law of Geneva' and the 'law of The Hague', thus referred to by the name of the city which spearheaded the specific rules of each sub-branch. The 'law of Geneva' refers to the rules protecting those who are involved in armed conflict, the military and combatants, those who are sick or wounded, and civilians. The 'law of The Hague' governs the rules, obligations and limits applicable in time of conflict. See *International Humanitarian Law – Answers to your Questions*, ICRC Publication, revised edition 2004, available at: http://www.icrc.org/web/eng/siteeng0.nsf/html/p0703 (accessed May 28, 2009).
Furthermore, international humanitarian law and human rights law are two distinct branches of international law which may contain similar regulations but are based on different sources (human rights law treaties exist independently). See Droege, Cordula, "The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict", *Israel Law Review*, Vol. 40, No. 2, 2007, pp. 310-355, available at: http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/ihl-human-rights-article-011207/$File/interplay-article-droege.pdf (accessed June 1, 2009). See Heintze, Hans-Joachim, "On the relationship between human rights law protection and international humanitarian law", *International Review of the Red Cross*, No. 856, 2004, pp. 789-817, available at: http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/692EUA/$File/irrc_856_Heintze.pdf (accessed June 1, 2009).

[206] The Geneva Conventions will be referred to as the First, Second, Third and Fourth Conventions, while the Additional Protocols will be designated as Protocol I and II.

[207] This also partly explains why the International Committee of the Red Cross and the headquarters of the International Federation of Red Cross and Red Crescent Societies are based in Geneva.

(1859)[208]. In order to comprehend where the roots of the body of international rules governing both international and non-international armed conflict lie, it is essential to understand the principles underlying the Red Cross Movement.

[208] For further details, see Dunant, Jean Henry, *A Memory of Solferino*, English translation of *Un Souvenir de Solférino*. Washington, D.C., American National Red Cross, 1939; and Kalshoven, Frits. *Constraints on the Waging of War*. 2nd ed. Geneva: International Committee of the Red Cross, 1991.

Table 9: Red Cross Movement Principles

Principles	Characteristics
Humanity	The organisation promotes the respect for the human rights of everyone, upholds the respect and love of other human beings, delivers protection and assistance, strives for the alleviation of human suffering and the protection of human life and works towards a lasting peace
Impartiality	The organisation treats all civilians and war combatants equally; provides relief without favour; considers that human beings are of equal value; promotes human dignity, non-discrimination, proportional relief; is impartial and has no political ties
Neutrality	The organisation takes no sides; does not participate in conflict; the organisation is a-political, a-religious and a-ideological; guarantee of the immunity of Red Cross/Red Crescent personnel; the Movement is an intermediary to help the victims
Independence	The organisation has no links to states, governments, religions or religious leaders, financial power-holders.
Voluntary Service	The services provided by the organisations are free and selfless
Unity	There is one RC Society per country only The field and HQ personnel are linked through the Movement and its Principles
Universality	The RC Movement and Principles are universal There is solidarity across the Movement and allegiance to international humanitarian law

Source: International Committee of the Red Cross Internet site: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/fundamental-principles-commentary-010179 (accessed January 19, 2009)

5 The International Human Rights Regime

> The dilemma of what to do about strangers who are subjected to appalling cruelty by their governments has remained with us throughout the post-1945 world. While the question remains the same, the normative context has changed markedly. As a result of the international legal obligations written into the United Nations system, clear limits were set on how governments could treat their citizens. For the first time in the history of modern international society, the domestic conduct of governments was now exposed to scrutiny by other governments, human rights non-governmental organizations (NGOs), and international organizations.[209]

The adoption by the United Nations General Assembly of the Universal Declaration of Human Rights[210] was the first step towards a comprehensive system of legal standards and an institutional framework on human rights. The UN thereafter developed institutional machinery to deal with human rights, such as the Commission on Human Rights established in 1946[211], and the Sub-Commission on Prevention of Discrimination and Protection of Minorities[212] set up in 1948.

Human rights are defined in the Universal Declaration of Human Rights[213]. Malanczuk defines human rights as "certain inalienable and legally enforceable rights protecting [the individual] against state interference and the abuse of power by government"[214]. This definition contains the elements important to the human rights regime, namely that these rights are granted to individuals, for their protection.[215] Indeed, human rights are part of customary international law and of *jus cogens*, thus all states have the duty to protect them.[216]

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[209] Wheeler, Nicholas J. *Saving Strangers, op. cit.*, p. 1.

[210] The Universal Declaration of Human Rights was adopted by the UN General Assembly on December 10, 1948.

[211] In 2006, the UN Human Rights Council replaced the Commission on Human Rights.

[212] In 1999, the Sub-Commission on the Promotion and Protection of Human Rights replaced the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission is a subsidiary body of the Human Rights Council and has established several working groups on specific themes, including minorities and indigenous peoples, for example.

[213] In the sense that "Everyone is entitled to all the rights and freedoms set forth in this Declaration"

[214] Malanczuk, Peter. *Akehurst's Modern Introduction to International Law, op. cit.*, p. 209.

[215] However, many legal issues emerged from this element of the definition. In classical international law, states are the subjects of international law. Can individuals become subjects of international law, since they are granted rights ? The debate revolved around human rights dealing with individuals, the latter being granted benefits and affected by duties. The second controversial element is the interference of states in the private affairs of individuals.

[216] The United Nations monitors the respect for and the promotion of human rights contained in the main human rights instruments, namely the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination

The main rights which are baffled for internally displaced persons are 'basic' human rights, such as the right to life and integrity, the right to protection, to have an identity, the right to food. Scholars argue that, in order to prevent displacement, peace and democracy should be promoted. This obviously has political implications, yet deserves attention since some of the causes in the 'political' column in the table above could be resolved by adherence to principles. The following sub-section discusses how the respect for human rights can promote peace: several references to political issues linked to internal displacement will be made, such as the importance of individuals in the current human rights context, the existence of several nations within a state, state sovereignty, stable political regimes. Thereafter, the author will assert that internal displacement can be a threat to international peace and security.

The United Nations, namely in the Charter, states that the founders of the UN were determined "... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person ..."[217] and further that:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
>
> (c) universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion[218].

Moreover, the mention of human rights in the very purpose of the UN is noteworthy

> The purposes of the United Nations are:
> 3. to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion [...][219].

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against Women (CEDAW), the Convention against Torture and the Convention on the Rights of the Child (CRC). To these instruments are assigned four committees (the Committee on the Elimination of All Forms of Discrimination, the Committee on the Elimination of All Forms of Discrimination against Women, the Committee on Torture, and the Committee on the Rights of the Child), which along with the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, form the monitoring bodies within the UN. All of these bodies review reports from Member states, in which the measures implemented to guarantee treaty adherence and respect for human rights are stated. Moreover, in the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination, individual communications (from nationals of states which have ratified the treaties concerned) are accepted.

[217] UN Charter, Preamble.

[218] *Ibid.*, Chapter IX, art. 55.

[219] *Ibid.*, Chapter I, art. 1.

The issue of human rights is, however, politicised within the UN context. An example of this is the Human Rights Council and the former Commission on Human Rights, where states are unhappy to see an issue on the agenda which could lead to a debate. Indeed, at the time of submitting 'country resolutions', there is a lot of corridor lobbying in order to prevent resolutions from being put to a vote. This is certainly the case for China.

This explains why the respect for human rights has been considered as a requirement for peace, democracy and development. The widespread belief is that by maintaining peace and educating on human rights issues, stable political systems will function:

> ... the United Nations ... sees in the promotion and respect of human rights one of the main elements of peace keeping and peace building ...
> By the end of the twentieth century, the international community not only confirmed the close relations and interdependence existing between human rights, peace, democracy and development, but reinforced them and enriched them with new dimensions[220].

5.1 Link between Human Rights and Peace

Dimitrijevic[221] discussed important concepts of the human rights-peace paradigm. Which is true: human rights are a precondition for peace, or peace as a requirement for the protection of human rights? "If human rights are part of a meaningful and desirable peace, then peace without human rights is less valuable or not peace at all"[222]. The reference to peace (in relation to human rights) appears in the preamble of the Universal Declaration of Human Rights:

> *Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world [...][223].

Moreover, the General Assembly adopted the Declaration on the Right of Peoples to Peace (1984):

> The General Assembly,
> Recognizing that the maintenance of a peaceful life for peoples is the sacred duty of each State,
> 1. Solemnly proclaims that the people of our planet have a sacred right to peace;
> 2. Solemnly declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State.

There is a belief that "societies without human rights are a danger to international peace"[224]. In this regard, one is brought back to the confronting

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[220]Symonides, Janusz (ed.). *Human Rights: New Dimensions and Challenges*. Aldershot (UK): Ashgate. UNESCO Publication, "Human Rights and Peace: a dichotomy", 1998, p. 4.
[221] Dimitrijevic, Vojin. "Human Rights and Peace" in Symonides, J., *op. cit.*, pp. 47-64.
[222] *Ibid.*, p. 47.
[223] Universal Declaration of Human Rights, First preambular paragraph.

ideological theories of the Cold War, or the belief that, in order to secure international order, all societies must uphold the values of and respect for human rights[225]. Indeed, the powers of the time could not agree on which rights were the most important, the Western block arguing that civil and political rights were among the values they would support, the Communist block claiming that collective rights (economic, social and cultural rights) were the most important.[226]

Why do different democratic states then claim that human rights are not to be dealt with, because of the 'cultural' argument? Human rights are universal and should be enjoyed by every human being: "today, human rights are well established as the legitimate concern of all humanity. ... people everywhere aspire to the basic dignity and respect secured by the rights of the Universal Declaration"[227]. The non-discriminatory basis of the protection of human rights confirms this universality of human rights. Thus, all human beings are entitled to fundamental rights, in order to prosper, and develop in an appropriate environment.

This is where the concept of democracy comes into consideration. If one infers that human rights can only be fully enjoyed in democratic states, then one must identify what 'democratic' means, and what differs in non-democratic states. Traditionally, the following view prevailed: democracy implies enjoying civil and political rights, and all mechanisms necessary to enjoy such rights are part of a democracy. In a democracy, citizens have a say in state affairs (they can vote on certain laws and issues) affecting them; they equally 'choose' those who will exercise political power (whether directly or indirectly).

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[224] Dimitrijevic, Vojin, *op. cit.*, p. 57.

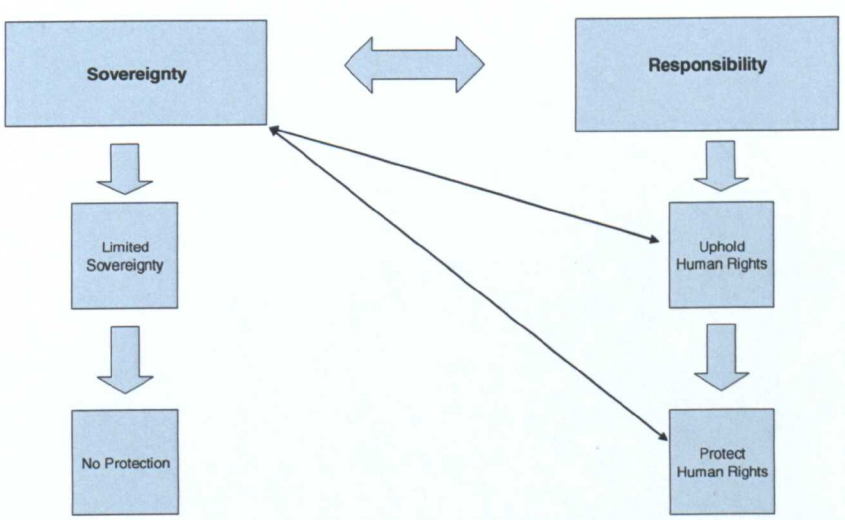
[225] See Steiner, Henry and Alston, Philip. *International Human Rights in Context*. 2nd ed. Oxford: Oxford University Press, 2000, pp. 323-366.
This also refers to the West believing in "human rights / peace / security, the East peace and the South development", Dimitrijevic, Vojin, *op. cit.*, p. 47.

[226] There were two sets of human rights, in the classical approach to human rights law. The first set of human rights were civil and political rights, while the second cluster consisted of economic, social and cultural rights. This division goes back to the Cold War and the differences in ideologies and values between the two blocks. In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted in this context. Both these instruments mainly develop the rights mentioned in the Universal Declaration, by expanding on their definition and going into more detail.
Today, all human rights are deemed to be indivisible and interdependent; none are considered more important than others.

[227] *Human Rights Watch World Report*, 1999, pp. xiii and xv.

> At the heart of democracy thus lies the right of all citizens to a voice in public affairs and to exercise control over government, on terms of equality with other citizens. For this right to be effective requires, on the one hand, the kind of political institutions - elections, parties, legislatures and so on - with which we are familiar from the experience of the established democracies. On the other hand, it requires the guarantee of those human rights which we call civil and political, and which are inscribed in such conventions as the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Both are needed to realize the basic principles of democracy. Thus the connection between democracy and human rights is an intrinsic rather than an extrinsic one, human rights constitute a necessary part of democracy.[228]

5.2 Bridging the Gap between Sovereignty, Responsibility and Intervention



If Adam Roberts is right in stating that "ever since the inception of the UN Charter, the UN has been based on a delicate and logically insoluble tension between the right of peoples and the rights of states"[229], the existence of this section in this chapter on humanitarian intervention is justified[230]. The tension, and

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[228] Beetham, David. "Democracy and Human Rights: Civil, Political, Economic, Social and Cultural" in Symonides, Janusz (ed.), *op. cit.*, p. 73.

[229] Roberts, Adam. "The United Nations and Humanitarian Intervention", in Welsh, Jennifer, *op. cit.*, p. 97. See Brown, Chris and Ainley, Kirsten, *op. cit.*

[230] For a discussion of humanitarian interventions and the responsibility to protect, as well as background on interventions which occurred after 1991 until recently, see Rice, Susan E. and

paradoxically the link, between the claims to rights of states and rights of peoples are undeniable. As has already been explained in the opening section on sovereignty, a state is held accountable both through 'domestic' and Westphalian sovereignty[231]. With the advent of a new context of international relations – and increased focus on human rights – it is not surprising that massive violations of human rights give rise to designations of 'failed states'. Thus, to be a 'good' state, or acquire a 'good citizenship' record in international society, states must uphold and promote high standards of human rights[232]. Kofi Annan made this point in his article in *The Economist*

> State sovereignty, in its most basic sense, is being redefined... States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights. When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.[233]

Jennifer Welsh also grasps this link, when she claims that

> The members of international society should view the relationship between sovereignty and intervention as complementary rather than contradictory, by conceiving sovereignty as conditional upon respect for a minimum standard of human rights[234].

Thus, the concepts of 'sovereignty as responsibility' and 'responsibility to protect' crystallise. In other words, if a state does not live up to its duties and responsibilities of upholding human rights and protecting its citizens, that very duty falls to the international community as a whole.

> 2.31 While the state whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of states. This fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly

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Loomis, Andrew J. "The Evolution of Humanitarian Intervention and the Responsibility to Protect" *in* Daalder, Ivo H. (ed.). *Beyond Preemption: Force and Legitimacy in a Changing World*, Washington D.C.: The Brookings Institution, 2007, pp. 59-95.

[231] See *supra* note 21.

[232] This also ties in to the next sub-section on ethical and moral considerations, and shall be dealt with in detail at that stage as well.

[233] Annan, Kofi A. "Two concepts of sovereignty", *The Economist*, 18 September 1999.
It is also interesting that Kofi Annan discusses various aspects of intervention in the same article, arguing that intervention does not only refer to the use of force, that national interest can be an obstacle to action, that the Security Council must be able to react, and that the commitment to peace after an intervention must be upheld.

[234] Welsh, Jennifer. "Conclusion" in Welsh, Jennifer, *op. cit.*, p. 177.

> threatened by actions taking place there. This responsibility also requires that in some circumstances action must be taken by the broader community of states to support populations that are in jeopardy or under serious threat[235].

Such is the missing link between sovereignty, responsibility and intervention.

> We have no decent choice but to accept the thesis that David Miller accepts: that the rest of us are not free merely to leave human beings to their fates when it is impossible for their basic rights to be protected by national institutions. Miller argues not only a) that the rest of us are obligated to act *only* if it is impossible for national institutions to protect basic rights, but also b) that *if* it is impossible, than the rest of us are obligated to act somehow – at least, sometimes[236].

The challenge is twofold. Firstly, it implies a reversible relationship between human rights and sovereignty: sovereignty can be defined on the one hand as control by a state, and on the other by accountability to other states that human rights are upheld. Should this not be the case, the state may be considered as not fully exercising its capacity and the international community, ideally represented by the United Nations Security Council, may investigate the matter further and, if required, take appropriate measures[237].

Secondly, interventions and Security Council action under Chapters VI and VII may be permissible, or at least morally warranted and justifiable, as threats to international peace and security, in cases of massive violations of human rights. This brings a new dimension to the discussion on humanitarian intervention: what constitutes a 'gross and massive violation of human rights', what is severe enough to justify intervention for human protection purposes? As was explained in the introductory section when examining the definitions of humanitarian intervention, the problematic point with the term lies in the designation 'humanitarian'. The same applies to the 'responsibility to protect': protect whom, from what, to what end, and how?

The issue is one of thresholds and limits in both these two challenges. In the first case, the limit concerns how far the international community can bear to let

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[235] *The Responsibility to Protect, op. cit.*, p. 17.
[236] Shue, Henry. "Limiting Sovereignty" in Welsh, Jennifer, *op. cit.*, pp. 20-21.
[237] This is the 'sovereignty as responsibility' paradigm and further accounts may be found by referring to Deng, Francis M.; Kimaro, Sadikiel et al., *op. cit.*; and to Francis M. Deng and Roberta Cohen's publications in general.

states go before considering intervention as the last option. This also encapsulates several ethical and moral considerations pertaining to human suffering, death, the role of the state, values and 'collective conscience', which will be discussed in the following section. In the second case, the question is around 'human' loss, and is quite straightforward: what is the threshold which amounts to a justification of humanitarian intervention?

Not surprisingly, nobody has dared to advance figures to quantify life and death. How many lives need be lost to allow for a qualification of massive violations of human rights? 1,000, 10,000, 800,000 lives?[238] How much does the death toll weigh in the consideration of using force to avert a 'humanitarian' crisis? How many children must starve to label a situation as a 'threat to international peace and security'? Does targeted rape and abuse in time of civil war suffice to warrant international action?

> The philosophy underlying objections to humanitarian intervention is essentially a philosophy of limits: limits on the consensus that exists internationally about the link between a state's legitimacy and its protection and advancement of human rights; limits on the willingness of intervening states to engage in long-term efforts to address root causes; and finally, limits on the degree to which we can say that humanitarian interventions have been undertaken in the name of the 'international community'[239].

Yet another set of interrogations arises: which 'human rights' are basic or essential? The literature on international human rights, 'priority rights' and cultural relativism provides many answers[240]. The traditional view in international relations in the post-Cold War context is that the rights to life, physical integrity and security and food are 'basic', in the sense that these rights are necessary to survive, and to physical and moral well-being. In other words, there are certain rights without which human beings cannot live.

This implies that the Cold War view of political and civil rights as opposed to economic and social rights does not set as clear a divide. How can one devise a priority among the various human rights? Who establishes the criteria required in the

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[238] Depending on the country's population, a percentage of the population could even serve as a quantification. Indeed, 1,000 civilian losses in Liechtenstein or in India show the relativity of the criteria.

[239] Welsh, Jennifer. "Taking Consequences Seriously: Objections to Humanitarian Intervention" in Welsh, Jennifer, *op. cit.*, p. 53.

[240] See Steiner, Henry and Alston, Philip. *International Human Rights in Context, op. cit.*, pp. 323-366.

new 'sovereignty as responsibility' concept? Who will enforce these rights and duties, monitor compliance with, and deviation from, them?

> Questions about 'sovereignty as responsibility' lead directly to questions about the legitimacy of intervening with force in a sovereign state on humanitarian grounds. They also raise important questions about who should play the role of judge and enforcer in contemporary international relations[241].

The United Nations Security Council is the most able body to monitor compliance with human rights' protection[242]. Indeed, under its mandate, this body is in a position to use force to restore conditions of international peace and security, if it deems necessary.

Certain acts are indeed considered as 'crimes against humanity', as in the case of genocide and ethnic cleansing. Under international law, the prevention of genocide has entered the body of customary law. Thus, if genocide is under consideration within the United Nations and is named as such, states could be held to account for crimes against humanity, with individuals held accountable and threatened by international legal sanctions.

A consideration of the cases in which the Security Council did consider or take action in order to address violations of human rights will now highlight the issues and strengths at stake, and will introduce the analysis and discussion of the criteria presented by the 'Responsibility to Protect' to assess whether intervention is warranted.

5.3 United Nations Security Council Resolution 688 (1991)

In 1991, following the US-led operation in Iraq, the Security Council was seized of the matter. In light of the repression of the civilian population in Northern Iraq, forces were sent to establish 'safe havens', or protected enclaves, for the Iraqi population: 'Operation Provide Comfort' had begun. On April 5, 1991, the Security Council adopted Resolution 688 (5 April 1991)[243]. Adopted by 10 votes to 3 (Cuba,

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[241] See Welsh, Jennifer, *op. cit.*, p. 67.
[242] Many scholars disagree with this view and support the idea of reforming the Security Council. Section 2.6 will analyse their positions.
[243] Adopted at the Security Council's 2982nd meeting, 5 April 1991.

Yemen and Zimbabwe), with 2 abstentions (China, India), the Resolution expressed the view that the Security Council was

> Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region[244].

The importance of Resolution 688 is striking for several reasons. First, it is among the rare occasions on which the Security Council did mention that the mistreatment of a civilian population and the flow of refugees posed a threat to international peace and security. Second, it was not adopted under Chapter VII of the UN Charter and did not authorise the use of force. Nevertheless, the wording of the resolution is 'Chapter VII' language. Clearly, the qualification of events taking place in Iraq as "threaten[ing] international peace and security" is a step in the direction of Chapter VII.

The Resolution also did not make mention of humanitarian grounds (should it have done so, it would probably not have secured the required number of UN Security Council Member votes, and may even have been vetoed – most probably by China). Finally, Resolution 688 was not intended as a legal or political precedent that would justify intervention on humanitarian grounds.

Simon Chesterman provides a complete international legal discussion of the creation of no-fly zones in Iraq for the Kurdish population[245]. His conclusions state that although Resolution 688 could be a potential legal basis for no-fly zones, this is not reflected in the commentary or declarations made by states when referring to Resolution 688. Rather, most statements addressed the plight of refugees, not of the civilian population or of internally displaced persons[246]. The nature of Resolution 688 in relation to humanitarian intervention thus remains blurred and ambiguous. Undoubtedly, this Resolution was innovative by introducing human rights concerns and offering a new perspective of human protection purposes.

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[244] UN Security Council Resolution 688, 5 April 1991, preambular paragraph 3.
[245] Chesterman, Simon, *op. cit.*, pp. 196-206.
[246] It has been argued that IDPs would be included as the victims of repression by analogy to refugees. However, no reference was made to IDPs in the text of the Resolution. In this case, refugees may, nevertheless, be assimilated to IDPs.

In the early years of the twenty-first century, sovereignty has undergone numerous challenges. In fact, the claims to self-determination and human rights of individuals and groups have been on the increase. Likewise, the number of conflicts taking place within states has reached peaks. The solutions must focus on the long-term, be fair and far-reaching: the world is now truly interconnected, and communication means are at the disposal of the global populations. What happens to Mr. Dbonage[247] will reach Mr. Smith. And yes, Mr. Jones may choose to react. However, some of the ideas raised by professionals and academics alike are striking by their practicality and value.

As has been demonstrated throughout this chapter, humanitarian intervention presents challenges to politics, ethics, morality and law. At the least, these entangled and complex concepts generate discussion, controversy, views and perspectives. By identifying the issues at stake within the fields mentioned above, this chapter also attempts at providing some elements to address these.

Perhaps the most interesting thing to remember about intervention is that

> It seems self-evident to some ... that, depending on the circumstances, the intentions behind interventions should be to end hostilities, to maintain the peace, to restore or create viable and just social and political structures, and to do as much as possible to ensure no future outbreak of hostilities[248].

Thus, although the most optimist objective may not always be feasible in practice, it is fair to assume that the aim should be to restore conditions which are viable and satisfy all those located in the areas at conflict, to ensure the safety and protection of civilians, to prevent further harm and suffering and casualties. These conditions should be acceptable to all states and parties, as a stable and relatively calm environment is conducive to a prosperous economy, development, and peaceful relations with other states.

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[247] These fictive names have been chosen randomly.

[248] Fixdal, Mona and Smith, Dan. "Humanitarian Intervention and Just War", *Mershon International Studies Review*, 1998, Vol. 42, p. 17.

Chapter 3 Internally Displaced Persons

The purpose of this chapter is to set a background for a core element of this thesis, namely internally displaced persons. It will specifically address internal displacement, by providing definitions and a typology – or differentiation – and by discussing causes of internal displacement. This will lead into a discussion of how internal displacement can become a threat to international peace and security. Then, the author will demonstrate how non-governmental organisations have raised the plea of internally displaced persons on the international scene, representing 'human' and civil society concerns. Finally, the sub-section on the practical side of the IDP-linked organisational problems will highlight how UN agencies, NGOs and actors involved have dealt with internal displacement at the policy and administrative levels. This will show how, from an issue of temporary mandates and *ad hoc* consideration, the problem of internal displacement has grown to justify a division of its own within the Office for the Coordination of Humanitarian Affairs (OCHA), a UN agency, and how the UN Secretary-General's Representative on Internal Displacement, has become a focal point for all IDP-related issues.

The first step will be to shed light on the international refugee regime. As part of the context setting of this thesis, this section will present such essential elements as the refugee definition, *non-refoulement*, issues and problems, a typology, international texts and instruments relating to refugees – the international refugee regime. This will highlight the commonalities and the differences between the international legal and political contexts of refugees and internally displaced persons. The main focus of this chapter will thus obviously be on internally displaced persons, causes of such massive movements and latest developments.

1 Refugees

> [...] Greater effort and commitment will be required by all members of the international community, irrespective of their differing ideologies, cultural traditions and institutional mandates. Political leadership has a central role to play in this process. On too many occasions in the past, governments and other actors have interpreted the notion of 'national interest' in an unduly narrow and insular manner. As well as failing to acknowledge their broader responsibility to the protection of human welfare, they have also ignored the fact that their longer-term interests would actually be served by respecting and promoting the principles embodied in the UN Charter.[249]

The plight of refugees gained importance in the past few years: this has two explanations. The first is related to the growing number of refugees in the world today, and the second is the realisation that this problem has consequences for the host countries as well as for those involved. There is now a common awareness that the refugee issue could emerge anywhere and that the drastic consequences it generates could be irreversible. It is important to note that refugees are not confined to one part of the world: indeed, refugee concerns have arisen on all continents. In the late 1940s, the end of the Second World War reshaped Europe and led to the recognition that refugees were lacking adequate legal protection. It was in this context that the Refugee Convention[250] was conceived. The drafters of the Convention were conscious that there was a need to codify the rights granted to refugees, and that the refugee issue was one of prominent importance.

1.1 Definition of a 'Refugee' according to the Convention

According to the 1951 Convention, and as contained in the general provisions of Chapter 1, Article 1, a refugee is

> any person who:
> -has been granted refugee status under a preceding treaty

[249] *The State of the World's Refugees: 1997-98: A Humanitarian Agenda.* Oxford: Oxford University Press. (UNCHR Publications), 1997, p. 276.
[250] United Nations Convention Relating to the Status of Refugees, 1951, adopted on 28 July 1951. Full text available at: http://www.unhchr.ch/html/menu3/b/o_c_ref.htm (accessed January 12, 2009).

> -as a result of events occurring before 1 January 1951 and owing to a 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"[251].

The 'refugee problem' was spreading throughout Europe, and it was thought necessary to emphasize the geographical location of the refugees at the time. Thus, article B(1)(a) specifies that the definition should apply to "events occurring in Europe before 1 January 1951".

The 1967 Protocol relating to the Status of Refugees widens the scope of the 1951 Convention by modifying its definition as follows: there shall be no time limitation (i.e. the words "as a result of events occurring before January 1 1951" were omitted), and no geographical limitation (according to article 1, 3. of the Protocol). Thereafter, the Convention was applicable to refugees all over the world. In addition, the Protocol places an emphasis on cooperation between states and the UNHCR.

1.2 Limitations

There are several issues to be dealt with when considering the definition of a refugee in the 1951 Convention. Indeed, according to the Convention (and not considering the 1967 Protocol at this point) a refugee would have had to be a person suiting the definition contained in article 1, A (2) in Europe and before 1951.

The definition includes people who have a well-founded fear of persecution: this entails problems for the analysis of individual cases, when determining and granting refugee status. Indeed, the asylum-seeker would thus have to prove this well-foundedness; and in some cases this can be difficult.

Further, the Convention's definition implies that the consideration and granting of refugee status is made on an individual basis. This obviously limits the scope of the status and implies that each claim must be examined individually or separately. However, today in a growing number of cases, asylum seekers may be the product of common persecution. For example, in cases of ethnic cleansing or persecution based on ethnic grounds, asylum seekers have to claim refugee status individually, whereas they belong to a group and are the object of human rights

[251] *Ibid.*, Article 1, section A (2).

abuses due to this common belonging. Moreover, the definition definitely lacks a mention of ethnicity as a reason of fear of being persecuted, in light of the conflicts of the 1990s[252].

There is therefore a distinction to be considered: 'Convention refugees' are those persons who strictly satisfy the definitional criteria laid down in article 1 A (and B, as amended by the 1967 Protocol), and 'humanitarian refugees', the protection and needs of which are not addressed specifically in the 1951 Convention. Problems arise from this omission, as the Convention does not cover 'humanitarian refugees'[253], who may require immediate and emergency assistance. This implies, as was previously mentioned, that states receiving a mass influx of humanitarian refugees face a practical difficulty in applying the Convention because "there simply is no time to do the individualized screening commonly necessary to apply the Convention definition"[254].

The grounds for granting refugee status, i.e. "race, religion, nationality, membership of a particular social group or political opinion" may no longer be sufficient today. A number of new reasons have emerged: persecution by a rebel group, flight from civil war, gross violations of human rights, and external aggression are but a few examples. The 1951 Convention's definition lacks some very pertinent reasons for an individual to claim refugee status. In other words, it does not encompass all dimensions of the current international order.

Finally, scholars voice specific concerns for the 'social groups' who may be the most vulnerable – refugee women and children, sick and elderly refugees.[255]

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[252] "The definition [of 'refugee' in the 1951 Convention] does not apply to persons fleeing from generalized violence or internal turmoil in, rather than persecution by, their home countries. Such persons are generally considered to be "**humanitarian refugees**" rather than political or social refugees as defined in the 1951 Refugee Convention", Hailbronner, Kay *in* Martin, David A. Ed. *The New Asylum Seekers: Refugee Law in the 1980s.* The Ninth Colloquium on International Law. Dordrecht: Martinus Nijhoff Publishers (Kluwer), 1988, p. 124, emphasis added.

[253] They are, however, covered by other legal instruments.

[254] Hailbronner, Kay, *op. cit.*, pp. 124-125.

[255] For a complete discussion on the notion of social group, see Goodwin-Gill, Guy S. *The Refugee in International Law.* 2nd ed. Oxford: Clarendon Press, 1996, pp. 46-49. These groups are vulnerable in the refugee context, since they may be persecuted for reasons of gender, weakness but are also those who require assistance during phases of displacement and return, as well as in camps.
For a consideration of refugee women as a vulnerable social group, see Goodwin-Gill, Guy S. *Ibid.*, pp. 362-366. See UNHCR, 'Note on Refugee Women and International Protection' of UNHCR Executive Committee, 36th session), UN document EC/SCP/39, July 1985 (available as Annexe 3 in Goodwin-Gill, Guy S. *Ibid.*, p. 488); UNHCR, 'Note on Refugee Children' (no. 47) of UNHCR Executive Committee, 38th session), 1987 (available as Annexe 3 in Goodwin-Gill, Guy S. *Ibid.*, p. 492) . See also Cipriani, Linda. "Gender and Persecution: Protecting Women Under International

1.3 Non-Refoulement

Non-refoulement is the legal obligation of states not to expel (from the French verb '*refouler*') refugees or asylum seekers. This norm may be identified as the "prohibition to expel an asylum seeker claiming refugee status, without at least examining his claim"[256]. *Non-refoulement* should be applied by states at the border; in other words, states should not return asylum seekers when they arrive at the border, claiming the right to enter their territory. Obviously, this reflected progress in the international refugee regime. This principle is embodied in article 33 of the 1951 Convention:

> *Prohibition of expulsion or return ('refoulement')*
> No contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

It is important to note that the reasons given for the prohibition of expulsion are those very reasons mentioned in article 1 A (2) of the definition. Thus, *non-refoulement* is the first step for an asylum seeker. It is also the first step for states, which under their international legal obligations, are bound to let an asylum seeker seek refuge. Moreover, *non-refoulement* is one of the norms of the 1951 Convention to which states may not make reservations. The debate about *non-refoulement* becoming a principle of *jus cogens* has been ongoing. The concept would then be formally recognised as a norm that states could not opt out of. Although there is question about the extent to which this has been the case, *non-refoulement* has, in most cases, been respected by states. Future prospects may not be so optimistic, because of the situations faced by many states today, which are hosting temporary protected persons and a large number of refugees or in states where refugees have been integrated and resettled. Thus, there is a need to monitor the application of the

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Refugee Law", *7 Georgetown Immigration Law Journal 511*, 1993, pp. 511-548; Mahmud, Nasreen. "Crimes Against Honour: Women in International Refugee Law", *Journal of Refugee Studies,* Vol. 9, No. 4, 1996, pp. 367-382. Erika Feller considers the Convention and the issue of social groups in Feller, Erika. "International refugee protection 50 years on: The protection challenges of the past, present and future". *International Review of the Red Cross*, No. 843, Geneva: ICRC, pp. 581-606. See also the EU's concern for these vulnerable groups and in particular the "Position on Refugee Children" by the European Council on Refugees and Exiles (ECRE) (available at: http://www.ecre.org/files/children.pdf, accessed March 16, 2010)

[256] For a complete discussion on this concept see Goodwin-Gill, Guy S. *The Refugee in International Law*. *op. cit.* 2nd ed, 1996, pp. 117-171.

principle of *non-refoulement* on a case by case basis, and UNHCR has the mandate to do so.

Non-refoulement is incorporated in various legal instruments[257]. The Cartagena Declaration puts forward a powerful proposal, that *non-refoulement* should be considered as *jus cogens* and should become a "corner-stone of the international protection of refugees". However, in order to secure the regime applicable to refugees, there is a need to ensure that this principle is upheld. Indeed, refugees if expelled or returned may be faced with threats to their lives.

1.4 Reservations to the 1951 Convention

In article 42 (Chapter VII), the 1951 Convention provides for reservations to be made by states. Interestingly enough, states may not make reservations to articles 1, 3, 4, 16 (1), 33, and 36-46, respectively the definition of a refugee, non-discrimination, religion, access to courts, *non-refoulement*, and administrative matters related to the Convention. It is important to note two of these articles (1 and 33) as not permitting reservations. Indeed, were a state to make a reservation on article 1 (definition), the Convention would not be applicable. Therefore, once refugee status has been granted in accordance with article 1, other states may not challenge this status. Secondly, article 33, relating to the prohibition of expulsion or return is extremely important. If reservations were to be made to such an important provision, refugees could be expelled to places where their lives may be threatened. The fact that the drafters of the Convention excluded this article from reservation demonstrates their hope that the prohibition of expulsion should become a generally accepted principle or general state practice in international law.

1.5 Other Legal Regional Instruments Applicable to Refugees

In addition to the 1951 Convention, there exist two other legal instruments at the regional level: the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa, and the 1984 Cartagena Declaration on Refugees. Both these texts add a different perspective to the definition of a refugee.

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[257] In the 1951 Convention, in the 1969 OAU Convention (article II (3)), in the 1984 Cartagena Declaration (section III, 5), in the 1984 Convention against Torture (article 3), in the 1969 American Convention on Human Rights (article 22 (8)), in the 1950 European Convention on Human Rights (article 3); and in international humanitarian law under the 1949 Four Geneva Conventions (in particular in article 45, Fourth Convention).

The 1969 OAU Convention adopted a definition encompassing that of the 1951 Convention[258], although it broadened it[259]. Moreover, it emphasises the obligation of OAU member states to grant asylum, to the best of their capacity[260]. The 1984 Cartagena Declaration on Refugees is an extremely useful text, because it equally qualifies the definition of the 1951 Convention, and adds that the principle of *non-refoulement* should be expanded upon[261]. This definition is much more complete and reflects the current reality of the international order. The major change in the Cartagena Declaration concerning *non-refoulement* is to imply that it would become a legal principle that states could not opt out of, that it would become part of international customary law.[262]. There are two sides to this: the first aspect is positive. Indeed, including *non-refoulement* in international customary law would be a considerable progress.[263] For refugees, concretely, this would mean that they could not be rejected, at least during the processing of the claim. However, it is interesting to note that states have, most of the time, abided by the principle of *non-refoulement* (probably more so in the cases of 'humanitarian refugees'). The fact that it should be a 'corner-stone' of the international refugee regime is undeniable: otherwise, refugees whose lives are threatened may have to return to those very places where they could be in danger. Thus, despite the fact that *non-refoulement* is a logical act

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[258] Article I, 1 and 2 of the 1969 OAU Convention.

[259] 1969 OAU Convention, Article I, 2: "The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

[260] 1969 OAU Convention, Article II, 1: "Member states of the OAU shall use their best endeavors consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality."

[261] "[...] in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country **because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.**", *Ibid,* Section III, 3, emphasis added.

[262] "[...] to reiterate the importance and meaning of the principle of *non-refoulement* (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *ius cogens", Ibid,* Section III, 5.

[263] Yet today, scholars do not agree whether or not *non-refoulement* is a part of international customary law or not.

in theory, in practice things may be quite different. If a state did not have the capacity to welcome an asylum seeker, could or should it reject him/her? Or should that state arrange for that person to be transferred to a neighbouring state (as is the case under the European Community Dublin Convention and Schengen Agreement)? Here, one can once again mention the dichotomy between 'asylum' and refugee status: for a refugee, seeking refuge is a way to save his/her life or integrity, that is why the 'fear of persecution' is so important: The refugee will have to provide evidence corroborating his/her claim of fear for his/her life. Therefore, *non-refoulement* at the border is crucial for all asylum seekers, until the competent national authorities have examined their individual claims, and should definitely be recognised as an essential component of the international refugee regime.

1.6 The United Nations High Commissioner for Refugees (UNHCR)

Historical Background

The United Nations High Commissioner for Refugees, UNHCR, is the lead UN agency in any matter relating to refugees. It is the successor organisation of the International Refugee Organisation (or IRO, which was set up under the League of Nations). It was implemented as a UN subsidiary organisation, i.e. working under the authority of the UN General Assembly.[264] Thus, the UN High Commissioner for Refugees reports to ECOSOC and to the General Assembly once a year.

Mandate

The mandate of UNHCR is set out in the "Statute of the Office of the United Nations High Commissioner for Refugees" (14 December 1950)[265]. The mandate and responsibility of UNHCR focuses on two key aspects, i.e. the protection of and assistance to refugees, and the prevention of refugee flows. The Statute's reference to a refugee matches the Convention's definition[266], except that in article 6.B, it refers to all persons outside their country and having a well-founded fear of

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[264] As of today, UNHCR has the status of a 'specialised agency' of the UN, but was set up under article 22 of the UN Charter.

[265] UNHCR Statute, 14 December 1950, Chapter I, article 1, emphasis added: "The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of **providing international protection** under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of **seeking permanent solutions for the problem of refugees** [...] to facilitate voluntary repatriation of such refugees, or their assimilation within new national communities."

[266] *Ibid.*, chapter II, article 6.A (i)(ii) and B.

persecution. UNHCR's concrete responsibilities for the protection of refugees are specified in the Statute, chapter II, article 8: "The agency has the important functions of monitoring the application and promotion of the 1951 Refugee Convention (as well as any other relevant international treaties) (article 8. a)); collaborating with governments to improve refugee conditions, as well as to promote voluntary repatriation or resettlement/integration and establishing contacts and exchanging information relating to refugees". Article 8 c) is relevant to UNHCR's 'solutions' to the problems of refugees. UNHCR was set up as being non-political, so as to enable the agency to conduct its work without interfering in states' affairs, thus acting on a humanitarian basis (this is why UNHCR is referred to as a 'humanitarian' organisation)[267]. However, in the scope of application of the competence of the Office, the individualistic aspect is undeniable: the Statute contains a paradox, as noted by Goodwin-Gill[268]. This is related to the definitional problems discussed earlier, in relation to the 1951 Convention. Indeed, as of today, major refugee movements are mass movements (mostly involving 'humanitarian refugees').

UNHCR's mandate has thus evolved accordingly, in order to include new phenomena[269]. This proves that, although UNHCR was set up after World War II and maintained since then, it does have the capacity to evolve and to adapt to the challenges of the current international scene. This is the key to the agency's success and constant progress, in terms of new issues emerging in the area of refugees and displaced persons. As explained by Hailbronner, UNHCR's mandate today covers more people than originally intended[270].

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[267] UNHCR Statute, *op. cit.*, "The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees". Whether this is the case in practice is questionable because UNHCR does depend on states for contributions, and is a UN agency. See also UNHCR Statute, *op. cit.*, Chapter I, article 2.

[268] Goodwin-Gill, Guy S., *op. cit.*, p. 8: "The UNHCR Statute, nevertheless contains an apparent contradiction. On the one hand, it affirms that the work of the Office shall relate, as a rule, to groups and categories of refugees. On the other hand, it proposes a definition of the refugee which is essentially individualistic, seeming to require a case by case examination of subjective and objective elements."

[269] *Ibid.*, pp. 8-9: "The frequency of large-scale refugee crises over the last forty-five years together with a variety of political and humanitarian considerations, has necessitated flexibility in the administration of UNHCR's mandate. In consequence, there has been a significant broadening of what may be termed the concept of 'refugees of concern to the international community'".

[270] Note on International Protection, 36th Session of the Executive Committee of the High Commissioner's Programme, UN Doc. A/AC.96/660 (1985): "International bodies have also reacted to the growing problem of mass influx of humanitarian refugees. Originally, the competence of the

This extension of mandate is made possible by the Statute, in article 9 (chapter II): "The High Commissioner shall engage in such additional activities [...] as the General Assembly may determine." In other words, whenever necessary, the General Assembly may expand UNHCR's responsibilities. Obviously this is an important provision, and although such new extensions are not contained in the text of the Statute, they do become legal texts which form a part of international customary law.[271] Unfortunately, there are no such corresponding extensions to the 1951 Convention's definition.[272] The former UN High Commissioner for Refugees, Mrs. Sadako Ogata, referred to these "new types of people" of concern to her agency and discussed UNHCR's functions[273]. Mrs. Ogata also stressed the importance of the 'protection' provided by UNHCR (as compared with the search for permanent solutions for the problem of refugees)[274]. In 2005, UNHCR was designated as the cluster lead for camp coordination and management, emergency shelter and protection.[275]

United Nations High Commissioner for Refugees (UNHCR) was restricted to refugees as defined by the 1951 Refugee Convention, i.e. "Convention refugees". Since 1959, however, the UNHCR's competence has been extended gradually to cover all refugees, including "persons who have fled their home country due to armed conflicts, internal turmoil and situations involving gross and systematic violations of human rights".
See also Hailbronner, Kay, *op. cit.*, p. 125: "In accordance with its extended mandate, the UNHCR has also striven to enlarge the scope of *non-refoulement* to reach humanitarian refugees".

[271] At this point, one could argue (as does Goodwin-Gill, pp. 216-217) that GA resolutions are legally binding and that UNHCR does not have a legal status in international law.

[272] One could extrapolate and argue that, those groups assigned to UNHCR under its competency, do become part of the corresponding definition of what new categories of people of concern to the Office are.

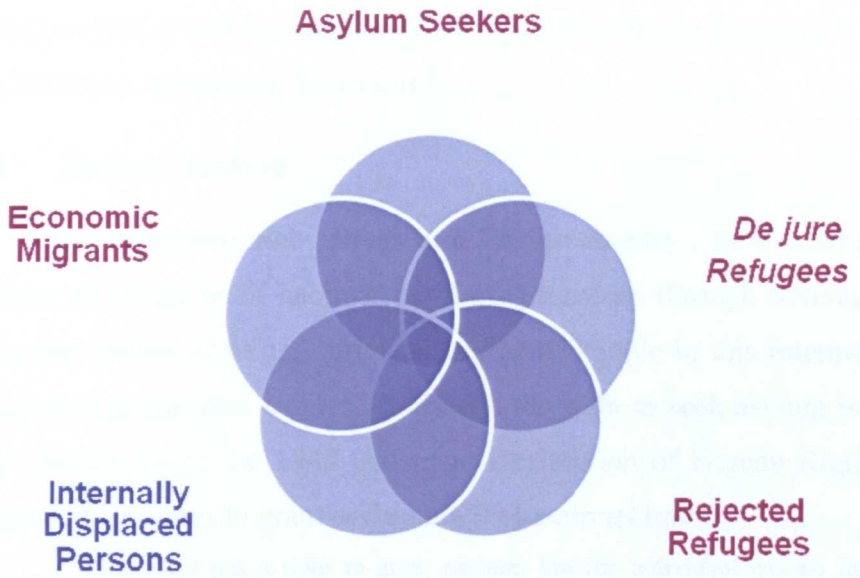
[273] *The State of the World's Refugees 1997-1998*, *op. cit.*, "Foreword", p. x: "The organization's other beneficiaries include a variety of different groups: internally displaced and war-affected populations; asylum seekers; stateless people and others whose nationality is disputed; as well as 'returnees' [...] While such groups of people may differ considerably with regard to their specific circumstances and legal status, they have one thing in common: a high level of human insecurity, arising in most instances from the inability or unwillingness of a state to protect its citizens. The primary function of UNHCR is to compensate for this absence of national protection by safeguarding the life, liberty and other rights of people who have been uprooted or threatened with displacement."

[274] UNHCR Statute, chapter I, article 1: "Of the two functions, the provision of international protection is of primary importance, for without protection, such as intervention to secure admission and *non-refoulement* of refugees, there can be no possibility of finding lasting solutions."
See also Goodwin-Gill, Guy S., *op. cit.*, p. 212.

[275] This will be discussed in greater detail in Chapter 5, section 4.2 The Cluster Approach.

2 Typology of Migrants, Refugees and Internally Displaced Persons

There are several types of groups involved in migrations. In this sub-section, the different sub-groups will be introduced and pertinent questions will be raised as to the relationship between them. Although the categories of people on the move are clearly distinct from internally displaced persons, they are discussed at this point in order to demonstrate that their motivation for movement and the 'push' factors leading to displacement are similar. Furthermore, in order to grasp the particularities of internal displacement, a differentiation is necessary, particularly with refugees. For the purpose of this thesis, the following will be considered:



Source: Amina Nasir

These categories are very dynamic in nature, and the delimitation between them is permeable and reversible, allowing for a switch from one to the other. The interesting element to be noted from this typology is that all the categories, except internally displaced persons, are bound to cross borders, as will be explained in more detail.

2.1 Economic Migrants

Groups of individuals who migrate for economic reasons, to seek better economic conditions (higher salaries, more favorable social conditions, countries with a higher record of economic performance) are referred to as 'economic migrants'. Typically, the decision to migrate is based on the hope to improve present status, to prosper in a new environment, and to attain better prospects for individuals and families. Although this may be a shared objective, this type of migration is rarely 'collective' in nature, and mostly involves few people at a time. Morever, economic migrants can be a threat to refugees and internally displaced persons, since their claims are motivated by improvement in contrast to groups of individuals who flee to protect their lives and physical integrity. Tight asylum policies are the result of states wishing to implement higher levels of control on illegal immigration. For example, since the mid-1990s, the European Union has adhered to a strict collective policy and has implemented regulations in the Union as a whole, through the Schengen agreement, for example.

2.2 Asylum-Seekers

An individual who arrives in a foreign country ('third country', i.e. not the country of origin or of habitual residence) must go through several administrative processes before acquiring any type of status. People in this intermediate stage are designated as 'asylum seekers'. Although the right to seek asylum is a basic human right (article 14 of the 1948 Universal Declaration of Human Rights), there is no obligation for states to grant asylum, in international law:

> The state has a right to grant asylum, but the individual has no right to demand asylum. Articles 13 and 14 of the Universal Declaration of Human Rights and the General Assembly's 1967 Declaration on Territorial Asylum recognize the "right to leave any country including [one's] own" and the "right to seek and enjoy in other countries asylum from persecution". These rights, however, are not coupled with a corresponding state obligation to grant asylum[276].

The reasons behind the lack of a binding norm of international law for states to grant asylum is quite obvious: the decision to grant asylum is a state's prerogative and is closely related to state sovereignty. Nevertheless, regional legal instruments have been implemented to clarify some of the issues related to the granting of asylum. The 1969 American Convention on Human Rights states:

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[276] Malone, David in Martin, David A. (ed.) *The New Asylum Seekers: Refugee Law in the 1980s*. The Ninth Colloquium on International Law. Dordrecht: Martinus Nijhoff Publishers (Kluwer), 1988, p. 125.

> Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offences or related common crimes[277].

Asylum-seekers are in between two phases: flight from country of origin and integration in a new country. The administrative procedures can last for months, since national authorities bear the task of following up on the claims, must verify the accuracy of the individual claim of threat to life and integrity, in the case of a potential refugee. This entails gathering information in the 'home country' (or country from where the person originates), contacting various sources, liaising with UNHCR regional information and desk officers, etc. This may take time and asylum seekers must wait for the communication of the final decision regarding their claim. Once the decision is communicated, and assuming it is positive, the asylum seeker will become a *de jure* refugee, will be granted refugee status, a refugee passport and related documentation. Thereafter, local integration will have to take place, with the individual permanently settling in a new environment, with legal protection and access to rights similar to those of citizens of the new host country.

2.3 Individuals who become Refugees

Although the determination of refugee status does follow certain norms and standard procedures, according to the 1951 UN Convention relating to the Status of Refugees, policies at the national level are regulated by states' rules and policies. Once the claim of an asylum seeker is approved and a positive decision is communicated, the individual will become a *de jure* refugee. Thereafter, local integration will have to take place, with the person permanently settling in a new environment, with legal protection and access to rights similar to those of citizens of the new host country.

2.4 Rejected Refugees

If the asylum seeker's claim is rejected, the individual can be considered as a 'rejected refugee', in the sense that his/her case has not proven successful. A formal communication must be delivered, including mention of the outcome of the claim, next steps and deadline to depart the country. Rejected refugees generally

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[277] 1969 American Convention on Human Rights, Article 22 (7).

experience a strong psychological reaction to the negative outcome of their claim, and may even show signs of anger and rejection towards the 'host country'. This is merely the reflection of disappointment, and fear to have to return to the country of origin, which they may have left for a long time, as well as having to face the unknown conditions of return and rebuilding. Since asylum seekers are persecuted in their country of origin, it may be that they fear for their life and integrity upon having to return to their country of origin.

'Rejected refugees' are given a specific timeframe and conditions to prepare for and comply with departure guidelines, in most cases the host country will arrange for them to be returned within a short period of time. The psychological elements of time for proper preparation, explanation and provision of information on conditions in the country to which they are returning are often not given the required attention. These individuals must also face the challenge of re-creating an identity and rebuilding a life for themselves. Most states now offer some kind of initial help, whether in cash or in kind (territory or help in cash, for example) to rejected refugees, although they impose the time and conditions of departure.

3 Internally Displaced Persons

Interestingly enough, although it has been demonstrated that refugees and internally displaced persons share more common features than is generally thought[278], these two categories are not permeable. Indeed, IDPs are not able to cross a border, due to the very fact that they are 'trapped' within their own country. Refugees have already arrived in another country, where they are able to submit a claim (they acquire a new status: asylum seekers become refugees). Thus, these two conditions are exclusive and sufficient.

Nevertheless, the reasons for flight are very similar to internally displaced persons and refugees. The Guiding Principles on Internal Displacement and the Refugee Convention give the following potential reasons, the concurrence of which is summarised in the table below[279].

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[278] Most of the time, it is the difference between them, that is, the fact that IDPs remain within the borders of their country of origin or habitual residence, which is pointed out.

[279] Although the respective definitions may not specifically refer to these causes, in light of internal displacement and refugee crises, these causes can be inferred.

Table 10: Causes of Mass Movement

	IDPs	Refugees
Armed Conflict	✓	✓
Violence	✓	✓
Violations of Human Rights	✓	✓
Race	✓	✓
Religion	✓	✓
Nationality	✓	✓
Membership of a Particular Group	✓	✓

Source: Amina Nasir

As the comparison clearly demonstrates and according to legal definitions, mass movements of internally displaced persons and refugees have common causes. This will be studied in further detail in the subsequent section on internally displaced persons.

Many scholars have feared that helping IDPs would undermine the international refugee regime. However, it must be remembered that IDPs represent a growing area of concern and that the refugee problem will remain another major concern, as it has a secured legal background. IDPs are currently a challenge to the international community, and will probably remain as such in the coming years:

> What distinguishes IDPs and should make them of concern to the international community is the coercion that impels their movement, their subjection to human rights abuse emanating from their displacement, and the lack of protection available within their own countries. [...] importance lies in identifying people who should be of special concern to the international community, raising awareness to their plight, and facilitating the work of governments and private organizations seeking to increase protection and assistance for IDPs[280].

3.1 A Story in Numbers

In 2008, there were 26 million internally displaced persons in the world, located on all five continents, in 52 countries[281].

Whereas the number of refugees has been on the decrease in the past twenty-five years, due to voluntary repatriation or resettlement efforts, the number of

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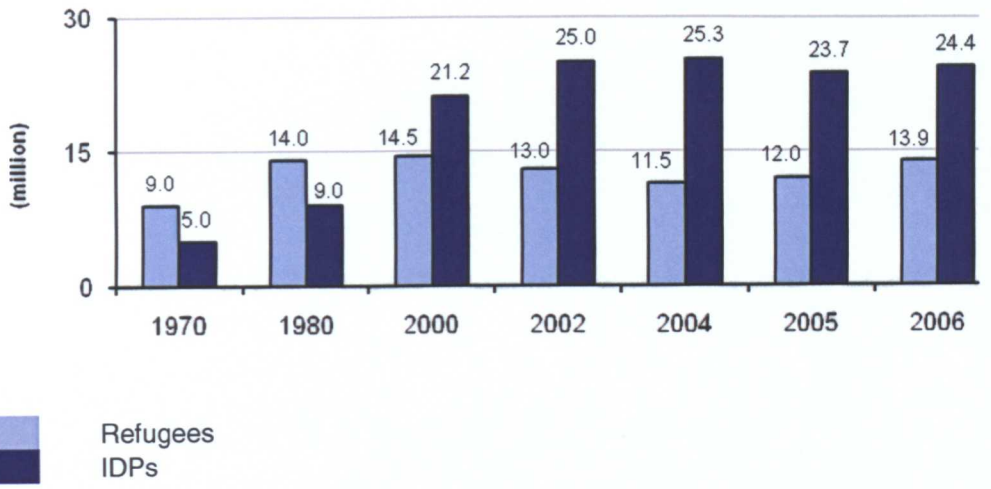
[280] *The State of the World's Refugees 1997-1998*, *op. cit.*, p. 5.

[281] Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2008*. Geneva: Internal Displacement Monitoring Centre and Norwegian Refugee Council, April 2009.

internally displaced persons has been increasing, and now outnumbers the total number of refugees around the world, as demonstrated in the chart below[282].

Number of Refugees and Internally Displaced Persons 1970-2006



Source: Internal Displacement Monitoring Centre, U.S. Committee for Refugees and Immigrants

3.2 Definition Problems

There are several problems regarding IDPs, at present and under the current international legal regime – the first of which is quite essential since it relates to the definition of an IDP. According to UNHCR, an IDP is "[a] person who, as a result of persecution, armed conflict or violence, ha[s] been forced to abandon [his] home and leave [his] usual place of residence, and who remain[s] within the borders of [his] own country"[283].

According to Dr. Francis Deng, former UN Representative of the Secretary-General on Internally Displaced Persons, IDPs are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or

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[282] The total number of refugees in the world stands at 13.9 million against 24.4 million internally displaced persons, according to the 2006 statistics of the US Committee for Refugees and Immigrants and the Internal Displacement Monitoring Centre. UNHCR gives the statistics of 9.8 million refugees against 12.79 million internally displaced persons of concern to UNHCR. In 2007 and 2008, there were 26 million internally displaced persons in the world, based on figures from the Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2008*, April 2009.

[283] *The State of the World's Refugees 1997-1998, op. cit.*, p. 99.

human-made disasters, and who have not crossed an internationally recognized State border"[284]. This definition includes two elements which deserve attention. The first being that Dr. Deng states that these conditions are "in particular", thus reserving the possibility to include other situations creating IDP crises, and the second being that he specifically refers to the lack of crossing of borders, thereby differentiating IDP status from refugee status. This remains the broadest and most often referred to legal definition. Yet, no legal text has been adopted and, therefore, the definition of the Guidelines must be used: "The Guiding Principles cover legal norms relevant in all three phases of displacement (prevention, actual displacement and solutions) and will hopefully have moral force and may evolve over time into customary law"[285]. However, given the various categories of displaced people, their geographical locations and the reasons for their displacement, UNHCR is right in qualifying them as "a very disparate and ill-defined group of people"[286].

The Meaning of 'Protection' for IDPs

Protection in relation to internally displaced persons is defined as: "the concept of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. HR law, IHL, refugee law)".[287]

3.3 IDP Status and Physical Protection

In recent years, a more comprehensive approach to internal displacement was adopted with the nomination in 1992 of the (former) UN Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng.

Since internally displaced persons are within the territory of their state of origin or permanent residence, the question of protection arises: if an internally displaced person does not enjoy appropriate protection and security in his/her

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[284]Deng, Francis M. *The Guiding Principles on Internal Displacement.* United Nations Commission on Human Rights, Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, UN Doc. E/CN.4/1998/53/Add.2, February 11, 1998.

[285]Hampton, Janie (Ed.), *Internally Displaced People: A Global Survey*, London, Earthscan Publications Ltd., Norwegian Refugee Council, Global IDP Survey, 1998, p. 35.

[286] *Ibid*, p 35.

[287] UN Inter-Agency Standing Committee Policy Paper, "Protection of Internally Displaced Persons", New York, December 1999, p. 4 (the definition is quoted from the Third Workshop on Protection, Background paper, ICRC, 7 January 1999). Available at: http://www.humanitarianinfo.org/IASC/pageloader.aspx?page=content-products-products&productcatid=10 (accessed January 27, 2009).

country of origin/residence, can the international community take action? This will be dealt with in a further chapter. Furthermore, in the case of internal displacement, insecurity is very likely and so, many of those IDPs who need assistance may not be able to request it or may not have access to it, because they are no longer protected by their own state and their lives may be threatened by those in power in their state: This may lead to a legal 'limbo'. Finally, a problem lies in the fact that no single organisation has been given the task or mandate to deal with IDPs; thus, it is extremely difficult to compile exact statistics and to assess the needs of IDPs requiring assistance.

Causes of Internal Displacement

Although root causes and proximate causes trigger mass movements, the most common immediate or direct cause of internal displacement is armed, internal conflict. The other most important direct, or triggering, causes are: human rights violations, genocide and ethnic cleansing[288].

4 The Guiding Principles on Internal Displacement[289]

4.1 Background

Francis Deng presented the 'Guiding Principles on Internal Displacement' to the United Nations Commission on Human Rights in 1998.[290] However, several analyses of the international legal norms, human rights in particular, applicable to internally displaced persons had been undertaken earlier.[291] In 1992, the UN Human Rights Commission entrusted the UN's Special Representative on Internally Displaced Persons with the task of assessing whether existing international law provided adequate coverage for internally displaced persons. In 1996, Dr. Deng was asked to develop a legal framework for IDPs. The Guiding Principles draw upon

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[288] Chapter 6 will integrate these major causes of internal displacement.

[289] Hereafter referred to as the 'Guiding Principles'. Available at: http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/A2D4116C222EB1F18025709E00419430/$file/GPsEnglish.pdf (accessed January 21, 2009).

[290] Deng, Francis M. *The Guiding Principles on Internal Displacement, op. cit.*

[291] See Deng, Francis M. *Internally Displaced Persons: Compilation and Analysis of Legal Norms.* Report of the Representative of the U.N. Secretary-General on Internally Displaced Persons. UN Doc. E/CN.4/1996/52/Add.2. December 5, 1995; Deng, Francis M. *Comprehensive Study on the Human Rights Issues Related to Internally Displaced Persons.* UN Doc. E/CN.4/1993/35. January 21, 1993; Cohen, Roberta. "Human Rights Protection for Internally Displaced Persons", Refugee Policy Group, June 1991.

existing international law, international human rights law, international refugee law and international humanitarian law[292].

In the "Introduction"[293], the Guiding Principles define internally displaced persons:

> For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or 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.

The Guiding Principles are a restatement of international human rights, humanitarian and refugee law to the protection and needs of internally displaced persons. Indeed, as the title of Francis Deng's initial report, the Guiding Principles are a *"Compilation and Analysis of Legal Norms"*. In this sense, they build upon the rights contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the Status of Refugees, the Convention on the Rights of the Child, international humanitarian law, the Geneva Conventions and Additional Protocols.[294] The Guiding Principles deal with the protection of IDPs during the phases of displacement and return and reaffirm that national authorities have the obligation to protect internally displaced persons and their rights.

The Guiding Principles do not have binding force in international law. They are not part of a United Nations legally binding document. According to Walter Kälin, this was done purposefully by his predecessor:

> there were several convincing reasons for this decision. Treaty making in the area of human rights had become difficult and time-consuming. Deng felt that something more immediate was required to respond to the needs of the growing numbers of IDPs worldwide, and he wanted to avoid a long period of legal uncertainty resulting from drawn-out negotiations. We stressed that the Principles were not creating new law but restating

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[292] Most of these norms are also part of customary international law and *ius cogens*.

[293] Deng, Francis M. *The Guiding Principles on Internal Displacement, op. cit.,* article 2.

[294] See Chapter 2, "4.2 International Humanitarian Law and 5 The International Human Rights Regime".
The Internet site of the Representative of the Secretary-General on the human rights of internally displaced persons provides a complete listing of the sources of international law used to compile the Guiding Principles: http://www2.ohchr.org/english/issues/idp/standards.htm .

> obligations that already existed under human rights and international humanitarian law binding upon states. We were concerned that negotiating a text that draws as heavily from existing law as do the Principles might have allowed some states to renegotiate and weaken existing treaty and customary law. Having a treaty approved would by no means have guaranteed its widespread ratification by governments. Finally, we felt that to draft a treaty that combines human rights and humanitarian law was probably premature. In legal, institutional and political terms, the distinction between human rights applicable mainly in peacetime and humanitarian law for times of armed conflict still was so fundamental that it was likely that many states and organisations would strongly oppose any attempt to combine both areas of law in a single UN convention.[295]

4.2 The 2005 World Summit

In the World Summit Outcome Document, heads of states declared:

> We recognize the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons.

This is an important step in the direction of promoting the Guiding Principles, and in assisting in the work of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.

5 Inter-Agency Cooperation[296]

At the end of the 1990s, it became obvious that there was a need to cooperate when dealing with internally displaced persons. Discussions on the need for operational or inter-agency collaboration to optimise the protection and assistance dimension related to IDPs have taken place. This has been illustrated by the various efforts to integrate internally displaced persons within the scope of UNHCR's activities, to synchronise the roles of international and non governmental organisations in order to avoid duplication of efforts, and to canalise and centralise responsibilities.

The question of a specific legal framework for IDPs can be addressed under three aspects: legal, operational and organisational[297]. The operational and

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[295] Kälin, Walter. "The Future of the Guiding Principles" in "Ten Years of the Guiding Principles of Internal Displacement", *Forced Migration Review GP10*. Oxford: Oxford University Press. December 2008, p. 39.

[296] This will be discussed at length in Chapter 5.

[297] At the legal level, "there are three principle schools of thought [...]: those who argue that the best approach lies in the development and dissemination of existing international human rights and

organisational aspects fall together, under the heading of a simple question: Who (i.e. which organisation[s]) should deal with IDPs? Cohen and Cuénod argue that

> **the most promising prospect for an effective international system clearly lies with a system-wide coordinated approach.** Internally displaced persons have needs that span the entire range of UN agencies from emergency assistance to protection to development aid. The creation of a single entity to meet these needs would duplicate the many existing resources and capacities that have already become involved with the displacement - at a time when the UN system is under considerable pressure to eliminate duplication and cut back staff. What is needed rather, is an effective coordinating mechanism to allocate responsibility and ensure that the varying needs of the displaced are met[298].

Cooperation, coordination, consultation are the key words. Indeed, it is obvious that many actors will be involved: the ICRC (international humanitarian law), UNHCR (refugee law), the Office for the Coordination of Humanitarian Affairs OCHA, and the Emergency Relief Coordinator ERC, the UN Human Rights mechanism, NGOs and respective governments. Thus, instead of falling under the umbrella of a single agency, IDPs benefit from the expertise and assistance of all. As of 2004, Dr. Walter Kälin, Professor at the Faculty of Law of the University of Berne, Switzerland, has been appointed the new UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.

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humanitarian law; those who claim that there is a need for new legal instruments or standards, akin to international refugee law but specifically focussed on the protection of internally displaced people; and those who call for a more radical and comprehensive legal framework, covering all forms of forced displacement." *The State of the World's Refugees 1997-1998, op. cit.*, p. 124.

[298] Internally Displaced Persons, *Report of the Symposium 23-25 October 1995*. Geneva: ICRC Publications, 1996, p.55, emphasis added. Some recommendations on cooperation when dealing with internally displaced persons were also proposed, see pp. 97-98:

1. Confusion between political and humanitarian matters should be avoided, and the blending of humanitarian decisions with political ones indeed seems to be dangerous. This remark particularly concerns the way in which the Security Council carries out its mandate: it should be possible to obtain the assurance that the Council conducts its deliberations and takes its decisions in full awareness of the humanitarian effects of the options it adopts.
2. The principles of humanity, impartiality and neutrality, now universally recognized, continue to be the cornerstone of all humanitarian action.
3. The draft principles of cooperation among Organizations prepared by the working group of [DHA] should be adopted by the Inter-Agency Standing Committee and put into practice.
4. Promotion of the Code of Conduct for NGOs should be intensified and more thought should be given to the criteria of these organizations' capacity to engage in field work.
5. [There is] a need to lay down guiding principles for donor governments and intergovernmental institutions.
6. [T]he practice of assigning funds to specific programmes (earmarking) should ideally be discontinued.

Chapter 4 The Responsibility to Protect

The Responsibility to Protect project emerged at a time when civil wars around the world were outnumbering international conflict, when massive violations of human rights were putting at risk human life across the globe, and when states were unable to take measures with an aim of halting or averting killing or genocide. At the same time, new trends on the international scene were emerging, with non-governmental organisations and civil society calling for the consideration of human rights, assistance and protection for those in need. The purpose of this chapter is to shed light on the Responsibility to Protect concept, and in particular on the Responsibility to Protect Report[299], as well as to set it within the context of the time of its publication. To do so, the chapter will be broken down into the following sections: brief overview of the critical issues at the time of the release of the Report; concepts and content of the Report, its originality and contribution; the authors of the Report and those involved in its promotion and implementation, the Report's relevance to internally displaced persons, the essence of its content; and finally, impact and implementation of the Report.

1 Context of the Report Drafting

1.1 Year 2000: the State of the World

At the turn of the 21st century, many features of the international order had changed, and the number of independent states had reached more than 190. The Cold War and colonisation were now history. This has affected the lens through which the world and international relations can be viewed. The world was getting closer, as communication and information networks constantly progressed; yet it was also torn apart, as conflicts arose.

The 1990s witnessed tragedies such as Rwanda (1994-95) where 800,000 lives were lost in 100 days. This was a lesson to the international community, since it was not prepared to react to ethnic clashes occurring within a territory, which were

[299] In this chapter, when referring to the Responsibility to Protect Report, I capitalise the 'R' purposely, to distinguish this Report from others.

definitely a defining feature of the late 1990s. In hindsight, it seems that alternative action should have been considered. However, at the time of the facts, both at the international and at the regional levels, discussions were undertaken to decide what could be done to address a situation taking place within the boundaries of a sovereign state. Indeed, Rwanda was a member of the international community, and although it was producing a mass influx of refugees affecting neighbouring states, the UN did not reach a consensus to take further steps to assist the populations in need within the country. In parallel, many non-governmental organisations were attempting to raise awareness in civil society and to draw the attention of public opinion to situations like Rwanda, by pointing to the gloomy failure of the UN, as well as to the inaction of the United States and other European states (mainly the former colonisers of the country) to assist individuals, or avert gross violations of human rights. This, coupled with the media coverage of the events, led to a realisation that at least some of this tragic situation could have been stopped earlier on. Nevertheless, the acknowledgement by civil society and public opinion that there is a common goal of promoting human rights and avoiding such degenerations gave rise to a momentum to construct and to assess that this was an item on the global agenda.

In 2000[300], there were 30 intra-state[301] wars. This was also a new feature of international relations, since during the 20th century, most major conflicts were carried out between states. The initiators of these wars had intricate reasons to resort to war, which were inherent to the state's affairs. Civil wars have appeared throughout all regions, and particularly in countries with poor economic performance. The reasons behind the conflict were often ethnic or regional differences, territorial claims, a desired change of regime, and in the worst cases, genocide. The national authorities were overwhelmed by the speed with which events unfold, and could not stay abreast of developments due to the rapid degradation of the situation.

When conflict occurred within the borders of a state, it was difficult, in light of the principles relating to state sovereignty and non-intervention contained in the

[300] Figures compiled by the Department of Peace and Conflict Research, Uppsala University, and the International Peace Research Institute, Oslo, state that there were 30 civil wars and 2 inter-State wars taking place in 2000. Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, *A more secure world: Our shared responsibility, op. cit.*, Part I: Towards a new security consensus, December 2004, p. 11.

[301] Intra-state wars are also described as 'internal' or 'civil' wars.

United Nations Charter, to pursue these matters at the international level. Nevertheless, if human lives were at stake and if massive violations of human rights were being committed, should the international community sit idle? Definitely not, as the lesson of Rwanda has taught. These were the issues, which the International Commission on Intervention and State Sovereignty, and its subsequent report 'The Responsibility to Protect', have addressed.

1.2 UN Secretary-General Kofi Annan and the New Challenge

The United Nations then Secretary-General Kofi Annan, in his Millennium Report, presented the international community of states with a challenge:

> ...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity ?[302]

This statement placed the new challenge, as well as the Report, in a context of human rights protection. The idea stemmed from a realisation that in 1990s, several instances of gross violations of human rights and civil wars had led to horrendous situations where the international community, as represented by the United Nations, had failed to prevent genocide, to react and to protect human rights, in particular the right to life.[303]

1.3 International Commission on Intervention and State Sovereignty (ICISS)

The International Commission on Intervention and State Sovereignty[304] and the Responsibility to Protect Report were the result of this appeal by the Secretary-General to find "new solutions to ongoing problems"[305]. The Commission was established by a UN Member State, the government of Canada, within the Ministry of Foreign Affairs, under the coordination of Lloyd Axworthy. It was composed of independent commissioners, meaning that the latter were not acting as government representatives, but as individuals specialised in their respective fields. Twelve Commissioners were invited to form the ICISS, including Gareth Evans and

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[302] *The Responsibility to Protect, op. cit.*, p. vii.
[303] Reference is here made to Rwanda, Somalia and the former Yugoslavia.
[304] Hereafter referred to as the ICISS (the official abbreviation used to describe the Commission).
[305] The Report was, however, not commissioned by the United Nations. It was the initiative of the government of Canada.

Mohamed Sahnoun[306], the two co-chairs. Areas of expertise of the commissioners included politics, international relations, international law, and humanitarian law. All the experts had diverse backgrounds, including academic, legal, intergovernmental, and non-governmental careers.[307]

When considering the Responsibility to Protect Report, it is essential to focus on its aim:

> First it seeks to reposition the existing normative consensus on the subject by replacing the language of humanitarian intervention with the concept of the responsibility to protect. Second, it seeks to locate that responsibility with state authorities at the national and the Security Council at the global levels respectively. Third, it seeks to ensure that when intervention for human protection purposes does take place, it is carried out with efficiency, effectiveness, and due authority, process and diligence[308].

Indeed, many commentators, when assessing the Report, tend to forget the following elements:

- ICISS was set up on a voluntary basis by the government of Canada, and not by the United Nations.
- ICISS Commissioners served as individual experts, not as mandated UN or civil servants.
- The Report was written by the Commissioners themselves (three Commissioners, in fact: Gareth Evans, Ramesh Thakur and Michael Ignatieff).[309]
- ICISS was implemented without its output being attributed to any one of its members.
- The impact of the 'Responsibility to Protect' Report was foreseen as a mid- to long-term goal, through advocacy and a new terminology.
- The issues dealt within the Report are building blocks of current international relations, highly controversial and innately political.

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[306] The ICISS Commissioners were independent, in the sense that they were not civil servants but experienced practitioners. It is also noteworthy that none of the Co-Chairs was of Canadian nationality.

[307] The Commissioners met five times and held several roundtables. For further information on the background discussions, see Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, pp. 35-50.

[308] Thakur, Ramesh. "Intervention, sovereignty and the responsibility to protect" *in* Thakur, R. et al. *International Commissions and the Power of Ideas, op. cit.*, p. 181.

[309] Interview with Ramesh Thakur, New York, 6 June 2007.

While the report, by not explicitly mentioning some areas may have seemed to lack force, nevertheless, the strength of the Report lied as much in what it says as in what it omitted – in most cases, deliberately. When presenting the new terminology, for example, the emphasis was placed on contrasting concepts[310]. It was not necessary for the Report to insist on what this negated; rather, it correctly turned to the fresh perspective. Most commentators insisted on the need to quantify the just cause threshold, which would justify an intervention for human protection purposes[311]. Of course, this would have made practical applications easier to categorise. The aim of ICISS, however, was not to enable intervention. Rather, the three aims referred to in Ramesh Thakur's quote above, clearly express what was expected of the ICISS and the Responsibility to Protect. This obviously was to be determined on a case-by-case basis: Kosovo is not Rwanda, and the arbitrary setting of a threshold would prove to be difficult, each situation having its own context. What suggestions would those authors put forward for setting a threshold: number of deaths (100,000; 10,000?), death from starvation or thirst (5,000?). Such figures would be subjective and unhelpful.[312] However, setting a threshold in the Report in a footnote would have been useful to avoid these comments. Alternatively, the Report left enough freedom of interpretation as to "what constitutes an extreme humanitarian emergency"[313]. United Nations agencies could thus be consulted in each case: UNHCR, UNDP, UNICEF, etc. These are the most capable actors to determine whether, and when, a humanitarian emergency situation occurs[314].

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[310] 'New terminology' is meant here as new associations of words and concepts, not as neologisms.
[311] For an argumentation of this point, see Welsh, Jennifer; Thielking, Carolin J.; MacFarlane, S. Neil, "The Responsibility to Protect: Assessing the report of the International Commission on Intervention and State Sovereignty", *op. cit.*, pp. 204-206 and Levitt, Jeremy I. "Book Review: The Responsibility to Protect: A Beaver without a Dam?: International Commission on Intervention and State Sovereignty", *Michigan Journal of International Law*, Vol. 25, No. 153, 2003, pp. 6-7.
[312] As Walzer asks: "How much killing is 'systematic killing'? What number of murders makes a massacre? How many people have to be forced to leave before we can talk of 'ethnic cleansing'? How bad do things have to be on the other side of the border to justify a forceful crossing, to justify a war?" Walzer, Michael. *Just and Unjust Wars, op. cit.*, "Preface to the Third Edition", p. xv.
[313] Welsh, J. et al., "The Responsibility to Protect: Assessing the report of the International Commission on Intervention and State Sovereignty", *op. cit.*, p. 204.
[314] These organisations are used to dealing with thresholds etc. and have qualified staff and operational procedures and processes in place to deal with emergencies.

2 Repositioning The Debate

2.1 Francis Deng and the 'Responsibility to Protect'

Francis M. Deng, the former UN Secretary-General's Special Representative on Internally Displaced Persons[315], used the terms 'responsibility to protect' to describe the responsibility of the international community to protect populations at risk, when their country of origin or of residence was unable or unwilling to do so. This was a way to avoid making reference to humanitarian intervention, by framing the debate in another context: responsibility became a corollary duty to the sovereign rights of the state. The 'responsibility to protect' debate started at this time, in a context where everyone agreed that interventions could help vulnerable populations.

2.2 'Repackaging' the Intervention Debate

The debate on the terms of humanitarian intervention when to intervene (threshold), the justification and the limitations of intervention have posed a real challenge to the international community. On the one hand, there are those who were firmly opposed to any kind or form of intervention, who based their view on the supreme authority of states and their sovereignty as the founding elements on international order. On the other hand, there were the proponents of intervention, who claimed that the needs of victims of civil wars can only be alleviated through an intervention.

The Responsibility to Protect Report presented the debate as 'responsibility' and not 'intervention'. It added a dimension by stating that intervention should be

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[315] Dr. Deng was given the mandate of UN SG Special Representative on Internally Displaced Persons in 1992, by the Commission on Human Rights Resolution E/CN.4/RES/1992/73. He carried out his mandate between 1992 and 2004. As of September 2004, Professor Walter Kälin has been given this mandate by the United Nations Commission on Human Rights Resolution 2004/55. This responsibility now includes:

(1) engaging in coordinated advocacy in favour of the protection and respect of the human rights of IDPs,
(2) continuing and enhancing dialogues with Governments as well as non-governmental organisations and actors,
(3) strengthening the international response to internal displacement, and,
(4) mainstreaming the human rights of IDPs into all relevant parts of the UN system.

In addition, the Representative is expected to build upon what his predecessor had initiated, in promoting the "Guidelines on Internal Displacement" (contained in UN document E/CN.4/1998/53/add.2).

carried out 'for human protection purposes', thereby focusing on the victims. This emphasised that intervention should be carried out with the least political ulterior motives, and with attention paid to those who suffer. By affirming that it is the international community of states' responsibility to protect the most vulnerable, the Responsibility to Protect Report took on an original stance, as it shifted the debate in light of a new perspective.

> As a member of that commission and one of the principal authors of the report, I responded that even here, the commission was a norm broker more than a norm entrepreneur. We consolidated a number of disparate trends, borrowed language first developed by former U.N. official Francis Deng to help address the problem of internally displaced people in his home continent of Africa, and adapted it to the so-called challenge of humanitarian intervention in the 1990s. Rather than create a new norm, we registered and dramatized a norm shift already under way. It is the implications of acting by the standards of the new norm that are revolutionary.[316]

3 Contents of the Report

The 'Responsibility to Protect' Report continued to draw attention, and different parties were engaged in promoting its findings and empirical principles[317]. Among the commentators who have written about the Report, there was agreement that "the evolution in language from 'right' to 'responsibility' was the central achievement of the ICISS"[318]. The aim of this section is to demonstrate what the Report – and its underlying normative framework – has achieved, and where its weak points stood. To do so, the reader will be introduced to the views of experts in International Relations, and to an analysis through four lenses: ethical and moral, core principles, operational, conceptual and content-related.

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[316] Thakur, Ramesh. "The responsibility to protect revisited". *The Daily Yomiuri* (Japan). April 12, 2007. Available at: http://www.igloo.org/community.igloo?r0=community&r0_script=/scripts/announcement/view.script&r0_pathinfo=%2F%7B7caf3d23-023d-494b-865b-84d143de9968%7D%2FAnnouncements%2Fciginews%2Ftherespo&r0_output=xml (accessed January 23, 2009).

[317] ICISS Commissioners regularly give speeches on the Report's content and published articles regarding its operational principles. Civil society, as represented by NGOs, is also active is publicising the Report's contents.

[318] Welsh, Jennifer *et al.*, *op. cit.*, page 494.

3.1 A New Terminology

The most important contribution of the 'Responsibility to Protect' Report has been to refresh the debate around humanitarian intervention. Although it seems obvious now that the terminology used in the Report has gained wide support, the focus on one of the most controversial elements of International Relations had not yet been addressed in such a detailed and successful manner. As Jeremy I. Levitt puts it: "The report's vitality stems from its 'fresh' terminology and clear ideas for reconciling conflicting principles"[319].

There are several points to note regarding the terminology of the Report. First, this was a rare occurrence of two extreme concepts (sovereignty and intervention) in a document with such a wide scope. The dichotomy is well known in International Relations, and the fact that the Report addressed both issues and attempted to reconcile sovereignty and intervention made much of its success. Indeed, the background provided in the Research Essays on intervention and sovereignty weighed heavily in favour of the power of the Report's ideas and novelty. Second, the Report did not merely discuss both principles, it went well beyond by presenting definitions (in the "Essays") and by drawing the two together under the umbrella concept of 'responsibility to protect'. If pondering on the meaning of the term, two sub-concepts should be associated: firstly sovereignty carries with it a responsibility to a state's citizens, and the same require protection and what is more, if a state is unable or unwilling to protect its citizens, then that responsibility should be taken over by the international community[320].

Finally, intervention was not viewed from the perspective of states only, but rather through the lens of those who are in need of protection and assistance. These elements show that the Report innovated by associating conflicting ideas and concepts, but equally provided new pathways to follow for legal interpretations[321]. Another essential element was the language of 'protection' which is associated to human rights. Indeed, as one of the ICISS Commissioners correctly pointed out, "the

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[319] Levitt, Jeremy I, *op. cit.*, p. 4.
[320] This is paraphrasing the Report.
[321] By acknowledging that individuals (those in need of protection or assistance) are also important players on the international scene, the Report in fact indicates that individuals or groups of individuals are subjects of international law. This is a relatively recent concept, and one particularly pertinent to international human rights law.

language of 'protection' is linked to the ICRC experience and gives consideration to victims."[322]

3.2 Definitional Issues: the 'Just Cause Threshold'

The Responsibility to Protect principles pertaining to military intervention, also referred to as the "just cause threshold", allow for intervention in only two cases. The 'Responsibility to Protect' even went to the extent of stating that "If either or both of these conditions are satisfied, it is our view that the 'just cause' component of the decision to intervene is amply satisfied"[323].

A. Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect, or inability to act, or a failed state situation; or

B. Large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape[324].

These definitions have been carefully thought through and worded. References can be inferred from human rights: the Genocide Convention is implicitly mentioned with the terms 'genocidal intent', 'ethnic cleansing', 'killing', and 'forced expulsion', 'acts of terror or rape'. Other human rights instruments were brought forward when looking more closely at the wording of the Report, such as the 'core' right to life and physical integrity, the right to safety, freedom of movement, and freedom of religion and opinion.

The authors of the Report, however, had purposely not mentioned all the cases covered by ethnic cleansing or killing, so that the definition remained open to a range of situations[325]. Political elements were taken into consideration in these definitions, since the authors of the Report included the terms "actual or apprehended", thereby leaving leeway for threats of such acts. As will be demonstrated throughout this research work, the strength of the 'Responsibility to Protect' lies in its wording, terminology, ability to cover and address different sub-areas of international relations (law, politics), and in advocacy.

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[322] Interview with Cornelio Sommaruga, Geneva, 1 July 2008.
[323] *The Responsibility to Protect, op. cit.*, p. 32.
[324] *Ibid.*, para. 4.19, p. 32.
[325] This stems from the different backgrounds of the Commissioners. A legal input for the definitions, in addition to political consideration, is essential. This is the case throughout the Report.

The ICISS Commissioners made an attempt to clarify what should be included in the 'just cause threshold'[326]: action defined in the 1948 Genocide Convention; large scale loss of life, whether involving genocidal intent or not, and whether carried out by states or not; ethnic cleansing and behaviour related thereto; crimes against humanity and violations of the laws of war; consequences of state collapse and civil war; natural or environmental catastrophes.

Nevertheless, although the just cause threshold definition included essential elements and encompasses various scenarios, it did have a shortcoming. Indeed, the Report did not quantify "large scale" loss of life or "large scale" ethnic cleansing. Such a quantification could have led to many more criticisms, had it been included, but an acknowledgement of this would have been helpful. This is what commentators referred to as a "lack of threshold (criteria) for intervention". The ICISS Commissioners explained[327] that they did not expand on what 'large scale' implies, as there would be general agreement in the international community on this matter. They also stated that they intended the 'just cause threshold' to justify military intervention as an "anticipatory measure in response to clear evidence of likely large scale killing"[328], so as to avoid situations where the international community would have to wait for a genocide to unfold before being able to intervene to protect and assist the victims.

Another aspect which was addressed in the 'Responsibility to Protect' Report is that of evidence. The Commissioners pondered on the question of where evidence of the circumstances warranting an intervention, as described in the 'just cause threshold', should be found.[329] Although the Report suggested that the International Committee of the Red Cross could be a potential source of information on such circumstances, it also recognised that due to the nature of the ICRC's work and mandate, "it is absolutely unwilling to take on any such role."[330] The Report concluded that such evidence could not be found in one institution, but that several sources such as the Office of the High Commissioner on Human Rights, UNHCR, or

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[326] *The Responsibility to Protect, op. cit.*, para. 4.20, p. 33, paraphrasing the Report here. The Commissioners also provide exclusions from the 'just cause' conditions, in paras. 4.25-4.27, p. 34.
[327] *Ibid.*, para. 4.21, p. 33, paraphrasing the Report here.
[328] *Ibid*, p. 33.
[329] *Ibid.*, paragraphs 4.28-4.31, pp. 34-35.
[330] *Ibid*, p. 35.

the UN Secretary-General's Rapporteurs and Representatives, compiled such information.[331]

Comparison between the ICISS and the World Summit Outcome Document Content

What the 'Responsibility to Protect' applied to was codified in the ICISS original report. In 2005, Heads of States gathered at the World Summit, adopted the World Summit Outcome Document at the High-Level Plenary Meeting of the General Assembly[332], the main paragraphs relating to the Responsibility to Protect are reproduced below.

> **Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity**[333]
> 138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.
>
> 139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by- case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic

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[331] This will be discussed in Chapter 7, namely in section 7.3.1.

[332] World Summit Outcome Document, *op. cit.*, paras. 138 and 139.

[333] As a reminder, the definitions of genocide and ethnic cleansing are provided. For the definition of crimes against humanity and war crimes, see Chapter 1, section 2.4. Genocide is defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, in article II, as: "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." Ethnic cleansing is defined as: "rendering an area ethnically homogeneous by using force or intimidation to remove from a given area persons of another ethnic or religious group" (quoted from Hayden, Robert M. "Schindler's Fate: Genocide, Ethnic Cleansing, and Population Transfers", *Slavic Review*, Vol. 55, No. 4, pp. 727-748. 1996).

> cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.
>
> 140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

As will be discussed further in this chapter[334], the inclusion of a reference to the 'responsibility to protect' in the World Summit Outcome Document was a major breakthrough. The text of the World Summit Outcome Document emphasised that "each individual State has the responsibility to protect its populations", thereby reaffirming what the 'Responsibility to Protect' had initially worded as: "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself"[335]. It is important, in the context of the just cause threshold, to contrast the definition in the initial ICISS 'Responsibility to Protect' Report and that of the 2005 World Summit Outcome Document, as shown in the table below.[336]

Table 11: Comparison between R2P Just Cause Threshold & World Summit Outcome Definitions

R2P ICISS Original Text	World Summit Outcome Document
Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect, or inability to act, or a failed state situation; or	Genocide
Large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape	Ethnic cleansing War crimes Crimes against humanity

Sources: International Commission on Intervention and State Sovereignty. *The Responsibility to Protect.* Ottawa: International Development Research Centre. December 2001; United Nations (General Assembly). World Summit Outcome Document. UN Doc. A/60/L.1. September 15, 2005, para. 138

The original ICISS formulation was much broader, allowing for interpretation and inclusion of many aspects. Indeed, "large scale loss of life" can occur in situations where genocide is not taking place, for example. Although the elements mentioned in the World Summit Outcome document were those foreseen

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[334] Chapter 7, section "Impact and Implementation: 2004 and Onwards".

[335] *The Responsibility to Protect, op. cit.*, "Synopsis: Core Principles" "(1) Basic Principles", p. xi.

[336] For a complete comparison of the concepts, in the original ICISS Report, the HLP Report and the World Summit Outcome Document, see "Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?", *House of Commons Library Research Paper 08/55*, 17 June 2008, "Appendices, B. From ICISS to the Outcome Document: Key Changes", p. 61. Available at: http://www.parliament.uk/commons/lib/research/rp2008/rp08-055.pdf (accessed January 24, 2009).

in the ICISS original text, the omission of the words "actual or apprehended" and "large scale" was a sign that the drafters did not want to leave much space for interpretation.

'Precautionary Principles'

The 'Responsibility to Protect' Report was also original, through the creation of "precautionary principles"[337], which were intended for consideration when planning a military intervention. As Table 15 further below suggests, the precautionary principles find their origin in the Just War theory.

Table 12: The Responsibility to Protect Precautionary Principles

A. **Right intention:** The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned. B. **Last resort:** Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded. C. **Proportional means:** The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective. D. **Reasonable prospects:** There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

Source: International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. Ottawa: International Development Research Centre. December 2001, "Synopsis: The Precautionary Principles", p. xii.

It is striking that there was no mention in the World Summit Outcome Document of the precautionary principles.[338] "Yet, for all the similarities, the process of diplomatic negotiation inevitably led to concessions and compromise which in turn resulted in both obvious and subtle differences between the Outcome Document and previous attempts to fashion an R2P norm. Perhaps most notable is the complete

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[337] *Ibid.*, "Synopsis: Principles for Military Intervention" "(2) The Precautionary Principles", p. xii.

[338] At the time of discussing the World Summit Outcome Document for adoption, there was a fear that the inclusion of the 'precautionary principles' would lead to a rejection of the reference to the 'Responsibility to Protect' by Egypt, India, Nigeria and Pakistan, as well as the five permanent members of the Security Council, who did not wish to see these included in the final document. For the positions of states, see "Position Paper of the People's Republic of China on the United Nations Reforms," Permanent Mission of the People's Republic of China to the United Nations, 7 June 2005, available at: http://www.fmprc.gov.cn/ce/ceun/eng/zt/gaige/t199101.htm (accessed June 30, 2009); "Position of Russia at the Sixty-First Session of the UN General Assembly," Permanent Mission of the Russian Federation to the United Nations, 13 July 2007, available at: http://www.un.int/russia/new/MainRoot/docs/interview/060831indexen.htm (accessed June 30, 2009); "Pakistan's Position towards UN Reform," Pakistan Mission to United Nations. See http://www.pakun.org/unreform/index.php (accessed June 30, 2009).

absence of any mention of the list of precautionary principles to guide military interventions."[339]

This was all the more disappointing, since the High-Level Panel on Threats, Challenges and Change had made recommendations pertaining to the criteria to be considered by the Security Council.[340] This can be explained in light of the highly political nature of the precautionary principles, perceived by some states as criteria allowing for 'easier intervention', as indicated by Gareth Evans.

> Although the five criteria of legitimacy originally spelt out by the ICISS had managed to survive all the way through the earlier debate, they fell at the last hurdle: caught, in effect, in a pincer movement between, on the one hand, the hostility of the United States, which very definitely did not want any guidelines adopted that could limit in any way the Security Council's - and by extension, its own - complete freedom to make judgments on a case-by-case basis, and on the other, the hostility of a number of developing countries who argued, with more passion than intelligibility, that to have a set of principles purporting to limit the use of force to exceptional, highly defensible cases was somehow to encourage it.[341]

3.3 Operational Issues

The Responsibility to Protect Report entered into the political context when it suggested principles forming the basis of exceptional military intervention. Indeed, more than a contribution to norms, this would ensure a consistency of approach towards planned intervention; a common ground for all actors involved in the process, whether in preparation of or in the intervention itself; and a starting

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[339] "Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?", *Library of the House of Commons Research Paper 08/55*, 17 June 2008. Available at: http://www.parliament.uk/commons/lib/research/rp2008/rp08-055.pdf (accessed January 24, 2009).

[340] "In considering whether to authorize or endorse the use of military force, the Security Council should always address - whatever other considerations it may take into account - at least the following five basic criteria of legitimacy: (a) *Seriousness of threat.* Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended? (b) *Proper purpose.* Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved? (c) *Last resort.* Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed? (d) *Proportional means.* Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question? (e) *Balance of consequences.* Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?", HLP, *A more secure world: our shared responsibility, op. cit.*, para. 56.

[341] Evans, Gareth. "From Humanitarian Intervention to R2P", *Wisconsin International Law Journal*, Vol. 24, No. 3, 2006, p. 716.

discussion outlining how, when, with what means, with whose authority, and under whose conduct the operations would take place.

3.4 Just War Theory: the Moral Rationale

Origins

The logic behind the doctrine of just war derives from the discussion surrounding war and peace and requires a background analysis. The targets of war were those involved in the conflict but also those who were not directly concerned. It thus became necessary to establish the fact that war can cause casualties, harms the civilian population, creates trauma in societies and carries with it some moral concerns. Although these points may seem obvious, as will be discussed later in this sub-section, establishing rules and conditions for the recourse to, and the conduct of, hostilities became a necessity. Thus, since very early on, humankind has sought to put an end to a state of war[342]. The numerous tools available in International Relations and International Law today are a reflection of the importance granted to the topic.

The origins of the doctrine of Just War date back to at least the Middle Ages, a time when religious beliefs and activities were main concerns. It was in such a context that figures such as St Augustine and St Thomas Aquinas expressed their views regarding 'rules' applicable to conflict, ethics of war, which led to the more recent (19th century) laws pertaining to initiating wars[343]. Peace was regarded, at the time of its creation, not so much as the 'opposite of war' or the absence of conflict, but rather as a state of perfect being, an ideal condition, as stated by Kolb[344]:

> Peace is first of all an ideal, a state-to-be, and a regulatory idea towards which efforts must always strive and which will never be fully achieved. [...] Peace, in this case, represents a far-reaching ideal, belonging to the order of reality only in a world that is beyond human, a divine world. Peace is thus an inaccessible aspiration that transcends the world and only exists in ideas, in utopia.

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[342] Today, peace and conflict studies have even taken on greater importance, with university departments and centres devoted to research linked thereto.

[343] Just War doctrine is discussed in Chapter 2: Humanitarian Intervention, and will only briefly be touched upon in this section, which serves as a link between Just War and the Responsibility to Protect.

[344] Kolb, Robert. *Ius contra bellum, op. cit.*, p. 5, free translation.

In this sense, peace was so 'perfect' a condition that it could be achieved by a non-human (i.e. divine) entity, implying that men and rulers were not given the attributes or 'goodness' to achieve conditions of peace and harmony among themselves.

Essence of the Doctrine

The doctrine of just war, *iustum bellum*, does not abrogate war *per se*. Rather, it is a "doctrine of contextualisation of the use of force"[345] in the sense that it proposes to weigh the use of force against the causes of war, and only permits the use of force to re-establish 'good' (as opposed to evil). In other words, just war has seven underlying rules[346]:

1. War can only be initiated by an authoritative and effective power holder.
2. War can only be carried out for a just cause.
3. War must be based on right intention.
4. War is waged for the good of those who are vanquished.
5. War is aimed at achieving peace.
6. War will correct an injustice.
7. War is conducted as a last resort, *ultima ratio*.

When considered against the precautionary principles contained in the Responsibility to Protect Report, it is clear that the just war theory is the concept used to determine whether an intervention should be carried out, as stated by Gareth Evans: "we identified five criteria that we argued should be applied by the Security Council—and be used by the world at large—to test the validity of any case made for a coercive humanitarian intervention. All five have an explicit pedigree in Christian just war theory."[347]

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[345] *Ibid.*, p. 15, free translation.
[346] This discussion is based on the interpretation provided in Kolb, Robert, *Ius contra bellum, op. cit.*, pp. 16-18.
[347] Evans, Gareth. "From Humanitarian Intervention to R2P", *op. cit*, p. 710.

Table 13: Correlation between R2P Precautionary Principles & Just War Doctrine

Responsibility to Protect	Just War
Just cause	Just cause: -defensive attacks -protective war -war against the violation of a right -God-inspired war -war initiated by the Pope against 'unbelievers'
Right intention	Right intention
Last resort	*Ultima ratio*
Proportional means	Balance injustice and restore piety
Reasonable prospects	Achieve 'good'
Right Authority	Beholder of power

Source: Amina Nasir

The six points mentioned in the 'Responsibility to Protect' Report under precautionary principles to be weighed when an intervention is being discussed are drawn from the Just War theory and form the basis of an 'ideal' checklist prior to any action implementation. Because these principles draw upon an existing – and accepted – theoretical background, they are acceptable and less likely to be contested. Ideally, the following would be a basis, which would allow for the planned operation to be carried out.

Civilians and the Need for Protection

The idea of civilians requiring protection applies not only to times of war. Indeed, today, notwithstanding the tremendous development of the body of international human rights laws, states have integrated accountability to civilian populations (and civil society as a whole) in their systems of government. Most constitutions thus contain reference to the rights and liberties of citizens and, by extension, to civilians, which cannot be derogated from by states. However,

situations of conflict do require additional means of protecting populations at risk for several reasons. First, all human life is precious. Violence is not considered as 'good' or viable a situation for populations at risk[348]. Second, civilians may not be involved nor have any stake in the continuing conflict and they should be differentiated from combatants at war. Civilians are not always protected or may not have access to protection. The most vulnerable groups of civilians may be targeted during war to harm indirectly the opponents (rape of women, for example). The civilian population may not be able to exercise immunity in practice, and may thus be drawn into the hostilities although opposed to war. Civilians may be harmed in times of conflict, and must be granted adequate protection and assistance, as specified by the applicable international and national legal regimes. Finally, there is an understanding that certain moral principles should be upheld, that a commonality exists and that values of life and physical integrity are to be upheld.

Innocence, Non-Combatants and International Humanitarian Law[349]

Civilians are often considered as 'innocent'. "The word innocent comes from the Latin *nocens*, 'to harm', and so means that the innocent are not-harming"[350]. Obviously, in this context, 'non-harming' and 'innocent' refer to civilians who are not involved in conflict. Internally displaced persons, for example, can be forced to flee because of armed conflict, although they are not taking part in it. The distinction between civilians, victims and combatants has been a delicate issue of international order.[351]

'International humanitarian law' deals with the protection of civilians and non-combatants[352] and is defined by Kolb as "a branch of the law of armed conflict, and even its main branch today"[353]. The body of international law known as international humanitarian law is part of a broader set of international legal rules

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[348] These first two conditions are explained by Hugo Slim in "Why protect civilians? Innocence, immunity and enmity in war", *International Affairs* 79, 3, 2003, pp. 481-501.
[349] For a complete discussion of international humanitarian law and the involvement of the ICRC with civilians, see Chapter 2, and in particular Section 4.2 'International humanitarian law'.
[350] Slim, Hugo, *op. cit.*, p. 499.
[351] Indeed the example of children who were fighting in a war, but who were also presented as victims to humanitarian organisations, can be mentioned. In cases where the conflict was based on ethnic cleansing, fighters could claim to be civilians while they were in fact involved in the conflict.
[352] For a complete discussion, see section 4.2 'International humanitarian law' above and footnotes 202-208 in particular.
[353] Kolb, Robert. *Ius in bello: Le droit international des conflits armés. Collection de droit international public.* Basle: Helbing & Lichtenhahn; Brussels: Bruylant, 2003, p. 12, free translation.

concerning the law of armed conflict[354]. The law of armed conflict designates "[...] the complete set of rules relating to armed conflicts fought between States"[355].

The Resort to War and the United Nations

UN Charter Chapter VII

The UN Charter contains a prescription for the use of force[356], in Chapter VII[357]. Traditionally, in International Relations, the UN Charter is the core text prohibiting the use of force, in its Chapter about 'threats to and breaches of international peace and security'. According to the wording of the Charter, there must be a serious threat to international peace and security or acts of aggression, which – in some cases, allows the UN Security Council to consider the matter and decide on action that is required.

In such cases, the Security Council disposes of means to address the issue at stake, by using the following peaceful means: the Secretary-General's good offices and mediation powers, discussion of the matter at a session, convening an extraordinary emergency session, presenting or referring the issue to the Secretary-General or to the General Assembly, consulting with regional organisations, further investigating the matter, requesting the advice of one of the thematic or country Special Rapporteurs of the UN bodies, inviting UN agency specialists to provide expertise, bringing the specifics of the matter in front of governments at one of the UN meetings.

Once these measures have been exhausted, provided no solution has been found, the Security Council can resort to Chapter VII, Article 42 of the UN Charter,

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[354] As Kolb pertinently points out, *Ius in bello, op. cit.*, pp. 11-12, 'international humanitarian law' is often confused with the 'law of armed conflict'. The nuance is subtle and it should be noted that international humanitarian law is part of the law of armed conflict, and is traditionally associated with the Red Cross movement and body of law dealing with the protection of civilians in times of armed conflict and the conduct of war, and based on the Four Geneva Conventions (1949) and the Two Additional Protocols (1977). This dates back to the Battle of Solferino (1859) and to the protection of non-combatants, of the wounded, ill, elderly population at the time of Henry Dunant who became the founder of the ICRC.

[355] Kolb, *Ius in bello, op. cit.*, p. 12, free translation.

[356] This is dealt with in more detail in Chapter 2, Humanitarian Intervention, where the complete set of international rules governing the resort to, and conduct of, war is examined. This section is but a brief reminder and will thus not go into the details, to avoid repetition.

[357] At this point, the resort to war will be discussed with the aim of enlightening the forthcoming discussion on the application of the 'responsibility to protect' to IDPs and on the measures foreseen (in the World Summit Outcome Document, for example, in article 139). However, preventive diplomacy and other measures remain essential elements of the discussion, although they are not mentioned here.

which allows Member States to use "all necessary means" to restore international peace and security. The best way to explain how this measure functions is:

> We now enter the hallway of Chapter VII, the aim of which is only to maintain peace or to restore it as quickly as possible. The type of peace which is discussed here is not that aiming at an environment that favours the blooming and viability of peace. Rather, it seeks to prevent the clashes with arms and/or the return to the situation prevalent prior to the act of aggression. This 'peace' is more restrictive, short-sighted, and more centred on the short-term, and is referred to as 'negative peace'[358].

Any issue to be considered under Chapter VII of the Charter, in order to entail the consideration of action, must either:

- constitute an act of aggression,
- disrupt international peace and security
- be a threat to international peace and security.

This leads to a discussion on collective security, one of the core concepts contained in the United Nations Charter.

Collective Security

Collective security is at the heart of the provisions of Chapter VII of the UN Charter. It can be characterised by two elements:

1. A decision by the UN Security Council that action is required, as a reaction to an act of aggression.[359]
2. A collective agreement by all Member States that the action will be undertaken, and that it is appropriate to do so and that they will support it.

One can only refer to collective security when a Security Council resolution has been passed and that action is undertaken as a reaction to a preliminary attack. Thus, preventive action is not considered as collective security. The act of the

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[358] Kolb, Robert, *Ius contra bellum, op. cit.*, p. 54, free translation.

[359] It is mandatory for the Security Council to authorise action taken under Chapter VII of the UN Charter. The only exception is action taken under Article 51 of the UN Charter in cases of self-defence: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." In case of action taken as collective or individual self-defence, the Security Council must be informed.

aggressor state should thus be severe enough to warrant universal condemnation. Indeed, in order to obtain a Security Council resolution with attached action, it is necessary that none of the five permanent members of the Council (China, France, Russia, USA, United Kingdom) apply its veto[360].

3.5 Authors and Actors Involved

The Responsibility to Protect Report was drafted by 12 independent Commissioners, under the auspices of the government of Canada and of Lloyd Axworthy. The two Co-Chairs of the Commission, Gareth Evans and Mohamed Sahnoun, with Eduardo Stein Barillas, Gisèle Côté-Harper, Michael Ignatieff, Lee Hamilton, Vladimir Lukin, Klaus Naumann, Cyril Ramaphosa, Fidel V. Ramos, Cornelio Sommaruga and Ramesh Thakur, produced the Report, according to the mandate given to the ICISS in December 2000.

The Report has undoubtedly contributed to the debate surrounding humanitarian intervention given the credibility that the ICISS Commission has given to it, and the new terminology it has generated in reference to sovereignty. Indeed, the ICISS attracted attention, both at the time of its launch and again thereafter, for several reasons. First, the members of the Commission were carefully chosen individuals, representing different areas of expertise, background and cultures, but they were all publicly and internationally recognised figures. Gareth Evans, the former Foreign Minister of Australia, had already chaired another body[361], and Cornelio Sommaruga was a distinguished figure and the former ICRC President. Second, the choice of launching a body of experts under the auspices of a government as opposed to creating another UN ad hoc commission or committee both attracted more interest and took the challenge to a different level.

Canada sponsored a quality report and further advanced the discussion on this delicate topic. It is a well-known fact that, in the United Nations, the debate over sovereignty cannot last very long without provoking strong reactions. Canada's reputation as a peace-loving and liberal country allowed it to spearhead such an

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[360] In fact, permanent members of the Security Council hold what is often referred to as a 'double veto': they can veto the consideration of any issue or situation in the Council. They also have the ability, at the time an issue is under consideration, to veto action proposed. This veto power is only held by the five permanent members of the Security Council.

[361] The Canberra Commission on the Elimination of Nuclear Weapons, 1995.
Gareth Evans served as Australia's Attorney-General in 1983-1984 and as Foreign Minister of Australia between 1988 and 1996.

initiative. The last reason why the Report attracted so much attention was that, for those familiar with International Relations, politics and international law, the themes of the Report were central and the authors or sponsors were well-known.

The credibility the Report enjoyed derived from the status and reputation of its authors, the ICISS Commissioners, but also from those who were not directly in the spotlight, but whose contribution was undeniable. To start with, mention should be made of Lloyd Axworthy and then Canadian Prime Minister Jean Chrétien, who did whatever was necessary to make the ICISS a reality. The research team, led by Thomas Weiss, also deserves particular attention and praise for the extensive bibliography and information gathering carried out. Francis Deng, the actual 'coiner' of the expression 'sovereignty as responsibility', should not be forgotten. Indeed, from the early 1990s, Deng was already promoting the expression in the context of internally displaced persons. The UN Secretary-General also made a significant contribution to the credibility of the ICISS Report by endorsing it and by promoting its content and its chosen terminology. In so doing, Mr. Annan recognised *de facto* not only that the Report was a major component of the debate in current terms, but also that the United Nations validated its findings, as will be explained in the following section.

The second strength of the Responsibility to Protect was the choice of the ICISS Commissioners, of the terminology, expressions and wording. Indeed, the Report generated a set of terms such as the responsibility to protect, sovereignty as responsibility, intervention for human protection purposes, precautionary criteria and military intervention threshold, which have become 'buzzwords'. These are somewhat like coded International Relations references to specific sub-fields or wider concepts. In other words, the ICISS has succeeded in refreshing highly controversial political themes, and at the same time creating new terms of reference for viewing international relations through a modern lens. This is particularly obvious when considering the precautionary criteria and military threshold.

These concepts bring to mind the theory of Just War. Although there have been attempts to address issues of proportionality in the case of conflict, right intention and authority, none has left such a remarkable blueprint nor has succeeded in using past theory to reinforce current principles and to adapt them so cleverly to the present state of international affairs.

More and more references are being made to the concepts, expressions, and themes contained in the Report. This generates attention and the focus of public opinion, civil society and to a larger extent, of the general public to those ideas. In addition to serving the purpose of establishing a generally accepted meaning, the phenomenon has actually had a domino effect on several reports. The more and the longer the Report's terminology and key concepts are promoted, the greater the effect. This suggests that the debate has taken a new approach, the audience targeted has widened, and that the power of the ideas contained in the Report is strong:

> Still, if problematic, the promise of international commissions also says a good deal about the margins open for imagination and innovation as ideas are brought in and played out in world affairs. [...] The wealth of diversity found amidst this form of idea-generating mechanisms allows a novel and salient take on the socially textured world of international politics. [...] international commissions deserve study not only on their individual merits and for their extensive range of activities but on the basis of their collective contribution with respect to the world polity whereby the mind of global governance is scrutinized and re-evaluated as part of a wider ideational turn in international relations[362].

The audience targeted by the Report was intended to include those involved in and dealing with sovereignty and intervention, that is states, the United Nations and international organisations, "the main report itself is addressed chiefly to the international policy community in general, and to the UN-centred policy community in particular"[363].

Its Recommendations and suggested action were addressed to States and the UN as a whole, but also to a wider audience of academics, politicians and international experts, international figures, States, lawyers and individuals. Indeed, its main answer to the challenge posed by Kofi Annan at the Millennium Summit was that "[i]n this new century, there must be no more Rwandas"[364]. It can be argued that in the international order of today, based on current international law and relations, States are the major players. This would imply that States have the power to commit to the UN Secretary-General's plea. Yet, because of political and national interests, they may in practice do otherwise. This is precisely why the Report targeted other players on the international scene, another audience segment.

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[362] Cooper, Andrew F; English, John. "*International commissions and the mind of global governance*" in Thakur et al., *op. cit.*, p. 23.
[363] Thakur, Ramesh. "In Defence of The Responsibility to Protect", *op. cit.*, p. 160.
[364] Evans, Gareth and Sahnoun, Mohamed. "The Responsibility to Protect", *op. cit.*, p. 99.

Non-governmental organisations, as representatives of civil society, have increasingly taken on the role of 'collective spokespersons'. Similarly, academic institutions and think tanks are also able to influence and communicate with the general public. The means available to do so are extensive and include the Internet and electronic communications[365]. The Report was publicised through all the above-mentioned channels. Moreover, individuals all over the world must have heard about it, whether directly or indirectly. The actors involved are many more than originally foreseen from the individual citizen, academics (the present doctoral research is such an illustration), politicians, journalists, the ICISS Commissioners, the United Nations and its related bodies, NGOs, and most importantly, to those in need of protection.

Kofi Annan, in his report *In larger freedom: towards development, security and human rights for all*, published in March 2005[366], referred to the 'Responsibility to Protect' Report's terminology in several instances[367]. In the Introduction, under the "imperatives of collective action" section, he stated that:

> in our efforts to strengthen the contributions of States, civil society, the private sector and international institutions to advancing a vision of larger freedom, we must ensure that all involved assume their responsibilities to turn good words into good deeds. We therefore need new mechanisms to ensure accountability – the accountability of States to their citizens, of States to each other, of international institutions to their members and of all the present generation to future generations.[368]

The consideration of States and civil society together, as well as the reference to responsibility and accountability, particularly of States to their citizens, clearly pointed to the Report's content. However, the link to the Report's themes became more obvious in the section on 'Freedom from Fear and the Use of Force'[369], where

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[365] The World Federalist Movement, for example, has a whole part of its website devoted to the Responsibility to Protect, and has created a mailing list to encourage discussion and attention to the Responsibility to Protect.

[366] Annan, Kofi. *In larger freedom: towards development, security and human rights for all.* 21 March 2005. Available at http://www.un.org/largerfreedom (accessed January 13, 2009). UN document A/59/2005, A/59/2005 Add. 1 and Add. 2, presented at the 59th session of the General Assembly on 21 March 2005, under Agenda items 44 and 45, "Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields", "Follow-up to the outcome of the Millennium Summit".

[367] While some references are obvious, others are implicit. This is the reason they are all quoted at this point.

[368] Annan, Kofi A. *In larger freedom: towards development, security and human rights for all, op. cit.*, para. 22.

[369] *Ibid.*, para. 126.

concrete action to be taken by the Security Council was discussed. Indeed, Mr. Annan suggested that the Security Council should consider adopting a resolution setting out principles, which would guide its decision whether or not to authorise the use of force. This recommendation mirrored perfectly the military intervention guidelines set forth in the Report, including reference to the precautionary criteria.

The last references contained in the Secretary-General's report were the strongest, in terms of a link to the 'Responsibility to Protect' Report. In the section on the 'Freedom to live in dignity', he expressed his support for the Report:

> We must also move towards embracing and acting on the 'responsibility to protect' potential or actual victims of massive atrocities. The time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service. [...]
>
> The International Commission on Intervention and State Sovereignty and more recently the High-Level Panel on Threats, Challenges and Change, with its 16 members from all around the world, endorsed what they described as an 'emerging norm that there is a collective responsibility to protect' (see A/59/565, para. 203). While I am aware of the sensitivities involved in this issue, I strongly agree with this approach. **I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it.** This responsibility lies, first and foremost, with each individual State, whose primary raison d'être and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required. In this case, as in others, it should follow the principles set out in section III [Freedom from Fear] above. [370]

The words of the Secretary-General in the quotations above conveyed not only the importance he placed on the 'freedom to live in dignity', but also his conviction of the worth of the work of the ICISS and in the themes, principles and suggestions contained in the 'Responsibility to Protect' Report[371]. It spoke for itself as to the fact that the UN should endorse and abide by these principles[372]. The purpose of the Secretary-General's report was to provide a basis for States to consider issues for

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[370] *Ibid.*, paras. 132 and 135, emphasis in original.

[371] Once again, specific terms and textual reference to the Report are used. It is noteworthy that protection here refers to 'human rights and well-being' of civilians, an interesting way of broadening the scope of the Report.

[372] One may regret the use of the word 'humanitarian' in the list of means at the disposal of the United Nations to address the plea of civilians, knowing the controversy and political connotations of this term, particularly within the UN context.

which "action is both vital and achievable in the coming months"[373] that is, at the World Summit in September 2005. Therefore, an Annex for decision by Heads of State and Government was attached, with recommendations grouped by topic, of what needed to be decided. In the "Annex"[374], there was a specific recommendation, within the item of supporting the rule of law, human rights and democracy, to "embrace the 'responsibility to protect' as a basis for collective action against genocide, ethnic cleansing and crimes against humanity..."[375]. This was an effort to include the terminology of, and direct reference to, the Report in a final resolution, declaration or statement at the 2005 World Summit. Yet, it also reiterated the Secretary-General's effort to induce the Security Council to use the Report's precautionary criteria in its discussions and deliberations, particularly in regard to military action decisions[376].

A full section of the above-mentioned report was devoted to 'sovereignty as responsibility', which was a clear indication of the impact of the new terminology and emerging norm associated therewith, and the continuum in which the Responsibility to Protect had found momentum. The increasing cross-referencing to the terminology pointed to an emerging norm and proved that the advocacy efforts of the ICISS Commissioners, the former UN Secretary-General, and civil society had a timely effect. Both of the reports mentioned above have wide audiences, and more people now associated the terms of 'responsibility', 'protection' and 'sovereignty' since the publication of the Report. However, it is interesting that ICISS or the Report was not explicitly mentioned when a reference to the terminology appears. This may be intentional. Indeed, such an omission provided even greater weight to a debate and content framed outside the United Nations thereby giving it enhanced credibility and accessibility. The terms were coined by and belong to those who gave them meaning and substance – individuals. Those who ascertain their power and practical implementation will use them, that is states.

The aim of states and individuals alike should be to promote the common values and principles of the world's people namely, respect, dignity, and protection.

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[373] Annan, Kofi A. *In larger freedom: towards development, security and human rights for all, op. cit.*, p. 3.
[374] Section III Freedom to live in dignity.
[375] Annan, Kofi A. *In larger freedom: towards development, security and human rights for all, op. cit.*, Annex, Section III 'Freedom to live in dignity', paragraph 7.(b).
[376] Although the reference is to the Responsibility to Protect Report, the definitions of the atrocities are different, see the R2P Report, pp. 32-33.

These, and nothing less, are the same objectives as that of the Responsibility to Protect.

4 The Responsibility to Protect Concept and its Relevance to Internally Displaced Persons

> Situations of genocide, war crimes, crimes against humanity and ethnic cleansing inevitably force people into displacement. The link between R2P and IDPs, however, extends beyond causal factors.
> In fact, the intellectual roots of R2P run deep, extending to and very much inspired by international approaches to IDP protection introduced a decade earlier. In particular, the concept of 'sovereignty as responsibility', which is at the core of R2P, has a pedigree traceable to the earliest days of IDP protection advocacy... Coining the phrase 'sovereignty as responsibility',[377] Deng then made this concept his signature calling card in carrying out all aspects of his mandate. He used it to particular advantage in opening channels for constructive dialogue with governments the world over on what fundamentally is an internal, and therefore politically highly sensitive, matter. Much more than a diplomatic nuance and tactic, sovereignty as responsibility also simply made sense. For IDPs and other people still within their own country, protection ultimately entails securing access to effective national protection.[378]

The Responsibility to Protect applies to internally displaced persons in at least three respects. IDPs are by definition within the territorial boundaries of their state of origin (or of permanent residence) and IDP protection needs are among basic human rights, such as the right to life, the right to dignity, and the right to physical integrity and the right to protection. Furthermore, the two main conditions explicitly referred to in the Responsibility to Protect report – large-scale loss of life and large-scale ethnic cleansing or genocide – are applicable to internally displaced persons.[379]

Internally displaced persons are, *de facto*, within the territory of their state of origin or habitual residence. Under the provisions of international law, they remain within the territorial and national jurisdiction of their state of origin[380]. From a legal point of view, they remain tied to the state of their nationality although, in many

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[377]Deng et al, *Sovereignty as Responsibility: Conflict Management in Africa, op. cit.*

[378]Mooney, Erin. "The Guiding Principles and the Responsibility to Protect", in "Ten Years of the Guiding Principles of Internal Displacement", *Forced Migration Review GP10*. Oxford: Oxford University Press. December 2008, p. 12.

[379] Although it is also possible to consider people who have been displaced by conflict are who have not suffered ethnic cleansing or genocide.

[380] Paradoxically, internally displaced persons are tied with their state and that precise fact leads to their deprivation of certain rights since, in many cases, their state of origin is persecuting them.

cases, they may have lost all claims of being nationals. For instance, internally displaced persons who fear for their lives due to ethnic persecution (e.g. those who belong to a minority) may not be able to ask for help from their own government or authorities. They cannot reach the border across to the closest neighbouring country, particularly if they have no personal documents, left behind during their flight. In other words, state sovereignty (territorial or national) is particularly relevant to internally displaced persons.

Human rights are a major concern to IDPs. Most notably, the right to life, the right to dignity, the right to physical integrity, are among what many experts refer to as 'core' or 'primary' human rights[381]. The right to protection, in this context, takes on all its meaning. If the state has sovereignty over its citizens, it also has a corollary responsibility to protect them. The 'responsibility to protect' of the state, or the right to protection of its population – and, therefore of internally displaced persons – is clearly related to any 'human protection purposes' by which action would be justified. As Ramesh Thakur suggests,

> Where humanitarian intervention raises fears of domination based on the international power hierarchy, the responsibility to protect encapsulates the element of international solidarity. Moreover, it implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention. Our preferred terminology refocuses the international searchlight back on the duty to protect the villager from murder, the woman from rape, and the child from starvation and being orphaned[382].

Other instances when the responsibility to protect can be relevant and applicable to cases of internal displacement are if a state does not assume the responsibility to protect its citizens and their human rights, if civilians/IDPs (the state's population) are experiencing large-scale ethnic cleansing (killing, forced expulsion, acts of terror, rape) and if the international community is given the responsibility to protect the civilians of a state.

Most recent examples demonstrate that internally displaced persons do not have access to assistance and, to a large extent, depend on external aid[383]. Obviously, at this point, proponents or opponents of intervention will take part in a debate, as described earlier in this work. This is the main hindrance to helping those

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[381] 'Core' or 'primary' in this sense refer to rights essential for living and to physical well-being. To an IDP, the right to physical integrity comes before the right to fair treatment in court, for example.
[382] Thakur, Ramesh. "Intervention, sovereignty, and the responsibility to protect", *in* Thakur, R. Cooper, A. F. and English, J., *op. cit*, p. 184.
[383] Case of Darfur, Sudan.

in need: the political context of sovereignty and humanitarian intervention. As Jorge Heine puts it, "The tension between the need to intervene to protect human lives and the sovereign right of a nation state to handle its internal affairs as it sees fit is ... evident"[384].

The four circumstances listed in the World Summit Outcome Document (in paragraphs 138 and 139) namely genocide, war crimes, ethnic cleansing and crimes against humanity, often lead to or involve internal displacement. Thus, by the very definition of the 'just cause threshold', the 'Responsibility to Protect' applies to internal displacement. The 'Responsibility to Protect', in the discussion around the 'just cause threshold', also stated that:

> 4.23 Again, the principles as we have defined them make no distinction between those abuses occurring wholly within state borders, with no immediate cross-border consequences, and those with wider repercussions. This reflects our confidence that, in extreme conscience-shocking cases of the kind with which we are concerned, the element of threat to international peace and security, required under Chapter VII of the Charter as a precondition for Security Council authorization of military intervention, will be usually found to exist. Security Council practice in the 1990s indicates that the Council is already prepared to authorize coercive deployments in cases where the crisis in question is, for all practical purposes, confined within the borders of a particular state.[385]

Thus the circumstances which could justify military intervention include internal crises and human rights abuses occurring within the boundaries of a state.

The Responsibility to Protect and IDPs: From Theoretical to Practical Solutions

The theoretical concepts can be put into practice taking the case of internally displaced persons in Darfur, Sudan. There are currently 6 million internally displaced persons in Darfur, Sudan[386]. Their own government was unable or unwilling to protect them and could not fulfil their basic needs. In this case, the Responsibility to Protect could have helped internally displaced persons.

The power of the words 'protection' and 'responsibility' should not be underestimated. Indeed, as has been emphasised in every discussion subsequent to the Responsibility to Protect's release, the primary responsibility for the 'protection'

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[384] Heine, Jorge. "The responsibility to protect: Humanitarian Intervention and the principle of non-intervention in the Americas" in Thakur, R., Cooper, A. F. and English, J., *op. cit.*, p. 223.
[385] *The Responsibility to Protect*, para. 4.23.
[386] According to the statistics of the Internal Displacement Monitoring Centre: the estimate of 6 million IDPs is based on separate UN estimates for Darfur, Khartoum, and Southern Sudan. Statistics available at: http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000 (accessed January 13, 2009).

of citizens/nationals belongs to the state, as a tenet of sovereignty. Nevertheless, as a corollary to that protection duty, states have an obligation adequately to assist and protect those within their sovereignty realm.

Asylum

The protection debate even goes beyond, with asylum policies established in relation to protection. In the European Union, for example, a harmonised system for filing and dealing with asylum claims has been implemented. The Dublin and Schengen Agreements enable close cooperation among signatory member states and a coordinated effort to avoid duplication of work. In this sense, stricter checks on illegal asylum have been achieved. On the other hand, does this mean that tighter asylum policies should affect effective protection needs in times of crises? Obviously not. The cases of refugees must therefore be considered with the necessary time and delicacy. As for internally displaced persons, neighbouring states and regional bodies must realise that, far from being a threat to their stability, those in need deserve and require immediate attention and protection.

5 Background to Drafting the Report

The Responsibility to Protect was initiated at a time when the political context surrounding humanitarian intervention was very unstable, as was explained earlier. This implies that several issues were taken into consideration when drafting the report. This sub-section will point to these concerns, identify why and how they arose, and finally how the Report addressed them. The political context that determined which elements were retained in the final version of the Report will be examined, as will be the aspects that do not appear in the Report as it was published.

5.1 Politics

The Research Essays included in the Supplementary Volume to the Report provide insights into the political concerns at the heart of the debate: sovereignty, intervention and prevention. The research team led by Thomas Weiss carried out comprehensive research supporting the Report. Indeed, this also involved producing

an extensive bibliography[387], which points to further reading and background documentation. Although this is not part of the Report itself, it provided further credibility and background. Two major topics were covered in the Supplementary Volume – sovereignty and intervention. Both of these concepts carry heavy political weight, and are extremely controversial in political and International Relations theory. Some commentators have suggested that certain aspects were excluded from the final version of the Responsibility to Protect Report due to political controversies; this is the subject of the next sub-section.

5.2 Rejected Concerns

The Report does contain omissions, in the sense of major elements that do not appear in the final version of the text. Indeed, some of these may be politically motivated, whereas others either weaken the Report or have given rise to multiple criticisms and objections to the Responsibility to Protect doctrine. This sub-section is divided into definitional and operational rejected concerns.

Definitional Issues

An omission which is immediately striking in the 'Responsibility to Protect' Report was the lack of mention of 'national interest'. One could have expected to find a mention of this at some point, particularly in the context of discussing intervention. Sovereignty was indeed covered in great detail in the Report, whereas national interest, which is extremely relevant in a discussion relating to intervention, is an element that seems to have been avoided. The targeted audience of the report was the international community, states and policy-makers. Obviously, with a mention of national interest in the core of the Report, the reaction of the audience may not have been as positive. Nevertheless, a reference could have been inserted in a subtle manner.

Similarly, the Report left aside the political aspects of intervention, protection and prevention, as well as the reasons why states may (or not) wish to be associated with the idea of intervention. This also raises the questions of moral versus political ethics and of states' status and objectives on the international scene (either as

[387] The bibliography is available at the following links:
http://www.iciss.ca/pdf/Supplementary%20Volume,%20Bibliography.pdf
http://www.iciss.ca/04_Biblio-en.asp (accessed January 27, 2009).

individual countries, or as part of a group such as the European Union or the Non-Aligned Movement, striving to achieve a certain degree of consistency in its foreign policy targets and in its positioning in international affairs). Although it is understandable that this was not discussed, again in light of the target audience of the Report, these aspects are part of the debate in current affairs.

The Report mainly concentrated its focus on internal war, its root causes and characteristics. Although civil war is the focus of this dissertation, there are similarities between the root causes of internal and international war, and a list of both would have been helpful. The reason for the lack of reference to international war in the Report was most probably politically motivated, as such a mention might have made it more difficult to promote the Report at the international level.

The Report allowed for military intervention only under certain specific circumstances according to the 'just cause threshold', and these did not include massive violations of human rights or racial discrimination in the exact wording[388]. These two conditions are part of the *jus cogens* norms.

The discussion around violations of human rights and racial discrimination, two concepts which are at the heart of conflict in the international political context of the early twenty-first century, could have been given further consideration. This has probably been deliberately omitted, so as to avoid that any human rights crisis be considered as an R2P case.

Gareth Evans explains that

> R2P situations must be more narrowly defined.
> If they are perceived as extending across the full range of human rights violations by governments against their own people, or all kinds of internal conflict situations, it will be difficult to build and sustain any kind of consensus for action... If too much is bundled under the R2P banner, we run the risk of diluting its capacity to mobilize international consensus in the cases where it is really needed.[389]

The Commissioners also had as an objective to leave the just cause threshold open to interpretation, and not to limit it by including such a reference. Moreover, as one interviewee stated, "the 'Responsibility to Protect' is all about human rights,

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[388] Human rights violations or racial discrimination were not explicitly mentioned in the Report.
[389] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, op. cit.*, pp. 68-69.

there was thus no need for an implicit reference"[390]. UN Secretary-General Ban Ki-moon also stated in 2008: "In the realm of human rights, we speak of the responsibility to protect"[391]. Donald Steinberg, Deputy President (Policy) of the International Crisis Group, commented: "The Commissioners stretched the text as much as would be possible to pass the World Summit Document and made an honest assessment of how far they could go at the time"[392]. Another practitioner gave a pragmatic answer, when asked why racial discrimination and human rights violations were not included in the initial R2P just cause threshold: "Racial discrimination is obvious in cases of ethnic cleansing".[393]

When asked why human rights were not explicitly referred to in the 'Responsibility to Protect' Report, Ramesh Thakur provided two reasons[394]. Firstly, the human rights issue is polemical and divisive. According to Professor Thakur, it would have been difficult to secure agreement within and outside the ICISS, had a broader approach been taken[395]. Secondly, "in order to ensure that intervention is the extreme response, there was a need to narrow the circumstances which justify intervention. This sets the bar high and makes the case for international action compelling."[396]

Operational Issues

The omission in the Report of how to assess whether a conflict exists, although understandable so as to avoid complex argumentation, makes it difficult – particularly in conditions of civil war – to bring practical arguments to play. Furthermore, there is no mention of which measures to consider for the threshold criteria (how many casualties, extent of human rights violations, and the duration of the conflict or hostilities, for example). The Commissioners most probably wanted

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[390] Interview with Jean-Marc Coicaud, New York, 7 June 2007.
[391] UN Secretary-General Ban Ki-moon, "Opening Remarks at Year-End Press Conference, 'The Responsibility to Deliver'", New York: United Nations, 17 December 2008, available at http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=387 (accessed January 17, 2009).
[392] Interview with Donald Steinberg, New York, 5 June 2007.
[393] Interview with Sapna Chhatpar, New York, 6 June 2007.
[394] Interview with Ramesh Thakur, New York, 6 June 2007.
[395] According to Professor Thakur, this could have led to long discussions on which rights and values should be considered, cultural relativism, and more political debate. The developing countries would have most probably not agreed to some suggestions for inclusion in the Report.
[396] Interview with Ramesh Thakur, New York, 6 June 2007.

to avoid using precise numbers and qualifications of human rights abuses[397]. The lack of quantification thus leaves way for interpretation on a case-by-case basis.

According to Professor Ramesh Thakur, the "biggest weakness of the Report is the absence of clear operational principles to guide military intervention".[398] This is all the more true of the World Summit Outcome Document, which left out the ICISS 'precautionary principles'. In the words of Cornelio Sommaruga, "the frustration lies in the fact that the UN did not take up the criteria [ICISS precautionary principles] because a coalition of countries thought that there was an intention to push for humanitarian intervention".[399] Among the countries opposed to the inclusion of the precautionary principles, were Egypt, India, Nigeria and Pakistan, as well as the five permanent members of the Security Council[400].

Among the Commissioners, there were international legal experts. As such, there was a clear effort to promote the Report and to endorse it as an emerging norm in international law and international relations. Although this was not explicitly mentioned in so many words, it appeared from the attempt to establish norms of customary international law. Indeed, the more the Report was discussed and widely promoted, the more chances that its terminology and concepts were adopted as part of peremptory norms of international law. Furthermore, recent endeavours to include the terminology of 'sovereignty as responsibility' and 'responsibility to protect' in various United Nations reports and statements, aimed to promulgate the concepts and ideas contained in the Report and implement the responsibility to protect as a norm of 'soft law'. This also in part explains why there is such controversy around the inclusion of these terms in UN documents by some governments[401]. Of course,

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[397] It would have been difficult, moreover, to reach agreement or consensus on these figures.
[398] Interview with Ramesh Thakur, New York, 6 June 2007.
[399] Interview with Cornelio Sommaruga, Geneva, 1 July 2008.
[400] *Ibid.*.
It is also noteworthy that "Belarus, Cuba, India, Pakistan, Russia, and Venezuela were some of the governments who resisted inclusion of various elements of the responsibility to protect." Pace, William R. and Deller, Nicole. "Preventing Future Genocides: An International Responsibility to Protect", *World Order*, Vol. 36, No. 4, 2005, p. 25.
[401] This was the case at the September 2005 World Summit, discussed in further detail in a later section of this chapter. Indeed, the World Summit's Outcome document, available at www.responsibilitytoprotect.org and at www.reformtheun.org, as well as the statements of the ambassadors and permanent representatives contain arguments for (or against) the inclusion of the reference to the 'responsibility to protect'. For example, the ambassador of the USA put forward several different proposals in order to avoid the use of the Report's terminology. However, the final

by stating that the 'responsibility to protect' and 'sovereignty as responsibility', as well as the principles contained in the Report must become elements of soft law, the Commissioners would have taken the risk of jeopardising the political equilibrium that they sought to create.

The question of who should be protected first, in emergency situations, was not addressed in the Report. Indeed, should the threshold criteria be fulfilled, how would those involved know how to go about this? The answer was provided, for example, in international humanitarian law, where it is clearly stated that women, children, the elderly and the wounded are to be protected as a priority[402].

Both Welsh and Levitt[403] identified the failure of the 'Responsibility to Protect' Report to mention the role of multinational corporations in conflict. At a time when exchanges and increased economic challenges are features of a globalised world, the roles of businesses and cross-border corporations cannot be underestimated. This element was missing in the mention of the causes of conflict.

One commentator expressed the view that the 'Responsibility to Protect' did not consider accountability. Indeed, Levitt stated that:

> What is needed is an approach that not only seeks to make the state accountable to people but also makes people in the developing world, where the bulk of conflict takes place, have limited contact with and know little about their own rights, privileges, and duties on one hand and about national governments on the other. By themselves, top-down, state-centered approaches – whether 'a right to intervention' or 'a responsibility to protect' – do not adequately consider the bottom-up contingent factors in root cause prevention[404].

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version of the text , although revised, did contain a specific mention of the responsibility to protect. Although it is still too early to argue that this creates a norm of soft law, it is a remarkable step forwards.

[402] This system of hierarchy is also mentioned in various international human rights documents. See the 1951 Refugee Convention, for example.

[403] See Welsh, Jennifer; Thielking, Carolin J.; MacFarlane, S. Neil, "The Responsibility to Protect: Assessing the report of the International Commission on Intervention and State Sovereignty", *op. cit.* and Levitt, Jeremy I. "Book Review: The Responsibility to Protect: A Beaver without a Dam?: International Commission on Intervention and State Sovereignty", *op. cit.*

[404] Levitt, Jeremy, *op. cit.*, pp. 5-6.

The link between lack of protection and impunity has also been addressed by Ramesh Thakur and Vesselin Popovski[405]. It was indeed important to stress protection, but the corollary of what happens to those who have perpetrated crimes, is a further area of study.

Although the Report did address prevention in the section with the same name, analysts stated that due to operational weaknesses, it did not provide a full range of alternatives or solutions sufficient to enable the international community, and the UN in particular, to move from a "a culture of reaction" to a "culture of prevention"[406]. At the time of publishing the Report, the Commissioners knew that their immediate priority was to mobilise the international community in the issues addressed in the Report[407].

In the case of failed states, who would be given the responsibility to protect the population of that state? This question was unfortunately not addressed in the Report, and this will need to be addressed whenever the problem arises in practice. Although the obvious answer would be the international community, the lack of specification did generate confusion not so much as to the granting of responsibility, but rather as to how this could be dealt with in practice.

The Report did not make mention of the impact of military intervention. This could have been stated in the sections on prevention and rebuilding ('Responsibility to Prevent', 'Responsibility to Rebuild'). Should a military intervention be carried out, the impact on the local population and on the environment needs to be assessed. The criteria which should be met in the aftermath of intervention, in terms of ending a mandate authorised by the Security Council, avoiding a prolonged military presence and administrative procedures, were not dealt with in the text of the Report. A reference to what non-governmental organisations recommend or to sources of information could have been added.[408]

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[405] Thakur, Ramesh and Popovski, Vesselin. "The Responsibility to Protect and Prosecute: The Parallel Erosion of Sovereignty and Impunity". The Global Community, *Yearbook of International Law and Jurisprudence.* New York: Oceana. Volume I, 2007, pp. 39-61.

[406] Levitt, Jeremy, *op. cit.*, p. 10.

[407] In 2001, the political context was not open to discuss all these alternatives. Prevention alternatives will be discussed in Chapter 7.

[408] The Commissioners could have inserted a reference to the handbooks, manuals or practical guidelines of the International Committee of the Red Cross, UNHCR, OCHA, UN peacekeeping, or other organisations involved in operational tactics at the field level.

Linked to the previous point was the lack of mention of the disadvantages of external intervention. Indeed, the Commissioners made reference to the precautionary criteria that must be fulfilled in order to agree to intervention and to the fact that sovereignty should be upheld. Nevertheless, a short discussion around the negative aspects of external intervention, in the sense of third party involvement (with an interest or a stake in the concerned country, for example) would have been useful.

Interestingly enough, no expert questioned the fact that the ICISS Commission was set up outside the United Nations context. This does seem awkward at first. However, by not developing the 'responsibility to protect' concept within the UN framework, the ICISS "did not have to cater to the views and interests of UN members"[409]. The fact that the Report was not initially designed in the United Nations actually served its purpose, for the following reasons. First, the terminology was 'original' when it came to be considered at the United Nations. It was credible because it was not 'new' or invented.[410] Second, the debate surrounding the emotional concepts of sovereignty and intervention had taken place outside of the UN arena. Third, the ICISS had commissioned a background research team led by Thomas Weiss, a well-known scholar based in New York, to consider aspects of this debate. Finally, the drive of previous UN Secretary-General Kofi Annan to adopt the concept and the Report proved valuable for its endorsement at the UN the World Summit in 2005.

Although it was understandable that the Report, responding to a challenge put forward by the former UN Secretary-General, placed such an emphasis on the United Nations' involvement in the 'Responsibility to Protect' and in authorising intervention, it may have been interesting to address current political realities which demonstrate that the UN has been bypassed in some cases of intervention. The UN Security Council must obviously play a major role in identifying threats to international peace and security, as well as in dealing with crises. However, regional

[409] Interview with Donald Steinberg, New York, 5 June 2007.
[410] Francis Deng had used the 'sovereignty as responsibility' expression before.

organisations should also have a say in areas of concern to them[411]. Since there may be common issues, these should be addressed at all levels, and then brought to the attention of the Security Council. Moreover, with the thematic mandates given to the UN Special Rapporteurs of the Human Rights Council and the UN Secretary-General's Representatives, there are a wide range of means at the disposal of the United Nations to bring to the attention of its agencies and main bodies any potential concerns, whether through regular or *ad hoc* measures. Therefore, a consideration of alternate bodies, organisations and parties involved with issues of the 'Responsibility to Protect' could have enhanced the Report, by providing further options.[412]

There were two dimensions in the lack of reference to the media and public opinion. The momentum generated by the Report's popularity and dissemination was maintained by the efforts of civil society and non-governmental organisations. The second aspect was the influence that the media have achieved on shaping the opinion of civil society regarding current international politics and events (this has been on the increase since September 2001). By the absence of acknowledgement of both these concerns, the Report did fail to address one of the political forces on the current scene of international politics.

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[411] If licensed by the Security Council, of course, as provided in the UN Charter, Article 53.1: "The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state."

[412] By providing concrete ideas for action to be taken both within and outside the United Nations context, the Report would have gained in credibility, particularly at the time of its release. Even if the Commissioners did not want to discuss a real event, they could have chosen to mention the African Union or the European Union as obvious regional partners.

6 Impact and Implementation of the Report

6.1 Time of Release and Impact

The 'Responsibility to Protect' report was published in December 2001. Its release was initially planned for September-October of the same year, but in light of the events of September 11, 2001, the Commissioners decided to delay it. The aforementioned events overshadowed the very important work of the International Commission on Intervention and State Sovereignty (ICISS). The impact that the September 11, 2001 development had on the world and politics was tremendous. The media seized the opportunity to create innumerable headlines, continuous information flooded the world's ears and eyes. It would have been a very bad timing to release a major report at such a moment. Cornelio Sommaruga, one of the ICISS Commissioners stated: "the drama was that the 'Responsibility to Protect' Report came out after September 11, 2001".[413]

It was thus decided that the 'Responsibility to Protect' publication would be postponed for a couple of weeks. However, as the Commission had been given a one-year mandate, it had to deliver what was expected of it to the Canadian government, under the auspices of which it had functioned. The opening paragraphs of the Report actually state this:

> **The Report and the Events of 11 September 2001**
> The Commission's report was largely completed before the appalling attacks of 11 September 2001 on New York and Washington DC, and was not conceived as addressing the kind of challenge posed by such attacks. Our report has aimed at providing precise guidance for states faced with human protection claims in other states; it has not been framed to guide the policy of states when faced with attack on their own nationals, or the nationals of other states residing within their borders.
>
> The two situations in our judgement are fundamentally different. The framework the Commission, after consultations around the world, has developed to address the first case (coping with human protection claims in other states) must not be confused with the framework necessary to deal with the second (responding to terrorist attacks in one's own state). Not the least of the differences is that in the latter case the UN Charter provides much more explicit authority for a military response than in the case of intervention for human protection purposes ...
>
> While for the reasons stated we have not – except in passing – addressed in the body of our report the issues raised by the 11 September 2001 attacks, there are aspects of our report which do have some relevance to the issues with which the international community has been grappling in the aftermath

[413] Interview with Cornelio Sommaruga, Geneva, 1 July 2008.

> of those attacks. In particular, the precautionary principles outlined in our report do seem to be relevant to military operations, both multilateral and unilateral, against the scourge of terrorism. We have no difficulty in principle with focused military action being taken against international terrorists and those who harbour them. But military power should always be exercised in a principled way, and the principles of right intention, last resort, proportional means and reasonable prospects outlined in our report are, on the face of it, all applicable to such action[414].

September 2001: The 'War on Terror' and the Bush Administration's Answers

Only a few days after the events of September 11, former US President George W. Bush declared a 'war on terror'. This topped all the news' headlines in the immediate aftermath of these events. Moreover, the Bush administration policy has aimed at maintaining the momentum of this war and the associated measures taken. Therefore, the release of the Report, although delayed for three months, remained a 'minor' event on the world scene. This is very unfortunate, as the Responsibility to Protect Report represents a comprehensive effort to address very important issues of the current international order.

As Gareth Evans and Mohamed Sahnoun put it:

> Since September 11, 2001, policy attention has been captured by a different set of problems: the response to global terrorism and the case for 'hot preemption' against countries believed to be irresponsibly acquiring weapons of mass destruction. These issues, however, are conceptually and practically distinct. There are indeed common questions, especially concerning the precautionary principles that should apply to any military action anywhere. But what is involved in the debates about intervention in Afghanistan, Iraq and elsewhere is the scope and limits of countries' rights to act in self-defense – not their right, or obligation, to intervene elsewhere to protect peoples other than their own. [415]

6.2 Post-September 11, 2001 Developments of the 'Responsibility to Protect'

The primary fear expressed regarding the interventions in Afghanistan and Iraq was that they would undermine the main tenets of the Responsibility to Protect concept. Indeed, many experts feared that interventions could be justified more easily, by misusing the military and precautionary principles, as well as the grounds for intervening. The efforts pursued by the previous US George W. Bush administration to justify its military operations in Iraq, without an initial Security Council backing, goes against the most essential points put forward by the Report.

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[414] *The Responsibility to Protect*, "Foreword", pp. viii-ix.
[415] Evans, Gareth and Sahnoun, Mohamed. "The Responsibility to Protect", *op. cit.*

Even within the context of the responsibility to protect discussion for inclusion in the 2005 World Summit, the United States stressed that action could be carried out without Security Council authorisation, as will be discussed further on in this chapter.

Clearly, both the interventions in Afghanistan and in Iraq jeopardised the precautionary principles (exhaustion of diplomatic and other means). They were initiated without referring to 'human protection purposes', and explained for political objectives[416].

2002: *Foreign Affairs* article and the 'awakening' of the general public to Responsibility to Protect

Although the Commissioners pursued their advocacy efforts for the normative framework, the Responsibility to Protect was known mostly to those in the politics and international relations fields. There was a clear need to publicise the work of the ICISS, and thereby to grant the general public access to this information. Gareth Evans and Mohamed Sahnoun, the ICISS Co-Chairs, chose to spread the Responsibility to Protect knowledge through a concise article, published in the November/December 2002 issue of *Foreign Affairs*[417].

The article started with a brief introduction and background relating to previous humanitarian interventions, the explanation of the need for the concept, and a reference to September 11, 2001. The authors thereafter immediately tapped into the new terms of the debate, present 'sovereignty as responsibility', and the military intervention precautionary principles required before action is taken. They concluded by an appeal to political will, a requirement for change and improvement, and the notion of 'good international citizenship'.

This short article is a clear, right to the point guide through the Responsibility to Protect. Broken down in paragraphs with clear sub-titles, it provided the reader with a justification for and explanation of the Responsibility to Protect concept; a recent picture of failed humanitarian interventions; the language and terminology used in the Report and the normative framework; the three aspects of the concept: react, prevent and rebuild; key political concepts and underlying theories ('just war', UN Charter provisions, sovereignty); a summary of the six principles justifying military

[416] To retrieve the freedom of the Iraqi people and to restore peace and democracy in Afghanistan and Iraq.
[417] Evans, Gareth and Sahnoun, Mohamed, *op. cit.*

intervention; proposals for action and Security Council application of principles and a General Assembly declaration.

Some noteworthy elements of the article are the following. First, the opening paragraph gives a definition of humanitarian intervention: "coercive action against a state to protect people within its borders from suffering grave harm"[418]. The authors also acknowledged the controversy surrounding humanitarian intervention ('right to intervene', how and when it should be exercised, under whose authority). Moreover, they explicitly acknowledged that:

> Although this new principle [sovereignty as responsibility] cannot be said to be customary international law yet, it is sufficiently accepted in practice to be regarded as a de facto emerging norm: the responsibility to protect[419].

This has implications in international law, in the sense that the aim of the ICISS was ultimately to insert the responsibility to protect in international customary law, as a widely accepted concept, as well as to establish it among *obligations erga omnes*, or provisions out of which states cannot opt. Finally, the article insisted on the authority of the Security Council to take (military) action. Nevertheless, it specified that if the Security Council is unable to reach agreement, the General Assembly should be called upon to exercise authority, as it has done in the past, under the Uniting for Peace procedure.

On the whole, the article in *Foreign Affairs* did have an impact, and attracted more attention to the Responsibility to Protect momentum. All those eager to promote it seized this opportunity to expand knowledge and awareness further around the concept and the Report.

2003: Non-governmental Organisations and Civil Society

Throughout 2003, the non-governmental organisation network, and the World Federalist Movement – the Institute for Global Policy in particular – created specific discussion fora regarding the Responsibility to Protect. The WFM held several roundtables and consultations involving NGOs, experts and civil society. Since then, the WFM has set up a website dedicated to the Responsibility to Protect, and a mailing list for anyone involved or interested in the Report[420]. The site is regularly updated and maintained by WFM staff, and any document, news item or

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[418] *Ibid.*, p. 99.
[419] *Ibid.*
[420] See www.responsibilitytoprotect.org (accessed January 17, 2009).

article with a link to the responsibility to protect is featured, and provides a platform for latest updates and allows an exchange of information through the mailing list and group the WFM manages ('R2P-CS-info'). In parallel, the work of other NGOs in different sub-areas adds to the information available. WFM has also developed a vast network of interested organisations, connected through its activities, website and communications.

This represented an effort to keep the general public, NGOs and others abreast of developments of the concept. Moreover, this initiative involved civil society and represents its interests in all debates. The World Federalist Movement is particularly active in liaising with the United Nations, publishing editorials and summaries, and analysing communications and documentation on the responsibility to protect.

6.3 Impact and Implementation: 2004 and Onwards

The momentum gained through the *Foreign Affairs* article was maintained through regular consultations between non-governmental organisations, the United Nations and academics. These concerted efforts gave rise to substantial work relating to the responsibility to protect. For instance, the publication of *International Commissions and the Power of Ideas*[421] brings a new facet to the debate, by stating that independent Commissions have the power to create standards and norms around topics with which they deal. In the case of the Responsibility to Protect, the analysis and comments relate to what the normative framework brings anew both at a practical level and to the political and legal discussions. As such, this is an essential contribution to draw attention and support to the concept.

Today, the developments of the Responsibility to Protect are followed by non-governmental organisations, which represent the link between civil society, governments and the United Nations. For example, for information on the Responsibility to Protect and internally displaced persons, it would be useful to consult the websites of the WFM-IGP, the Norwegian Refugee Council and the Global IDP Database, the Brookings Institute, UNHCR, OCHA and other UN agencies[422].

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[421] Thakur, Ramesh et al., *op. cit.*

[422] The organisational structure around internally displaced persons will be discussed in Chapter 5.

The Missing Link: the United Nations, the 'Responsibility to Protect' and the Millennium Movement

The United Nations has streamlined debates around the Responsibility to Protect in its fora. Indeed, the previous Secretary-General has been the main instigator and focal point for this topic. Since then, he has relentlessly pursued efforts to draw general support for the responsibility to protect, through speeches, references and most importantly in the commissions and further reports he sponsored. The importance of the 2004 High-Level Panel on Threats, Challenges and Change, and the 2005 World Summit as two main expressions of central themes relating, directly or indirectly, to the Responsibility to Protect should not be underestimated. These two instances and their subsequent reports certainly will leave a trace of the then current context of international relations[423].

2004: The High-Level Panel on Threats, Challenges and Change

During the second half of 2004, the former Secretary-General mandated the UN High-Level Panel on Threats, Challenges and Change, which delivered its report on December 2, 2004. The final report of the High-Panel, *A more secure world: Our shared responsibility*[424], contains a specific reference to the 'Responsibility to Report', referring to both 'sovereignty as responsibility' and the 'responsibility to protect':

> In signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities. Whatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community. [...]
>
> What we seek to protect reflects what we value. The Charter of the United Nations seeks to protect all States, not because they are intrinsically good but because they are necessary to achieve the dignity, justice, worth and safety of their citizens[425].
>
> The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and Darfur, Sudan, have concentrated attention not on the immunities of sovereign Governments but their responsibilities, both to their own people and to the wider international community. There is a growing recognition that the issue is not "the right to intervene" of any State, but the "responsibility to protect" of *every* State when it comes to people suffering from avoidable catastrophe [...].

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[423] The High-Level Panel on Threats, Challenges and Change, most notably, widely contributed to the discussion of what the issues of tomorrow on the international scene will be.
[424] *Supra* note 4.
[425] *A more secure world: Our shared responsibility, op. cit.*, paras. 29 and 30 C. Sovereignty and Responsibility.

> And there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community [...].[426]

The UN report revisited sovereignty within the UN Charter context, its legal source. Only states which have signed and adhered to the Charter can expect to be legitimate members of the United Nations, and thereby of the international community. The High-Level Panel report emphasised that the status of international affairs of the world today has changed, yet the Charter remains applicable, and is consistent with current values and realities. The report purposely reiterated that States are the primary holders of responsibility and protection for their citizens, thereby insisting on national law and national/territorial jurisdiction. However, it also explicitly referred to States' obligations under international law, as the rules governing relations among States.

The report used the term 'value' to indicate that States are all equal and to give meaning to 'citizens', implying that human life is associated with dignity, justice, worth and safety. The report consistently reminded of the obligations of States towards the wider international community, implicitly referring to 'good international citizenship'. Paragraph 201 was literally drawn from the Responsibility to Protect report.

The aims of the High-Level Panel's report were to provide concrete solutions to the issues of today[427]. The report covered aspects such as poverty, conflict within and between states, terrorism, transnational organised crime, the use of force, peace

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[426] *Ibid.*, paras. 201-204.

[427] 2. "The aim of the High-Level Panel is to recommend clear and practical measures for ensuring effective collective action, based upon a rigorous analysis of future threats to peace and security, an appraisal of the contribution that collective action can make, and a thorough assessment of existing approaches, instruments and mechanisms, including the principal organs of the United Nations. [...]

3. [The Panel] is being asked to provide a new assessment of the challenges ahead, and to recommend the changes which will be required if these challenges are to be met effectively through collective action.

4. Specifically, the Panel will:

a. Examine today's global threats and provide an analysis of future challenges to international peace and security [...].
b. Identify clearly the contribution that collective action can make in addressing these challenges.
c. Recommend the changes necessary to ensure effective collective action, including but not limited to a review of the principal organs of the United Nations."

-----. *The High-Level Panel, 'Terms of Reference'.*

enforcement and peacekeeping capability, post-conflict peacebuilding, and United Nations reform. Concretely, many of these areas are relevant to the Responsibility to Protect, as they underline the emphasis put on 'human concerns', protection and security.

Since 1945,

> we know all too well that the biggest security threats we face now, and in the decades ahead, go far beyond States waging aggressive war. They extend to poverty, infectious diseases and environmental degradation; war and violence within States; the spread and possible use of nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime. The threats are from non-State actors as well as States, and to human security as well as State security[428].

The report also clearly acknowledged the Responsibility to Protect as an emerging norm, a very important step in a UN document.

> 201. The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and now Darfur, Sudan, have concentrated attention not on the immunities of sovereign Governments but their responsibilities, both to their own people and to the wider international community. **There is a growing recognition that the issue is not the 'right to intervene' of any State, but the 'responsibility to protect' of *every* State when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease**
>
> 204. **We endorse the emerging norm that there is a collective international responsibility to protect exercisable by the Security Council authorizing military intervention as a last resort [...].**[429]

Paragraph 204 was extremely powerful, since the UN in a main report, endorsed an emerging norm. In doing so, the legal framework was set for a future customary international law provision. This is crucial, since the designation 'norm' carries with it implications.[430] Moreover, this meant that the experts writing the report were aware that this would engage the UN to 'sponsor' such a development, both at the political and legal levels. Paragraph 204 made it clear that the body recognised to authorise military intervention is the UN Security Council.

In fact, from the time of its publication, the 'Responsibility to Protect' was a concept, in the sense of an idea. It was discussed and carried by its initiators in order to become better acknowledged in public and United Nations circles. As states were

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[428] *A more secure world: Our shared responsibility, op. cit.*, "Synopsis", p. 1.
[429] *Ibid.*, "Part 3: Collective security and the use of force", paras. 201 and 204, emphasis added.
[430] See Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, pp. 6-7 for further insights into R2P considered as 'concept', 'principle' or 'norm'.

exposed to the concept, R2P founders and supporters wished for a collective understanding and consensus – as this would lead R2P to become a 'principle'. The qualification of the responsibility to protect as an 'emerging norm' in the High-Level Panel Report had political and legal implications. The new norm had the potential to alter not only thinking but also action in current international relations.[431] States would thus be expected to react to the emerging norm and to address the principle, as would the Security Council when considering situations when elements of the 'responsibility to protect' could apply.

Moreover, by referring to the responsibility to protect as an 'emerging norm' in this paragraph, the High-Level Panel Report provided a basis for its inclusion in customary international law.[432] The report of the High-Level Panel provided the basis for the 2005 World Summit discussions[433].

2005: The World Summit

World leaders gathered in New York between September 12 and 16, 2005, were supposed to discuss and agree to recommendations and produce an "Outcome Document" addressing, among other issues Security Council reform (distribution of permanent seats, regional under-representation); human rights mechanisms (creation of a Human Rights Council, strengthening of the UN Office of the Human Rights Commissioner); development improvements (commitment to grant 0.7% of Gross Domestic Product to Overseas Development Assistance; creating, financing and respect of the Millennium Development Goals by 2015) and democracy targets (creation of a Democracy Fund).

In view of discussing the reform of the United Nations, and achieving consensus surrounding the issues at stake, the then UN Secretary-General published a report and a series of Millennium Development Goals[434] and, in September 2005, produced the World Summit "Recommendations" meant for states to be adopted at the Summit. At the September 2005 World Summit, Heads of State and Government

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[431] This will be discussed in the conclusions, in Chapter 7.

[432] The reference to "an emerging norm" is also a step in the direction of securing the responsibility to protect in soft law. For an explanation of soft law, see footnote 46.

[433] Indeed, many of the proposals contained in the former Secretary-General's World Summit Report emanated from the High-Level Panel on Threats, Challenges and Change. See, for example, the sections on the United Nations reform.

[434] Annan, Kofi A. *In larger freedom: towards development, security and human rights for all.* 21 March 2005. UN Document A/59/2005, available at: http://www.unmillenniumproject.org/documents/Inlargerfreedom.pdf
The 'Millennium project' was, however, dropped from the World Summit Outcome Document.

also had to discuss a reference to the 'responsibility to protect'[435]. This need stemmed from many roots. The first of which was the focus of attention on this issue since the year 2000, as explained earlier in this chapter. The second was the continued pressure that civil society, as represented by dedicated NGOs, had exerted on governments and states to assume their deeds and promises, as well as more demand for accountability of national agents (whether acting officially or as individuals). The third reason for such a point to be included in a General Assembly declaration was the recognition that such a reference would lead the 'responsibility to protect' to be considered as part of UN terminology[436] and would foster progress towards the recognition as customary international law. Finally, as expressed by Secretary-General Annan:

> For the first time you [Heads of State and Government] will accept, clearly and unambiguously, that you have a collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. You will make clear your willingness to take timely and decisive collective action through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to protect their own populations. Excellencies [ambassadors], you will be pledged to act if another Rwanda looms[437].

The inclusion of three paragraphs[438] in the World Summit Outcome Document was a very important step. This was a turning point, despite the reluctance of a number of states to see the inclusion of the responsibility to protect in the World Summit Outcome Document.[439]

> Referring to the responsibility to protect, Mark Turner, a reporter for the *Financial Times,* observed that, 'In coming years, as historians reflect upon what was achieved at this week's United Nations summit in New York, one decision may stand out.' He described the responsibility to protect as a 'profound shift in international law, whereby a growing sense of global responsibility for atrocities is increasingly encroaching upon the formerly sanctified concept of state sovereignty.'[440]

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[435] For a complete discussion of the developments pertaining to the responsibility to protect at the World Summit, see Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, pp. 66-97.

[436] The ICISS was not set up as UN-commissioned body of experts, thus the inclusion of its terminology in the UN is a very important step.

[437] Annan, Kofi. "Address to the 2005 World Summit", New York, 14 September 2005.

[438] World Summit Outcome Document, *op. cit.*, paras. 138-140.

[439] Several member states tried to block the inclusion of the responsibility to protect in the World Summit Outcome Document. Among these were Cuba, Egypt, India, Pakistan and Venezuela. See "Small Number of Countries Holding UN World Summit Hostage on Human Rights, Security, Poverty", *Human Rights Watch News*, September 6, 2005, available at: http://www.hrw.org/en/news/2005/09/06/small-number-countries-holding-un-world-summit-hostage-human-rights-security-poverty (accessed June 30, 2009).

[440] Mark Turner, "UN 'Must Never again be Found Wanting on Genocide' The 'Right to

Indeed, the terminology of the 'responsibility to protect' could from then on be used in the United Nations documents, with a reference to the World Summit.[441] Moreover, the reference in the World Summit Outcome Document drew visibility to the 'Responsibility to Protect' and to the commitment of UN Member States to the concept, the norm and its content. In light of the delicate nature of the debate surrounding sovereignty and intervention in the political arena, and in the United Nations in particular, the World Summit Outcome Document can definitely be considered a major achievement for the 'responsibility to protect':

> The provisions on the responsibility to protect in the *Outcome* document have been hailed as one of the few true successes of the 2005 Summit. The Secretary-General remarked about the agreement that 'Perhaps most precious to me is the clear acceptance by all UN members that there is a collective responsibility to protect civilian populations against genocide, war crimes, ethnic cleansing and crimes against humanity, with a commitment to do so through the Security Council wherever local authorities are manifestly failing.'[442]

2008: Creation of the Global Centre for the Responsibility to Protect

On February 14, 2008, the Global Centre for the Responsibility to Protect[443] was launched. Its aim is "serve a catalyst for moving the responsibility to protect from principle to practice" and to "conduct, coordinate, and publish research on refining and applying the R2P concept. It will serve as an information clearing house and resource for governments, international institutions, and non-governmental organizations leading the fight against mass atrocities"[444]. The Global Centre for R2P is the initiative of several non-governmental organisations, namely the International Crisis Group, Human Rights Watch, Institute for Global Policy, Oxfam International and Refugees International.

The GCR2P aims to accomplish the following objectives:

- advance and consolidate the World Summit consensus on R2P;
- protect the integrity of the R2P concept;

Protect'—Intervention to Stop Mass Murder—May Well Be the Summit's Lasting Legacy," *Financial Times,* September 16, 2005 quoted in Pace, William R. and Deller, Nicole. "Preventing Future Genocides: An International Responsibility to Protect", *op. cit.*, p. 27.

[441] This has been the case in many resolutions and statements, including Security Council resolutions on Darfur, see Chapter 6.

[442] Pace, William R. and Deller, Nicole. "Preventing Future Genocides: An International Responsibility to Protect", *op. cit.*, p. 27 and Annan, Kofi. "The UN Summit: A Glass At Least Half Full" in *Jakarta Post*, September 23, 2005.

[443] Internet site: www.GlobalCentreR2P.org (accessed May 17, 2009).

[444] Quoted from the Global Centre for the Responsibility to Protect Internet site, http://globalr2p.org/about.html ('About the Centre') (accessed January 18, 2009).

- clarify when non-consensual military force can and cannot be used consistently with R2P principles;
- build capacity on R2P within international institutions, governments, and regional organizations; and
- have in place the mechanisms and strategies necessary to generate an effective political response as new R2P situations arise.

In order to achieve these objectives, the GCR2P will undertake the following types of activities:

- promote research and provide a common knowledge and information base on R2P, publishing freely available monographs and reports and maintaining a high quality website;
- recommend and support strategies for norm consolidation and capacity building worldwide;
- support and assist efforts to generate the political will in governments and intergovernmental bodies to respond effectively to new R2P situations as they arise;
- develop close working relationships with key NGOs and relevant units of governments and international regional institutions working on R2P, including in particular the UN Secretary-General's Special Representative for the Prevention of Genocide and Mass Atrocities and his Special Adviser on the Responsibility to Protect; and
- establish linkages worldwide with a wide variety of civil society, academic, governmental, and international bodies involved in relevant analysis and research[445].

2008: Appointment of a Special Adviser on the 'Responsibility to Protect'

On February 21, 2008, UN Secretary-General Ban Ki-moon appointed Edward C. Luck (of the United States) as Special Adviser to the Secretary-General on the 'Responsibility to Protect'. This position is at the rank of Assistant Secretary-General in the United Nations hierarchy. "Mr. Luck's work will include the responsibility to protect, as set out by the General Assembly in paragraphs 138 and 139 of the 2005 World Summit Outcome document. Mr. Luck's primary role will be conceptual development and consensus building, to assist the General Assembly to continue consideration of this crucial issue. Towards this end, the Secretary-General requested Mr. Luck to help him develop proposals, through a broad consultative process, to be considered by the United Nations membership."[446] The choice of an American national was probably not a mere coincidence, in light of the reluctance of the then US administration to see the development of the responsibility to protect norm emerge. Moreover, it did seem convenient to have 'an American in New York' keen to promote the conceptual aspects linked to the responsibility to protect, in

[445] *Ibid.* (accessed January 18, 2009).
[446] United Nations Press Release Department of Public Information News and Media Division, UN Document SG/A/1120 Bio/3963, 21 February 2008, available at http://www.un.org/News/Press/docs/2008/sga1120.doc.htm (accessed January 19, 2009).

cooperation with the Global Centre for the Responsibility to Protect.[447] It is important, however, to note that this is a part-time appointment.

2009: Launch of the *Global Responsibility to Protect* Journal

In 2009, the *Global Responsibility to Protect* Journal[448] (Martinus Nijhoff) was launched. Alex J. Bellamy, a scholar who has published on the 'responsibility to protect'[449], ethics and just war, is the editor of the new journal.

7 Strengths and Weaknesses of the Report

> The [ICISS] commission's boldest contribution, however, was to argue that the responsibility to protect binds both the individual states and the international community as a whole.[450]

Beyond any doubt, the Responsibility to Protect Report achieved several major breakthroughs. The Report came as an enlightened response to the challenge put forward by former UN Secretary-General Kofi Annan at the Millennium Summit. The Report and its authors have also increased the credibility of the issues dealt with, and have strengthened the belief that the current vision of international relations is not time-bound, but carries with it an element of flexibility and adaptability to new challenges and concerns.

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[447] This will allow for more visibility and focus, at the United Nations and in key meetings.

[448] "*Global Responsibility to Protect* is the premier journal for the study and practice of the responsibility to protect (R2P). This journal seeks to publish the best and latest research on the R2P principle, its development as a new norm in global politics, its operationalization through the work of governments, international and regional organizations and NGOs, and finally, its relationship and applicability to past and present cases of genocide and mass atrocities including the global response to those cases. *Global Responsibility to Protect* also serves as a repository for lessons learned and analysis of best practices; it will disseminate information about the current status of R2P and efforts to realize its promise. Each issue contains research articles and at least one piece on the practicalities of R2P, be that the current state of R2P diplomacy or its application in the field. *Global Responsibility to Protect* promotes a universal understanding of R2P and efforts to realize it, through encouraging critical debate and diversity of opinion, and to acquaint a broad readership of scholars, practitioners, students and analysts with the principle and its operationalization. It encourages contributions from a variety of disciplines and professions who have something to say about R2P. *Global Responsibility to Protect* seeks insights and approaches from every region of the world that might contribute to understanding, operationalizing and applying R2P in practice". Quoted from http://www.brill.nl/gr2p (accessed January 20, 2009).

[449] See Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.* and Bellamy, Alex J. "Conflict Prevention and the Responsibility to Protect", *Global Governance*, Vol. 14, No. 2, April-June 2008, pp. 135-156.

[450] Feinstein, Lee and Slaughter, Anne-Marie. "A Duty to Prevent", *Foreign Affairs*, Vol. 83, No. 1, January/February 2004, p. 138, available at: http://www.foreignaffairs.org/20040101faessay83113-p10/lee-feinstein-anne-marie-slaughter/a-duty-to-prevent.html (accessed January 20, 2009).

Indeed, the exposure of the terms contained in the ICISS Report and in the World Outcome Document has enabled expressions such as 'sovereignty as responsibility' and 'the responsibility to protect' to be associated with protection issues, human rights and the role of the state as a 'sovereign' entity. This was the intended aim, and also allowed for 'humanitarian intervention' to be left aside. The association of 'sovereignty' and 'responsibility' has shifted the debate surrounding intervention, and has drawn attention to the victims of abuses. The fact that the international community has addressed internal conflict and the protection of the human rights of civilians and individuals was an indication that the realities of the current international order were tackled.

The doctrine also succeeded in its planned impact despite potential setbacks at the time of the release of the Report and has had a noteworthy effect since its publication. Furthermore, the Report established strong new terminology and related concepts. The effect of coining these terms, their international impact and long-term reach is unquestionable.

The responsibility to protect is applicable to several practical situations and is not confined to specific implementation or rules. For example, it may be put in practice when dealing with internal displacement. In general, civil society, the media and public opinion are aware, and in favour, of the ideas contained in the doctrine.

Some commentators have argued that the 'responsibility to protect' provides states with a 'licence to intervene'. "Those espousing the use of military force for human protection purposes are no longer on the side of the angels because of how the concept could apparently be manipulated by the George W. Bush administration."[451] Experts feared that the United States could pursue the foreign policy line which implies getting involved in interventions without prior Security Council approval.

Although the Responsibility to Protect Report suffered omissions and failed to address some of the areas of relevance to the current state of international affairs, it was a comprehensive study and can definitely be considered as innovative and remarkable.

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[451] Weiss, Thomas G. "R2P After 9/11 and the World Summit", *op. cit.*, p. 748.

8 Next Steps

8.1 Towards the Inclusion of the 'Responsibility to Protect' in Security Council Resolutions and United Nations Documents

In order to retain the momentum of attention focused on the 'Responsibility to Protect', it was essential that the responsibility to protect reference be made in as many United Nations resolutions and documents as possible.[452] This would be a strong move in the direction of converting these norms into customary international law. Progress has been achieved with the inclusion of the Report's terminology in the 2005 World Summit Outcome Document, as well as in other major United Nations reports. The next step could be to work towards an official statement, resolution, declaration, Presidential statement, or communication which bring the doctrine, and thereby the norms, to the forefront of the current international scene.[453] This requires political will and a strong legal background, most importantly from the actors involved in drafting the Report and its related principles.

UN Secretary-General Ban Ki-moon is committed to promote the responsibility to protect norm[454]:

> The Secretary-General seems to follow a tactical inspired constructivist approach: to sponsor the emergence of a moral norm or a legal frame that has the potential to grow into international customary law. By including R2P in as many statements, resolutions and official documents as possible, the principle will take hold[455].

8.2 Principles for Consideration by the Security Council when Authorising the Use of Force

The High-Level Panel on Threats, Challenges and Change clearly stated: "The maintenance of world peace and security depends importantly on there being a

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[452] The responsibility to protect would thus be included in soft law. For an explanation of soft law, see footnote 46.

[453] Some commentators have argued for a General Assembly declaration or resolution on the responsibility to protect. The author of this thesis believes that there are more urgent priorities for the responsibility to protect, identified in this chapter, in table 14, and also discussed in Chapter 8. For a discussion, see Bamberger, Sara Heitler; Bostrom, Meg; Hurlburt, Heather; O'Connell, Jamie; Owen, Jessica; Sheikhholeislami, Hosna; Shigekane, Rachel and Shulman, Joanna. "The Responsibility to Protect (R2P): Moving the Campaign Forward", Human Rights Center, Religion, Politics and Globalization Program, International Human Rights Law Clinic, University of California, Berkeley, October 2007, pp. 47-51.

[454] Secretary-General annual address to the General Assembly: 25 September 2007 UN Documents SG/SM/10842, SG/SM/11094, SG/SM/11182)

[455] Saxer, Marc. "The Politics of the Responsibility to Protect", *op. cit.*, pp. 3-4.

common global understanding, and acceptance, of when the application of force is both legal and legitimate."[456]

In his report, former UN Secretary-General Kofi Annan stated that:

> The task is not to find alternatives to the Security Council as a source of authority but to make it work better. When considering whether to authorize or endorse the use of military force, the Council should come to a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success. By undertaking to make the case for military action in this way, the Council would add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion.
> **I therefore recommend that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force.**[457]

This reference was clearly to the R2P's 'precautionary principles'. In the absence of principles guiding the authorisation of the use of force by the Security Council, it was probable that powerful states, coalitions of states and regional organisations will be able to obtain the use of force, as has been the case in Iraq in 1991, for example.

Not only does this lack of criteria risk undermining the credibility and the role of the Security Council, it could also generate "international anarchy and the law of the jungle in world affairs" as Ramesh Thakur points out.[458] He goes on to describe six alternatives to UN authorisation of force:

- Any one country can wage war against any other.
- Any one coalition of states can wage war against another country or group.
- Only NATO has a right to launch military action against a non-NATO country.
- Only NATO has the right to determine if military intervention, whether by NATO or any other coalition, is justified against others outside the coalition.
- Regional organizations can take in-area military action but not out-of-area operations.
- Only the United Nations can legitimately authorize armed intervention.[459]

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[456] *A more secure world: our shared responsibility, op. cit.*, para. 184.
[457] Annan, Kofi A. *In larger freedom: towards development, security and human rights for all, op. cit.*, para. 126, emphasis in original. Available at http://www.un.org/largerfreedom (accessed January 22, 2009).
[458] Thakur, R.. "Towards a Less Imperfect State of the World: The Gulf Between the North and the South", *op. cit.*, p. 4.
[459] *Ibid.*, p. 4.

Professor Thakur clearly opposed the first and second options on the grounds that humanitarian intervention has now evolved to the extent that what occurs within state borders is under scrutiny by the international community, and that the decline in inter-state armed conflict could be reversed in case these two cases were a reality. The third and fourth alternatives were pushed aside in view of the fact that non-NATO members would not accept the third, and that the international community as a whole would certainly not adhere to the fourth. The fifth option was a conceivable one, at least conceptually. Obviously, the last alternative was the most viable and the preferred one, according to Professor Thakur, and to the United Nations Charter.

8.3 Considering the 'Responsibility to Prevent'

The ICISS Commissioners believed that "prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it".[460] The Report recognised that the budget devoted to the area of prevention is "dwarfed by the resources devoted to intergovernmental organizations, and the states themselves, to preparation for war, to warfighting, to coercive intervention, to humanitarian assistance to the victims of conflict, and catastrophe, to post-intervention reconstruction, and to peacekeeping."[461] Measures identified as belonging to the prevention arena were early warning and knowledge of potential crises, the 'preventive toolbox' or available policy measures and willingness to apply the available measures.[462] The ICISS experts suggested the monitoring of potential areas of conflict through information provided by NGOs such as the International Crisis Group, the ICRC, Amnesty International, Human Rights Watch and the Fédération internationale des droits de l'homme, to name but a few. Nevertheless, the Report did recognise that "UN headquarters is often identified as the logical place to centralize early warning."[463] The Secretary-General could also play a role according to the provisions of Article 99 of the UN Charter.[464]

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[460] *The Responsibility to Protect*, 'Synopsis', p. xi.
[461] *Ibid.*, p. 20.
[462] *Ibid.*
[463] *Ibid.*, p. 20.
[464] UN Charter, Article 99 reads "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

The 'preventive toolbox' of measures was discussed under the headings of 'root cause prevention efforts' and 'direct prevention efforts'.

The prevention aspect is without any doubt a key priority area. However, in real terms, securing adequate funding and political will for situations of potential conflict, with no certainty as to the unfolding events, will prove to be a hard point to make to the international community[465]. Furthermore, the political dimension within the United Nations may be a second obstacle to implementing prevention. The early warning mechanisms, however, are essential to monitoring efforts, and these will be discussed in a later section.[466]

Alex Bellamy mentioned that "at least three factors have contributed to the relative neglect of the responsibility to prevent: the inherent difficulty of translating a commitment to prevention into coherent policy, the impact of the place of prevention in the war on terrorism, and the question of authority and agency".[467] What Bellamy meant by his first point is that the political will to advance prevention was lacking. Secondly, in the aftermath of the 'war on terror', states were focused on responses and less on preventive action. In fact, some states are now reluctant to discuss preventive action due to a fear that this may lead to instances of interference in domestic affairs.[468] Finally, the locus of the 'responsibility to prevent' remained unclear. Do states, regional organisations or local actors hold such a responsibility?

The World Summit's Outcome Document did not tackle the responsibility to prevent, and the topic was dropped. The only references to prevention included were to develop United Nations 'early warning' capability, to enhance capacity building and assisting before conflicts break out, and to create the position of Special Adviser to the Secretary-General on the Prevention of Genocide.[469] A consideration of the options available, the measures at hand and the advantages of preventive efforts would be timely.

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[465] See Shahabi-Sirjani, Farhad. *Preventive Diplomacy at the United Nations: a study of the rise and fall of the Office for Research and the Collection of Information.* Ph.D. thesis at the University of Kent 1996, for a discussion of how the UN has previously tried to develop this aspect.
[466] Chapter 7, section 3.1.
[467] Bellamy, Alex. J. "Conflict Prevention and the Responsibility to Protect", *op. cit.*, p. 142.
[468] This fear derives from the Bush administration's invention of a preventive and preemptive strategy.
[469] World Summit Outcome Document, *op. cit.*, paras. 138-140.

8.4 Priority Areas for the Responsibility to Protect

Gareth Evans identified four areas of immediate priority for the responsibility to protect, or as he put it "unfinished business to attend to"[470], which are included in the table below.

Table 14: Priority Areas for the Responsibility to Protect

Priority	Suggested Action By whom	Scope (international/national)	Timeframe
Develop knowledge of R2P	Capacity-building, bottom up approach Educate civil society on R2P Governments to reach agreement and to commit to R2P in statements, UN documents Regional organisations to commit to R2P NGOs, governments, international and regional organisations	International civil society	Short to medium-term: 6 months – 2 years
Prevent abuse of the concept and backslide of what has been achieved so far	Define R2P (Evans, Thakur), work with UN and NGOs to clarify the concept, promote and advocate R2P as often as possible in public events, speeches, conferences R2P Commissioners, R2P Centre, UN, regional organisations, states, NGOs, civil society	International	Short-term: 6 months – 1 year
Ensure operational capacity	Assess past crises and scope of capacity required R2P Centre, UN experts, regional organisations, states	National, regional and international	Medium to long-term: 1 – 3 years
Generate and sustain political will	Advocate R2P, ensure references and promotion of the concept UN, regional organisations, NGOs, R2P Centre	National, regional and international	Short to long-term: immediate – 3 years
Implement R2P regionally	Disseminate information,	National, regional	Short-term: 6

[470] Evans, Gareth. "Making Idealism Realistic: The Responsibility to Protect as a New Global Security Norm", *Address to launch Stanford MA Program in International Policy Studies*, 7 February 2007. Available at http://www.crisisgroup.org/home/index.cfm?id=4658 (accessed January 16, 2009).

and nationally	provide regional and local references and application Regional organisations, civil society, R2P Global Centre		months – 1 year
Apply R2P in practice	Prepare the concrete application of the concept to a real case, apply to an emerging crisis R2P Commissioners, R2P Centre, UN	International	Medium-term: 1 – 2 years
Establish guidelines for the use of military force	Suggest alternatives to the precautionary principles, which could be consistently referred to R2P Centre, R2P Commissioners, NGOs, UN experts, Security Council	International	Medium-term: 1 – 3 years

Source: Amina Nasir, based on articles and interviews (Ramesh Thakur, Sapna Chhatpar, Gareth Evans)

The practical application of the Responsibility to Protect Report depends on the willingness of states, and the international community as a whole, to adopt the principles at the heart of the doctrine. In the case of internally displaced persons, one of the main conceptual issues is the wide array of actors, organisations and partners involved at the operational level. In order to shed some light on the topic, the next chapter proposes to address the question of 'who is who' and 'who does what' in relation to internal displacement.

Chapter 5 From Problem to Network: An Emerging Institutional Framework for Internally Displaced Persons

The genesis of internal displacement shows a clear example of a practical issue occurring before theoretical concerns were addressed. This is interesting, for several reasons. The first is the lack of clear-sightedness in assessing that internal displacement would remain a key feature at the international level. Secondly, no single agency or leader seemed willing to take responsibility for IDPs. Finally, the confusion between UN agency mandates and the duplication of efforts on the field demonstrates the 'weakest link' at the operational level. This explains the title of this chapter: 'From problem to network: an emerging institutional framework'.

> This paper explores how institutional capacities and arrangements can be further strengthened and better coordinated within the international system in order to respond more effectively to the needs of the internally displaced. It examines the relevant capacities of existing institutions, their weaknesses and strengths, and recommends improvements that could be made in the current system[471].

1 Background and Development

Internally displaced persons have always existed. The events in the former Yugoslavia or in Darfur are also obvious examples. These were precursors of a phenomenon that would turn out to be a defining feature of international order since the 1990s.

Internally displaced persons are defined as "persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disaster, and who have not crossed an internationally recognised state

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[471] *Improving Institutional Arrangements for the Internally Displaced.* Washington D.C.: The Brookings Institution Refugee Policy Group Project on Internal Displacement, 1996, 'Introduction', p. 1.

border"[472]. Since they have always been apart from the international scene, figures – an adequate database and thus policies – to address this global phenomenon were non-existent, unsurprisingly. The table below shows the increase in the IDP populations worldwide, from 1995 to 2005, in perspective with the decreasing number of refugees globally during the same period.

1.1 IDPs in Numbers

Although the number of refugees has remained relatively stable, the number of internally displaced persons has generally been on the increase since 1997, with a slight decrease apparent in 2004[473]. It must be noted, however, that the figures relating to IDPs were not systematically compiled until recently, when the Norwegian Refugee Council, the US Committee for Refugees and UNHCR integrated these statistics into their annual reports[474]. Thus, the numbers before the year 2000 may be mere estimates.[475] Moreover, governments may either not be willing to provide figures of internally displaced persons within their territory, or may not even have these on record. The stated number of internally displaced persons should therefore be taken as a minimum across the globe. Since the year

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[472] Deng, Francis M. *Guiding Principles on Internal Displacement, op. cit.*, 'Introduction', para. 2.

[473] In 2007 and 2008, the number of internally displaced persons has remained stable, at 26 million. However, in 2008, some 4.6 million people fled as a result of new outbreaks of violence or conflict whereas 2.6 million returned, according to the Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2008*. Geneva: Internal Displacement Monitoring Centre and Norwegian Refugee Council, April 2009.

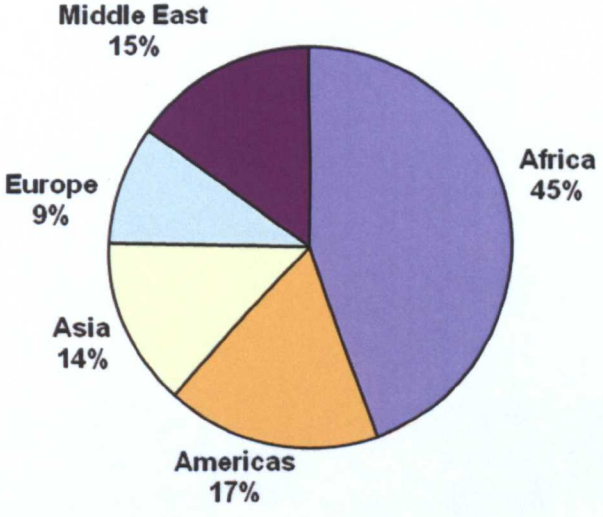
[474] Hampton, Janie (ed.). *Internally Displaced People: A Global Survey*. London: Earthscan Publications, Global IDP Survey, Norwegian Refugee Council. 1998: "Information is rarely neutral and there are vested interests in withholding or exaggerating facts and figures related to IDPs. Most of the figures ... have to be qualified by the word 'estimate'. In some countries, ... even an estimate is impossible." (p. xvi). "Lack of consensus over definition and methodological inconsistency has a tremendous impact on existing official estimates". (p. 25)
The Internal Displacement Monitoring Centre further explains that "producing reliable figures on conflict-induced internal displacement in politically-sensitive contexts is challenging. In most countries affected by internal displacement, existing data on IDPs are often incomplete, unreliable, out of date or inaccurate. Disaggregated data is only available in a few countries. Arriving at a commonly agreed numbers of IDPs implies government recognition of the displacement crisis, and a complex identification and registration of IDPs who are often mixed with other affected populations". See IDMC "Global IDP estimates 1990-2008", "Note on figures" available at: http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/10C43F54DA2C34A7C12573A1004EF9FF?OpenDocument&count=1000 (accessed May 24, 2009).
See also *Internally Displaced People: A Global Survey*. 2nd ed. Global IDP Survey/Norwegian Refugee Council. London: Earthscan Publications / Norwegian Refugee Council. 2002, pp. 13-15.

[475] UNHCR published country reports until 1993, when the annual *Statistical Overview of Refugees and Others of Concern* to UNHCR was launched. The US Committee for Refugees publishes an annual *World Refugee Survey* and the US Department of State used to publish a *World Refugee Report*, until 1990. The *Global IDP Survey* was thus the first attempt to compile statistical, thematic and country information in a comprehensive manner. The Internal Displacement Monitoring Centre pursues this objective and regularly updates its Internet site with statistics, reports and maps.

2000, there are more internally displaced persons around the world than there are refugees. This has also contributed to the debate around institutional reorganisation, since the current phenomena seem to indicate that IDPs should be a main focus of all organisations, at least as far as the numbers can tell. This is also true for the regional breakdown, since internal displacement is not the monopoly of poorer continents. Rather, there are internally displaced persons in all regions.

Regional Distribution of Internally Displaced Persons

The chart below indicates the percentage of internally displaced persons in each region.



Source: Amina Nasir
Source of figures: Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2008*, April 2009. Geneva: Internal Displacement Monitoring Centre and Norwegian Refugee Council, percentages represent % of the total number of IDPs in 2008

There are currently over 25 million internally displaced persons around the globe. As shown in the chart above, of the 26 million IDPs in 2008, almost half were in Africa. The remaining half was split between the Americas, the Middle East and Asia, with 9% in Europe. Africa is the continent with the largest IDP populations. This may also be linked to other concerns the region has, although the large numbers of IDPs in the Americas and in Europe leave no doubt as to the fact that internal displacement is not only an occurrence in poorer regions.

> The United Nations estimates that close to 1 per cent of the world's 6.7 billion people are now displaced within their own countries, forced to flee their homes due to armed conflicts, violence, development projects and natural disasters. In 2007, the estimated number of people displaced by armed conflicts and violence passed the 26 million mark, the highest global total since the early 1990s.[476]

At the international level, there has been great confusion as to how and who should handle internally displaced persons. Indeed, at the time of realisation of the problem, in the early 1990s, most actors reacted as if they estimated that this would merely be a temporary situation, which would eventually disappear. As we know today, internal displacement remains a major area of concern, in all regions. Amidst these relatively confused times, internally displaced persons were assimilated to refugees. This is a correct assumption, in most instances, as shown in the table below.

Table 15: Differences and Similarities between Refugees & Internally Displaced Persons

Refugees	Internally Displaced Persons
Similarities	
Loss of identity	Loss of identity
Persecution	Persecution from own government, home country or country of habitual residence
Immediate assistance needs	Immediate assistance needs
Danger for women and children	Danger for women and children
Part of civilian population	Part of civilian population
Differences	
Crossed an international border	Did not cross an international border
New identity documents	

Source: Amina Nasir

The main difference between the two populations lies in the fact that internally displaced persons have not crossed an international border, and thus remain within their home country. This also points to the difference in legal status, since refugees can benefit from the protection of the 1951 Refugee Convention and its 1967 Protocol. IDPs do not fall under the refugee regime, which is a major difference under international law. Internally displaced persons are, of course, protected under other existing international legal treaties, such as the Universal

[476] "Internally Displaced People: Exiled in their Homeland". OCHA Online article, available at: http://ochaonline.un.org/News/InFocus/InternallyDisplacedPeopleIDPs/tabid/5132/language/en-US/Default.aspx (accessed January 21, 2009).

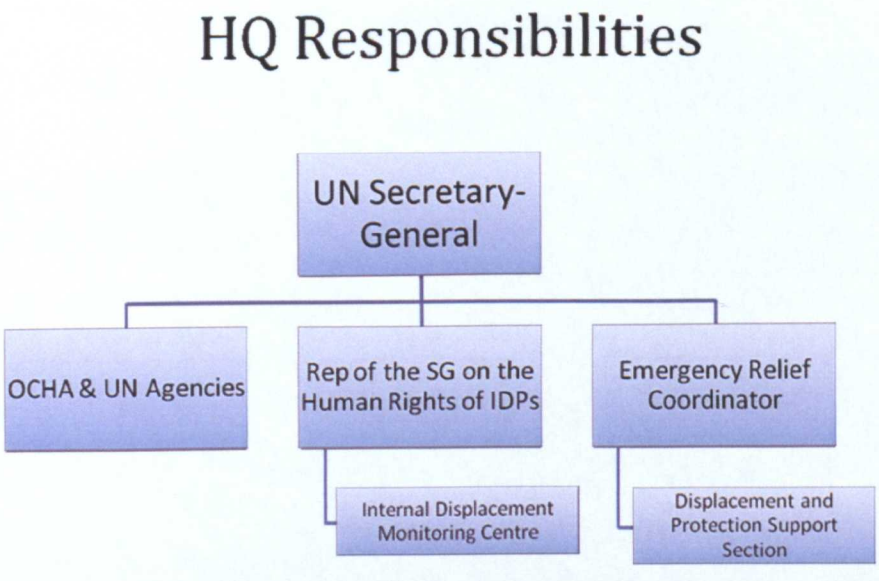
Declaration on Human rights and national legislation protecting human rights. Nevertheless, IDPs are *de facto* persecuted by the government of their home country or country of habitual residence, or by other actors in the country, or other groups. They have not crossed a border and thus cannot access external assistance.

2 International Institutional Framework for Internally Displaced Persons

> Because no single agency within the UN has been designated to have the primary responsibility for the internally displaced, emphasis has been placed on enhancing collaboration among the many agencies and NGOs that play a role with the internally displaced.[477]

In cases of internal displacement, a range of international and non-governmental organisations became involved in the assistance and protection of internally displaced persons. The analysis of the international framework of organisations dealing with internally displaced persons can be divided into two sub-sections: the headquarters and the field levels, as shown in the charts below.

International Institutional Framework for IDPs – Headquarters Level



Source: Training Module, "The 'Collaborative Response' to situations of internal displacement", training on the protection of IDPs, Internal Displacement Monitoring Centre[478]

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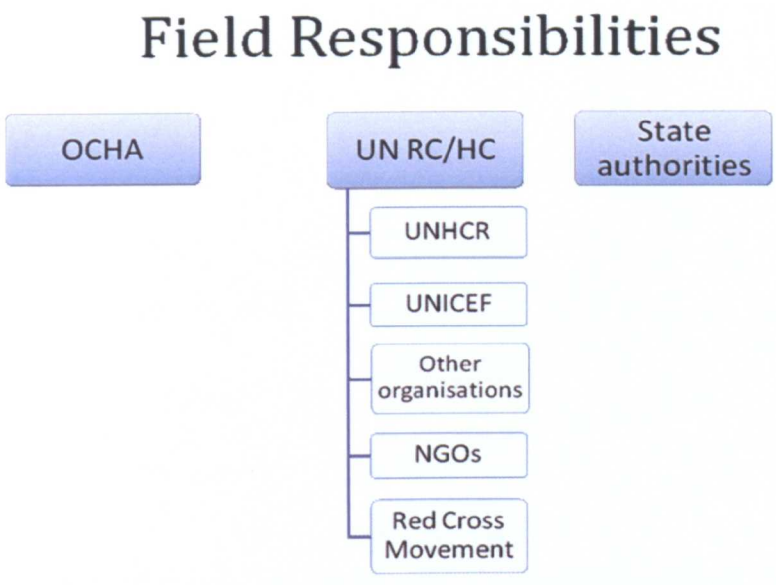
[477] "Seminar on Internal Displacement in Southern Sudan, Rumbek, Sudan, November 25, 2002". Washington DC: Brookings Institution, 2002, p. 2. Available at: repository.forcedmigration.org/pdf/?pid=fmo:2606 (accessed January 22, 2009).

[478] Available at: http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/9E4BCA9FEAF0A377C12571150046F255/$file/Actors%20module%20handout%20collaborative%20approach.pdf (accessed January 27, 2009).

International Institutional Framework for IDPs – Field Level



Source: Training Module, "The 'Collaborative Response' to situations of internal displacement", training on the protection of IDPs, Internal Displacement Monitoring Centre

2.1 United Nations Representative of the Secretary-General on the Human Rights of Internally Displaced Persons

When internal displacement progressed beyond the proportions that analysts had expected in July 1992, the United Nations Secretary-General (at the request of the Commission on Human Rights) appointed the United Nations' Secretary-General's Representative on Internally Displaced Persons, in the person of Dr. Francis M. Deng. In 1993, the Commission on Human Rights, to whom the Representative was mandated to submit annual reports and the elements derived from his fact-finding missions, extended his mandate for two years. In 1995, Dr. Deng was asked to serve in his role for another three years. Francis Deng carried out his mandate as Representative on Internally Displaced Persons until 2004.

From the United Nations Representative of the Secretary-General Representative on IDPs to the United Nations Representative of the Secretary-General on the 'Human Rights' of IDPs

Professor Walter Kälin has served in the position since September 21, 2004. The position's designation, however, has changed, with the inclusion of a reference to the 'human rights' of internally displaced persons inserted into Walter Kälin's title. The editors of *Forced Migration Review* questioned Professor Kälin about this:

> *Professor Kälin, in September 2004 you were appointed the 'UN Secretary-General's Representative on the human rights of internally displaced persons'. Your predecessor, Dr Francis Deng, did not have the words 'human rights' in his title. Does this indicate a change in the mandate?*
> When Dr Deng's mandate was created by the UN Commission on Human Rights in 1992, there was acknowledgement that internal displacement was a serious human rights problem but in the absence of a treaty on the rights of internally displaced persons, or any provision in a human rights convention explicitly guaranteeing the rights of IDPs, it was almost impossible to assert that IDPs as such had human rights. Of course, as human beings, IDPs when they become uprooted do not lose their human rights but it was unclear what these rights specifically meant in the context of displacement. Since 1998, the Guiding Principles on Internal Displacement have identified the human rights that are of special relevance for IDPs and have spelled out, in more detail, what is implicit in these guarantees. The change in title of my mandate suggests that the concept of the human rights of IDPs is, at least in principle, accepted today by the international community and indicates a certain redirection of the mandate as it puts more emphasis on the protection of the rights of IDPs.[479]

What needs to be added to this response is the fact that the RSG on the Human Rights of IDPs is a position associated in the Office of the High Commissioner for Human Rights, and given its mandate by the OHCHR. This could justify the insertion of the words 'human rights' in the position title.

In addition to being the focal point for internally displaced persons, the Representative also carries out fact-finding missions and elaborates guidelines to assist IDPs. In 1995, Dr. Deng elaborated the 'Guiding Principles on Internal Displacement', which, although not binding, are now part of the official United Nations documents relating to IDPs and remain the most elaborate compilation of legal norms pertaining to internal displacement. The Guiding Principles on Internal Displacement[480] were designed specifically to address the protection and assistance needs of internally displaced persons. They offer pointers for governments and the international community as to what the rights and specific needs of IDPs are. In addition, the Guiding Principles reiterate fundamental human rights. In this sense, all human rights' treaties apply to IDPs, including norms of international customary law. The Representative on Internally Displaced Persons signed a Memorandum of Understanding with the Emergency Relief Coordinator on April 17, 2002, to recognise officially the collaboration between Dr. Deng and the ERC.

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[479] "Interview with Walter Kälin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, co-director of the Brookings-Bern Project on Internal Displacement, and professor of constitutional and international law at Bern University, Switzerland", February 2005. Interview available at: http://www.migrationforcee.org/textOnlyContent/FMR/23/01.htm (accessed January 21, 2009).

[480] Hereafter referred to as the "Guiding Principles".

Initially, this role was intended as short-term. Indeed, the international community was reluctant to acknowledge internal displacement, and had a perception that the internal displacement crises would vanish. This also partly explains the confusion in mandates and operational activities in the field.

When asked whether he can be outspoken, Dr Walter Kälin replied that there are legal limitations which are the same as the special procedures in the Human Rights Council.[481] The Representative on Internally Displaced Persons sees the following as key qualities and capacities for the position holder: the ability to be diplomatic, strategic, a good knowledge of different areas of law (human rights, international humanitarian law), the need to be multifaceted, a liking for field visits, the ability to communicate at all levels (IDPs, governments, officials), public relations and communication skills, a thorough knowledge of the UN system (in particular the humanitarian agencies) and the capacity to follow up with all actors.[482]

The position of Representative on Internally Displaced Persons does suffer some inconsistencies, which prevent the capacity of this position to function at the best of its capacity. For instance, the Representative serves on a part-time basis, and both people who served as Representatives were affiliated with institutions, Dr. Deng to a non-governmental organisation and Dr. Kälin to a university, thus holding other titles which remain their full-time occupations. Moreover, the Representative has only limited means and staff at his disposal[483]. Finally, perhaps the most controversial point, the Representative is a stand-alone position, in the sense that he is not heading any unit. This obviously presents important advantages, such as independence and advocacy, but also carries with it a lack of operational effectiveness, since the Representative cannot dispatch missions. A later section will consider the opportunities for enhancement to allow this important function to be carried out at its full capacity.

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[481] Interview with Dr. Walter Kälin, Berne, 14 July 2008.
[482] *Ibid.*
[483] There is a Memorandum of Understanding with OCHA, since the Representative on Internally Displaced Persons have staff working for him at the OCHA New York office. The RSG on Internally Displaced Persons is also a member of the standing committee at OCHA. The RSG on the Human Rights of IDPs has an assistant equivalent to one person, with a part-time helper.

2.2 United Nations Office for the Coordination of Humanitarian Affairs (OCHA)

As part of the reforms initiated within the UN system, the former Department of Humanitarian Affairs (DHA) was transformed into the Office for the Coordination of Humanitarian Affairs (OCHA) in 1998. The Head of OCHA also has the role of Emergency Relief Coordinator and the title of Under-Secretary-General for Humanitarian Affairs.

OCHA was given the task of hosting the Internal Displacement Division for the following reasons. It has the capacity to oversee the operational aspects of humanitarian crises. Moreover, in 2002, there was a realisation that the protection and assistance of internally displaced persons required a coherent approach throughout the UN system. OCHA was a logical choice for creating the displacement division since it is active in field operations[484]. The Head of OCHA is involved in policy discussions at the headquarters level and in the Inter-Agency Standing Committee, and in operational activities since he supervises the Resident Coordinator or Humanitarian Coordinator (as the Emergency Relief Coordinator).

Inter-Agency Internal Displacement Division (IDD)

In January 2002, after efforts initiated 10 years earlier with the appointment of the UN Secretary-General's Representative on Internally Displaced Persons, the Internal Displacement Unit was established with the Office for the Coordination of Humanitarian Affairs (OCHA). The Internal Displacement Unit was to support the efforts of the Emergency Relief Coordinator. In July 2004, the Unit was re-organised into the Inter-Agency Internal Displacement Division, or IDD, within OCHA. The Division was composed of staff from major international agencies: UNDP, UNHCR, WFP, UNICEF, OCHA, OHCHR, IOM, NGO representatives and the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. The Division worked in close collaboration with the Inter-Agency Standing Committee (IASC), with headquarters in Geneva and a liaison

[484] It could be argued that UNHCR should have hosted the Internal Displacement Division. UNHCR was certainly capable of dealing with the assistance needs of IDPs, as it had done on an ad hoc basis. Nevertheless, in terms of policy and coordination, as well as directing teams in the field, OCHA had the experience and the hierarchical structure (the Emergency Relief Coordinator supervises the Resident Coordinator/Humanitarian Coordinator).

officer in the OCHA New York office. The Division stood within the OCHA framework, and the Director reported to the Under-Secretary-General for Humanitarian Affairs, who is also the Emergency Relief Coordinator.

The activities of the Internal Displacement Division were of four types: field support, protection of internally displaced persons, capacity building and training; advocacy and public information. Field support involved coordination and communication with OCHA field offices and UN field missions, in addition to consultation with local parties, governments and non-governmental organisations operating in the field. The Division also ensured that all field operations were concurrent with the Guiding Principles on Internal Displacement and other aspects relevant to internal displacement. The protection of IDPs was an area that the Division had emphasised. Most notably, the Division created an 'IDP Response Matrix' that clearly outlined the activities of the Inter-Agency Standing Committee members and assessed the practical results of cooperation in cases of internal displacement. The Division also undertook a Protection Survey, established a Protection Coalition and a Task Force on Protection. The Capacity Building and Training role of the Internal Displacement Division requires mention. Indeed, as early as 2002, a Training of Trainers was offered in order to prepare IASC member agencies' representatives to deliver field workshops, another element of the training function of the Division. Moreover, six training modules were created[485]. In the area of public information and advocacy, the Division progressed as well, with the Internet site providing several links to key documents, to partner agencies and to training modules. In addition, press releases and memoranda of understanding with other partners were available for consultation, which made OCHA's site[486] a useful toolkit relating to internal displacement figures, policies and partners.

Displacement and Protection Support Section (DPSS)

In 2007, the Displacement and Protection Support Section (DPSS) replaced the Inter-Agency Internal Displacement Division. The DPSS reports to the Director of OCHA in Geneva. The Section is responsible for coordinating the inter-agency collaborative response.

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[485] For further details, see www.reliefweb.int/idp/priority/train.htm, accessed July 16, 2006.
[486] http://ochaonline.un.org/AboutOCHA/tabid/1076/Default.aspx (accessed January 14, 2009).

2003-2004 saw the creation of a new mechanism to integrate IDP issues into all relevant areas such as human rights and humanitarian concerns. Indeed, in November 2003, the UN Secretary-General announced the creation of a 16-member High-Level Panel to study Global Security Threats, and recommend necessary changes:[487] Subsequently, at its 60th session held in March-April 2004, the Commission on Human Rights unanimously adopted a resolution (2004/55)

> Request[ing] the Secretary-General, in effectively building upon the work of the Representative of the Secretary-General on internally displaced persons, to establish a mechanism that will address the complex problem of internal displacement, in particular by mainstreaming the human rights of the internally displaced into all relevant parts of the United Nations system.[488]

It is yet too early to assess the efficiency of this approach. Nevertheless, it should be an enhancement of the existing mechanisms, and will further alleviate the plight of internally displaced persons.

2.3 Emergency Relief Coordinator (ERC)

In 1998, in light of UN reforms, the position of Emergency Relief Coordinator was created to head the former Department of Humanitarian Affairs. In his capacity, the Emergency Relief Coordinator became the focal point for the Inter-Agency Coordination of Humanitarian Assistance to Internally Displaced Persons. "The Emergency Relief Coordinator is responsible for advocacy on both assistance and protection requirements; identification of gaps and resource mobilisation for needs of internally displaced persons; promotion of information gathering and dissemination; support to the field, including negotiation of access to internally displaced persons"[489]. The Emergency Relief Coordinator is the Under-Secretary-General for Humanitarian Affairs.

2.4 The Inter-Agency Standing Committee (IASC)

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[487] UN Press Release SG/A/857, November 4, 2003. This had been announced in the Secretary-General's address to the General Assembly on September 23, 2003. The terms of reference of the Panel state that it should consider collective action related to global challenges, identify future threats to international peace and security, and make recommendations as to any changes which need to take place.

[488] UN Economic and Social Council document E/CN.4/2004/L.11/Add.5, 21 April 2004. Commission on Human Rights 60th session, agenda item 21(b), Resolution 2004/55.

[489] OCHA, Unit on Internal Displacement, 'Inter Agency Collaboration'. OCHA's website: www.reliefweb.int/idp/partners/ian.htm, accessed July 16, 2006.

The Inter-Agency Standing Committee, or IASC, chaired by the Emergency Relief Coordinator, is the primary body for inter-agency coordination on a broad range of humanitarian issues at all organisational levels[490]. IASC is composed of the heads of the major UN humanitarian and development organisations, including OCHA, UNICEF, UNHCR, UNDP, OHCHR, WHO, FAO, WFP, UNFPA, ICRC, IFRC, IOM, the Representative of the Secretary-General on Internally Displaced Persons and the World Bank, and addresses humanitarian emergency situations. The heads of these organisations meet twice a year and create policies targeted "to assist with the resolution of complex humanitarian emergencies; to allocate responsibilities among the major humanitarian and development agencies; and to identify areas which require further investigation"[491]. In addition, the IASC Working Group consists of senior representatives of the organisations in the IASC and meets four to six times a year to discuss work plans and to prepare recommendations and guidelines for the IASC main meetings. In 1992, the IASC created the Inter-Agency Task Force on Internally Displaced Persons, and mandated it to consider the protection and assistance needs of IDPs, to develop a mechanism to deal with emergency crises involving internal displacement and to submit proposals to the IASC on its findings.

2.5 Senior Inter-Agency Network on Internal Displacement

The Senior Inter-Agency Network on Internal Displacement was created in July 2000 and is composed of the Director of the Inter-Agency Internal Displacement Division and senior staff members of the Inter-Agency Standing Committee, including OCHA, UNICEF, UNHCR, UNDP, UNHCHR, WHO, FAO, WFP, UNFPA, ICRC, IFRC, IOM, the Representative of the Secretary-General on Internally Displaced Persons and the World Bank. It serves as an advisory board on what type of action should be carried out by governments and local actors involved in internal displacement both in the field and at the headquarters level. The Network has been involved in several operational missions. With the creation of the Division

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[490] The IASC was established in 1991, according to General Assembly Resolution 46/182 "Strengthening of the coordination of humanitarian emergency assistance of the United Nations", 19 December 1991, "Annex" article 38.

[491] Inter-Agency Standing Committee Internet site, "Primary Objectives", available at: http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=about-default (accessed January 22, 2009).

on Internal Displacement within OCHA, the Senior Network will continue to provide operational guidelines and reinforce the coordination efforts undertaken in regard to internal displacement.

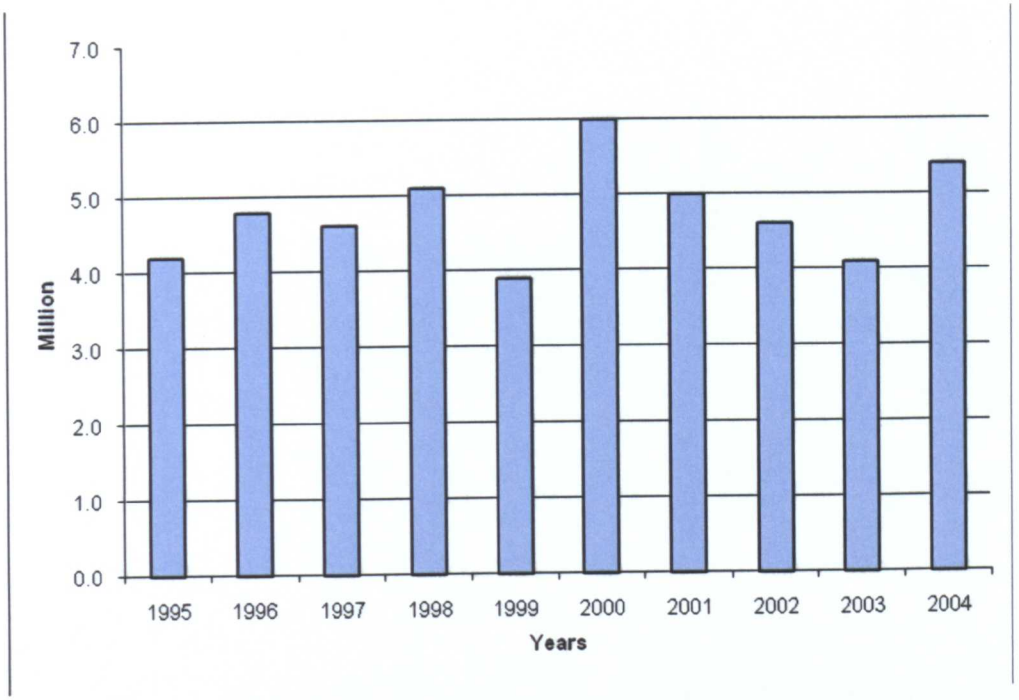
2.6 United Nations Resident Coordinator/Humanitarian Coordinator (RC/HC)

In the case of a humanitarian crisis, the UN Resident Coordinator or Humanitarian Coordinator is the focal point for coordination of the inter-agency response for internally displaced persons in the field. The Resident Coordinator will be the main consultation and information point for UN agencies, NGOs, governments and local actors. In carrying out this function, the UN Country Team will also report to the Resident Coordinator. The Resident Coordinator is appointed by the Emergency Relief Coordinator, and reports to him. In practice, Resident Coordinators have generally been UNDP officials.

2.7 United Nations High Commissioner for Refugees (UNHCR)

Because of the similarities with refugees, as described above, the organisation within the UN system in charge of refugee protection was given the mandate to overview IDP-related activities. The United Nations High Commissioner for Refugees would oversee the protection and assistance of internally displaced persons. In practice, UNHCR has cared for internally displaced persons from the mid-1990s as internally displaced persons share with refugees many needs for practical assistance. The chart below gives an idea of the populations of internally displaced persons of concern to UNHCR between 1995 and 2004.

Number of Internally Displaced Persons of Concern to UNHCR



Source: United Nations High Commissioner for Refugees Internet site, figures represent year-end statistics

2.8 Non-governmental Organisations

Norwegian Refugee Council (NRC) / Internal Displacement Monitoring Centre (IDMC)

In 1998, the Norwegian Refugee Council was one of the first non-governmental organisations to state that internally displaced persons needed to become a locus of attention. The NRC thus created the Global IDP Project, which not only has a very powerful database of internal displacement statistics and topical as well as country reports, but also contributes to a greater awareness of the general public to internal displacement-related issues. Indeed, in 1998, the Emergency Relief Coordinator outsourced the creation of a database on internal displacement to the Norwegian Refugee Council, which had already become involved in IDP-related topics, and had released the first IDP Survey the same year. On June 25, 2002, the Norwegian Refugee Council Resident Representative and the Director of the Inter-Agency Internal Displacement Division signed a Memorandum of Understanding, which formalised the collaboration between the two entities.

The Norwegian Refugee Council also hosts the Internal Displacement Monitoring Centre, which is involved in maintaining the IDP database and in

providing training and advocacy materials. The IDP database "offers comprehensive and frequently updated information and analysis on all situations of conflict-induced internal displacement worldwide. With just the click of a button, visitors can get a brief overview of the displacement situation in a given country, or browse the database for more detailed information on background, causes of displacement, humanitarian and human rights concerns, and national and international responses"[492].

Brookings Institution / University of Berne Project on Internal Displacement

Dr. Deng, while serving as Representative on Internally Displaced Persons, was affiliated with the Brookings Institution. In his position of Director of the Brookings Institution in Washington D.C., Francis Deng was the forefather of the attention and concerns devoted to internally displaced persons, along with several colleagues such as Roberta Cohen. When working on the Guiding Principles, he sought the collaboration of renowned international lawyers, among whom was Dr. Walter Kälin from the University of Berne, Switzerland. Their cooperation was not only fruitful for the particular legal background they were to develop for internal displacement. Dr. Kälin also succeeded Dr. Deng as Representative on Internally Displaced Persons, and both institutions developed a permanent unit on internal displacement, which has now come to be seen as one of the reference 'think tanks' on the topic. The Brookings-Berne Project on Internal Displacement is co-directed by Professor Kälin.

> Created to promote a more effective national, regional and international response to the global crisis of internal displacement, the Brookings-Bern Project on Internal Displacement monitors displacement problems worldwide, promotes the dissemination and application of the Guiding Principles on Internal Displacement, works with governments, regional bodies, international organizations and civil society to create more effective policies and institutional arrangements for IDPs, convenes international seminars on internal displacement, and published major studies, articles and reports[493].

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[492] Internal Displacement Monitoring Centre, The IDP Database, IDMC's Internet site at www.internal-displacement.org (accessed January 21, 2009).

[493] The Brookings Institution, Foreign Policy Studies, The Brookings-Berne Project on Internal Displacement. Brookings Institution Internet site, at www.brookings.edu/fp/projects/idp/about_us.htm, (accessed January 21, 2009).

International Committee of the Red Cross (ICRC)

The International Committee of the Red Cross is involved with internally displaced persons to the extent that, in most instances, internal displacement is caused by conflict. As such, victims of international or internal conflict fall under the 'civilians' category, which the ICRC is mandated to assist. In practice, the ICRC is one of the only organisations which will be in the field immediately, through its delegations and through the Red Cross and Red Crescent national societies. Moreover, international humanitarian law, which relates to the protection of civilians in times of armed conflict, is pertinent and thus applicable to internally displaced persons. As will be explained in the section on organisational mandates, the ICRC has a specific mandate to protect and assist civilians, a category well suited for internally displaced persons. It is very important to note that the "ICRC's responsibility, moreover, is to the victims of conflict whereas the U.N.'s is primarily to governments"[494].

3 Organisational Mandates

Most of the organisations involved in work with internally displaced persons have been pulled into doing so without even having an original mandate to do so[495]. This is the case, for example, for UNHCR, UNDP, UNICEF, WHO, WFP and many non-governmental organisations. Of the agencies dealing with internal displacement in field operations, only the OCHA Unit on Internal Displacement, the ICRC and IOM, as well as certain NGOs, have a written, formal mandate covering IDPs. Thus, ironically, within the United Nations system, most agencies work with IDPs on a purely 'ad hoc' basis.

3.1 Secretary-General's Representative on the Human Rights of Internally Displaced Persons

[494] "Improving Institutional Arrangements for the Internally Displaced", *op. cit.*, p. 20.
[495] Indeed, internal displacement appeared on the scene of international affairs. The international community responded on an 'ad hoc' basis at first. Thus, internal displacement is a special phenomenon since the institutional framework was created after the practical reality of internally displaced persons had emerged.

The current Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Professor Walter Kälin, was officially given his mandate by Resolution 2004/55 of the Commission on Human Rights, which "requested him to engage in coordinated advocacy in favour of the protection and respect of the rights of IDPs, continue and enhance dialogues with Governments as well as non-governmental organisations and other actors, strengthen the international response to internal displacement; give salience to the human rights of IDPs into all relevant parts of the UN system, and build upon the work of his predecessor in promoting and disseminating the Guiding Principles on Internal Displacement at the national, regional and international levels. In this function, the Representative on Internally Displaced Persons prepares guidelines and policy framework documents, the most recent of which discusses the national responsibility framework for internally displaced persons"[496].

3.2 United Nations Office for the Coordination of Humanitarian Affairs (OCHA)

(Former) Internal Displacement Division

The Office for the Coordination of Humanitarian Affairs' Unit on Internal Displacement, created in 2002, was restructured in July 2004, following the External Evaluation of the Internal Displacement Unit, as the Inter-Agency Internal Displacement Division (IDD). As such, the Internal Displacement Division had an extended mandate "to focus on enhancing collaborative action in a limited number of countries where the collaborative approach is deemed to be insufficiently effective, or where major gaps in the international response to internal displacement have been identified"[497].

Initially, the Inter-Agency Internal Displacement Division was created to support the Emergency Relief Coordinator in his efforts to coordinate system-wide approaches to internal displacement. The Division's 'Mission Statement' set out the following purposes

> The Inter-Agency Internal Displacement Division aims to ensure a predictable and concerted response among all concerned actors to the problems of internal displacement. Its primary purpose is to promote respect

[496] The Brookings Institution – University of Berne Project on Internal Displacement. April 2005. "Addressing Internal Displacement: A Framework for National Responsibility". Washington D.C. and Berne: Brookings Institution and University of Bern Project on Internal Displacement.
[497] OCHA, Unit on Internal Displacement, 'Background'. Previously on OCHA's website but no longer accessible (www.reliefweb.int/idp/about/back.htm accessed July 16, 2006).

> for the rights of the displaced in all aspects of displacement and encourage the search for long-term solutions and the prevention or non-reoccurrence of displacement.
> Created by the Emergency Relief Coordinator and approved by the Secretary-General of the United Nations and members of the Inter Agency Standing Committee, the Division will build on its interagency character and pursue a collaborative process to address the operational challenges posed by internal displacement.
> Through assessment, analysis, advocacy and practical support it will assist relevant actors meet the needs of the displaced by providing the following services...
> The Division will identify and draw attention to gaps in the response to internal displacement, particularly protection... and will seek to provide recommendations and guidance.
> The Division will seek to bring increased attention and greater understanding to the needs of the displaced ... by issuing reports, studies and providing field-focused training.
> ... the Division will seek to use all fora to engage governments and non-state actors to provide access and physical security to the displaced.
> The Division will call on UN agencies, intergovernmental and non-governmental organizations as well as the displaced themselves, to enhance their commitment and accountability to a credible institutional response to internal displacement[498].

As such, the Division focuses on four key aspects, namely, field support, protection of internally displaced persons, training and capacity building, and advocacy and public information. It coordinates the activities carried out relating to internal displacement with the members of the Inter-Agency Standing Committee.

Displacement and Protection Support Section (DPSS)

The mandate of OCHA's Displacement and Protection Support Section, created in 2007 to replace the Internal Displacement Division, is to:

> - build on the work of OCHA's former inter-agency Internal Displacement Division in creating a more predictable, systematic and collaborative response to internal displacement. DPSS collaborates closely with the Policy Development and Studies Branch (PDSB) in supporting field offices to implement policy on the protection of civilians in armed conflict. DPSS focuses on three interrelated areas of work:
> - supporting the mandate of the Emergency Relief Coordinator to strengthen the system-wide response to internal displacement;
> - enhancing OCHA-wide capacity to support protection at field and headquarters levels in line with internal policy instruction; and
> - augmenting inter-agency protection capacity through support to the Protection Cluster Working Group, the Camp Coordination and Management Cluster and the Early Recovery Cluster, as well as the management of the inter-agency ProCap project.[499]

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[498] OCHA, Unit on Internal Displacement, 'Mission Statement'. Previously on OCHA's website but no longer accessible (www.reliefweb.int/idp/about/mission.htm, accessed July 16, 2006).
[499] Quoted from OCHA's website at: http://ochaonline.un.org/HumanitarianIssues/ProtectionandDisplacements/tabid/1202/language/en-US/Default.aspx (accessed January 12, 2009).

The mandate of the DPSS is to oversee the inter-agency collaboration in the field, provide advice to the UN Resident or Humanitarian Coordinator, analyse cross-cutting displacement issues and integrate the results of these findings in future operations, improve the UN internal coordination mechanisms by addressing gaps, designing policy and concrete tools.

3.3 United Nations High Commissioner for Refugees (UNHCR)

According to the Statute of the Office of the United Nations High Commissioner for Refugees[500],

> 1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

The creation of the High Commissioner for Refugees must be placed into its historical context, in 1950. The First World War had created a large number of displaced citizens, who fled to neighbouring countries, and a solution had to be found to deal with a problem that had taken huge proportions. This explains the creation of a refugee agency. Interestingly enough, at the time, it was thought that the refugee phenomenon would be a long-term feature of international order, whereas at the end of the 1990s, when internal displacement emerged, there was no will to endorse this or similar long term phenomena.

Thus, UNCHR does not have a *de facto* mandate to deal with internally displaced persons. The Organisation was requested to deal with IDPs in light of its capacity to handle refugee-like situations.

> The General Assembly has recognized in recent years that UNHCR's activities under its original mandate could be extended to internally displaced persons when both refugees and internally displaced persons are so intertwined that it would be practically impossible, and/or certainly not wise, to assist one group and not the other[501]

As stated above, internally displaced persons have assistance needs that are common to those of refugees. As such, UNHCR was the agency best equipped to

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[500] General Assembly Resolution 428 (v) of 14 December 1950, Chapter I, Article 1 ff.
[501] "Improving Institutional Arrangements for the Internally Displaced", *op. cit.*, p. 16.

tackle emergency displacement situations. At this point, a debate around the extension of UNHCR's mandate was initiated. The Organisation, already working under a tight budget and guidelines to cut expenses and staff, could not afford to be given another task, which would require concrete appeals both for funding and support towards internally displaced persons. The High Commissioner for Refugees at the time, Mrs Sadako Ogata, actually stated so in an official communiqué. UNHCR, through the decisions taken by its Executive Committee, would continue to provide support to all actors in the field involved with IDPs, and in many instances, would become the 'lead' agency in internal displacement crises.

Under the current arrangements, UNHCR serves as one of the focal points for internal displacement, in the sense that it cooperates with the Emergency Relief Coordinator and with all the organisations to coordinate assistance for IDPs, and has been designated as 'cluster lead' according to the cluster approach created in 2005 for all internal displacement-related issues, and as 'global protection cluster lead'.[502] Furthermore, UNHCR is well known for its capacity to develop policies and for its strong legal department. In this capacity, the Organisation also takes on a role in the protection of internally displaced persons, has developed several important policy documents, and continues to monitor the situation both in the field and at the theoretical level.

3.4 International Committee of the Red Cross (ICRC)

The ICRC's Mission Statement declares that "the International Committee of the Red Cross is an impartial, neutral and independent organisation whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance"[503]. There is an essential element in this Mission Statement which does not appear in any other organisation's mandate: the ICRC is responsible for both protection and assistance.

> ICRC makes no distinction between protection and assistance activities. While U.N. humanitarian and development agencies often contend that protection responsibilities will jeopardize their assistance role, ICRC has gained the acceptance of both governments and insurgent forces in carrying out a joint protection and assistance role. One of ICRC's organizational strengths is that its representatives extend protection on both sides in

[502] For a complete discussion of the cluster approach, see Chapter 5.
[503] International Committee of the Red Cross, 'Mission Statement', available on the ICRC's Internet site, available at http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/icrc-mission-190608?opendocument (accessed January 21, 2009).

> conflict situations and seek to reach those whom other humanitarian organizations cannot reach because of hazardous security conditions or political obstacles[504].

The Statutes of the International Committee of the Red Cross of July 20, 1998, confirm that "the role of the ICRC shall be in particular... d) to endeavour at all times – as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife – to ensure the protection of and the assistance to military and civilian victims of such events and of their direct results"[505].

The ICRC's function is interesting in itself, since the Organisation is involved both in protection activities through the promotion and monitoring of international humanitarian law and the Geneva Conventions and Protocols in particular, and in assistance operations in order to provide relief to civilians and victims of armed conflict.

3.5 International Organisation for Migration (IOM)

The International Organisation for Migration, according to its Mission statement is "committed to the principles that humane and orderly migration benefits migrants and society"[506].

In this capacity,

> IOM acts with its partners in the international community to:
> - Assist in meeting the growing operational challenges of migration management.
> - Advance understanding of migration issues.
> - Encourage social and economic development through migration.
> - Uphold the human dignity and well-being of migrants[507].

As mentioned in the introductory paragraph to organisational mandates, IOM is among the only agencies the mandate of which includes displaced persons, in the sense of internal migrants. Another important feature of IOM's consideration of

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[504] "Improving Institutional Arrangements for the Internally Displaced", *op. cit.*, p. 20.
[505] International Committee of the Red Cross 'Statutes of the International Committee of the Red Cross', Article 4 d).
[506] International Organisation for Migration, 'Mission', available on the IOM's Internet site, at http://www.iom.int/jahia/Jahia/lang/en/pid/9, 'About IOM', 'Mission' (accessed January 21, 2009).
[507] *Ibid.*

migration issues is the fact that the organisation clearly states its point of view that protection and assistance are closely linked, since only protection can offer long-term assistance to migrants.

4 The Collaborative and Cluster Approaches

4.1 The 'Collaborative' Approach

Since there had been a realisation that the proposals for a reorganisation of the current institutional framework for internally displaced persons could not go through a massive restructuring due to resource constraints and a lack of will, OCHA's Internal Displacement Division suggested that, in order to improve the inter-agency collaboration, agencies take responsibility and become accountable for a segment of emergency relief operations. In this context, UNHCR agreed on September 12, 2005, to take the lead responsibility for protection, camp management and shelter for internally displaced persons. This agreement was endorsed by the Inter-Agency Standing Committee. This new way of assigning responsibility and accountability was designated as the 'collaborative approach'.

> Given UNCHR's long experience in protecting uprooted populations ..., on 12 September 2005 the UN Inter-Agency Standing Committee assigned it lead responsibility for the protection of the internally displaced (as well as responsibility for camp management and emergency shelter). Its enlarged protection role will require it to ensure that joint steps are taken by all agencies in the field to enhance the security of the displaced. Special partnerships will be needed with the Office of the High Commissioner for Human Rights (OHCHR), which has largely stayed clear of operational engagement with internally displaced persons, and UNICEF, whose protection role with internally displaced children could be strengthened. A protection policy paper adopted by the Inter-Agency Standing Committee sets forth in detail the protection steps international agencies can take. Currently under discussion are ideas for 'protection coalitions', 'interagency mobile protection advisory teams' as well as 'protection standby force'[508]

In a similar outreach to carve out agency responsibilities, the Internal Displacement Division suggested that organisations involved with internal displacement situations identify the areas in which they can provide assistance and implement these in emergency situations. In this case, UNCHR would be expected to provide protection, camp management, emergency shelter, and address water, nutrition and sanitation needs of IDPs in collaboration with other agencies such as WHO, WFP, UNICEF.

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[508]The Office of the United Nations High Commissioner for Refugees. *The State of the World's Refugees 2006: Human Displacement in the New Millennium, op. cit*, p. 172.

> Despite the obvious limits on the role outsiders can play in providing protection, how the humanitarian community deals with this major gap in the international response system will in large measure determine whether the collaborative approach will be successful or whether alternative arrangements will be needed[509].

4.2 The Cluster Approach[510]

In 2005, the Inter-Agency Standing Committee named cluster leads for the 11 areas of work, as shown in table 15. The clusters were created to address the issues faced by those in need in humanitarian and emergency situations. Each cluster lead acts as the focal point for a specific area of humanitarian work. This was intended to enable all actors involved in the operational dimension of humanitarian assistance to know which organisation is leading in which area, as well as for governments to be aware of the agencies to contact. Non-governmental organisations and inter-governmental organisations are included in the cluster approach. It should be noted, however, that the International Committee of the Red Cross is not taking part in the cluster approach.[511]

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[509] *Ibid.*

[510] For information and resources on the 'cluster approach', see http://www.humanitarianreform.org/Default.aspx?tabid=143 (accessed January 22, 2009).

[511] The ICRC is not a cluster member nor a cluster lead, as the organisation feared that this could jeopardise its neutrality, by submitting it to the United Nations. The ICRC stated its position on the cluster approach as follows: "Among the components of the Movement, the ICRC is not taking part in the cluster approach. Nevertheless, coordination between the ICRC and the UN will continue to the extent necessary to achieve efficient operational complementarity and a strengthened response for people affected by armed conflict and other situations of violence." Quoted from the IASC "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", 24 November 2006, p. 1, footnote 1. Available at: http://www.humanitarianreform.org/Default.aspx?tabid=143 (accessed January 22, 2009).
"Given the scope and magnitude of the problem of internal displacement, it is generally recognized that an effective and comprehensive response to the needs of IDPs and returnees is beyond the capacity of any single organization. For decades, the ICRC has therefore endeavoured to step up its coordination with other humanitarian organizations in this domain...
The ICRC has closely followed efforts to develop this new cluster approach, particularly in situations of armed conflict where civilians, including IDPs, are protected by IHL and are the traditional beneficiaries of ICRC activities. However, the ICRC does not intend to take the lead for any cluster or be a cluster member, as this would entail accountability to the United Nations." See "ICRC Position on Internally Displaced Persons (IDPs) (May 2006). Geneva: ICRC. 2006, p. 6. Available at: http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/idp-icrc-position-030706/$File/2006_IDPs_EN_ICRCExternalPosition.pdf (accessed May 27, 2009).
This is related to the politicisation of the relations between the United Nations and its specialised agencies and of the provision of aid and assistance through the UN. In the 1970s already, the politicisation of the United Nations and its specialised agencies was an issue, and the ICRC had reverted to a more neutral position. See Ghebali, Victor-Yves. "The politicisation of UN specialised agencies: A proposed framework", *Millennium*, Vol. 14, No. 3, Winter 1985, pp. 317-334 and Ameri,

Table 16: 'Clusters' and 'Cluster Leads'

Clusters	Cluster Leads / Organisations
Agriculture	FAO
Camp Coordination & Camp Management -IDPs from conflict -disaster situations	 UNHCR IOM
Early Recovery	UNDP
Education	UNICEF / Save the Children
Emergency Shelter -IDPs from conflict -disaster situations	 UNHCR IFRC (Convener)[512]
Emergency Telecommunications	OCHA (UNICEF & WFP)
Health	WHO
Logistics	WFP
Nutrition	UNICEF
Protection (IDPs from conflict) Protection (disasters/civilians affected by conflict, other than IDPs)	UNHCR UNHCR / OHCHR / UNICEF
Water, Sanitation & Hygiene	UNICEF

Source: OCHA's Humanitarian Reform Support Unit Internet site: http://www.humanitarianreform.org/Default.aspx?tabid=143, PowerPoint presentation "Humanitarian Reform: Building a Stronger, More Predictable Humanitarian Response System", slide 2.

Cluster leads, by agreeing to act in this quality, take on several responsibilities. Three aspects have been identified by the Humanitarian Reform Support Unit[513]: normative, response capacity building and operational support. From a normative perspective, cluster leads are expected to develop expertise in their area, to set standards which are applicable in practice and to establish 'best practice' guidelines. Response capacity building refers to preferred methods of

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Houshang. *Politics and process in the specialised agencies of the UN.* Aldershot: Gower Publications, 1982.

[512] "IFRC has made a commitment to provide leadership to the broader humanitarian community in Emergency Shelter in disaster situations, to consolidate best practice, map capacity and gaps, and lead coordinated response. IFRC has committed to being a 'convener' rather than a 'cluster lead'. In an MOU between IFRC and OCHA it was agreed that IFRC would not accept accountability obligations beyond those defined in its Constitutions [sic] and own policies and that its responsibilities would leave no room for open-ended or unlimited obligations. It has therefore not committed to being 'provider of last resort' nor is it accountable to any part of the UN system.". Quoted from the IASC "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", 24 November 2006, p. 3.

[513] OCHA's Humanitarian Reform Support Unit Internet site: http://www.humanitarianreform.org/Default.aspx?tabid=143, PowerPoint presentation "Humanitarian Reform: Building a Stronger, More Predictable Humanitarian Response System", slide 4.

response, training at all levels and planning in terms of required materials and needs. Operational support involves emergency preparedness and resource mobilisation.[514]

The responsibilities of the cluster leads, according to the 'Terms of Reference', include coordination with key humanitarian partners, governments, national and local authorities, training and capacity building, and to be the provider of last resort.[515] This last concept is extremely important in the cluster approach, because it implies a further commitment on part of the cluster leads. It is their responsibility to ensure that a response is found under their area of leadership. In case this requirement is not met, cluster leads must coordinate with all humanitarian actors in order to find a solution, and 'in last resort', to cater to the needs on its own. If access or security concerns prevent an immediate response to the humanitarian situation, the cluster lead remains responsible for advocacy and explanation to stakeholders.

Interestingly, it seems that internal displacement was recognised as a delicate case in terms of operational response, as evidenced by the following:

> The cluster approach should eventually be applied in all countries with Humanitarian Coordinators. By definition, these are countries with humanitarian crises which are beyond the scope of any one agency's mandate and where the needs are of sufficient scale and complexity to justify a multi-sectoral response with the engagement of a wide range of humanitarian actors. The cluster approach can be used in both conflict-related humanitarian emergencies and in disaster situations. It should significantly improve the quality of international responses to major new emergencies. Also, although not limited to situations of internal displacement, it should make a significant improvement in the quality, level

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[514] The financial dimension of the cluster approach also remains an important theme. In the *Cluster Appeal for Improving Humanitarian Response Capacity* updated in May 2006, the estimated total budget required was of USD 38,573,194. The three clusters with the highest amounts of the total budget are, respectively, logistics (USD 9,052,980), emergency telecommunications (USD 6,700,000) and nutrition (USD 5,440,276). The camp coordination and management and protection clusters have estimated budgets of USD 3,498,965 and USD 2,927,400 . The United Kingdom is the largest contributor of both these clusters.
See "Cluster 2006 – Report on Implementation of Global Cluster Capacity-Building 1 April 2006 – 31 March 2007", Version 1.1 updated 26 March 2007. Geneva: OCHA. United Nations Publications, pp. 3-4.. Available at:
http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/2007_Cluster_Report/$FILE/2007_Cluster_Report_SCREEN.pdf?OpenElement (accessed May 26, 2009).

[515] *Ibid.*, slides 5-6. The responsibilities of the cluster leads, according to the 'Terms of Reference', also include participatory and community-based approaches, attention to priority cross-cutting issues (HIV/AIDS and gender for example), needs assessment and analysis, emergency preparedness, planning and strategy development, application of standards, monitoring and reporting, advocacy and resource mobilisation.

> and predictability of the response to crises of internal displacement and represents a substantial strengthening of the 'collaborative response'.[516]

In this context, it is relevant for internally displaced persons that UNCHR is the 'global protection cluster lead'[517]. The specificities of internally displaced persons were considered through preparedness, training and practicalities at headquarters and in the field. This was also the case, with the publication of two key documents relating to internally displaced persons, namely the *Handbook for the Protection of Internally Displaced Persons* and the *Guidance on Profiling Internally Displaced Persons*.[518]

> In this area, the main focus necessarily will be on clarifying agency roles in relations to IDPs. In the case of refugees, the role of UNHCR is referred to in a virtually routine manner. This is not the case with IDPs. While a policy framework for collaborative response and the decision-making framework exist both underlining the importance of the decision-making framework, inter-agency arrangement, effectiveness, collaborative approach, accountability, and the leading role of the ERC the actual implementation remains unclear.
> ...There is a general reluctance among the NGOs to be involved in a coordinated framework for protection. This aspect of the problem, as seen from their perspective, has hampered accountability, planning, and leadership, in key sectors of IDP specific vulnerability such as camp management, emergency shelter, repatriation, reintegration, and recovery, as well as in the area of protection itself.[519]

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[516] "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", *op. cit,* p.2.

[517] "However, at the country level in disaster situations or in complex emergencies without significant displacement, the three core protection-mandated agencies (UNHCR, UNICEF and OHCHR) will consult closely and, under the overall leadership of the HC/RC, agree which of the three will assume the role of Lead for protection.", "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", 24 November 2006, p. 3.
"In this area, the main focus necessarily will be on clarifying agency roles in relations to IDPs. In the case of refugees, the role of UNHCR is referred to in a virtually routine manner. This is not the case with IDPs."

[518] See "Cluster 2006 – Report on Implementation of Global Cluster Capacity-Building 1 April 2006 – 31 March 2007", *op. cit.*, pp. 47-48. See also *Handbook for the Protection of Internally Displaced Persons*. Geneva: OCHA, Global Protection Cluster Working Group. Provisional release, December 2007, available at: http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/Protection%20Handbook/IDP%20Handbook_Complete_FINAL%20Jan%2008.pdf (accessed May 27, 2009) and *Guidance on Profiling Internally Displaced Persons*. Geneva: Internal Displacement Monitoring Centre and OCHA. April 2008, available at: http://www.internal-displacement.org/profiling (accessed May 27, 2009).

[519] "Humanitarian Response Review", Commissioned by the United Nations Emergency Relief Coordinator and Under-Secretary-General for Humanitarian Affairs, Geneva: OCHA, August 2005, p. 31. Available at: http://www.humanitarianreform.org/humanitarianreform/Portals/1/Resources%20&%20tools/Humanitarian%20Response%20Review%202005.pdf (accessed January 22, 2009).

The stated aims of the cluster approach are

> At the global level, the aim of the cluster approach is to strengthen system-wide preparedness and technical capacity to respond to humanitarian emergencies by ensuring that there is predictable leadership and accountability in all the main sectors or areas of humanitarian response. Similarly, at the country level the aim is to strengthen humanitarian response by demanding high standards of predictability, accountability and partnership in all sectors or areas of activity. It is about achieving more strategic responses and better prioritization of available resources by clarifying the division of labour among organizations, better defining the roles and responsibilities of humanitarian organizations within the sectors, and providing the Humanitarian Coordinator with both a first point of call and a provider of last resort in all the key sectors or areas of activity. The success of the cluster approach will be judged in terms of the impact it has on improving the humanitarian response to those affected by crises.[520]

Although progress on the cluster approach will need to be closely monitored in order to assess its capacity to respond to one of the major hindrances in dealing with internal displacement issues – institutional arrangements – it seems that the international community has finally understood that without clear guidelines and policies for action, nothing will happen. The cluster approach is a welcome development.

5 Efficiency Assessment

There have been so many changes and organisational restructuring efforts in the past 10 years that experts wondered whether this chaos would come to an end. It became extremely difficult not only to understand the system, but also to identify which agency was involved in which aspect, relating to internally displaced persons. It would be very easy to get confused with the long list of acronyms and abbreviations: IASC, RSG and ERC are but a few of these extremely complex names and structure relating to protection and assistance of internally displaced persons.

Now that it is clear that internal displacement is a phenomenon which should remain a salient feature on the scene of international affairs and not an *ad hoc* feature related to refugees, it seems appropriate that the mandates of organisations dealing with IDPs were recently re-considered. The continuous discussion surrounding the organisational framework to deal with internal displacement has had

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[520] OCHA's Humanitarian Reform Support Unit, Powerpoint presentation "Humanitarian Reform: Building a Stronger, More Predictable Humanitarian Response System", p. 2.

several consequences. "...the absence of clear institutional responsibility for the internally displaced has resulted in an *ad hoc* and highly uneven international response"[521]. This has hampered a speedy response to issues related to internal displacement and has caused unnecessary delays and administrative chaos. Because many organisations were busy trying to understand which one was mandated to take action, time was lost to address emergency situations. Similarly, policy questions which need to be resolved at headquarters or in a forum, had to be addressed during crises and on the spot.

Change is not a United Nations exclusivity. Non-governmental organisations have also undergone several changes, and the Norwegian Refugee Council, which was the pioneer organisation in terms of compiling statistics, figures and advocating on behalf of internally displaced persons, created an Internal Displacement Monitoring Centre (IDMC). NGOs that were traditionally focusing on refugees and migration issues are now increasingly devoting attention and resources to internally displaced persons. This is an extremely positive move, and should be further enhanced by information sharing among NGOs and international organisations.

In order for the global network of agencies and organisations working on internal displacement issues to remain effective, it is crucial for certain elements to be considered. Firstly, the framework within and outside the United Nations context must be clearly established, in written terms and for all the actors involved, including the general public. This will not only raise awareness, it will also clarify the needs of IDPs, through the understanding that all agencies are working together to assist and protect them. Next, knowledge management is a requirement. Indeed, there is a lot of information available, and this is a very positive outcome of the efforts of all organisations involved to increase the level of data and instruments dealing with internal displacement, including the promotion of the Guiding Principles and that of transparency and governance.

The Division on Internal Displacement within OCHA provides links to all these sites, as should the Internal Displacement Monitoring Centre, but the issues should be organised according to the needs of those in the field and those involved with IDP-related topics. Thus, a summary page with links to the Guiding Principles, statistics and figures, regional and country overviews, topical issues, advocacy and

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[521] "Improving Institutional Arrangements for the Internally Displaced", *op. cit.*, p. 2.

general public material would be extremely helpful. Finally, the new developments and changes should be pointed to through all these channels, as well as through internal and public communication. The results of the preliminary phases of the cluster approach should be examined as early on as possible, so as to avoid another chaotic situation and further complaints about continued changes in the internal displacement network.

Positive aspects of the recent developments linked to internal displacement are also to be highlighted. These include the efficiency of the two Representatives on Internally Displaced Persons, the developments linked to the release of the Guiding Principles and the efforts of Dr. Deng and Dr. Kälin to disseminate policy documents are essential contributions to the IDP cause.

An official efficiency assessment of the 'collaborative' approach was provided by the Humanitarian Response Review.[522] The cluster approach is a step in the collaboration efforts and operational efficiency of the organisations involved with humanitarian crises in the field. The "Humanitarian Response Review" provided ideas and concrete proposals as to which areas require action and improvement. The reaction by international, non-governmental and inter-governmental organisations is eagerly awaited. The cluster approach has certainly succeeded in clarifying areas of expertise and leadership. Donors need to be convinced of this, in order to provide funding for the approach to become a reality. Nevertheless, further efforts remain a priority, as explained in the "Cluster 2006 – Report on Implementation of Global Cluster Capacity-Building" published by OCHA.[523] However, time will tell whether this approach will, with hindsight, enable

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[522] "The major weakness in recent responses to IDP crises has been the absence of operational accountability and leadership in key sectors of IDP-specific vulnerability; this despite the fact that a collaborative approach has been agreed upon by the international community and that it has the backing of the IASC membership. The impact of the leadership role for IDPs by the Emergency Relief Coordinator (ERC) – as the Secretary-General's focal point on IDPs – and his field-level counterparts, the Humanitarian Coordinators (HCs), is in practice minimized by the lack of operational accountability among UN agencies for addressing IDP needs in these areas. In the "collaborative approach" for IDPs, the international humanitarian coordination system works by goodwill and consensus and depends too often on the authority and skills of HCs. While its role has to be maintained and reinforced, there is also a need to make progress in designing a more explicit model where, sector operational accountability will be clearly identified at the level of a designated organization, following standards to be agreed upon. Responsibilities to be covered under such a model are: (a) planning and strategy development, (b) standard-setting, (c) implementation and monitoring, (d) advocacy.", "Humanitarian Response Review", *op. cit.*, pp. 49-50.

[523] "Cluster 2006 – Report on Implementation of Global Cluster Capacity-Building 1 April 2006 – 31 March 2007", *op. cit.*

accountability, the assessment of specific responsibilities, in particular in the context of UN integrated missions where such a breakdown may pose challenges.

6 Future Perspectives

United Nations Representative on the Human Rights of Internally Displaced Persons

There are some essential elements to consider in order for the current institutional arrangements to function effectively and, most importantly, to address adequately both the policy and assistance needs of internally displaced persons. The first of these is to improve the position of the Representative on IDPs. It is essential that all those involved understand the function of the Representative on the Secretary-General on IDPs.

It would be useful to explain the differences between the RSG, the ERC and the head of the Inter-Agency Internal Displacement Division, for example. Even IDP training modules should incorporate this distinction and internally displaced persons, as far as possible, should be informed that there is a professional expert who is there to address their needs and to find ways to improve their status on a global level. Secondly, the RSG on the Human Rights of IDPs is such an important role that this should be made a full-time position. If this is not possible, the function should be reviewed every five years, for example, in light of internal displacement conditions and developments. Moreover, senior staff to second the Representative on the Human Rights of IDPs should be appointed in New York or, at the least, a liaison officer reporting to the RSG.

Finally, the Representative should be given the opportunity to make statements at a maximum of fora and to a large number of audiences. He should also be given an annual session or workshop to meet with all the actors involved, including field staff, to follow up on all issues and gather feedback for any issues encountered. His publications or statements should be given further attention, with press releases to raise awareness, and a dedicated Internet site, with perhaps a link from the Brookings Institution or the University of Berne. He should also request direct feedback from all actors involved (through email, the Internet sites, etc).

Organisational Framework

At the level of organisations involved with internally displaced persons, it seems important to clarify roles and identify channels of communication. The "Humanitarian Response Review" also suggests a mapping of the internal displacement response capacities:

> One major recommendation emerging from the report is the need to obtain a global mapping of humanitarian response capacities that would cover not only international actions but also national and regional action, the private sector and the military. Such a mapping should also aim at obtaining a more complete picture of the capacities of NGOs.[524]

All the agencies dealing with humanitarian emergencies and IDPs should be communicating with each other, should echo common concerns and problems, while requesting feedback from field staff on what requires immediate attention. This will avoid a duplication of complaints and should allow for an easier transmission to the OCHA Division and to the Representative on IDPs. Channels of communication must be devised to enhance opportunities to share information, as this can be done through the Internet, memos or targeted e-mail correspondence.

Regional and local organisations must also be involved in the discussions on improving the response mechanisms. Their contributions may be valuable in terms of transmitting information, addressing specific issues with a local or regional twist, and getting in touch with those at the centre of the issue.

> Less effective have been the institutional arrangements developed, but here too progress is discernible. The UN's decision to assign responsibilities to specific agencies has the potential to bring predictability and clarity to the international response system for the displaced. ... For the first time since the end of the Second World War, a comprehensive regime is being designed to address the needs of forced migrants on both sides of the border[525].

OCHA should inform all agencies of the main contacts both at the headquarters (topical and country-level focal points) and in the field[526]. The contacts provided should be able to answer on all issues related to internal displacement, and thus should be senior level staff, who would be able to assist in emergency

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[524] "Humanitarian Response Review", OCHA, *op. cit.*, p. 12.
[525] *Ibid*, p. 175.
[526] Such a list/map has been designed by OCHA on its website:
http://3w.unocha.org/WhoWhatWhere/ (accessed January 22, 2009).
A regularly updated list of Humanitarian Coordinators is also available at:
http://www.humanitarianreform.org/Default.aspx?tabid=143 (accessed January 22, 2009).

situations[527]. A list of topics of concern should also be established, where all major agencies could contribute and provide their views on how to resolve these issues which, for example, could then be discussed at the Senior Network meetings.

It is critical that the new approaches taken be followed up and monitored, so that in case of relative failure, these can be amended immediately with back up plans and re-visited alternatives.

> As it is in postconflict situations, it is essential to coordinate these efforts to eliminate overlaps and gaps in the provision of services. Some progress has been made since the UN emergency relief coordinator initiated a reform that has enabled international organizations – including UN agencies, the International Red Cross and Red Crescent Movement, and various nongovernmental organizations – to establish a consensual division of labor (known as 'the cluster approach') in humanitarian emergencies.[528]

Promotion of the 'Guiding Principles on Internal Displacement'

The reference to the Guiding Principles in the World Summit Outcome Document is a welcome step in the creation of a normative framework for internally displaced persons.

> We recognize the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons.[529]

The role of the UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons is to focus on advocacy of the rights of IDPs. The Internal Displacement Monitoring Centre provides training on the Guiding Principles and other activities to enable local actors to cater to the protection and assistance needs of IDPs. Collaboration, as well as support to local and regional actors and stakeholders is a top priority.

> In brief, Deng's and Cohen's efforts on behalf of IDPs broke new ground. International discourse is different; a clear normative framework is in place; guiding principles regarding IDPs are circulating with new coalitions behind

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[527] A list of cluster leads has been created, and is available at: http://www.humanitarianreform.org/Default.aspx?tabid=143 (accessed January 22, 2009).
[528] Guterres, António. "Millions Uprooted: Saving Refugees and the Displaced", *Foreign Affairs*, Vol. 87, No. 5, September/October 2008, p. 95.
[529] "World Summit Outcome Document", *op. cit.*, paragraph 132.

> them; and individual institutions emphasize to varying degrees the particular problems of IDPs within their programs and projects.[530]

The next chapter will seek to describe and analyse what occurs in practice, as it will consider the case of Darfur in relation to internally displaced persons. How does the complex network of agencies and actors involved with internal displacement operate in practice? How did the United Nations respond to the needs of IDPs in Darfur? What was the involvement of the institutional framework pertaining to internal displacement? What would have changed, had the responsibility to protect been applied?

[530] Weiss, Thomas G. *Humanitarian Intervention: War and Conflict in the Modern World, op. cit.*, p. 95.

Chapter 6 Illustration: The Case of Darfur

This chapter presents the case of Darfur, which is a pertinent illustration of several aspects of importance to the research issues developed in this analysis. Indeed, the lack of action by the international community in the early stages of the crisis has been criticised by many observers[531]. The United Nations' operational involvement in Darfur dates back to 2005, when the United Nations Mission in Sudan was established. However, the crisis in Darfur had started in 2003, and by February 2004, there were an estimated one million internally displaced persons in Darfur.[532]

The latter part of the chapter analyses what could have changed, hypothetically, had the responsibility to protect been applied. This obviously remains a speculative aspect.[533] Moreover, this chapter attempts to demonstrate that, at the time of writing, the responsibility to protect can be applied to Darfur as a theoretical norm. In practice, however, there are unresolved issues, which will be addressed in the final chapter and presented as conclusions of this assessment.

The discussion is based on weighing the threshold criteria, applying the precautionary principles defined by the 'Responsibility to Protect' to the case of Darfur, building upon the suggestions presented in previous chapters relating to operational measures. The first section will present the context of the Darfur conflict, by outlining the main aspects of this humanitarian crisis and the

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[531] See Dallaire, Roméo. "Looking at Darfur, Seeing Rwanda", *New York Times*, October 4, 2004; Dallaire, Romeo Lt. Gen. *Shake Hands with the Devil: The Failure of Humanity in Rwanda*. London: Arrow Books, 2004; Slim, Hugo. "Dithering over Darfur? A Preliminary Review of the International Response", *International Affairs*, Vol. 80, No. 5, 2004, pp. 811-828.

[532] Burr, J. Millard and Collins, Robert O. *Darfur: The Long Road to Disaster*. Princeton: Markus Wiener Publishers. 2006, p. 293: "By February 2004, one year after the beginning of the insurgency, the conflict, ethnic cleansing, and displacement of African *zurug* had conservatively ... forced a million people from their lands as Internally Displaced Persons (IDPs)...".

[533] Applying the responsibility to protect to a past crisis can seem out of context, at first. The choice to consider the case of Darfur and apply the responsibility to protect was based on the fact that, at the time this thesis was started, the situation in Darfur clearly had the 'ingredients' to satisfy the responsibility to protect just cause threshold. This is not a case study but rather an illustration of how the responsibility to protect norm could have brought a new dimension to the debate. This is also an attempt to identify what could be improved and which elements of the responsibility to protect are to be strengthened in order to be applicable in practice.
For case studies of the application of the responsibility to protect to past crises (East Timor, Republic of Macedonia, Burundi), see Bamberger, Sara Heitler et al. "The Responsibility to Protect (R2P): Moving the Campaign Forward", *op. cit.*, pp. 66-97. It should also be noted that the ICISS Commissioners had warned of the retroactive use of the responsibility to protect to cases of intervention.

background underlying the crisis. The details and historical analysis will be left to experts.[534]

1 Presentation of the Situation and Context

Darfur is a region which is not well known. Moreover, Darfur has a long history of being marginalised within its own country, Sudan. During the colonial times, there were even two 'Sudans', present day Mali and present day Sudan.[535] The term 'Sudan' derives from the Arabic word *Bilad As-Sudan*, meaning 'land of the blacks' – ironic for a land of very different people. It is important to understand what types of people live in Darfur in order to comprehend the complexity of the region, as well as its ethnic and racial composition. In the dry North of Darfur, nomads are to be found, in the centre, settled peasants engaged in agriculture. While in the South and the South West, sedentary peasants produce cotton. In Darfur, both 'Arab' and 'African' people are to be found. Indeed, the language spoken is Arabic and the term 'Arab' in this sense is complex, since it refers to an ethnic and a language trait. Furthermore, the term 'African' can be a source of confusion, since everyone in Darfur is black, in terms of skin colour. The nomads were traditionally referred to as 'Arabs', thus implying that someone who was designated as such was 'above' the others both in terms of status and activity.

Darfur is at the same time an isolated land and one connected to the rest of the region, which has in many instances been claimed by its neighbours. Indeed, both Chad and Libya have attempted to make incursions in the area. Libya's leader, Khadafi, even had the dream of pan-Arab unification, including Darfur. The region has never been very prosperous, and has witnessed severe drought and famine crises since the 1980s.[536]

Darfur is not a homogenous entity. Rather, it has always been made of different peoples with varying activities. Most scholars and experts attribute the issues arising in Darfur not so much to ethnic differences, which seem to have been a mere way of justifying what has happened, but more to an identity crisis

> It has always been my view that Sudan suffered from an identity crisis, which needs to be addressed.

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[534] For details and historical background, see Prunier, Gérard. *Darfur: The Ambiguous Genocide.* London: C. Hurst & Co., 2005.
[535] Mali was the 'French Sudan' and the present Sudan was under Anglo-Egyptian control.
[536] 1984 and then 1990.

> In the case of Sudan, I have tended to focus on the underlying identity crisis as the root cause of the conflicts throughout the country.[537]

The importance of status attached to the term 'Arab' and to nomadic traits is largely underestimated and not fully understood, since, as stated by the former UN's Representative on Internally Displaced Persons Dr. Francis Deng, a Sudanese himself,

> I must add though, that these labels of 'Arab' and 'African' are largely matters of perception, as even those who could justifiably consider themselves Arabs are actually a mixed African/Arab race. What counts though, is how these people perceive themselves, and even though the differences may not be so obvious to an outsider, to the local people, they are quite clear and critically important to one's position in society.[538]

This makes the situation in Darfur so much more difficult to assess[539] since there is still no agreement, although most scholars and well-versed experts would most probably agree that there was a genocidal intent and that the use of terms with pejorative meaning created feelings of distrust and disliking.[540]

Numbers are a further problem for internal displacement in Darfur, since the statistics concerning the region are extremely ambiguous and no organisation was compiling statistics from the onset of the crisis.

2 The United Nations and Darfur

The United Nations has come under severe criticism for its lack of intervention in certain major crises, among which is that of Darfur. However, the various reports and resolutions emanating from the United Nations on the Sudan, and on Darfur in particular, suggest that the organisation has discussed and considered the issue extensively. When reading the data and progress reports produced, it is obvious that although the criticism could be that the attention was

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[537] "Interview on Darfur with the Representative of the UN Secretary-General on Internally Displaced Persons". 18 August 2004. Washington D.C.: Brookings Institution, Live Internet Chat (http://www.brookings.edu/fp/projects/idp/20040818_deng.htm), accessed 8 January 2007), answers to question 4 and 9.

[538] *Ibid.*, answer to question 1.

[539] As was the case when the international community asked itself whether a genocide had occurred in Darfur.

[540] This would allow for intervention, according to the just cause threshold of the ICISS, since "genocidal intent" is one of the circumstances foreseen. The World Summit Outcome Document would not, however, provide a justification to intervene, since the four circumstances are genocide, ethnic cleansing, war crimes and crimes against humanity.

drawn too late, there clearly was a focus on Darfur, as will be shown in the analysis below.

Between 2003 and 2006, the spotlight has been turned on and off the Darfur crisis. Although there had been calls, from within the United Nations itself, to ensure that monitors were in place in Darfur and to assess the situation[541], from 2004 and until the United Nations Mission in Sudan (UNMIS) was established in 2005[542], it seems that these had not been heard.

2.1 Reports of the Secretary-General on the Situation in Darfur

The Secretary-General has been requested to provide regular updates of the situation in Sudan to the Security Council[543]. More specifically, from 2005, the Secretary-General prepared monthly reports for the Security Council on the situation in Darfur. In 2005, the Secretary-General submitted nine reports on Darfur to the Security Council.[544]

In 2006, the Secretary-General presented nine reports on Darfur to the Security Council.[545] Of these, two were extensive[546] and presented the background

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[541] Resolution 1556 (2004), adopted by the Security Council at its 5015th meeting on 30 July 2004, in operative paragraphs 1 and 2:

1. *Calls on* the Government of Sudan to fulfil immediately all of the commitments made in the 3 July 2004 Communiqué, including particularly by facilitating international relief for the humanitarian disaster by means of a moratorium on all restrictions that might hinder the provision of humanitarian assistance and access to the affected populations ... by the establishment of credible security conditions for the protection of the civilian population and humanitarian actors...
2. *Endorses* the deployment of international monitors, including the protection force envisioned by the African Union, to the Darfur region of Sudan under the leadership of the African Union and *urges* the international community to continue to support these efforts.

[542] Resolution 1590 (2005), adopted by the Security Council at its 5151st meeting, on 24 March 2005:

1. *Decides* to establish the United Nations Mission in Sudan (UNMIS) for an initial period of 6 months...

[543] See UN Security Council resolution 1556 (2004) para. 6, resolution 1564 (2004) para. 15, resolution 1574 (2004) para. 17, and resolution1590 (2005) para. 12.

[544] UN Security Council Documents S/2005/240 of 12 April 2005, S/2005/305 of 10 May 2005, S/2005/378 of 9 June 2005, S/2005/467 of 18 July 2005, S/2005/523 of 11 August 2005, S/2005/592 of 19 September 2005, S/2005/650 of 14 October 2005, S/2005/719 of 16 November 2005, S/2005/825 of 23 December 2005.

[545] UN Security Council Documents S/2006/59 of 30 January 2006, S/2006/148 of 9 March 2006, S/2006/218 of 5 April 2006, S/2006/306 of 19 May 2006, S/2006/430 of 21 June 2006, S/2006/591 and S/2006/591Add. 1 of 28 July 2006, S/2006/764 of 26 September 2006, S/2006/870 of 8 November 2006, S/2006/1041 of 28 December 2006.

[546] These were more comprehensive reports than the monthly updates to the Security Council and this was new in 2006 (which explains why these reports are considered in further detail), see UN Security Council Documents S/2006/306 and S/2006/591 and Add. 1.
In 2007, the Secretary-General drafted six reports for the Security Council (monthly report S/2007/104 of 23 February 2007, comprehensive report S/2007/462 of 27 July 2007; and Reports of

of the conflict, the current situation and concerns, United Nations' action in Darfur, the progress of the implementation of the Darfur Peace Agreement, risks, challenges and regional considerations, as well as the Secretary-General's suggestions and recommendations for Darfur.[547] The remaining three reports were presented in fulfilment of the Security Council's request to the Secretary-General to report regularly on the implementation of the Darfur Peace Agreement.[548]

It is noteworthy that the Secretary-General, in his monthly reports, stressed the fact that the situation in Darfur remained critical, that the security and humanitarian situations were preoccupying, that efforts were required in political terms to come to a settlement of the conflict. This was the case in the Monthly report of the Secretary-General on Darfur of 26 September 2006.[549]

> 58. Darfur is at a critical stage. Insecurity in this troubled region is at its highest levels and humanitarian access is at its lowest levels since 2004. Unless security improves, the world is facing the prospect of having to drastically curtail an acutely needed humanitarian operation.
>
> 60. The Government of Sudan must also be aware that there can be no military solution to the Darfur conflict. I remain strongly convinced that a United Nations multidimensional operation, in accordance with Security Council resolution 1706 (2006), would be the most appropriate political approach to achieving lasting and sustainable peace in Darfur, and that only such a truly international and impartial operation, with adequate resources and capacity, and with strong African participation, can effectively support the implementation of the Darfur Peace Agreement.

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the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur: S/2007/517 and Corr. 1 of 30 August 2007, S/2007/596 of 8 October 2007, S/2007/653 of 5 November 2007, S/2007/759 and Corr. 1 of 24 December 2007.
In 2008, the Secretary-General submitted nine reports to the Security Council relating to the situation in Darfur, see UN Security Council Reports of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur S/2008/98 of 14 February 2008, S/2008/196 of 25 March 2008, S/2008/249 of 14 April 2008, S/2008/304 of 9 May 2008, S/2008/400 of 17 June 2008, S/2008/443 of 7 July 2008, S/2008/558 of 18 August 2008, S/2008/659 of 17 October 2008, S/2008/781 of 12 December 2008.
In 2009, at the time of writing, the Secretary-General had submitted two reports to the Security Council on the situation in Darfur, see UN Security Council Reports of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur S/2009/83 of 10 February 2009 and S/2009/201 of 14 April 2009.

[547] The Report of the Secretary-General on Darfur S/2006/591 of 28 July 2006 is extremely important, since it called for an expansion of the mandate of the United Nations Mission in Sudan (UNMIS) and the Secretary-General proposes three options for consideration by the Security Council in terms of operational characteristics (number and type of participants), this will be discussed in a later section.

[548] Resolution 1706 (2006), adopted by the Security Council at its 5519th meeting on 31 August 2006:

> 11. *Requests* the Secretary-General to keep the Council regularly informed of the progress in implementing the Darfur Peace Agreement, respect for the ceasefire, and the implementation of the mandate of UNMIS in Darfur, and to report to the Council, as appropriate, on the steps taken to implement this resolution and any failure to comply with its demands.

[549] S/2006/764, Monthly report of the Secretary-General on Darfur, 26 September 2006, pp. 11-12.

> 61. Governments and leaders who are in a position to influence the events must also make themselves heard and redeem the solemn pledge made in September 2005, when the General Assembly agreed that Governments have a "responsibility to protect" vulnerable civilians from genocide, ethnic cleansing, and gross and systematic violations of human rights.... There must be a clear, strong and uniform message from the Security Council and the international community about the consequences of rejecting international assistance for the suffering people of Darfur and for failing to exercise the responsibility to protect.

In December 2006, in another monthly report, the Secretary-General reiterated this call:

> The conflict is increasingly spreading over the Sudanese borders, threatening to engulf the whole region in war... It is essential that the Security Council send a clear and united message to warn all concerned that the current situation in unacceptable and will not be allowed to continue.[550]

At first glance, it could have seemed that Secretary-General Annan's calls were left unanswered. However, in a statement issued in December 2006 in relation to the consideration of the Secretary-General's reports on the Sudan, the Security Council stated its will to address situations, which could threaten international peace and security, thereby posting a message to the incoming Secretary-General, Mr. Ban Ki-moon:

> At the 5598th meeting of the Security Council, held on 19 December 2006, in connection with the Council's consideration of the item entitled 'Reports of the Secretary-General on the Sudan', the President of the Security Council made the following statement on behalf of the Council: ...
>
> The Security Council recognizes the importance of more effective international efforts to prevent conflict, including intra-State conflicts, and encourages the Secretary-General, as already requested in Security Council resolution 1625 (2005), to provide the Council with more regular, analytical reporting on regions of potential armed conflict and stresses the importance of establishing comprehensive strategies on conflict prevention in order to avoid the high human and material costs of armed conflict.[551]

Mr. Ban Ki-moon, in his first report on Sudan of 25 January 2007[552], updated the Security Council on the status of affairs, UNMIS progress, and new developments in Sudan. According to this report, 94% of mandated UNMIS personnel and 93% of the authorised police force were deployed by January 2007. A plan for the return of 200,000 internally displaced persons by the end of 2007 was also under way. The Secretary-General also stressed that the cases of misconduct

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[550] UN document S/2006/1041, Monthly report of the Secretary-General on Darfur, 28 December 2006, p. 12, para. 66.
[551] Statement by the President of the Security Council, 19 December 2006, S/PRST/2006/55, p.2.
[552] Report of the Secretary-General on Sudan, UN document S/2007/42, 25 January 2007.

among UN personnel must become a zero-tolerance policy, and informed the Security Council that he had decentralised the functions on the ground by "appointing a senior official who will be responsible for coordinating all Mission activities in Southern Sudan and representing the Head of Mission on a day-to-day basis with the Government of Southern Sudan".[553]

2.2 Security Council Role

The role of the United Nations Security Council is to discuss, decide and resolve all questions pertaining to international peace and security. The Council therefore has primary responsibility to address such questions. As set out in Article 2.7 of the United Nations Charter, and restated in Article 24.1,

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.[554]

The Council is composed of the five permanent members[555] and of 10 non-permanent members elected every two years on a geographical rotating basis by the General Assembly.[556] Decisions taken in the Security Council are submitted to a vote. For procedural matters, there must be nine affirmative votes. For all other matters, there must be nine affirmative votes, including the concurring votes of the five permanent members[557]. The Council has at its disposal several means of addressing threats to international peace and security by adopting resolutions.[558]

2.3 United Nations Security Council Resolutions on Darfur

In all the Security Council resolutions presented in detail in table 16, the situation in Darfur is qualified as a 'threat to international peace and security' or a

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[553] *Ibid.*, p. 15.
[554] For a more detailed discussion, see Chapter 2, section on international law of humanitarian intervention.
[555] China, France, Russia, United Kingdom, United States.
[556] Three seats are reserved for African states, two for Asia one for Eastern Europe, two for Latin America and two for Western Europe and the rest of the world.
[557] According to the UN Charter, Article 27.
[558] Under the following chapters of the UN Charter, Chapter VI Peaceful Settlement of Disputes, Chapter VII Threats to International Peace and Security, Chapter VIII Regional Settlement of Disputes and Chapter XII Trusteeship Council. The Chapter XII option has not been used since the decolonisation process and many scholars argue that it is no longer an option, in light of the current international order.

'threat to international peace and security for the region' and in almost all cases, the Security Council stated that it was 'deeply concerned' by such a threat.

The period between 2004 and 2006 thus seems to have remained one of thinking about and weighing the effects of possible action. In 2006, for example, eight resolutions were passed in the Security Council stating the situation in the region remained a matter of serious concern. The table below presents the resolutions pertaining to Darfur, with a summary of the topic under consideration.

Resolution 1556 (2004) remains crucial, as it is the first resolution of a series requesting the Secretary-General to monitor the situation in Darfur. Similarly, resolution 1590 (2005) is considered essential for two reasons. Firstly, it extensively describes the situation in Darfur as one of concern and substantially expands on previous resolutions by identifying the threats and grievances incurred by the civilian population. Secondly, the United Nations Mission in Sudan (UNMIS) was established by this resolution. The mandate of the Mission in Sudan was thereby clarified and UNMIS was to protect civilians and United Nations personnel. Although resolution 1590 set an initial mandate of six months for UNMIS, this has subsequently been extended eight times.[559]

Referral of the Situation in Darfur to the International Criminal Court

These two resolutions were the first steps of a set of measures to address the crisis in the region. Indeed, in resolution 1593 (2005), the Security Council decided to refer the situation in Darfur to the International Criminal Court[560], the resolution specified that the situation since 1 July 2002 was referred to the ICC, implying that events since 2002 were of concern to the international community. This is extremely important, as it was intended to give the Sudanese government a clear sign that the atrocities committed in Darfur would not go unpunished[561]. In 2008, at the time

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[559] In resolutions 1627 (2005), 1663 (2006), 1709 (2006), 1714 (2006), 1755 (2007), 1784 (2007), 1812 (2008), 1870 (2009).

[560] The International Criminal Court (ICC), according to its Statute Part 2. Jurisdiction, Admissibility and Applicable Law, Article 5: Crimes within the jurisdiction of the Court, has jurisdiction with respect to the following crimes:

(a) The crime of genocide;
(b) Crimes against humanity;
(c) War crimes;
(d) The crime of aggression.

[561] The Security Council published, in resolution 1672 (2006), a list of four individuals who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities... or are responsible for offensive

when the International Criminal Court was considering taking action against President Al Bashir, the UN Security Council discussed the issue and the Representative of the Russian Federation suggested that the Security Council use its authority to defer a potential ICC decision under article 16 of the Rome Statute of the ICC[562]. The United States was vocal about accountability.[563]

In March 2009, the International Criminal Court issued a warrant of arrest for Sudan's President Al Bashir for war crimes and crimes against humanity.[564] President Al Bashir faces seven counts in the warrant for arrest, five of which are counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities and pillaging).[565] However, the International Criminal Court did not mention genocide in the warrant of arrest.[566]

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military overflights.... The funds and financial assets and economic resources that are owned or controlled by these individuals were frozen.

[562] See UN Security Council document S/PV.5947 of the Security Council's 5947th meeting, 31 July 2008, p. 3, available at http://daccessdds.un.org/doc/UNDOC/PRO/N08/444/74/PDF/N0844474.pdf?OpenElement (accessed May 14, 2009).

[563] See UN Security Council document S/PV.6096 of the Security Council's 6096th meeting, 20 March 2009, p. 6, available at http://daccessdds.un.org/doc/UNDOC/PRO/N09/275/01/PDF/N0927501.pdf?OpenElement (accessed May 14, 2009). Ms Rice stated that "President Al-Bashir and his Government are responsible, and must be held accountable, for each and every death caused by these callous and calculated actions. The Sudanese Government made this decision and owns its consequences, which will not only cost lives but leave the Government locked deeper in an isolation of its own making."

[564] ICC document ICC-02/05-01/09, Pre-Trial Chamber I, "Situation in Darfur, Sudan in the Case of the Prosecutor v. Omar Hassan Ahmad Al Bashir ("Omar Al Bashir") – Public Document: Warrant of Arrest for Omar Hassan Ahmad Al Bashir" 4 March 2009, available at: http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf (accessed May 14, 2009) and ICC Press Release, "ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan", ICC-CPI-20090304-PR394, 4 March 2009, available at: http://www.icc-cpi.int/NR/exeres/0EF62173-05ED-403A-80C8-F15EE1D25BB3.htm (accessed May 14, 2009).
"He is suspected of being criminally responsible, as an indirect (co-)perpetrator, for intentionally directing attacks against an important part of the civilian population of Darfur, Sudan, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property. This is the first warrant of arrest ever issued for a sitting Head of State by the ICC. Omar Al Bashir's official capacity as a sitting Head of State does not exclude his criminal responsibility, nor does it grant him immunity against prosecution before the ICC".

[565] *Ibid.*

[566] The Court argued that there was not enough evidence the government of Sudan had the intent to destroy specific groups, in part or in full. Nevertheless, it did state that any additional evidence found of this could lead to an amendment in the warrant of arrest to include the crime of genocide. See ICC press release of 4 March 2009.

The table below presents the resolutions concerning Darfur adopted by the Security Council between 2004 and 2009.

Table 17: United Nations Security Council Resolutions - Darfur

Year	Topic	Chapter VII Resolution
2004	1547: establishment of UNAMIS, United Nations Advance Mission in the Sudan	
2004	1556: deployment of international monitors and request to SG to report monthly on the situation in the Sudan	Yes
2004	1564: security of civilian population, establishment of commission on enquiry to investigate violations of international humanitarian law, international human rights law in Darfur	Yes
2004	1574: consideration of the establishment of a UN peace support operation, AMIS[567] mission increased to 3,320 personnel	
2005	1585: extension of UNAMIS[568] mandate until 17 March 2005	
2005	1588: extension of UNAMIS mandate until 24 March 2005	
2005	1590: establishment of the United Nations Mission in Sudan (UNMIS)[569]: for an initial period of 6 months, Special Representative of the Secretary-General for Sudan to coordinate all activities, UNMIS mandate clarified, UNMIS to take all necessary action to protect civilians and UN staff	Yes
2005	1591: establishment of a Committee of the Security Council as a Panel of Experts, demand that the government of Sudan cease offensive military flights in and over Darfur	Yes
2005	1593[570]: situation in Darfur since 1 July 2002 referred to the Prosecutor of the International Criminal Court, encouragement of the creation of national legal and judiciary institutions	Yes
2005	1627: extension of UNMIS mandate until 24 March 2006, request to Secretary-General to report on UNMIS' progress and implementation every 3 months	Yes
2005	1651: extension of Panel of Experts' mandate until 29 March 2006	Yes
2006	1663: extension of UNMIS mandate until 24 September 2006, request to Secretary-General to expedite the planning for the transition of AMIS to a United Nations operation, requests Secretary-General to present options for a United Nations operation by 24 April 2006	

[567] AMIS is the African Union Mission in the Sudan. For further information, see http://www.amis-sudan.org/index.html (accessed January 16, 2009).

[568] UNAMIS, the United Nations Advance Mission in the Sudan, was set up by United Nations Security Council Resolution 1547 of 11 June 2004.

[569] For a complete background on UNMIS, see http://www.un.org/Depts/dpko/missions/unmis/background.html (accessed January 16, 2009).

[570] The United States abstained on the voting of this resolution. Indeed, the United States' position towards the International Criminal Court is known. It is interesting to note, however, that the US did not object to the referral of the situation in Darfur to the ICC through this resolution and that the United States has, thereafter, been more keen on supporting the work of the ICC. See "Chronology of US Opposition to the International Criminal Court: From 'Signature Suspension' to Immunity Agreements to Darfur", The American Non-Governmental Organizations Coalition for the International Criminal Court and the United Nations Association and the United States of America, Update of March 13, 2009, available at: http://www.amicc.org/docs/US%20Chronology.pdf (accessed June 27, 2009).

2006	1665: extension of Panel of Experts' mandate until 29 September 2006	Yes
2006	1672: inclusion of four individuals as perpetrators of acts of concern (as described in Resolution 1591 (2005), para. 3)	Yes
2006	1679: decision to take steps for the transition from AMIS to a United Nations operation	Yes
2006	1706[571]: expansion of UNMIS mandate, addition of temporary reinforcement for UNMIS, request to Secretary-General for a plan and timetable for the transition from AMIS to a United Nations operation in Darfur, decision that UNMIS shall take over responsibility from AMIS no later than 31 December 2006, UNMIS mandate clarified and expanded	Yes (UNMIS can take all necessary means to protect civilians and UN personnel)
2006	1709: extension of UNMIS mandate until 8 October 2006	
2006	1713: extension of Panel of Experts' mandate until 29 September 2007, request to Secretary-General to appoint a fifth member of the Panel of Experts, request to the Panel to provide a midterm briefing by 29 March 2007	Yes
2006	1714: extension of UNMIS mandate until 30 April 2007	
2007	1755: extension of UNMIS mandate until 31 October 2007, request for the appointment of a Special Representative for the Sudan by the Secretary-General, request for updates every three months to the SC by the Secretary-General on the implementation of the UNMIS mandate	
2007	1769: establishment of UNAMID (African Union/United Nations hybrid operation in Darfur) for an initial period of 12 months, consisting of up to 19,555 military personnel; appointment of AU-UN Joint Special Representative for Darfur Rodolphe Adada UNAMID took over from AMIS	Yes (UNAMID can take all necessary action, paragraph 15 seq.)
2007	1779: extension of the mandate of the Panel of Experts	Yes
2007	1784: extension of UNMIS mandate until 30 April 2008	
2008	1812: extension of UNMIS mandate until 30 April 2009	
2008	1828: extension of UNAMID mandate until 31 July 2009	
2008	1841: extension of the mandate of the Panel of Experts	Yes
2009	1870: extension of UNMIS mandate until 30 April 2010, request to Secretary-General to report to the Security Council every three months on the implementation of UNMIS' mandate, to provide an assessment and recommendations	Preambular para. 15 states: "*Determining* that the situation in the Sudan continues to constitute a threat to international peace and security"

Source: Amina Nasir, resolutions available at http://www.un.org/documents/scres.htm (accessed January 29, 2009)

Total number of resolutions in 2004: 4
Total number of resolutions in 2005: 7
Total number of resolutions in 2006: 8
Total number of resolutions in 2007: 4
Total number of resolutions in 2008: 3

[571] It is particularly interesting to note the abstentions on the voting of this resolution by China, Russia and Qatar, since this is the first resolution making a reference to the responsibility to protect, (reference to the World Summit outcome document paras. 138 and 139, in the second preambular paragraph) and authorising the deployment of a peacekeeping force in Darfur under Chapter VII of the UN Charter. See O'Neill, William G. "The responsibility to protect Darfur: The UN should send a peacekeeping force to Darfur – even without Sudan's consent". *Christian Science Monitor.* New York: Christian Science Monitor, 28 September 2006, available at: http://www.csmonitor.com/2006/0928/p09s01-coop.html (accessed June 30, 2009).

2.4 United Nations Operational Involvement

Secretary-General's Suggestions for a United Nations' Operational Mission in Darfur

Pursuant to the Security Council's request, in Resolution 1679 (2006), the Report of the Secretary-General on the Sudan[572] was published on 28 July 2006. The report provided a background to the crisis, a context to the United Nations' involvement in the Sudan and presented, at the Security Council's President's request[573], options for the mandate and mission of the enhanced United Nations mission in Darfur.

The Secretary-General stated that the expanded United Nations mission should be designed along the following pillars: support for the peace process and good offices, rule of law, governance and human rights, humanitarian assistance, recovery and reintegration, and security and physical protection. In this regard, he also proposed a new hierarchical structure with the Special Representative of the Secretary-General for Darfur with overarching responsibility for all operations in Darfur, while the Senior Deputy Special Representative of the Secretary-General for Darfur would manage UNMIS in Darfur, be based in Al-Fasher and report to the Special Representative of the Secretary-General for Darfur. A Regional Commander for Darfur and a Deputy Police Commissioner for Darfur would support the UNMIS Force Commander and Police Commissioner respectively, all under the operational command of the Senior Deputy Special Representative of the Secretary-General for Darfur. In addition, UN civil-military liaison and coordination officers were to serve on each sector and at regional headquarters.

Specifically, the Secretary-General suggested three military options for the consideration of the Security Council[574], presented in the table below.

Table 18: Military Options for United Nations Darfur Mission – Secretary-General's Proposals

	Option 1	Option 2	Option 3
Number of troops	17,000	18,300	15,000
Infantry battalions	14	16	11

[572] Report of the Secretary-General on the Sudan, 28 July 2006, UN document S/2006/591.
[573] Statement by the President of the Security Council, 3 February 2006, UN document S/PRST/2006/5.
[574] In the Report of the Secretary-General on the Sudan, 28 July 2006, UN document S/2006/591, paras. 84-87.

Number of aircraft	3	4	9
Number of helicopters	8 +18 military	4 + 9	14
Liaison officers	200	185	185
Military observers	300	300	300
Special force companies	(reserve) 2	rapid reaction 3	6
UN police officers	3,300	3,300	3,300
Total Cost (USD)*	1.593 million	1.699 million	1.432 million

Source: Amina Nasir
*As per the preliminary cost estimates for the expansion of the United Nations Mission in the Sudan into Darfur for a 12-month period, Annex II of UN document S/2006/591/Add.1

Subsequently, the United Nations' Security Council adopted Resolution 1706 (31 August 2006) which provided for an extension of the initial mandate of UNMIS[575] from 10,000 military personnel to 17,300 with a civilian component of up to 3,300 civilian police personnel and up to 16 Formed Police Units. The same resolution also authorised UNMIS to make use of all necessary means to protect the civilian population and UN personnel.

United Nations Mission in Darfur (UNMIS)

One of the main criticisms made to the United Nations regarding Darfur was the confusion of the mandates and involvement of the African Union and the United Nations to deal with the crisis in Darfur. Indeed, the initial field operation was implemented under the auspices of the African Union.

The African Union does not have the capacity to deploy the same number of troops and personnel as the United Nations, through member states[576]. It follows that

[575] According to Resolution 1590 (24 March 2005), contained in UN document S/RES/1590 (2005), UNMIS was established with 10,000 military personnel and a civilian component including up to 715 civilian police personnel.

[576] According to the United Nations Department of Peacekeeping Operations, the top twenty troop contributors to UN missions as of 31 August 2006 are (in descending order): Bangladesh, Pakistan, India, Jordan, Nepal, Ghana, Uruguay, Ethiopia, Nigeria, South Africa, Senegal, China, Morocco, Kenya, Benin, Brazil, Sri Lanka, Egypt, Argentina, France. Interestingly enough, 7 of these 20 countries are in Africa. However, although they may be contributing troops, none of these appears in the 2006 top twenty providers of assessed contributions to the UN peacekeeping budget.
UN Department of Peacekeeping Operations, "Fact Sheet", New York: United Nations Department of Public Information, September 2006, p. 3.

the field operations deployed by the African Union could not deal with the major threats posed by the situation in Darfur and handle the needs of civilians, including internally displaced persons, with the capacity deployed (7,000 troops[577]). According to the estimates put forward by experts and scholars, the number of troops required in Darfur was of at least 15,000, as shown also in the Secretary-General's proposals for a military capacity in the table above. In 2004, however, the AMIS mission had only 3,320 personnel.[578] According to reports of the Secretary-General on the security situation in the region, there was a need for more police officers and patrols in camps where internally displaced persons lived, in particular to ensure that internally displaced women and children were safe, and for human rights experts to monitor and train local authorities.

The United Nations Mission in Darfur was a peacekeeping operation[579], designed primarily to monitor the implementation of the Ceasefire Peace Agreement. This has several implications. Firstly, the United Nations mission is accountable for upholding the tenets of the Agreement. Secondly, any action taken must be justifiable under the terms of the mandate fixed by Security Council resolutions 1590 (2005) and 1706 (2006). Furthermore, the principles guiding United Nations peacekeeping operations must be in place. It is essential to bear in mind that the United Nations Mission in Sudan was not one implemented for 'humanitarian protection purposes', despite the fact that resolution 1706 (2006) gave UNMIS the power to take all necessary means to protect civilians and United Nations personnel under Chapter VII of the UN Charter.

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[577] *The Economist*, "Sudan: Keep crying out", December 9, 2006, p. 11: "Last week, after a year of concerted international pressure, [President Bashir's] government agreed to let a small UN contingent into Darfur to help bolster the rickety 7,000-strong African Union force there, which has sadly failed to assert itself."

[578] Security Council resolution 1574 (2004) increased the capacity to 3,320 staff for AMIS.

[579] Peacekeeping is defined as "a way to help countries torn by conflict create conditions for sustainable peace. UN peacekeepers – soldiers and military officers, police and civilian personnel from many countries – monitor and observe peace processes that emerge in post-conflict situations and assist conflicting parties to implement the peace agreement they have signed." "United Nations Peacekeeping: Meeting New Challenges", "Frequently asked questions", New York: United Nations Department of Public Information, June 2006.

International Crisis Group Suggestion for a Mission in Darfur

The International Crisis Group was monitoring the unfolding of events in Darfur. The NGO submitted its recommendations to the Security Council in March 2006 for an operational mission in Darfur[580] to

> authorise a two-phase intervention in Darfur under Chapter Seven of the Charter, with the following elements:
> (a) for the first phase ... a lead nation would serve as the advance element of the full UN mission by sending the bulk of an initial 5,000 troops to Darfur, with three main stabilisation tasks:
> i. interdiction of military activities across the Chad-Darfur border;
> ii. protection of civilians in Darfur... and
> iii. rapid-reaction support of AMIS forces until the transition to a full-fledged UN peace support operation.
> (b) for the second phase, immediate planning for a peace support operation of some 15,000 troops – none of whom should be diverted from the mission of the existing UN Mission in Sudan (UNMIS) – with a mandate emphasising civilian protection, ceasefire enforcement and monitoring of the Chad-Sudan border...

The International Crisis Group had come up with this suggestion in March 2006, whereas the Secretary-General's report was submitted in July 2006. Discussions and brainstorming efforts could have taken place, in the first quarter of 2006, between senior staff at the UN Secretariat and ICG experts, in order to optimise the use of ideas and resources and to expedite the planning stages of the mission implementation.

The following section will apply the responsibility to protect to Darfur, in a speculative manner, in order to identify pointers and elements that could have been applicable in the case of Darfur.

3 The Responsibility to Protect Applied to Darfur

3.1 Political, Economic and Legal Rationale

The United Nations' involvement in the Sudan covered several areas. In the case of Darfur, however, in light of the diverse factions fighting against each other and the fact that the government had been reluctant to allow humanitarian assistance for those in need, an intervention for humanitarian purposes could have been foreseen. The purpose of this sub-section is to identify, in retrospect, what could have been done to address the crisis at an early stage. Obviously, since this is undertaken *ex post facto*, the discussion presented below remains hypothetical and

[580] International Crisis Group. "To Save Darfur". *Africa Report* No 105, 17 March 2006, p. iii.

based on the assumptions and facts available. The theoretical framework of the responsibility to protect will be used as a basis for discussion. Indeed, the following hypothesis is submitted: the responsibility to protect principle applied in the case of Darfur could have changed the normative approach taken, and could have provided a basis for addressing the needs of the victims of Darfur. The International Crisis Group advocated such an approach.

> The question needs to be addressed, however, whether at this stage the situation is so grave as to justify, if Khartoum's resistance continues, the most extreme exercise of the international community's responsibility to protect – namely, a major military 'humanitarian intervention', involving here the deployment, against Khartoum's will, of the significant international force envisioned by Resolution 1706. If such a case is to be made to the Security Council, there are five criteria of legitimacy which need to be satisfied. How do these criteria apply to the current situation in Darfur?[581]

3.2 Assessing the 'Just Cause Threshold'

To be, or not to be, declared 'genocide'?

The World Summit Outcome Document, in the paragraphs relating to the responsibility to protect, identifies four circumstances which allow for military intervention: genocide, ethnic cleansing, war crimes and crimes against humanity. Interestingly enough, had the situation in Darfur been clearly categorised as 'genocide', this could have made a big difference, in several respects. Firstly, the legal regime and sanctions applicable would have been very different, since genocide is considered as a severe breach of international law and is punishable under the Genocide Convention. The International Criminal Court may prosecute individuals held accountable for committing such crimes.

Genocide[582] is defined, in Article 2 of the Genocide Convention (1948), as:

> Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.[583]

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[581] International Crisis Group, Policy Briefing, *Africa Briefing* N°43: "Getting the UN into Darfur", Nairobi/Brussels, 12 October 2006, p. 16.

[582] The term 'genocide' is attributed to Raphael Lemkin, a legal scholar, who coined the term from the Greek root for 'family' and the Latin root '*occidere*' (to kill) in the 1940s.

The Rome Statute of the International Criminal Court mirrors this definition.[584]

The Commission of Inquiry on Darfur

The Commission of Inquiry on Darfur, established pursuant to Security Council resolution 1564 of 18 September 2004[585], was entrusted with the task "to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable".[586]

The Commission stated in its report, the Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General[587], that:

> The Commission concludes that the Government of Sudan has not pursued a policy of genocide.[588]

This meant that any potential intervention in Darfur could not be justified on account of genocide happening in the region. The Commission did point out, however, that there may have been two elements of genocide contained in the actions of the government and rebel groups in Darfur.[589]

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[583] Convention on the Prevention and Punishment of the Crime of Genocide, approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948, entry into force on 12 January 1951.

[584] Rome Statute of the International Criminal Court, Part 2. Jurisdiction, Admissibility and Applicable Law, Article 6, "Genocide":

> 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.

[585] UN Security Council document S/RES/1564 (2004), 18 September 2004.

[586] UN Security Council Resolution1564 (2004), 18 September 2004, operative para. 12.

[587] Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to Security Council Resolution 1564, Geneva, 25 January 2005, p. 124.

[588] *Ibid.*, p. 131.

[589] Report of the International Commission of Inquiry on Darfur, *op. cit.*, p. 4:

> The Commission concluded that the Government of the Sudan has not pursued a policy of genocide. Arguably, two elements of genocide might be deduced from the gross violations of human rights perpetrated by the Government forces and the militias under their control. These two elements are, first, the *actus reus* consisting of killing, or causing serious bodily or mental harm, or deliberately inflicting conditions of life likely to bring about physical destruction; and, second, on the basis of a subjective standard, the existence of a protected group being targeted by the authors of criminal conduct. However, the crucial element of genocidal intent appears to be missing, at least as far as the central Government authorities are concerned.

Former United States Secretary of State Colin Powell declared that the situation in Darfur was 'genocide', in a statement to the Senate Foreign Relations Committee, on 9 September 2004.[590] This had consequences, since genocide is considered as part of *jus cogens*. By making such a statement, and by endorsing a situation of genocide, the United States should have taken action.[591] Action was not taken, and officials tried to withdraw what had been said[592]. The opportunity to react was there.

Generally speaking, the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds. Rather, it would seem that those who planned and organized attacks on villages pursued the intent to drive the victims from their homes, primarily for the purposes of counter-insurgency warfare.
The Commission does recognise that in some instances individuals, including Government officials, may commit acts with genocidal intent. Whether this was the case in Darfur, however, is a determination that only a competent court can make on a case by case basis. The conclusion that no genocidal policy has been pursued or implemented in Darfur by the Government authorities, directly or through the militias under their control, should not be taken in any way as detracting from the gravity of the crimes perpetrated in that region. International offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide.

[590] "Powell declares Killing in Darfur 'Genocide'", The NewsHour with Jim Lehrer, 9 September 2004, available at http://www.pbs.org/newshour/updates/sudan_09-09-04.html (accessed January 16, 2009).

[591] The position of the United States on genocide is complex. Indeed, the US signed the Genocide Convention in December 1948, at the time of its development, but only ratified it on 25 November 1988. The reasons behind this are the fear that US citizens could be tried and the fact that certain acts could be considered as genocide. At the time of ratification of the Genocide Convention, the US Senate passed the 'Lugar-Helms-Hatch Sovereignty Package', adopted on February 19, 1986, introducing reservations to, and clarification of the Senate's understanding of, the Genocide Convention, as well as a provision that the President should not ratify the Convention with the United Nations before 'implementing legislation' had been passed. The 'implementing legislation' (Proxmire Act) included jurisdiction for acts committed either on US territory or by US nationals. See "Resolution of Ratification (Lugar-Helms-Hatch Sovereignty Package), S. EXEC. REP. 2., 99th Cong., Ist sess. (1985)". Interestingly, in 2007, the US Congress passed the "Genocide Accountability Act" which amends the law by stating that aliens permanently residing in the United States, and perpetrators of genocide who have been brought into the United States (even if the crime has been committed elsewhere), may be prosecuted in the US. For a commentary on the United States and the Genocide Convention, see LeBlanc, Lawrence J. *The United States and the Genocide Convention.* Durham (USA): Duke University Press. 1991. See also Korey, William. "The United States and the Genocide Convention: Leading Advocate and Leading Obstacle", *Ethics & International Affairs*, Vol. 11, No. 1, April 2006, pp. 271-290.
This is closely related to the debate over the International Criminal Court, and the decision by President Bush's administration not to ratify the Rome Statute of the ICC for fear of undermining the sovereignty of the United States and that US officials could be tried by the ICC, among other reasons (some critics also argued that the Rome Statute is incompatible with the US Constitution).

[592] If the events occurring in Darfur were qualified as 'genocide', the United States had the obligation under international law to punish the perpetrators of the genocide and prevent any further acts of genocide, according to the 1948 Genocide Convention, in Article 1: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Thus, it was a political move to reverse what Colin Powell had said.
It is also noteworthy that the Genocide Convention does not state *how* prevention and punishment are to be carried out, which adds a further complication to the matter.

Crimes against Humanity and War Crimes

The Report of the Commission of Inquiry mentions crimes against humanity[593] and war crimes, as stated above: "International offences such as the crimes against humanity and war crimes that have been committed in Darfur...".[594] This is very important when considering the application of the responsibility to protect.

Indeed, the Report was commissioned by the United Nations, which in 2005 agreed that crimes against humanity and war crimes are among the conditions allowing for a military intervention if the state's 'responsibility to protect' was not met. Thus, the responsibility to protect would be applicable to the situation in Darfur, at least in theory.

Human rights violations, forcible transfers of population, breaches of international humanitarian law were among the acts harming internally displaced persons and civilians, who were in need of protection and assistance. This situation could have been deemed a threat to international peace and security, due to the instability caused in the region. In turn, this could have stirred the idea of an 'intervention for human protection purposes'. Moreover, in this case, a specific legal and sanctions regime could have been set up to address the crimes against humanity or war crimes which occurred in Darfur.[595]

Large-scale Loss of Life

Furthermore, the other condition set out in the Responsibility to Protect definition did occur, namely large-scale loss of life. The main problem with the concept in this respect is that it does not specify what the threshold criterion refers to when it mentions *large-scale* loss of life.[596] Indeed, the responsibility to protect report does not specify when the threshold criterion is met, in other words how many deaths amount to 'large scale' loss of life. It is understandable that the drafters of the Responsibility to Protect Report wanted to leave room for interpretation and

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An interesting finding is the lack of awareness by the American public of what was happening in Darfur, which the authors link to the fact that addressing genocide is not a priority foreign policy goal for the US, see Bamberger, Sara Heitler et al. "The Responsibility to Protect (R2P): Moving the Campaign Forward", *op. cit.*, pp. 37-40.

[593] See Chapter 1, Section 2.4 Rules of War and Peace, for the definition of crimes against humanity and war crimes.

[594] Report of the International Commission of Inquiry on Darfur, *op. cit.*, p. 4.

[595] The legal framework for war crimes and crimes against humanity is very precise, and a Tribunal for Darfur (or the Sudan) could have been established.

[596] This has been discussed in Chapter 4 on the Responsibility to Protect.

not categorise occurrences, but this does remain a major controversy in the concept. In fact, the lessons of late twentieth century crises could have constituted a good basis for assessing a threshold range.[597] In the case of Darfur, several measures could have been used to justify a major crisis situation, such as the percentage of deaths per year in regard of the population[598], the number of deaths per day, the number of internally displaced persons and refugees, the number of internally displaced persons killed, the number of civilians lacking food, shelter, or access to humanitarian assistance. These figures, although difficult to compile, could have been provided by field workers and by non-governmental organisations with operations in Darfur.[599]

Human Rights Violations and Internal Displacement

Most of the Security Council resolutions stated that massive violations of human rights were taking place in Darfur. This, coupled with the fact that the Sudanese government no longer adequately protected civilians, could also have prompted the international community to take action. It is also noteworthy that racial discrimination as a cause of concern had not been raised. Indeed, massive violations of human rights and racial discrimination are two norms of *jus cogens*, or peremptory norms of international law[600]. *Jus cogens* norms are taken to have a status of acceptance among the international community of states and norms, which cannot be derogated from. As such, the Vienna Convention on the Law of Treaties specifies that any treaty in violation of peremptory norms of international law is null and void.[601] Genocide, crimes against humanity, war crimes and torture are part of *jus cogens*.[602]

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[597] Reference is made to Rwanda and Kosovo.

[598] The consideration of the percentage of deaths per year or per day, in comparison of the total population for example, could provide indication of large-scale loss of life. In the case of Darfur, this percentage of deaths of the total population would have demonstrated large-scale loss of life.

[599] UNDP and UNICEF, with NGOs such as Médecins sans Frontières and the International Crisis Group may have had relevant figures at hand.

[600] *Jus cogens* norms are defined as follows, in the Vienna Convention on the Law of Treaties, 1969, Article 53:

> For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law, having the same character.

[601] Vienna Convention on the Law of Treaties, 23 May 1969, United Nations *Treaty* Series, vol. 1155, p. 331, Article 53:

> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

The Commission on Inquiry does make it a point that mass displacement did occur in Darfur, and that this constitutes a crime against humanity:

> At the time of the establishment of the Commission and, subsequently, upon its arrival in the Sudan in November 2004, two irrefutable facts about the situation in Darfur were immediately apparent. Firstly, there were more than one million internally displaced persons (IDPs) inside Darfur (1,65 million according to the United Nations) and more than 200,000 refugees from Darfur in neighbouring Chad to the East of the Sudan.[603]

International Humanitarian Law

International humanitarian law is contained in the Four Geneva Conventions (12 August 1949) and the Two Additional Protocols (1977). The Four Geneva Conventions deal with persons who are wounded or sick in times of war on the ground or at sea, while the Protocols (also referred to 'Additional Protocols to the Geneva Conventions') deal with the protection of victims in times of international armed conflict (Protocol I) and non-international armed conflict (Protocol II).[604] In this sense, international humanitarian law deals with the civilian population of a country at war, whether international or civil war. This is the essence of what constitutes the international humanitarian law regime.

Although such a distinction is artificial, international humanitarian law is often broken down into two sub-branches, *jus in bello* and *jus ad bellum*.[605] The law of war regulates all aspects of waging war and seeks to limit the effects of hostilities, and is codified in The Hague Conventions of 1899 and 1907.[606] The law of assistance provides details of help and aid to non-combatants of war. However, this

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The Vienna Convention on the Law of Treaties entered into force on 27 January 1980.

[602] For further references, see Brownlie, Ian. *Principles of Public International Law*. 5th ed. Oxford and New York: Oxford University Press, 1999, pp. 511-517; Kolb, Robert. *Ius contra bellum: Le droit international relatif au maintien de la paix*, 2003, *op. cit. Akehurst's Modern Introduction to International Law, op. cit.*; Schachter, O. *International Law in Theory and Practice*. Dordrecht: Martinus Nijhoff, 1991; Shaw, Malcolm M. *International Law, op. cit.*

[603] Report of the International Commission of Inquiry on Darfur, *op. cit.*, p. 61.

[604] For further reading, see Kalshoven, F. *Constraints on the Waging of War*. Dordrecht: Martinus Nijhoff, 1987.

[605] Robert Kolb provides the following definitions (in footnote 1), in his article: Kolb, Robert. "Origin of the twin terms *jus ad bellum/jus in bello*", *International Review of the Red Cross*, N°320, pp. 553-562, 31 October 1997, available at http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNUU (accessed 16 January 2009).

> *Jus ad bellum* refers to the conditions under which one may resort to war or to force in general; *jus in bello* governs the conduct of belligerents during a war, and in a broader sense comprises the rights and obligations of neutral parties as well.

[606] For further details, see Byers, Michael. *War Law, op. cit.*; Sandoz, Y., Swinarski, C., Zimmermann, B. (eds.). *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Geneva and Dordrecht: ICRC and Martinus Nijhoff, 1987; Pictet, J. *Development and Principles of International Humanitarian Law*. Dordrecht and Geneva: Martinus Nijhoff and Henry Dunant Institute, 1985.

difference is difficult to maintain, since international humanitarian law as contained in the Geneva Conventions and the Additional Protocols governs the conduct of hostilities, the responsibilities and rules applicable to the parties at war, and the assistance to victims and civilians (combatants and non-combatants). In this sense, international humanitarian law clearly delimits the obligations, responsibilities, and conduct of belligerents in times of war, as well as sanctions applicable if these are not respected.

International humanitarian law is part of customary international law[607], through the Geneva Conventions and the Additional Protocols.[608] In times of conflict, international humanitarian law is applicable to protect civilians. There was a situation of internal crisis in Darfur. It is thus surprising that there is no mention of international humanitarian law as applicable to the civilian population, and to internally displaced persons specifically, as the main legal basis of protection. Indeed, the International Committee of the Red Cross has the mandate, under international humanitarian law, to provide protection and assistance to internally displaced persons.

Article 3 common to the Four Geneva Conventions[609] governs the conditions to be respected in case of non-international armed conflict:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
> (b) taking of hostages;
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
> (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly

[607] For further details, see the International Law Commission, 1980; UN Secretary-General's Report S/25704, 3 May 1993; Security Council Resolution 827, 25 May 1993. Henckaert, J.M., Doswald-Beck, L., *Customary International Humanitarian Law, volume I:* Rules *and volume II:* Practice (Two Parts), ICRC, Cambridge University Press, 2005.

[608] For further reading on the Martens Clause, see Ticehurst, Rupert. "The Martens Clause and the Laws of Armed Conflict", *International Review of the Red Cross*, N° 317, 30 April 1997, pp. 125-134, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNHY (accessed 10 May 2009).

[609] Also referred to as 'common article 3'.

> constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
> (2) The wounded and sick shall be collected and cared for.
> An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

Once crimes against humanity and war crimes, coupled with the deliberate targeting of the civilian population and forced displacement had been recognised as realities that occurred in Darfur, the next step could be taken by considering the Responsibility to Protect precautionary principles in order to assess potential options for military intervention.

3.3 Precautionary Principles

The criteria, upon which the Responsibility to Protect report is built, are just cause, right intention, last resort, proportional means, reasonable prospects and right authority. The following paragraphs will demonstrate that, thanks to the measurement and consideration of these criteria, it would have been possible to take necessary steps to address the situation in Darfur, and to what extent a solution with or short of intervention, may have been justifiable.[610]

Just Cause

The just cause criterion would have been satisfied by the seriousness of the threat. It is interesting that, at various times in the Darfur crisis, the just cause principle may have been addressed in different terms. Indeed, it would have been easier, between 2004 and 2005 to justify intervention, when the momentum was favourable[611]. In 2005, the fact that the International Commission of Inquiry on Darfur concluded that there had been no genocide in Darfur could seem to take away some strength from the just cause principle. However, the US State Department had declared that the crisis in Darfur contained elements of genocidal intent, and in light of the fact that the Commission of Inquiry gave weight to two elements of *jus cogens* as explained above, both provide an element of just cause justification.

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[610] Based on an assessment of the facts and data at hand, United Nations and NGO reports, and in particular the International Crisis Group, Policy Briefing, *Africa Briefing* N°43, Nairobi/Brussels, 12 October 2006.

[611] Since the US State Department indicated that the events taking place in Darfur amounted to genocide, and in September 2004, then Secretary of State Colin Powell qualified the situation in Darfur as genocide.

Right Intention

The primary purpose of an intervention, according to the just war and responsibility to protect theories, "must be to halt or avert human suffering"[612]. In the case of Darfur, the facts that the intervention would avert the cause of the problem, and would 'correct the wrong' that had been initially committed, satisfy the right intention principle.

Last Resort

This appears to be the element of the concept which is the most difficult to defend, in the case of Darfur. Nevertheless, in light of the announcement by the Prosecutor of the International Criminal Court[613] that individuals are held accountable for crimes against humanity and war crimes committed in Darfur, the last resort principle gained traction.

Indeed, the United Nations Secretary-General, in his numerous reports on the situation in Darfur, has repeatedly requested the government of Sudan to cooperate with the United Nations and consent to having an operation to assist civilians and internally displaced persons. However, as stated in the Responsibility to Protect Report,

> Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would have not succeeded.[614]

An objection to this is to ask what 'every non-military option' means. Traditional non-coercive measures include good offices, mediation, diplomatic and formal consultations, negotiation, economic sanctions, arms embargo, and the freezing of assets, as provided for in the UN Charter[615].

In the case of Darfur, the measures that have been used include good offices by the Secretary-General to induce the cooperation of the actors involved in the Darfur crisis and the freezing of assets of several individuals identified by the Panel of Experts established by the Security Council. Imposing economic sanctions on the oil industry would have ensured that the economy of Darfur was affected. In this case, the government would have been deprived of major revenues from the

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[612] *The Responsibility to Protect,* p. xii.
[613] Statement of 27 February 2007, see discussion on referral to the International Criminal Court below.
[614] *The Responsibility to Protect,* p. xii.
[615] UN Charter, Chapter VI, Pacific Settlement of Disputes, articles 33-38.

petroleum sector and any potential investments would have been hampered by these measures. Of course, the consequences of such measures would have been felt not only on the oil industry but also on the economy as a whole, thereby imposing further stress on the local population.[616]

The threat of sanctions and of a potential military intervention could have been much more vocal and strongly inserted into the Security Council resolutions, in the Secretary-General's reports, in order to give clear signs to the government of Sudan, as well as to factions and outsiders involved in perpetrating punishable acts in Darfur, that these cannot go unpunished.

> At the same time [senior Khartoum officials] should be told explicitly that it is in their interest to demonstrate they are at least prepared to cooperate with, or at least not hinder, international efforts, and they do not have a veto over the international community's responsibility to protect in Darfur, a responsibility Khartoum has shown conclusively it is not prepared to meet itself.[617]

A clear message should have been addressed to the major Sudanese actors, most importantly the National Congress Party, in order to convey the warning that the international community was not prepared to accept what was happening or what might happen. Although then Secretary of State Rice did make a statement in this sense, there were no follow up measures, which may have been interpreted by those accountable in Darfur that the international community of states would not punish these acts. Similarly, the European Union could have made statements and insisted that those who had committed reprehensible acts in Darfur be made accountable and, if found guilty, be punished.[618]

> Accordingly, the U.S., UN, African Union and European Union, acting together to the greatest extent possible but as necessary in smaller constellations and even unilaterally, should now:
> - apply targeted sanctions, such as asset freezes and travel bans, to key NCP leaders who have already been identified by UN-sponsored investigations as responsible for atrocities in Darfur and encourage divestment campaigns;
> - authorise through the Security Council a forensic accounting firm or a panel of experts to investigate the offshore accounts of the NCP and the NCP-affiliated businesses so as to pave the way for economic sanctions against the regime's commercial entities, the main conduit for financing NCP-allied militias in Darfur;

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[616] International Crisis Group. "Getting the UN into Darfur", *op. cit.*, p. 9: "And there is the further problem, common to all approaches aimed at shutting down Sudan's petroleum sector, that any serious impairment of it would have implications for the humanitarian situation in the country."
[617] International Crisis Group. "To Save Darfur", *op. cit.*, p. 23.
[618] It is, however, difficult when a large number of parties are involved, to reach agreement. This is also referred to as the 'least common denominator' problem.

> □ begin immediate planning for enforcing a no-fly zone over Darfur by French and U.S. assets in the region, with additional NATO support; obtaining consent of the Chad government to deploy a rapid-reaction force to that country's border with Sudan; and planning on a contingency basis for a non-consensual deployment to Darfur if political and diplomatic efforts fail to change government policies, and the situation on the ground worsens.[619]

Proportional Means

According to the Responsibility to Protect report, "the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective."[620] The scale of a hypothetical operation in Darfur remains a debated question. The size of the force in Darfur was a matter of disagreement among experts, with estimates ranging from 3,000 to 40,000 troops. Three thousand military personnel to monitor a ceasefire agreement, protect internally displaced persons in camps and on the move, provide humanitarian assistance and inter alia train the local police seems too low a capacity.

The scope of the operation would have required a clear statement in its mandate. The numbers provided by non-governmental organisations seemed closer to a realistic approach, with between 30,000 and 40,000 troops required, in order successfully to perform all the duties required.[621]

Reasonable Prospects

It is useful to ask the questions whether the military action would have been likely to be successful, whether it would have availed the purpose or intention of those carrying it out, and whether there is a chance that the conditions after an intervention would have worsened. In the long-term, in the case of Darfur, the intervention could have redressed the situation and avert further threats to the region. However, in the short-term, it may well be that the conditions for civilians would have worsened before improving. Indeed, access to Darfur was limited and the military operations would need to have been carried out in a planned manner, which may not allow for immediate air or land arrival.

It is conceivable that the perpetrators of atrocities would have retaliated against a force arriving in Darfur and persecuted civilians in an attempt to induce fear and hamper assistance from arriving. Moreover, if an intervention were carried

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[619] International Crisis Group. "Getting the UN into Darfur", *op. cit.*, p. 2.
[620] *The Responsibility to Protect*, p. xii.
[621] For further reading, see International Crisis Group. *Africa Briefing* N° 28. "The AU's Mission in Darfur: Bridging the Gaps". 6 July 2005.

out despite the protest (or lack of consent) of the Sudanese government, officials and authorities could have hampered access, thus creating a hostile environment and severe conditions for the local population. Finally, in the case of an intervention, there is a risk of an insurgency and rebellious actions on part of the local population or those in the factions in Darfur. This could have seriously affected the distribution of, and access to, assistance for the victims.

Right Authority: Action through the Security Council

In Resolution 1706 (2006), the Security Council makes a reference to the responsibility to protect:

> *Recalling also* its previous resolutions 1325 (2000) on women, peace and security, 1502 (2003) on the protection of humanitarian and United Nations personnel, 1612 (2005) on children and armed conflict, and 1674 (2006) on the protection of civilians in armed conflict, which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document....[622].

As correctly noted by William G. O'Neill,

> Little noticed, however, is the resolution's reference to paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document. These paragraphs describe what is known as the 'responsibility to protect', which world leaders at last year's UN General Assembly unanimously endorsed...
>
> Resolution 1706 is the first time that the Security Council has referred to the responsibility to protect in a specific country situation where armed UN peacekeepers are to be deployed under Chapter VII of the UN Charter. This chapter allows the council to take whatever military means necessary to restore international peace and security.[623]

In other words, the Security Council in resolution 1706 (2006) was acting under Chapter VII of the UN Charter[624] and granted the United Nations Mission in Sudan the power to "use all necessary means" to protect civilians. This could have

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[622] Security Council Resolution 1706 (2006), adopted by the Security Council at its 5519th meeting, on 31 August 2006, UN document S/RES/1706 (2006), preambular para. 2, emphasis in original.

[623] William G. O'Neill. "The responsibility to protect Darfur: The UN should send a peacekeeping force to Darfur – even without Sudan's consent", *Christian Science Monitor*, New York: Christian Science Monitor, 28 September 2006, p.1, available online at http://www.csmonitor.com/2006/0928/p09s01-coop.html (accessed January 19, 2009).

[624] Security Council Resolution 1706 (2006), adopted by the Security Council at its 5519th meeting, on 31 August 2006, UN document S/RES/1706 (2006), operational paragraph 12, emphasis in original:

12. Acting under Chapter VII of the Charter of the United Nations:

(a) *Decides* that UNMIS is authorized to use all necessary means, in the areas of deployment of its forces and as it deems within its capabilities:

-to protect United Nations personnel, facilities, installations and equipment.., to protect civilians under threat of physical violence,

-in order to support early and effective implementation of the Darfur Peace Agreement, to prevent attacks and threats against civilians....

constituted the basis of a military intervention in Darfur. Of course, under international law, the consent of the government of Sudan to forces entering its territory would have been an advantage. The latter had been requested in several instances, and the government of Sudan made it clear that it would not cooperate[625]:

> In the case of Darfur, the Security Council has 'invited' Sudan to consent to the deployment of UN troops... The Security Council, however, is not required to gain the government's consent before sending in troops. By inserting the reference to the responsibility to protect, the Security Council is giving notice to Khartoum that while it seeks the government's cooperation, others will have to step in and substitute if Sudan cannot fulfill its sovereign responsibilities.[626]

China and Russia Interests

The interests that China and Russia had in Darfur are beyond political stakes. Indeed, Sudan had petroleum reserves, and thus the reactions of both countries to resolutions or threats to the Sudanese economy were also to be seen in this light. China has sought to develop economic ties, and in parallel to encourage investment and trade, with Sudan. Thus, part of the economic rationale behind the support for Sudan stemmed from the consideration of the country as a market for Chinese goods and services. The telecommunication sector had yet to pick up in Africa, and the Chinese telecommunication corporations were looking into contracts in the region, as were the construction and hotel industries. The African continent represented a potential emerging market, as well as heavy investment opportunities, which China had clearly identified.

Threat of a Veto in the Security Council

If the identification of genocide, crimes against humanity and war crimes and the steps to undertake an intervention with a military option had been stated clearly in the Security Council, the matter would have come under consideration. The five permanent members of the Security Council would have been able to use their veto, had a resolution been tabled. In fact, it is very probable that China and Russia would have at least threatened to use their veto in case of a vote on a resolution pertaining to Darfur. The reasoning behind this related to economic and strategic interests.

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[625] Monthly Report of the Secretary-General on Darfur, 26 September 2006, UN document S/2006/764, p. 10: "51. During the reporting period, President Bashir and Vice-President Taha made remarks, including threatening armed resistance and other violence against the United Nations if Security Council resolution 1706 (2006) is implemented, and even promising to open special camps to train fighters who would violently resist the presence of United Nations peacekeepers in Darfur."

[626] William G. O'Neill, *op. cit.*, p. 1.

However, although the United States also had enhanced ties with Sudan in connection with its foreign policy and the cooperation offered by the government of Sudan in connection to the 'war on terror', it seems unlikely that the United States would have vetoed a resolution presented in the Security Council at the time. China and Russia, on the other hand, had several reasons to do so.

China and Russia are generally opposed to interference in the affairs of another state, for different reasons. For China and Russia, interference in the affairs of another state could have repercussions internally. These countries did not wish to see the intervention in Darfur as a precedent allowing the international community to treat their own cases in the same way, in particular with the same justifications and argumentation. Moreover, non-interference in the affairs of another state is a matter of principle for the non-aligned movement. Russia does not wish to alienate China, a major economic and political partner, by going against its policies. In this context, China and Russia would probably have adopted a prudent stance, and abstained or made use of their veto, had a resolution be put to a vote in the Security Council.

Intervention without a Security Council Resolution

Obviously, without a Security Council resolution and authorisation,

> any such military blockade would be seen as an illegal act of war (and one harder to morally justify than a military intervention aimed directly rather than as here very indirectly, at civilian protection). It would risk a very serious political confrontation with China, which – along with other oil importers from Sudan – would also at the least demand full economic compensation.[627]

Although the option of intervention without a Security Council resolution remained open, it was highly controversial for several reasons. First of all, a major element of the responsibility to protect concept is that the most suitable authority to establish a military operation is the Security Council. Furthermore, under international law, an intervention, which has not secured Security Council authorisation prior to action, may be considered illegal.[628] Moreover, action taken without Security Council

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[627] International Crisis Group. "Getting the UN into Darfur", *op.cit.*, p. 9.

[628] In the case of the intervention in Kosovo, for example, legal scholars remain divided on the question of the legality of NATO action.
See Rytter, Jens Elo. "Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond", *Nordic Journal of International Law* Vol. 70, No. 121, 2001, p. 123.
"However, in terms of legitimacy it makes a huge difference whether or not intervention has some basis in prior Security Council resolutions expressing concern for the humanitarian

authorisation undermines the credibility of the United Nations, and of the action itself, and should remain an exception in cases when the Security Council is deadlocked or that a resolution risks a veto by one of the five permanent members.[629] The Uniting for Peace procedure could have been used in this case, if the Security Council failed to address threats to international peace and security, owing to disagreement among its permanent members. The matter could have been transferred to the General Assembly under the Uniting for Peace procedure, in an Emergency Special Session. A two-thirds majority of present and voting UN members would have had to be secured, in order to pass a resolution adopting measures. A Uniting for Peace resolution would not have been a binding legal instrument, as it would have been a General Assembly resolution. However, as soft law and coming from the body consisting of all the United Nations members, it could have been politically important.

In the case of Darfur, Security Council Resolution 1706 (2006) allowed action under Chapter VII of the UN Charter. If the precautionary principles were satisfied, the next step towards implementing an intervention would have been to address the operational principles, as will be discussed in the next sub-section.

3.4 Operational Principles

According to the responsibility to protect and to just war theory, the military operation of an intervention must have the following six operational principles.

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situation, possibly even determining that it constitutes a threat to international peace and security. Furthermore, Security Council authorisation must be obtained *prior* to action."

[629] Nevertheless, if the Security Council is deadlocked, the Uniting for Peace procedure could be made use of. The UN General Assembly Uniting for Peace Resolution (A/RES/77) of 3 November 1950 states that if the Security Council fails to address threats to international peace and security, owing to disagreement among its permanent members, the matter should be transferred to the General Assembly. This was initiated by the United States in October 1950 in the context of the Cold War and the Korean War, as a measure to bypass Soviet vetoes of the time. The Uniting for Peace procedure has, however, hardly ever been used.

Table 19: Responsibility to Protect Operational Principles

1. Clear objectives
2. Common military approach among involved partners
3. Acceptance of limitations
4. Rules of engagement
5. Acceptance that force cannot be the principal objective
6. Maximum possible coordination
7. Minimum use of force

Source: Amina Nasir

Clear and Unambiguous Mandate

The mandate should be unambiguously stated in a Security Council resolution. In the case of UNMIS, the mandate was clearly specified, and later expanded, in several Security Council resolutions.[630]

A clear mandate also implies identifying the actors, the targets and practical goals that will be involved in the operation. As has been explained in a previous chapter[631], the international institutional network of organisations dealing with humanitarian issues, and internal displacement in particular, is extensive. Efforts are not always coordinated and in some cases, this has hampered protection and assistance rather than improving conditions for the victims. In the case of Darfur, the following organisations would have been involved in field operations - UNHCR, OCHA, the Office of the High Commissioner for Human Rights, UNDP, UNICEF, the World Food Programme, the World Health Organisation, the International Organisation for Migration, the Secretary-General's Representative on Internally Displaced Persons, the International Committee of the Red Cross, the Norwegian Refugee Council, and the Global IDP Project. Of course, with so many organisations working concurrently in the field and in light of their different ways of operating and approaches, a concerted effort to coordinate action in the crisis is a requirement.

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[630] Specifically, in the case of Darfur, the military force mandate would have had to protect and provide assistance to civilians, to assist internally displaced persons and refugees, to restore law and order, to monitor agreements and the ceasefire, to monitor access for humanitarian workers, to establish no fly zones, to place patrols in IDP camps and in areas where attacks occur, and, finally, to take all necessary steps to ensure the security of civilians, UN personnel and other actors involved in dealing with the victims.

[631] See Chapter 5 From Problem to Network: The Emerging Institutional Framework for Internally Displaced Persons

Maximum Possible Coordination between Organisations in the field: the Collaborative and Cluster Approaches

As of September 12, 2005, UNHCR assumed the lead responsibility for protection, camp management and emergency shelter for internally displaced persons in the field. UNHCR also became the 'global protection cluster lead' for IDPs, responsible for coordinating the assistance for internally displaced persons, for camp management, for providing emergency shelter relief, for addressing water, nutrition and sanitation needs, and for collaborating with other agencies within their areas of specialisation.[632]

In Darfur, certain tasks were assigned to agencies through United Nations documents. Thus, the United Nations Development Programme was entrusted with the assessment of the judiciary in Sudan. Most of the coordination efforts could have focused on the obvious sub-areas of expertise, with the World Food Programme involved in assessing nutritional needs and providing a plan for meeting the needs of civilians and internally displaced persons. The World Health Organisation would have been entrusted with health priorities, advising UNHCR and NGOs on immediate needs and medical concerns, as well as imminent health threats which required attention. It is important to note that organisations would have been requested to document and keep records of needs, aid provision and the like in order to integrate these concerns in terms of costs, budgets and lessons learned. The requirement for clear rules of engagement and acceptation of limitations could have been met by signing Memoranda of Understanding among the actors involved, whereas the acceptance that force cannot be the principal objective of the mission would have been explained to staff and enshrined in organisational policies, handbooks and procedures.

The reshuffling and lack of coordination in the organisational framework related to internally displaced persons, explained in detail in a previous chapter, could have been a serious drawback in the practical aspect of an intervention.

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[632] See Chapter 5, Section 4.2 The Cluster Approach and the "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", *op. cit.* and OCHA's Humanitarian Reform Support Unit Internet site: http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=217 (accessed May 10, 2009).

Suggested Military and Operational Measures

Implementation of No-Fly Zones

One of the measures that could have been implemented in Darfur in view of protecting civilians and establishing a relatively secure environment was the implementation of no-fly zones. The basis of the no-fly zone could have stemmed from the case of Iraq in 1991. Indeed, the United Nations' Security Council, in resolution 688 (1991) stated that it was[633]:

> *Gravely concerned* by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions which threaten international peace and security in the region,
> *Deeply disturbed* by the magnitude of the human suffering involved ...
> 1. *Condemns* the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten international peace and security in the region;
> 2. *Demands* that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression, and in the same context expresses the hope that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;
> 3. *Insists* that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and make available all necessary facilities for their operations.

Creation of Safe Havens for Internally Displaced Persons

Building upon the context of Security Council Resolution 688 (1991) pertaining to the situation in Iraq, safe havens for internally displaced persons could have been created. In this context, the United Nations could have launched an operation.[634] Indeed, the justification used in 1991 in order to establish safe havens was that the Security Council was gravely concerned by the repression of the civilian population in many parts of the country, that this led to a massive flow of refugees towards and across international borders, and finally that this could threaten international peace and security in the region.[635] These same concerns could have easily justified a similar Security Council resolution for Darfur, adopted in the Security Council.

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[633] United Nations Security Council Resolution 688, 5 April 1991, preambular paras. 4 and 5, operative paras. 1, 2, and 3.
[634] For study purposes, this hypothetical operation is termed "Operation Blue Nile".
[635] Security Council Resolution 688, adopted at the Security Council's 2982nd meeting on 5 April 1991.

Referral to the International Criminal Court

In its Resolution 1593 (2005), the Security Council referred the situation in Darfur to the International Criminal Court, with a retroactive element dating back to 2002. This was an extremely important measure, since the International Criminal Court is the instance mandated to investigate and prosecute genocide.[636]

On February 27, 2007, the Prosecutor of the International Criminal Court declared that "proceedings would start against the Sudanese State Minister for Humanitarian Affairs, Ahmad Muhammad Harun, and the militia/Janjaweed commander, Ali Kushayb, for war crimes and crimes against humanity committed in West Darfur in 2003-2004".[637]

4 What would have changed, had the Responsibility to Protect been applied?

> While the responsibility to protect is often loosely discussed solely in terms of military intervention to end conflict, the doctrine covers a much wider spectrum of responses – both non-coercive and coercive – over the whole continuum of conflict response, from prevention to reaction to rebuilding.[638]

4.1 Precautionary Principles

The consideration of the precautionary principles would have been a helpful step in addressing the crisis in Darfur. The table below builds on the previous section.

Table 20: Application of the R2P Precautionary Principles to the Darfur Crisis[639]

Responsibility to Protect	Darfur
Just cause	Civilians under attack Genocide Violations of human rights Ethnic cleansing Large-scale human suffering
Right intention	To halt human suffering To redress wrongs No political purpose

[636] In the cases of former Yugoslavia and Rwanda, two ad hoc tribunals had been created, the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. The International Criminal Court (ICC), established in 2002, has jurisdiction to investigate and prosecute genocide if national courts are unable or unwilling to do so.

[637] International Crisis Group, "Darfur: International Criminal Court Prosecutions Welcomed, Those Responsible Warned", Media release, Brussels, 27 February 2007, available at www.crisisgroup.org.

[638] International Crisis Group. "Getting the UN into Darfur", *op.cit.*, p. 15.

[639] Table created for Chapter 4 The Responsibility to Protect.

Last resort	*Ultima ratio* Chapter VI measures to be exhausted
Proportional means	Restore peace Ensure return of IDPs and refugees Protect civilians and victims Humanitarian rationale
Reasonable prospects	No worsening of situation
Right Authority	United Nations Security Council

Source: Amina Nasir

Table 21 presents the main justifications that the Security Council could have used, should an intervention in Darfur have been considered. All of these items put together could have satisfied the seriousness of threat/just cause criterion.

Table 21: Justification of an Intervention in Darfur

Issue	**Where to find mention?**
Threat to international peace and security	Security Council resolutions
Threat to international peace and security of region	Security Council resolutions
Civil war (non-international armed conflict)	Security Council resolutions Non-governmental organisations' reports UN Secretary-General Reports on Sudan
Large-scale human suffering	Security Council resolutions Non-governmental organisations' reports UN Secretary-General Reports on Sudan
Gross and massive violations of human rights	UN Secretary-General Reports on Sudan
Crimes against humanity	Report of the International Commission of Inquiry on Darfur
War crimes	Report of the International Commission of Inquiry on Darfur
Civilians targeted	Security Council resolutions Non-governmental organisations' reports UN Secretary-General Reports on Sudan
Forced (internal) displacement	Non-governmental organisations' reports UN Secretary-General Reports on Sudan
Massive refugee flows into neighbouring countries	Security Council resolutions UN Secretary-General Reports on Sudan

Source: Amina Nasir

Once the points above had been secured, the Security Council could have undertaken the consideration of a resolution to address the situation in Darfur, with

possible measures under Chapter VII of the United Nations Charter. The momentum seemed favourable since the term 'genocide' had been used

> By the summer [of 2004] the biggest and most sinister word that could be applied to such a situation, 'genocide', had been uttered. A shock went through the world opinion: ten years after the Rwandese genocide, when commemorations of the 1994 horror filled the newspapers and TV screens, could the same nightmare be occurring again in another part of the African continent? Or was the international community guilty of blindness and neglect? Or perhaps both?[640]

The resolution, in this case, would have authorised the use of force by employing specific terms:

> An authorisation exists only if the Council has *explicitly* mandated member states to intervene. A determination by the Security Council that a Chapter VII situation – a threat to international peace and security – exists, does not suffice, neither is any term short of 'authorises', such as 'demands', 'insists' or 'stresses the need to prevent...' a sufficient legal basis for the use of force.[641]

The resolution, presented on behalf of the European Union and sponsored by France and the United Kingdom, could have been put to a vote shortly before resolution 1706 was passed. In other words and in a hypothetical framework, this could have been discussed in 2006. It is necessary to consider which states were non-permanent members of the Security Council at the time, in order to extrapolate on how a vote could have ended.

In 2006, membership of the Security Council was the following (in addition to the five permanent members): Argentina, Congo, Denmark, Ghana, Greece, Japan, Peru, Qatar, Slovakia and Tanzania. Three of the nine non-permanent members are countries of the African continent. Because of their affiliation to the West, it can be assumed that Denmark, Greece, Japan and Slovakia would have followed the votes of France and the United Kingdom, and most probably would have been influenced, to a certain extent, by the stand that the United States would have expressed. Ghana, in other statements, had made clear its position to help its African neighbours, and would most probably have voted in favour of an intervention. Qatar, on the other hand, had abstained from the vote on resolution

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[640] Prunier, Gérard. *Darfur: The Ambiguous Genocide, op. cit.*, p. viii.

[641] Rytter, Jens Elo. "Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond", *op. cit.*, p. 123.

1706 (2006).[642] It can be inferred that it most probably would have abstained on the hypothetical resolution, or followed the Chinese and Russian votes.[643]

4.2 Practical and Operational Concerns

An operation set up in Darfur would have had as main priorities the delivery of humanitarian relief, the protection of and assistance to internally displaced persons, ground and air delivery of aid, the establishment of camps for internally displaced persons and their surveillance, and perhaps an 'oil for assistance' programme. In the hypothetical intervention under consideration, which states would have been willing to send troops and deliver assistance to Darfur? Although the theoretical elements of the responsibility to protect and normative issues appear to find answers in what has been detailed above, the concrete and practical dimension remain unclear. This is also linked to the chaotic situation in the Sudan. Nevertheless, the operational stakes are difficult to conceive of, and remain the 'weakest link' in the speculative exercise developed in this chapter.

The most important political issue the international community probably had in mind in the case of Darfur was the fear of setting a precedent. Indeed, once a resolution regarding the situation in Darfur was passed or even if the situation had been discussed, this could serve as the basis for future reference, as well as develop into a norm of customary international law. There was a will to safeguard against attempts to establish a precedent, where the international community had to intervene to protect and assist.[644]

The other obstacles to an intervention in Darfur appear to be of operational and logistical nature. How would the hypothetical intervention be planned, implemented and carried out in practical terms? Which states would send the troops? How would the political will to 'do something' be secured? Political stakes would also have been involved, however. Were states willing to send troops to protect and assist the 'far away' victims of Darfur? Nicholas Wheeler referred to this,

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[642] The voting on this resolution was as follows. Votes in favour: Argentina, Congo, Denmark, France, Ghana, Greece, Japan, Peru, Slovakia, United Kingdom, United States, Tanzania. Abstentions: China, Qatar, Russian Federation. Available at http://unbisnet.un.org (accessed 19 January 2009).

[643] At this point, it is important to remind the reader that Qatar has economic interests in the oil industry in Sudan.

[644] China and Russia, in particular, were concerned by setting a precedent because of the situations they face internally.

> Armed with the new R2P, are we any better placed to avoid the paralysis and inaction that gripped the Security Council over Rwanda in April 1994? Implicit in these remarks is the notion that the use of force should have been employed to end the suffering in Darfur, and that the refusal of Western militaries to act shows that the major states are not prepared to place the lives of their military personnel at risk to save strangers.[645]

These questions will be raised in the following chapters, which will offer some ideas of outstanding issues.

[645] Wheeler, Nicholas J. and Egerton, Frazer, "The Responsibility to Protect: 'Precious Commitment' or a Promise Unfulfilled?", *Global Responsibility to Protect*, Vol. I, No. 1, February 2009, p. 131.

Chapter 7 Conclusions: Meeting the Challenge

> In just five years – a remarkably short time when set against other movements in the history of ideas – we have seen the emergence of what can reasonably be described as a brand new international norm of really quite fundamental ethical importance and novelty in the international system. On any view that is unquestionably a major breakthrough, and one that, for all the grinding and wearying task of implementation that lies ahead, should generate our optimism about the art of the possible in international relations[646].

This chapter will discuss the development of the responsibility to protect norm, current issues of international order, and the evolving nature of threats to international security.

1 The Development of the Responsibility to Protect Norm

It is particularly relevant for international relations scholars, as well as for political scientists and international lawyers, to consider the process of norm setting and how this has developed in the case of the responsibility to protect. From a challenge put forward by then UN Secretary-General Kofi Annan to the international community in 2000, the 'responsibility to protect' concept has expanded to be included in discussions both within and outside the United Nations.

Francis Deng coined the expression 'sovereignty as responsibility' in 1996, in his earlier work[647]. Deng's argument was that states are sovereign on the international scene, since national sovereignty is granted through international law to members of the international community. However, the related aspect of responsibility, both to their citizens and to the other members of the international community, also has a weighting. Thus, the novelty of the concept is that states are bound to follow the rules of 'good citizenship' among each other, as well as to uphold certain rights and fulfil duties towards their citizens. Deng also linked the notion of responsibility to that of protection in another reference[648]. Thus, his focus

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[646] Evans, Gareth. "Making Idealism Realistic: The Responsibility to Protect as a New Global Security Norm", *op. cit.*

[647] Francis M. Deng et al. *Sovereignty as Responsibility: Conflict Management in Africa, op. cit.*

[648] Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community.* Washington D.C.: Brookings Institution, 1993.

and interest was on victims of conflict, their rights as citizens, and on persons who were displaced within their own country. These happen to be the key themes of the responsibility to protect concept.

Although human rights and the plight of civilians have taken precedence as a centre of attention on the international scene today, this does not imply that it will be so in the future. It is difficult to predict whether such issues will remain at the forefront of the debate in international relations. Values change according to the context of international affairs and politics. The genesis of the responsibility to protect does seem to have been accurately timed, bringing a new angle to the deadlock in which some of the most complex aspects of international relations had been neglected. It can also be argued, however, that the attention from which it benefited is closely linked to the events occurring throughout the world at the beginning of the twenty-first century, as well as to the attempts by the international community as a whole to seek new solutions to older problems.

From the time that the International Commission on Intervention and State Sovereignty published its report, 'The Responsibility to Protect', this terminology, as well as its inherent principles, became familiar within various circles. The advocacy and promotion of the concept carried out by the ICISS Commissioners[649] between 2001 and today is impressive. Despite the events taking place in the last quarter of the year 2001 and reduced attention devoted to the responsibility to protect at the time of its release, its authors made tremendous efforts to publicise the most important features of the normative framework - the three main aspects of prevention, reaction and rebuilding - and the positioning of the debate from the perspective of the victims and the importance of state responsibility for protection of its citizens. Through conferences, articles[650], speeches and dissemination, the advocates of the responsibility to protect promoted their work, unfailingly responding to those who questioned its potential and explaining the tenets of the responsibility to protect concept. The Commissioners now needed a way to secure endorsement. This was done through the then Secretary-General Kofi Annan, who was a known supporter of the responsibility to protect concept. Indeed, the 2004

[649] Most notably Gareth Evans, Mohamed Sahnoun, Cornelio Sommaruga and Ramesh Thakur, as well as Thomas Weiss, who chaired the research group which assisted the Commission.
[650] The most noted of which was the one published in Foreign Affairs in November/December 2002: Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect", *Foreign Affairs*, *op. cit.*

Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change[651] refers to sovereignty as responsibility.

> The Panel endorses the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.[652]

In 2005, at the UN World Summit, world leaders endorsed the responsibility to protect in the World Summit Outcome document.[653]

> For a concept that addresses central issues of the world order such as sovereignty, violent conflict and human rights, R2P has made an astonishing career. Introduced by the International Commission on Intervention and State Sovereignty (ICISS) in the wake of the attacks of September 11, 2001, the concept survived the divisive debates over the invasion of Iraq and was adopted by 150 heads of states in the Outcome Document of the 2005 World Summit.[654]

2 Current Issues of International Order

The challenging outstanding questions for this research are summarised below, with attempts to address open issues and suggest further orientation of the debate.

2.1 Human Security

As has been explained in Chapter 1, the nature of threats to international security has evolved. Indeed, internal or civil conflicts are now more open than they were fifty years ago, and new issues have emerged on the international scene which must now be given attention as well: this is the case of the increase and growing effectiveness of non-state actors, transnational groups, and civil society.

In this context, it is necessary to give some consideration to the concept of human security. What is human security, and how is it defined? In the responsibility to protect principles, human security is explained as being multidimensional, external, internal, narrow and broad:

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[651] United Nations. December 2004. *A more secure world: Our shared responsibility*, *op. cit.*, paras. 29 and 30.
[652] *A more secure world: our shared responsibility*, *op. cit.*, "Summary of Recommendations, Part 3: Collective security and the use of force, Using force: rules and guidelines", para. 55.
[653] World Summit Outcome Document, *op. cit.*, paras. 138-139.
[654] Saxer, Marc. "The Politics of the Responsibility to Protect", *op. cit.*, p.2.

> The fundamental components of human security – the security of *people* against threats to life, health, livelihood, personal safety and human dignity – can be put at risk by external aggression, but also by factors within a country, including 'security' forces. Being wedded still to too narrow a concept of 'national security' may be one reason why many governments spend more to protect their citizens against undefined external military attack than to guard them against the omnipresent enemies of good health and other real threats to human security on a daily basis.
> 2.23 The traditional, narrow perception of security leaves out the most elementary and legitimate concerns of ordinary people regarding security in their daily lives. It also diverts enormous amounts of national wealth and human resources into armaments and armed forces, while countries fail to protect their citizens from chronic insecurities of hunger, disease, inadequate shelter, crime, unemployment, social conflict and environmental hazard. When rape is used as an instrument of war and ethnic cleansing, when thousands are killed by floods resulting from a ravaged countryside and when citizens are killed by their own security forces, then it is just insufficient to think of security in terms of national or territorial security alone. The concept of human security can and does embrace such diverse circumstances.[655]

2.2 Focus on Individuals

People, or individuals, are now a growing focus of attention[656]. The respect for human rights is a feature of the present international order. Civilian casualties in internal wars are on the increase.

> The aim [of new wars] is to control the population by getting rid of everyone of a different identity (and indeed of a different opinion). Hence the strategic goal of these wars is population expulsion through various means such as mass killing, forcible resettlement, as well as a range of political, psychological and economic techniques of intimidation. This is why, in all these wars, there has been a dramatic increase in the number of refugees and displaced persons, and why most violence is directed against civilians.[657]

Moreover, in many instances, the perpetrators of violence against civilians are states themselves, represented either by the government, or by armed factions who are not part of the government but who have gained control and have the means to generate threats to citizens. It is within this specific context that the responsibility to protect has tackled this aspect by 'sovereignty as responsibility'[658]:

> On the one hand, in granting membership of the UN, the international community welcomes the signatory state as a responsible member of the

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[655] *The Responsibility to Protect*, paras. 2.22-2.23.
[656] Of course, international terrorism has been a main area of concern since September 11, 2001. Nevertheless, in light of the issues discussed, this will not be dealt with here.
[657] Kaldor, Mary. *New & Old Wars: Organized Violence in a Global Era*. Cambridge: Polity Press, Blackwell Publishers, 2001, "Introduction", p. 8.
[658] The concept is not new (it was coined by Francis Deng in the late 1990s), but its inclusion in the terminology of the responsibility to protect can be credited to the International Commission on Intervention and State Sovereignty.

> community of nations. On the other hand, the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties.
> 2.15 Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.[659]

2.3 Human Rights

In the case of the responsibility to protect and internally displaced persons, the human rights referred to as 'basic' are those which are under immediate consideration as a first priority - the right to life, liberty and security of the person, the right not to be subjected to torture or to cruel, inhumane or degrading treatment or punishment and the right to freedom of movement and residence within the borders of each state.[660] Of course, civil, political, economic and social rights are important to internally displaced persons; however in the context of protection and persecution, the primary focus is on the right to life, integrity and security.

As attention is drawn to the responsibilities and accountability of the state towards its citizens, human rights concerns become a prime consideration. This is directly linked to a change in focus in international affairs which occurred after the Second World War.[661] Similarly, in recent years, there has been a change in behaviour, coupled with a stronger consciousness for justice[662].

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[659] *The Responsibility to Protect*, paras. 2.14 and 2.15.

[660] Universal Declaration of Human Rights 1948, Articles 3, 5, and 13; available at http://www.un.org/Overview/rights.html (accessed January 16, 2009).

[661] This was also the time when many of the international legal instruments of the human rights regime were adopted: 1948 the Universal Declaration of Human Rights, 1966: the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, for example.

[662] Evidence of this is the creation of the international criminal tribunals and the International Criminal Court.
There is concern about the economic, social and cultural rights of people being considered as 'secondary', and the question of inclusion of these rights in this work has been put to our consideration: Brussels School of International Studies/University of Kent, Conference 2008: Pathways to International Security, 17-18 May 2008, Brussels.

2.4 Accountability

Another aspect of consideration, linked to the prominence of human rights on the international scene, is that of accountability. The creation of the international criminal tribunals on the former Yugoslavia and Rwanda after the crises as well as the creation of the International Criminal Court, is evidence that the international community has found ways to react to crimes. In this context, crimes against humanity and war crimes are punishable under international law. There is a clear message behind the establishment of the international criminal tribunals, namely that crimes of this nature will no longer go unpunished, and as the trials and cases have shown, their perpetrators have been brought to account for these. This is meant to discourage potential abuses of international law, but also demonstrates that the concern for the security and human rights of individuals and groups of individuals has risen on the international agenda.[663]

Facing Crises, Taking Action

> But at the end of the day the case for R2P rests simply on our common humanity: the impossibility of ignoring the cries of pain and distress of our fellow human beings.[664]

There was a time when, under the umbrella of the concept of sovereignty, states were able to hide what was going on within their borders. At that time, state sovereignty was the 'licence to kill' which Gareth Evans[665] refers to and was the sole concern of the state itself. With the advent of media coverage and the immediate availability of information in all regions through the Internet and public attention drawn to crises unfolding around the world, states are less free to let such situations last, under the eyes of civil society.

From 'absolute sovereignty' in the seventeenth century, there has thus been a move towards 'relative sovereignty'. This does not imply that the concept of sovereignty has changed. Rather, with globalisation and the exchange of information and images, states and their governments are under scrutiny and cannot afford to be considered as 'bad citizens' of the international community. Information pertaining

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[663] This runs concurrent to the United Nations' efforts in relation to end impunity in recent years.
[664] Evans, Gareth. "Making Idealism Realistic: The Responsibility to Protect as a New Global Security Norm", *op. cit.*
[665] *Ibid.*, p. 3.

to the causes of crises, the figures relating to the number of casualties and the number of displaced persons are available. Thus, sovereignty is now more visible.

In fact, a lack of action by the international community will be rapidly questioned by civil society and public opinion. Citizens, non-governmental organisations and pressure groups will question the authorities and leaders of the state, and demand answers as to why the required action was not taken. Responses to the current problems are expected, not only of the United Nations, but also of states. In this context, the responsibility to protect offers answers and means to address some of these concerns.

The next section will offer an overview of the current threats to international security, and will propose some ideas for monitoring or considering what may be done to address these.

2.5 Security Council Reform

> Will the responsibility-to-protect principles, in combination with numerous other commitments made in recent resolutions and treaties, become a collective force to pressure the UN Security Council to finally improve dramatically its working methods and practices? As the Security Council enters its seventh decade, is it too much to hope that it will one day take decisions to *prevent* conflicts, to *react* to early warnings, to intervene and stop genocide? Will the UN and regional organizations identify indicators that will trigger sanctions and humanitarian responses, including, as a last resort, using force to ensure peace? Will the governments agree in coming years to principles on the use of force as suggested by the ICISS, the High-level Panel, and the Secretary-General? The answer to these questions will be the answer to a larger one. Will the twenty-first century repeat the twentieth century and be a continuation of the most violent period in all of recorded history?[666]

One of the suggestions to address the problems faced by the Security Council was a major reform. This was presented in the wider context of the United Nations reform. The reasoning behind the suggested reform was that the Security Council is not representative of the current international system: "Thus we can say that the Security Council 'ain't broke' but it 'don't fit no more'. It is, therefore, hardly surprising that there has been a long-standing discussion on reform of the Security Council going back at least until the late 1970s".[667] The issues under consideration in the reform were the size and composition of the Security Council, its working

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[666]Pace, William R. and Deller, Nicole. "Preventing Future Genocides: An International Responsibility to Protect", *op. cit.*, p. 32.

[667] Groom, AJR. "The Security Council: A Case for Change by Stealth" *op. cit.*, p. 283. See also the earlier discussion pertaining to the Jackson Report in Chapter 1, Section 2.3.

methods, decision-making process, transparency of its discussions and the use of the veto.[668] The High-Level Panel on Threats, Challenges and Change[669] came up with specific proposals for Security Council.[670] It recommended a reform of the Security Council to represent the world of the early years of the millennium, and not so much that of 1945, at the time of its conception[671].

The main arguments put forward by those countries seeking to obtain the status of permanent member are the following: population size (Brazil, India), contribution to the regional and global economy (Germany, Japan), the ability to contribute to sanctions[672], or the lack of regional representation. Moreover, all of them claim that the representation of the Security Council was very much crystallised at the time of its creation, in 1945.

Of course, such a major reform has flaws. It would require amendments to be made to the UN Charter, to reflect these changes in composition. This could risk undermining the core role and responsibility of the Security Council, which certain states may at the time decide to contest. Moreover, who would judge which

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[668] These questions were dealt with by the working group established in 1993. See Groom, *ibid.* P. 287.

[669] *A more secure world, op. cit.*

[670] "The aim of the High-Level Panel [wa]s to recommend clear and practical measures for ensuring effective collective action, based upon a rigorous analysis of future threats to peace and security, an appraisal of the contribution that collective action can make, and a thorough assessment of existing approaches, instruments and mechanisms, including the principal organs of the United Nations. ...
[The Panel] is being asked to provide a new assessment of the challenges ahead, and to recommend the changes which will be required if these challenges are to be met effectively through collective action.
Specifically, the Panel will:
Examine today's global threats and provide an analysis of future challenges to international peace and security ...
Identify clearly the contribution that collective action can make in addressing these challenges.
Recommend the changes necessary to ensure effective collective action, including but not limited to a review of the principal organs of the United Nations."
The High-Level Panel, "Terms of Reference", *op. cit.*, emphasis added.

[671] See *A more secure world: our shared responsibility.* Part 4: "A more effective United Nations for the twenty-first century", paras. 252-253. None of these suggestions were taken up, however.

[672] Among the arguments put forward by candidates to permanent membership of the Security Council, the ability to contribute to sanctions, military action and peacekeeping operations are key concerns. Japan, for example, claims a seat as a permanent member of the Security Council, but does not contribute to sanctions. India, on the other hand, has the capacity to contribute troops to potential military action. It is thus important to differentiate between measures under Chapter VI for Security Council expanded membership, with political capacity and a potential wider pool of candidates, and Chapter VII capability and willingness to use military action, contribute troops and military personnel, as well as the capacity to project military force regionally and contribute to peacekeeping activities.

countries would or would not be given a permanent seat, even if it were on a rotation basis, and who would decide whether to grant veto power to the new members?

The details relating to the Security Council reform were not taken up at the World Summit, although a reference was included, acknowledging the need for reform.[673] Thus, in the words of John Groom, "questions on the size and composition of the Security Council and use of the veto plague us still", "...the Security Council 'ain't broke' but there are some things we can do to 'fix it better'".[674]

Security Council Principles

The other main proposal for change in the Security Council concerns humanitarian intervention more directly. The 'Responsibility to Protect' Report, among other works, suggested that the Security Council, when deliberating any measure which is close to intervention or which could eventually lead to an intervention, should consider a list of questions and assessments.

3 The Evolving Nature of Threats to International Security Likely to Generate Internally Displaced Persons

The threats to international security, and the interpretation made of these threats, have evolved. Armed conflict remains a major threat to international peace and security. However, as our analysis of the responsibility to protect and its application to cases of internal displacement has demonstrated, it is no longer the only threat.

Globalisation involves the movement of people. If, for instance, the security of individuals is not guaranteed or taken care of and the situation could potentially lead to a conflict, this could become a threat to international peace and security.[675] Unstable states or states with less effective executive, legislative or judiciary authorities, infrastructure and powers could be potential threats to international peace and security as well. Thus regional and international peace and security may

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[673] World Summit Outcome Document, *op. cit.*, para. 153: "We support early reform of the Security Council as an essential element of our overall effort to reform the United Nations in order to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions. We commit ourselves to continuing our efforts to achieve a decision to this end and request the General Assembly to review progress on the reform set out above by the end of 2005."

[674] Groom, AJR, *op. cit.*. p. 287 and p. 297.

[675] Assuming that this happens on a mass scale, and within a short period of time.

be at stake. Economic gain and profit is among the threats to international peace and security as well. The competition for resources and access to market shares is a potential threat to international peace and security.

The national interest of states has the potential to become a threat to international peace and security. This is particularly true when the foreign policy of a state is aimed at fighting a specific target. In the case of the war on terror, for example, the perceived threat was that of an enemy, an axis of evil and a group of terrorists. The danger lies in the ill definition of such a group, i.e. when the 'enemy' is not clearly identified. If a state or a group of states pursues such a foreign policy, it could become a threat to international peace and security.

Mass Movement and Forced Displacement

Mass movement and forced displacement also have the potential to become threats to international peace and security. Forced displacement often occurs in times of internal conflict. As the study of the case of Darfur has shown, large-scale movement linked to conflict can lead to instability and lack of security.

The case of Iraq in 1991 comes to mind. In Resolution 688 (1991), the Security Council deemed the repression of the civilian population and the massive flows of refugees as threats to international peace and security[676]. Perhaps this is the way to progress. The Security Council can decide that forced displacement is a potential threat to international peace and security. Gareth Evans pertinently states that:

> All this [UN Charter Articles 39-42] language is as clear as it possibly could be in its application to external threats – the traditional concern with cross-border aggression and the threats this poses to international peace and security. But it is not so obvious how it relates to internal threats to civilian security of the kind with which the norm of the responsibility to protect is concerned. These situations clearly may involve a threat to, or breach of, the peace, but does addressing them involve maintaining or restoring *international* peace and security? Does the language of Article 42 anticipate collective action against a state when then only threat involved is to those within it? Does there have to be some provable external element, like cross-border refugee flows, to make a particular such case genuinely a threat to 'international' peace and security?[677]

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[676] See Chapter 2, Section 5.3.

[677] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, *op. cit.*, p. 133, emphasis in original.

It is true that such an argument is delicate, particularly because it may be coloured by political considerations. However, in theory, the Security Council does have the power to at least discuss these situations, as Evans recognises: "With no higher authority to gainsay it, threats to international peace and security are what the Security Council says they are. It does not have to give its reasons for determining a matter to be within the scope of Article 42 and does not explicitly do so."[678]

Internally displaced persons are therefore a relevant group since they represent a potential threat to international peace and security. As this thesis has hopefully demonstrated, they are part of the civilian population of states and thereby are entitled to the rights – and human rights in particular – granted to a state's citizens. Moreover, internal displacement frequently occurs in parallel with situations of violations of human rights, conflict, war crimes, crimes against humanity, genocide, ethnic cleansing, and these are the crimes from which a state has the responsibility to protect its population, according to the World Summit Outcome Document.

Internally displaced persons are also a vulnerable part of the population, since they remain within the borders of their home country or country of habitual residence. The link to territory by the very definition of their condition sets internally displaced persons in a delicate situation both vis-à-vis their home country and the international community. The concerns as to the human security of this group are obviously high. Access to, information about and knowledge of the exact location, condition and numbers of internally displaced persons are further hindrances to alleviating their plight.

To all the threats to international peace and security mentioned above, the responsibility to protect offers answers. Firstly, if individuals, their protection and security are the locus of attention, there are means to address these concerns. Human rights and international humanitarian law, for instance, can provide the basis of a protection and security regime. Ensuring that states have the ability and the will to uphold their responsibility for their citizens, and to make human security a

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[678] *Ibid.*, p. 134.

dimension of foreign policy and of sovereignty, will certainly contribute to decreasing the potential threats to international peace and security.

Secondly, the most appropriate body of the international community to deal with international peace and security is the United Nations' Security Council. The authors of the responsibility to protect left no doubt whatsoever about this.

Thirdly, when a threat to international peace and security occurs, the responsibility to protect provides tools for action. Initially, the threat must be analysed and all possible responses must be considered. If all other means have been exhausted, the responsibility to protect proposes to consider military intervention under limited and specific circumstances, with clear guidelines on how to carry out an 'intervention for human protection purposes'. Detailed operating procedures are also provided.[679]

Finally, the responsibility to protect firmly promotes prevention as the most important aspect of the concept, and the priority for avoiding threats to international peace and security to appear in international affairs:

> This Commission strongly believes that the responsibility to protect implies an accompanying responsibility to prevent. And we think that it is more than high time for the international community to be doing more to close the gap between rhetorical support for prevention and tangible commitment. The need to do much better on prevention, and to exhaust prevention options before rushing to embrace intervention, were constantly recurring themes in our worldwide consultations, and ones which we wholeheartedly endorse.[680]

3.1 Prevention Strategies

In recent years, several reports have focused on prevention of conflict, in line with the argument that development and conflict prevention are clear priorities for the United Nations for both the short and long-term. This is the case of the Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change[681], and of the Secretary-General's Millennium Summit Report[682], the Secretary-General's Action Plan to Prevent Genocide[683], and the World Bank Report[684]. Indeed, the Report of the High-Level Panel on Threats, Challenges and Change, in

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[679] *The Responsibility to Protect*, paras. 7.08 – 7.37, pp. 58-64.
[680] *Ibid.*, para. 3.1.
[681] *A More Secure World: Our Shared Responsibility, op. cit.*
[682] Annan Kofi A. *"We the Peoples: The Role of the United Nations in the 21st Century", op. cit.*
[683] United Nations' Secretary-General Kofi Annan. *Action Plan to Prevent Genocide, op. cit.*
[684] Collier, Paul. *Breaking the Conflict Trap: Civil War and Development Policy, op. cit.*

its main body and in Annex I, 'Summary of Recommendations', provides elements of conflict prevention, through six clusters[685].

Conflict Analysis and Monitoring

In most cases, the build-up towards the disintegration of the situation and the initiation of conflict or grave violations of human rights is preceded by signs, as Susan Woodward suggests: "The moment of breakdown into high-intensity or large-scale violence, the moment normally coded as war and noticed by outsiders, is most frequently due to some 'trigger'".[686] If this is the case, then it seems that a close monitoring of cases and situations, where these 'triggers' are either known or suspected, could lead to early recognition of a problematic situation, and in turn to preventive action.

A large number of non-governmental organisations specialise in country-specific or region-specific issues, and could be a first source of information. The International Crisis Group, a highly credible organisation, conducts extensive and regular research on the situations of crises around the world. The ICG's website[687] provides details of where these crises are taking place, and the ICG's monthly review, *CrisisWatch*[688], provides insights into the evolution of the situation. The International Crisis Group also hosts the *CrisisWatch* database and regular reports on countries and regions which are at risk of a crisis.

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[685] Respectively, economic and social threats, including poverty, infectious disease and environmental degradation; inter-State conflict; internal conflict, including civil war, genocide and other large-scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; transnational organised crime.

[686] Woodward, Susan L. 'Do the Root Causes of Civil War Matter ? On Using Knowledge to Improve Peacebuilding Interventions', *Journal of Intervention and Statebuilding*, 2007, Vol. 1, No. 2, p. 158.

[687] http://www.crisisgroup.org/home/index.cfm (accessed January 16, 2009)

[688] *CrisisWatch* is a 12-page monthly bulletin designed to provide busy readers in the policy community, media, business and interested general public with a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world. Published at the beginning of each calendar month, *CrisisWatch*

- summarises briefly developments during the previous month in some 70 situations of current or potential conflict, listed alphabetically by region, providing references and links to more detailed information sources;
- assesses whether the overall situation in each case has, during the previous month, significantly deteriorated, significantly improved, or on balance remained more or less unchanged;
- alerts readers to situations where, in the coming month, there is a particular risk of new or significantly escalated conflict, or a particular conflict resolution opportunity (noting that in some instances there may in fact be both); and
- summarises Crisis Group reports and briefing papers that have been published in the last month

(quoted from the ICG's website)

The International Federation of Red Cross and Red Crescent Societies also works on crisis monitoring. However, it is important to gain access to local knowledge and information as well, since many conflicts have a regional or local component, which can only be explained by experts. This was the case, for example, of the crises in Rwanda and Darfur, where the lack of local understanding would have precluded those involved from being able to act.

Just as 'corporate governance' is key to the business world, a 'state' or 'government' governance system could be considered in the realm of international affairs. This could be a combination of activities carried out by non-governmental organisations, private organisations and think-tanks, spanning from conflict and risk analysis, democracy and conflict monitoring, prevention advocacy, and executive governance. Screening states where leaders are endangering their citizens or the human rights of the latter and identifying potential crises is an important aspect of prevention in the case of potential threats to international security.

However, it must be emphasised that, despite having access to all the information and analysis, the main question remains the will and means to act, which will be discussed below.

Democracy and the Promotion of Human Rights

Another suggestion would be for the United Nations to consult non-governmental organisations such as the Inter-Parliamentary Union[689], in order to gain insights on how governments are dealing with internal political problems. Indeed, if these are not resolved, in the long term, potential internal chaos may lead to national, or even regional, instability and undemocratic procedures. Electoral voting processes should also be weighted and audited by international actors who can provide expertise and assistance to governments. The United Nations has such capabilities, through the UN Electoral Assistance Division and the UN Declaration of Principles for International Election Observation (October 27, 2005)[690]. The European Union also has such a capacity through the Congress of the Council of Europe and its EU Handbook for European Union Election Observation Missions[691], as does the Organisation for Security and Development in the Office for Democratic

[689] http://www.ipu.org/english/home.htm (accessed January 16, 2009).
[690] http://www.accessdemocracy.org/library/1923_declaration_102705.pdf (accessed January 16, 2009).
[691] http://ec.europa.eu/external_relations/human_rights/eu_election_ass_observ/docs/handbook_en.pdf (accessed May 28, 2008).

Institutions and Human Rights - Elections[692] and the OSCE Handbook for Long Term Election Observers[693]. The National Democratic Institute[694] and the Carter Center[695] can also carry out such a task.

The promotion of human rights, as well the insurance that human rights are upheld is equally important. Human Rights Watch[696] and Amnesty International[697] are two key organisations in this respect. By their presence in a large number of countries, these two organisations provide global, regional and national coverage. Corruption is also an indicator of where attention should be focused. Transparency International[698] provides elements of response, regular updates and indices.[699] The United Nations has the capacity to monitor potential situations where the protection of human rights is at risk.

Preventive Diplomacy

"Preventive diplomacy" was presented in former Secretary-General Boutros Boutros-Ghali's *Agenda for Peace* in 1992, and is defined as "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur".[700] Preventive diplomacy can include fact finding missions, early warning of potential conflicts, mediation, and confidence-building measures. Such initiatives may be taken by the Secretary-General or senior officials, and include negotiation, diplomatic efforts to secure action short of armed conflict and aimed at the resolution of the crisis. In essence, preventive diplomacy can be assimilated to efforts taken under Chapter VI of the UN Charter (Pacific Settlement of Disputes)[701], since it includes measures

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[692] http://www.osce.org/odihr-elections/ (accessed May 28, 2008).
[693] http://www.osce.org/publications/odihr/2007/04/24088_829_en.pdf (accessed May 28, 2008).
[694] http://www.ndi.org/globalp/elections/programselc/monitors.asp (accessed May 28, 2008).
[695] http://www.cartercenter.org/news/publications/election_reports.html (accessed May 28, 2008).
[696] http://www.hrw.org/ (accessed May 28, 2008).
[697] http://www.amnesty.org/en (accessed May 28, 2008).
[698] http://www.transparency.org/ (accessed May 28, 2008).
[699] The "Global Policy Forum" also provides reports and updates on human rights, the work of the Security Council. It has a section devoted to humanitarian intervention with links to documents mentioning the responsibility to protect, available at: http://www.globalpolicy.org/empire/humanitarian-intervention.html (accessed June 3, 2009).
[700] Boutros Boutros-Ghali. *An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Document A/47/277 – S /24111. New York: United Nations, 17 June 1992, Article II Definitions, 20, available at: http://www.un.org/Docs/SG/agpeace.html (accessed May 3, 2009).
[701] UN Charter, Chapter VI, Article 33.1: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a

taken to address threats to international peace and security and prevent these from escalating into conflict. Preventive diplomacy is thus related to peacekeeping and peace building initiatives, and former UN Secretary-General Dag Hammersköld referred to peacekeeping as "Chapter Six and a Half" of the United Nations' Charter, since it is not explicitly mentioned in the UN Charter.[702]

Preventive diplomacy covers a wide range of activities, including some of those mentioned in the paragraphs above, and former Secretary-General Kofi Annan suggested in 2001 to alter the designation 'preventive diplomacy' to 'preventive action', since diplomacy is only one of the measures of 'preventive action' which may consist of humanitarian action, development, human rights initiatives, among others. Mr Annan also mentions, in his report, that "preventive action should mostly be limited to measures under Chapter VI of the Charter, but ... enforcement action under Chapter VII must remain a legitimate means of last resort to prevent massive violations of fundamental human rights or other serious threats to the peace".[703] Former Secretary-General Annan presented several recommendations relating to conflict prevention and preventive action in the report.[704]

The next chapter will highlight the main trends and recommendations which have emerged as the result of the research presented in this dissertation, thereby providing a conclusion.

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solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".

[702] This implies that peacekeeping, and preventive diplomacy by extension, are to be considered between traditional peaceful means of conflict resolution (Chapter VI) and armed intervention (Chapter VII).

[703] Annan, Kofi A. *Report of the Secretary-General on the Prevention of Armed Conflict.* UN Document A/55/985 – S/2001/574, 7 June 2001, presented to the 55th session of the General Assembly, Part One: Mandate and role of the principal organs of the United Nations, II. United Nations mandate for the prevention of armed conflict, Section B. General Assembly and Security Council decisions and the views of Member States on conflict prevention, paragraph 22.

[704] Prevention should be taken up in all the United Nations activities, bodies, agencies and should become an area of focus. In addition, the General Assembly and the Security Council were urged to collaborate on such issues, as well as to integrate prevention aspects in their work, and to take into consideration the information and expertise from the UN human rights and development network. Mr Annan also urged the Security Council to make use of briefings and to invite the Emergency Relief Coordinator, in order to identify potential crisis situations and take preventive action. The Department of Political Affairs was identified as requiring further resources and devoting more attention to early warning and analysis relating to conflict prevention. Peacekeeping, and preventive deployment in particular, was deemed as having a role to play in conflict prevention.

Chapter 8: The Road Ahead – Trends and Recommendations

This final chapter provides thoughts for the road ahead and presents trends and recommendations as to what remains to be done. The responsibility to protect requires sustained efforts in order to clarify its scope and achieve its implementation. These are the priority areas, which should run in parallel to securing a strong legal and operational framework for internally displaced persons, before the responsibility to protect can be applied to internal displacement. In order to do so, the political will of the international community is the key challenge.

1 Recognising the Evolution in Public Thinking of the Concept of Sovereignty

The concept of sovereignty has not changed. Rather, the perception of what sovereignty implies, has evolved. Similarly, governance and accountability are two key issues in the international arena, whether at the economic, political or corporate levels[705]. The responsibility to protect provided a lead in this direction. States are no longer the only players in international relations, multinational corporations are another major force.

This development is helpful, in the sense that it may balance the international order. In addition, since international relations now focus on individuals, their aspirations and well-being, attention can be drawn to these areas within the borders of states.

Some scholars propose to establish criteria for sovereignty and upholding of human rights, similar to those which the European Union has established for the accession states.

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[705] For a discussion of "security governance", see Saxer, Marc. "Security Governance in a Post-sovereign World". Available at: http://www.responsibilitytoprotect.org/index.php/civil_society_statements/?theme=alt5 (accessed August 16, 2008).

2 Drawing Lessons from Empirical Data of Cases of Internal Displacement

As Chapter 6 has shown, the current reaction of the international community is not adapted to 'real' situations. Political and strategic interests are involved in the decision to protect and assist internally displaced persons. Nevertheless, there are measures which can be implemented in most cases. As the study of the institutional framework relating to IDPs presented in Chapter 5 has demonstrated, coordination efforts remain a priority.

Assessing what was required, in operational, political and legal terms, by considering a 'real' internal displacement crisis ex post, would be a step in the direction of drawing lessons and understanding what remains to be done. An expert on the 'responsibility to protect' should be part of this assessment, as should field workers. This will allow for a transparent account of which areas need improvement, which measures are suggested, and what steps require further investigation. This should be discussed with the RSG on the Human Rights of IDPs and with senior staff within the UN's humanitarian agencies and non-governmental organisations, in order to request their views.

3 Securing a Strong Legal and Operational Framework for Internally Displaced Persons

In the World Summit Outcome Document, the 'Guiding Principles on Internal Displacement' were recognised as "an important international framework for the protection of internally displaced persons"[706]. The Guiding Principles must be incorporated into national and regional legislative instruments[707]. At the political level, there is a need to strengthen political will through dialogue with governments, and to enhance capacity-building to implement the norms applicable to internally displaced persons, namely through training and the development of tools in cooperation with other agencies.[708]

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[706] World Summit Outcome Document, *op. cit.*, para. 132.

[707] Indeed, this may take some time, as pointed out by Professor Kälin during the interview (Berne, 14 July 2008), since national laws do not take into consideration the needs and protection of internally displaced persons.

[708] Interview with Walter Kälin, Berne, 14 July 2008.

A priority related to the operational framework dealing with IDPs is the need to improve the tangled 'institutional web' involved in internal displacement issues. Indeed, despite attempts at cooperation, collaboration, clusters and the like, confusion remains at the operational and policy levels. A 'toolkit' explaining who is who and who is mandated to do what would be helpful.[709] The table included in Appendix 2 is a step in this direction.

4 Clarifying the Scope of the Responsibility to Protect

A conclusion which became obvious at the time of ending our analysis, and in light of the recent events taking place in international affairs[710], is that the concept of the responsibility to protect requires a definition for operational purposes. In other words: what does the responsibility to protect cover, and when does it apply?

Gareth Evans[711] has provided an answer to this question, by publishing several statements after the tragic situation in Burma unfolded in May 2008.[712] It is, however, unfortunate that several academics have offered responses which are not coherent on whether the responsibility to protect was applicable in the case of Burma[713]. This could create confusion at a time when the responsibility to protect requires promotion. The Global Centre for the Responsibility to Protect may be the best place to coordinate such responses and to advocate the responsibility to protect and its practical application.[714] Most importantly, it is essential to state clearly that the responsibility to protect is not a concept which can be used to cover everything, or to justify every intervention.

> There are at least five key tasks that confront us if R2P is to become both effectively consolidated as a global norm and effectively operational in practice...
> A key part of the enterprise must be to develop a better understanding by policymakers of just what 'R2P situations' are. If they are perceived as

[709] As demonstrated in Chapter 5, the number of actors involved with IDPs both at the policy and operational levels, as well as the approaches taken, are intricate and complex. The toolkit could include links to the websites of the organisations, names of contact persons, explanation of mandates, memoranda of understanding and other relevant information.
[710] The tragic events in Burma and Sudan, for example.
[711] Co-Chair of the International Commission on Intervention and State Sovereignty and President of the International Crisis Group.
[712] Evans, Gareth, "Burma/Myanmar: Facing Up to Our Responsibilities", *The Guardian*, 12 May 2008, available at: http://www.crisisgroup.org/home/index.cfm?id=5430&l=1 (accessed August 16, 2008).
[713] See the statement of the Responsibility to Protect Civil Society, available at: http://www.responsibilitytoprotect.org/index.php/pages/1182 (accessed August 16, 2008).
[714] This is addressed in Bamberger, Sara Heitler et al. "The Responsibility to Protect (R2P): Moving the Campaign Forward", *op. cit.*, pp. 15-17.

> extending across the full range of human rights violations by governments against their own people, or all kinds of internal conflict situations, it will be difficult to build and sustain any kind of consensus for action: we will find ourselves rapidly back in the area of North governments worrying about how to justify foreign entanglements where no vital national interests seem to be immediately involved, and South governments being concerned about their sovereignty being at risk of interventionary over-reach [sic]. 'R2P situations' must be seen only as those actually or potentially involving large-scale killing, ethnic cleansing or other similar mass atrocity crimes — situations where these crimes are either occurring or appear to be imminent, or which are capable of deteriorating to this extent in the absence of preventive action — and which should engage the attention of the international community because of their particularly conscience-shocking character.
> *Two: Protect the integrity of the R2P concept.* The language in paragraphs 138 and 139 of the World Summit Outcome Document was the product of delicate negotiations to address the concerns of all UN members, including the need for a tool-box of non-military measures for prevention and the application of R2P only to the atrocity crimes, and the need for clear criteria to be met before invoking R2P. If the R2P concept is to win genuine universal consensus, and become effectively operational, it is critical that it not be seen either too narrowly, as only about non-consensual military intervention, or too widely, as a synonym for addressing all global ills broadly related to human security (e.g. protecting people from HIV/AIDS, climate change, or the proliferation of nuclear weapons or small arms).[715]

Clarifying the scope of the 'Responsibility to Protect' also implies reiterating the circumstances mentioned in the World Summit Outcome Document, which now constitute the situations to which the 'Responsibility to Protect' apply, namely, genocide, war crimes, ethnic cleansing and crimes against humanity.

> Maybe the main contribution of R2P proponents is to point out time and again the limited scope of the concept, and to argue against attempts to expand R2P beyond the four internationally widely accepted and solidly codified cases of genocide, ethnic cleansing, war crimes, and crimes against humanity. Any attempt to use R2P to legitimize action on behalf of the entire human security agenda will doom the prospects of the concept to become effective international customary law.[716]

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[715] Evans, Gareth. "The Responsibility to Protect: Creating and Implementing a New International Norm", *Address by Gareth Evans, President, International Crisis Group, to Human Rights Law Resource Centre*, Melbourne, 13 August 2007 and Community Legal Centres and Lawyers for Human Rights, Sydney, 28 August 2007. Available at: http://www.crisisgroup.org/home/index.cfm?id=5036&l=1 (accessed January 23, 2009).
[716] Saxer, Marc. "The Politics of the Responsibility to Protect", *op. cit.*, p. 6.

5 Implementing the Responsibility to Protect

> But I believe as passionately now as I ever have ... that ideas matter enormously, for good and for ill. And for all the difficulties of acceptance and application that lie ahead, there are – I have come optimistically, but firmly, to believe – not many ideas that have the potential to matter more for good, not only in theory but in practice, than that of the responsibility to protect.[717]

In terms of the operationalisation of the responsibility to protect, regional organisations and states must consider what options are available to respond to new challenges of international order, as identified throughout this thesis. Human security and civilian protection, gross and massive violations of human rights, as well as 'human crises' such as that in Darfur, must be addressed rapidly and concretely. This aspect needs to be developed carefully and precisely, with the help of United Nations and non-governmental organisations experts. Sapna Chhatpar suggested the creation of a 'responsibility to protect' 'toolbox' with reference to the measures available, an assessment of whether they are used appropriately, the background and main issues at stake.[718] Past crises can be analysed, in order to assess what went wrong and what was handled properly.[719] The consideration of a 'real' case, where the responsibility to protect can be applied, if this is agreed to by the main experts and advocates of the concept[720] and an outline of what should be done, would be ideal.[721]

Secretary-General Ban Ki-moon presented his views on the implementation of the responsibility to protect in a report[722]. These are structured around three pillars, namely the protection responsibilities of the state, international assistance and capacity-building, and timely and decisive response.[723] According to the

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[717] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, *op. cit.*, p. 7.

[718] Interview with Sapna Chhatpar, New York, 6 June 2007.

[719] The experiences of Darfur and of Rwanda are, in this sense, very relevant.

[720] Gareth Evans, Ramesh Thakur, Thomas Weiss, for example.

[721] "Perhaps the only way to really clarify the concept is to apply it to particular cases and make clear the extent to which it does and doesn't apply", Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All", Address to the Institute for Public Policy Research, London, 15 December 2008, available at: http://www.crisisgroup.org/home/index.cfm?id=5830&l=1 (accessed June 30, 2009).

[722] United Nations. Report of the Secretary-General. "Implementing the responsibility to protect". 12 January 2009. UN document A/63/677, available at: http://daccessdds.un.org/doc/UNDOC/GEN/N09/206/10/PDF/N0920610.pdf?OpenElement (accessed June 3, 2009).

[723] The international assistance and capacity-building pillar contains a large number of suggestions for implementing R2P. In particular, the Secretary-General identifies five capacities which are

Secretary-General, the protection responsibilities of the state can be strengthened by further research on violence, by promoting the respect for human rights and training practitioners accordingly, by holding accountable the perpetrators of the four crimes mentioned in the World Summit Outcome Document in relation to the responsibility to protect, and by integrating the responsibility to protect principles "into each culture and society without hesitation or condition, as a reflection of not only global but also local values and standards"[724].

6 Applying the Responsibility to Protect to Internal Displacement[725]

Link between R2P, the World Summit Outcome Document and Internal Displacement

The 2005 World Summit Outcome Document clearly defines the situations to which the responsibility to protect applies as genocide, war crimes, ethnic cleansing and crimes against humanity. Internal displacement often occurs in locations where such atrocities are taking place, in conjunction with human rights violations, in many cases. The link between internal displacement and the responsibility to protect is thus to be made at this level. In fact, this would be the way to start the discussion at the United Nations, by reference to the World Summit Outcome Document. This also explains why the clarification of the scope of the responsibility to protect is very important, as stated above. Once this has been established, conceptual and practical suggestions can be considered.

Conceptually, when applying the responsibility to protect to internally displaced persons, the issues presented in the table below need to be considered.

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critical, according to him, in order to achieve implementation. These capacities are conflict-sensitive development analysis, indigenous mediation capacity, consensus and dialogue, local dispute resolution capacity, and the capacity to replicate capacity. See Report of the Secretary-General. "Implementing the responsibility to protect", "III. Pillar two: International assistance and capacity-building" para. 45.

[724] *Ibid.*, "II. Pillar one: The protection responsibilities of the State", para. 20.

[725] The originality of this thesis lies here.

Table 22: Elements to Consider for the Practical Application of the 'Responsibility to Protect' to Internal Displacement

1. Does the case in question fall under the threshold of the responsibility to protect?
2. What is the cause of the disruption in the country? Is this a case of internal conflict?
3. What is the impact of the situation on the civilian population of the state?
4. What is the status of internally displaced persons? Are they accessible?
5. Is the state in question unable or unwilling to assist its civilian population and internally displaced persons?
6. What are the needs of internally displaced persons? Can a distinction be made between 'priority' or immediate needs and secondary needs?
7. Who are the actors involved? Authorities, external actors? What are their stake and their attitude towards internally displaced persons?
8. Which norms of international law are applicable? International humanitarian law? Human rights norms? Which treaties, covenants, specific instruments?
9. What is the involvement of the United Nations, or UN agencies? Are any non-governmental organisations involved and active in the field?

Source: Amina Nasir

Link between the UN Secretary-General's Representative on the Human Rights of IDPs, Special Adviser on the Responsibility to Protect, and Special Adviser for the Prevention of Genocide

The UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons and the UN Secretary-General's Special Adviser on the Responsibility to Protect, Mr Edward Luck, should collaborate on both issues. Professor Walter Kälin stated in July 2008 that cooperation had not yet begun.[726] Collaboration and regular meetings with the UN Special Adviser for the Prevention of Genocide, Dr. Francis Deng, are essential for consultation and mainstreaming of these issues across the United Nations. However, due to differing mandates and reporting lines, this may prove to be difficult in practice. Indeed, the UN Special Adviser for the Prevention of Genocide is a full-time position[727], supported by the High Commissioner for Human Rights but reporting directly to the Security Council. This makes Dr. Deng a UN staff member. Nevertheless, it also links genocide with threats to international peace and security.

[726] Interview with Walter Kälin, Berne, 14 July 2008.

[727] "In a continuing effort to strengthen the United Nations' role in [the] area [of genocide prevention], the Secretary-General has asked Mr. Deng to devote full time to this position." United Nations Press Release SG/A/1070, 29 May 2007, available at: http://www.un.org/News/Press/docs/2007/sga1070.doc.htm (accessed January 21, 2009).

Link between the Responsibility to Protect, IDPs and the Protection of Civilians in Armed Conflict

Internally displaced persons are members of the civilian population of a state. In this sense, UN Security Council Resolution 1674 (2006)[728], relating to the protection of civilians in armed conflict, is also a starting point for applying the responsibility to protect to internal displacement. Resolution 1674 expressly refers to the responsibility to protect and to forced displacement[729]. The Global Centre for the Responsibility to Protect published a "Policy Brief"[730] in January 2009 to detail the relationship between the responsibility to protect and the protection of civilians in armed conflict. The document defines the protection of civilians in armed conflict as follows,

> Broadly, the protection of civilians in armed conflict refers to the measures that can be taken to protect the safety, dignity, and integrity of all human beings in times of war which are rooted in obligations under international humanitarian law (IHL), refugee law, and human rights law. States bear the primary responsibility under these legal regimes to respect, protect and meet the needs of civilians in times of armed conflict.[731]

In the normative field, the responsibility to protect meets the protection of civilians in armed conflict. Indeed, they share a focus on the protection of individuals and their human rights. Moreover, in legal terms, states are mandated with the protection of their citizens and with upholding their obligations under international humanitarian law, human rights law and refugee law[732]. In this sense, "R2P has advanced the 'normative framework' of the protection of civilians"[733] by including the protection of citizens from genocide, war crimes, ethnic cleansing and crimes against humanity among the responsibility of states.

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[728] United Nations Security Council Resolution 1674 (2006) adopted at the 5430th meeting of the Security Council on 28 April 2006. UN Document S/RES/1674 (2006).
See also the *Report of the Secretary-General on the protection of civilians in armed conflict*, UN Security Council Document S/2007/643 of 28 October 2007 and the *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, UN Security Council Document S/1999/957 of 8 September 1999, considered as a basic document in this context.
[729] *Ibid.*, operative paragraphs 4, 5, 12 and 14 respectively.
[730] "Policy Brief: The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict", Global Centre for the Responsibility to Protect, January 2009, available at: http://globalr2p.org/pdf/GCR2PPolicyBrief-ProtectCivConflict.pdf (accessed May 2, 2009).
[731] *Ibid.*, p.1
[732] *Ibid*, p. 2
[733] *Ibid.*

Practical Suggestions

In practical terms, applying the responsibility to protect to cases of internal displacement implies considering what measures should be implemented when a state is committing genocide, war crimes, ethnic cleansing or crimes against humanity[734] which are inducing internal displacement.

The Brookings-Bern Project on Internal Displacement has conceived indicators of national responsibility for states faced with internal displacement.[735] The twelve measures identified are to prevent displacement and minimise its adverse effects, raise national awareness of the problem, collect data on the number and conditions of IDPs, support training on the rights of IDPs, create a legal framework for upholding the rights of IDPs, develop a national policy on internal displacement, designate an institutional focal point on IDPs, address internal displacement, encourage national human rights institutions to integrate internal displacement into their work, ensure the participation of IDPs in decision-making, support durable solutions, allocate adequate resources to the problem and cooperate with the international community when national capacity is insufficient.[736]

In this sense, broad suggestions can be made as to what should be done[737], such as warning the government of the state committing the atrocities that it has a responsibility to protect, freezing assets and applying sanctions, the Security Council should consider measures as its disposal, and individuals should be held accountable[738]. However, in order to apply the responsibility to protect, generating political will is the main challenge.

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[734] It could also be a combination of these situations.

[735] *Addressing Internal Displacement: A Framework for National Responsibility*. Brookings Institution –University of Bern Project on Internal Displacement, April 2005.
It is interesting that some of these measures have been initiated, namely by the Internal Displacement Monitoring Centre for compiling data and statistics and designing training material, see http://www.internal-displacement.org/.

[736] *Ibid.*, pp. 5-6.

[737] Alex Bellamy presents the suggestions of the US Task Force on the United Nations set up in 2004, and those contained in the Task Force's Report, *American Interests and UN Reform*, Washington D.C.: United States Institute of Peace, 2005. See Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, pp. 81-82.

[738] Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, p. 82

7 Securing Political Will

> The real test for the R2P is whether it can be transformed into a programme of action which delivers real protection to civilians in peril. There are strong indications that it can, and there has been notable progress, but careful diplomacy and a significant political commitment will be needed to overcome the many obstacles which stand in its way.[739]

Implementing the responsibility to protect implies first and foremost securing the political will to 'do something'. This is the main challenge which remains to be addressed. The question may also be put as: what could make the international community, as represented by the Security Council, decide to take action? The power of images should not be underestimated: the media have a role to play in this sense. Moreover, states are aware that the respect for human rights, and the lack of abuse in this area, is part of 'sovereignty' as defined in the current international order.

Another incentive would be the 'good international citizenship' designation. If a state were to fear that other states, NGOs or public opinion would point at it with accusations of perpetrating genocide, ethnic cleansing, war crimes or crimes against humanity, perhaps it may be less reluctant to accept assistance from the international community for what occurs within its borders. This is part of the dilemma, since on the one hand the state would be accused of committing atrocities and may refute these accusations and reject international assistance. On the other hand, in order to protect and assist civilians and victims, the consent and willingness of the state in question is desirable.

The Security Council has deemed situations of internal conflict and of protection of civilians as threats to international peace and security in the past. This is another path on which the United Nations could engage, with the assistance of the R2P Centre, as well as NGOs and ICISS Commissioners Evans and Thakur for example. This would be the starting point of implementing operationalisation of the responsibility to protect in practice. This needs to be done according to defined principles and at different levels.

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[739] Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities, op. cit.*, p. 199.

Achieving Consensus and Commitment

The political strength of the responsibility to protect lies in its ability to "tie different agendas together", as mentioned by Alex Bellamy.[740] Steps in the direction of achieving consensus and commitment to the norm must be handled carefully and slowly. Nevertheless, developing ideas of what can be done short of the UN Chapter VII measures, and bringing new impetus into the discussion are essential aspects. By moving to a more regional approach, the shift will also be "drawn away from the politics in New York"[741]. Putting pressure on governments to secure political will and making them take a stake in the norm is another way to progress. Gareth Evans mentions four arguments which could lead to concern, and thus to action

> ...one has to recognize that there are certain individuals, at or near the top of the food chains, whose attitudes are going to be decisive, and good arguments have to be found that will both appeal to them and be useful to them in explaining and defending their decisions. There are four different kinds of argument that matter in this respect: moral, national interest, financial, and political.[742]

The Capacity to Protect

Does the United Nations have the capacity to protect? Can the military and operational resources be found? As Chapter 5 has shown, the operational capacity to deal with protection in case of internal displacement should be feasible. Nevertheless, the peacekeeping resources may not follow. This implies difficulties in deploying a force, as well as delays in doing so. Time constraints are often high in emergency crises where protection is required immediately. Regional organisations could thus be requested to assist in capacity building, in resources and staffing.

Bottom Up Approach

The responsibility to protect needs to be recognised as a concept and normative framework, which has been endorsed by the United Nations. At this point, advocacy and 'marketing' of the concept are key priorities, both within the UN context and outside. Within the UN, the concept must be included in major documents, such as Security Council texts –in particular in Chapter VI and Chapter

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[740] Interview with Alex J. Bellamy, 4 February 2009.
[741] *Ibid.*
[742] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, op. cit.*, p. 228.

VII resolutions, but also referred to by the General Assembly, the Secretary-General, and by all the agencies and organisations in the 'UN constellation'.[743]

Non-governmental and inter-governmental organisations are also expected to use the R2P language in their statements, reports and appeals. Advocacy by R2P experts and knowledgeable individuals is another aspect of this approach: the UN Secretary-General Ban Ki-moon, Gareth Evans, Ramesh Thakur, Thomas Weiss, Alex Bellamy, Kofi Annan, Francis Deng, Cornelio Sommaruga, Lloyd Axworthy, to name but a few, are distinguished persons and have all contributed to developing the concept and published on R2P. Their various backgrounds and geographical locations would give further salience to the concept. Maria Banda suggests including "political leaders, Nobel Laureates, prominent public personas, and even Hollywood celebrities ... into the campaign".[744] Although this may grant transparency to the R2P concept and attract the media, it seems wiser to entrust R2P experts with the task of promoting the norm and ensuring its continued visibility in international affairs.[745] James Traub, the director of policy at the Global Centre for the Responsibility to Protect, who has also taken up the Sri Lankan crisis in an article published in the *Washington Post*[746], argues that there is a need to assess what is happening in the country, that the Security Council should discuss the crisis and remind the government of Sri Lanka of its responsibility.

This is yet another way to induce political pressure on a government in the public arena, and to ensure that the visibility of a crisis can lead to action, and to "mak[e] the voices of ordinary concerned citizens heard in the corridors of power, using all the resources and physical and moral energy of civil society organizations all round the world to force the attention of policymakers on what needs to be done, by whom, and when".[747] Encouraging the inclusion of the responsibility to protect in political agendas and creating national-based campaigns is essential.[748]

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[743] Importantly at OCHA, UNHCR, OHCHR, IOM, WHO, UNICEF, UNDP.

[744] Banda, Maria. "The Responsibility to Protect: Moving the Agenda Forward". *Report for the United Nations Association in Canada*, March 2007, p. 18.

[745] See "Open Letter to the Security Council on the situation in Sri Lanka", Global Centre for the Responsibility to Protect, 15 April 2009. The Global Centre for the Responsibility to Protect warned of the risks of a crisis, drawing the attention of the Security Council to the responsibility to protect of the government of Sri Lanka, and requesting the Security Council to monitor the situation and to take measures.

[746] Traub, James. "At Risk in Sri Lanka's War", *The Washington Post*, 22 April 2009.

[747] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, *op. cit.*, p. 224.

[748] Interview with Alex J. Bellamy, 4 February 2009.

Regional Endorsement

As a second step, the responsibility to protect must be referred to and endorsed at regional levels. Kristin M. Haugevik discusses this issue in further detail[749], and considers in what ways NATO, the European Union, the OSCE, ASEAN, the African Union and the Organisation of American States could contribute to the regionalisation of the responsibility to protect.[750]

For instance, and since many conflicts are unfolding in Africa, it would be extremely helpful for the African Union to endorse and refer to the concept in its meetings, declarations and conferences in order to ensure that all states in the region are aware of the concept. From this bottom up approach, the normative framework would become widespread and easily accessible, once clearly defined by both states and individuals. If this is successful, regional organisations and civil society members would be able to appeal to the United Nations and other international bodies to resort to and apply the responsibility to protect. Banda suggests having a plan for implementing R2P at the national level. The Global Centre for R2P could be the main player in devising this approach, and assisting in its rollout.

> Of course there are constraints to a practical implementation of the collective interest. But what are the alternatives? The question is not simply one of academic interest. Most of the factors that stopped the United Nations intervening to prevent genocide in Rwanda remain present today. Yet if we do nothing — if we are quiescent in the face of war crimes and ethnic cleansing — we will not only risk being pushed to the margins of global politics but we will also betray the many millions who look to the United Nations for the implementation of the high ideals of the Charter.[751]
>
> On any view, the evolution in just five years of the responsibility to protect concept, from a gleam in a commission's eye, to what now has the pedigree to be described as a broadly accepted international norm (and one with the potential to evolve into a rule of customary international law) is an extremely encouraging story, and we ought to be encouraged by it.[752]

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[749] Haugevik, Kristin M. "Regionalising the Responsibility to Protect: Possibilities, Capabilities and Actualities", NUPI Report No. 2-2008. Oslo: Norwegian Institute of International Affairs, 2008.

[750] Haugevik does conclude, however, that having the capacity to implement and regionalise the responsibility to protect does not imply securing the political will to do so, and that the latter lies with the member states constituting regional organisations.

[751] Annan, Kofi A. *Report of the Secretary-General on the Prevention of Armed Conflict.* UN Document A/55/985 – S/2001/574, 7 June 2001, presented to the 55th session of the General Assembly, Part Two: Role of the United Nations system and other international actors, VII. Conclusion, Section A. Overcoming the obstacles to conflict prevention, paragraph 165.

[752] Evans, Gareth. "Making Idealism Realistic: The Responsibility to Protect as a New Global Security Norm", *op. cit.*

This research work will have demonstrated that the development of concrete aspects of international relations laid the path for theoretical developments. Indeed, in the case of internally displaced persons, practical aspects preceded theoretical considerations. To pursue the ideas developed in this doctoral thesis, recommendations should be made on the application or the operationalisation of the responsibility to protect in practice, or a 'real case' study approach, in close collaboration with R2P experts and the new R2P centre. An important area of thinking forward from this research will be that of how to 'punish' or hold accountable those who have perpetrated crimes, about which Ramesh Thakur and Vesselin Popovski have published.[753]

International order is framed within a specific time context. Ideas, values and political currents affect international order. At the start of the twenty-first century, the prevailing values were those of liberal ideas and values, the revival of international organisations, the importance of human rights; and the well-being and protection of civilians and citizens.

In this sense, the link between internal displacement and the responsibility to protect is obvious: internally displaced persons do not have access to resources, may be isolated and may not be protected. This research endeavour attempted to provide a 'voice for the voiceless' by applying the responsibility to protect concept to internally displaced persons, who are unable to voice their plea on the international scene.

> It has been said that the world is divided among those who make things happen, those who watch things happen, and those who wonder what happened. Too often, when it comes to mass atrocity crimes, too many of us have been left wondering – how could this horror possibly have happened yet again when there were so many reasons and so much international capability to make it avoidable. The emergence of the responsibility to protect norm in 2001, and its embrace by the World Summit in 2005, brings us much closer to ending such crimes once and for all. But if we are to realize that dream, it is going to require continuing determined action from all those passionately committed to making it happen – not just from national and international leaders but from everyone, ordinary citizens in every country across every corner of the globe included, who are capable of influencing them. You don't get to change the world simply by observing it.[754]

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[753] Thakur, Ramesh and Popovski, Vesselin. "The Responsibility to Protect and Prosecute: The Parallel Erosion of Sovereignty and Impunity". The Global Community, *Yearbook of International Law and Jurisprudence.* New York: Oceana. Volume I, 2007, pp. 39-61.

[754] Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, op. cit.*, p. 241.

Appendix 1: List of Interviewees

	Location
-Prof. Alexander Bellamy Lecturer in Peace and Conflict Studies University of Queensland, Australia	telephone
-Dr. Jean-Marc Coicaud Director, New York Office United Nations University	New York
-Ms Sapna Chhatpar Project Manager, Responsibility to Protect -Engaging Civil Society Project World Federalist Movement - Institute for Global Policy	New York
-Dr. Roberta Cohen Senior Adviser Brookings-Bern Project on Internal Displacement	telephone
-Mrs Heidi Grau Councellor Federal Department of Foreign Affairs Permanent Mission of Switzerland to the United Nations	New York
-Prof. Walter Kälin United Nations Secretary-General's Representative on the Human Rights of Internally Displaced Persons	Berne
-Dr. Cornelio Sommaruga President of the Geneva International Centre for Humanitarian Demining	Geneva
-Dr. Donald Steinberg Vice President for Multilateral Affairs and Director of the New Office International Crisis Group	New York
-Prof. Ramesh Thakur Distinguished Fellow of the Center for International Governance Innovation and Professor of Political Science, University of Waterloo, Canada	New York

Appendix 2: Table of Main Institutional Framework involved with Internal Displacement at the Operational and Policy Levels[755]

Organisation / Actor	Type of Involvement	Role
RSG on Human Rights of IDPs	Operational and policy	-Carries out advocacy in favour of the protection and respect of the rights of IDPs -Initiates dialogue with Governments as well as non-governmental organisations and other actors -Aims at strengthening the international response to internal displacement -Gives salience to the human rights of IDPs into all relevant parts of the UN system -Promotes and disseminates the Guiding Principles on Internal Displacement at the national, regional and international levels
UNHCR	Operational and policy	-Provides effective support to national and international responses to situations of forced displacement -Plays a leading role in three clusters: (1) efforts to ensure the protection of conflict-related IDPs, (2) the provision of emergency shelter to such populations, and (3) the coordination and management of IDP camps -Shares a role with the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF in ensuring the protection of people displaced by natural disasters -Acts as the lead agency for HIV and AIDS amongst displaced populations -Appoints a senior staff member to implement UNCHR's strategy in relation to IDPs in the field
OCHA's former Internal Displacement Division	Operational and policy	-Ensured coordination and communication with OCHA field offices and UN field missions -Drove consultation with local parties, governments and non-governmental organisations operating in the field -Ensured that all field operations were concurrent with the Guiding Principles on Internal Displacement and other aspects relevant to internal displacement
OCHA's Displacement and Protection Support Section		-Creates a more predictable, systematic and collaborative response to internal displacement Collaborates closely with the Policy Development and Studies Branch (PDSB) in supporting field offices to implement policy on the protection of civilians in armed conflict DPSS focuses on three interrelated areas of work: (1) supporting the mandate of the Emergency Relief Coordinator to strengthen the system-wide response to internal displacement; (2) enhancing OCHA-wide capacity to support protection at field and headquarters levels in line with internal policy instruction; (3) augmenting inter-agency protection capacity through support to the Protection Cluster

[755] The content of the table builds upon what has been discussed in Chapter 5. There are other UN agencies and organisations involved, such as UNICEF, WHO, IOM, UNDP. However, the major actors only have been included in the table.

		Working Group, the Camp Coordination and Management Cluster and the Early Recovery Cluster, as well as the management of the inter-agency ProCap project
(OCHA) Emergency Relief Coordinator	Policy	-Heads OCHA -Serves as the Under-Secretary-General for Humanitarian Affairs -Chairs the Inter-Agency Standing Committee -Appoints UN Humanitarian Coordinators
(OCHA's) Inter-Agency Standing Committee	Policy	-Assists the Emergency Relief Coordinator as strategic coordination and consultation mechanisms among key humanitarian actors -Coordinates policy development and decision-making involving the key UN and non-UN humanitarian partners Develops humanitarian policies -Agrees on a clear division of responsibility for the various aspects of humanitarian response Identifies and addresses gaps in response -Advocates for effective application of humanitarian principles
UN Humanitarian Coordinators	Operational	-Coordinates the humanitarian activities of the Country Team. -Provides liaison between the Country Team and the Emergency Relief Coordinator -Manages the OCHA office which is put in place to support the Humanitarian Coordinator in his/her functions -Establishes and maintains comprehensive coordination mechanisms based on facilitation and consensus building -Ensures agreement on the basic division of responsibilities among agencies, in accordance with their respective mandates and capacities, with the aim of (1) ensuring that timely and appropriate humanitarian assistance is rapidly and effectively delivered to the victims of the complex emergency and (2) ensuring that any gaps or overlaps in protection, that could arise as a result of the respective mandates of the agencies, can be resolved in practice convening and serving as the chair of regular inter-agency meetings involving all relevant humanitarian actors and providing the necessary secretariat support -Ensures that leadership for coordination within specific sector and/or geographic areas is agreed upon and that the relevant coordination mechanisms are established and managed efficiently -Ensures consultation with national authorities on matters regarding the planning and implementation of humanitarian assistance. -Ensures overall coordination between the UN and other humanitarian aid agencies and the UN Department of Peacekeeping Operations when such forces are present, including promoting resolution of matters of joint concern to the humanitarian aid agencies -Facilitates communications and consultation between the UN and other humanitarian aid agencies on the

		one hand and the relevant components of bilateral military forces when such forces are present. -Acts as a focal point for discussion within the relief community regarding policy issues of inter-agency concern (e.g., wage levels for local staff, payments for services and difficulties with customs procedures and policies, government clearances for travel and passes, etc.) and as an interlocutor with the relevant parties (e.g., the host government) for resolution of such matters -Develops and maintains a central registry of locally represented humanitarian agencies and their respective activities and expertise -Oversees the development of a comprehensive strategic plan for responding to the assistance and protection needs of IDPs and identifies the most appropriate collaborative arrangements amongst operational agencies for implementing the plan, ensuring that all needs are met -Obtains guidance from the Designated Official regarding the implementation of security procedures in support of humanitarian assistance activities, ensuring that this is effectively communicated to the concerned agencies in the field, and facilitating their coordinated implementation -Facilitates the provision of key support services for the larger relief community, such as telecommunications, transportation -Sets up systems, including as appropriate Humanitarian Information Centres, for collecting and disseminating timely, accurate, detailed, reliable and up-to-date information on the humanitarian situation and on the relief efforts -Advocates with the relevant parties for the application of humanitarian principles on behalf of the victims and of the humanitarian community. This includes promoting, assisting and, if necessary, leading negotiations to obtain free, safe and unimpeded access for humanitarian assistance to those in need, in a manner consistent with the operational requirements of the various partners; promoting respect for Human Rights and Humanitarian Law (HRHL) as well as the Guiding Principles on Internal Displacement; seeking acceptance by all parties to the civil conflict in question on the principles of neutrality and impartiality that underline humanitarian action, as well as on other fundamental issues such as the access to those in need, the security of humanitarian personnel, and the need to be accountable to donors and beneficiaries for the aid provided; carrying out advocacy initiatives with the local and international media, the international community, the civil society and the public at large -Oversees all the in-country aspects of the inter-agency strategic planning process. This includes ensuring that multi-sectoral needs assessments are quickly initiated and priority humanitarian needs are identified, adequately supported, and effectively carried out; triggering and leading the Consolidated Appeal Process (CAP) in collaboration with the IASC

		Country Team and the Emergency Relief Coordinator, as detailed in the IASC Consolidated Appeal Process Guidelines; ensuring that a Common Humanitarian Action Plan (CHAP) is prepared as part of the Consolidated Appeal Process and ensuring that the humanitarian strategy presented in the Common Humanitarian Action Plan is compatible with other strategic planning initiatives such as the UN Development Assistance Framework and poverty reduction initiatives; ensuring that strategic monitoring is carried out as detailed in the IASC Consolidated Appeal Process Guidelines -Monitors the provision of resources against the Consolidated Appeal, for bringing donor attention to important outstanding gaps and for facilitating inter-agency resource mobilisation efforts both in-country as well as at the headquarters level with the capitals -Ensures that a comprehensive contingency plan is developed and regularly updated by the UN Country Team in consultation with all the humanitarian partners in the country -Promotes and monitors the implementation of the relevant policies and guidelines adopted by the IASC -Promotes gender mainstreaming and women's rights at the policy, planning and implementation levels as part of their strategic coordination and humanitarian accountability functions -Supports effective evaluations of the overall relief efforts, especially the coordination aspects -Cooperates with entities responsible for planning and implementation of rehabilitation and development activities to ensure that rehabilitation actions begin as soon as they become feasible, and that relief actions are planned and undertaken with the perspective of their longer-term continuation and impacts
UN Senior Inter-Agency Network on Internal Displacement	Policy	Advises on what type of action should be carried out by governments and local actors involved in internal displacement both in the field and at the headquarters level
ICRC	Operational and policy (international humanitarian law)	-Protects civilians in armed conflict -Assists civilians, detainees and families through activities aimed at ensuring full respect for the rights of the individual in accordance with international humanitarian law, human rights law and refugee law -Takes "vital measures include convincing the authorities to end specific patterns of abuse and alleviating suffering by providing material or medical assistance" -Aims to preserve or restore acceptable living conditions for civilians, the sick and wounded (both military and civilian) and people deprived of their freedom
Internal Displacement Monitoring Centre	Policy	Maintains the IDP database Develops training and advocacy materials
Brookings	Policy	-Promotes a more effective national, regional, and

Institution/University of Bern Project on Internal Displacement		international response to the global problem of internal displacement -Supports the work of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons in carrying out the responsibilities of the mandate -Monitors displacement problems worldwide -Promotes the dissemination and application of the Guiding Principles on Internal Displacement -Works with governments, regional bodies, international organisations and civil society to create more effective policies and institutional arrangements for IDPs -Convenes international seminars on internal displacement -Publishes major studies, articles and reports

Source: OCHA's Internet site, "Terms of Reference for the Humanitarian Coordinator"[756]; ICRC's Internet site, "Protecting people affected by war"[757] and "Aid for people affected by war: ICRC assistance"[758]; UNCHR's Executive Committee's "UNHCR's Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement – Policy Framework and Implementation Strategy" (ExCom 39th Standing Committee Meeting, 4 June 2007), UNHCR Document EC/58/SC/CRP.18[759]; Brookings Institution/Bern Project on Internal Displacement Internet site "About Us"[760].

[756] Available at: http://ochaonline.un.org/Coordination/FieldCoordinationMechanisms/HumanitarianCoordinators/TermsofReferencefortheHC/tabid/1400/language/en-US/Default.aspx (accessed January 21, 2009).
[757] Available at: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_protection?OpenDocument (accessed January 21, 2009).
[758] Available at: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/assistance?OpenDocument (accessed January 21, 2009).
[759] Available at: http://www.unhcr.org/excom/EXCOM/46641fff2.pdf (accessed January 21, 2009).
[760] Available at: http://www.brookings.edu/projects/idp/About-Us.aspx (accessed January 21, 2009).

BIBLIOGRAPHY

Primary Sources

1. Annan, Kofi A. *In larger freedom: towards development, security and human rights for all.* 21 March 2005. UN Document A/59/2005.

2. Annan, Kofi A. *"Address to the 2005 World Summit"*, New York, 14 September 2005.

3. Annan, Kofi A. *Action Plan to Prevent Genocide*. UN Doc. SG/SM/9197, HR/CN/1077. 7 April 2004.

4. Annan, Kofi A. *Report of the Secretary-General on the Prevention of Armed Conflict*. UN Doc. A/55/985 – S/2001/574. 7 June 2001.

5. Annan Kofi A. *"We the Peoples: The Role of the United Nations in the 21st Century"*. United Nations: Department of Public Information. 2000.

6. Arbour, Louise. "The Responsibility to Protect as a Duty of Care in International Law and Practice", Speech to Trinity College, Dublin, 23 November 2007.

7. Brookings Institution – University of Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005.

8. Cohen, Roberta. "The Responsibility to Protect: The Case of Sudan". Statement at the American University Washington College of Law. 29 September 2006.

9. Cohen, Roberta. "Human Rights and Humanitarian Emergencies: New Roles for U.N. Human Rights Bodies." Refugee Policy Group, September 1992.

10. Cohen, Roberta. "Human Rights Protection for Internally Displaced Persons." Refugee Policy Group, June 1991.

11. Cohen, Roberta. "U.N. Human Rights Bodies Should Deal With The Internally Displaced". Refugee Policy Group, February 7, 1990.

12. Coicaud, Jean-Marc. "Current Mainstream Thinking in International Relations". Talk at the ACUNS Meeting on June 7, 2007.

13. Deng, Francis M. *The Guiding Principles on Internal Displacement*. United Nations Commission on Human Rights, Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, UN Doc. E/CN.4/1998/53/Add.2, February 11, 1998.

14. Deng, Francis M. *"Report of the Representative of the Secretary-General on Internally Displaced Persons"* submitted pursuant to Commission on Human Rights resolution 1999/47. 26 January 2000. ECOSOC/Human Rights Commission doc. E/CN.4/2000/83; and "Addendum" (E/CN.4/2000/83/Add.2).

15. Deng, Francis M. *"Report of the Representative of the Secretary-General on Internally Displaced Persons"* submitted to the 59th session of the Commission on Human Rights under agenda item 14, ECOSOC/Human Rights Commission doc. E/CN.4/2003/86.

16. Deng, Francis M. *Internally Displaced Persons: Compilation and Analysis of Legal Norms.* Report of the Representative of the U.N. Secretary-General on Internally Displaced Persons. UN Doc. E/CN.4/1996/52/Add.2. December 5, 1995.

17. Deng, Francis M. *Internally Displaced Persons: Compilation and Analysis of Legal Norms, Part II: Protection against Arbitrary Displacement.* Report of the Representative of the U.N. Secretary-General on Internally Displaced Persons. UN Doc. E/CN.4/1998/53/Add.1. February 1, 1998.

18. Deng, Francis M. *Comprehensive Study on the Human Rights Issues Related to Internally Displaced Persons.* UN Doc. E/CN.4/1993/35. January 21, 1993.

19. Deng, Francis M. "The Plight of the Internally Displaced: A Challenge to the International Community". Article presented to the UN High Level Panel on Threats, Challenges and Change, April 8, 2004.

20. Evans, Gareth. "The International Responsibility to Protect: the Tasks Ahead", Address to Seminar on Africa's Responsibility to Protect, The Centre for Conflict Resolution, Cape Town, 23 April 2007.

21. Evans, Gareth. "Making Idealism Realistic: The Responsibility to Protect as a New Global Security Norm", Address to launch Stanford MA Program in International Policy Studies, 7 February 2007.

22. Global Centre for the Responsibility to Protect, "Open Letter to the Security Council on the situation in Sri Lanka", 15 April, 2009.

23. Global Centre for the Responsibility to Protect, "Policy Brief: The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict", January 2009.

24. Holbrooke, Richard C. Statement by Ambassador Richard C. Holbrooke, United States Permanent Representative to the United Nations at Benjamin N. Cardozo School of Law - NY, on Refugees and Internally Displaced Persons, 28 March 2000.

25. ICC document ICC-02/05-01/09, Pre-Trial Chamber I, "Situation in Darfur, Sudan in the Case of the Prosecutor v. Omar Hassan Ahmad Al Bashir ('Omar

Al Bashir') – Public Document: Warrant of Arrest for Omar Hassan Ahmad Al Bashir" 4 March 2009.

26. International Crisis Group, Policy Briefing, *Africa Briefing* N°43: "Getting the UN into Darfur", Nairobi/Brussels, 12 October 2006.

27. International Crisis Group. "To Save Darfur". *Africa Report* No 105, 17 March 2006.

28. International Crisis Group. *Africa Briefing* N° 28. "The AU's Mission in Darfur: Bridging the Gaps". 6 July 2005.

29. International Commission on Intervention and State Sovereignty. *The Responsibility to Protect.* Ottawa, Canada: International Development Research Centre. December 2001.

30. Kälin, Walter. "*How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework*". Statement presented at the Ralph Bunche Institute for International Studies Roundtable, CUNY Graduate Center, December 19, 2001.

31. Ki-moon, Ban. "Opening Remarks at Year-End Press Conference, 'The Responsibility to Deliver'", New York: United Nations, 17 December 2008.

32. Ki-moon, Ban. "Responsible Sovereignty: International Cooperation for a Changed World", Speech delivered in Berlin, 15 July 2008.

33. Sommaruga, Cornelio. "Globalising Responsibilities for Human Security", Talk given at the International School of Geneva, June 23, 2008.

34. Sommaruga, Cornelio. "The Panel on UN Peace Operations ('Brahimi Report') and The International Commission on Intervention and State Sovereignty", Statement at the UN-CM Coord Staff Course, Geneva, June 6, 2008.

35. --------. "Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?" *House of Commons Library Research Paper* 08/55, 17 June 2008.

36. --------. *Charter of the United Nations.* June 1945.

37. --------. *United Nations Convention on the Prevention and Punishment of the Crime of Genocide.* 1948.

38. --------. *A more Secure World: Our shared Responsibility. Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change.* New York: United Nations. UN document A/59/565, General Assembly, 59th session.

39. --------. United Nations Report of the Secretary-General. "Implementing the responsibility to protect". 12 January 2009. UN document A/63/677.

40. --------. *Reports of the Representative of the Secretary-General on Internally Displaced Persons.* United Nations Commission on Human Rights, 1993-2007. UN Docs. E/CN.4/1993/35; E/CN.4/1994/44; E/CN.4/1995/50; E/CN.4/1996/52; E/CN.4/1997/43; E/CN.4/1998/53; E/CN.4/1999/79; E/CN.4/2000/83; E/CN.4/2001/5; E/CN.4/2002/95; E/CN.4/2003/86; E/CN.4/2004/77; E/CN.4/2005/84; E/CN.4/2006/71; A/HRC/4/38 & A/HRC/4/38/Add.3.
Available at http://www2.ohchr.org/english/issues/idp/annual.htm

41. --------. United Nations Report of the Secretary-General on Darfur S/2006/591 of 28 July 2006.

42. --------. United Nations Statement by the President of the Security Council. 3 February 2006. UN document S/PRST/2006/5.

43. --------. United Nations Resolutions on Darfur: Resolution 1556 (2004), Resolution 1564 (2004), Resolution 1574 (2004), resolution 1585 (2005), Resolution 1588 (2005), Resolution 1590 (2005); Resolution 1591 (2005), Resolution 1593 (2005), Resolution 1672 (2006), Resolution 1627 (2006), Resolution 1651 (2006), Resolution 1663 (2006), Resolution 1665 (2006), Resolution 1679 (2006), Resolution 1706 (2006), Resolution 1709 (2006), Resolution 1713 (2006), Resolution 1714 (2006), Resolution 1755 (2007), Resolution 1769 (2007), Resolution 1779 (2007), Resolution 1784 (2007), Resolution 1812 (2008), Resolution 1828 (2008), Resolution 1841 (2008), Resolution 1870 (2009).

44. --------. United Nations Security Council Resolution 1674 (2006) adopted at the 5430th meeting of the Security Council on 28 April 2006. UN Document S/RES/1674 (2006).

45. --------. United Nations Inter-Agency Standing Committee Policy Paper, "*Protection of Internally Displaced Persons*", New York, December 1999.

46. --------. United Nations General Assembly World Summit Outcome Document. UN Doc. A/60/L.1. September 15, 2005.

47. --------. Letter by Ambassador John Bolton, Permanent Representative of the United States of America to the UN, to the UN, 30 August 2005.

48. --------. "Cluster 2006 – Report on Implementation of Global Cluster Capacity-Building 1 April 2006 – 31 March 2007", Version 1.1 updated 26 March 2007. Geneva: OCHA.

49. --------. *Handbook for the Protection of Internally Displaced Persons.* Geneva: OCHA, Global Protection Cluster Working Group. Provisional release, December 2007.

50. --------. *Guidance on Profiling Internally Displaced Persons.* Geneva: Internal Displacement Monitoring Centre and OCHA. April 2008.

51. --------. OCHA, Unit on Internal Displacement, 'Inter Agency Collaboration', OCHA's website: www.reliefweb.int/idp/partners/ian.htm.

52. --------. "ICRC Position on Internally Displaced Persons (IDPs) (May 2006)". Geneva: ICRC. 2006.

53. --------. "Appeal 2001-2002: Sudan". *Appeal 01.17/2001.* International Federation of the Red Cross and Red Crescent Societies. Geneva, 2001.

54. --------. ICRC Activities relating to internal displacement, Economic and Social Council, Humanitarian Affairs Segment, 19 July 2000.

55. --------. *Internal Displacement: Global Overview of Trends and Developments in 2004.* Geneva: Global IDP Project. March 2005.

56. --------. *Internal Displacement: Global Overview of Trends and Developments in 2003.* Geneva: Global IDP Project. February 2004.

57. --------. *Internally Displaced People: A Global Survey.* 2nd ed. Global IDP Survey/Norwegian Refugee Council. London: Earthscan Publications / Norwegian Refugee Council. 2002.

58. --------. *Internally Displaced People: A Global Survey.* Global IDP Survey/Norwegian Refugee Council. London: Earthscan Publications. 1998.

59. --------. *World Refugee Survey* (annual editions). Washington D.C.: US Committee for Refugees.

60. --------. *Forced Migration Review.* Oxford: Oxford University Press. January 1998-ongoing.

Interviews

61. Bellamy, Alex J. Interview. 04 February 2009 (telephone).

62. Cohen, Roberta. Interview. 06 February 2009 (telephone).

63. Coicaud, Jean-Marc. Interview. 7 June 2007, New York.

64. Kälin, Walter. Interview, 14 July 2008, Berne.

65. Sommaruga, Cornelio. Interview, 1 July 2007, Geneva.

66. Steinberg, Donald. Interview, 5 June 2007, New York.

67. Thakur, Ramesh. Interview, 6 June 2007, New York.

Secondary Sources

68. Abramowitz, Morton and Pickering, Thomas. "Making Intervention Work: Improving the UN's Ability to Act", *Foreign Affairs*, Vol. 87, No. 5, September/October 2008, pp. 100-108.

69. Allan, Pierre and Keller, Alexis (eds.) *What is a Just Peace?* Oxford: Oxford University Press. 2006.

70. Allen, Tim and Styan, David. "A Right to interfere? Bernard Kouchner and the new humanitarianism", *Journal of International Development,* Vol. 12, 2000, pp. 825-842.

71. Ameri, Houshang. *"The Ultimate UN Reform"* in *"International Relations: the Journal of the David Davies Memorial Institute of International Relations"*. London: David Davies Memorial Institute of International Relations, vol. 13, no. 5, pp. 37-43. August 1997.

72. Ameri, Houshang. *Politics and process in the specialised agencies of the UN.* Aldershot: Gower Publications. 1982.

73. Amstutz, Mark R. *International Ethics: Concepts, Theories, and Cases in Global Politics.* 2nd ed. Lanham: Rowman & Littlefield. 2005.

74. Annan, Kofi. "The UN Summit: A Glass At Least Half Full", *Jakarta Post,* September 23, 2005.

75. Annan, Kofi A. "Two Concepts of Sovereignty", *The Economist*, 18 September 1999. Available at: http://www.un.org/News/ossg/sg/stories/kaecon.html (accessed January 20, 2009).

76. Atack, Iain. *The Ethics of Peace and War.* Edinburgh: Edinburgh University Press. 2004.

77. Axworthy, Lloyd and Rock, Allan. "R2P: A New and Unfinished Agenda". *Global Responsibility to Protect*, Vol. I, No. 1, February 2009, pp. 54-69.

78. Baehr, Peter R. *"Human Rights Organizations and the UN: a Tale of Two Worlds"* in Bourantonis, Dimitris and Wiener, Jarrod (eds.). *The United Nations in the New World Order: The World Organization at Fifty.* New York: St. Martin's Press. 1996.

79. Bagshaw, Simon and Paul, Diane. *"Protect or Neglect? – Towards a More Effective United Nations Approach to the Protection of Internally Displaced Persons"*, The Brookings-SAIS Project on Internal Displacement and the UN Office of the Coordination of Humanitarian Affairs/Inter-Agency Internal Displacement Division. November 2004. Available at:

http://www.reliefweb.int/rw/lib.nsf/db900SID/OCHA-69DEXE?OpenDocument (accessed January 27, 2009).

80. Bagshaw, Simon. "Focus on internally displaced persons". *International Journal of Refugee Law*, Vol. 10, Issue 3, July 1998, pp. 548-556.

81. Banda, Maria. "*The Responsibility to Protect: Moving the Agenda Forward*". Report for the United Nations Association in Canada. March 2007.

82. Barutciski, Michael. "Tensions Between the Refugee Concept and the IDP Debate". *Forced Migration Review*. Vol. 3, pp. 11-14. December 1998.

83. Beck, Robert J.; Arend, Anthony Clark and Vander Lugt, Robert D. (eds.) *International Rules: Approaches from International Law and International Relations*. Oxford: Oxford University Press. 1996.

84. Beetham, David. "*Democracy and Human Rights: Civil, Political, Economic, Social and Cultural*" in Symonides, Janusz (Ed.). *Human Rights: New Dimensions and Challenges*. Aldershot (UK): Ashgate. UNESCO Publication. 1998.

85. Beitz, Charles R. et al. *International Ethics*. Princeton: Princeton University Press. 1985.

86. Bellamy, Alex J. *Responsibility to Protect: The Global Effort to End Mass Atrocities*. Cambridge: Polity Press. 2009.

87. Bellamy, Alex J. "Conflict Prevention and the Responsibility to Protect". *Global Governance*, Vol. 14, No. 2, April-June 2008, pp. 135-156.

88. Bellamy, Alex J. *Just Wars: From Cicero to Iraq*. Cambridge: Polity Press. 2006.

89. Bellamy, Alex J. "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics & International Affairs*, Vol. 20, No. 2, June 2006, pp. 151-152.

90. Bellamy, Alex J. "Preventing Future Kosovos and Future Rwandas: The Responsibility to Protect after the 2005 World Summit". New York: Carnegie Council. 2006.

91. Bellamy, Alex J. and Williams, Paul. "The Responsibility To Protect and the Crisis in Darfur". *Security Dialogue,* Vol. 36, No. 1, 2005, pp. 27-47.

92. Bellamy, Alex J. "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq". *Ethics & International Affairs*, Vol. 19, No. 2, Summer 2005, pp. 31-54.

93. Bellamy, Alex J. and Williams, Paul. *Peace Operations and Global Order.* New York: Routledge. 2005.

94. Bettati, Mario. *Le droit d'ingérence : mutation de l'ordre international.* Paris : Odile Jacob. 1996.

95. Bettati, Mario; Kouchner, Bernard et al. *Le devoir d'ingérence.* Paris : Denoël. 1987.

96. Betts, Richard K. *Conflict After the Cold War: Arguments on Causes of War and Peace.* New York: Macmillan Publishing Company. 1994.

97. Bexell, Magdalena. *Exploring Responsibility: Public and Private in Human Rights Protection.* Lund: University of Lund, Department of Sociology. Lund Political Studies Vol. 135. 2005.

98. Bickerton, Christopher J; Cunliffe, Philip and Gourevitch, Alexander. *Politics Without Sovereignty: A Critique of Contemporary International Relations.* London: University College London Press. 2007.

99. Bodin, Jean. *On Sovereignty.* Ed. Julius Franklin. Cambridge: Cambridge University Press. 1992.

100. Booth, Ken and Wheeler, Nicholas J. *The Security Dilemma: Fear, Cooperation and Trust in World Politics.* New York: Palgrave & Macmillan. 2008.

101. Bortolotti, Dan. *Hope in Hell: Inside the World of Doctors without Borders.* New York: Firefly Books. 2004.

102. Bourantonis, Dimitris and Wiener, Jarrod (Eds.). *The United Nations in the New World Order: The World Organization at Fifty.* New York: St. Martin's Press. 1996.

103. Boutros-Ghali, Boutros. *Confronting new challenges : report on the work of the Organization from the Forty-ninth to the Fiftieth Session of the General Assembly.* New York: United Nations. 1995.

104. Brauman, Rony. *Aider, sauver: Pourquoi, comment?* Paris: Bayard. 2006.

105. Brown, Chris and Ainley, Kirsten. *Understanding International Relations.* 3rd ed. Basingstoke: Palgrave & Macmillan. 2005.

106. Brown, Chris. *Sovereignty, Rights and Justice: International Political Theory Today.* Oxford: Polity and Blackwell. 2002.

107. Brown, Chris. *International Relations Theory: New Normative Approaches.* Hemel Hempstead: Harvester Wheatsheaf. 1992.

108. Brown, Chris. "A Qualified Defence of the Use of Force for Humanitarian Reasons". *Special Issue of the International Journal of Human Rights: The Kosovo Tragedy: The Human Rights Dimension*, Vol. 4, Nos. 1 & 2, 2001, pp. 282-288.

109. Brown, Michael E. (Ed.). *The International Dimensions of Internal Conflict.* CSIA Studies in International Security. Cambridge (Massachusetts, USA): MIT Press. 1996.

110. Brownlie, Ian. *Principles of Public International Law.* 5th ed. Oxford and New York: Oxford University Press. 1999.

111. Buirette, Patricia and Lagrange, Philippe. *Le droit international humanitaire.* Paris: La Découverte, collection Repères. 2008.

112. Bull, Hedley; Kingsbury, Benedict and Roberts, Adam (Eds.). *Hugo Grotius and International Relations.* Oxford: Clarendon Press. 1990.

113. Bull, Hedley. *Intervention in World Politics.* Oxford: Oxford University Press. 1984.

114. Bull, Hedley. *The Anarchical Society: A Study of Order in World Politics.* Basingstoke: Macmillan. 1977.

115. Burchill, Scott; Devetak, Richard; Linklater, Andrew *et al. Theories of International Relations.* 4th ed. Basingstoke and New York: Palgrave Macmillan. 2009.

116. Burke, Anthony. "Just War or Ethical Peace? Moral Discourses of strategic violence after 9/11". *International Affairs*, Volume 80, Issue 2, 2004, pp. 329-353.

117. Burr, J. Millard and Collins, Robert O. *Darfur: The Long Road to Disaster.* Princeton: Markus Wiener Publishers. 2006.

118. Byers, Michael. *War Law.* London: Atlantic Books. 2005.

119. Byers, Michael. "High ground lost on UN's responsibility to protect", *Winnipeg Free Press*, 18 September 2005.

120. Carment, David and Schnabel, Albrecht. *Conflict Prevention: Path to Peace or Grand Illusion?* Tokyo: United Nations University Press. 2003.

121. Caverzasio, Sylvie. *Strengthening Protection in War – A Search for Professional Standards.* Geneva: ICRC. 2001.

122. Chandler, David. 'Unravelling the Paradox of "The Responsibility to Protect"', *Irish Studies in International Affairs*, Vol. 20, No. 0, 2009, pp. 27-39.

123. Chandler, David. "The Responsibility to Protect? *Imposing the 'Liberal Peace'*" in Bellamy, Alex J. and Williams, Paul. *Peace Operations and Global Order*. New York: Routledge. 2005, pp. 59-81.

124. Chandler, David. 'The responsibility to protect? Imposing the "Liberal Peace"', *International Peacekeeping*, Vol. 11, No. 1, 2004, Special Issue: Peace Operations and Global Order, pp. 59-81.

125. Chatterjee, Deen and Scheid, Don E. *Ethics and Foreign Intervention: Kosovo and Beyond.* Cambridge: Cambridge University Press. 2003.

126. Chertoff, Michael. "The Responsibility to Contain: Protecting Sovereignty Under International Law", *Foreign Affairs*, Vol. 88, No. 1, January/February 2009, pp. 130-147.

127. Chesterman, Simon. *You, The People: The United Nations, Transitional Administration, and State-Building*. Oxford: Oxford University Press. 2004.

128. Chesterman, Simon. *Just War or Just Peace? Humanitarian Intervention and International Law (Oxford Monographs in International Law)*. Oxford: Oxford University Press. 2001.

129. Chimni, B.S. "Reforming the International Refugee Regime: A Dialogic Model". *Journal of Refugee Studies*, Vol. 14, Issue 2, June 2001, pp. 151-168.

130. Chin, Sally & Morgenstern, Jonathan. "*No Power to Protect: The African Union Mission in Sudan*". Washington D.C.: Refugees International. November 2005.

131. Christopher, Paul. *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*. 3rd ed. New Jersey: Prentice Hall. 2004.

132. Clough, Michael. "Darfur: Whose Responsibility to Protect?", *Human Rights Watch*, January 2005.

133. Coates, A.J. *The Ethics of War*. Manchester: Manchester University Press. 1997.

134. Cochran, Molly. *Normative Theory and International Relations*. Cambridge: Cambridge University Press. 2000.

135. Cohen, Roberta. "The Forgotten Ones: A Survey of Recent Literature on Displaced Persons". *Harvard International Review*. Winter/Spring 2000.

136. Cohen, Roberta & Deng, Francis M. "Exodus within Borders". *Foreign Affairs*, Vol. 77, No. 4, July/August 1998, pp. 12-16.

137. Cohen, Roberta & Deng, Francis M. (Eds.) *The Forsaken People: Case Studies of the Internally Displaced*. Washington D.C.: Brookings Institution Press. 1998.

138. Cohen, Roberta. "Protecting the Internally Displaced". *World Refugee Survey 1996.* Washington D.C.: US Committee for Refugees, pp. 20-27. 1997.

139. Cohen, Roberta and Cuenod, Jacques. "*Improving institutional arrangements for the internally displaced.*" Washington D.C.: Brookings Institution. Refugee Policy Group Project on Internal Displacement. 1995.

140. Coicaud, Jean-Marc and Wheeler, Nicholas J. (Eds.). *National Interest and International Solidarity: Particular and Universal Ethics in International Life.* New York: United Nations University Press. 2008.

141. Coicaud, Jean-Marc; Doyle, Michael W. and Gardner, Anne-Marie. *The Globalization of Human Rights.* New York: United Nations University Press. 2003.

142. Coicaud, Jean-Marc. *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility.* Cambridge: Cambridge University Press. 2002.

143. Coicaud, Jean-Marc and Warner, Daniel. *Ethics and International Affairs: Extent & Limits.* New York: United Nations University Press. 2001.

144. Collier, Paul et al. *Breaking the Conflict Trap: Civil War and Development Policy.* New York: World Bank and Oxford University Press. 2003.

145. Collins, Allan. *Contemporary Security Studies.* Oxford: Oxford University Press. 2007.

146. Cooper, Richard (ed.) and Voinov Kohler, Juliette. *Responsibility to Protect: The Global Moral Compact for the 21st Century.* New York: Palgrave Macmillan. 2008.

147. Coppieters, Bruno and Fotion, Nick. *Moral Constraints on War: Principles and Cases.* Lanham: Lexington Books. 2002.

148. Corten, Olivier. *"Nouvel ordre international humanitaire ou droit d'ingérence?"* in Corten, Olivier et al. *A la Recherche du nouvel ordre mondial: Le droit international à l'épreuve.* Belgium: Association Droit des Gens, pp. 159-185. 1993.

149. Cox, Robert. *"Is There a Specifically Canadian Perspective in the World?"* Vancouver: Centre for International Relations Working Paper No. 45. March 2005. Available at: *se1.isn.ch/serviceengine/FileContent?serviceID=ISN&fileid=C2F38BC4-37A8-7F56-23D0-B37E09FE943B&lng=en*

150. Crawford, Neta C. *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention (Cambridge Studies in International Relations).* Cambridge: Cambridge University Press. 2002.

151. Cunliffe, Philip. 'Sovereignty and the politics of responsibility' *in* Bickerton, Christopher J; Cunliffe, Philip and Gourevitch, Alexander. *Politics Without Sovereignty: A Critique of Contemporary International Relations.* London: University College London Press. 2007, pp. 39-57.

152. Cuny, Frederick. *"Displaced Persons in Civil Conflict".* First edition. United Nations Disaster Relief Organisation. 1991.

153. Curwin, Jon and Slater, Roger. *Quantitative Methods: A Short Course.* London: Thomson Learning. 2004.

154. Cushman, Thomas. Ed. *A Matter of Principle: Humanitarian Arguments for War in Iraq.* Berkeley, London & Los Angeles: University of California Press. 2005.

155. Dallaire, Romeo Lt. Gen. *Shake Hands with the Devil: The Failure of Humanity in Rwanda.* London: Arrow Books. 2004.

156. Danish Institute for International Affairs, *"Humanitarian Intervention",* Copenhagen: Danish Institute for International Affairs. 1999.

157. Davies, Wendy (Ed.) *Rights Have No Borders: Worldwide Internal Displacement.* Geneva: Global IDP Survey/Norwegian Refugee Council. 1998.

158. Davis, Michael C. et al. (Eds.). *International Intervention in the post-Cold War World: Moral Responsibility and Power Politics.* Armonk, N.Y.: M.E. Sharpe. 2004.

159. Deng, Francis M. *Masses in Flight: The Global Crisis of Internal Displacement.* Washington D.C.: Brookings Institution Press. 1998.

160. Deng, Francis M; Kimaro, Sadikiel; Lyons, Terrence; Rothchild, Donald; Zartman, I. William. *Sovereignty as Responsibility: Conflict Management in Africa.* Washington D.C.: Brookings. 1996.

161. Deng, Francis M. "Frontiers of Sovereignty: A Framework of Protection, Assistance and Development for the Internally Displaced". *Leiden Journal of International Law.* Vol. 8, No. 2, 1995, pp. 249-286.

162. Deng, Francis M. "Dealing with the Displaced: A Challenge to the International Community". *Global Governance.* Vol. 1, No. 1, 1995, pp. 45-57.

163. Deng, Francis M. "Internally Displaced Persons". *International Journal of Refugee Law.* Vol. 6, No. 2, 1994, pp. 291-307.

164. Deng, Francis M. *Protecting the Dispossessed: A Challenge for the International Community.* Washington D.C.: Brookings Institution Press. 1993.

165. de Senarclens, Pierre. *Mondialisation, souveraineté et théories des relations internationales.* Paris: Armand Colin. 1998.

166. Dimitrijevic, Vojin. "Human Rights and Peace" in Symonides, Janusz. (Ed.) *Human Rights: New Dimensions and Challenges.* Aldershot: Ashgate. 1998, pp. 47-64.

167. Dowty, Alan & Loescher, Gil. "Refugee Flows as Grounds for International Action", *International Security*, Vol. 21, No. 1, Summer 1996, pp. 43-71.

168. Dunant, Henry, *A Memory of Solferino*, English translation of *Un Souvenir de Solférino.* Washington, D.C., American National Red Cross, 1939.

169. Dyer, Hugh C. *Moral Order/World Order: The Role of Normative Theory in the Study of International Relations.* Basingstoke: Palgrave Macmillan. 1997.

170. El Hattab, Morad (Ed.). *Urgence Darfour.* Paris: Des Idées et des Hommes, collection *Droit de Citer.* 2007.

171. Elshtain, Jean Bethke. *Just War Theory.* New York: New York University Press. 1991.

172. Ellis, Anthony (Ed.). *Ethics and International Affairs.* Manchester: Manchester University Press. 1986.

173. Etzioni, Amitai. "Genocide Prevention in the New Global Architecture", *The British Journal of Politics & International Relations*, Vol. 7, No.4, November 2005, pp. 469-484.

174. Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All.* Washington D.C.: Brookings Institution Press. 2008.

175. Evans, Gareth. "The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?", *International Relations*, Vol. 22, No. 283, 2008, pp. 283-298.

176. Evans, Gareth. "From Humanitarian Intervention to R2P", *Wisconsin International Law Journal*, Vol. 24, No. 3, 2006, pp. 703-722.

177. Evans, Gareth. "When is it Right to Fight?", *Survival*, Vol. 46, No. 3, Autumn 2004, pp. 59-82.

178. Evans, Gareth & Sahnoun, Mohamed. "The Responsibility to Protect". *Foreign Affairs.* Vol. 81, No. 99, November/December 2002, pp. 99-111.

179. Evans, Grahman and Newnham, Jeffrey. *Penguin Dictionary of International Relations.* London: Penguin. 1998.

180. Evans, Paul M. "Human Security and East Asia: In the Beginning". *Journal of East Asian Studies.* Vol. 4, pp. 263-284. 2004.

181. Falk, Richard A. *The Costs of War: International Law, the UN, and World Order after Iraq*. New York: Routledge. 2008.

182. Falk, Richard A. "What Future for the UN Charter System of War Prevention?", *The American Journal of International Law*, Vol. 97, No. 3, July 2003, pp. 590-598.

183. Falk, Richard A. *Human Rights and State Sovereignty*. New York: Holmes & Meier. 1981.

184. Farer, Tom J. with Archibugi, Daniele; Brown, Chris; Crawford, Neta C.; Weiss, Thomas G. & Wheeler, Nicholas J. "Roundtable: Humanitarian Intervention after 9/11", *International Relations*, Vol. 19, No. 2, 2005, pp. 211-250.

185. Fearon, James D. "Counterfactuals and Hypothesis Testing in Political Science", *World Politics* Vol. 43, 1991, pp. 169-195.

186. Feinstein, Lee and Slaughter, Anne-Marie. "A Duty to Prevent", *Foreign Affairs*, Vol. 83, No. 1, January/February 2004, pp. 136-150.

187. Ferris, Elizabeth G. *Beyond Borders: Refugees, Migrants and Human Rights in the Post-Cold War Era*. Geneva: World Council of Churches. 1993.

188. Fierke, K.M. *Critical Approaches to International Security*. Cambridge: Polity Press. 2007.

189. Finnemore, Martha. *The Purpose of Intervention: Changing Beliefs about the Use of Force*. Ithaca, N.Y.: Cornell University Press. 2003.

190. Fisher, David. "*Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates*". Washington and Berne: Brookings Institution – University of Bern Project on Internal Displacement. 2006.

191. Fixdal, Mona and Smith, Dan, "Humanitarian Intervention and Just War", *Mershon International Studies Review*, Vol. 42, No. 2, November 1998, pp. 283-312.

192. Fitzpatrick, Joan. *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons: A Guide to International Mechanisms*. Ardsley, New York: Transnational Publishers. 2001.

193. Flint, Julie and de Waal, Alex. *Darfur: A New History of a Long War (African Arguments)*. London: Zed Books. 2008.

194. Flynn, Stephen E. "Beyond Border Control", *Foreign Afffairs*, Vol. 79, No. 6, November/December 2000, pp. 57-68.

195. Freiesleben, Jonas, *Managing Change at the United Nations*, New York: Centre for UN Reform Education, April 2008.

196. Forbes, Ian and Hoffman, Mark. *Political Theory, International Relations and the Ethics of Intervention.* London/Basingstoke: Palgrave Macmillan. 1993.

197. Forbes Martin, Susan. *The Handbook for Applying the Guiding Principles on Internal Displacement.* Washington D.C and Geneva: The Brookings Institution Project on Internal Displacement and the United Nations Office for the Coordination of Humanitarian Affairs. 2000.

198. Forsythe, David P. *The Humanitarians: The International Committee of the Red Cross.* Cambridge: Cambridge University Press. 2005.

199. Forsythe, David P. *Human Rights in International Relations.* Cambridge: Cambridge University Press. 2000.

200. Fortin, Antonio. "The Meaning of 'Protection' in the Refugee Definition", *International Journal of Refugee Law*, Vol. 12, Issue 4, October 2000, pp. 548-576.

201. Frerks, Georg. "Human security as a discourse and counter-discourse", *Security and Human Rights*, Vol. 19, No. 1, 2008, pp. 8-14.

202. Gasser, Hans-Peter. "International Humanitarian Law" in Haug, Hans. *Humanity for All: The International Red Cross and Red Crescent Movement.* Berne, Stuttgart & Vienna: Paul Haupt Publishers. 1993.

203. Geissler, Nils. "The international protection of internally displaced persons", *International Journal of Refugee Law*, Vol. 11, Issue 3, July 1999, pp. 451-478.

204. Ghebali, Victor-Yves. "The politicisation of UN specialised agencies: A proposed framework", *Millennium*, Vol. 14, No. 3, Winter 1985, pp. 317-334.

205. Goodwin-Gill, Guy. *The Refugee in International Law.* 2nd ed. Oxford: Clarendon Press. 1996.

206. Gordenker, Leon. *The UN Secretary-General and Secretariat.* Routledge Global Institutions Series, Thomas G. Weiss and Rorden Wilkinson editors. New York: Routledge. 2005.

207. Gray, Christine. *International Law and the Use of Force.* Oxford: Oxford University Press. 2000.

208. Groom, AJR. "The Security Council: A Case for Change by Stealth", Extract from *Liber Amicorum Victor-Yves Ghebali*: Conflicts, security and cooperation. Edited by Vincent Chétail. Brussels: Bruylant, 2007, pp. 279-297.

209. Group of Lisbon. *Limits to Competition.* Cambridge, MA (USA): MIT Press. 1995.

210. Guterres, António. "Millions Uprooted: Saving Refugees and the Displaced", *Foreign Affairs*, Vol. 87, No. 5, September/October 2008, pp. 90-99.

211. Hailbronner, Kay in Martin, David A. (Ed). *The New Asylum Seekers: Refugee Law in the 1980s.* The Ninth Colloquium on International Law. Dordrecht: Martinus Nijhoff Publishers (Kluwer). 1988.

212. Hampton, Janie. (Ed.) *Internally Displaced People: A Global Survey.* London: Earthscan Publications Ltd., Norwegian Refugee Council, Global IDP Survey. 1998.

213. Hathaway, James C. (Ed.) *Reconceiving International Refugee Law.* The Hague: Martinus Nijhoff Publishers (Kluwer Law International). 1997.

214. Haugevik, Kristin M. "Regionalising the Responsibility to Protect: Possibilities, Capabilities and Actualities", NUPI Report No. 2-2008. Oslo: Norwegian Institute of International Affairs, 2008.

215. Heitler Bamberger, Sara; Bostrom, Meg; Hurlburt, Heather; O'Connell, Jamie; Owen, Jessica; Sheikhholeislami, Hosna; Shigekane, Rachel and Shulman, Joanna, "The Responsibility to Protect (R2P): Moving the Campaign Forward", Human Rights Center, Religion, Politics and Globalization Program, International Human Rights Law Clinic, University of California, Berkeley, October 2007.

216. Henckaerts, Jean-Marie, Doswald-Beck, Louise. *Customary International Humanitarian Law, volume I:* Rules, *and volume II:* Practice (Two Parts), ICRC, Cambridge University Press, 2005.

217. Hieronymi, Otto. "Ethnic and Nationalist Intolerance: The Threat for International Order", *Internal Conflicts: The Role of Humanitarian Action.* Proceedings of a conference organized by Webster University. Geneva: ICRC. 1999.

218. Hoffman, Peter J. and Weiss, Thomas G. *Sword & Salve: Confronting New Wars and Humanitarian Crises.* Lanham (MD, USA): Rowman and Littlefield. New Millennium Books in International Studies. 2006.

219. Hoffmann, Stanley. *The Ethics and Politics of Humanitarian Intervention.* University of Notre Dame Press. 1996.

220. Hoffmann, Stanley. *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics.* Syracuse: Syracuse University Press. 1981.

221. Holzgrefe, J.L. and Keohane, Robert O. *Humanitarian Intervention: Ethical, Legal and Political Dilemmas.* Cambridge: Cambridge University Press. 2003.

222. Homan, Kees Maj. Gen. (ret.). "The military and human security", *Security and Human Rights*, Vol. 19, No. 1, 2008, pp. 73-81.

223. Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order.* 2003 and Huntington, Samuel P. "The Clash of Civilizations?" *Foreign Affairs,* Vol. 72, No. 3, Summer 1993, pp. 22-49.

224. Huntley, James. *Pax Democratica.* London: Palgrave. 2001.

225. Jackson, Robert. *A Study of the Capacity of the UN Development System.* Geneva: United Nations. 1969.

226. Jokic, Alexsandar (Ed.). *Humanitarian Intervention: Moral and Philosophical Issues.* Toronto: Broadview Press. 2003.

227. Johnson, James Turner. *Just War Tradition and the Restraint of War.* Princeton: Princeton University Press. 1981.

228. Jones, Adam. *Genocide: A Comprehensive Introduction.* New York : Routledge. 2006.

229. Joyner, Christopher C. *The United Nations and International Law.* Cambridge: Cambridge University Press. 1997.

230. Kaldor, Mary. *New and Old Wars: Globalized Violence in a Global Era.* Cambridge: Polity. 2001.

231. Kälin, Walter. *Guiding Principles on Internal Displacement: Annotations. Studies in Transnational Legal Policy, No. 32.* Washington D.C.: the American Society of International Law and the Brookings Institution Project on Internal Displacement. 2000.

232. Kälin, Walter. "Introduction to the Guiding Principles on Internal Displacement", *International Journal of Refugee Law.* Vol. 10, No. 3, pp. 557-562. 1998.

233. Kälin, Walter. "Protection in international human rights law", *Internally Displaced Persons.* Geneva: ICRC. 1996, pp. 15-25.

234. Kalshoven, Frits. *Constraints on the Waging War.* Geneva: International Committee of the Red Cross. 1991.

235. Keely, Charles B. "Filling a Critical Gap in the Refugee Protection Regime: The Internally Displaced", *World Refugee Survey.* Washington D.C.: US Committee for Refugees, 1991, pp. 22-27.

236. Kent, Randolph C. "International humanitarian crises: two decades before and two decades beyond", *International Affairs.* Vol. 80. No. 5, 2004, pp. 851-869.

237. Keren, Michael and Sylvan, Donald A. (Eds.). *International Intervention: Sovereignty versus Responsibility.* London: F. Cass. 2002.

238. Kolb, Robert and Hyde, Richard. *An Introduction to the International Law of Armed Conflicts*. Portland, USA: Hart Publishing. 2008.

239. Kolb, Robert. *Introduction au Droit des Nations Unies*. Basle/Brussels: Helbing & Lichtenhahn/Bruylant. 2008.

240. Kolb, Robert. *Droit humanitaire et opérations de paix internationales - L'application du droit international humanitaire dans des opérations de maintien ou de rétablissement de la paix auxquelles concourt une organisation internationale.* 2nd ed. Basle/Brussels: Helbing & Lichtenhahn / Bruylant. 2006.

241. Kolb, Robert. *Ius contra bellum: – Précis de droit international relatif au maintien de la paix.* Basle/Brussels: Helbing & Lichtenhahn/Bruylant. 2003.

242. Kolb, Robert. *Ius in bello – Précis de droit international des conflits armés.* Basle/Brussels: Helbing & Lichtenhahn/Bruylant. 2003.

243. Korn, David A. *Exodus within Borders: An Introduction to the Crisis of Internal Displacement.* Washington D.C.: Brookings Institution Press. 1999.

244. Kratochvil, Friedrich. "Sovereignty as *Dominion*: is there a Right of Humanitarian Intervention?" in Lyons, Gene M. and Mastanduno, Michael (Eds.). *Beyond Westphalia?* Baltimore & London: The John Hopkins University Press. 1995.

245. Lang Jr., Anthony F. (Ed.). *Just Intervention*. Carnegie Council on Ethics and International Affairs series. Washington D.C.: Georgetown University Press. 2005.

246. Lavoyer, Jean-Philippe (Ed.). *Internally Displaced Persons, Report of the Symposium 23-25 October 1995*. Geneva: ICRC Publications. 1996.

247. Lavoyer, Jean-Philippe. "Protection under international humanitarian law", *Internally Displaced Persons, Report of the Symposium 23-25 October 1995*. Geneva: ICRC. 1996, pp. 26-36.

248. Lavoyer, Jean-Philippe. "Refugees and internally displaced persons: International humanitarian law and the role of the ICRC", *International Review of the Red Cross* No. 305, 30 April 1995, pp. 162-180.

249. Lavoyer, Jean-Philippe. "Guiding Principles on Internal Displacement : A Few Comments on the Contribution of International Humanitarian Law", *International Review of the Red Cross*. No. 324, 30 September 1998, pp. 467-480.

250. Lepard, Brain D. *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*. University Park: Pennsylvania State University Press. 2002.

251. Levene, Mark. *Genocide in the Age of the Nation-State, Volume I: The Meaning of Genocide*. New York: I.B. Tauris & Co. Ltd. 2005.

252. Levitt, Jeremy I. "Book Review: The Responsibility to Protect: A Beaver without a Dam?: International Commission on Intervention and State Sovereignty", *Michigan Journal of International Law*, Vol. 25, No. 153, 2003, pp. 6-7.

253. Light, Margot and Groom, AJR. (Eds.). *International Relations: A Handbook of Current Theory*. London: Pinter. 1985.

254. Lischer, Sarah Kenyon. "Collateral Damage: Humanitarian Assistance as a Cause of Conflict", *International Security*, Vol. 28, No. 1, 2003, pp. 79-109.

255. Little, Richard and Smith, Michael H. *Perspectives on World Politics*. 3rd ed. London and New York: Routledge. 2005.

256. Lomborg, Bjorn. *Solutions for the World's Biggest Problems: Costs and Benefits*. Cambridge: Cambridge University Press. 2007.

257. Lu, Catherine. *Just and Unjust Interventions in World Politics: Public and Private*. New York: Palgrave Macmillan. 2006.

258. Luck, Edward C. "Sovereignty, Choice, and the Responsibility to Protect", *Global Responsibility to Protect*, Vol. I, No. 1, February 2009, pp. 10-21.

259. Luck, Edward C. *UN Security Council: Practice and Promise*. Routledge Global Institutions Series, Thomas G. Weiss and Rorden Wilkinson editors. New York: Routledge. 2006.

260. Luopajärvi, Katja. "Is there an Obligation on States to Accept International Humanitarian Assistance to Internally Displaced Persons under International Law?", *International Journal of Refugee Law*, Vol. 15, Issue 4, October 2003, pp. 678-714.

261. Lyon, Alynna. "Global Good Samaritans: When do we Heed 'The Responsibility to Protect'?", *Irish Studies in International Affairs*, Vol. 20, No. 0, 2009, pp. 41-54.

262. Lyons, Gene M. and Mastanduno, Michael (Eds.). *Beyond Westphalia? State Sovereignty and International Intervention*. Baltimore & London: The John Hopkins University Press. 1995.

263. Macfarlane, S. Neil and Khong, Yuen Foong. *Human Security and the UN*. Bloomington, USA: Indiana University Press. United Nations Intellectual History Project Series. 2006.

264. MacWhinney, Edward. *The United Nations and a New World Order for a New Millenium: Self-determination, State succession, and Humanitarian Intervention*. The Hague: Kluwer Law International. 2000.

265. Malanczuk, Peter. (Ed.). *Akehurst's Modern Introduction to International Law.* 7th ed. London and New York: Routledge. 1997.

266. Malanczuk, Peter. *Humanitarian Intervention and the Legitimacy of the Use of Force.* Amsterdam: Spinhuis. 1993.

267. Malone, David M. in Martin, David A. (Ed.) *The New Asylum Seekers: Refugee Law in the 1980s.* The Ninth Colloquium on International Law. Dordrecht: Martinus Nijhoff Publishers (Kluwer), 1988.

268. Mercier, Michèle. *Le Comité International de la Croix-Rouge: L'action humanitaire dans le nouveau contexte mondial.* Presses Polytechniques et Universitaires Romandes. 2004.

269. Miall, Hugh; Ramsbotham, Oliver and Woodhouse, Tom. *Contemporary Conflict Resolution.* Cambridge: Polity Press. 1999.

270. Miller, Richard B. *Interpretations of Conflict: Ethics, Pacifism and the Just-War Tradition.* Chicago: University of Chicago Press. 1991.

271. Mooney, Erin. "The Guiding Principles and the Responsibility to Protect", *in* "Ten Years of the Guiding Principles of Internal Displacement", *Forced Migration Review GP10.* Oxford: Oxford University Press. December 2008, pp. 11-13.

272. Moore, Jonathan (Ed.). *Hard Choices: Moral Dilemmas in Humanitarian Intervention.* Lanham: Rowman and Littlefield. 1998.

273. Murphy, Sean D. *Humanitarian Intervention: the United Nations in an evolving world order.* Philadelphia: University of Pennsylvania Press. 1996.

274. Nardin, Terry. *Law, Morality and the Relations of States.* Princeton: Princeton University Press. 1983.

275. Nasir, Amina. "The Responsibility to Protect applied to Internally Displaced Persons". Paper presented at the Brussels School of International Studies 2008 Annual Conference (University of Kent), Brussels, 16-18 May 2008.

276. Nasir, Amina. "The Responsibility to Protect applied to Internally Displaced Persons". Paper presented at the Second Global International Studies Conference, World International Studies Committee, Ljubljana, 22-27 July 2008, available at: http://www.wiscnetwork.org/papers.php?char=13 (accessed January 18, 2009).

277. Newman, Edward and van Selm, Joanne (Eds.). *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State.* New York: United Nations University Press. 2003.

278. Newman, Edward; Paris, Roland and Richmond, Oliver P. (Eds.) *New Perspectives on Liberal Peacebuilding.* New York: United Nations University Press. 2009.

279. Newman, Michael. 'Revisiting the "Responsibility to Protect"', *The Political Quarterly*,Vol. 80, No. 1, January/March 2009, pp. 92-100.

280. Norman, Richard. *Ethics, Killing and War.* Cambridge: Cambridge University Press. 1995.

281. Novosseloff, Alexandra. *Le Conseil de sécurité des Nations Unies et la maîtrise de la force armée: Dialectique du politique et du militaire en matière de paix et de sécurité internationales.* Bruxelles: Bruylant. 56 *Organisation Internationale et Relations Internationales.* 2003.

282. Nguyen, Quoc Dinh. *Droit International Public.* 5th ed. Paris: L. G. D. J. 1994.

283. O'Hanlon, Michael. *Expanding: Global Military Capacity for Humanitarian Intervention.* Washington D.C.: Brookings Institution. 2003.

284. O'Neill, William G. "The responsibility to protect Darfur: The UN should send a peacekeeping force to Darfur – even without Sudan's consent". *Christian Science Monitor.* New York: Christian Science Monitor, 28 September 2006.

285. Orford, Anne. *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law (Cambridge Studies in International and Comparative Law).* Cambridge: Cambridge University Press. 2003.

286. Oltsch, Stefan. "Human Security in the United Nations and the European Union". Paper presented at the ACUNS Annual Meeting 2007.

287. Pace, William R. and Deller, Nicole. "Preventing Future Genocides: An International Responsibility to Protect", *World Order*, Vol. 36, No. 4, 2005, pp. 15-32.

288. Paskins, Barrie and Dockrill, Michael L. *The Ethics of War.* 1979. Minneapolis: University of Minnesota.

289. Paul, Ellen Frankel, Miller, Fred D. Jr. and Paul, Jeffrey. (Eds.). *Morality and Politics.* Cambridge: Cambridge University Press. 2004.

290. Pawlowska, Karina. 'Humanitarian Intervention: Transforming the discourse', *International Peacekeeping*, Vol. 12, no 4, December 2005, pp. 487-502.

291. Phuong, Catherine. *The International Protection of Internally Displaced Persons.* Cambridge: Cambridge University Press. 2004.

292. Phuong, Catherine. "Improving the United Nations Response to Crises of Internal Displacement", *International Journal of Refugee Law.* Vol. 13. No. 4, 2002, pp. 491-517.

293. Pictet, Jean. *Development and Principles of International Humanitarian Law.* Dordrecht and Geneva: Martinus Nijhoff and Henry Dunant Institute. 1985.

294. Piiparinen, Touko. "The Lessons of Darfur for the Future of Humanitarian Intervention", *Global Governance.* Vol. 13. No. 3, July/September 2007, pp. 365-390.

295. Plattner, Denise. "The protection of displaced persons in non-international armed conflicts", *International Review of the Red Cross* No. 291, November-December 1992, pp. 567-580.

296. Pollock, Philip H. III. *The Essentials of Political Analysis.* 2nd ed. Washington D.C.: CQ Press. 2005.

297. Primakov, Yevgeny. "UN Process, Not Humanitarian Intervention, Is World's Best Hope", *New Perspectives Quarterly*, Vol. 25, No. 4, 2 September 2004. Available at: http://www.digitalnpq.org/global_services/global%20viewpoint/02-09-04primakov.html (accessed January 23, 2009).

298. Prunier, Gérard. *Darfur: The Ambiguous Genocide.* London: Hurst & Company. 2005.

299. Ramcharan, Bertrand. *The Quest for Protection: A Human Rights Journey at the United Nations.* Geneva: The Human Rights Observatory. 2003-2004.

300. Ramonet, Ignacio. *Wars of the 21st Century: New Threats, New Fears.* Melbourne: Ocean Press. 2004.

301. Ramsbotham, Oliver; Woodhouse, Tom and Miall, Hugh. *Contemporary Conflict Resolution.* 2nd ed. Cambrdige: Polity Press. 2005.

302. Ramsbotham, Oliver and Woodhouse, Tom. *Humanitarian Intervention in Contemporary Conflict.* Cambridge: Polity. 1996.

303. Ramsey, Paul. *The Just War: Force and Political Responsibility.* Lanham: University Press of America and Cambridge: Cambridge University Press. 1983.

304. Reeves, Eric. "Failure to Protect: International Response to Darfur Genocide", *Harvard International Review*, Vol. XXIX, No. 4, Winter 2008, pp. 83-84.

305. Regan, Patrick M. "Choosing to Intervene: Outside Intervention in Internal Conflicts", *The Journal of Politics*, Vol. 60, No. 3, 1998, pp. 757-779.

306.Rice, Susan E. And Loomis, Andrew J. "The Evolution of Humanitarian Intervention and the Responsibility to Protect" *in* Daalder, Ivo H. (ed.). *Beyond Preemption: Force and Legitimacy in a Changing World.* Washington D.C.: The Brookings Institution, 2007, pp. 59-95.

307. Richmond, Oliver P. *Peace in International Relations.* New York: Routledge. 2008.

308. Richmond, Oliver P. 'Reclaiming Peace in International Relations', *Millennium: Journal of International Studies*, Vol. 36, No. 3, 2008, pp. 439-470.

309. Richmond, Oliver P. *The Transformation of Peace.* Basingstoke and New York: Palgrave Macmillan. 2007.

310. Richmond, Oliver P. 'Understanding the Liberal Peace', *Conflict, Security and Development*, Vol. 6, Issue 3, October 2006, pp. 291-314.

311. Robertson, Geoffrey Q.C. *Crimes against Humanity: The Struggle for Global Justice.* 2nd ed. London: Penguin Books. 2002.

312. Rubio, François. *Le droit d'ingérence est-il légitime ?* Paris : Les Editions de l'Hèbe, Collection la question. 2007.

313. Rytter, Jens Elo. "Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond", *Nordic Journal of International Law*, Vol. 70, Nos. 1 & 2, 2001, pp. 121-160.

314. Sandoz, Yves, Swinarski, Christophe, Zimmermann, Bruno (eds.). *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949.* Geneva and Dordrecht: ICRC and Martinus Nijhoff. 1987.

315. Saxer, Marc. "The Politics of the Responsibility to Protect". Dialogue on Globalization, *Friedrich Ebert Stiftung Briefing Paper 2*, April 2008.

316. Schweizer, Beat. "Moral dilemmas for humanitarianism in the era of 'Humanitarian' military interventions", *International Review of the Red Cross* (IRRC), Vol. 86, No. 855, September 2004, pp. 547-563.

317. Sellers, Mortimer. (Ed.). *The New World Order: Sovereignty, Human Rights and the Self-Determination of Peoples.* Oxford: Berg (Oxford International Publishers). 1996.

318. Seybolt, Taylor B. *Humanitarian Military Intervention: The Conditions for Success and Failure.* Oxford: Oxford University Press. 2007.

319. Shaw, Malcolm N. *International Law.* 5th ed. Cambridge: Cambridge University Press. 2003.

320. Slater, Jerome and Nardin, Terry. "Nonintervention and Human Rights", *Journal of Politics*, Vol. 48, No. 1. 1986.

321. Slim, Hugo. "Why protect civilians? Innocence, immunity and enmity in war", *International Affairs,* Vol. 79, No. 3, 2003, pp. 481-501.

322. Smith, Dan. *Atlas des guerres et des conflits dans le monde: Peuples, puissances militaries, espoirs de paix*. Paris: Editions Autrement. 2004.

323. Smith, Michael J. "Ethics and Intervention", *Ethics and International Affairs*, Vol. 3, No. 1, 1989, pp. 1-26.

324. Souverijn-Eisenberg, Paula. "Lessons Learned from the Joint Military Commission", New York: United Nations Department of Peacekeeping, Peacekeeping Best Practices Section, August 2005.

325. Stahn, Carsten. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm", *The American Journal of International Law,* Vol. 101, No. 1, January 2007, pp. 99-120.

326. Stamnes, Eli. "'Speaking R2P' and the Prevention of Mass Atrocities", *Global Responsibility to Protect*, Vol. I, No. 1, February 2009, pp. 70-89.

327. Stein, Mark S. "Unauthorized Humanitarian Intervention" in Paul, Ellen Frankel; Miller Jr., Fred D. and Paul, Jeffrey. *Morality and Politics*. New York: Press syndicate of the University of Cambridge, Cambridge University Press. 2004, pp. 14-38.

328. Steiner, Henry J. and Alston, Philip (Eds.) *International Human Rights in Context: Law, Politics and Morals – Texts and Materials*. 2nd ed. Oxford: Clarendon Press. 2000.

329. Symonides, Janusz (Ed.). *Human Rights: New Dimensions and Challenges*. Aldershot: Ashgate. UNESCO Publication. 1998.

330. Teitel, Ruti G. "For Humanity". *Journal of Human Rights*. Vol. 3. No. 2. June 2004, pp. 225-237.

331. Ternon, Yves. *Guerres et Génocides au XXe siècle: Architectures de la Violence de Masse*. Paris: Odile Jacob. 2007.

332. Tesòn, Fernando R. *Humanitarian Intervention: An Inquiry into Law and Morality.* 2nd ed. Dobbs Ferry N.Y.: Transnational Publications. 1997.

333. Thakur, Ramesh and Weiss, Thomas G. ""R2P: From Idea to Norm – and Action?", *Global Responsibility to Protect*, Vol. I, No. 1, February 2009, pp. 22-53.

334. Thakur, Ramesh. "Towards a Less Imperfect State of the World: The Gulf between North and South". Dialogue on Globalization, *Friedrich Ebert Stiftung Briefing Paper 4*, April 2008.

335. Thakur, Ramesh and Popovki, Vesselin. "The Responsibility to Protect and Prosecute: The Parallel Erosion of Sovereignty and Impunity", The Global Community, *Yearbook of International Law and Jurisprudence.* New York: Oceana. Volume I, 2007, pp. 39-61.

336. Thakur, Ramesh. *The United Nations, Peace and Security.* Cambridge: Cambridge University Press. 2006.

337. Thakur, Ramesh and Sidhu, Waheguru Pal Singh (Eds.). *The Iraq Crisis and World Order: Structural, Institutional and Normative Challenges.* Tokyo: United Nations University Press. 2006.

338. Thakur, Ramesh; Cooper, Andrew F. and English, John. (Eds.) *International Commissions and the Power of Ideas.* New York: United Nations University Press, 2005.

339. Thakur, Ramesh. "Use of Force and the Responsibility to Protect". *The Hindu.* June 2005.

340. Thakur, Ramesh. "The responsibility to protect revisited". *The Daily Yomiuri* (Japan). April 12, 2007. Available at: http://www.igloo.org/community.igloo?r0=community&r0_script=/scripts/announcement/view.script&r0_pathinfo=%2F%7B7caf3d23-023d-494b-865b-84d143de9968%7D%2FAnnouncements%2Fciginews%2Ftherespo&r0_output=xml (accessed January 23, 2009).

341. Thakur, Ramesh. "No More Rwandas: Intervention, Sovereignty and the Responsibility to Protect", *Humanitarian Exchange Magazine*, Issue 26, Humanitarian Practice Network, March 2004, pp.7-9, available at: http://www.odihpn.org/report.asp?id=2605 (accessed January 23, 2009).

342. Thakur, Ramesh. "In Defence of The Responsibility to Protect". *The International Journal of Human Rights,* Vol. 7, No. 3, Autumn 2003, pp. 160-178.

343. Thakur, Ramesh and Newman, Edward. *New Millennium, New Perspectives: The United Nations, Security, and Governance.* Tokyo: United Nations University. 2000.

344. Thomas, Caroline. *New States, Sovereignty and Intervention.* Groom Helm: Aldershot. 1985.

345. Ticehurst, Rupert. "The Martens Clause and the Laws of Armed Conflict", *International Review of the Red Cross*, No. 317, 30 April 1997, pp. 125-134.

346. Torrelli, Maurice. *From humanitarian assistance to "intervention on humanitarian grounds ?"*. Geneva: ICRC. 1992, pp. 228-248.

347. Totten, Samuel and Markusen, Eric (Eds.). *Genocide in Darfur: Investigating the Atrocities in the Sudan.* New York: Routledge. 2006.

348. Traub, James. "At Risk in Sri Lanka's War", *The Washington Post*, April 22, 2009.

349. Turner, Mark. "UN 'Must Never again be Found Wanting on Genocide' The 'Right to Protect'—Intervention to Stop Mass Murder—May Well Be the Summit's Lasting Legacy," *Financial Times,* September 16, 2005.

350. van Walraven, Klaas (Ed.). *Early Warning and Conflict Prevention:* Limitations and Possibilities. The Hague: Kluwer Law International. 1998.

351. Vincent, Marc & Refslund Sorenson, Brigitte (Eds.). *Caught Between Borders: Response Strategies of the Internally Displaced.* London: Pluto Press. 2001.

352. Vincent, Marc. "Protection and Assistance to IDPs". Response to Barutciski's article, *Forced Migration Review*. Vol. 4, p. 34. April 1999.

353. Vincent, R.J. *Nonintervention and International Order*. Princeton: Princeton University Press. 1974.

354. von Clausewitz, Carl. *On War*. London: Penguin Books (1832 translation). 1982.

355. von Freiesleben, Jonas, *Managing Change at the United Nations*, New York: Centre for UN Reform Education, April 2008. Chapter 3: "System-wide Coherence", pp. 37-54. Available at: http://www.centerforunreform.org/ (accessed January 26, 2009).

356. Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations.* 2nd ed. New York: Basic Books. 1992.

357. Warner, Daniel. *An Ethic of Responsibility in International Relations.* Boulder: London; Lynne Rienner. 1992.

358. Weiss, Thomas G. *Humanitarian Intervention: Ideas in Action.* Cambridge: Polity. 2007.

359. Weiss, Thomas G. and Daws, Sam. *The Oxford Handbook on the United Nations*. Oxford: Oxford University Press. 2007.

360. Weiss, Thomas G., Forsythe, David P. and Coate, Roger A. *The United Nations and Changing World Politics*. 5th ed. Boulder: Westview Press. 2007.

361. Weiss, Thomas G. "R2P After 9/11 and the World Summit", *Wisconsin International Law Journal*, Vol. 24, No. 3, 2006, pp. 741-760.

362. Weiss, Thomas G. and Korn, David A. *Internal Displacement: Conceptualization and Its Consequences*. Routledge Global Institution Series. New York: Routledge. 2006.

363. Weiss, Thomas G. *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect.* 2nd ed. New Millennium Books in in International Studies. Lanham: Rowman & Littlefield. 2005.

364. Weiss, Thomas G. "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era", *Security Dialogue*, Vol. 35, No. 2, 2004, pp. 135-153.

365. Weiss, Thomas G. and Collins, Cindy. *Humanitarian Challenges and Intervention: World Politics and the Dilemmas of Help.* Boulder: Westview Press. 2000.

366. Weissman, Fabrice (Ed.). *In the Shadow of 'Just Wars': Violence, Politics and Humanitarian Action.* London: Hurst & Company/Médecins sans Frontières. 2004.

367. Weller, Marc. "Negotiating the final status of Kosovo". Chaillot Paper No 114. Paris: Institute for Security Studies, European Union. December 2008.

368. Welsh, Jennifer; Thielking, Carolin J.; MacFarlane, S. Neil, *"The Responsibility to Protect: Assessing the report of the International Commission on Intervention and State Sovereignty"* in Thakur, R.; Cooper and English. *International Commissions and the Power of Ideas.* Tokyo: United Nations University Press, 2005, pp. 198-221.

369. Welsh, Jennifer M. *Humanitarian Intervention and International Relations.* Oxford: Oxford University Press. 2004.

370. Wheeler, Nicholas J. and Egerton, Frazer. "The Responsibility to Protect: 'Precious Commitment' or a Promise Unfulfilled?", *Global Responsibility to Protect*, Vol. I, No. 1, February 2009, pp. 114-132.

371. Wheeler, Nicholas J. "Operationalising the Responsibility to Protect: The Continuing Debate over where Authority should be Located for the Use of Force", NUPI Report Responsibility to Protect No. 3-2008. Oslo: Norwegian Institute of International Affairs, 2008.

372. Wheeler, Nicholas J. "A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit", *Journal of International Law and International Relations*, Vol. 2, No. 1, Winter 2005, pp. 95-105.

373. Wheeler, Nicholas J. *"The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society"* in Welsh, Jennifer M. (Ed.). *Humanitarian Intervention.* Oxford: Oxford University Press, 2004, pp. 29-51.

374. Wheeler, Nicholas J. "Legitimating Humanitarian Intervention: Principles and Procedures", *Melbourne Journal of International Law*, Vol. 2, No. 2, 2001, pp. 550-568.

375. Wheeler, Nicholas J. *Saving Strangers: Humanitarian Intervention in International Society.* Oxford, New York: Oxford University Press. 2000.

376. Wight, Gabriele and Porter, Brian (Eds.). *Wight, Martin. International Theory: The Three Traditions*. London: Leicester University Press. 1991.

377. Williams, Andrew. *Liberalism and War: The Victors and the Vanquished.* New York: Routledge. 2006.

378. Wright, Quincy. *A Study of War*. Chicago: University of Chicago Press. 1983.

379. Woodward, Susan L. "Do the Root Causes of Civil War Matter ? On Using Knowledge to Improve Peacebuilding Interventions", *Journal of Intervention and Statebuilding*, Vol. 1, Issue 2, June 2007, pp. 143-170.

380. Yovanovich, Gordana (Ed.). *The New World Order: Corporate Agenda and Parallel Reality*. Quebec City: McGill-Queen's University Press. 2003.

381. Zanetti, Véronique. *L'intervention humanitaire: Droits des individus, devoirs des Etats*. Genève : Labor et Fides. 2008.

382. Zanotti, Laura. "Protecting humans, governing international disorder: Integrated UN peacekeeping and NGOs." Paper prepared for the SHUR Final Conference LUISS University, Rome, Italy, June 4-6, 2009 (http://www.luiss.it/shur/wp-content/uploads/2009/05/zanotti.pdf).

383. Zanotti, Laura. 'Bio-Politics, International Governmentality and the Reorganization of Political Action from Below: Integrated UN Peacekeeping and NGOs'. Paper prepared for the submission at the 2009 International Studies Association, New York.

384. Zanotti, Laura. "Imagining Democracy, Building Unsustainable Institutions: The UN Peacekeeping Operation in Haiti," *Security Dialogue*, 2008, 39, 5, 539-561.

385. Zanotti, Laura. 'Taming Chaos: A Foucauldian View of UN Peacekeeping, Democracy and Normalization', *International Peacekeeping* 13(2) 2006: 150-167.

386. UN General Assembly Document 36/103. *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*. 36th session. 9 December 1981.

387. UN General Assembly Resolution 2131 (XX). *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*. 21 December 1965.

388. --------. *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*. Washington D.C.: The Brookings-Bern Project on Internal Displacement. October 2008.

389. --------. "Ten Years of the Guiding Principles of Internal Displacement". *Forced Migration Review GP10*. Oxford: Oxford University Press. December 2008.

390. --------. *Human Rights: A Compilation of International Instruments*, Vos. I, parts 1 and 2. New York & Geneva: United Nations. 1994.

391. --------. "Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement". *International Review of the Red Cross*, January-February 1987.

392. --------. *International Review of the Red Cross* No. 838, pp. 491-500: "Internally Displaced Persons: The Mandate and Role of the International Committee of the Red Cross", 30 June 2000.

393. --------. *International Review of the Red Cross* No. 324, pp. 463-466: "Codification of international rules on internally displaced persons", 30 September 1998.

394. --------. ICRC. "Humanitarian Challenges on the Threshold of the Twenty-First Century": *Keynote Address by the President of the International Committee of the Red Cross at the First Plenary Meeting*, Geneva, 4 December 1995". 26th International Conference of the Red Cross and Red Crescent. Geneva: ICRC.

395. --------. *Human Rights Watch World Report*, 1999.

396. --------. *Human Security Report 2005: War and Peace in the 21st Century*. Human Security Centre, University of British Columbia, Canada. Oxford and New York: Oxford University Press. 2005.

397. --------. *The Kosovo Report: Conflict, International Response, Lessons Learned*. The Independent International Commission on Kosovo. Oxford: Oxford University Press. 2000.

398. --------. "10 Years after Genocide in Rwanda: Building Consensus for the Responsibility to Protect". International Peace Academy Report on the Memorial Conference on the Rwandan Genocide held on 26 March 2004. 2004.

399. --------. *Conflict Barometer 2005-2008.* Heidelberg Institute for International Conflict Research. 2005-2008, available at: http://hiik.de/en/konfliktbarometer/index.html

400. --------.*World Disasters Report 2001.* International Federation of the Red Cross and Red Crescent Societies. IFRC: Geneva, 2001.

401. --------. *World Disasters Report 2000.* International Federation of the Red Cross and Red Crescent Societies. IFRC: Geneva, 2000.

402. --------. *Report of the Vienna Colloquy on the Guiding Principles on Internal Displacement, Vienna, Austria, September 2000.* Washington D.C.: Brookings Project on Internal Displacement.

403. --------. *Internally Displaced Persons and International Law, A Legal Analysis Based on the Needs of Internally Displaced Persons.* American Society of International Law, International Human Rights Law Group, prepared for Dr. Francis M. Deng, Representative of the U.N. Secretary-General on Internally Displaced Persons. October 1995.

404. --------. *Improving Institutional Arrangements for the Internally Displaced.* Washington D.C.: The Brookings Institution Refugee Policy Group Project on Internal Displacement. 1996.

405. --------. "The London Declaration of International Law Principles on Internally Displaced Persons". *International Journal of Refugee Law*, Vol. 12, Issue 4, October 2000, pp. 672-679.

406. --------. "International Intervention to Combat the Explosion of Refugees and Internally Displaced Persons". *Georgetown Immigration Law Journal.* Vol. 9, No. 3. 1995.

407. --------. *Analytical Report of the Representative of the UN Secretary-General on Internally Displaced Persons.* UN Commission on Human Rights. Geneva: UN Doc. E/CN.4/1992/23. February 14, 1992.

408. --------. *Protection Refugees and the Role of UNHCR 2007-2008.* United Nations High Commissioner for Refugees. Geneva: UNHCR. 2007.

409. --------. *The State of the World's Refugees: Human Displacement in the New Millennium.* United Nations High Commissioner for Refugees. Oxford: Oxford University Press. 2006.

410. --------. *Human Rights and Refugee Protection: part I – general introduction, part II – specific issues.* United Nations High Commissioner for Refugees. Division of International Protection. Geneva: UNHCR. 1995.

411. --------. "IDPs: The Hot Issue for a New Millennium". *Refugees.* Geneva: UNHCR. Issue 117. 1999.

412. --------. *Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons*, Vols. I and II. Geneva: Division of International Protection of the Office of the UNHCR. 1995.

413. --------. *Refugees: Dynamics of Displacement, A Report of the Independent Commission on International Humanitarian Issues*. London: Zed Books, pp. 120-122. 1986.

414. --------. "Interview on Darfur with the Representative of the UN Secretary-General on Internally Displaced Persons". 18 August 2004. Washington D.C.: Brookings Institution, Live Internet Chat (http://www.brookings.edu/fp/projects/idp/20040818_deng.htm).

415. --------. 'Statutes of the International Committee of the Red Cross'. Geneva: International Committee of the Red Cross.

416. --------. International Crisis Group. *Policy Briefings*. Available at www.crisisgroup.org

417. --------. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to Security Council Resolution 1564 of 18 September 2004, Geneva, 25 January 2005.

418. --------. *The Economist*, "Glittering towers in a war zone", Special report: Sudan, December 9, 2006.

419. --------. *Human Security Now: Protecting and empowering people*. Commission on Human Security. New York: United Nations. 2003.