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# PhD Thesis

## Global Norms and Local Effects: Assistance and Protection of Internally Displaced Persons in Sri Lanka

Durham University, School of Government and International Affairs

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11/1/2015

*Abstract:* This thesis is concerned with questions about how international normative frameworks for the assistance and protection of internally displaced persons have come to be understood and applied in a local context. In order to accomplish this, a case study approach has been employed, with Sri Lanka selected as an ideal case study subject for analysis. Systematic reviews of literature concerning the international assistance and protection of internally displaced persons reveal that there is a gap in scholarship in this field – primarily concerning the normative considerations that constitute the Guiding Principles for Internal Displacement. The study that follows examines the formulation of these norms, their expressions, as well implementation and dissemination efforts combined with an analysis of how the local sphere has understood and experienced these processes and these frameworks. The findings from this thesis reveal original academic observations relevant for this field, as well potential policy and theoretical implications for how the international community approaches the dilemma of internal displacement in general.

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To everyone who has helped me along this path, I say thank you. It is only left for me to say here that the errors found within this thesis are mine alone.



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## **List of Acronyms**

3 GC	Common Article 3 of Geneva Conventions
CFA	Cease Fire Agreement
CHA	Consortium of Humanitarian Agencies
CPA	Centre for Policy Alternatives
DRP	Draft Resettlement Policy
GA	Government Agent
GC	Geneva Conventions
GP	Guiding Principles for Internal Displacement
HSZ	High Security Zone
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICES	International Centre for Ethnic Studies
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Center
IDP	Internally Displaced Person
IFRC	International Federation of the Red Cross
IGO	Intergovernmental Organisation
ILA	International Lawyers Association
INGO	International Non-Governmental Organisation
IOM	International Organization for Migration
KKV	King, Keohane and Verba
LSE	London School of Economics and Political Science
LTTE	Liberation Tigers of Tamil Elam
MCUDP	Metro Colombo Urban Development Project
MoD	Ministry of Defence
MoR	Ministry of Resettlement, Rehabilitation and Hindu Religious Affairs
MSF	Medicins Sans Frontiers (Doctors Without Borders)
NAP	National Action Plan for the Protection and Promotion of Human Rights
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs

OHCHR	Office for the Commissioner of Human Rights
OISL	OHCHR Investigation on Sri Lanka
PTF	Presidential Task Force
R2P	Responsibility to Protect Doctrine
RPG	Refugee Policy Group
RRR	National Framework for Relief, Rehabilitation and Reconciliation
RSG	Representative to the Secretary General for Internal Displacement
SFC	Security Forces Commander (Sri Lanka Army)
SLA	Sri Lankan Army
SZHI	Special Zone for Heavy Industries
TRO	Tamil Rehabilitation Organisation
UN	United Nations
UN GA	United Nations General Assembly
UN SG	United Nations Secretary General
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children Fund
UNSC	United Nations Security Council
US	United States
WB	World Bank
WCC	World Council of Churches
WFP	World Food Programme

## **Part I: Theory and Method**

Bombs land.

Landmines explode.

Bullets fly.

Typhoons hit.

Mud slides.

Evictions are ordered.

Walls collapse.

Homes are destroyed.

*People are displaced.*

## Introduction

Whether it is a result of civil wars raging in Syria, ongoing wars in Afghanistan and Iraq, conflicts and violence in Northern Africa, anarchy in Libya, persisting tensions in places like Colombia, or even the Democratic Republic of the Congo, or Mali, persisting conflict in Darfur, or Somalia, or, Eritrea, human beings are being forced to leave their homes on a daily basis for fear of death. With every passing day, thousands of people across our world make the decision, *every single day*, to pack whatever belongings may be left to them, to store as much food as can be mustered, to find a way that they can carry their children, and simply to leave, abandoning their homes and livelihoods. This is a trip often made without a planned destination. This is a trip taken only because the fear of staying out weighs the uncertainty of leaving. Instead, this journey has only few certainties. For those that make this decision, the only certainties that can be counted on are struggle, pain and hardship. Stories of boats sinking, of torture, of enslavement, of rape, and of death are not sufficient deterrents. The prospects of staying, staying at home, are worse than even these risks – so long as there is hope somewhere else. And so, the trip is made.

This is a trip, and a series of decisions that, quite literally, thousands of people will make as this thesis is being considered. It is the plight of human beings being forcibly displaced. For many their story will end before it can ever be told, and before it will ever reach the headlines of global media outlets. For those able to survive this journey, becoming a refugee is the goal. It is difficult to think about refugees as “fortunate” in any circumstance, but this difficulty reflects the desperate reality of forced migration. For those less fortunate, they may become stateless in a new country, or they will remain displaced internally if they do not cross an internationally recognised border. Unable to achieve refugee status, so many of these people will remain trapped in a country wherein they are either the target of violence, or void of sufficient essential protections from government authorities. This latter group has come to known as “IDPs”.

This three-word acronym has come to represent almost 40 million human beings today – internally displaced persons. To be clear, the existence of this acronym represents a growing recognition of the plights briefly described above that have come to be understood and internalised in not just a general lexicon, but also in global governance bodies. This recognition and the responses offered by the international community in light of this dilemma are the subject of analysis of this thesis.

## **Purpose: Context and Questions**

In the realm of social science there is no shortage of questions that relate to security, human wellbeing, or governance that impacts on how the international community addresses individual security more generally. These issues and concomitant questions have become ever more apparent and, indeed, more clearly defined, in the post Cold War era. The end of the Cold War signified a transition into an era wherein “new wars” and “human security” came into prominence for the international community (Kaldor, 2012). These distinctions, however, only scratch the surface of other developments that came about at the same time. Forced migration stands out as one of the issues that rose into prominence in this era, with needed nuance in line with contemporary complexities. Up until this point, forced migration was largely understood as “refugee studies”, typically relegated to field of international refugee law. However, the end of the Cold War also signaled a transition between those individuals we understand/understood as refugees, per se, as those individuals that might be refugees in conventional understanding(s), but that have not crossed an internationally recognised border – enter the IDP. The creation and development of a definition for “internally displaced persons” tracks closely with the rise of this phenomenon – becoming ever more pronounced in the post-Cold War era. Indeed, in the 1990s the number of IDPs recorded and recognised by the international community seems to rise in an inverse relationship with the numbers of refugees (to be explored in chapter 1). This led to a significant effort, on the part of the international community, to address the needs of IDPs, specifically and distinct from refugees. These efforts form the basis for this thesis.

## **Research Purpose and Questions**

This thesis has been informed by the historical developments that characterise forced migration in recent years, with emphasis placed on the plight of internally displaced persons specifically. This field of research is relatively new in the broader scope of social sciences in general, and also in the field(s) of political science and international relations more specifically. Research about internal displacement has become ever more relevant as the numbers of those internally displaced increases. The global political context of the mid and late-1990s made this concern more possible as the international community’s attention moved away from the bipolar tensions that characterised the Cold War, into an era wherein human security could take centre stage. The question of forced migration, especially as it related to refugees, was not a new phenomenon. Rather, the global governance context in the post-Cold



War era made possible attention to individuals in light and in relation to state power in a way that was never possible before.

As will be outlined, explained and examined in the chapters that follow, the question and dilemma of “internal displacement” became a priority for the international community during this time. This historical development necessarily led to scholarship that was focused on internal displacement specifically. This scholarship, it must be noted from the outset, was never far from actual policy formulation(s) relevant for this issue. Indeed, many of the academics that constitute the most relevant scholarship in this arena were also instrumental in the advocacy efforts that came to create the international policy framework(s) for assistance and protection of internally displaced persons that have come to characterise this field as a whole. This advocacy-based scholarship remains a dominant feature of research in this arena. As a result, this body of research has grown in significant ways. However, certain issues – indeed, questions – remain unaddressed. Specifically, one of the biggest gaps that remains in this growing body of research is concerning the normative aspects that have informed the international community’s approach to this dilemma in relation to the local acceptance, understanding(s) and subsequent implementation of global policy frameworks.

Accordingly, this thesis is driven by the following question: ***how have global norms concerning the international assistance and protection of IDPs impacted upon the local sphere?*** In order to answer this it is required that answers are also given to the questions: *how have global norms been articulated? How have these norms travelled to the local sphere? How have these norms been applied? And, how have these norms been understood and/or perceived by the local sphere?*

### **Analytical Structure**

In order to try and answer these questions, this thesis has been constructed along traditional constructivist lines, with a single case study chosen for closer examination in relation to (normative) developments in the international community. In chapter 1, there is a critical examination of leading literature that has been produced, concerned with the international assistance and protection of internally displaced persons. This literature review is essential in order to establish the originality of this study – identifying the dominant themes and also the holes that remain in this body of work. From this first chapter the reader will be able to see how the international (academic) community has approached this issue. The decision to limit this literature review along the lines mentioned above is justified by the fact that the very

notion of an “internally displaced person” is relatively new in the context of global governance; but, also a notion that has only become ever more prominent on the agenda of the international community at large.

Chapter 2 sets out a theoretical framework that is helpful in understanding the various developments within the international community that have been directed towards enhanced assistance and protection of those individuals internally displaced. The emergence of internal displacement on the international community’s agenda tracks closely with other historical developments characteristic of this time period. The three-dimensional theoretical foundation presented here comprises: state sovereignty and the responsibility to protect doctrine, cosmopolitanism theory, with an emphasis on the variant of institutional cosmopolitanism, and humanitarianism theory that continues to constitute a generalised understanding and approach to assistance and protection of internally displaced persons. Chapter 3 presents the methodology and methods that have been selected and employed in this thesis – favouring constructivist approach with qualitative methods. These three chapters comprise the first half of this thesis regarding theories and methods; these chapters are intended to capture and illuminate the most relevant considerations and themes that have come to characterise internal displacement in a scholarly focus, but also in how this issue might be considered in future research that departs from the conventional frameworks for analysis and therefore reveals the uncertainties that warrant more research.

The second half of this thesis is devoted to a case study in pursuit of the questions mentioned above. Whilst the approach chosen here was that of one single case study, this half of the thesis begins with an analysis of the documents that comprise the primary set of publications and normative frameworks originating from the international community relevant in this field. From this point, the specific case study of Sri Lanka is considered in some depth. To be clear, the case study chapters of this thesis do not endeavor to provide a complete history of the case study in the time periods analysed; this would not be possible, given the primary purpose(s) of this thesis. As will be justified further in chapter 3, the decision to employ Sri Lanka as an ideal case study for this study was made because of the long history the country has in relation to both forced displacement as well as its enduring relationship with the international community. Thus, chapter 5 includes a brief historical account of this case, with particular attention paid to the early 2000s, wherein the Guiding Principles for Internal Displacement were disseminated in the country, up until the end of the 30 year civil war that has come to characterise Sri Lanka more generally.

The Sri Lankan civil war only ended in 2009. The end of this war was brutal and bloody, resulting in the displacement of hundreds of thousands of people that would never become refugees; having not crossed an internationally recognised border, these people became to be known as “internally displaced”. Concomitant with the end of the civil war, and the widespread internal displacement, resettlement became a major priority for both the government as well as the other organisations operating in this arena. This period of immediate resettlement is the subject of chapter 6. The final case study chapter of this thesis, chapter 7, brings the contemporary context of internal displacement in Sri Lanka into focus. This final chapter is necessary and also original, in that it brings to a whole the current concerns about internal displacement in Sri Lanka with ongoing developments and movements relevant to the larger, global, normative frameworks put forth by the international community on this issue. Taken together, these chapters will present findings that constitute original research in this area into two ways: 1. By including information and data that has not been considered before, and 2. By employing this data, as well as other data available from the international community, in original conceptual frameworks.

## **Chapter 1: Literature Review**

Over the last two decades internal displacement has become a major priority in the international community. This development has included efforts to formally define internal displacement and also efforts to mitigate the dire conditions that it entails. At virtually all levels of analysis, internally displaced persons (IDPs) have been, and continue to be, intrinsically linked to refugees. Whether it is in academic discourse, legal debate, policy formulation or institutional mandates, these two groups stand out as two sides of the same coin. For one, and most simply, they are both displaced populations. Moreover, they often have in common the root causes of displacement – primarily violent conflict and human rights abuses (Lee, 1996-1997; Cohen, 2006b). Given the similar causes and contexts that refugees and IDPs share, it follows that they also have similar needs throughout the course of their displacement: food, shelter, protection, etc.

The conceptual, legal and institutional links between IDPs and refugees forms the backdrop against which most IDP literature is produced and is important to consider in this analysis. However, while these links may be strong, they do not amount to equivalence; thus, the differences between IDPs and refugees are what come to matter most in popular discourse. In the first instance, these differences embody the fundamental gap that exists between the two groups – a dominant theme throughout the literature and one that takes many forms. Despite the shared characteristics of refugees and IDPs, the context in which they are assisted and protected by the international community varies greatly, and this distinction sits at the core of all research in this field. There is a vast body of international law dating back to 1951 devoted to refugees specifically. Accordingly, refugees are legally afforded the protection of asylum or resettlement through various international treaties and organisations (Chimni, 1990; Lauterpacht and Bethlehem, 2003). IDPs, though sharing similar causes and circumstances, do not enjoy the benefits of long standing refugee law. IDPs do qualify, in principle, for the guarantees of international humanitarian and human rights law, however the legal distinction between refugees and IDPs constitutes one of the basic gaps that characterises the assistance and protection of the latter. This legal gap is a significant challenge for the formulation and implementation of IDP assistance and protection, and will be explored further in section 1.2 however it is not the primary subject of analysis for this thesis; rather, it is a symptom a larger trend that can be detected in this field.

Significantly, the gaps in IDP assistance and protection are not only apparent through inter-group analysis, but also within the IDP regime itself. One finds that scholarship and research on the international assistance and protection of IDPs is riddled with references to gaps: consensus gaps on the definition and meaning of internal displacement; ratification gaps on potential international legal mechanisms; legal gaps in the application of international law; implementation gaps at the institutional level (global, regional and national); and so on (see Phuong, 2004). These are at times explicit in the literature, while at others implicit in the arguments made by contributing scholars. More generally, it is possible to identify three dominant themes that characterise literature on IDPs over the last couple of decades:

1. The conditions and context of IDPs
2. Legal debates concerning assistance and protection
3. International institutional innovations and deficiencies

In order to establish a critical understanding of this field, this chapter will present a critical review of literature on the international assistance and protection of IDPs. In doing so, it will highlight the explicit and implicit gaps that exist throughout the growing body of work concerned with this issue. As this field of scholarship is relatively new, this review has been largely informed by the seminal works produced in the field by those key figures who have given shape to the discourse, to the policy and current debates; for example, Roberta Cohen and Francis Deng stand out as two such figures. Whilst it is necessary to draw on the scholarship more broadly, and this is done, contributions from Cohen and Deng remain invaluable to a survey of this literature. Throughout this chapter, I will argue that many of the debates and concerns over such “gaps” are, in many ways, resolved or essentially moot for contemporary consideration of international IDP assistance and protection. This can be seen only when one considers questions about how assistance and protection is provided in current institutional and legal frameworks, not when one questions how assistance and protection ought to be provided. Furthermore, those gaps, or simply issues, that do remain can be conceived more generally within the foundation in this field; that is, a broader and more pertinent issue surrounding the normative frameworks that underlie the international community’s approach to IDP policy; norms and principles that are designed to not only provide, but in fact guarantee, basic rights to the world’s most vulnerable populations – in this case, to those internally displaced. In short, it is a question of normativity. Within this, however, there are other elements that deserve more attention. One such element is that of the state; how the state has been/is affected by international programmes, and also vice versa

– how considerations of the state have informed and continue to influence the international schemes intended to enhance protection and assistance of IDPs.

## **1.1 Conditions and Context**

An essential element in the growing literature on the international assistance and protection of IDPs is concerned with the conditions and context that have led to IDPs becoming a prominent concern; this necessarily includes the causes, measurement, implications, and definition of internal displacement. The story of how IDPs have been conceived and defined in the international community reflects the growing numbers of persons displaced as well as the growing awareness and attention of their plight in the international community.

Moreover, evaluating the processes and debates that have informed the creation of a definition reveals an implicit consensus gap pertaining to the concept itself. The notion of an IDP is relatively new and as it has developed over the last 20 years subtle, yet significant, changes have been made. There has been an on-going debate over how restricted or broad the definition should be, affecting the groups that can/should be included in the growing IDP regime. While the definition remains contested in some respects, it appears that there is a growing convergence between the different articulations and therefore an emerging consensus on the concept.

A survey of basic trends in internal displacement reveals two important points: 1.) it demonstrates the quantitative divergence of IDP and refugee populations, where the former has drastically overtaken the latter; and 2.) it highlights the acute and unique needs of IDPs. Taken together, these form the backdrop against which a definition has been debated and developed in the international system.

### **1.1.1 The Rise and Plight of IDPs**

While internal displacement as a phenomenon has deep historical roots, it has been poorly recorded and there is very little reliable data available on figures until the 1970s. This is primarily due to the fact that, until recently, there was not an internationally recognised organisation devoted to IDP monitoring (Rosenberg, 2004).<sup>1</sup> Even when reporting began, the figures from the 1970s and 1980s are contested and vary greatly: by one account, in 1970 there were five million IDPs from five countries, in 1980 seven million from 11 countries and by 1990 22 million from 23 countries (Hampton, 1998; Rosenberg, 2004); by another, 1982

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<sup>1</sup> The Internal Displacement Monitoring Centre was established by the Norwegian Refugee Council in 1998, and has since taken on this role of monitoring and reporting basic statistics and trends on the internally displaced.

was the first year that IDPs were recorded, producing a much more modest count at one million (US Committee for Refugees, 1998 and UN High Commissioner for Refugees, 1998 in Weiss, 1999, p.363; Cohen and Deng, 1998a; Cohen, 2003). Statistics on internal displacement are necessary for an understanding of the scale and scope of the problem, however, they need to be considered with the recognition that they are far from accurate. While still recognising their significance, Marc Vincent has warned that they are ‘at best, estimates and, at worst, misleading’ (2000, p.1). Counting and reporting has improved in many ways over the past 20 years, but the complex and diffuse nature of internal displacement makes it a very difficult phenomenon to record with (statistical) confidence.

Regardless of the discrepancies in, and limitations of, reported statistics, it is possible to see an undeniable trend – the significant rise of internal displacement across the globe, particularly relative to refugees. According to the Internal Displacement Monitoring Centre, when the research for this began in 2011 there were more than 28 million IDPs<sup>2</sup>, compared to the 15 million refugees counted by the United Nations High Commission for Refugees (UNHCR) (IDMC, 2012; UNHCR, 2011). At the final stage of writing, the most recent data estimates that the number of IDPs have grown to 38 million; refugee figures having increased to approximately 19 million (IDMC, 2015a).

There is, of course, no single cause of internal displacement, making its dramatic increase difficult to understand. At the micro-level one commonly finds underlying political, ethnic, linguistic or religious tensions that erode, or inhibit, national stability (Cohen and Deng, 1998a). These tensions take diverse forms in the multitude of states where internal displacement occurs. That said, many scholars note how the broader geopolitical context of the time can help to understand the rise of IDPs; more specifically the end of the Cold War (Cohen and Deng, 1998a/b; Weiss, 1999; Vincent, 2000; Phuong, 2004; Bagshaw, 2005). Barbara Cohen and Francis Deng, two of the most prominent scholars and practitioners in this field, specifically call internal displacement a ‘post-cold war phenomenon’ and explain that ‘some of the major cases of internal displacement over the past two decades are related to conflicts that either took place during the cold war or were significantly affected by cold war policies’ (1998a, p.19).

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<sup>2</sup> This figure does not count those displaced by natural or man-made disasters nor development projects. If those IDPs were counted the figure would increase by the millions.

Two trends in particular help to explain the increase in internal displacement over the last 20 years. First, throughout the Cold War there was a political advantage to accept refugee flows. In addition to the political advantages of great powers accepting large numbers of refugees, less power states that hosted refugees could appeal to the great powers for financial, or otherwise material, assistance. However, as the Cold War came to an end Western powers were less willing to grant asylum. In its place, containment policies became favoured by host states and displaced populations found it more difficult to seek refuge, per se. The increase of containment policies and their effects helped, in part, produce a shift in focus of the international community. Simon Bagshaw explains this while highlighting some of the specific mechanisms that would constitute containment policies in this context:

...international concern with the plight of the internally displaced should perhaps be ranked among the litany of measures employed by such states to undermine the refugee protection regime during the last two decades such as visa requirements on the nationals of refugee-producing states, carrier sanctions, burden-shifting arrangements, so-called “safe country” lists and forcible interdiction of refugees at frontier and in international waters. (2005, p.74).

With diminished incentives and willingness to harbor refugees, such populations necessarily became internally displaced. Secondly, patterns of conflict shifted in the post-Cold War transition from interstate to intrastate, civil conflict (Kaldor, 2012). More significantly, these conflicts have often been characterised by violence targeted against civilians, widespread human rights abuses and a generalised increase of populations displaced within their borders (Weiss, 1999; Kaldor, 2012).

The statistics on internal displacement, while not accurate, do indicate a generalised trend of incidence that shows a disturbing upward trend. This rise, from the early 1990s onward, has garnered increasing attention from the international community, reflecting not only the absolute increase, but also a growing awareness of the acute and urgent needs of those internally displaced. The globalisation of media and proliferation of broadcast power brought the IDP plight, at least in part, into global consciousness (Cohen and Deng, 1998b; Rosenberg, 2004). The effects of internal displacement make affected populations one of, if not the most vulnerable group(s) in the world. Situations of internal displacement account for the ‘highest mortality rates ever recorded during humanitarian emergencies’ and leaves tens



of millions (at time of writing) without homes, livelihoods, personal documentation, and basic services necessary to sustain life itself (Cohen, 2006a, p.89). The basic and fundamental, and daily, threat to life is accompanied by IDPs' severely limited access to shelter, food, healthcare, education and necessary documentation for travel, work or access to the aforementioned services (Mooney, 2005, pp.16-17). This list is by no means exhaustive or all inclusive of the problems IDPs face, but it does highlight the exigency of their circumstances. Furthermore, the deleterious effects of internal displacement are not confined to the IDP populations themselves; rather, they affect both the communities of origin as well as the host communities where IDPs reside. This "multiplier affect" has increased the calls for international responses that can prevent and mitigate displacement, as the disturbances created can have long term negative consequences for an even greater number of people. Furthermore, it must be noted that negative externalities can cross borders even if IDPs cannot, in turn threatening both regional and international security more generally (Cohen, 2006a).

### **1.1.2 Definition Debates**

As incidence and awareness of internal displacement grew, the constituent elements of the very concept were examined more closely. It became apparent that, amongst other things, there needed to be a settled definition of what 'internally displaced person' meant. This is, of course a sensitive political issue as the definition of an IDP dictates what groups are included and therefore focused on. There were parallel concerns that the definition, if for example to be linked directly to the refugee regime, could be overly restrictive and not include groups that ought to be (Cohen and Deng, 1998a). On the other hand there were concerns that too broad a definition would impair the overall effectiveness and coherence by including too many groups with too diverse a set of needs. Furthermore, there have been questions regarding the ethics, or indeed, necessity of a special category for IDPs, primarily based on the argument that if IDP rights are to be grounded in existing international law, should not those standards apply already to every member of a population? (Phuong, 2004; Bagshaw, 2005). Box 1.1 below sets out critical dates and developments in the formulation of a definition for internally displaced persons at the international level.

## Box 1.1

## Timeline of IDP Rise and Definition

1951	Convention relating to the Status of Refugees established in response to the refugee problem in Europe after World War Two
1967	Protocol established in response to the refugee problem in Europe after World War Two
Oslo, 1988	International Conference on the Plights of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED), re: Angola and Mozambique
United Nations, 1989	General Assembly requested the Secretary-General to consider the need for a implementation and coordination mechanism for IDPs
Americas, 1989	International Conference on Central American Refugees recognised distinct needs of IDPs
United Nations, 1990	The Economic and Social Council requested the Secretary-General initiate UN-wide review of related experience and capacity.
late 1980s - early 1990s	Friends World Committee for Consultation (Quakers) (Martin Macpherson), World Council of Churches (WCC) Beth Ferris, Barbara Cohen from Refugee Policy Group (RPG) mobilise in response to problems of NGO access to internally displaced populations
United Nations, 1990	Quaker UN Office in Geneva invited Dr. Cohen to discuss how best to proceed
United Nations, 1991	In consultation with the WCC and (informally) ICRC and UNHCR Macpherson submitted a draft resolution to the Commission on Human Right; Austrian delegation subsequently submits draft resolution to the Commission based largely on Macpherson's.
Washington, DC, 1991	Refugee Policy Group convened a conference on human rights protection for IDPs; including UN branch chief George Mautner-Markhoff of the UN Center for Human Rights, who was responsible

	for the forthcoming analytical report of IDPs. Recommended that the Commission set up a working-group and special rapporteur of IDPs
United Nations, 1992	Analytical report submitted to the Commission. Statement by Quakers, WCC and Caritas proposed a working-group of experts; Austria subsequently re-submitted a resolution requesting a designated representative to the Secretary-General
United Nations, 1992	Secretary General Boutros-Ghali appointed Francis Deng as his Representative on Internally Displaced Persons
United Nations, 1993	RSG-Deng submitted comprehensive study to the Commission; noted tension between legal standards and debate over utility of a new legal regime; also noted lack of centralised UN mechanism responsible for IDPs; proposed that a compilation and analysis of legal norms be conducted (Austria submitted); Commission Res. 1993/95 requested Secretary-General to extend RSG mandate
United Nations, 1994	Compilation and Analysis study began with diverse group of international legal experts
United Nations, 1996	The first part of the Compilation was submitted to the Commission
United Nations, 1998	The second part of the Compilation was submitted to the Commission
United Nations, 1998	The Guiding Principles on Internal Displacement submitted to the Commission

Source: adapted from various UN Archives; Bagshaw, 2005.

As a starting point, it is important to note that the definition of an IDP, and subsequent consensus gaps in the debate, must be considered in relation to the refugee regime for three reasons. The notion of a consensus gap in this context refers to the lack of agreement on just who should be included in the term “internally displaced person”. This has manifested itself different ways. First, there has historically been a strong link between the way the international community both understands and also responds to refugees and IDPs. This

historical link may have been severed formally (in 1951), however a perceptual link has persisted in popular discourse – where IDPs are often thought of as a different kind of refugee. Secondly, because of the historical link, attempts to create a distinct IDP definition have deliberately decoupled the two regimes in crucial ways. And third, because even though there has been significant progress on the formulation of an IDP definition, issues of contention still remain in both academic and (I)NGO circles.

Luke Lee explains that '[e]ven during the early years of the United Nations, the term refugee included also the meaning of IDPs (1996-1997, p.529). In fact, immediately after the end of World War II, the un-resettled Jews from Germany who were detained and persecuted within Germany were in fact defined as refugees (ibid). This link was formally severed by the 1951 international Convention Relating to the Status of Refugees, as the realities of the Cold War set in and borders became 'sacrosanct', such that 'concepts of non-interference in internal affairs overrode most efforts to protect people inside their countries' (Cohen, 2010).

However, the conceptual link between refugees and IDPs survived at least until the mid-1980s when Andrew Shacknove argued that the basic criterion for refugeehood was threefold: 1.) persons deprived of basic rights, 2.) persons with no recourse to home government and 3.) persons with access to international assistance (1985, p.282). By his estimation, this criteria could easily apply to different forms displacement, including internal, because "refugeehood" was fundamentally a political relationship and should not be determined by positivistic legal standards conditioned by the act of crossing a border (Shacknove, 1985, pp.282-283). Even beyond the articulation of conceptual links between refugees and IDPs lies the link in perception. This is perhaps best illustrated by the statement made by President George H.W. Bush of the US in 1991 when he referred to Kurdish IDPs in Northern Iraq as part of the 'refugee concern' (Orchard, 2010). This perception is gradually changing as the IDP regime grows, however it demonstrates why the issue of creating an IDP definition is so closely linked to the formal notion of a refugee (the implications of a legal synthesis between a refugee and an IDP are examined below).

The attempts at creating an IDP definition distinct from a refugee follow quite closely the trend of internal displacement growth. And while this can on the surface appear to be a semantic exercise, language in this field matters a great deal. In the case of differentiating between refugees and IDPs it determines status (Vincent, 2000), and status in turn determines the forms of assistance and protection available to the respective populations via international law (Barutciski, 1998). The United Nations first officially addressed the IDP issue in 1972,

but at this point the concept was still largely linked with refugees and therefore within the mandate of UNHCR. It was not until 1989 that the first formal definitions were proposed (Geissler, 1999). However, the most significant attempts (and amendments) began in the early 1990s.

The process and debate over an IDP definition is unique in that it has taken place in a multiactor governance framework, largely outside of conventional state-led efforts. In response to difficulties experienced in the field when trying to access internally displaced populations, three organisations mobilised in the early 1990s to bring this issue to the fore; the informal coalition included the Friends World Committee for Consultation (Quakers), World Council of Churches (WCC) and Refugee Policy Group (RPG) (see box above). With early and unexpected success in taking the issue to the Commission on Human Rights the coalition was able to – primarily through the support of the Austrian delegation – push for the appointment of a Representative to the Secretary General (RSG) on Internal Displacement, extended working groups on the issue and extensive analysis of the problem.

The UN Secretary General, in 1992, put forth a working definition of IDPs as follows:

Persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country (UN Commission for Human Rights, in Mooney, 2005, p. 10).

This articulation was found to be problematic and subsequent changes were made under the leadership of Francis Deng, then Representative of the Secretary General on Internally Displaced Persons. The RSG's first report to the Commission, in 1993, was a comprehensive study of the internal displacement problem and included proposals (which would become requests via the Austrian delegation) for a technical compilation and analysis of the legal norms relevant to IDP protection and assistance – what would aptly become the *Compilation and Analysis of Legal Norms*. The study began in 1994 and included a group of leading international law scholars led by Walter Kalin (Cohen and Deng, 1998a). The Compilation was eventually submitted in two parts, 1996 and 1998 respectively, along with the Guiding

Principles on Internal Displacement (OCHA, 1998).<sup>3</sup> The definition developed in Deng's work was a slightly, albeit significantly, amended version of the 1992 articulation and reflects the recognition that the 1992 definition was overly restrictive. The amended version defined an internally displaced persons as follows:

'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 man-made disasters, and *who have not crossed an internationally recognized State border*' (OCHA, 1998, p.1 emphasis added).

The italicised amendments are nuanced edits but have significant implications. First, by replacing 'forced to flee' with 'obliged to flee', this articulation broadens the causal scope of internal displacement to include forms of coercion that are not the direct consequence of overt force such as evictions or demolitions. Also, by removing the term 'in large numbers' this broadened the definition to include instances of displacement where groups would frequently leave in small numbers so as to avoid detection (as in the case of Colombia's internal displacement patterns). By adding 'places of habitual residence' this definition includes those individuals who did not have a home to begin with. The term 'in particular' in this version allows for flexibility in interpretation that could include other causes of displacement as they arise. Next, by adding 'in order to avoid the effect of' this definition entails those people who have become displaced as the result of an expectation of, or potential for, a crisis, rather than as a crisis unfolded. The phrase 'who have not crossed an internationally recognized border' was intended to address the dilemma witnessed in the dissolution of the former Yugoslavia. This language accounts for situations wherein international borders change suddenly and individuals find themselves displaced within a territory that was once their state but no longer is (Mooney, 2005). Lastly, it is significant to note that the phrase 'suddenly or unexpectedly' was removed from the 1992 definition. This terminology implied temporal constraints within IDP definition and could therefore be grounds for excluding those individuals experiencing protracted displacement. Here too, the "expectation of crisis" is afforded equal ground as crises in real-time.

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<sup>3</sup> The Guiding Principles on Internal Displacement are a restatement and in some cases a re-articulation of existing of Human Rights, Humanitarian, and (by analogy) Refugee Law. These are explained in greater detail in section 1.3.1.

This definition reflects the concerted efforts made by both the UN, and key member states, but also of active and engaged non-governmental organisations. The 1998 Compilation and Guiding Principles' definition quickly became the commonly used reference for an IDP definition. However, even the more contemporary IDP related bodies find it difficult to account for all groups covered by this articulation. The IDMC, for example, is only now in the initial stages of recording disaster and development related internal displacement. While this terminology was included in both the 1992 and 1998 UN definitions, it remains an issue of some contention. Recent work from Mooney (2005) has focused on highlighting disaster and development internal displacement as a distinction that deserves both more consideration as well as resources. While the inclusion of disaster and development related IDPs is not contested generally, these are two situations where the state in question is likely to reassert its control and avoid the assertion that it is somehow too weak to care for its citizens. In the academic community, the inclusion of disaster and development IDPs is a growing theme. The international attention, recording, assistance and evaluation of conflict related displacement still accounts for a majority of respective efforts, but efforts to emphasise disaster and development internal displacement continue and it is likely to be a field of further inquiry.

Parallel to the UN-led process of developing a definition for IDPs were the efforts made by the International Lawyers Association (ILA). The ILA began consideration of an IDP definition around the same time (early 1990s) and in 2000 produced a version within the London Declaration of International Law Principles on IDPs as follows:

‘Persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border’ (ILA, 2000 in Lee, 2002).

This definition is significantly narrower than the UN version as it does not include the qualifications of coercion, the ‘in particular’ expanding qualification, nor inclusion of disaster related IDPs.<sup>4</sup> This difference illustrates the contested nature of an IDP definition and the consensus gaps implicit in the discussion that have collectively shaped the understanding we have today. The debate over a settled definition for IDPs is dominant feature of virtually all

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<sup>4</sup> Further articles in the ILA declaration do include disaster as a legitimate cause, however it was not included in the explicit definition.

literature on the subject. Ironically, however, most scholars – indeed even most of those who discuss this issue – now use the UN (OCHA, 1998) articulation.<sup>5</sup> This ostensible consensus does not come without exceptions, however, exemplified by the contribution of one researcher who has written on the subject as recently as 2004, while neglecting to use the updated UN version, and instead basing his analysis on the now out-dated 1992 UN definition (see Rosenberg, 2004). Despite this, the consensus gap over a definition appears to be closed in many crucial respects. It is true that inevitable confusion and inconsistency will remain problematic, but the convergence of terms is significant.

The past and current scholarship on the international assistance and protection of IDPs, to a large degree, is grounded on an analysis of the IDP conception itself. However, this conception is not simply a neat definition, but rather it is one that is both contested and also one that has undergone significant transformation over the last 20 years, particularly in the 1990s. This is consistent with the overall increase in incidence(s) of internal displacement during that time period and concomitant attention from the international community. The Guiding Principles' definition, one could argue, is now becoming entrenched as it is increasingly the standard which informs IDP assistance and protection efforts made by the international community. The Guiding Principles have gone a long way in rearticulating existing international law and therefore it is necessary to examine the nature of form international law in relation to IDPs more closely.

## **1.2 The Legal Debate**

There is an extensive debate in IDP literature on the legality of available assistance and protection mechanisms. This discussion covers a range of issues, from the fundamental legal gaps that exist in IDP protection, to analysis on the efficacy of existing international law, and also the possibility, and utility, of a legally binding instrument devoted explicitly to IDPs – similar to that available to refugees.

While this debate is prominent throughout the IDP literature, there appears to be a constant argument against legal synthesis, stressing instead a “soft law” approach. In this way, the argument appears to be moot in certain respects as there are few defenders of either a. legal synthesis with the refugee regime, or b. the establishment of a legally binding set of standards explicit for IDPs. To demonstrate the growing consensus in the legal debate, it is important to

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<sup>5</sup> Luke Lee stands out as one of the only contributors who actively uses the ILA definition, though it should be noted that he was formerly the Chairman of the ILA's committee on IDPs.



consider these three themes in the literature: the gaps, the relevance of existing law and the question of a legally binding instrument.

### **1.2.1 Legal Gaps**

The most basic idea of a protection gap for IDPs lies in their condition relative to refugees; where the latter have an established legal regime that explicitly provides for assistance and protection. This was a glaring discrepancy in legal protections that the international community began to address in the early 1990s, alongside the efforts to create a settled definition. The Compilation and Analysis of legal norms (mentioned above), under the guidance of RSG Deng, analysed the extent to which the basic needs of IDPs were met by three recognised bodies of international law: international humanitarian law, human rights law and refugee law by analogy; as refugee law explicitly does not apply to IDPs, it was largely used as a reference point for comparing applicable law to the needs of IDPs in order to specifically identify the gaps that exist relative to those offered to refugees (Phuong, 2004). The Compilation has become the foundation upon which an IDP assistance and protection regime is being built. It provided an independent and technical legal analysis of relevant law, and in the process, demonstrated the need for further articulation of legal principles – hence the subsequent creation of the Guiding Principles.

The report found that, combined, international humanitarian law and human rights law covered many aspects of relevance to IDPs, but it also revealed that some significant ‘gray areas’ and ‘gaps’ remained (OCHA, 1995; Bagshaw, 2005). Different scholars tend to emphasise specific gray areas and gaps, or sets of them, when discussing the shortfalls of current international legal standards. These studies warrant review, however it is helpful to begin with the Compilation itself and its conclusions.

The Compilation considers the extent to which these various international standards address the needs of the internally displaced within three situations: situations of tensions and disturbances, or disasters; situations of non-international armed conflict; and situations of international armed conflict. (Bagshaw, 2005, p. 86). Viewed in this way, the study found that while existing international law ‘covers many aspects of particular relevance to internally displaced persons, there remain two areas in which the law fails to provide sufficient protection for them’ (CHR, 1998). The first are those situations where general legal norms do exist but that a ‘corollary, more specific right has not been articulated that would ensure implementation of the general norm in areas of particular need to internally displaced’

(Bagshaw, 2005, p.89). Second, there are also some situations where international law provides insufficient protection as general legal norms do not exist that would address the specific needs of IDPs (*ibid.*). Altogether, there were 17 areas of insufficient articulation found in the former category and eight distinct gaps in the latter; see box 1.2 below.

## Box 1.2 Grey areas and Gaps

Compilation recommended restatement of existing general norms where norms did exist but no corollary or specific articulation in relation to: (Grey Areas)

- discrimination
- the protection of life
- gender specific violence
- detention
- the use of human shields
- forced recruitment
- subsistence needs
- medical care
- free movement
- family related needs
- the use of one's own language
- religion
- work
- education
- association
- political participation
- the need for access to international assistance

Compilation identified a number of cases where international law failed to provide adequate protection to IDPs when no explicit norms exist relevant for their needs: (Gaps)

- disappearances
- the missing and the dead
- the use of landmines and like-devices
- detention
- needs for personal identification
- documentation and registration
- property-related needs
- humanitarian workers and organisations

Source: adapted from Compilation and Analysis, 1998.

These 25 categories reveal the diverse weaknesses of international law in relation to the needs of internal displacement; weaknesses that range from inexplicit articulation of existing norms to the absence of relevant norms in the first place. With this recognition in mind the RSG continued his efforts and work with the group of international lawyers who worked on the Compilation in order to produce the Guiding Principles on Internal Displacement (the

Guiding Principles or Principles hereafter), a restatement of international humanitarian and human rights law focused on the needs of IDPs (explored in detail in section 1.3).

The Compilation and its findings have played a major role in the scholarship and research on internal displacement since their publication in 1998. Questions about the international assistance and protection of IDPs necessarily invoke questions about international law and this continues to feature prominently in the research produced on this issue. Given the breadth of issues that arise in these grey areas and gaps, and their technical character, key scholars have focused on illustrative examples or certain aspects of the gaps and grey areas. Nils Geissler provides a good example of this in his focus which emphasised three categories of legal gaps across international humanitarian and human rights law that warrant closer attention: first, the right to personal liberty is ‘constantly violated’ in situations of internal displacement through practices ranging from closed IDP camps, to kidnappings or forced military recruitment; secondly, freedom of movement and related rights are not enjoyed by IDPs – indeed, the very notion of displacement entails a transgression of this legal norm; third, IDPs do not have legal protection of other civil and political rights such as personal documentation (1999). These studies can provide condensed frameworks for analysis of this issue, but they also seem to contradict the claims that existing law was/is sufficient, and that implementation and staff incompetence are the primary obstacles to effective IDP assistance and protection (Lomo, 2000).

### **1.2.2 International Human Rights and Humanitarian Law Considered**

International human rights law has grown in substantial ways since the end of World War II, and a human rights approach to assistance and protection of IDPs is favoured by notable scholars who advocate this framework as the most suitable for meeting the needs of IDPs (see Mooney, 2005; Phuong, 2004). This position is strengthened by the broad range of international law that it invokes: from treaty to customary law as well as non-binding norms and mechanisms and “soft law” standards. This wide range of human rights instruments includes, but is not limited to: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women and the

Convention on the Rights of the Child (Phuong, 2004). Additionally, ‘non-binding authoritative’ declarations are cited from various non-binding General Assembly resolutions.

Within this dense web of human rights agreements there are still weaknesses and gaps. For example, human rights agreements depend on state ratification. Thus, when states in question are not party to a given convention, one can observe ‘ratification gaps’ that inhibit necessary protection (Goldman, 1998). However, even if ratification was not a problem, in some instances human rights law is simply insufficient. The right to personal liberty, in particular, is at best tenuous in the human rights context because of derogation clauses that allow for limitations and abuses in times of public emergency (Geissler, 1999). In the case of freedom of movement, there is no absolute protection that guarantees this right in existing human rights law, due to limitations and, like personal liberty, potential instances of derogation (CHR, 1995). Concerning the right to documentation, there are human rights provisions that guarantee individuals the right to be recognised as a person before the law, however, there are only few and weak binding provisions that explicitly reference the issuance of personal identification documents (Geissler, 1999). These are significant deficiencies in human rights law as it pertains to IDPs, yet even where the law does exist, there remains a persistent “implementation gap” when states simply do not enforce agreed upon legal standards (ibid).

International humanitarian law is equally crucial when considering the protection of IDPs. Here it is important to draw the distinction between humanitarian assistance and protection; where the former is concerning the provision of aid such as shelter, food and basic medical services, and the latter is centrally concerned with the physical protection of life itself. Roberta Cohen emphasises this dilemma and has argued that ‘[p]roviding food, medicine, and shelter to internally displaced persons, while ignoring violent abuse, has led to the tragic description of victims as the “well-fed dead”’ (Cohen, 2006b, p.107). This powerful term encapsulates the gap in IDP protection, per se. When it comes to protection, there is extremely limited capacity and even less competent staff that are in a position to provide the type of physical security that is needed in order to sustain life itself (Cohen, 2006a). International humanitarian law has deep historical roots and this can be an advantage in the international community. The principle mechanisms of international humanitarian law are the four Geneva Conventions (GC), and more specifically article 3 which is common to all four, as it ‘is applicable in case of armed conflict not of international character’ (Geneva Conventions, 1949). In this case, ratification gaps are less of a concern, however, weaknesses still exists. Indeed, the antiquity of international humanitarian law can also be a flaw in

addition to being its strength. Thomas Weiss suggests that international humanitarian law may have simply been designed for a world in which we no longer live – one wherein conflicts were neatly split along state lines and the primary concern was the regulation of military conduct (1999). Contemporary patterns of conflict do not fit this template and, thus, the relevance of traditional humanitarian law has been called into question.

Returning to the framework set forth by Geissler, it becomes apparent that humanitarian law – like human rights law – does not adequately fill the grey areas and gaps of IDP assistance and protection. Most generally, as humanitarian law is only applicable to situations of armed conflict, this provides room for manoeuvre for repressive states by not acknowledging that a given crisis or state of internal strife amounts to a conflict, *per se* (Geissler, 1999). Through semantic manipulation of the term ‘conflict’ states are able to avoid the applicable standards set out in the GC. The derogation clauses in human rights law that inhibit the protection of personal liberty are further exacerbated by the fact that ‘article 3 GC contains no rules concerning the deprivation of the right to personal liberty of non-combatants’ (Geissler, 1999, p.463). Thus, neither body of law provides necessary legal standards for such protection. Furthermore, article 3 GC is virtually silent on the freedom of movement and the only prohibition of arbitrary displacements comes in article 17 of Protocol II. However, it is limited to displacement not justified by military imperatives – thus leaving room for derogation if a state deems it necessary and in the public interest during an emergency (*ibid*). Issues like personal documentation are simply not taken up in international humanitarian law; hence, the persistence of protection gaps across humanitarian and human rights law alike.

### **1.2.3 The Question of a Legally Binding Instrument**

The clear legal gaps that can be identified in the assistance and protection of IDPs have given rise to a debate over the necessity, utility and preference of a legally binding instrument, distinct from but analogous to, refugee law. Recall that historically these two groups were considered one and the same, both conceptually as well as in the institutional mechanisms of assistance and protection administered by the international community. Given this historical link, combined with the ostensible efficacy of the refugee regime, the possibility of combining the two can appear attractive. This proposition is the subject of debate over legal synthesis between the two regimes; however, it has few supporters.<sup>6</sup> Rather, the debate that seems to endure is whether or not there ought to be a separate legally binding instrument for

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<sup>6</sup> Legal synthesis between refugees and IDPs would grant the latter the protections afforded to the former under applicable international law.

IDPs specifically. Both of these aspects to the legal protection of IDPs feature prominently in the literature and therefore deserve closer attention.

To start, the notion of legal synthesis is supported only by those who would seek to redefine the current conception of a refugee in a manner that would remove the criterion of border crossing as a definitive element of a refugee, *per se*. As previously mentioned, Andrew Shacknove strove to do just this when he wrote in 1985 that the very idea of a refugee is fundamentally a political relationship between a state and its citizens and that arbitrary borders ought not determine status. However, in the short span of 10 years this argument was almost completely dispensed with. Luke Lee was perhaps one of the most influential – and indeed one of the few – supporters of this idea, though his argument was more qualified. Rather than arguing for synthesis *in toto*, he more simply rejected the legally positivistic border crossing criterion. He emphasised four faults with this standard in particular: first, the historical and institutional link between refugees and IDPs (discussed in section 2.1.2) seems to contradict the norms in international law; second, the practical needs of both population are so congruent that a legal distinction between the two is not functionally effective; third, he argued that there is a ‘formidable juridical argument against the use of boundaries as determinant’ because this is necessarily dependent on diplomatic recognition of states, while there is now law that mandates ‘uniform diplomatic recognition’; fourth, the explicit universality of human rights cannot be achieved with preferential treatment towards refugees, relative to IDPs (1996-1997, pp.531-535). Similar to Shacknove, this argument proved fruitless over time. Tellingly, by 2002 Lee amended his argument from a *lex lata* position to one of *lex ferenda* (the law as it exists and future law, respectively) – where he no longer argued that synthesis was grounded in historical and juridical precedent, but rather that the 1951 convention should be amended to reflect the normative position he held. This is a nuanced distinction but a significant development nonetheless; for the ensuing debate seems to be drawn along exactly those lines – *lex lata* Cf. *lex ferenda*.

As the limited voices for legal synthesis faded, the greater question that emerged in this discussion was whether there ought to be a separate legally binding instrument exclusive to IDPs, much like the current body of refugee law. This is a question that is repeated time and time again in the literature. Ironically, however, one finds oneself hard pressed to find advocates for a legally binding instrument. Rather, there seems to be a degree of consensus on this issue, that it is neither realistic nor preferable. It is therefore peculiar that even

contemporary research continues to pay service to this debate. Nonetheless, it is a dominant theme and thus warrants consideration.

The objections to legal synthesis and to a legally binding instrument for IDP assistance and protection vary. At the most extreme is Michael Barutciski's patent dismissal of both legal synthesis and the idea of a legally binding instrument for IDPs. He argues that any form of legal synthesis would have gravely detrimental effects to the efficacy of the current refugee regime, by diverting financial and human resources and also priority in an inefficient manner, and even goes so far as to question the utility of an IDP concept unless it entails positivistic legal rights (1998). It is clear that Barutciski rejects completely the idea that IDPs can or should have a separate legal regime. That conclusion is shared, though with much more qualification, by a number of scholars who contribute to this debate. The overarching theme that emerges from the literature is that current international humanitarian and human rights law can be interpreted so as to provide adequate protections, in principle, to IDPs, without developing a distinct legal framework.

Apart from Barutciski's bold dismissal of a legally binding instrument, there are other, more sympathetic objections to the idea, but reserve their support out of pragmatism and concerns over efficiency. Roberta Cohen provides a convincing compound argument against a treaty or equally binding mechanism: first, it is quite clear that there is little to no political will among states in the international community to permit a formal mechanism that would further constrain sovereign state privileges at the current time; second, the formation of a legally binding instrument is both labour and time intensive, whereas the needs of IDPs are acute in the here and now and there are other alternatives that can accomplish the same goal to at least a large degree; third, and similar to the argument made by Lomo (2000), there is already sufficient international law that can be adapted and re-interpreted to furnish IDPs with the assistance and protection that they require. Significantly, this position is shared by key scholars on this issue (Geissler, 1999; Weiss, 1999; Phuong, 2004; Cohen, 2003; Cohen 2006a/b; Cohen, 2010; Mooney, 2010).

A relatively recently study conducted by Simon Bagshaw is important to consider when evaluating the proposition for a legally binding instrument. Essentially he shares the view that it is not preferable at this time, however his analysis is unique in that he first demonstrates an ostensible diminishing utility of treaty making as an effective means to address growing human rights crises. His convincing argument is thus:



Although treaties will, in many cases, remain the preferred and, in some cases, possibly the only law-making option, the problems discussed above – the difficulties of obtaining consensus resulting in long drawn-out and sometimes stalled negotiations, the implications of the consensus technique for obtaining ratifications and accessions even from states that had supported and signed the treaties, and the structural and procedural weaknesses of treaty-making as the principal means through which to seen to enhance and further develop the protection of human rights, in particular with regard to new and emerging areas requiring international regulation. (2005, p.69)

In lieu of the treaty making process, Bagshaw argues that the non-binding, normative standard setting approach through ‘soft law’ is the appropriate course to take in the international community relating to IDPs. His position reflects the course taken by the international community in their on-going efforts to address the problem of internal displacement. It is from this position that much of the literature on IDP assistance and protection has developed – with a focus on the legal aspects of policy, even though the Guiding Principles are not a legally binding framework per se. This begins to illustrate the importance of developing a deeper understanding, specifically, of the norms and principles that inform the international community’s response – as aspect of this field that had heretofore been neglected in much of the literature surrounding internal displacement

In the absence of political will for a “hard law” solution to the issue of IDP protection and assistance the international community developed the Guiding Principles. They are the product of efforts focused on capitalising on existing international humanitarian and human rights law, but with careful re-interpretation and articulation so as to fill the aforementioned legal gaps of IDP protection. Given the time required for a “hard law” mechanism, the Guiding Principles have provided a more ‘time sensitive and forthcoming approach’ that has, over time, ‘become an accepted framework for dealing with the problem of internal displacement’ (Cohen, 2010, p.8; Orchard, 2010, p.303). The Principles have been the primary means for such efforts and they are examined below, in section 1.3.1. In many ways, they can be seen as one of the institutional innovations that have been designed and implemented in order to enhance the protection and assistance of internally displaced persons.

### **1.3 Institutional Innovations and Deficiencies**

In the absence of a new legal regime that would specifically be responsible for IDPs, the international community has relied on existing institutional infrastructure to furnish assistance and protection, with increasing coordination between the UN and international nongovernmental organisations (e.g. the WCC, RPG, ICRC, etc). However, as the gaps in protection became more apparent the calls for reform grew louder. The work being conducting under the auspices of the UN throughout the 1990s was responding to this growing demand, and by the turn of the century there were significant developments intended to fill the IDP assistance and protection gaps. These efforts have persisted into the 21st century and the international community has continued to adapt institutional schemes in response to the dynamic and growing needs of IDPs. These efforts have produced some marked success, however problems of institutional fragmentation and coordination failures remain. These institutional changes have been a dominant theme in contemporary literature on internal displacement. The two most notable innovations are explored below.

#### **1.3.1 The Guiding Principles of Internal Displacement**

The culmination of work that RSG Deng began in 1992 came in the form of a document he published in 1998 entitled Guiding Principles on Internal Displacement (OCHA, 1998). Walter Kalin (who would become the next RSG on internal displacement) provided the legal annotations to the document and explains that ‘[t]hey identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration’ (2008, p.1). The Principles (30 all together) should be seen in relation to a reconceptualisation of sovereignty as responsibility that Deng was advocating throughout the 1990s (explored in next section), as they brought together, into one document, established international law that is relevant for IDPs.

Moreover, the Guiding Principles rely on existing international legal mechanisms of various kinds, but specifically existing Human Rights and International Humanitarian Law. In the most recent legal annotations (2008) provided for the Principles a range of law is referenced: customary humanitarian law, treaty based international human rights and humanitarian law, non-binding UN declarations, various statutes of international criminal law, as well as policy documents from non-governmental agencies such as the World Bank and the OECD (see Appendix I for a legal catalogue of the Guiding Principles adapted from UN documents).

With regards to the Principles themselves, the temporal distinctions within are significant – that they are concerned with prevention, protection during, and resettlement when displacement ends. This highlights the structural symmetry between the Principles and the R2P doctrine (which will be explored below in chapter 2) which also emphasises these distinct phases, and which was established shortly after the Principles were published.

The international community has been relatively receptive to this innovation: the Principles have had support in the UN since their inception and beginning in 1999 members of Security Council have been formally encouraged to observe them; and major international humanitarian and human rights organisations have not only endorsed the Principles, but have also begun to apply them in the field (Cohen, 2003). More significantly, by 2008, 20 national governments had enacted laws and policies on internal displaced that are based on the standards set out in the Principles (Ferris, 2008). This trickle-down effect remains limited, but it is significant nonetheless as national governments continue to be the bearers of primary responsibility for the needs and rights of IDPs. To be sure, some states have been reluctant to accept the Principles, however the fact that they are grounded in existing international law makes outright rejection that much more difficult. In this way, the Principles have gone a long way towards plugging the legal gaps in IDP assistance and protection. To what extent they are actually implemented is, of course, another question altogether. It is, therefore, important not to overstate the successes of the Principles, as some advocates might be inclined to do. Another aspect of this innovation that is somewhat lacking is a thorough account of the norms and principles that characterise this framework. Recall from above that the Guiding Principles bring together international humanitarian law and human rights law; and that this has been the subject of legal analysis. However, the relationship between human rights principles, mostly implied humanitarian principles (note here that humanitarian law is not equivalent to principles of humanitarianism, and local actors have not been sufficiently addressed by the academic community). This thesis aims to fill this gap to some degree.

### **1.3.2 The Cluster Approach**

With all of the developments in IDP assistance and protection that were created throughout the 1990s, there was cautious optimism that the needs of IDPs might begin to be met more fully in the 21st century. However, the dense web of institutions relevant to internal displacement was wrought with coordination and fragmentation problems. The actors involved in this arena are numerous and diffuse; they included, but were not limited to: the UNHCR, the International Committee of the Red Cross (ICRC), the UN Children's Fund

(UNICEF), the World Food Program (WFP), the UN Development Program (UNDP), the Office of the Commissioner for Human Rights (OHCHR), the International Organization for Migration, and a host of other NGOs that operated in areas of need (Cohen, 2006b). One of the benefits of the soft law approach pursued by the RSG in the initial formulation and articulation of IDP concerns was that diverse voices could both participate in and also lead the process. The active role that Dr. Barbara Cohen and RSG Francis Deng continue to play in this issue highlights this fact. The incorporation of non-governmental organisations was also evident in the manner in which the ICRC was more officially relegated responsibilities.

Needless to say, coordination – especially in times of crisis – of all these groups was a daunting task. Put simply, the UN was not doing a sufficient job on this front. Weiss has cynically pointed out that “‘coordination’ is the most used and least understood term in the UN lexicon’ (1999, p.390). The “collaborative approach” to IDP assistance and protection that was in place in the early 2000s lacked structure and did not designate lead agencies to any specific areas of concern. In a report commissioned by UNHCR to assess its own policies towards IDPs, their performance was described as ‘uncertain, inconsistent and unpredictable’ (Mattar and White, 2005, p.1).

This condemning analysis of UNHCR’s performance in the field provided the impetus for a restructuring of IDP policy as part of a larger humanitarian reform movement in the UN. The result was a shift from the failing “collaborative approach” to a “cluster approach” that was designed to establish a clear structure with lead agencies assigned specific tasks. Within this scheme, there are eleven clusters which are essentially categorisations of basic needs in times of displacement.<sup>7</sup> In this approach, each cluster programme is assigned one or more cluster “leads”, that is, agencies responsible for the provision of services in their given cluster. Officially enacted in 2006, this scheme has been heralded as a way to ‘provide much needed predictability and accountability’ in the international assistance and protection of IDPs (Morris, 2006, p.1).

Since 2006 there has been a growing body of literature that evaluates the cluster approach effectiveness (see Crisp, Kiragu and Tennant, 2007; Humanitarian Policy Group, 2007; Streets, et al, 2010). Much of this research is conducted through case study analysis of

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<sup>7</sup> Clusters and lead agencies: 1. Sanitation, Water and Hygiene – UNICEF; 2. Education – UNICEF and Save the Children; 3. Early Recovery – UNDP; 4. Emergency Telecommunication – WFP; 5. Food Security – FAO and WFP; 6. Protection – UNHCR; 7. Health – WHO; 8. Camp Management and Coordination – UNHCR and IOM; 9. Emergency Shelter – UNHCR and IFRC; 10. Nutrition – UNICEF; 11. Logistics – WFP.

specific IDP populations. While the examined contexts within this literature are certainly unique, a common critical thread can be detected. One of the more comprehensive and contemporary evaluations of the cluster approach was conducted by the Global Public Policy Institute in 2010 across six countries. It produced 34 findings, of which 27 were negative; including observations about how the implementation of the cluster approach has failed to achieve its goals. A vast majority of the criticisms levied upon the Cluster Approach focus on coordination challenges and failures. Indeed, coordination failure is a dominant feature of analysis on humanitarian aid delivery and provision. It should be recognised, however, that the cluster approach is very much still in its infancy and that it continues to be a ‘work in progress’ (Crisp, Kiragu and Tennant, 2007), however, this trend reveals, the paramount “gap” that remains in the international assistance and protection of IDPs – the incongruence between legal norms and institutional mechanisms for implementation. Many of the other gaps have either been closed or are now moot, however, this one persists. This gap of implementation, via coordination etc, is the subject of on-going impact evaluations at the institutional level and also the subject of recent scholarship in the field. What one finds missing in all of this is an examination of the normative principles that have informed the new cluster approach specifically, and also the international community’s strategy in general. With this in mind, and what this thesis sets out to do, scholarship could benefit from more a nuanced examination of the global norms of IDP policy, especially as protection and assistance schemes are conceived in relation to the state in question.<sup>8</sup>

#### **1.4 Conclusion: Global Norms in Question**

Having considered the “gaps” in the IDP literature it can be argued that the most prominent one that remains for consideration is concerning global norms. There is a normative element to this field that cuts across all the major themes of research. At times this is made explicit; however, by and large, there is insufficient attention paid to the issue of how the norms were conceived of and developed at the international level are understood and applied in local contexts. Accordingly, a focus on the state’s role, and understanding of policy, in relation to global norms will add to this growing body of work in valuable ways. An evaluation of the state in this regard requires that one first consider the IDP regime, and how it has involved, affected and has been affected by the state. It is also necessary to understand the

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<sup>8</sup> Note also that for the case study selected for this thesis, Sri Lanka, the cluster approach was never implemented. It has been included here because it is a dominant theme in the literature about international assistance and protection of IDPs. This focus has not included thorough accounts of the norms involved in this process, which is the reason why it is the subject of analysis for this thesis.

paradigmatic context of the time, especially in light of then-RSG Deng's work throughout the 1990s that critically evaluated the nature and operational value of state sovereignty.

State sovereignty and authority plays a critical role in the international assistance and protection of IDPs, as the core of questions pertaining to international law are necessarily dependent on fundamental conceptions of state sovereignty in relation to a wider international system. Therefore, an account of the transformations of sovereignty will be necessary to complete this evaluation. Thus, the dilemma of internal displacement and the related efforts that have been made at the international level can be best understood when viewed in a relevant theoretical context. In the chapter that follows the IDP problematic is put in context of the transformations of sovereignty that have occurred over the last 20 years. The ethical norms that drive the IDP regime are then evaluated through what appears to be the most conducive theoretical framework for global policy and justice: cosmopolitanism. Finally, humanitarianism theory will also be considered as an underlying basis for the international assistance and protection of IDPs.

## **Chapter 2: A Theoretical Framework**

State authority is central to the current context of internal displacement. As those people internally displaced remain within their state (or their state of residence), they remain under the purview of state authority and these states retain primary responsibility for their protection and assistance. That said, most situations of internal displacement reveal a level of state dysfunction that results in direct (states deliberately targeting specific groups in a violence or otherwise coercive manner) or indirect (states failing to respond to displacement needs either because of a lack of capacity or a lack of political will) persecution of vulnerable groups (Cohen and Deng, 1998a; Phuong, 2004). Given the heightened awareness of IDP needs in the international community, this dilemma has created an impetus for international action. However, in many cases the state, via the prerogatives of sovereignty, stand in the way. The result is that states can, if they so choose, reject or even block international aid to populations in need (Geissler, 1999). This is in stark contrast to the way in which sovereignty further empowers refugee law – as provisions to refugees are guaranteed by host states and reinforced by their membership to the various refugee conventions (e.g. The 1951 Refugee Convention; and OAU, 1969). This contradiction reveals the root cause of the basic gap between IDPs and refugees, where the former has far less access to international assistance protection than the latter because of state sovereignty. This is a challenge that is constantly mitigated and managed by the international community.

More specifically, notions of state sovereignty and responsibility, in the context of internal displacement, need to be further grounded in theoretical frameworks that help to make sense of the conference of moral/legal/institutional obligation and duty to the international community. In order to provide this theoretical foundation for analysis, this chapter will proceed from questions of sovereignty and responsibility to relevant variants of cosmopolitanism theory, supplemented by a theoretical consideration of humanitarianism insofar as it helps situate and contextualise this study.

### **2.1 The State and Sovereignty**

Recognising this problem, academic and practitioner communities related to IDPs have focused on sovereignty and state authority a great deal. Throughout the literature, sovereignty is often presented in two ways: first, simply as a problem, and secondly as something that must be overcome, with contributors regularly providing prescriptions for how this can be achieved. This stands out as a good example of the prescriptive qualities that

characterise contemporary IDPs literature. Alongside the development of the international IDP regime, there have been both conceptual and material transformations in state sovereignty. As will be explored below, the transformations of state sovereignty in the international system that have taken place over the last 20 years even share some common roots with the proliferation of international efforts to protect and assist IDPs.

### **2.1.1 Transformations of Sovereignty**

In the early post-Cold War era state sovereignty was brought into question. This development followed closely the emergence of IDPs onto the agenda of the international community. The international focus on IDPs at this time was ‘part of a broader shift in how states understand sovereignty and the state’s relationship with its own citizens’ (Finnemore and Sikkink, 1998; Orchard, 2010, p.282). The international community, by this time, had already encountered problems of access to internally displaced populations in places such as Biafra and Sudan (see de Waal, 1994). As IDPs remain within territorial borders of the country to which they ostensibly belong, providing assistance or protection to them without state permission can amount to a form of intervention – a practice prohibited by Article II (Chapter 1) of the UN Charter (UN, 1945). In attempts to mitigate this obstacle, advocates and academics of international IDP assistance and protection<sup>9</sup> point out that the principle of non-intervention ‘must be placed in the context of Chapter VII’ of the UN Charter, which legitimises intervention in certain circumstances (Orchard, 2010, p.303). Nils Geissler has gone so far as to argue that there was already established precedent for intervention without UN Security Council approval in cases wherein non-state actors maintained some form of territorial control in internal, and non-internationalised, civil conflicts (see the ICJ case *Military and Paramilitary Activities*, 1986 in Geissler, 1999). Arguments such as this did not make much headway in solving the obstacles of state sovereignty, however, as the legal reasoning and precedent was far too thin.

Greater success was found in the institutional efforts to recast sovereignty in a way that would create more space for IDP assistance and protection. In response to the dramatic growth of IDP populations, in 1992, Francis Deng’s appointment was an indication of the heightened international focus on internal displacement and would come to have significant impacts on

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<sup>9</sup> It should be noted that in many cases these two classes of contributors in this debate seem to overlap. While academic literature on the subject does include empirical analysis, the lines between academic scholarship, advocacy and practitioner contributions is blurred in many respects. This is most evident when considering the individuals most involved in the development of the Guiding Principles as a framework, and their other leading roles in the most relevant scholarship on the issue.



the way IDPs were (and are still) treated by the international community. Among his many contributions throughout this time was the notion of “sovereignty as responsibility” (Deng et al, 1996). This concept is part of a broader shift in the way in which the international community came to understand sovereignty. However, when one considers the development of IDP policy in the 1990s in conjunction with Deng’s role in the UN, the link between the very idea of sovereignty as responsibility and the IDP dilemma becomes more apparent. On the one hand, the concept of sovereignty as responsibility reinforced the primacy of sovereignty in the international system by emphasising that the principle responsibility for IDPs remained with the state in question. On the other hand, it qualified sovereignty in a manner that subordinated it to humanitarian imperatives by arguing that if states ‘are unable to fulfil their responsibilities, they are expected to request and accept outside offers of aid. If they refuse or deliberately obstruct access and put large number of people at risk, the international community has a right, even a responsibility, to express its concern’ (Cohen, 2003, p.3). This reconceptualisation of sovereignty sought to justify, and even guarantee, that the protection gap of IDPs could be filled – if not by a state, then by the international community.

Sovereignty as responsibility, thus, sought to transform the duty of state powers from negative to positive qualities, through a series of normative declarations and conceptions of state duty to the international community and to the individuals that reside within their borders. Whereas previously international law, treaties and conventions sought to constrain state behaviour so as to prevent human rights abuses, the notion of sovereignty as responsibility advanced positive duties – wherein sovereignty was conditional upon what states must do, rather than simply what they must not. This conception of state and international responsibility is implicitly based on the recognition that ‘[s]tate sovereignty is an inherently social construct’ and not ‘cast in concrete’ (Weiss, 1999, p.371). Throughout the 1990s this idea began to take root in international discourse. By 2000, then-UN Secretary General Kofi Annan had begun espousing this idea regularly, and in a statement to the UN General Assembly declared that sovereignty can no longer ‘be a shield for crimes against humanity’ (Annan, 2000, p. 48; see also see Annan, 1999). This challenge to traditional Westphalian notions of sovereignty was not limited only to discourse and, as will be shown, has been used as the foundation for more formal and institutional developments such as the Responsibility to Protect doctrine.

### 2.1.2 The Responsibility to Protect

At the turn of the 21st century, in light of the changing patterns of conflict in the post-Cold War era and the conceptual transformations of sovereignty, Kofi Annan appealed to the international community to develop a framework for solutions to the challenges posed by contemporary (intrastate) conflict – not the least of which was the problem of internal displacement. The Canadian government took the lead on this effort and in 1999 established the International Commission on Intervention and State Sovereignty (ICISS) (ICISS, 2001). In 2001, the ICISS published *The Responsibility to Protect*, a report that reinforced the notion of sovereignty as responsibility and further broadened the concept to intervention as a whole, rather than a concept exclusive to concerns over only internal displacement. While this report was broader than Deng's specific emphasis on IDPs, its connection was undeniable. Indeed, Lloyd Axworthy, the Canadian Foreign Minister who initiated the ICISS even acknowledged that 'the first time (he) heard the notion of "responsibility to protect" was when Deng visited (him) in Ottawa and argued for a clear commitment by the international community to deal with the IDP issue' (Weiss and Thakur, 2010, p.314). Weiss and Thakur explicitly describe this document as an attempt to fill 'gaps' in the available mechanisms and policies for assistance and protection of vulnerable populations in conflict situations: ranging from R2P as a potential solution for policy, normative, institutional and compliance gaps (2010, pp.319-337).

R2P was endorsed by the international community in 2005 at the World Summit, and continues to be 'promoted as holding the potential to unlock and unblock persistent gaps in the protection of IDPs' (UN General Assembly, 2005; UNHCR, 2006; Mooney, 2010, p.63). It is important here to recognise the language used, specifically that R2P holds the 'potential' to overcome obstacles of IDP policy. The doctrine is both new and unbinding, yet it continues to inform the discourse around the protection of vulnerable groups when states cannot or will not. Within the academic community this development is recognised as a significant accomplishment towards filling the protection gap in general, as the R2P doctrine covers four classes of crimes at the international level: genocide, war crimes, crimes against humanity and ethnic cleansing.<sup>10</sup> These four distinctions are significant because internal displacement can often be either the pretext for, or the consequence of, one or more of these crimes. Erin Mooney has gone so far as to suggest that internal displacement can even be an

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<sup>10</sup> The R2P doctrine also provides three temporal distinctions of responsibility: the responsibility to prevent, react and to rebuild in relevant situations. This structural feature of R2P is significant and has further ties to the IDP regime which will be explored in section 2.4.

indicator of sorts for R2P crimes, and has argued that internal displacement occurrence can be seen as a 'bellwether of situations which may warrant consideration under the R2P framework' (2010, p.84). She argues that the gaps of international protection can, at least in part, be filled by the added accountability that R2P places on states and the international community (ibid).

Despite the ostensible marriage between the R2P doctrine and the needs of IDPs presented here, there remain significant problems in terms of application and implementation – giving rise to what can be called application and implementation gaps in international protection. For instance, even though R2P has gained significant ground in international discourse, its application falls far short of its *raison d'être*. One of the few successful invocations of R2P reveals this in two ways. Shortly after the 2008 post-election violence in Kenya, wherein hundreds of thousands of individuals found themselves internally displaced, UN Secretary General Ban Ki-moon characterised the crisis as an R2P issue and sought to reach political settlement through an Annan-led peace mediation. The clashes eventually ended, but not before more than 1,500 Kenyans were killed and close to 600,000 displaced (Cohen, 2010). This example can only be seen in stark relief from other instances of conflict where R2P is either ignored or blocked by powerful states (see Shukla, 2008). This demonstrates how when R2P is invoked it is uneven, arbitrary and highly vulnerable to (inter)state-centric politics. Furthermore, in the case of Kenya, it was also narrow in its application; only invoked in the acute moment of crisis with no emphasis on prevention nor on rebuilding after the clashes ended (ibid). Moreover, the efficacy of R2P was only lightly tested in this case, as the Kenyan government welcomed the process.

Perhaps most significant, however, is the growing connotation between R2P and the deployment of external military forces. Despite the holistic framework set forth in the doctrine, it is increasingly difficult to disassociate R2P from military intervention (Cohen, 2010). This has proved problematic on two levels. First, states such as China (in the case of Sudan – Darfur) do not accept humanitarian crises as justifiable grounds for intervention and 'at the behest of Sudan blocked any reference to R2P in the Security Council Resolution authorising an African Union-UN force to protect IDPs and other civilians (UN Security Council, 2007; Cohen, 2010, p.6). This association of R2P and military intervention is not only the concern of states, however, as humanitarian workers on the ground have actively campaigned against its application out of concern that it overtly politicises aid and can thus further restrict access to key international humanitarian agencies, or even make humanitarian

workers the victims of targeted attacks (Keen, 2007). This is important to consider when evaluating the prospects for, and implementation of, an international system of assistance and protection of internally displaced populations. R2P today is markedly different from its initial conceptions, but it remains significant to consider because of its historical origins and its implications relative to the emergent internal displacement problem.

The transformations of sovereignty and the development of R2P throughout the 1990s were concurrent with the increasing focus and mandate in the UN system in relation to IDPs. The Guiding Principles have been conceived, introduced and implemented along side R2P in the UN system, despite the departure of recent R2P projects. As the Principles were developing, sovereignty was transforming, and in some ways being subordinated to emerging universal principles of human rights. This is the backdrop against which most contemporary efforts to assist and protect the internally displaced takes place. The international community has endeavoured to overcome some of the constraints of sovereignty in assisting and protecting the internally displaced through the soft law approach manifest in the Guiding Principles.

The conceptual transformations of sovereignty over the last 20 years, as well as the more recent institutional innovations in this field, are best understood by grounding them in philosophical principles that have come to inform international discourse in the field. By establishing a conducive and relevant theoretical framework that accounts for such changes, the institutional innovations and provision schemes are understood as more ethically coherent and therefore legitimate. The remainder of this chapter seeks to accomplish this.

## **2.2 Cosmopolitanism and Internal Displacement**

The conceptual transformations of sovereignty that have occurred along side the growing IDP assistance and protection regime have taken place over the last two decades. These developments, combined with the aforementioned innovations and reforms (see chapter 1) intended to enhance IDP protection, are driven by certain ethical principles and norms. These are revealed in many ways throughout the IDP literature as well as related policy and legal documents in various international institutions and agencies. As the scholarship in this field is heavily normative, it is beneficial, if not necessary, to understand the ethical principles that drive it within a relevant philosophical framework. Indeed, for the ethics and norms underpinning the IDP regime to be coherent they ought to be sustained by philosophical principles.

It bears recognising that the internal displacement problematic is complex and multilayered. It brings to the fore questions about state sovereignty and the reasonable limits that can be expected in instances of critical human insecurity, as well as questions about the application, and at times utility, of international law in seeking to provide for the most basic and fundamental of needs. As will be presented, cosmopolitanism appears to offer a compelling theoretical framework for understanding the IDP regime as well as the dilemma of internal displacement itself. This is not a simple association or task, as cosmopolitan theory is replete with diverse (and at times competing) variants, which in turn have complex internal distinctions. Put simply, there is no one cosmopolitanism that can be called upon. However, the complex and multifaceted character of cosmopolitan theory is advantageous in that it provides a degree of flexibility in how the framework can be applied and understood.<sup>11</sup>

The rest of this section will continue as follows: to start, the historical development of cosmopolitanism will be presented in order to provide an intellectual context of the basic tenets of cosmopolitanism which will in turn be evaluated in relation to the IDP assistance and protection regime; next, the treatment of sovereignty will be considered more closely; and finally, different modalities of cosmopolitanism will be explored in relation to the IDP regime.

### **2.2.1 Historical Background and the Development of Cosmopolitan Governance**

Most accounts of cosmopolitanism begin with ancient Greece around 300 BC. Indeed, the etymology of cosmopolitanism comes from the ancient Greek kosmos (world) and polis (city). While one may belong to a bounded (political) community as a citizen, by chance, at the same time one also innately belongs to the universe, morally speaking. From this idea cosmopolitanism emerges as a universal philosophy in which ‘a relation of identity is thereby set up among the universe (cosmos), reason (logos), law (nomos) and citizenship (cosmopolitein) (Beardsworth, 2011).

During the European Enlightenment, and specifically through the works of Immanuel Kant, cosmopolitanism became much more systematic and robust. Kant’s contributions to cosmopolitan philosophy are seminal and in many respects inform contemporary theoretical discussion and contributions. His cosmopolitan framework was developed throughout his

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<sup>11</sup> The argument that cosmopolitanism variants provide flexibility in application relies on the premise of complementarity among the different modalities (see Beardsworth, 2011). This is not a view shared by all cosmopolitan scholars, but it is shared here. Accordingly, the framework offered by Beardsworth will be relied on heavily for this section.

various writings on ethics and politics (1784, 1785, 1788, 1793a, 1793b, 1795, 1797). Kant did not rely on the theistic justifications used in prior cosmopolitan thinking, and he provided a more firm foundation from which universal rights could be derived. Garrett Brown divides Kantian cosmopolitanism into two distinct streams and is helpful to quote at length:

One is concerned with what some might consider a naturalistic teleology and the other is concerned with the formal principles involved in creating universal justice and cosmopolitan law. The distinctions are important, for whereas Kant's cosmopolitan theory of history sought to discover various motivations behind the formation of a cosmopolitan order, cosmopolitan law was specifically dedicated to inaugurating principles of jurisprudence necessary for a condition of universal justice to exist. (2011, p. 45).

Kant set down a series of moral, legal and political conditions necessary to give rise to cosmopolitan justice. In so doing, amongst many other indelible contributions, he developed an ideal framework of global governance that recognised the equal moral worth of all human beings. Significantly, his framework subordinated state sovereignty to supranational authorities and universal organising principles. Most significant to note for this evaluation, Kant's creation of a cosmopolitan law and public right bridges moral cosmopolitan thought with institutional dispositions that have been, and continue to be, developed. Selected elements of his work will be returned to as different modalities of cosmopolitanism are explored below.

### **2.2.2 Cosmopolitanism Applied as an Analytical Framework**

The brief historical account above sets the backdrop for contemporary contributions to cosmopolitan thinking and it is these writings that will be evaluated in specific relation to the IDP regime and dilemma of internal displacement. The use of cosmopolitanism to understand issues of forced migration have some scholarly precedent. Scholars ranging from Derrida to Hassner, have relied on cosmopolitan theory to understand and evaluate the refugee regime and (im)migration flows in relation to individual rights that transcend conventional nation-state logic and primacy (2001 and 1998, respectively). In their relevant contributions, cosmopolitanism is used to justify and even demand a duty within the international community to care for those displaced. Hassner in particular uses the plight of refugees to illustrate the very many ways the international community fails, and by proxy, how the cosmopolitan purpose remains unfulfilled. It must be noted that they both wrote in

regard to refugees and not IDPs. However, as noted in chapter 1, the refugee regime and its growing IDP counterpart share many characteristics – empirically and analytically.

Therefore, it is the challenge here to examine the extent to which cosmopolitanism can also be applied and used in relation to those people displaced, but whom have not crossed an internationally recognised border. This distinction is significant as it brings with it the baggage of state sovereignty and concomitant state rights in the international system.

A comprehensive account of every variant of cosmopolitan theory is beyond the scope of this evaluation; rather, selected and relevant (i.e. consistent) streams of cosmopolitanism will be presented in relation to the IDP regime and dilemma of internal displacement. In order to remain consistent, this analysis will review first the most basic and fundamental tenets of cosmopolitan theory. These tenets serve as a kind of least common denominator of cosmopolitan theory through which one can assess the IDP regime and IDP problematic. Once this is complete, some of the primary contemporary modalities – that is, those most agreed upon – will be explored. Throughout both sections aspects of cosmopolitan theory will be presented and the IDP regime will be considered against them, and more specifically against the Guiding Principles on Internal Displacement as well as the institutional scheme designed to enhance the protection and assistance of IDPs – the Cluster Approach. Evaluating the IDP regime through a cosmopolitan theoretical lens will include some of the key internal distinctions that exist within different modalities, such as the notion of weak versus strong cosmopolitanism, or of cosmopolitan duties and/or rights.

To start, it is widely acknowledged that virtually all expressions of cosmopolitan theory share three basic principles: individualism, universality and generality (or impartiality, egalitarianism) (Pogge, 1992; Brown and Held, 2010; etc.). While some cosmopolitan positions provide a more detailed account of basic and fundamental tenets – for example Held’s eight principles of a cosmopolitan order (2010)<sup>12</sup> – these three form a good starting point for this review. The principle of individualism holds that individual human beings are the ultimate units of moral concern, rather than states, nations, tribes or any other form of communitarian, or otherwise, political association. A review of the IDP regime reveals both implicit and explicit emphasis consistent with this principle. For example, considering the IDP regime as a whole one can see how the very development of norms pertaining to those

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<sup>12</sup> 1. Equal worth and dignity, 2. Active agency, 3. Personal responsibility and accountability, 4. Consent, 5. Collective decision-making about public matters through voting procedures, 6. Inclusiveness and subsidiarity, 7. Avoidance of serious harm, and 8. Sustainability (pp. 69-75)

displaced are intended to provide protection and assistance that is analogous to the body of refugee law. As noted in chapter 2, this effort was undertaken because of the recognition that IDPs experience particular vulnerabilities that have not been mitigated or addressed in a satisfactory manner. Moreover, the rights of IDPs, as outlined in the Guiding Principles, are stated as primary, over the secondary rights of states entailed in the notion of sovereignty – thus placing the individual as the ultimate unit of moral concern in a way that subordinates the rights of states and qualifies principles of absolute sovereignty. Specific principles such as 1, 4, 6, 10, 11, 12, 17, and 23 explicitly stress that every individual is entitled to the rights outlined in the document (see Appendix I). Principle 4 is perhaps the most significant in this regard as it makes clear that the Guiding Principles ‘shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria’ (UN, 1998). Taken as a whole, it is clear that the IDP regime strives to place individuals as the ultimate units of (moral) concern.

Secondly, the principle of universality holds that ‘the status of ultimate unit of concern attaches to every living human being equally – not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims’ (Pogge, 1992, p.48). Here it is important to remember that the IDP regime has developed in response to critical failures of both states and the international community to provide protection and assistance to IDPs that is at the very least on par with refugee guarantees. It is worth pointing out that the legal annotations to the Guiding Principles make numerous references to Universal Declaration of Human Rights when considering human rights law specifically (see Appendix I; Kalin 2008). The attempts to provide equal protection and guarantees to IDPs under a framework of international law demonstrates the universal character of the regime as a whole. The fact that the Guiding Principles focuses specifically on IDPs might be seen as placing priority on those who have been displaced over, for example, those members of the same community who have the same needs but have not been displaced. Catherine Brun has touched on this tension when evaluating the categorisation of hosts versus IDPs and how that in turn affects an individual’s right to protection and assistance. If this could be taken as a form of partiality then the IDP regime would indeed be inconsistent with the cosmopolitan principle of universality. However, the Guiding Principles are not a new body of law specifically for the IDPs; rather, they rearticulate existing international law (Human Rights and International Humanitarian Law specifically), which are, by their very nature, meant to be universal. Even though



Human Rights and International Humanitarian Law remain wanting in their application, they do reveal a sort of latent universality that could be accomplished if impartial application is achieved. Thus, the Guiding Principles are grounded in a truly universal framework of moral concern and consistent with this basic and shared tenet of cosmopolitanism.<sup>13</sup>

The third basic tenet is generality. This principle can also be expressed as impartiality or egalitarianism but it means essentially the same thing: that individual human beings are the ultimate unit of moral concern for everyone and not only for those with whom they share a familiar association such as a tribe or religion etc (Pogge, 1992). The principle of generality is distinct from universality in that it addresses the issue of agency more directly; where the principle of universality speaks to the equal (moral) standing of all individuals, generality applies more to the impartial application of norms; lending itself to evaluation of the behaviour of agents in relation to individuals' equal moral standing. This tenet, like individualism and universality, is embedded throughout the Guiding Principles. Most significant, the Guiding Principles have sought to provide protection(s), in principle, for IDPs from behaviour of not only states in question, but also non-state actors – for example in Principles 2 and 5. Principle 2, in particular, specifically emphasises that:

These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction.

The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved. (OCHA, 1998; see Appendix I).

In his legal annotations Walter Kalin explains that this principle, grounded in diverse international human rights and humanitarian law, 'advocates the widest possible scope of observance of the Guiding Principles and emphasises their impartial and neutral nature' (2008, p.15).<sup>14</sup> In doing so, the Principles can be seen to embody the principle of generality/impartiality and thus consistent with this fundamental cosmopolitan precept, as well with impartiality understood through a humanitarianism lens (see below).

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<sup>13</sup> Interestingly, if the refugee regime were to be evaluated by the same criteria it might not withstand criticism of partiality as it is a specific body of law delimited to one class of peoples only.

<sup>14</sup> Here, and elsewhere, Common Article 3 of the Geneva Conventions is often invoked to justify impartial (or targeted) application of humanitarian law in situations of intrastate conflict and disturbances, including actions carried about by non-state actors (Kalin, 1998/2008). This consideration, however, is mitigated by qualifications about impartiality under the auspices of humanitarianism theory (explored below).

### **2.2.3 Variants of Cosmopolitanism**

It is useful here to draw an analogy for the application of cosmopolitan theory. Viewing the IDP regime and internal displacement dilemma through the lens of fundamental, and shared, cosmopolitan tenets is akin to viewing the IDP problematic with a wide view that encompasses the various levels of needs, and the various forms of protection and assistance that are attempted. By unpacking different variants of cosmopolitan theory this problematic can be viewed at higher magnification, with more detail and nuance accounted for. At this point, the application of cosmopolitanism becomes ever more complex as there are a number of different theoretical variants. Following the work of Beardsworth (2011), here the different variants/modalities of cosmopolitanism are taken to be complementary rather than in competition with one another. Certain scholars might argue that more robust interpretations of cosmopolitan theory are inconsistent with thinner/weaker variants. Beardsworth argues, and I follow, that the various modalities of theory ought to be, and can be, understood and progressive and complementary – not actually disproving those articulations and understandings that do not immediately fit certain criteria. This point would be contested in some contemporary cosmopolitan contributions, however, it is the argument here that the IDP problematic allows for complementary application of differentiated modalities as it fits within both weak/thin and strong/thick conceptions of cosmopolitanism (see Held, 2010b on thick Cf. thin cosmopolitanism), as well as across more distinct categories such as moral, legal, political and institutional cosmopolitanism.

#### **Moral Cosmopolitanism**

As a starting point, it is necessary to consider the moral modality of cosmopolitan theory in relation to the IDP regime and internal displacement dilemma. Within this modality there are different strands of theory. Significantly, however, ‘moral cosmopolitanism is at the core of cosmopolitan thought and remains central to contemporary cosmopolitan ideas’ (Beardsworth, 2011, p. 23). All variants of cosmopolitanism begin from a moral disposition; recall that even early conceptions revealed the morally arbitrary nature of border and boundaries. This considered, all individuals are conceived as human beings most simply, as opposed to particular manifestations of identity such as national, ethnic or religious. This creates a common space within which we can understand and account for all of humanity as equal in fundamental ways; which in turn gives rise to universally shared rights and entitlements as well as duties within this space (see Nussbaum, 1994). This universality of individuals’ equal moral worth, and subsequent rights and duties, gives rise to a robust

discussion about global justice and the mechanisms by which it can be pursued. The extent to which these rights and duties are justified in the world order, however, depends on whether one holds a weak or strong cosmopolitan position.

Let us begin by considering weak conceptions of cosmopolitanism in relation to the IDP problematic, followed by more stringent and strong variants. Scholars such as Nagel (2005) and Miller (2002; 2007a/b) posit a weak variant of moral cosmopolitanism. They maintain that political communities exist sub-globally and therefore any conception of moral cosmopolitanism ought to be minimalistic. For Miller, 'justice is concerned with comparative rather than absolute outcomes' (2007b, p. 9, in Beardsworth, 2011). Accordingly, it is unfeasible to establish a comprehensive comparison of justice between separate political communities. As such, any theory of global justice must be grounded in only the most basic human (humanitarian) needs. Elsewhere, Miller has argued that that 'there is nothing unjust about international inequalities as such. What should concern even weak cosmopolitans are societies that cannot guarantee their members fundamental rights' (1998, p. 179). This emphasis on basic human needs as the only legitimate foundation for a moral vision of cosmopolitanism allows for the IDP regime and internal displacement dilemma to be considered in consistent and coherent fashion. The IDP regime, at its core, is a response to the basic and fundamental insecurities that individuals face in circumstances of internal displacement. It is focused, simply, on guaranteeing the prerequisites and conditions for life in and of itself. When individuals are displaced their life chances become significantly limited – whether through coercive or negligent acts of the state in which they reside. Therefore, even the weak variants of moral cosmopolitanism apply in this case and provide a framework for understanding how individuals' rights (and moral concern) in this case are primary to that of the state in question.

Strong variants of moral cosmopolitanism, on the other hand, hold a much more stringent view of global justice. For Pogge, the universality of moral personhood entails a moral duty to seek and create 'just conditions of individual life worldwide' (Pogge, 1992 in Beardsworth, 2011). Following Beitz (1999), this means that there ought not be any moral distinction between individuals' rights (and corollary duties) between local or global conceptions of justice. For strong cosmopolitans like Beitz and Pogge, this broadens the space from which universal entitlements and duties are derived. As will be explored in greater detail below, this allows for greater scope in evaluating the legitimate level of analysis as well as a greater number of universal rights owed to all individuals – morally speaking. This position holds

that liberal principles of moral egalitarianism can, and should, be extended to the international sphere of global governance. It follows that if the IDP regime is consistent with the weaker variants of moral cosmopolitanism, then it also fits within the stronger conceptions outlined here. Pogge will be returned to on this matter when considering institutional modalities of cosmopolitanism below.

### Legal Cosmopolitanism

Legal cosmopolitanism is concerned with translating the moral rights owed to all individuals, under principles of universalism and liberal egalitarianism, into specific and concrete entitlements and its roots are found in the works of Kant in the Enlightenment era. For Kant, public law, or *das Recht*, serves as the bridge between morality and politics. In his ‘Idea for a universal history with a cosmopolitan purpose’ (1784) and ‘Perpetual peace’ (1795), Kant extends the idea of (civic) freedom beyond the boundaries of Westphalian nation-states to the global arena. As such ‘[t]he domain of cosmopolitan right (in general) involves the rights of states and individuals in their legal relations to each other under cosmopolitan law (Beardsworth, 2011, p.37; emphasis added). Kant’s attempt to create a framework of cosmopolitan law was focused on the geopolitical circumstances that could give rise to a condition of global (cosmopolitan) justice, as according to him rights and justice can only be guaranteed through the force of law (1793). This necessarily entails duties that correspond to such entitlements and rights. These duties can be understood as external constraints placed on states in order to establish a more just international order. More specifically, Kant’s notion of a world republic of states, or a pacific federation, laid down a framework where the worst of interstate aggression and conflicts could be tempered and mitigated through the “juridification” of international relations. Beardsworth explains this relationship well:

To argue for the juridification of international relations is therefore to insist, following the spirit of Kantian legalism, that human rights find legal entitlement, that they be embedded as coherently as possible in the tests of international law and that they foster legal procedure according to norms of universality, generality and impartiality. (2011, p.39)

This process of embedding human rights can already be seen in some key respects. International legal mechanisms, such as the UN Charter or the Rome Statute for example, according to Habermas, demonstrate the ‘quasi-constitutionalization’ of the international order (2006, pp.159-63; in Beardsworth, 2011). However, patterns of conflict in the 21st

century may not be solved by this process of Kantian juridification alone. Rather, contemporary insecurity and the unfreedoms of individuals throughout the world (specifically IDPs for this case), might require that state sovereignty be subordinated even further, as many of the worst atrocities accounted for now are within national/state boundaries, and concern the state's treatment of its own citizens.

This is significant for our purposes because the IDP regime is not simply a set of principles to be discussed or pondered. Indeed, the IDP regime clarifies and expressly articulates certain universal principles, but it also seeks to entrench these principles in global policies and practices that are implemented on the ground. The primary mechanism for the entrenchment of such global rights remains international law. However, in the case of IDPs, existing international law has been found to be lacking in several crucial respects. The creation of the Guiding Principles on Internal Displacement, and the process by which the RSG has attempted to gain consensus among states on the Principles, can be understood as a further attempt to constitutionalise international relations in a way that prioritises individual rights (of IDPs) as opposed to those of sovereign states (in which IDPs reside). In order to accomplish this, as noted in chapter 1, the IDP regime has brought together multiple layers of international law. This ranges from customary international humanitarian law, to treaty human rights and humanitarian law, as well as less (or non) legally binding mechanisms. The latter category of international law includes, but is not limited to, various non-binding UN declarations, as well as policy statements put forth by global governance bodies such as the World Bank, for example. Taken together, the IDP regime, in terms of law, is constituted by a multilayered and multifaceted web of legal norms. Even where these instruments are not explicitly legally binding, they still perform norming functions in the international system that seek to place the rights of individual IDPs as primary to those of the states in which they are displaced. In this way, the IDP regime and the use of international law can be understood through a cosmopolitan lens.

### Institutional Cosmopolitanism

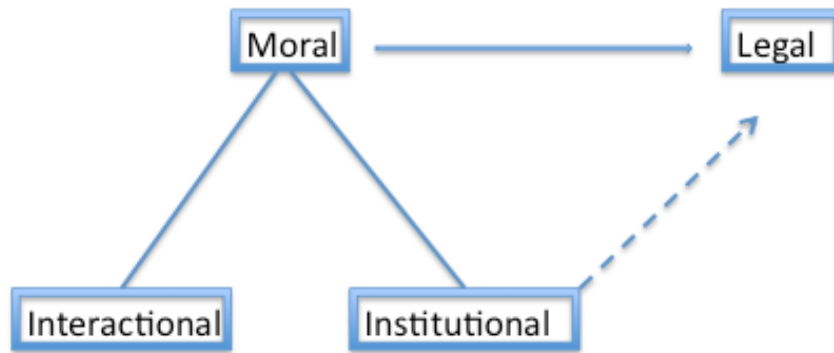
The third modality of cosmopolitan theory that warrants review is the institutional variant. However, before exploring institutional cosmopolitanism in relation to the IDP problematic, it is first necessary to understand the place of “institutional cosmopolitanism” within this field. The place of institutional cosmopolitanism varies depending on the contributing scholar(s). Earlier articulations of cosmopolitanism stand out as ethical philosophy. Kantian legalism

was perhaps the first point of departure when cosmopolitanism moves from a strictly ethical orientation to a more institutional position; a position that continues to be developed and refined today. Brown and Held explain that a great deal of contemporary cosmopolitan theory is focused on moving from the strictly moral conceptions to ‘practical institutional application’ (2010, p.9). For Brown and Held, this move from a moral position to an institutional one is the framework within which different modalities reside, such as cultural, legal, political and civic cosmopolitanism. However, according to Beardsworth legal cosmopolitanism, described above, is a variant of the institutional modality. For him, and following in the Kantian tradition, ‘[l]egal cosmopolitanism is a form of institutional cosmopolitanism and is committed to the complementarity between moral rights and legal entitlement,’ because it serves as a bridge between the moral and the political spheres (2011, p.36). This is compared to Pogge, who continues on from Beitz, where the latter describes institutional cosmopolitanism as a variant within the moral modality (1992). The remainder of this chapter relies on the framework of institutional cosmopolitanism developed by Pogge (via Beitz) in closer relation to the IDP regime and dilemma of internal displacement.

Pogge begins by delineating the differences between moral and legal cosmopolitanism. As Pogge places the institutional modality of cosmopolitanism within the moral variant, it is worthwhile to take a start with a closer look as how Pogge defines the moral:

Moral cosmopolitanism hold that all persons stand in certain moral relations to one another: we are required to respect one another’s status as ultimate units of moral concern – a requirement that imposes limits upon our conduct and, in particular, upon our efforts to construct institutional schemes. (1992, p.49)

The nuance of Pogge’s framework emerges, however, when he begins to unpack the notion of “moral concern”. Pogge presents a typology of institutional cosmopolitanism within the moral modality, and in contraposition to the interactional as follows:



He explains that interactional cosmopolitanism ‘postulates certain fundamental principles of ethics’ that are ‘first order in that they apply directly to the conduct of persons and groups’ (1992, p.50). Whereas, principles of institutional cosmopolitanism ‘apply to institutional schemes and are thus second-order principles: standards for assessing the ground rules and practices that regulate human interactions’ (ibid). While institutional cosmopolitanism emerges from the moral modality, it can serve as the bridge to more legal forms of cosmopolitan principles and entrenchment in the world system. This is a critical point in his typology: while on the one hand it would be very difficult to assign responsibility for certain structural deficiencies to (a group of) individuals, it becomes more plausible when one considers the institutional context in which injustice manifests. The justification for collective responsibility of global ills and bads rests on the growing interdependence of the contemporary world order; indeed, ‘[i]t is only because all human being are now participants in a single, global institutional scheme’ that we can identify and observe collective responsibility (ibid, p.51). With this responsibility come certain duties. While Pogge prefers to focus on the notion of negative duties – that is, the external restraint of certain actions – this can in turn lead to certain positive obligations as participants in certain global institutional schemes. By this account, if a global system is seen to engender or perpetuate violations of basic human rights, then there is an obligation to reform the system in accordance with principles of universality and impartiality that treats all individuals equally and with the dignity owed to all. Thus, the position of Poggeian institutional cosmopolitanism ‘broadens the circle of those who share responsibility for certain deprivations and abuses...’ to the sphere of global governance bodies (1992, p.52).

It is here that one must take a closer look at the “system” in which internal displacement, along with all its human insecurities, manifests and is perpetuated. The first task is to

examine whether or not collective responsibility can legitimately be assigned to a global institutional scheme for the plight of those internally displaced. At first glance this seems implausible, as the global governance institutions responsible for mitigating and addressing internal displacement do not have a direct causal relationship with the insecurities that IDPs face. Despite this fact, the relationship between the IDP phenomenon and the global governance system should be considered more closely. As noted above, state sovereignty has been examined by scholars as a challenge in the international assistance and protection of IDPs (Cf. national and/or regional strategies). Even where sovereignty is not problematic, *per se*, state authority certainly is, and the bounds of state authority rest upon the confines of sovereignty. Moreover, both absolute and relative increases in the incidents of internal displacement positively correlate with the end of the Cold War and the subsequent ripple effects this had on states' willingness to accept refugee flows in times of crisis (see chapter 1); with opportunities for cross border migration limited, those fleeing their place of residence have increasingly become internally displaced – and therefore far more limited in their basic life chances than those who were able to cross borders more freely in the Cold War era. While there is no mono-causal explanation for every case of internal displacement, it is a dilemma that is increasingly situated central to the system of global security governance. In this way, the growth of IDPs and the continued deprivation(s) experienced by those affected can be understood in relation to the international system, despite not being caused by it.

In response to this the international community, and specifically those devoted to the IDP problematic, have made significant efforts to address systematic failures and shortcomings in providing basic rights to those displaced. This began in the early 1990s with the introduction of sovereignty as responsibility. In line with the principles of individualism and universality, state sovereignty was reconceived by those working on the internal displacement dilemma. The goal was to place the rights of individuals in need above the sanctimonious notions of Westphalian state sovereignty. Moreover, the IDP regime has sought to reform not only the (legal) norms applicable to situations of internal displacement, but, even more recently, has also implemented a set of reforms intended to enhance protection and assistance – namely, the Cluster Approach described in chapter 1. This is multilayered process that includes global governance bodies such as the UN, but also extends into the realm of global civil society with organisations like the ICRC, as they become increasingly vocal actors in the IDP debate.

In this way, institutional cosmopolitanism appears to provide a conducive theoretical framework for understanding the changes that have taken place at the global institutional



level. The IDP regime stands out as a prominent example of a global institutional scheme striving to further the entrenchment of universal human rights to those populations deemed most vulnerable. This may hint at a new way in which positive obligation or duty is conferred to the international system, through deliberate appropriation. This was a trend observed throughout the course of field research, and will be returned to in the conclusions of this thesis. Over the last two decades the principles of individualism, universality and generality have been embedded in the policy documents, (re)interpretations of international law, as well as the institutional schemes devoted to mitigating and addressing the human insecurities that result from internal displacement. It is for this reason that cosmopolitan theory provides the ideal framework, in combination with the R2P doctrine, for grounding the norms of the IDP regime in coherent philosophical principles of global governance for today's ever-more interconnected world.

### **2.3 Humanitarianism**

The third branch of theory included this theoretical framework is humanitarianism. The decision to include this theoretical dimension has been informed by both the historical development of the forced migration regime – with internal displacement as the focus – as well as the values and principles that comprise humanitarian theory; values and principles that are often reflected, in at least some form, in the consideration of IDP assistance and protection. The very terms “humanitarian”, “humanitarian assistance”, “humanitarian imperative”, or simply, “humanitarianism” have become fixtures in the lexicon of social scientists, policy makers and the wider general public. Despite this apparent ubiquity, the ideas of humanitarianism are not always understood, and remain contested in significant ways. However, a comprehensive account of all of these differences and contestations is far beyond the scope of its consideration here. Indeed, there are entire careers built upon the questions that remain in the field of humanitarianism. Instead, and similar to the application of cosmopolitan theory above, the first task here is to present and examine the basic and core tenets of the theory that can be identified as common across variants, in relation to the purpose of this thesis. From here, it is also necessary to narrow in on a version of humanitarianism theory that is helpful in completing an appropriate theoretical framework for this study. In order to accomplish these tasks, the section will proceed thus: first, there will be a brief account of what humanitarianism means in a general sense, including the requisite historical development of this body of thought; secondly, the common and/or core tenets of humanitarianism will be considered in relation to the issue of internal displacement generally,

and also in relation to the two aforementioned branches of theory explicated here; finally, the concept of “liberal humanitarianism” (offered by Michael Barnett, 2011) will be applied to this analysis.

### **2.3.1 Humanitarianism in Contemporary Context**

In establishing the foundations the humanitarianism theory, the question of history is important to consider. When did this theory come into existence? What does this word mean? Why has it come into being? In seeking to answer these questions, and indeed throughout this section, an historical account and framework offered by Michael Barnett will be relied on in developing this aspect of the theoretical framework offered here. In *Empire of Humanity, A History of Humanitarianism*, Barnett states that:

Humanitarianism is nothing less than a revolution in the ethics of care. The revolution, like all revolutions, was created through a mixture of transcendent visions, politics and power, and it has generated an assortment of successes and excesses. (2011, p. 18).

Where this revolution started, however, is difficult to identify. Indeed, the duty of care to those in need may date as far back as human history, particularly through the recorded histories offered by religion (ibid). In order to provide a structure to this long-term “revolution” Barnett offers three distinct ages of humanitarianism:

1. Imperial Humanitarianism, 1800-1945
2. Neo-Humanitarianism, 1945-1989
3. Liberal Humanitarianism, 1989-present

The age of imperial humanitarianism is often associated with the life of Henry Dunant who, whilst traveling from Geneva to Italy, encountered a battle between French and Austro-Hungarian troops in Solferino (an Italian village). Dunant’s experience would be immortalised in his *Memory of Solferino* (1864), and eventually led to the creation of the ICRC, and even informed the creation of the Geneva Conventions. For Barnett, the era of humanitarianism that was created by Dunant was characterised by great power politics in combination with colonialism, commerce and civilising/civilisation ambitions of this time. The second era, which Barnett calls ‘neo-humanitarianism, on the other hand, was characterised by the Cold War, decolonisation, development goals and state sovereignty. This second era was different

from the first in that humanitarianism shifting away from an endeavor that was primarily informed by charitable acts (though still insitutionalised in many ways), to a phase of history wherein humanitarianism planning and action would become embedded in an emerging postwar global governance architecture (2011, pp. 99-111).

The third era, or age, of humanitarian that Barnett describes only emerged at the end of the Cold War. He characterises this current period of humanitarianism as informed by forces of liberal peace, globalisation, and human rights (2011). The inclusion of human rights as a driving force in this current era is important to recognise, given the nature of this study. This, however, requires that we consider the basic elements of humanitarianism that were codified thorough the decades, even centuries, of humanitarianism development and evolution.

Across these three ages of humanitarianism, and through the insitutionalisation of this concept into governance bodies (be them, national, global or civil society-based), certain core principles can be seen as enduring and constituent elements of the theory as we know it today. Most simply, the very core of humanitarianism as we know it today might be understood as ‘compassion across boundaries’ (Barnett, 2011, p. 19). What this “compassion” means, in reality, is more complex. Even here, it is possible to identify specific dimensions common to humanitarianism as a whole. Fiona Terry explains that:

Three of the seven fundamental principles of the Red Cross movement, humanity, impartiality, and neutrality, provide the most broadly accepted principles to guide humanitarian action and form the basis of the various codes of conduct that have appeared in recent years. (2002, p. 18).

Indeed, it is these three principles, specifically, that were referenced in the UN General Assembly resolution 46/182, made on 19 December 1991, that led to the creation to the creation of the UN Department of Humanitarian Affairs (A/RES/46/182; see Terry, 2002, pp. 18-20 for a greater account of this). Strikingly, however, even in the UN resolution text, these principles are not clarified in a satisfactory manner. Accordingly, they will be explored in the next sub-section below. Before turning to this clarification, however, it is important to contextualise this articulation further. Given the historical period of this codification, it is possible to understand it within the age of liberal humanitarianism as defined by Barnett. This necessarily includes the recognition that humanitarianism, in this period, is understood in relation to human rights. However, this relationship is not so simple or easily justified. Indeed, Barnett has explained that:

Humanitarianism and human rights share various traits, but they are not synonymous, a point that needs stressing because the better-known field of human rights is often assumed to incorporate humanitarianism. It's a confusion that human rights activists and scholars unintentionally propagate.... Human rights relies on a discourse of rights, humanitarianism a discourse of needs. (2011, p. 16)

The above quote is of paramount significance for the purposes of this study. On the one hand, this is important when accounting for the moral versus legal versus institutional obligations conferred on international institutions through the explication of institutional cosmopolitanism (see above). On the other hand, it is directly relevant to the construction of the Guiding Principles, which has attempted to fuse together humanitarian obligations (via international humanitarian law explicitly, and humanitarian principles, via action and access, both explicit and also implied – see chapter 1). This fusion is not unique to the Guiding Principles, however. David Rieff explains that large numbers of humanitarian relief workers today see humanitarian work as ‘inseparable’ from human rights (2002, p. 71). The manner in which this observation impacts upon the question guiding this thesis will be explicated below, but before going to that point it is necessary to consider the core and basic tenets of humanitarianism in greater detail.

### **2.3.2 Humanity, Neutrality and Impartiality**

Like humanitarianism, the term and idea of humanity is largely amorphous; used and referenced by many who write about humanitarianism, without being clearly defined. However, because it stands out here as one of the core principles of humanitarianism theory, it must be evaluated more closely. Notions of humanity can, at the extremes, be associated with scientific designations of membership in a common species, or concerning humanity as a social phenomena, it can be dated as far back as human history has been recorded. However, this does not necessarily make the concept any easier to actually define and apply in a critical manner. Talal Adad captures this difficulty well when he writes that:

of the innumerable books dealing in one way or another with humanity, virtually all take its sense for granted—a large, all-embracing category whose members have a single essence... And yet it is in the name of humanity that the modern project of humanitarianism intervenes in the lives of other beings to protect, help, or improve them. (2015, [online])

For the purposes of this framework, it is necessary to narrow and refine this concept at least to a degree where it becomes more immediately applicable in the study. Concerning theory, and cosmopolitanism in particular, it is possible to link the idea of humanity to the moral philosophy of Immanuel Kant. More specifically, a more clearly defined concept of humanity is offered in the formula Kant set out for the Categorical Imperative. According to Kant, humanity, for oneself and others alike, must not be treated only as a “means” but as an “end” in and of itself. This is often associated the introduction of respect for one another, yet it still remains vague in that it does not offer a satisfactory explanation of what one treated as a end fully entails. Turning to more contemporary and policy-orientation articulations of this principles, one can see that the invocation does not mean the principle is defined. For example, OCHA, simply explains humanity by stating that ‘[h]uman suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings’ (OCHA, 2012, p. 1). This explains the duty owed in light of humanity, but comes short of clarifying the concept. Similarly, the ICRC is also light on clarity. In stating the principles that the ICRC’s actions are based off of<sup>15</sup> humanity is explained thus:

The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours – in its international and national capacity – to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples. (1979/2010, ICRC Fundamental Principles Commentary)

The explanations of humanity provided above are important to consider because together they reveal intuitive character of the principle, but also illustrate the difficulty in clear definitions. In this way, one begins to see that humanitarianism, therefore, should be thought of as the embodiment of certain principles, and not defined by any one at any specific point in time or place.

One of the other core principles of humanitarianism that warrants closer inspection is the idea of impartiality. In many ways this can also be seen as quite similar to the basic tenets of

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<sup>15</sup> Nb, the ICRC actually includes 7 core principles of humanitarian action (humanity, impartiality, neutrality, independence, voluntary service, unity and universality), however, the three examined here are the most commonly referenced and relied on principles throughout the humanitarian arena more broadly.

cosmopolitanism – wherein impartiality often features in the discourse as well. Terry offers a very straightforward account of this principle. She states that impartiality is ‘based on the conviction that all people have equal rights to certain standards...’ (2002, p. 23). She argues that this is perhaps one of the less controversial principles of humanitarianism, but becomes more difficult to achieve when thought of in relation to independence: ‘... only those aid organizations that are financially and politically independent can ensure that they base their allocations of aid solely on need’ (ibid). The question of independence per se is not taken up here, but this qualification does raise an interesting issue – the emphasis placed on allocating resourced based on ‘need’. Here, it would appear that Terry is implying that a facet of impartiality is in fact the targeting of vulnerability, which necessarily requires a kind of ranking or prioritisation decision making structure (even if this is ad hoc). This prioritisation of aid is not often explicit in literature; however, it can be identified in policy-oriented documents from the ICRC and OCHA referenced above. For OCHA, impartiality not only entails the right that everyone has to receive assistance in need, but clearly states that humanitarian action must give ‘priority to the most urgent cases of distress’ (OCHA, 2012, p. 1). Similarly, the ICRC the non-discrimination aspect of impartiality is emphasised, and qualified by priority such that the principle of impartiality ‘endeavours only to relieve suffering, giving priority to the most urgent cases of distress’ (1979/2010). For now, it is only necessary to make this distinction very clear, as it will be on the features that allows for documentary analysis of global norms conducted in chapter 4.

The third core tenet of humanitarianism that is being emphasised for this theoretical framework is neutrality. Neutrality might be one of the most controversial principles in the humanitarian puzzle, as it is persistently contested, and increasingly difficult to achieve. Indeed, the question of neutrality has occupied a large space in the contemporary (critical) literature on humanitarianism (see for example Rieff, 2002; Keen, 2007; or de Waal, 2010). However, it is also seen as one of the most important operational tools for ICRC, and groups that aspire to maintain humanitarian principles to the standard set by the ICRC (Terry, 2002). Generally speaking, neutrality refers to the idea that humanitarian acts should not favour one side of a conflict. However, if this disposition also implies permission from both/all parties to a conflict to provide assistance, then this principle comes into tension with both impartiality and humanity (ibid). Such a critique only begins to scratch the surface of scepticism that seems to permeate contemporary scholarship on this issue. For the likes of Alex de Waal, neutrality may most accurately be described as illusory at best (1994). Yet, despite the

growing criticism this aspect of humanitarianism now faces, it has endured as one of the core tenets of humanitarianism theory and warrants attention here (to be expanded below).

### 2.3.3 Applying Humanitarianism Theory

In determining the best way to apply humanitarianism theory it became necessary to do two things: 1. Situate this thesis in the most appropriate variant; and 2. Explain how the core tenets of this theory are relevant and/or necessary for a study of this kind. Regarding the former, it is useful here to return to the historical framework offered by Barnett (2011), and the current age of liberal humanitarianism specifically. What makes Barnett's historical framework so valuable is that it, in the first instance, places humanitarianism within the broader geopolitical changes and developments that have occurred throughout history. However, Barnett acknowledges that this view alone may be reductive and not take into account the "humanitarians", be they organisations or institutions, or even individuals. For the purposes of this thesis, the emphasis on historical specificity is particularly helpful. Barnett argues that we have now entered into an era of liberal humanitarianism in the context of the end of the Cold War, the increasing forces of globalisation, and the concomitant emphasis placed on human rights in the humanitarian discourse. For the purposes of this thesis the focus on (human) rights in this era is of particular significance; on this, it is worth quoting Barnett at length:

In the 1990s, however, rights talk seeped into every nook and cranny of world affairs. The UN Security Council began to articulate the importance of human rights, to link human rights and security, to invest in peacekeeping operations units with human rights units, and to ensure that human rights were part of postconflict endeavors. *Already existing humanitarian organizations more fully linked their areas of relief and protection to discourses of rights.* (2011, p. 167, emphasis added)

This quote embodies the general thrust of Barnett's argument that is most relevant for present purposes – the link between human rights and humanitarian efforts was institutionalised and, in some ways at least, codified in the 1990s. Historically, this fits neatly with the development of the Guiding Principles. Recalling chapter 1, the Principles can now be understood largely in relation to a human rights-based approach to assistance and protection. This approach, with the benefits of Barnett, allows for one to understand these developments and this normative framework specifically in a broader context of evolving humanitarianism

theory. It is against this backdrop that one should consider the core tenets of humanitarianism more closely linked to the study presented here.

Concerning humanity, the link between a “humanitarian imperative” and the increased efforts from the international community in the 1990s is only a short step. As the bipolar tensions of the Cold War subsided, security concerns were refocused on issues and concepts like human security, and human rights. The generalised trend of increasing internal displacement figures seemed to go hand-in-hand with this. Put simply, there was more space for thinking about the security of individuals and this space was filled by what we may now call liberal humanitarianism. The development of the IDP regime can, and should, be understood as part of this.

The idea of impartiality is significant here because it adds substantive content to otherwise amorphous normative principles. Impartiality, and the non-discrimination criterion entailed, would come to be a guiding light for more nuanced explications and amended articulations of international law in the way it could better serve the most vulnerable populations of the world. However, in this latter claim, the idea of vulnerability is only implicitly addressed. Institutional articulations of impartiality made this link more explicit – and it justified the targeting the certain groups as more vulnerable and in need than others, and therefore asserts that these groups should be given priority. This can be generally applied to the understanding of an “IDP” in the first instance; but it can also account for more narrowed focus and prioritisation of certain groups that fall under the IDP umbrella. This will be important to keep in mind when considering the documentary analysis of chapter 4. Neutrality, it seems, remains as contested as it does essential for contemporary humanitarian action. Accordingly, it will be essential to keep this principle, and the implications it carries, when developing this thesis further, understanding IDP assistance and protection as a humanitarian endeavour, at least in part. However, it is the aim of this thesis to consider neutrality not simply to reject or criticise it. Rather, the purpose of including it here is useful because it speaks to the competing and complex decisions that are made on the ground in local contexts (for both the international community and the local sphere). Therefore, this principle helps to illuminate the normative tensions that exist when global norms are understood locally.

More generally, the inclusion of humanitarianism theory is also consistent with the two previously considered branches of theory – the R2P doctrine, and cosmopolitanism (specifically, the institutional variant). The principles examined here, established as the core



tenets of humanitarianism theory, share many similarities with the two aforementioned theoretical dimensions. In the first instance, it is possible to discern normative similarities that are shared across all three theories. R2P has been included here in order to explain the conference of positive duty on the international community when states are unwilling or unable to provide requisite protections to their populations. Institutional cosmopolitanism explains how this is justified and understood in both moral and legal terms, wherein the institutional variant becomes a link between the two primary conceptions. In other words, cosmopolitan theory helps to explicate the mechanisms whereby duty and obligation is conferred to the international community. Humanitarianism furthers the institutional obligation observations by providing a context wherein this duty and/or obligation manifests itself in institutional bodies. Historically, all of these developments came about at the end of the Cold War. This is not a coincidence, but rather a reflection of global norm formation taking place at this point in time – within the global governance institutions that have been created in order to provide assistance and protection to the world's most vulnerable individuals.

## **2.4 Conclusion: Theory in Three Dimensions**

The theoretical approaches to sovereignty, responsibility, duty/obligation and humanitarianism presented above constitute the theoretical framework chosen for this thesis. The purpose of creating a theoretical foundation of this kind has been informed by the overarching aim of this thesis – developing a greater understanding of how global norms related to internal displacement affect and are understood in local context(s). The development of the Guiding Principles was intimately linked with the normative transformations that were occurring in the late 1980s and throughout the 1990s. It is for this reason that the Responsibility to Protect Doctrine was essential to consider here. By considering cosmopolitanism and the institutional variant specifically the conferment of positive duty to the international institutions was understood in a larger theoretical context. Finally, a theoretical framework suitable for this topic would not have been complete without attention paid to humanitarianism theory from the outset. In the first instance, the efforts to develop frameworks for assistance and protection of IDPs is easily understood to be humanitarian; however, this intuitive link is in fact full of complexity and nuance only seen when humanitarianism is considered more closely. The three dimensional framework presented above will inform the analysis of global norms and field research data in significant ways. However, it is the claim here that these are the only theories that could or should have

been applied to this study. Rather, it is the argument that these are suitable, if not ideal. Subsequently, this thesis will also return to theoretical concerns in the conclusion of this thesis – not attempting to create a new theoretical framework, but still offering implications for theory that can be considered going forward.

### **Chapter 3: Methodology**

This is the final theoretical chapter that will be presented in this thesis. In the first chapter a critical review of the literature pertaining to the internal displacement was presented. It was argued that much of the scholarship on the dilemmas of internal displacement focuses on the gaps that are observed in the formulation and implementation of protection and assistance schemes. More specifically, the analyses in this field generally approach the problem from the international sphere – evaluating the normative, legal and operational frameworks employed to enhance protection and assistance of those displaced within a state's borders. As it was demonstrated, while there is a growing body of work that evaluates the legal and institutional challenges of international programmes, there is insufficient attention paid to the complex relationship between international bodies and local actors – namely the state, as the primary bearer of both authority and responsibility over and for internally displaced persons. Moreover, the transference of norms surrounding IDP policy from the international community to the state has not been sufficiently developed in the literature.

The second chapter grounded this problematic in more theoretical terms by first evaluating the changes that have occurred in the understanding and implications of state sovereignty in the international community. Since the end of the Cold War, sovereignty has been gradually recast, at least in principle, in such a way that it is conditional upon a state's willingness and ability to provide basic rights to its citizens. This transformation of sovereignty was then analysed in a cosmopolitan theoretical framework, followed by an examination of humanitarianism theory. Such a theoretical approach was beneficial for understanding the ways in the responsibility of states has changed over time and also for understanding the source of international obligation to vulnerable populations. In the case of internal displacement, state sovereignty can ostensibly be seen as an obstacle to international efforts. Bearing this in mind, subsequent efforts have been made, principally in the UN system, to overcome this hurdle; for example, the development of 'sovereignty as responsibility', as well as the creation and entrenchment of the Guiding Principles on Internal Displacement. Even more recently, the creation of the Cluster Approach for more efficient delivery of protection and assistance has been launched and currently guides policy formulation at the international level. This presents a unique and complex challenge for states with large numbers of IDPs – a challenge that will be explored in depth throughout this study.

This chapter sets out the methodological structure that will be employed in this research project. As stated previously, this thesis aims to answer the question: how do international protection and assistance programmes affect local/state protection and assistance efforts (including both the political will as well as the capacity of local institutions)? Thus, the purpose of this study is to develop a greater understanding of the relationship between the international IDP “regime” and the local institutions that continue to bear the primary responsibility for protection and assistance of IDPs; how has state sovereignty been transformed? Put another way, how has the development of an IDP regime changed the relationship of power between the international community and the state, and in turn, between the state and those persons internally displaced. The chapter begins with a brief overview of the competing approaches to social science research, followed by an explanation of the approach employed in this study. This necessarily reflects the disposition of me as a researcher – making clear the ontological and epistemological assumptions brought to the study, but also pragmatic considerations of what form of research is possible and most conducive to answering the aforementioned research question. Next, the comparative logic of this study is presented; including recognition of the limits and benefits of this methodological approach as well as more specific articulation of the process by which my cases were selected. Finally, this chapter presents the research design and methodological tools that are relied upon, explicating the process undertaken for preparation as well as implementation of field research; including an explanation of how this research will accomplish my aforementioned goals.

### **3.1 Different Approaches Considered**

There is no shortage of diversity when it comes to social science research methods. As such, there is also no shortage of debate on the various approaches taken in social science. Within this field, there are many ways in which one might delineate and categorise the different schools of thought. One common division that continues to be the subject of intense debate and growing scholarship is between quantitative and qualitative methods. This is an important distinction that needs to be explored. However, this debate needs to be first situated in a broader, more fundamental consideration of methodology; that is, a more basic discussion of the philosophical assumptions and dispositions brought to the research by the researcher. Moses and Knutsen (2007) draw a useful analogy in explaining this difference in

describing methodology as the tool box, and methods as the tools that fit within it.<sup>16</sup> Thus, it is necessary to start with a consideration of the tool box before we turn to the tools that will be used in the study that follows. Following Moses and Knutsen (*ibid*), this evaluation will be framed in the difference between naturalism and constructivism. Significantly, however, these two general approaches should not be understood as a fixed dichotomy; rather, they can be understood as two sides of a continuum wherein the same – or similar – tools can be employed in both approaches, but in different ways.

## Naturalism

To begin, it is important to consider the underlying assumptions of naturalism and the place it currently holds in social science research. Put simply, one can understand the naturalist school of research as striving to emphasise the science in social science. This statement needs unpacking and explanation. Naturalists approach research with a positivistic ontological interpretative framework where an objective reality exists and because of this generalisable truths and patterns can be identified and understood. This reality exists outside of the observer's interpretation – it is objective – and one can know about this world through careful observation. In this way, a naturalistic approach in social science attempts to approximate the empirical process of the scientific method. This methodology enables its practitioners to generate formal hypotheses that can be tested. The result is that theories can be demonstrated to be falsifiable and can also take on predictive qualities, through the demonstration of empirical causality. This approach has come to a position of dominance in the field of social scientists as it offers an opportunity to demonstrate hard truths and therefore gain scientific legitimacy. As pressures for scientific legitimacy increase in the realm of academia, naturalism has become a preferred approach.

Within this methodology there is another debate about the value of quantitative versus qualitative research methods. King, Keohane and Verba (KKV) are responsible for perhaps the most seminal work on the debate between quantitative and qualitative methods in their *Designing Social Inquiry* (1994). This contribution was an attempt to provide a set of shared standards when it comes to social science research and it has had considerable impact on the field of scholarship. However, in one evaluation of KKV their contribution has been described as over-relying on the assumption that quantitative tool are superior to their

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<sup>16</sup> The comprehensiveness and salience of the framework(s) offered by Moses and Knutsen have made them a cornerstone reference in the development of this methodological approach; accordingly, they are relied on heavily in this section.

qualitative counterparts. (Brady et al., 2004). Thus, KKV can be understood as a template for social science that reflects a superiority of quantitative methods. Simply, the more quantitative a researcher can become, the better. Consideration of both the strengths and weaknesses of a given approach is important and will be returned to below.

While a full account of KKV and their critics is beyond the remit of this chapter, it is sufficient to recognise that there has been a growing preference for quantitative work in the social science, embodied by KKV's attempts to pair qualitative tools with a quantitative template. This view can be understood as a naturalist approach to social science more generally. Recognising the ostensible supremacy of quantitative methods, one can see how methods within the naturalist approach can be ranked. Indeed, there is a generally recognised hierarchy of methods ranging from experimental and statistical methods, to comparative approaches and case study based research. For the purposes of this study, specific attention needs to be paid to comparative research. This approach has a long and robust lineage dating at least as far back as the classic study conducted by Max Weber (1930) on the influence of a Protestant work ethic in the development of capitalism in Western societies. Ragin is perhaps the most noteworthy scholar contributing to the formalisation of this approach (1987, 1994). In this mode of analysis the scholar chooses a small number of cases for research, typically at least two but not more than five or six.

Even within the qualitatively oriented camp there are critiques of this method being used. For example, such an approach may be vulnerable to selection biases, or may lack robust systematic procedures of research, etc. (see Anchen and Snidal, 1989; Geddes, 1990; King Keohane and Verba, 1994). KKV, in line with their preference for quantitative methods, recommend that the researcher strive to increase the N (number of observations) in their research. This strategy can have enormous benefits in the external and empirical validity of research. However, those of a qualitative persuasion would argue that there are greater problems within this framework. While quantitative analysis may be able to produce general propositions across a number of cases, at the same time it can fail to explain and understand any one case in depth – something accomplished more easily through narrowed and limited case study research. Following this critique, and striving to understand the nuance and complexities of selected cases, a qualitative approach will be employed in this study – with a case selected. Before continuing with a justification for this approach, however, it is necessary first to set out the more fundamental difference that is chosen here – namely in the ontological disposition.

## Constructivism

It is not an exaggeration to say that the naturalist approach to social science has come to dominate the field. However, it must be noted that naturalism does in fact have numerous critics, and that this is an area of substantial and on-going development and growth. The very term ‘constructivism’ is also contested, as scholars who might be classified as such find fault in the terminology; other labels that can be applied, and might even be preferred, such as ‘interpretivism’ and ‘hermeneutics’ can also be applied (Moses and Knutsen, 2007). Where for some the term constructivism is stigmatised and therefore avoided, here, it is an approach that is embraced and consciously adopted. In setting out a constructivist research design it is necessary to consider the differences between this approach and its naturalist counterpart, review how this framework has been employed, and to explain how a constructivist framework is well suited to this research project.

In contrast to the naturalist approach reviewed above, constructivism begins from a wholly different disposition in ontological terms. Where a naturalist holds there to be a real world out there that can be understood through systematic analysis, a constructivist is more sceptical. Rather, constructivist scholars maintain that the world cannot be decoupled from the social experience of it. That is to say, ‘[c]onstructivists focus on the role of ideas, norms, knowledge, culture, and argument in politics, stressing in particular the role of collectively held or “intersubjective” ideas and understandings on social life’ (Finnemore and Sikkink, 2001, p.392). Rather than seeking to understand and make sense of the world through positivistic means, constructivism strives to uncover truth about ‘social facts’; facts such as money, property rights and sovereignty (Searle, 1995, p.2). Eschewing the precepts of neorealism and neoliberalism, constructivism allows for broader consideration of the role of norms as well as material structures in global politics, as well as the role of identity in the creation of interests and subsequent actions (Price and Reus-Smit, 1998, p.259), and therefore acknowledge that agents and structures are ‘mutually constituted in ways that explain why the political world is so and not otherwise’ (Finnemore and Sikkink, 2001, p.393). In this framework, understanding the behaviour of agents (which might make predictions possible), cannot be achieved unless actors are considered closely with the socio-historical context in which they operate. As such, this approach provides the researcher an opportunity – indeed, it requires researchers – to apply nuanced context-specific analysis of complex social issues and questions.

Needless to say, the ontological assumptions of constructivism have significant impacts on the types of questions that can be asked and thus on the form of knowledge produced by research. There have been many critics of this approach, questioning the empirical nature of constructivist research programmes. Robert Keohane is one such critic, who through his scepticism has helped to propel constructivist scholarship to new heights of empirical research. In 1988, in his address to the International Studies Association, Keohane issued a challenge to the constructivist project, saying that the viability and validity of this new strand of research will depend entirely on its ability to develop empirical rigor (1988). Finnemore and Sikkink (2001, p. 391), claim confidently that '[t]hirteen years later, we believe that this challenge has been easily met'. Their claim of success is supported by the rapidly growing body of scholarship that has been produced in the area of international politics. Constructivist research is conducted in a variety of ways. At the far end of the spectrum, one can even see how quantitative methods have been employed in this school in the works of Boli (1987), Strang (1991) and Ramirez et al (1997) who have attempted to explain and understand the changing distribution of sovereignty, rights of citizens as well as women's rights (see Moses and Knutsen, 2007). However, in most cases qualitative methods have been preferred. Perhaps most significant for this research project has been the work of constructivists researching the role of global norms and local effects. In this area of research the focus tends to be on how global norms affect the interests and subsequent actions of local actors.

Here, however, one must acknowledge an implicit bias of the constructivist literature, towards progressive norms and one-sided evaluation of how local actors come to comply with emerging global norms and the institutions tasked with their dissemination. In so doing, scholars might ignore the type of feedback loop that exists, wherein local actors and context can reflexively shape the formation of norms at the global level, and in turn the institutional design implemented by global actors (Kaufman and Pape, 1999). This is a central concern for the construction of this research design, and one that will be considered closely throughout the collection of data. With this in mind, it will be crucial to go beyond an evaluation of the top-down dissemination of global norms into local contexts, and to be mindful of the "bottom-up" influences in the realm of IDP protection and assistance. The work of Kratochwil and Ruggie is significant in this regard, as they 'treat domestic and international structures as two faces of a single global social order. They then consider the mutually constitutive relationship between this order and the state' (Price and Reus-Smit, 1998, p.269). By adopting a similar view, wherein domestic and global structures are considered together –



in a reflexive relationship – the relationship between the global order and the state can be understood in greater analytical depth, avoiding the shortcomings of an overly simplified, linear (or top-down) evaluation.

More generally, it is also important to consider the nature, form and applicable value of knowledge that can be produced by such a research framework. Constructivists question the ability of researchers to uncover broad generalisations – what has been referred to as “big-T” truths (Price and Reus-Smit, 1998). Whereas the research agenda of naturalists allows for the uncovering of generalisable “Big-T” truths, constructivism research produces more narrow conclusions, limited to ‘small-T’ truths that are contingent on context and intersubjective meaning:

Such partial and contingent claims may still constitute causal explanation, albeit in a somewhat different sense than realists or liberals understand causality [sic]. For constructivists, understanding how things are put together and they occur is not mere description. Understanding the constitution of things is essential in explaining how they behave and what causes political outcomes. (Finnemore and Sikkink, 2001, p.394)

This conception of causality differs greatly from that strived for in the naturalist approach, but as Finnemore and Sikkink argue, it is no less valuable in the production of knowledge. Moreover, in the constructivist approach variables are utilised in a distinctly different manner. For, when generalisations are drawn by constructivists, ‘the factors they focus upon are not treated as context-free independent variables that may be transferred unproblematically to any and all situations to produce a necessary outcome’ (Price and Reus-Smit, 1998, p.274). This is not to say, however, that constructivism falls into the realm of complete relativism. Indeed, some interpretations – some small-T truths, can achieve external validity through extrapolation (see, for example, Grix, 2010, re: case study research).

The choice of a constructivist framework in this research project reflects two important points. First, it reflects the general disposition brought to the research by me, as the researcher. Following from the explication of the differences between naturalism and constructivism, the latter more accurately reflects the underlying assumptions and philosophical beliefs maintained by me. Rather than holding a positivistic view of an objective reality somewhere out there, I take the view that understanding our reality is contingent upon intersubjective meaning placed in a given socio-historical context.

Secondly, it is the view here that a constructivist approach is in fact more conducive to understanding the ways in which the international IDP regime has changed and shaped the role of the state in relation to domestic protection and assistance efforts. In the section that follows, the method of case study research will be evaluated, followed by an explanation of the case that has been selected for this study.

### **3.2 The Case Study Approach to this Research Project**

In developing a research design for this study various approaches were considered. As noted above, a constructivist approach is preferred for two distinct reasons. Moreover, within this approach there are a number of methodological tools that have been consulted. In the first instance, it is significant to note that quantitative methods have not been identified as an appropriate set of tools to carry out this research. This is largely due to the fact that statistical data on internal displacement is incomplete, at best, and could even be misleading, at worst (see Chapter 1). Therefore, reliance on statistical techniques would not produce empirically robust results. Moving into the qualitative realm of constructivist scholarship, comparison has been identified as the most conducive approach to this study, if not ideal in all respects. More specifically, this study will employ a case study based methodology. There is no simple, or direct, template for how this kind of scholarship takes shape. Indeed, the methodology of many constructivist scholars is often only implicit and not formally articulated. However, this is not a convenience afforded to this study, nor should it be. For it is the argument here, that for a research study to gain legitimacy and standing these are important concerns that ought to be made explicit.

This thesis is based on a case study approach to research. This is not necessarily a defining characteristic of the methodology, however, as '[c]ase-studies are not tied to any particular research method and they are "methods" themselves, but instead should be seen as simply an organisational strategy, within which social data are organised...' (Grix, 2010, p. 51). That said, it is still necessary to explain the case study approach in closer detail in order to establish a robust methodological structure for this study. Case-studies can be conducted as either single or in a comparative manner; both of which can be conducted in a constructivist construct. The manner in which comparison is used in constructivist scholarship necessarily differs greatly from the way in which it is utilised in the naturalist tradition. Rather than striving to develop universal and patterns and laws of the social world, the constructivist seeks to uncover meaning that can only be disclosed through in depth analysis of the particularities found in context-specific settings. This thesis does not completely disregard the

scientific claims of naturalists that employ case study-based approaches to research; comparative cases in particular. However, given the pursuit of inter-subjective meaning(s) and understanding(s) of global norms in local contexts, the constructivist approach remains the preferred methodology.

Moses and Knutsen identify three principle ways in which the constructivist departs from their naturalist counterpart(2007). First, and what is alluded to directly above, is the different way in which constructivists approach generalisation and recognition of patterns in the social world. Second, constructivists have a markedly different approach to the selection of cases. Whereas case selection in the naturalist tradition attempts to come closest to the scientific method, with emphasis placed in controlling for selection/sampling bias, '[t]hese concerns – most of which are borrowed from a statistician's world view – are irrelevant for the constructivist.... By contrast, constructivists tend to be more casual in their choice of cases' (ibid, p.232). Rather than attempting to select cases in way that will produce law-like external validity of results, the constructivist approach focuses on the value of meaning achieved in particular contexts. Third, naturalists and constructivists differ in significant ways when it comes to source(s) of data that can be used in their research. Similar to the difference in case selection, the former prefers carefully selected and controlled, often quantifiable sources of data, whereas the latter draws from a much broader pool of available data that can help uncover the manner in which meaning is constructed and perpetuated; this can include an array of sources, ranging from cultural specific literature and documents, to in depth interview and even novels or plays (ibid, p.234). Thus, a constructivist approach allows for a greater degree of methodological pluralism – a benefit that will be relied upon in this research project.

Regarding the construction of a single case study specifically, there are different distinctions that are important to consider. Grix, for example, simplifies the different types of case studies by dividing possibilities into three categories: 1. Descriptive, 2. Exploratory, or 3. Explanatory (2010, p. 50). By contrast, Lijphart presents a more complex classification of types of case studies: 1. Atheoretical, 2. Interpretative, 3. Hypothesis-generating, 4. Theory-confirming, 5. Theory-infirmit, and 6. Deviant (1971, in Moses and Knutsen, 2007). This thesis relies on both sets of typologies in describing the approach selected here. Specifically, this thesis can be most accurately described as explanatory (from Grix) and interpretative (from Lijphart). The former is most accurately understood as a case study approach that 'seeks to make generalisations by extrapolating the single case-study's findings to other

cases' (2007, p. 50). This application of a case study does seek to make generalisations, but the claims to extrapolation for other cases is more modest here; informed by the interpretative nature of this study. According to Moses and Knutsen, the interpretative basis of a case study does not necessarily imply generalisations, which makes it a less preferable for naturalist researchers. It is the argument there, that a case study can be both explanatory and interpretative, wherein generalisations can be offered even in the context of interpretation of a single case. However, this generalisation focus must be modest in nature and not necessarily applied to completely separate cases, but rather focused on elements endogenous to the thesis questions (see below for justification and explanation).

The explanation above concerning what a case study is, in the context of this thesis, must be bolstered with a justification about why this approach has been implemented. In first instance, the feasibility of research must be addressed. Given the limited time and resources available for me as a researcher in conducting this analysis, a few approaches were considered. The most convenient approach to this research would have been focused on the international community exclusively and would not have required field research. However, with the aim of trying to produce a study that incorporated the experience of a local sphere in the context of global norms, field research remained a priority. In deciding the contours of field research, the comparative method was originally chosen; however, the feasibility of conducting studies into countries proved too difficult to achieve. The transparent disclosure of this process is included here, in order to maintain the spirit of a constructivist disposition wherein the context of the researcher is made explicit in the process of research. It was, therefore, determined that a single case study would be valuable and possible. Valuable, because this thesis has the potential to raise some issues about norms and local effects (of norms specifically) that is currently missing in the literature on international assistance and protection of internally displaced persons. Possible, because conducting field research in two countries would not have been feasible for concerns of time and resources. The limitations of external validity in a single case study approach have been acknowledged from the outset, however, it was determined that a study of this kind could still yield valuable findings. The selection of Sri Lanka, in particular, was central to reaching the conclusion. Accordingly, it is necessary here to understand why Sri Lanka was selected as the subject of this case study.

### **3.2.1 A Sri Lankan Case**

In justifying Sri Lanka as an ideal case study for this thesis five considerations will be briefly presented below: basic information about the country, the scale and scope of displacement in

the country, the presence of the international community operating in relation to IDP assistance and protection, the current geopolitical context of Sri Lanka, and the pragmatic concerns of conducting field research.

To start, the basic dimensions of Sri Lanka must be considered. Sri Lanka is an island state that has a British Colonial history (this will be explored in some more detail in chapter 5). According to the Sri Lankan government, the population of Sri Lanka was most recently estimated/recorded as 20,771,000 million people (2014), with the major population centre being the capital of Colombo (approximately 2.4 million, *ibid*). Sri Lanka's population is largely constituted by two ethnic groups, the Sinhalese and Tamils. The Sinhalese, according to the government (from earlier documentation) account for 74.9% of the population, with the Tamil population constituting the largest minority group at 11.1% of the population (2012). The Sinhalese population is largely Buddhist, with a sizable Christian minority. The Tamil population is largely Hindu, with a smaller minority of Christians as well. There is also a sizable Muslim minority, primarily from the Moor ethnic group, but Tamil speaking, accounting for approximately 9% of the population. The religious distinction of Muslim, however, is often expressed as an ethnic identity in the country (Mohan, 1987). These demographic statistics may seem basic, however, they are important in establishing a profile of the Sri Lankan population, as these distinctions have largely informed the civil war the country has experienced, as well as the contours and trends of internal displacement that have occurred in the country. These demographic distinctions are essential for understanding the analysis that follows the case study section of this thesis.

Following the basic information presented above, the scale and scope of internal displacement that has been experienced in Sri Lanka is also important to highlight here. Sri Lanka has long history of internal displacement. Indeed, this experience predates the very definition of an "IDP" as we have come to know it today. The Sri Lankan civil war began in 1983, 15 years before the UN would publish an internationally accepted definition of an IDP. Needless to say, this conflict led to massive displacement resulting in refugees who were able to leave the country, as well as internally displaced persons that remained within Sri Lankan borders. This long term conflict and displacement that occurred as a result makes Sri Lanka a suitable case for understanding how global norms surrounding internal displacement specifically have been understood by, and impacted upon, the local sphere. However, the internal displacement resulting from the war only represents one (albeit the largest share historically) group of people who have been displaced in the country. In addition to the conflict-affected IDP

populations, Sri Lanka also comprises internal displacement resulting from natural disasters and development projects (both of which have been included in the UN's definition of an IDP). Regarding disaster-affected displacement, the most relevant and contemporary event was the 2004 Indian Ocean Tsunami, that hit the island whilst the civil war was escalating when a 2002/2003 Cease Fire Agreement fell apart. Development-induced displacement has also occurred in the country in more recent years – particularly in the years after the war ended. These three different causes and drivers of internal displacement make Sri Lanka an ideal single case study for this study because the country has experienced all forms of displacement included in the international normative frameworks concerned with assistance and protection of IDPs. Moreover, the historical basis of displacement in the country has also created a situation wherein “protracted displacement” remains an enduring challenge for the government and relevant international actors. All of these issues will be examined in the case study chapters that follow.

An additional aspect of the Sri Lankan context that makes it an ideal case study is the country's relationship with the international community. When thinking about how Sri Lanka engages with the international community, one must begin by acknowledging the colonial history of the country. Continuing from a colonial experience with the Dutch, Sri Lanka was ceded to Great Britain in 1815. It would remain a British colony until independence in 1948. This colonial history is necessary to keep in mind when understanding the country's relationship with the international community in a broader historical context – and this will be explored a bit more in chapter 5. The purpose of introducing this history here is to establish the fact that the country has constantly been engaged with the international community, though the nature of this engagement has evolved over time. Recalling the age of liberal humanitarianism described in the previous chapter, the nature of engagement between Sri Lanka and the international community in the 1990s, and onward, is most relevant for the purposes of this study. As the country's civil war raged on, bilateral partners in the international community were always involved in trying to reach a political solution. The Norwegian government, in particular, was very active in trying to establish cease fire agreements wherein a peaceful resolution might be found through negotiations between the Sri Lankan government and the Tamil Tigers. As the war continued, the IGOs roles in the country become more pronounced – with UNHCR, in particular, taking on significant responsibilities for providing assistance and protection to those people internally displaced. The role of the UNHCR was gradually diminished in the postwar years, however, many IGO

agencies remain involved in the country. This involvement has been significantly qualified in recent years, and the functions these organisations perform have changed dramatically. This engagement will be the subject of ensuing analysis. The point, here, is to highlight that Sri Lanka's governance has regularly been the subject of consideration for the international community. This simple fact helps to explain why the country is an ideal case for a study of this kind.

As hinted to above, the role of the international community in Sri Lanka has significantly changed throughout recent years. Yet, the attention and focus on Sri Lanka remains a fixture on the international community's agenda. There is perhaps no better example of this than the on-going UN-led investigation into potential war crimes in the country that may have occurred by both the state and the Tamil Tigers during the civil war – especially towards the end of the war. Accusations about war crimes in the Sri Lanka civil war have been constant not only in the final years of conflict, but have also persisted in the postwar years (see for example the documentary 'Sri Lanka's Killing Fields', Snow and Macrae, 2011). These accusations have not subsided, but rather have led to an official enquiry from the Office of the High Commissioner for Human Rights entitled 'OHCHR Investigation on Sri Lanka' (OISL) (UNHCR, 2014). This investigation was launched via resolution A/HRC/25/1 adopted in March 2014. Significantly for the purposes of this thesis, the investigation mentioned here was authorised after Sri Lanka was selected as the subject case study. Despite this fact, the OISL stands out here as yet another example of how and why global norms on internal displacement are relevant to understand in relation to local context(s). Moreover, the OISL actual investigations were launched only weeks before I set out for field research in Sri Lanka. This timing had significant implications for my research, which will be explained below. But before turning to these implications it is necessary to first recount here the pragmatic and practical concerns that made Sri Lanka an ideal case study.

Apart from the historical and empirical dimensions of Sri Lanka as a case study, the choice of Sri Lanka was also driven by very pragmatic considerations. The inclusion of these concerns here is deliberately in service of the constructivist model for research, wherein biases and dispositions of the researcher must be made clear. When attempting to formulate a study of this kind, practical constraints were significant concerns in the planning of field research. As mentioned above, the limitations of time and resources made a comparative approach implausible. Recognising this, in attempting to find a single case study that would be possible, a few considerations became central. In the first instance, the potential empirical

opportunities for research in Sri Lanka made it valuable in the decision making process. More specifically, the fact that one of the official languages of Sri Lanka is English made field research in this country more possible. Further to this point, the presence of IGO actors operating in the Sri Lanka during the period of planned field research seemed to present opportunities for this thesis. However, the presence of IGOs would come to be irrelevant because of political sensitivities, as will be explained below. Finally, the decision to use Sri Lanka as a subject for case study analysis was also informed by the fact that I had some potential contacts in the country that might prove useful for research purposes. These issues, as well as those issues mentioned immediately above will be explained more fully in the research design presented below.

The Sri Lankan case allows for generalisations to be made about global norms in a way that makes them relevant for the international community to consider, without claiming that these observations necessarily apply to complete separate case studies of internally displaced populations.

### **3.3 Research Design**

The research undertaken in this project will be of a qualitative nature. More specifically, it will be based primarily on semi-structured interviews and site visits in Sri Lanka, between July and November 2014. The data gathered throughout this process will be further supported by a range of official policy documents from international governmental organisations (IGOs), international non-governmental organisations (INGOs), national governments, as well as local non-governmental organisations (NGOs). Additionally, the completed case study will also integrate information available from national and international media sources, as well as the theoretical literature on state sovereignty and IDP protection as a means to triangulate the findings with contemporary context considerations in Sri Lanka, as well as the prevailing understanding of this problematic in current relevant scholarship. This section will preview the efforts that I undertook in order to prepare for the field research, the process by which my research will be conducted, including the considerations that have been made in order to produce valid and robust results, as well as an explanation of how these techniques will help achieve the goals of my research.

Given the constraints that I encountered in terms of time in the field and availability of funding for fieldwork, this research depended heavily on extensive efforts that have been made in the planning stages, before arriving in Sri Lanka. Field research for this thesis has



been limited to 4 months in-country. Indeed, such time constraints have greatly informed the research programme overall; by deliberately focusing on the international community and local providers of protections and assistance. Two to three months before departing for the field, I developed a database of the most relevant actors that would be essential for conducting this research; actors, in the context, includes both organisations and individuals. These subjects were selected from a variety of sources: documents, reports and websites (which have staff lists) produced by IGOs, INGOs, NGOs and local governments; from online media outlets that report on issues of internal displacement; from available conference proceedings that list attendees; as well as from personal consultation with colleagues and academics from the London School of Economics and Durham University.

Interviews conducted with respondents from the IGO community were planned and pursued. However, upon arrival in Sri Lanka, the pool of respondents became problematic (as explained below). Whilst conducting field research, I relied on referrals made by those respondents I was able to secure in order to build my respondent groups. I have been cognisant of potential sampling biases, or, “referral biases”, that might arise from this “snow balling” technique; however I have concluded that it is not an obstacle to my research for two reasons. First, given that my focus, both internationally and nationally, is on the providers of protection and assistance, there is a more narrow pool of interview subjects to draw from, limiting the risk of a sample bias. Second, and despite this, I have still attempted to control for sample biases by pursuing a two-fold strategy of referrals: where I first ask for direct referrals to those individuals I would like to interview but for whom I do not have a personal relationship or connection, and then asking for more open-ended referrals only second.

The four categories of respondents for my interviews were originally as follows: IGOs, INGOs, government officials, and local NGO actors. These can be divided into two groups: international and local actors. Throughout the course of field research I was able to conduct over 50 interviews; however, as will be explained below a number of these were withdrawn upon the request of respondents (given the ongoing UN investigation into the country). The purpose of interviews was primarily to understand the mechanisms by which global norms have been disseminated to the local sphere, and then subsequently applied and/or understood – specifically, in relation to implied notions of the sovereignty as responsibility doctrine (or now, R2P), the Guiding Principles on Internal Displacement and the overall understanding and application of global norms as they have related to humanitarian assistance and protection of IDPs. Interviews with local actors that were possible can be broadly classified as state

actors and civil society leaders. Regarding the former, throughout the course of field research I was able to gain unprecedented access to the military officials. In particular, I was able to spend time with the Security Forces Commanders of both Kilinochchi and Mullaitivu. The access to these individuals is of paramount significance because these individuals were central in the final stages of the war, as well as in the early (and on-going) resettlement efforts. In addition to these high-level (elite) interviews, I was also able to interview a number of senior military officers under their respective commands. These military officials have been responsible for not only the final military operations at the end of the civil war, but also the resettlement efforts that followed when the war came to a close. This degree of access has not been achieved in any study regarding Sri Lanka specifically, nor has been achieved in many other studies about IDP assistance and protection more generally.

In addition to this access with military officials, this study has benefited from other elite interviews with governmental officials – namely the Secretary for the Ministry of Resettlement as well as the District Secretary of Mullaitivu. Regarding the former, as the Secretary of the Ministry of Resettlement, his responses represent further unprecedented access in the highest levels of governmental authority. Regarding the latter, the chance to interview the District Secretary of Mullaitivu was unique because this region remains one of the most contested areas when considering resettlement policy in Sri Lanka.

In addition the military and governmental interviews obtained throughout the course of field research, I was able to schedule a number of interviews with civil society leaders – one of which in particular continues to receive death threats given his prominence in this area of concern. The sample size of interviews conducted throughout field research may, at first glance, seem small. However, when the level of leadership of respondents obtained is considered, this sample can only be understood as both valuable and difficult to access. The field research presented here relies on the credibility and unique placement of influence that respondents come to embody.

Interviews with government officials will reveal the impact that international policy has on local capacity for protection and assistance: answering the question of to what extent has the growth of an IDP “regime” transformed the responsibility of states to populations internally displaced?; to what extent the Guiding Principles have been understood in re-formulating the responsibilities and obligations of the international community; and to what extent has this impacted the ability of local actors to provide the protection and assistance that they are

primarily responsible for? Interviews with local NGO actors have been essential to understand to the international-local actor relationships more fully as well as to triangulate the answers received from the state actors alone.

When setting out for field research the first step taken was that of trying to secure interviews with relevant IGO field staff. Upon arrival in Colombo, this seemed like a promising lead for research. Indeed, a number of interviews were conducted with UNHCR Colombo field-staff, and through these connections interviews were also conducted with one staffer from the local office for the UN Development Programme (UNDP), and another from the World Food Programme (WFP). As my research topic was politically sensitive, I was instructed to apply for and obtain official approval from the UNHCR country director before pursuing further interviews with field-staff based in Kilinochchi. After initial correspondence I was assured that access to staff would not be a problem. However, after further consideration my request for interviews went unanswered, despite repeated efforts to communicate about this issue. It was only in an informal meeting with my contact in the UNHCR Colombo office that I was informed that they would not be able to accommodate my requests for research and that any interviews I had conducted with UNHCR field staff could not be used for my thesis. There was never a formal explanation for this decision, but informally I was told that the nature of the OSIL meant that their responses cannot be used for research as they may potentially constitute evidence for the purposes of said investigation. Similar statements were in turn received from my UNDP and WFP contacts. Accordingly, no interview responses from IGO actors have been included or considered in this thesis. This represents an obvious gap in the evidence that will be presented throughout; however, it also can be understood as a signal that this research is both pressing and valuable.

For the interviews that were conducted and included in this thesis, the purpose remained both constant and flexible. My interviews began with questions about the respondents' professional backgrounds in relation to IDPs. This serves the dual purpose of building rapport with the respondents as well as to contextualise their opinions and answers. By employing semi-structured interviews I attempted to maintain flexibility in the exchange and to pursue new and relevant lines of questioning as they arise. Furthermore, this flexible approach allowed for the respondent to question me as well, so that my own biases and assumptions did not remain implicit and therefore unaddressed (this was a deliberate choice in line with the constructivist approach). After gaining the initial background and context from respondents, the interview questions that followed were about how the international

community's efforts have transformed traditional notions of sovereignty and responsibility – responsibility to both the international community in the form of outward accountability, as well as the states responsibility to their domestic constituencies. These questions were further narrowed and pursued in order to gain insight in the way in which the respondent(s) understood the international normative frameworks produced concerning internal displacement. In this context, it was necessary to leave these questions somewhat open-ended, so as to not prompt the respondent in a certain direction, and therefore avoid the risk of confirmation bias, as the researcher. It was also essential to inquire about how the respondents' institutional affiliations have been involved in policy formulation followed by questions surrounding the potential impact that international programmes have had on local efforts and understandings.

Before each interview I made it clear that the respondent's answers will only be used if I gain prior consent, and that should they wish, their attributions can be presented as anonymous sources. This was a crucial element of my research, as the topic of my study is highly politically charged. Indeed, this qualification of my research approach has led to a number of interviews being withdrawn and excluded from this thesis, as described above. Regarding the actual mechanics of interview techniques, for this thesis I chose to employ a strategy of note-taking rather than recording the exchanges, even if they would have given consent to being recorded. Because this is a sensitive research topic, it was recognised that interviews should, in the best case scenario, solicit answers that do not simply mimic official party lines and rehearsed answers. Placing a recording device in front of respondents would have likely limited their responses. It was the hope that these combined efforts have led to a more honest dialogue that may otherwise not have been possible if the respondent knew they were being recorded or if they had concerns over attribution.

In addition to conducting semi-structured interviews the evidence presented in the case study chapters that follow include documentary analysis (be it document review and/or content analysis). This evidence is used primarily in order to triangulate the evidence obtained through interviews, but in certain circumstances it is also offered as a primary observation with the context of this study.

### **3.4 Conclusion**

This chapter concludes the theoretical section of this thesis. It has set out the methodological approach that will be employed throughout this research project. More specifically, it has

considered the two distinct traditions of naturalism and constructivism in social science research. As described in sections 3.1 and 3.2, this project is based on the constructivist approach to research. Adopting a constructivist approach has allowed for the evaluation of intersubjective perceptions and experiences of global norms in a local context. Within this approach, I have chosen to rely on qualitative research methods, primarily semi-structured interviews in a single case study framework. This methodology and these methods reflect, what is argued here, the most advantageous set of tools to achieve the aforementioned goals of this study. In the chapters that follow, the research is presented and analysed in three distinct phases: historical and civil war, early resettlement efforts in the first three years after the civil war ended, and current context. These temporal distinctions, the latter two in particular, make this research project particularly relevant.

## **Part II: A Sri Lankan Case Study**

## **Chapter 4: Global Norms Examined**

In order to effectively evaluate the local effects of global norms relating to internal displacement it is necessary to begin with an investigation of the norms themselves. This inquiry is essential to contextualise the development, articulation, dissemination and eventually the (local) reception and/or incorporation of global norms concerning the international assistance and protection of internally displaced persons. In order to accomplish this, the current chapter comprises a document review and content analysis of primary texts as they relate to the development and evolution of relevant global norms. This review and analysis has been achieved through archival research comprising texts that have been produced by selected authoritative international bodies that have been active participants throughout the development and growth of IDP assistance and protection policy frameworks (namely documents produced within the UN system, but in collaboration with leading global civil society actors). The analysis of these documents and records has been guided by the need to identify and assess the normative expressions linking underlying principles of relevant international policy (frameworks) with the normative frameworks that have come to characterise IDP assistance and protection policy. The secondary aim of this chapter, apart from the in depth documentary analysis, is to understand and clarify how humanitarian principles have been embedded in the frameworks produced by the international community.

While this is a necessary first step in the research of this project, it is by no means sufficient alone. Rather, it will serve to provide the background and context that informs the subsequent case study research of this thesis. The chapter proceeds as follows: first, there is a brief description of the sources of data (documents) that has been analysed as well as a justification for their use and relevance; this chapter will then proceed with an analysis of the primary texts of the United Nations as they relate to the international assistance and protection of IDPs, including the Compilation and Analysis of Legal Norms I and II, the Guiding Principles on Internal Displacement, submitted to the UN Commission on Human Rights by the Representative to the Secretary General on Internal Displacement (RSG) (see CHR, 1995 & 1998). Third, this chapter includes an evaluation of policy guidance produced by the international community for field workers as well as law and policymakers, on the application and implementation of the Principles. Fourthly, this chapter considers the principles and norms that can be found in the IASC Framework on Durable Solutions for Internally Displaced Persons. Finally, it will also be necessary to consider the The Responsibility to

Protect Doctrine (R2P) throughout the review of the international documents, as this forms the backdrop for investigating transformations of authority, responsibility, duty and sovereignty.

Put more simply, what follows is an investigation of the principles and norms that underpin the international community's approach to the assistance and protection of IDPs. The purpose is to develop a thorough understanding of how the international community has deployed changing notions of sovereignty, responsibility and obligation, as well as humanitarian principles combined with human rights standards, in relation to the local sphere – here embodied by a single case study subject. Whilst existing research has evaluated the impact of established normative frameworks for assistance and protection in terms of policy effectiveness and legal terms, the current study aims to advance an understanding of the form and function of the norms themselves as they are intersubjectively understood and consequently constituted. This analysis will be supplemented by, and triangulated against, case study (fieldwork) research conducted in country, in the context of a politicised historiography of displacement and resettlement (chapters 5-7).

#### **4.1 Documents: Content and Context**

The decision to employ a document review and content analysis in this chapter was made for two primary reasons. First, in addition to providing the context and background for subsequent field research, it will also offer a source of triangulation against the soft data that is collected through field research. Second, the use of document review is beneficial for achieving depth in a single case study project, particularly in a constructivist or hermeneutic paradigm (which is the approach employed in this study) (Bowen, 2009).

Primary texts for this review have been selected because of their prominence in the UN system, as the UN remains the principal authority for coordinating assistance and protection of IDPs. With regard to documents representing the formation, evolution and dissemination of the global norms surrounding displacement, there are three primary texts which are the constituent elements of the multilateral approach and policy to internal displacement: the Compilation and Analysis of Legal Norms, the Guiding Principles on Internal Displacement, and the IASC Framework for Durable Solutions. For the Compilation, both versions (I and II) of this report have been consulted; and for the Principles, the core text, as well as the legal annotations for the text have been consulted, with references to international legal instruments where necessary. In addition to these core texts, handbooks and manuals that have been



produced by the UN and civil society partners for field staff working in situations of internal displacement as well as for law and policymakers, respectively, have been consulted; such documents are the primary mechanisms for the dissemination of the norms created by the international community and embodied by the Principles.

Overall, the purpose of this chapter is to develop a better understanding of the norms that have driven the creation of an international approach to IDP protection and assistance. Significantly, this analysis attempts to uncover the changes in norms and dissemination; recognising that norms are dynamic and not static or fixed in time. In this way, it is not only the content of these documents that ought to be considered, but rather the context in which they were created in the first place. Where needed, this evaluation will also reference leading scholarship on the issue in order to demonstrate the manner in which the relevant norms have become embedded within the affiliated epistemic community, comprising both academics and practitioners.

As explained in chapter 1, the notion of authority and duty (via sovereignty) is a dominant feature, indeed a challenge, in the field of IDP assistance and protection. As such, it will be crucial to investigate the normative transformations that have taken place in this regard as international involvement has increased. This has manifested most explicitly in the ICISS Responsibility to Protect Doctrine (2001). R2P helps one to contextualise the underlying approach that international actors have employed when developing the norms on internal displacement; thus, it will be important to pay particular attention to the treatment of authority, obligation and duty, as they relate to, and are addressed in, the aforementioned Guiding Principles as well as the IASC Framework on Durable Solutions for IDPs. The aim of investigating the treatment of authority in these documents will be helpful in understanding the reflexive exchange of obligation and authority that has taken place between the international community and state actors. This exchange, significantly, has been informed by the intersubjective development and understandings/perceptions of norms that have come to dominate and characterise conceptions of policy regarding IDP assistance and protection.

## **4.2 The Formation and Dissemination of Global Norms**

Whilst the issue of internal displacement is certainly not a new phenomenon, the efforts to address the issue systematically in multilateral institutions are a relatively recent development (see chapter 1 on Conditions and Context). It was not until the early 1990s that the United Nations began to take up the issue. The first step towards addressing the growing numbers of

those internally displaced took form in the *Compilation and Analysis of Legal Norms* (henceforth *Compilation*), submitted to the UN Commission on Human Rights in two parts (1995 and 1998) (Commission on Human Rights, E/CN.4/1996/52/Add.2, 1995/1998). In addition, following on from the *Compilation*'s findings, the *Guiding Principles* were also written and submitted in 1998 (OCHA). These two documents stand at the core of the normative framework for internal displacement and are thus the primary focus of this initial analysis. As IDP scholarship has grown, there has been much written on both of these documents (see for example the extensive writings by Cohen, 2003, 2006a, 2006b, 2008; Mooney, 2005; Ferris, 2008). Yet, it is essential for any investigation to consult these documents as the starting point for questions surrounding contemporary assistance and protection of IDPs. For the purposes of this study, the focus within documents will be on the employment of 'hard' international law in a 'soft law' approach, specifically looking at the treatment of universality, (national versus international) authority and duty, as well as the dissemination strategies and mechanisms that have been initiated by the international community. For the latter consideration, this analysis will shift in two different directions: first, toward the various handbooks and manuals that have been produced for the benefit of field staff working in situations of internal displacement; second, toward the IASC Framework that has been developed explicitly focused on the resettlement process, with the aim of providing understanding and guidance on durable solutions – what they are, and how to achieve them.

#### **4.2.1 The Compilation and Guiding Principles**

The *Compilation* is a product of extensive coordination and evaluation conducted by a team of international lawyers in the mid 1990s. It was commissioned in 1993 by the Commission on Human Rights, as part of the mandate of RSG Francis Deng. The purpose of the study was to discover what elements of existing international law covered the needs of IDPs as well as to understand what needs were unmet in such law. More specifically, it 'queried whether existing international legal instruments provide sufficient legal protection for the internally displaced and whether what is needed is more legal prescription or simply better implementation of existing law' (1995, para. 410). The overarching impetus for this mandate was the growing recognition that needs of IDPs were not being met by neither conventional international legal instruments, nor by the wider international community.

A team of legal experts, led by Walter Kalin, carefully combed through voluminous legal documents, case law and treaties. Through the course of this research it was concluded that

there are many instances wherein international law is, in principle, sufficient for the needs of those internally displaced (2008). This observation may seem optimistic at first glance, but gave rise to a question of implementation; if many of the needs of those internally displaced is covered by existing law, then implementation of said law ought to mitigate most of the exigencies experiences of those persons displaced. Implementation of international law (or the lack thereof) is not a new problem or question, but the UN-led study on this issue in relation to IDPs has catalysed a more systematic approach for impact evaluations of policy relating to IDP assistance and protection (see Brookings-LSE, 2011). Apart from the apparent recognition that there were many sources of international law directly applicable to situations of internal displacement, the study also found that there are critical areas of need that current international law does not sufficiently address. These deficiencies have been broken down into two distinct categories: grey areas and gaps. The former describes those instances where ‘a general norm exists but a corollary, more specific right has not been articulation that would ensure implementation of the general norm in areas of particular need to internally displaced persons’; whereas the latter refers to areas of needs where ‘no explicit norms exist to address identifiable needs of the displaced’ (CHR, 1995, para. 411) (recall the explanation provided in box 1.2 above).

It is impossible to consider the Compilation without simultaneously analysing the production of the Principles as well. Also submitted to the UN Commission on Human Rights in 1998, the Principles are a collection of international law reinterpreted and restated to address the grey areas and gaps listed above. Walter Kalin (who would become the next, and current at time of writing, RSG on internal displacement) provided the legal annotations to the document and explains that ‘[t]hey identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration’ (2008, p.1). There are 30 principles all together and they divided into four distinct categories: 1.) General Principles (1-4), 2.) Principles Relating to Protection From Displacement (5-9), 3.) Principles Relating to Protection During Displacement (10-23), 4.) Principles Relating to Humanitarian Assistance (24-27), and 5.) Principles Relating to Return, Resettlement and Reintegration (28-30) (OCHA, 1998).

As stated previously, there has been considerable scholarly research into the content of the Compilation and concomitant Principles – primarily along legal lines. One finds at least two points of virtual consensus among practitioners and academics alike: that a vast majority of

assistance and protection efforts and measures can be characterised as human rights issues (see Phuong, 2004), and that a new treaty specifically devoted to IDPs, like that of refugee law, is unfeasible, nor preferable by most concerned actors (see Bagshaw, 2005). In the *Compilation and Principles Human Rights Law* is referenced extensively. These laws, by their very nature, are explicitly universal. They were written, and are meant to apply, to all people, at all times, and in all places. However, the very nature of the *Compilation* as well as the *Principles*, and the efforts that drove their creation, is explicitly focused on one group of people. In this way, they may be understood as a narrowed application of universal principles, which may call into question the issue of universality if the *Principles* are understood in the context of Human Rights Law. The actors involved in the study and creation of the documents justified this narrow application because of the unique needs of those internally displaced (Cohen and Deng, 1998a and 1998b). The legal annotations to the *Principles* acknowledge this issue of narrowed and unequal treatment under international law and made efforts to mitigate the concern from the outset. Kalin explained that:

Sometimes treating internally displaced persons differently in order to respond to their specific needs is unavoidable or even justified... '[e]qual treatment does not mean [...] identical treatment, such that individual features distinguishing humans from one another, such as talents, characteristics, etc., may naturally play a role in the specific enforcement decision' (Nowak, CCPR Commentary, Article 26, paras 14-15, 2005, in Kalin, 2008, p.13)

By grounding this justification in international law Kalin alleviates the issue of narrowed universality (or, perhaps, simply targeting of certain populations) and unequal treatment in principle, but this legal justification does not account for how these norms are understood, and have been observed, when policy is implemented; in short, there is a lack of understanding and knowledge about how such a prejudicial (or targeted) approach is understood between the international community and the local sphere. There is only nominal research that has investigated some of the unintended consequences – local effects – that this has had. For example, such a narrowed application of international law gives rise to the question of a privileged status for those that are labeled as “IDPs”, wherein affected populations or host communities, who have not left their habitual place of residence, are not able to access the forms of assistance and protection that IDPs enjoy as a function of their being labeled so. According to humanitarianism theory, in particular the principle of impartiality, outlined in chapter 2, humanitarian action is frequently programmed to target the

most vulnerable populations; in this case, this group may be generally classified under the “internally displaced” umbrella. This phenomenon or set of programmatic decisions do not, to be very clear, represent a departure from existing international law, nor legal norms. However, such departures do help to illuminate the differences and tensions that may exist in the principles that underpin the ostensibly humanitarian approach to IDP protection and assistance when the targeting of groups under the principle of impartiality ceases.

Whilst the need for targeted assistance may be justified under certain qualifications to international law (also consistent with humanitarianism theory), there remains a question about how this approach to programming affects other policy and/or mandates in crisis situations. Moreover, it has also been suggested that the narrowed application of ostensibly universal principles can in fact incentivise the process of becoming displaced, if it does indeed lead to certain privileges obtained by those displaced (Barutciski, 1998)<sup>17</sup>. The purpose of this line of inquiry, in this study, is not to question the unique need(s) that IDPs have, but rather to understand how, in the first instance, the label of “IDP” – reinforced by recently created normative frameworks of policy – may affect local understandings and actions given the uncertainty about how the underlying norms and principles are understood by all parties involved. These questions are necessarily case-specific and will inform the field research that follows. More specifically, this reveals a question about how humanitarian principles (implied in the source texts) match with the human rights that are explicitly inscribed in the texts. This will be a primary consideration explored in greater depth in the proceeding case study chapters.

Evaluating the Principles more closely, it is important to note the range of actors that the Principles were explicitly intended for: the RSG, affected states, ‘all other authorities, groups and persons in their relations with internally displaced persons’, as well as IGO and (I)NGO workers in the field (OCHA, 1998, p. 1). The latter two categories are particularly important for the purposes of this study because, as will be shown, there is persisting emphasis on national authorities as the primary bearers of responsibility in situations of internal displacement. Yet, the quasi-legal normative framework that has been put forth is broader than that. It was essential to include non-state actors within this framework as often times in situations of internal tensions and civil conflict the state authorities do not have a monopoly on violence; but rather, various militias or armed factions may wield control over affected

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<sup>17</sup> See chapter 7 on how this qualified privileged label has been understood by local authorities (military example of people trying to stay labelled as displaced).

regions or people. However, as demonstrated in the legal annotations, the relevance that the Principles may have on non-state actors is largely grounded in the application of Common Article 3 of the Geneva Conventions. This Common Article needs to be placed and understood in the context of International Humanitarian Law – which only applies in situations of armed conflict. Therefore, there remains a question about how and when the rest of the Principles (mostly grounded in existing Human Rights Law) (see Phuoung, 2004) may also be extended to non-state actors.

The General Principles are somewhat self-explanatory making clear and simple statements of equality of rights under national and international law and prohibiting discrimination. Two points stand out. First, in Principle 3 we see the first reference to national authorities as the primary bearers of ‘duty and responsibility’ to provide assistance and protection to those displaced (para 1). Secondly, there is a qualification of needs for specific needs of more vulnerable groups within the category of IDPs: unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities as well as elderly people (Principle 4, para 2). Both of these qualifications are important to note as they are reiterated throughout the Principles in carefully articulated forms. With regard to authority and responsibility, there are 12 explicit references to ‘authority’<sup>18</sup>. These range from simple statements such as the one cited above regarding primary national authority, articulations of negative duty placed up certain authorities, to positive duties placed on authority figures to provide certain services such as education, medical assistance etc. Interestingly, six of these references are explicitly addressing the state apparatus in some form, while the other six are more ambiguous. The latter references to authority take the form of either authority generally, ‘concerned authorities’, or ‘competent authorities’.

It is in this deliberate articulation that one can see the broad nature of the Principles, including not only the state, but also non-state actors as well as IGO and (I)NGO workers. This is significant for the purposes of this study as it reveals the fluid character of obligation and duty in the global norms addressing internal displacement. Whilst on the one hand it is made clear that national authorities (i.e. the state) retain primary responsibility in positivistic terms, it is equally clear that responsibility within this normative framework is at least somewhat diffuse. Moreover, the emphasis of “primary” responsibility, then ambiguity of “concerned” or “competent” authority gives rise to questions about the nature and form of proximate or

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<sup>18</sup> Principle 3 (para 1), 7(3a), 16(2 and 3), 17(3), 18(2), 20(2), 23(2), 25(1), 25(3), 28(1), 29(2), 30(1).

secondary responsibility. Should there be one singular authority that retains all rights and obligations in this context, the emphasis of primary appears to be moot or simply superfluous. However, the constant and repeated stress of ‘primary authority’ gives rise to questions of what may exist under, or in spite of, this primary source. At the very least, the emphasis placed on a “primary” qualification of authority gives rise the question of secondary or proximate authority.

It bears significance that a conception of secondary/proximate authority appears to be implicit in the normative framework put forth by the international community (via the Principles), but the form, function and effect of this secondary authority remains unclear. Accordingly, subsequent field research in this study has sought to evaluate both the understanding and effects of this idea further. For the purposes of this chapter, here one can begin to see a form of dialectic duty; a sense of duty that must be conceived in a dialogical way, wherein reflexive interactions of authority, often competing with each other, come to characterise the ongoing and continued development of (understandings of) obligation and responsibility. The Principles explicitly set out a framework that comprises both humanitarian and human rights legal obligations. However, this framework is replete with references to authority in both the conventional (state-centric) and other “concerned” or “competent” forms. Whilst the Principles are silent on the forms these latter two expressions may entail, it can be inferred that they may comprise actors that operate in the supra-national arena – be it IGOs or INGOS. This conception of (secondary or proximate) authority necessarily implies a transgression against traditional sovereignty as outlined in the UN Charter. However, this transgression is not without precedent or historical context.

Here it is important to consider the normative transformations of sovereignty that have underpinned the development of global norms of internal displacement. RSG Francis Deng was one of the authors of *Sovereignty as Responsibility* (et al, 1996), which advanced a form of qualified state sovereignty based on a state’s ability or willingness to provide essential needs to its citizens. This idea eventually culminated in the Responsibility to Protect Doctrine produced by the ICISS (2001). Significantly, for this study, the R2P doctrine does not only place positive duties upon a state; rather, it also places obligation and duty upon the international community when states do not meet their obligations:

When preventative measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary

measures by other members of the broader community of states may be required. (ICISS, 2001, p. 29)

It is important to note that R2P provides the normative framework for intervention in such cases. While the provision of assistance and protection to IDPs may not constitute intervention, per se, the obligation of the international community to conduct such operations does strike at the core of state sovereignty. Thus, there is a continuing emphasis on R2P in the field of IDP policy (see Davies and Glanville, 2010). Normative arguments are put forth by the international community that claim a right to assist affected populations, but this takes place alongside documents such as the Principles which frequently grants deference to a state's "primary responsibility". Thus, the nature of obligation and duty in this field becomes much more complex than a simple linear conception of effective sovereignty (see Held, 2004). Obligation and therefore authority come to exist at multiple levels – the effect of which requires further investigation.

The qualification of especially vulnerable groups is also present throughout the Principles. Whereas the Principles themselves may be understood as a narrowing of generality and universality of cited international law, there is further emphasis placed on certain vulnerable groups within the label of "IDP". There are six instances that emphasise more vulnerable groups with three of them focusing on women in particular.<sup>19</sup> This is, of course, justified by the unique vulnerability these groups experience, but the effect and intersubjective consequence of this normative qualification remains unclear. Kalin addresses the concern of how this may privilege certain groups in the legal annotations:

According special treatment to some groups of internally displaced persons does not violate the principles of equality as objectively disparate situations should not be treated equally and specific vulnerabilities should be taken into account. (2008, p. 22)

However, both of these observations, regarding the treatment of obligation/duty and prioritisation of certain groups, are also understood here in relation to the distinctions of impartiality (as a core tenet of humanitarianism) set out in the theoretical framework developed in chapter 2. Impartiality in this context explains the need to target certain groups given their acute vulnerability. As such qualifications are found throughout the Guiding

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<sup>19</sup> Principle 2 (para 2), 7(3), 18(3), 19(1 and 2), and 20(3).



Principles, this makes it possible to understand how humanitarian principles sit at the foundation of the Principles as a whole. Legal justifications help to clarify the principles that underpin the global norms, but fall short of revealing what effects these norms have in practice when, state actors may have different understandings of how these norms are prioritised and applied. Moreover, these potential tensions give rise to other potential tensions as they relate the underlying principles of humanitarianism that are implied throughout the body of documents by the international community with the aim the enhance assistance and protection of IDPs.

With regard to authority and obligation/duty the Compilation and the Principles combined can be understood as a top-down, global-to-local, process; wherein, the international community, in the first instance, inscribes individual rights into international law (or in the case of the Principles, reinterprets and rearticulates existing law) thus restricting the actions of state actors (and even non-state actors when one considers the Common Article 3 of the Geneva Conventions). This is by its very nature a negative duty placed upon states, prohibiting certain actions that violate an individual's human rights. However, along side this, one also finds certain reservations or derogation clauses that defer back to the state. For example, regarding situations of tensions and disturbances, or disasters, the Compilation notes that:

Most human rights treaties including the ICCPR and the Convention on the Rights of the Child contain limitation clauses which permit Governments lawfully to restrict the free exercise of many rights during situations falling short of armed conflict in order to protect public safety or public health...It must be stressed, however, that such limitations, according to most human rights treaties, are only permissible to the extent that they are prescribed by law and are really necessary for achieving the aforementioned purposes (CHR, 1995, para. 31).<sup>20</sup>

Whilst human rights also have non-derogable articles (such as the right to life, prohibition of torture, cruel and inhuman treatment, slavery and retroactive application of penal law), there remains scope for the state to suspend or derogate international law that is explicitly

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<sup>20</sup> The idea of limitation in this form of derogation is defined in the Compilation using the Siracusa Principles: '(a) based on one of the grounds justifying limitations recognized by the relevant article..., (b) responds to a pressing public or social need, (c) pursues a legitimate end, and (d) is proportionate to that aim' (Siracusa Principles, note 29, paragraph 10).

addressing the needs of IDPs. In this way, the duty or obligation that rests between the international community and the state, is significantly qualified. It is a far more complex process than a simple linear formation of a law, dissemination and implementation. Rather, one can see further indications of a dialectical form of duty emerge, briefly described above.

### **4.3 Mechanisms of Dissemination**

Before continuing any deeper into the question of authority and duty, it is important to evaluate the means by which the international community has sought to disseminate the norms that have taken shape concerning internal displacement. These strategies have varied by country and region depending on a number of factors including political will, feasibility and opportunity. However, a connective thread can be found in the form of manuals and handbooks for field staff working in situations of internal displacement, as well as the accompanying policy frameworks put forth by the international community. The development and dissemination of such documents is not limited to a single agency, or even within one specific governance sector. Rather, they are the product of engagement between intergovernmental agencies with civil society – namely academia and think tanks focused on internal displacement. As described in chapter 1, the leading body in this regard is the Brookings Institution, which has been involved in the formation of global norms and policy on IDPs from the outset. Thus, the documents analysed below are those that have been either produced or compiled by the Brookings Institution concerning the dissemination and implementation of the Guiding Principles to the local level. This includes documents produced for international actors and field staff, as well as those directed at national authorities regarding the creation of internal displacement policy in accordance with the Guiding Principles.

#### **4.3.1 Field Guidance**

To begin, it is important to consider the documents produced for international actors and field staff. Two principle documents stand out: the Handbook for Applying the Guiding Principles on Internal Displacement as well as the Manual on Field Practice in Internal Displacement (OCHA-Brookings Institution, 1999; OCHA-IASC, 1999). These two documents were reviewed by both the UN as well as relevant NGOs in 1999, wherein it was decided that they would be published and disseminated (by the UN) together as they were intended to be complementary content. Moreover, when compared against one another these documents stand out as self-referential. This can be understood as a process of self-reinforcing

legitimation of the Principles within the international community. Accordingly, these documents represent an appropriate starting point for this evaluation as they were produced immediately following the creation of the Principles and because of their practical nature; that they are explicitly intended to embed the norms of the Principles into practice at the local field level. It is also important to note that, while they were put forth by the international community, they are not exclusively written for international actors as they can provide guidance and direction to local providers of assistance and protection in the same fashion, including state actors. This latter point reveals an important observation for the purposes of this study: that there is no single “local sphere”; rather, the local sphere evaluated in this study must be recognised as multidimensional and multi-actor comprising, at least, IGOs, INGOs, local NGOs and other civil society actors, state authorities, as well as non-state actors.

The Handbook in particular can be accurately understood as one of the primary and initial mechanisms for dissemination of the Principles. As a whole it provides a more accessible presentation of the Principles for field staff, similar to the way in which the Legal Annotations might be understood as a guide for international lawyers. Moreover, the very nature of the document and content within is explicitly and exclusively concerned with the guidance offered by the Principles. The Handbook is divided into sections symmetrical to the five distinct categories within the Principles (see section 3.1); but rather than dissecting the nuances of each individual principle the Handbook seeks to bring the main findings together in a more comprehensive and cohesive manner such that field staff can quickly develop an understanding of their content and thus more efficiently implement them. In this way, it is a non-technical commentary that elucidates the intentions and driving norms behind each of the Principles with more depth than the Field Manual. The Field Manual also includes (shorter) summaries of the Principles, but each summary is then followed up with recommendations on how to conduct field activities as well as examples of appropriate field practices.

The detail included in the documents regarding the Principles is not necessary to cover in depth here; rather, it is important to identify how the Handbook and Field Manual treat the issues raised above regarding the formation and dissemination of global norms and the effects this has on the local sphere. The Handbook in particular pays service to the tension that exists between the universality of applicable international law and the potential for a privileged status this may unintentionally confer upon displaced populations (though not to the degree as the legal annotations described above). By reiterating the legal foundation of the

principles the Handbook emphasises its universal application to all authorities, whether they are ‘government authorities, insurgent groups, nongovernmental organisations, (or) other institutions that come in contact with internally displaced persons’ (1999, p.10). It goes on to stress that IDPs themselves must also observe the Principles, but makes clear to state that ‘observance of the Guiding Principles does not affect – positively or negatively – the status of any of these institutions or persons’ (ibid). This is most obviously directed at insurgent groups to mitigate the claim that observance might legitimise their activity, but it is important to note that it also restates that the Principles ought not confer a privileged status to internally displaced individuals either. This is similar to the arguments made in the legal annotations, but again this is a commentary on principle and further research is needed to see the effects in the local sphere.

The Handbook also addresses the tension that exists between the international community and state authority with regard to responsibility and obligation. It is consistent with the prevailing discourse of emphasising primary responsibility resting with the state. However, acknowledgement of this tension is apparent:

Effective sovereignty implies a system of law and order that is responsive to the needs of the population. Rather than undermine sovereignty, as some might fear, the Guiding Principles reinforce the duty and responsibility of national authorities to protect and assist their population. Governments cannot escape their responsibility merely because a portion of their population is displaced. (1999, p. 12).

This reflects the same articulations found in the Principles themselves as well as the legal annotations, but like these latter two documents it remains ambiguous regarding a secondary or proximate responsibility that is provided by the R2P doctrine. This further invokes the lingering questions regarding such international obligation. To be sure, this research does not seek to demonstrate an entrenched international obligation contrary to the deference provided to state authority; rather, it seeks, in part, to understand the dialectal manner in which duty and obligation manifests at the local sphere. As such, that element of this study does not fit neatly within positivist legal frameworks of duty, *per se*, but instead it is focused on the fuzzy landscape produced when global norms are disseminated and implemented at the local level.

The Field Manual considered here is more technical than the Handbook, and throughout it there are some noteworthy themes relevant to this study. Like the Handbook it is organised by the five categories found in the Principles: general, protection from, protection during, humanitarian assistance, and resettlement/reintegration. However, the summaries of the Principles are more condensed than those provided in the Handbook; rather, the focus is on the recommendations for field workers followed by various examples of appropriate field practice. First, it bears significance to note the consistent reference to dissemination as a strategy. Throughout the text, in each of the distinct categories includes dissemination of the Principles as one of the recommendations for field practice. This is an interesting observation because on one hand the document itself is a mechanism for dissemination of the Principles; yet, in many instance, the first recommendation listed is in fact further dissemination. Such recommendations are made with guidance encouraging the translation of the Principles into local languages as well as initiating training programs for concerned parties. Moreover, for the purposes of this study, it reveals the paramount significance of dissemination in the overall global norming and policy processes concerning internal displacement.

A further observation that bears significance for this study comes from the examples of appropriate field practice that are provided. The examples provided cover a vast range of various practices that have been undertaken in a number of countries, so long as they related to one of the Principles. Fortuitously, Sri Lanka is one of the most cited countries throughout the examples provided, second to only Sudan. Thus, this document not only provides valuable insight to past practice, but it will also serve as a guide for further research in the field. At this stage, however, certain observations stand out and are necessary to consider in this study. The examples of appropriate field practice in Sri Lanka emphasise a few key points including the need to incorporate local actors and context into international programmes as well as the importance of collaboration between the international community and state authorities. Regarding the latter, the Manual recounts instances of success that the international community has had through various advocacy efforts that resulted in more efficient data collection, reporting and access as a result of the state compromising (pp. 60 in particular which emphasised the balance between national sovereignty and international efforts).

This presents a strong link between the international community and the local sphere, where there are tangible and positive effects. However, it is important to note the chronology of this document – that is was produced in 1999, just one year after the Principles were published. If one is to take the formation of the Principles as the primary text and core of global norms

surrounding internal displacement (evidenced in chapter 1), then it becomes difficult to draw a robust causal link between the dissemination of global norms (in the form of the Principles) and local effects using examples of best practice that, in fact, pre-date the creation of the Principles (see Field Manual pp. 40, 43, 44, 60 and 67). The creation of the Principles has been widely regarded as a significant achievement in the international community, as it provides a comprehensive normative framework for the assistance and protection of those internally displaced (see Cohen, 2003, 2006a, 2006b, 2008; Mooney, 2005; Ferris, 2008). However, the local effect(s) of the Principles is unclear at this stage, when one considers that successes were recorded without them being in place. Thus, this investigation requires more contemporary consideration of dissemination and reflection of the Principles in national policy before field research becomes relevant, or even possible.

### **4.3.2 Policy Guidance**

In addition to the documents relating to field staff analysed above, there are more recent documents that stand out as mechanisms for dissemination of applicable global norms as the drivers of internal displacement policy. These comprise the Addressing Internal Displacement: A Framework for National Responsibility (Brookings-Bern, 2005), Protecting Internally Displaced Persons: A Manual for Law and Policy Makers (Brookings-Bern, 2008), IASC Framework on Durable Solutions for Internally Displaced Persons (Brookings-Bern and IASC, 2010), IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (Brookings-Bern and IASC, 2011), From Responsibility to Response: Assessing National Approaches to Internal Displacement, and National Instruments on Internal Displacement (Brookings-LSE, 2011 and 2013, respectively). Whilst the content of these documents is necessary to consider, for the purposes of this study it is more significant to evaluate the context and chronology of their development. It is the argument here that to reach a holistic understanding of global norms and local effects it requires that normative frameworks be recognised as dynamic and shifting over time. Whilst the Guiding Principles as a document has not changed since it was produced in 1998, the manner in which it is employed for IDP assistance and protection has shifted to some degree. Understanding the creation and dissemination of the documents listed above – documents produced by the international community – reveals the nature of these shifts.

Recall that in chapter 1 the literature review concluded, in part, that the consideration of a normative framework for internal displacement has gradually become more inclusionary over time. This is not to say that such expansion has over-stepped the 1998 definition and

conception of global norms on internal displacement, but rather that the space provided by the broad definition of an IDP has been increasingly occupied by concerned parties; for the purposes of the literature review this was understood as being filled by academics increasingly focusing on disaster and development affected IDPs as well as durable solutions, whereas here, it is the argument that this space is also increasingly filled by practitioners and policy similarly focused on disaster affected populations as well as durable solutions. In this way, there is a perceptible shift in the normative structure of IDP assistance and protection; a shift towards greater inclusion and more attention focused on IDPs outside of the conventional conflict affected category. How this shift is understood in a local context warrants further and more in depth analysis.

The Framework for National Responsibility produced by the Brookings-Bern project on internal displacement, in many ways, picks up from where the Handbook and Field Manual left off. In evaluating those documents it was noted that there is a persistent emphasis of “primary responsibility” resting with the state, but that this posed a tension between the state and the international community. The document, again, recognises that there is no legal framework that bounds states to specific action; however, it attempts to create a system of accountability that can be used to measure state policy against the global norms. Specifically, it posits 12 essential steps that national authorities should take to address internal displacement:

#### Box 4.2 Policy Recommendations for States

1. Prevent displacement when possible and minimise its adverse effects when not
2. Increase national awareness of internal displacement problems
3. Develop systems to collect data on the scale and conditions of those displaced
4. Initiate and support training programmes focused on the rights of IDPs
5. Develop a national legal framework for the assistance and protection of IDPs
6. Create national policy on internal displacement dilemmas
7. Delegate institutional responsibility for IDPs
8. Promote human rights institutions to address IDPs
9. Implement participatory processes for policy and decision making that includes IDPs
10. Support and pursue durable solutions to internal displacement
11. Devote necessary resources to situations of internal displacement
12. Cooperate with the international community when there are state capacity constraints

Source: adapted from Brookings-Bern, 2005

Whilst this document is explicitly intended to help national governments development national policy on internal displacement, it also provides the necessary criteria for an evaluation matrix of state performance. In this way, it can also be understood as a mechanism for enforcement by making accountability more measurable and thus public and transparent – when evaluations are conducted. This latter point is evident by skipping a bit forward to the 2011 *From Responsibility to Response: Assessing National Approaches to Internal Displacement*, also produced by the Brookings-Bern project. This document provided findings from 15 different countries across the 12 points in Box 3.2 as well as four in depth case studies that considers state performance across the 12 points. One of the four case studies presented was Sri Lanka, for which the findings demonstrate a mixed record with some progress on the key recommendations as well as many areas wherein the government has failed to act or has not acted to a sufficient degree. However, the conclusions do not effectively or systematically address how the international community's efforts have affected these developments. Considering the document as a whole, it is significant that there is a section devoted to the conceptual links between the R2P doctrine and IDP assistance and protection. Where the previous documents analysed only made limited or implicit references international responsibility, this document picks R2P back up as a core and essential element



of IDP policy – both globally and locally. Returning to Deng's (et al, 1996) seminal work *Sovereignty as Responsibility*, it reiterates that:

the guiding principle ... is to assume that under normal circumstances, governments are concerned about the welfare of their people, will provide their people with adequate protection and assistance, and if unable, will invite or welcome foreign assistance and international cooperation to supplement their own efforts. Controversy arises only in the exceptional cases when the state has collapsed or the government is unwilling to invite or permit international involvement, while the level of human suffering dictates otherwise ... To fill the vacuum of moral responsibility created by such cleavages, international involvement becomes a moral imperative. (Deng et al, 1996, p.129 in Brookings-LSE, 2011, p.7)

In this way, one can see how the international community, through the development of guidance on national policy, has sought to emphasise accountability measures and subsequent international duty when local authorities are unwilling or unable to meet the needs of those internally displaced. Thus, the tension between global norms/policy and state responsibility and obligation is brought back into the foreground of internal displacement dilemmas. How this duty has changed or been understood at the local level, remains unclear without further field-based investigation.

Stepping back to 2008 one finds the document, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* also produced by the Brookings-Bern Project. This document can be understood as an extension of the 2005 document on *Frameworks of National Responsibility*, in that it provides more technical and specific guidance on the steps that governments ought to take in order to address displacement, organised by the five distinct categories of Guiding Principles and broken down further into necessary steps to address the grey areas and gaps identified. In addition to grounding the guidance in international law it provides specific examples of national law that has been implemented and which reflects the normative framework of the Principles. Significant for the purposes of this study, this document, whilst helpful and instructive to national authorities, also serves to legitimise the Principles and concomitant international efforts in assistance and protection. By demonstrating the congruence between local policy and global norms it promotes the

relevance of the Principles and thus further empowers the international community in this field.

The two documents that were produced in partnership between the Inter-Agency Standing Committee and the Brookings-Bern project on internal displacement – IASC Framework on Durable Solutions for Internally Displaced Persons, and the IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters – can be taken up together. Combined they reveal the expansionary/inclusionary tendency that comes to characterise the normative and institutional frameworks for IDP assistance and protection. Whereas the Manual for Law and Policymakers produced in 2008 covers all aspects of IDP needs, the Framework on Durable Solutions focuses exclusively on the final four Guiding Principles, and more specifically on principle 28; providing definitions, explanations and policy recommendations on what durable solutions mean and how they can be achieved.

Similarly, the Guidelines on Natural Disasters (2011) narrows the emphasis of the policy guidance to disaster affected internal displacement. Specifically, this document provides guidance on trainings and workshops that promote a rights based approach to disaster management and relief (pp. 2-8). Again, the focus of this document is consistent with the trends in scholarship as disaster affected displacement has recently become dominant theme (see chapter 1). Taken together, one can see a significant correlation between IDP scholarship and international policy guidance/focus. This is unsurprising considering the academic-practitioner overlap that exists in the field, where leading individuals such as Roberta Cohen, Francis Deng, Chaloka Beyani and Walter Kalin work simultaneously as academics and high-level practitioners within the UN system. The increasing emphasis on durable solutions and disaster affected displacement was made possible by the broad definition of an IDP that was agreed upon in 1998 and the wide scope of the Principles (see Guiding Principles 27-30). Yet, this increasing focus does represent a shift of sorts. Focus and attention on conflict affected populations has not diminished in policy circles, but rather longer-term (resettlement) solutions and disasters have been increasingly included as primary concerns. This is significant to note, as when evaluating the effects of global norms on the local sphere it is necessary to consider how the changes in the international community have affected the local as well, rather than conceptualising the articulation of a set of norms as fixed in time.

Finally, the 2013 Guide to National Instruments produced by the Internal Displacement Monitoring Centre in partnership with the Brookings-LSE project can be understood as an

extension of the 2008 Manual for Law and Policymakers. Where the former focused on the content of national legislation concerning IDP needs, the Guide to National Instruments focuses more on the process of developing policy. It begins with the familiar justification for developing a national policy, namely that ‘National sovereignty means that the primary responsibility for addressing internal displacement lies with the government’, but is quick to add that ‘the state has international, and in some cases regional, obligations to protect and assist IDPs’ (2013, pp. 9-10). Just as the aforementioned documents, this Guide relies on the Guiding Principles further embedding global norms – not just into the content of recommended legislation but also in the process of its formulation. In particular, the Guide emphasises the need to approach policy formulation in a broad consultative fashion ‘involving all relevant stakeholders’, comprising IGOs and (I)NGOs. Moreover, the document also emphasises the need to involve IDPs in the process as well, as arguably the most relevant stakeholders in the field (p. 30), reflecting Principle 7 (para 3, d).

By extending guidance, based on the Principles, beyond that of the recommended content of national legislation to the policy formulation process, the international community has sought to achieve a deeper penetration into the local sphere. This observation appears to hold true across all the documents evaluated in this section. The policy guidance provided by the international community reveals enduring tensions between national authority and international (moral) obligation to IDPs, but does so in a manner that advances the global normative framework developed in the Guiding Principles. The experience and intersubjective value of these norms, however, is not addressed. Yet, this was a necessary first step to understanding the extent to which global norms on internal displacement have local effects. Notably, however, these documents are first and foremost guidance offered by the international community. Where policy evaluations have taken place (see Brookings-Bern, 2011), they are typically broad in that they incorporate a number of cases in order to draw out comparative conclusions. Thus, in many ways they are minimal and insufficient to draw any robust conclusions regarding just how effective this normative framework has been in directly shaping state policy or otherwise affecting the local sphere. To push this investigation further it is necessary to consider next the degree to which such global norms are reflected and understood in a local context. To understand this it will be essential to compare Sri Lanka policy documents relevant to the protection and assistance of IDPs against the documents analysed above. This analysis will be presented throughout the case study chapters that follow.

#### **4.4 Resettlement: A Framework for Durable Solutions**

The final primary text originating from the UN system that has been selected for analysis in this chapter is the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons (Framework hereafter). This Framework was published in 2010 by the IASC in collaboration with the Brookings Institution – University of Bern Project on Internal Displacement. The timing of the publication of this document is significant to note because it comes two years after the second version of legal annotations to the Principles. As discussed earlier, throughout the early 2000s the international community was focused on disseminating the Principles in a broad and systematic manner. Whilst the Principles do address the needs and rights of IDPs after displacement ends (Principles 28-30), the IASC Framework is much more robust account of how to achieve durable solutions in the resettlement process. A pilot version of the Framework was released in 2007 and subsequently field-tested. Following feedback from the pilot version, the Framework was amended and finalised in 2009 (published in 2010). As will be demonstrated, the Framework furthers the “rights-based approach” also pursued in the previous documents analysed, but also includes guidance and commentary on the needs of those once-displaced in a manner that is more broad than explicit human rights. Indeed, this frame framework can also be understood to embody embedded humanitarian principles (consistent with this theory as explained in chapter 2), even if they are not made explicit. This Framework, like the Principles and accompanying documents, is not legally binding in any respect; rather, it has been produced under the auspices of the UN to provide guidance on what a durable solution is, how they can be achieved, to highlight the relevant legal instruments as they relate to resettlement, and finally to provide guidance how to recognise when a durable solution has been achieved. Accordingly, it is an essential element in the international communities toolbox of normative (and policy) responses to the dilemma of internal displacement.

It is necessary to begin by considering what exactly a durable solution. According to the revised version of this Framework:

A durable solution is achieved when IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement. (IASC, 2010, p.A-1;5).

Before delving into some of the complexities included in the document regarding guidance and recommendations, it is worth considering the definition provided above in a larger context. As was demonstrated in chapter 1, there was a complex debate that surrounded the creation of a definition for an IDP. The definition here is significant because it seeks to provide closure to the former; in so doing, this definition raises the question of when does displacement end – when is someone no longer an IDP, so to speak? From the outset, it is clear to see that the framing of a “durable” solution goes well beyond simply placing an IDP in a house in either a new community or back into one from the location they were displaced from. Rather, a host of human rights and humanitarian needs, under this Framework, need to be met in order for the resettlement of an IDP to be considered completed in a durable manner. However, the question of when displacement actually ends remains hugely problematic and contested (see chapter 6 regarding resettlement programmes and problems).

Moreover, regarding the definition of a durable solution, the Framework explicitly acknowledges that this has been developed in consideration of displacement originating from conflict and disaster. More specifically, the Framework provides ‘guidance for achieving durable solutions following internal displacement in the context of armed conflict, situations of generalised violence, violations of human rights and natural or human-made disasters (p.2). This illustrates a normative gap between the definition developed by the UN system in 1998, again codified in 2008, because it omits development induced displacement. For clarity, in a footnote the Framework acknowledges the omission of development-induced displacement and points to additional IGO frameworks developed that may be applicable in these circumstances – namely a framework developed by the World Bank (2001) on involuntary resettlement (see chapter 7 for a brief analysis of the World Bank framework). However, the lack of consistency in the documentation and understanding of what characterises dilemmas of internal displacement represents a further seed of contradiction or tension in the normative approach to assistance and protection.

Similar to the documents previously analysed, the IASC Framework also gives all due deference to the state when it comes to “primary” responsibility or duty for solutions and protection of rights to the state and/or local authorities (pp. A-2, 1, 3, 11, 30). In light of this primary obligation resting with the state, the Framework explicitly describes the international community’s role as complementary. Herein one can see a further extension of the tension discussed throughout this chapter, the principles of humanitarian action that at the very least encourage international humanitarian engagement where necessary, and the limitations that

sovereignty imposes of such actors – culminating in the repeated deference to the state. However, this tension is exacerbated in this Framework when the issue of needs are discussed. The Framework recognises that internal displacement is a complex issue that comprises, amongst other things, the necessity to guarantee human rights to those populations in question, whilst also emphasising that ‘[i]n the course of achieving durable solutions, IDPs often have continuing humanitarian needs’ (2010, p.7). More specifically, such needs may include, but are not limited to ‘temporary shelter until destroyed houses are rebuilt, food rations until the first crops are available, or emergency health services until the health system has been re-established’ (ibid.). Significant for the purposes of this analysis, there is nothing said about the potential contestations that may arise between securing and protecting human rights whilst also servicing the humanitarian needs of affected populations and humanitarian principles that underlie the international community’s approach to this issue. The rights based approach to resettlement is emphasised throughout the Framework in several annotated references to the Guiding Principles, which are in turn annotated with settled international law. Here too, one can see further seeds of tension between a rights based approach, which is necessarily a question of legal authority, and the both explicit and implied normative approach(es) that has been employed by the international community in this context.

Whilst this is only a cursory review of the IASC Framework, this brief analysis is meant to point out the similarities it shares with the documents analysed immediately above; namely, the emphasis on primary responsibility resting with the state, the implied responsibility (if not legally authorised) that rests with non-state actors (in this case the international community and/or other human rights or humanitarian providers), and the potential for normative gaps in an explicit normative approach to the internal displacement (here, resettlement) dilemma. Further analysis of this Framework as well as the relevant norms concerning IDP assistance and policy will be continued in chapters 5, 6 and 7.

#### **4.5 Conclusion: Embedded Humanitarianism**

The collection of documents analysed in this chapter constitute the primary texts produced by, or otherwise within, the UN system with the aim of enhancing assistance and protection of IDPs. Whilst this review is necessarily cursory, some significant observations can be made. First, it is clear that even though the UN has preferred to employ a rights-based approach in this arena, it is inherently normative in its authority and potential or intended application. Accordingly, the application of the frameworks developed by the international community are non-binding. This has been recognised by scholars previously (see, for example: Phuong,

2004 or Bagshaw 2005); however, what has not been investigated to date are the underlying normative tensions that arise from such an approach. These tensions, or even gaps, are observable, albeit in a limited way, in the form and function of international documents. Such tensions are further visible when one considers the potential contradiction that exists between the humanitarian principles that inform the international response and the human rights based approach that has been pursued and employed. These observations about the content of documents in question (i.e. the form) also reveal something significant about their function(s). Taken as a collection of documents, it becomes clear that the development and evolution of these frameworks have subsisted through self-referential legitimation. Whereas the Guiding Principles rely on the Compilation, the Handbooks and Manuals rely on each other, as well as the Principles. The IASC Framework produced some years later is also grounded in the Principles, further reinforced by the accompanying legal annotations. Such a strategy (conscious or not) has led to the self-legitimation of the documents and frameworks produced by the international community. The extent to which this remains valid or legitimate or, more basically understood, in the local arena can only be possible through field work analysis.

Moreover, when one considers the internal displacement dilemma within the context of R2P, the manner in which responsibility, duty and/or obligation is used within these texts appears to be contested at best and contradictory at worst. The argument that will be made in the subsequent chapters is that these understandings have come to develop in a dialogical way – servicing the entrenched notions of sovereignty on the one hand, and reflecting the changing notion of sovereignty on the other. How this dialectical progression plays out on the ground remains an unanswered question; a question for which one can only provide answers within a specific case. Moreover, it has been established in this chapter that in addition to the explicit references to human rights standards, supported by academic literature (see chapter 1), the relevant documents establishing a normative framework for the international assistance and protection of IDPs also comprises, what is being called here, embedded humanitarianism. Relying on the contours of humanitarianism theory presented in chapter 2, in light of the documentary analysis presented in this current chapter, it is possible to understand the international community's response as also constituted or characterised by humanitarian principles. This observation represents the first substantial finding of this thesis. It is recognised that this finding is relatively uncontroversial, however, this relationship between the Guiding Principles and humanitarianism theory is a necessary first step for the research that follows. By establishing the humanitarian character of these frameworks and documents,

it is possible to see how humanitarian principles, even if not explicit, have been embedded throughout their development and content. This finding is valuable, but it also should be understood in isolation. Rather, this observation will be key for the case study analysis that follows, with particular relevance coming out in chapter 6.

What follows is a more focused examination of such principles and frameworks (i.e. norms) as they have come to be understood, translated and operationalised in the local context of Sri Lanka. The documents analysed above will be brought forth throughout the coming chapters as they relate to additional data obtained throughout the period of field research.



## **Chapter 5: Conditions and Context of Internal Displacement in Sri Lanka**

The remainder of this thesis comprises a case study of international norms concerned with the protection and assistance of IDPs in Sri Lanka. As the focus of this thesis is to examine global norms in a (Sri Lankan) local context, the preceding chapter was concerned with a more nuanced analysis of the principles that inform the normative framework for IDP assistance and protection – the Principles. This chapter marks the first in a series that seek to examine and analyse these principles and norms in a selected local context; hence, a Sri Lankan case study.

The issue of internal displacement in Sri Lanka cannot be understood outside of the context of the 30 year civil war the country experienced, ending only 6 years ago at the time of writing. Accordingly, the conditions and context of internal displacement related to the civil war warrants attention for current purposes. However, the end of the war in Sri Lanka (in 2009) does not mark the end of the story when it comes to the plight of those internally displaced in the country. Rather, it will be essential to pay requisite attention to the period of war as well as what happened in the years immediately following the war, leading almost to the current time of writing. Moreover, it will also be essential to include an analysis of the current context that current prevails in Sri Lanka, particularly focused on the status of IDPs in the country and the relevance/understanding of global norms in this context.

As is the case in all situations of civil war, the political complexities are vast. This complexity is not only with regard to the domestic context, but also in the relationship(s) that exist(s) between the domestic sphere and the international community. Throughout the remainder of this thesis, these complexities will be illuminated to the extent possible, whilst also retaining the primary focus of developing a greater understanding of events, actions and policies in light of the global normative framework set out in the previous chapter. In order to accomplish this, the remainder of the thesis is divided into three chapters: The conditions and context of internal displacement in Sri Lanka throughout the civil war (1983-2009), including the various ceasefire periods; the immediate post-war (not to be confused with post-conflict) period of resettlement (2009-2012); and the current context of (development induced and protracted cases of internal displacement) in Sri Lanka (2012-2015). The evaluation of global norms in the local context will be carried out both within and across these three distinct time periods.

It is important to re-emphasise that the purpose of this thesis is not to recount the Sri Lankan civil war and internal displacement in the country in the greatest depth possible, but rather to understand how the global norms surrounding the assistance and protection of IDPs have travelled to, and have been understood, in the local Sri Lankan context. Of course, however, this cannot be achieved without a degree a thick description of the case at hand, coupled with original research in the form of document review, content and policy analysis, as well as interviews and other soft data gained in the form of observations. In order to accomplish all of this, the remainder of the thesis will rely on a variety of sources; ranging from (international/non-national) scholarly accounts of the conflict and country context, national historical and scholarly sources obtained during field research, organisational reports, as well as information (in the form of interviews) and observations obtained throughout the period of field research. Interview and observational data will be spread throughout the three following chapters, but will be most relevant for the analyses in chapters 6 and 7.

### **5.1 Historical Perspective: Background and Independence**

This section seeks to set out the necessary historical background for understanding how global norms have come to affect the Sri Lankan local sphere, as the former pertain to internal displacement. In order to accomplish that, this section will include a range of data and information in an analytical way, in accordance with the guiding research questions, theoretical underpinnings as well as the methodological framework set out in chapter 3. Accordingly, this section marks the first wherein interviews conducted throughout field research will be referenced and employed. The content of historical record that was brought out of field research interviews is limited, yet the interviews will be significant because of the various positions held by the respondents as they relate to the presence of global norms in the development and evolution of local perceptions and understandings.

The politics of internal displacement that can still be observed in Sri Lanka today have deep historical roots. Understanding the politics of this crisis may appear to be daunting task such that it can be difficult to know where to begin. As Dr. Saravanamuttu has suggested, one must look at the entire history, including what came before colonialism, for a proper understanding of the enduring, and indeed current, crisis (Saravanamuttu, Interview, 2014). Interestingly, this need for historical context was also stressed by Major General Jagath Dias (Former Security Forces Commander the Mullaitivu District, and serving as the SFC throughout the field research conducted for this thesis) (Dias, Interview, 2014). Whilst the need for a historical understanding was mentioned throughout the field research interviews, and that this

position was expressed by these two respondents illustrates an interesting and very rare agreement between two opposing figures. Dr. Saravanamuttu (Tamil) has a history of involvement in opposition politics in Sri Lanka ranging from founding the National Transparency International Chapter to serving as the current Executive Director of the Centre for Policy Alternatives (CPA). Dr. Saravanamuttu has become a leading voice for human rights in Sri Lanka, despite harassment and criticism that has come with such a public persona; indeed some of the recent death threats he has received were proudly displayed on his office walls for the two interviews I conducted with him.

Major General Dias' role in Sri Lankan politics sits at perhaps the furthest opposite point from Dr. Saravanamuttu. Maj. Gen. Dias was the SFC of Mullaitivu throughout my field research and was in significant positions of leadership throughout the end of the civil war. In the first of two interviews I was able to conduct with Gen. Dias on the army base in Mullaitivu, he stressed the need to begin this search for understanding with historical context. Gen. Dias emphasised the need to understand and consider Sri Lanka's colonial history in the context of ongoing engagement with the international community – and the West in particular (Interview, 2014). Whilst these two examples of emphasis on historical context are undoubtedly selected and narrow, the high level of their respective (and opposing) positions is used here to reinforce and justify the decision to begin a, albeit brief, historical account.

How far back one travels is an arbitrary decision. Whilst this study does not rely on historical narratives for empirical significance, it would be faulty to not include a brief history, including the requisite historical narrative that sets out the context for all of the analysis that will follow.

### **5.1.1 Pre-Colonial Engagement and the Independence Movement**

Sri Lanka has a long history of engagement with, and interference from, the West. The island's first documented experience with the West dates back to the early 16th century, when the Portuguese arrived and proceeded to establish control over selected coastal areas – establishing a fort in the port city Colombo in 1517. A century later (by the middle of the 17th century) the island found itself under Dutch control. However, the island would eventually find itself under the auspices of British colonialism beginning with the British controlling coastal areas as early as the late 18th century. By 1815 the British Empire defeated the last redoubt of island sovereignty when it defeated the Kandy Kingdom. This defeat of the Kandy Kingdom marked what would eventually become an era of British colonial control.

The colonial history and ultimate demise of British colonialism in Sri Lanka followed a familiar track of de-colonisation. On the 4th of February 1948, the island nation was granted independence as the “Dominion of Ceylon”. This dominion status was retained and maintained until 1972 (on the 22nd of May), when it finally became the fully independent “Republic of Sri Lanka”.

As is the case with many formerly-colonised countries, the early independence of Sri Lanka brought with it many strands of optimism and hope, underlined by contested domestic political fissures. The first phase of Sri Lankan independence ushered in waves of hope under an ostensibly unified country celebrating its newly found independence. However, this optimism would prove to be only a short-lived veil on top of the latent domestic conflict(s) that would come to surface almost immediately after independence was achieved.

Sri Lankan independence and ostensible unification was at the expense of the leading minority in Sri Lanka – the Tamil population, which at the time resided largely in the North and North-East of the country (see, for example, Herath, et al., 2010). New-found independence brought with it a number of internal struggles for power wherein the majority Sinhalese population came to control the political apparatuses of the state with the minority Tamil being systematically excluded and also discriminated against. This dynamic has been recognised in even the writings of an unabashedly pro-government intellectual cum politician, Dayan Jayatilleka (2014).

Given the history of Sri Lanka to this point, it is possible to say that not long after independence the movements of rebellion began amongst the Tamil population – some reflecting a desire to be heard and accommodated in the prevailing political process that constituted the newly formed Sri Lankan state, some reflecting a desire for an independent Tamil state (or otherwise autonomous territory, recognised as Tamil, within the Sri Lankan state). The structural inequalities that existed between the ruling Sinhalese government and the Tamil populations festered, to put it very mildly and in brief, in such a way that violent opposition to the Sinhalese state began to arise in very poignant ways in the 1970s (see Dissanayaka, 2004). However, this was only the beginning of what would become a much more prolonged and brutal civil war that would soon spread to all corners of this island state.

## **5.2 Civil War: From ‘Ethnic Rage’ to a Bloody Victory**

Whilst it is beyond the scope of this thesis to explore the many nuances and developments that transpired throughout the course of Sri Lanka’s civil war – indeed, it was a war that lasted for

almost 30 years – it is necessary to consider and examine the context of war in so far as this makes possible a more thorough understanding of local perceptions of global norms as they relate(d) to internal displacement. The purpose of this section will be to present: a brief account of the onset of civil war; the most relevant stages of the war, with particular attention paid to the Cease Fire Agreement (CFA) of 2002; the conclusion of the civil war, which was eventually reached in 2009; as well as a brief account of the Tsunami that hit Sri Lanka in 2004. This last section on the Tsunami is important to include here because of the displacement it caused amidst the breakdown of the CFA (2003). Much of the description that follows is historical in nature, however, where and when possible it will be linked to the development of global norms surrounding internal displacement, ranging from the development of R2P to the creation of the Guiding Principles – both of which emerged in full form within years of each other.

With tensions mounting between the majority Sinhala government and the minority Tamil populations, armed contest to the state became ever more frequent in the late 1970s and early 1980s. Unsurprisingly, the onset of the civil war was preceded by increasing ethnic clashes between the Sinhalese and Tamil populations. Local politician and scholar, Dayan Jayatilleka, has written that:

Meanwhile, finding the traditional electoral safety-valves closed, Sinhala disaffection flowed into channels of ethnic rage, exploding in the anti-Tamil riots of July 1983, catalyzed by the Tigers' ambush and killing of 13 Sinhala soldiers including a young officer (and the rumoured mutilation of their corpses). (2014, p. 14)

By the late 1980s the civil war in Sri Lanka was raging in full force, despite various attempts at a political solution – equally disparate, as they were unsuccessful. Indeed, by 1989 the Economist would describe Sri Lanka as 'the bloodiest place on earth' (The Economist, cited in Jayatilleka, 2014, p. 15). It is important at this point to place the Sri Lankan civil war in the broader international context. The violence on the island state would continue and persist into the early 1990s, against the backdrop of the end of the Cold War, and a rejuvenated and refocused international community directing their attention to human insecurity more generally. Recall from chapters 1 and 4 that it was the late 1980s that the notion of Sovereignty as Responsibility began to take shape; furthermore, recall that it was in the early

1990s that the very concept of the Guiding Principles for Internal Displacement was conceived.

This is not to say that the peace process had been abandoned completely throughout this period. To the contrary, there were on-going attempts to find a political solution to the civil war, with constant engagement from the international community at large. Domestically speaking, President Kumaratunga was elected in 1994 (serving up to 2005) with the ‘promise to negotiate with the Tamil Tigers, and achieved a truce in January 1995’ (ICRtoP.org, 2015); however, ‘[j]ust three months later the ceasefire ended when the LTTE sank Sri Lankan navy vessels and shot down two planes’ (ibid).

Apart from the truce of 1995, the most notable CFA in the civil war came in February of 2002. Negotiated by the Norwegian government, the Sri Lankan state and LTTE ‘agreed to enter into a ceasefire, refrain from conduct that could undermine the good intentions or violate the spirit of this Agreement’ (Norwegian Government, 2002). Interestingly, in the preamble to this agreement it was recognised that groups that are not directly party to the conflict are also suffering the consequences of it. This is particularly the case as regards the Muslim population’ (ibid). This significance of this emphasis is two-fold: 1. The recognition that civilian populations were being gravely affected by the civil war; and 2. The emphasis placed on the impact(s) the war was having on Muslim populations. Regarding the former, this clarification helps to support the overall understanding of international engagement as focused on “human security”; whilst the latter qualification demonstrates the humanitarian angle of concern being directed to the most vulnerable populations. In this respect it is important to note that the displacement of Muslims signifies a trend that can still be recognised today; the displacement of Northern Muslims (primarily to Puttalam), was carried out by both the Sri Lankan Army as well as the LTTE (this will be returned to, in particular, in chapter 7 re: contemporary context).

Returning to the context of war and attempts to find a political settlement, the Norwegian involvement has been described by Ravija Wigesinha (a prominent politician in Sri Lanka), as a ‘legitimate attempt’ made by the international community to try and broker peace, but also ‘one example, amongst many others’ where the international community thought they could come in and solve local problems (Wijesingha, Interview, 2014). The 2002 CFA did not last long. Norway helped facilitate six rounds of negotiations between the state and LTTE, but the agreement broke down by April of the next year. Undeterred, Norway continued in the

role of peace-broker, initiating another round of talks in February 2006. However, like before, the talks did not last long. According to the International Coalition for the Responsibility to Protect, ‘by April (2006) both sides were engaging in “major military operations”. By August, there was “full-scale war”’ (2015). In this context full scale war also meant widespread displacement – the result of operations conducted by both the state and the LTTE.

What has been provided above is only a very brief depiction of the major developments that both led to the tensions in Sri Lanka, the onset of civil war and manner in which it was ultimately concluded. Additional country specific information has been included in chapter 3 regarding Sri Lanka as a case study for this thesis. Together, these sections aim to provide the necessary information for understanding the analysis of the case study that follows. More to the point, the historical account provided immediately above brings the analysis into the early 2000s. This is significant because this is when the Guiding Principles were both complete and also being disseminated throughout Sri Lanka. Accordingly, the remainder of this chapter will focus on how the Guiding Principles reached Sri Lanka in the first place, how they were disseminated, how they were applied and/or used, and most importantly, how they were understood in the context of on-going civil war.

### **5.3 The Guiding Principles for Internal Displacement in Sri Lanka**

The following section of this chapter aims to focus more specifically on how the Guiding Principles were understood in the local Sri Lankan context during the 2000s, with particular emphasis paid to dissemination efforts in the early 2000s. In line with the overarching purpose of this study, the Guiding Principles have been examined in relation to local perception(s) and understanding(s). Accordingly, this section relies primarily on key informant interviews from local civil society actors. It is complemented with reports produced by local advocacy and/or research based civil society organisations as well as reports produced by the UN in relation to the Sri Lankan Civil War, up until the end of the civil war in 2009. In order to accomplish this, this section proceeds in the following fashion: first, it will be crucial to interrogate the early dissemination of the Guiding Principles; second, there will be a brief account provided of disaster related displacement events (specifically focused on the 2004 Tsunami) as this became almost immediately relevant in the context of natural disaster-induced displacement in Sri Lanka; third, it is necessary to return to Guiding Principles specifically as their application became widespread towards the end of the 2000s; finally it will be important to analyse the various visits made by UN officials relating to IDP

assistance and protection, which will include interview data triangulated with related reports made available by the UN as well as state institutions.

One of the first observations possible when evaluating the international normative frameworks concerning internal displacement in Sri Lanka is the early adoption of the Guiding Principles among leading civil society actors. Recall that the Principles were published first in 1998. By 2001 the UNHCR, in collaboration with the Brookings Institute, had funded an aggressive programme for dissemination with a range of local civil society organisations – organised under the umbrella of the Consortium for Humanitarian Agencies (CHA). Before proceeding further, it is worthwhile to place the CHA in context. The CHA was established in 1997, against the backdrop of ongoing civil war and one year after the publication of the Guiding Principles. Throughout the final decade of the civil war, CHA played a major role as providing a forum for the coordination of humanitarian-based organisations operating in Sri Lanka, both local NGOs, INGOs as well as INGOs were all included. Their role and perception of international normative frameworks will be taken up below in, however for the current purposes it is important to note how closely affiliated CHA was with the Rajapaksa regime and the government in general. When attempting to coordinate my field research plans the CHA was a top priority given their central coordinating role and humanitarian focus. However, upon arrival in Colombo I was warned a number of times to exercise caution with CHA because of the sensitive nature the current research and because of the relationship their leadership had with the Gotabhaya Rajapaksa (an Army General during the final stages of the civil war and Minister of Defence at the time of field research). Ultimately I was successful, via a third party, in scheduling an interview with the Deputy Executive Director, Firzan Hashim. Before exploring that further, it is necessary to turn to the Guiding Principles more basically to understand how they “landed” on the ground.

For this understanding the current research relies heavily on two interviews conducted in September of 2014 with Dr. Danesh Jayatilaka, a researcher at the International Centre for Ethnic Studies (ICES) at the time of interviews. The heavy emphasis on his responses specifically is justified because Dr. Jayatilaka was the individual recruited to work on the dissemination and implementation of the Guiding Principles (via the CHA). Accordingly, Dr. Jayatilaka was in a unique position to understand and comment on the intersection of global-local engagement on this issue. Valuable observations can be made from interpretative analysis of his responses in three ways: 1.) concerning the process by which the Guiding



Principles were incorporated into the local sphere; 2.) developing a further understanding of the global-local nexus as it relates to internal displacement; and 3.) for understanding a local perception of relevant and/or application of the Principles (Jayatilaka, Interview, 2014; applied here for the relevant content that follows). He was recruited in late 2000/2001 in order to help develop a ‘tool-kit’ for disseminating the Principles. This work was funded primarily by the Brookings Institute and the UNHCR, the latter of which retained significant managerial discretion as a result. The tool kit was meant to be a collection of methods for field trainings of local actors about the Principles.

When asked about how or why the Guiding Principles seemed to be incorporated into local discourse so early after their publication, Dr. Jayatilaka surmised that ‘Sri Lanka must have been a test case’ (ibid). According to him, the UNHCR was the principal body to be promoting the Principles, and he went so far as to say that whilst he does not know about their role(s) in Geneva, other UN agencies such as OCHA and UNDP, etc. had simply coordinating roles on the ground and that he never directly consulted with them about the Principles or their dissemination. This is interesting insofar as it might indicate a limitation of the Principles’ reach across UN agencies. Dr. Jayatilaka was passionate about this project; in his words, he was ‘consumed by [the] project in a creative way’. He describes his work with the Brookings Institute, in particular, as closely linked to the concern about local standards; however, as will be demonstrated, this was not an approach totally shared by the UNHCR (in his experience).

He credits his passion for this project for the wide breadth of the tool kit he came to develop. In addition the expected presentation materials and leaflets for informational purposes, Dr. Jayatilaka strove to be more innovative through the creation of interactive tools. For instance, one limitation he felt was not addressed by the UN was the fact that many local actors may either be illiterate, or otherwise have a difficult time understanding the concepts being introduced. In order to mitigate this challenge he wrote, and commissioned illustrations for, a storybook wherein different actors took on different animal characters. This story was accompanied by a series of questions for participants in the workshops he hosted.<sup>21</sup> He also

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<sup>21</sup> e.g. ‘Why do you think the elephants suddenly decided to listen to the animals?’ (Sri Lanka Programme Syllabi; in Sánchez-Garzoli, 2004, p. 688.). Such questions were meant to do two things: 1. Simplify the concepts being introduced, and 2. De-politicise the classification of actors who were engaged in IDP assistance and protection.

developed an exercise that included the use of wooden (building) blocks wherein ‘participants were presented the concept of approaching the GPs as simple wooden block [sic] being built on top of one another – structure to portray a sound society free of human rights abuses’ (Sánchez-Garzoli, 2004, p. 689). One final example of the types of tools he created was a board game that might help local officials and other civil society leaders understand the complexities of context and the diffusion of actors involved in a given setting. He described it as a ‘game with rules of the game along with internal displacement, Guiding Principles, assisting entities and ground dynamics that come about at wartime situations’ (ibid).

Dr. Jayatilaka regularly presented these tools along with the more conventional dissemination mechanisms (speeches, roundtables, presentations, leaflets, etc.) to what he understood as significant acclaim. He said that throughout his field visits some of his workshops were in fact over-subscribed and there would not be enough space in the room for everyone that wanted to attend. He stated that throughout these workshops he was able to constantly refine his approach to be more conducive to the needs and demands of local context. He credits this, in part, to the increased attention and attendance he was experiencing. However, this attention was not always positive and he explains that ‘some people became suspicious’ about what he was doing; put another way, he stated ‘if someone on top is scared, it trickles down’. This dimension of his experience remained vague throughout the course of follow up questions. The end result, however it came to pass, was definite: UNHCR asked him to cut back on some of tools he was using in the field as they felt it was either unnecessary in order to achieve effective dissemination or beyond the remit of their mandate. When he expressed an unwillingness to change his approach so significantly, ‘UNHCR decided to go another way’ and Dr. Jayatilaka was let go from his position. Repeated efforts to contact UNHCR about how the programme was continued after this fact were unsuccessful. Notably, however, the syllabus developed by Dr. Jayatilaka remains the programme featured in the aggregated syllabi made available by the Brookings Institution (Sánchez-Garzoli, 2004; see pages 683-692 regarding the Sri Lanka syllabus specifically).<sup>22</sup>

It is difficult to objectively verify, from these developments alone, any concrete implications for broader context of dissemination and implementation of the Guiding Principles, but these observations to help to create a fuller picture of the process dissemination, in the first

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<sup>22</sup> Nb, in this global syllabi, there are many references to the Sri Lankan case separate from the specific syllabus dedicated to Sri Lanka, wherein the country is used as an example for others in how the UNHCR approached IDP assistance and protection; for examples see pages 432-442, 558 and 596.

instance. This process was necessarily characterised by a nexus of global norms and actors with the local sphere. Dr. Jayatilaka explained that whilst the UNHCR was the primary promoter of the Principles, a range of IGO and INGO actors also participated in the workshops that he hosted. In fact, he said that every workshop was joint hosted by at least one other international actor, and was widely attended by a number of local officials and NGO staff. This presents a somewhat unified approach between the international community and local actors on dissemination. This cohesion may account for the widespread recognition of the Guiding Principles across local civil society actors; however, as will be shown in subsequent sections and chapters, the relationship and understanding of the Principles amongst these two groups is ever more complex and, indeed at times, contested.

For Dr. Jayatilaka's purposes, when asked about the benefits of Guiding Principles he felt strongly that they were a useful 'framework for systematic analysis' of a complex situation; that they provided a lens through which policy and programming could be understood in relation to human rights standards. This supports the view of the Principles as primarily a human rights-based instrument, but does not address the humanitarian element of the framework overall. Regarding the limitations of the Principles he had a number of things to say. First, he said that because it is a normative framework by definition it is 'very subjective and open to interpretation... and the government has its own interpretation' of these things. He also stressed that their application can lead to 'open-ended questions' that the Principles cannot answer; for example, 'when do you cross the line where (the Guiding Principles) are needed in displacement?' and 'when is relocation (or resettlement) finished?' Overall, Dr. Jayatilaka was sceptical that the Principles had any material impact on government policy, but stressed that they were provided a useful 'framework for advocacy'. This latter point is significant and will be expanded on in some detail below, in particular in the mid-to-late 2000 years. However, before moving forward in this regard it is important to return to the overall Sri Lankan context during this period – in particular it is important to consider the Tsunami that hit the island state in 2004.

The 2004 Tsunami hit Sri Lanka shortly after the 2002 CFA broke down. Thus, it was against the background of a raging civil war that the country would find itself confronted with a compounded crisis that now included significant numbers of "disaster-induced" internal displacement. As stated above, it is necessary to continue here with a brief account of this dilemma in order to provide a more comprehensive account of how the international community responded and, more importantly, how this response and the norms that informed

it, were understood by local actors. Prior to this point in the content of this thesis it may have been possible to understand internal displacement in Sri Lanka as a product of primarily (civil) conflict. However, and in keeping with the internationally agreed upon definition of an IDP, there are other causes of displacement that must be kept in mind. In the definition of an IDP created initially in 1992, formalised in 1998, and adopted by the General Assembly in 2005, an IDP includes those not only those displaced by conflict, but also by natural and man-made disasters and development projects as well. Needless to say, the incorporation of disaster-affected IDPs in this context only compounds the complexities that were understood on the ground with significant groups of international actors already in place attempting to contribute to the assistance and protection of those internally displaced as a result of the on-going civil war.

By 2005 the most reliable estimates indicate there were approximately 600,000 IDPs in Sri Lanka. The number of people displaced in Sri Lanka by the 2004 tsunami is very difficult to identify. Estimates range from approximately 450,000 people displaced by the tsunami to 1 million (NRC/Global IDP Database, 2005; UNEP, 2006). The exact figure of those displaced is not necessary for the purposes of this study, but the confusion on this matter does serve to illustrate the overwhelming complexities that are faced on the ground when a crisis of this magnitude strikes a country. The Global IDP Database, in their country profile published in 2005, does a good job of summarising the context in brief:

The devastating tsunami wave that hit 14 of Sri Lanka's 25 districts on 26 December 2004, killed over 30,000 persons, destroyed 80,000 households and displaced one million people. The total number of people currently displaced by the tsunami is estimated to be around 553,000. In addition to the displacement caused by the tsunami, more than 350,000 people remain displaced as a result of the conflict between the LTTE and the Government of Sri Lanka... (pp. 7-8)

Surprisingly, there is little research about the role(s) of international actors in the aftermath of the tsunami (see chapter 1); similarly, there have not been conclusive studies carried out by non-academic institutions about how international standards were applied during the tsunami crisis. Therefore, the data presented below largely comprises responses from key informant interviews as well as anonymous interviews with local NGO staff that were operating in the field at this time.

The most relevant interview data gathered concerning the assistance and protection of IDPs came in the form of an in-depth elite interview with the Chairman of the Sevalanka Foundation, Harsha Kumara Navaratne. For context, the Sevalanka Foundation was founded in 1993 with the intention and mandate:

...to work with the most vulnerable communities in the most neglected and disadvantaged regions of Sri Lanka. At the time (of founding), conflict was raging in the north and east of the country, and the communities caught in the middle of this war were clearly among the most vulnerable and disadvantaged. (2015)

Put more simply, and in the words of Mr. Navaratne, Sevalanka is ‘in the first case, and always a humanitarian organisation’ (Interview, 2014). His views are particularly valuable for the current study because Sevalanka has become one of the most important NGOs in Sri Lanka; in fact, the day before interviewing him Mr. Navaratne participated in a meeting (with four other civil society leaders) with (then) Minister of Defense Gotabhaya Rajapaksa. Mr. Navaratne’s responses are valuable for two principle reasons: 1. His experience(s) concerning the aftermath of the tsunami; and 2. Because of his views concerning the Guiding Principles in current context (which will be elaborated and examined the final chapter of this case study).

Throughout the course of this interview Mr. Navaratne’s responses were valuable in understanding the context and impacts that the tsunami had on local NGO actors; however, it must be acknowledged that the role, function and understanding of the Guiding Principles was not covered in depth for the period immediately following the tsunami.<sup>23</sup> That said, and in keeping with the constructivist ontological approach to this thesis, his responses are still significant insofar as they help provide a more thorough understanding of context and circumstance within this case.

In the immediate aftermath the tsunami, there was no shortage of international assistance on offer. In his words, ‘people and money was [sic] coming from everywhere’ (ibid). In an attempt to keep the conversation focused on the normative frameworks surrounding IDP policy, I attempted to keep the questions focused on the politics of assistance and protection. However, Mr. Navaratne was both quick and eloquent in his dismissal saying that ‘there was

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<sup>23</sup> Nb, his responses about the role of the Guiding Principles more generally are very relevant and will be evaluated in the subsequent sections of this chapter as well as the final chapter of this case study.

little room to debate the needs' of those affected and went on to explain that the government was quite open to additional resources – both in terms of financial assistance and in personnel. It became clear that in the immediate context of the tsunami assistance and protection was largely depoliticised and, rather, took on the form of humanitarian practice more fully. He described situations wherein the affected parts of the country were 'saturated' with aid workers from both local NGOs and, in particular, from the international community. However, this influx of assistance was not entirely a positive development.

Mr. Navaratne's criticism of the international community's role in the tsunami relief can be aptly summarised in four points:

1. There was an excessive influx of money
2. The strategies for international assistance were both too short and too rapid
3. Too many organisations came into the country
4. Local staff became 'spoiled' by the international community

Through further conversation about these issues it became clear that issues 1 and 4 were linked, such that points 3 and 4 were as well, with additional overlapping tendencies. He explained the problem of an excessive influx of foreign funds related to the fourth point in different ways. In the first instance, the INGOs that arrived and wanted to provide assistance did not spend their money or allocate their resources in efficient ways. In some cases the increased money available meant that certain groups and/or actors sought to capitalise on this for personal gain through the diversion of resources along partial lines (Nb, on this point, given the uncertain context at the time and also the inability to verify the claims made, it was requested any further detail not be included on this point). Moreover, he explained how the increase of funds, in combination with the excessive number of new international actors operating locally, meant that a number of previously locally employed NGO staff were recruited or otherwise appropriated by international organisations.

This, however, in the context of point 2 regarding short and rapid responses, meant that local capacity was absorbed by the international community but only for a limited time (by his estimation 1 to 1.5 years). During this time, such staff members were employed by organisations with significantly greater resources (in terms of salary) than what the local NGOs could offer. This became problematic when a number of INGOs began to withdraw, and the previously locally employed NGO staff had become used to the increases in salary and therefore their living standards. This led to situation wherein the local NGO community

was evermore fragmented as those employed by INGOs did not want to back to work in the organisations they were previously affiliated. Perhaps most apt, Mr. Navaratne stated that the ‘tsunami response killed 30-40 years of civil society development’ (ibid). Of course, this claim is neither quantifiable nor verifiable in objective terms. However, that it comes from a civil society leader such as Mr. Navaratne, bears significance for understanding how local leaders understood the impact of global actors more generally. As stated above, the extent to which this provides insight into international normative frameworks concerning internal displacement is limited. Yet it is important to include here in order to further contextualise the local understanding(s) during this period.

In only brief form did discussion with Mr. Navaratne about tsunami relief efforts focus on the Guiding Principles or international standards more broadly. When pressed on this element of analysis specifically, he stressed that values and principles are important, but then asked what role they play ‘when people are dying’. He described weekly meetings with the leading UN agencies during this time, and he remembers UNHCR, in particular, emphasising human rights principles under the Guiding Principles framework, but was quick to also state that they were doing what they could, when and where possible, to ‘save lives’. Even if these responses do not explicitly match with the Principles, they do illustrate an ostensibly humanitarian based approach to the provision of assistance for IDPs. Mr. Navaratne had much more to say about the value of the Guiding Principles in this larger context, which will be returned to below, and in combination with analysis of other civil society leaders’ views and experiences, as well as a number of primary documents that are related to IDP policy – all of which are presented here in relation to the mid-2000s, leading to the end of the civil war in 2009.

The above account of how the international community’s engagement and involvement affected the local sphere was specifically focused on the 2004 tsunami. Whilst this was necessarily narrow in both scope and depth, it does provide the backdrop for understanding how the dilemma of internal displacement would be treated in the latter half of the 2000 decade. Such an analysis would not be complete without a more comprehensive account of the national instruments and efforts that were put into place during this time. Accordingly, this section aims to provide an analysis of the Sri Lankan state initiatives and innovations that were concluded and/or implemented during the later stages of the civil war – here defined as the years between 2004 and 2009. The consideration of these policy evaluations will be supplemented with in-depth interview data obtained from a senior government official that led, in many respects, the government’s efforts towards a peaceful resolution to the war and

the protection of human rights in that process. Some of the policies and initiatives necessarily overlap with the resettlement and current context years, which are the subject of the two subsequent chapters. With this in mind, their consideration will be introduced here and then continued in the proceeding analysis.

#### **5.4 National Policy Approaches**

Identification of relevant national instruments and texts is not simple, given the vast amount of documentation that has been produced by the government related to the civil war in general – in which internal displacement is common trend as it was ubiquitous during the war. In order to conduct this analysis in as much of a systematic manner as possible a series of queries have been made in the Global Database for Guiding Principles on Internal Displacement (a database made available by the Brookings-Bern Project on Internal Displacement as well as the Institute for the Study of International Migration at Georgetown University). Using available metadata tags the following searches were conducted along the following lines (Type of Search; Principle; Country; Institution/Body):

- Legal References to the Guiding Principles; All; Sri Lanka; National Courts
- Legal References to the Guiding Principles; All; Sri Lanka; National Legislatures
- Legal References to Norms Described by the Guiding Principles; All; Sri Lanka; National Courts
- Legal References to Norms Described by the Guiding Principles; All; Sri Lanka; National Legislatures

These search parameters yield four relevant documents produced by the Sri Lankan government. As will be demonstrated below, the creation and evolution of these national policy frameworks follows an observable trajectory from being in close collaboration with the UN and in conjunction with international standards that the UN was espousing, to more nationalistic approaches wherein the international community was subordinated or not included at all.

Two of the most illuminating documents are: the Joint Strategy to Meet the Immediate Needs of Returned Internally Displaced Persons, produced by the Government of Sri Lanka and the UN<sup>24</sup> (Joint Strategy) (June 2002 – June 2003); and the National Framework for Relief,

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<sup>24</sup> Specifically, ‘UNCT, the Food and Agriculture Organization (FAO), International Labour Organization (ILO), World Health Organization (WHO), World Food Programme (WFP), United Nations Children Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), United Nations Population Fund (UNFPA), and



Rehabilitation and Reconciliation (RRR), (June, 2002). In evaluating these documents it is important to pay attention to both the context as well as the content. Regarding the former, the timing of these frameworks is striking. Both of them were produced during the 2002 CFA; both were produced before the 2004 tsunami; and both were produced before the election of Mahinda Rajapaksa in 2005. These documents are striking in their language and content as they read in lock-step with the normative principles set out in the Guiding Principles. On the one hand, the government recognises the humanitarian need of those displaced and the necessity for international access to affected populations. Indeed, the Joint Strategy makes this explicit in a number of areas, and goes as far as linking this to the protection of human rights the criteria set out for this approach. It clearly reads that the strategy would be informed by the need to:

Carry out immediate initiatives to support the peace process while maintaining the longer-term perspective of UN humanitarian and development assistance;... Ensure neutrality, impartiality and transparency in delivery of assistance; Uphold human rights principles including the Guiding Principles on IDPs... (Government of Sri Lanka and UN, 2002-2003, p. 11)

There are a couple very significant points to focus on from this criteria. First, this criteria allows for analysis of the document as a whole. Much of the remaining text is related to specific programming details such as budgets, allocation and distribution procedures, regional foci, etc. Indeed, a vast majority of the Joint Strategy is in fact a series of annexes in order to provide specific programmatic and budgetary details. Therefore, the criteria set out here becomes valuable because it reveals the underlying normative approach to this strategy. Interestingly, this approach is explicitly grounded on the Guiding Principles themselves. Moreover, it is clear that there is equal commitment to the humanitarian mission ahead as there is to the protection of human rights in the process. This combination needs to be noted here, as it will become a primary element of analysis in the next chapter. The congruence between (proposed) state policy and the international community, via the Joint Strategy and the Guiding Principles, is also reflected in the National Framework for Relief, Rehabilitation and Reconciliation. Given the significance of this link, it worth quoting the RRR at length:

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United Nations Development Programme (UNDP) – have prepared these elements of the Joint Strategy, together with the relevant Government partners, under the coordination of the UN Resident Coordinator. Support from UN agency headquarters was also provided in the form of specialist advisors’ (Joint Strategy, 2002/03, p. 5).

The universally accepted rights of the internally displaced - to protection, to liberty and security of person, to humanitarian assistance and to their return, resettlement and integration in society - are enshrined in the Guiding Principles on Internal Displacement, a document drawn up at the request of the United Nations Commission on Human Rights and General Assembly. Having been developed over the past eight years in consultation with a number of concerned governments, the Guiding Principles unquestionably also apply to the situation in Sri Lanka. (RRR, 2002, p.11)

The RRR, like the Joint Strategy, were not binding policy, however. And should these links to the Principles have material impact they would have needed to be formalised through legislative act(s). This qualification should not detract from their significance, however, as the purpose of this thesis is to understand how the global norms in this field have been received and understood at the local level. These early documents tend to suggest that the government was in fact receptive and explicitly committed to ensuring that ‘all ministries bring their policies into line with these Guiding Principles’ (ibid).

It is important to interrogate this ostensible link both in terms of context at the time and what came after, as well as with the contradictory interview and civil society data that follows as well. The fact that both of these documents were produced during the CFA was addressed in an interview with two local NGO field staff workers (Anonymous Interviews, nos. 2 & 3, 2014). Whilst as field staff these two respondents were not involved in the drafting or consideration of these national instruments, they described this period as ‘the first time in a long time that there was some prospecting [sic] for a peaceful solution’. However, when the CFA broke down ‘it was different this time’. NGO staff no. 3 was referring the general sense that this was their best chance, and now that it failed, in the field they began to fear the worst. Before returning to a larger understanding the local reception and understanding of the Principles that would come to characterise the end of the war, it is important to consider the other two national initiatives/innovations that relate to the Principles more generally.

Following the 2004 tsunami and influx of aid and aid workers, the government developed a legal instrument ‘to enable special legal provisions to be made in respect of persons and property affected by the tsunami...’ (Special Provisions, 2005, p. 1). This Act is reflective of norms described in the Principles in a few key respects. First, the creation of this Act reflects the recognition of disaster-affected populations have special and acute needs (in line with the

including of disaster-induced displacement in the creation of a definition of an IDP – see chapter 1). Secondly, this act makes special provisions for children in particular. Indeed, a majority of the provisions included in the act are pertaining to children specifically, and in particular the legal distinctions and need for a more robust system of foster care and legal guardianship. This is consistent with the Principles insofar as they too identify children as a group with distinct and acute needs that ought to be either prioritised or considered more pertinently. Significantly, however, this Act does not make any explicit reference to the Guiding Principles or international community at large. This is a departure from the previous two documents considered, and signals the beginning of a shift away from the explicit reference to global norms.

The shift away from explicit references to global norms can be understood as the nationalisation of security and assistance that came to characterise the government's approach towards the end of the civil war. This is further reflected in the Resettlement Authority Act No. 09 of 2007. The on-going conflict in Sri Lanka, exacerbated by the tsunami, led to a situation wherein several hundreds of thousands of individuals were internally displaced. This necessarily created a massive burden on the local authorities to establish a lasting mechanism for resettlement (Sugathadasa, Interview, 2014). The Resettlement Authority Act sought to establish:

...an authority to be called the Resettlement Authority: to vest the authority with the power to formulate a national policy and to plan, implement, monitor and co-ordinate the resettlement of the internally displaced persons and refugees; and to provide for matters connected therewith or incidental thereto.  
(Resettlement Authority Act, 2007, L.D. – O.40/2006)

The creation of the Resettlement Authority – the precursor to the currently existing Ministry of Resettlement – is significant because it reflects the need for national authorities to take primary responsibility for IDPs (a theme stressed throughout the Guiding Principles, see chapter 4). Moreover, this Act also stressed the need to 'facilitate the restoration of basic human rights including cultural rights to empower internally displaced persons' (ibid, paragraph 14 (j)). Again, this is consistent with the overall normative dimensions of the Principles insofar as they attempt to articulate the human rights of IDPs. Significantly, however, and like the Special Provisions Act discussed above, there is no explicit reference made to the Principles, nor the international community as a whole. Indeed, there is also at

least one very notable departure from the Principles that warrants mention. At the end of the Act, in order to clarify various elements up for interpretation, it defines an IDP as:

...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 generalized violence... (ibid, paragraph 35).

Notably, the qualification of ‘places of habitual residence’ directly reflects the amendments made to the definition of an IDP at the international level (see chapter 1). However, there is a conspicuous absence of disaster and/or development induced internal displacement in this definition. Hence, one can see the continuing nationalisation of IDP policy; here, limiting the scope of engagement with IDPs to only those affected by conflict.

The overarching trend of nationalisation of policy, despite what was being advocated for by the international community, ought to be considered more closely. The election of Mahinda Rajapaksa in 2005 stands out as one of the reasons why government policy may have taken such a turn as he approached the war from a wholly militaristic point of view, where a diplomatic solutions was put aside. However, there were other elements of engagement between the international community and local actors would come to inform this period and the government’s approach in particular.

Significant insight into this period was gained from an in-depth interview with Dr. Rajiva Wijesinha (a Member of Parliament at the time of interview). Dr. Wijesinha was appointed by President Rajapaksa as the Secretary General of the Sri Lankan Government Secretariat for Coordinating the Peace Process (SCOPP). Generally speaking, his responses can be aptly characterised as a consistent narrative of international intrusion and intervention, subverting national authority and causing disruptions for the country – with only a few exceptions.

Perhaps most significantly, he explained how and why the government of Sri Lanka became suspicious of the international community during this time. One primary example that he provided in this narrative was the planned creation of a Responsibility to Protect Centre that was going to be based in Sri Lanka. According to Dr. Wijesinha, Gareth Evans (Co-Chair of the International Commission on Intervention and State Sovereignty) and Louise Arbour (former UN High Commissioner for Human Rights), worked together in developing a plan to establish an R2P centre in Sri Lanka. This plan was intended to come into fruition in 2007

(though was discussed and considered by them for at least a couple years prior to that), and apparently the plans were so far advanced that the proposed centre was even featured on the R2P website (Interview, 2014). Critically, from the perspective of Dr. Wijesinha, these plans were developed completely outside of a national dialogue and that they had no permission to establish such a centre. It is important to note that requests for interviews with Gareth Evans and Louise Arbour were both unsuccessful, and therefore this narrative must be understood in the context of a government's account of events that cannot be independently verified. Regardless of that, as the rest of the narrative went, after mounting pressure from national authorities the plans for an R2P centre were abandoned. However, Dr. Wijesinha uses this story as an example of how the international community was intervening in state affairs without mandate or permission; and he holds this up as an indicative symptom of how local authorities came to view the international community as a whole.

Throughout the course of discussion with Dr. Wijesinha the perception of the international community as disruptive became clearly apparent and I questioned him further as to the reasons why, from a government perspective, this might be the case beyond the one example listed above. One additional example that he provided is worth recounting here. He explains that as the Secretary General of SCOPP he participated in a number of regular meetings with representatives from the international community. In one such case, as it appeared that there might be end to hostilities in the near future, the government presented a plan for the rapid and large-scale resettlement of IDPs in the country. This was, according to him, a nationally devised plan with ambitious targets to resettle hundreds of thousands of people as soon as the conflict reached an end. As his account continues, within days of this meeting the government received a letter from the US Ambassador to Sri Lanka, calling on the government to take the exact kind of action that the government had presented in their meeting. His interpretation of this act, which he said was a widespread interpretation amongst government officials, was that the US government was attempting to preempt the national authorities and 'take credit' for a plan they had already developed.

These anecdotes, in the first instance, can be understood as just that – anecdotes. However, the context of my discussion with Dr. Wijesinha bears significance. These accounts provided by him came as responses when asking him about the role of the Guiding Principles from the government's point of view. The fact that such questions led to these stories points to the fact that the Principles had, by then (mid to late 2000s), become a point of reference that was virtually synonymous with international disruption into domestic affairs. Moreover, when

asked about what, if any, value the Guiding Principles had from his point of view, he explained that he, on more than one occasion, used them as a framework to point out to the international community that they had an obligation to respect ‘national standards’. Recalling from chapter 4 the constant and repeated qualifications in the Principles placing ‘primary responsibility’ with national authorities, this seems consistent in some ways. However, this use of the Guiding Principles specifically, must be understood as only one side of the story when considering the local sphere. Indeed, it points to the need to differentiate amongst the “local”, and not see it as some unified entity. As will be explained below, the use of the Guiding Principles for elements of civil society was entirely different from the government’s view.

The following section returns to a civil society perspective regarding the Principles, but moves beyond the phases of dissemination and tsunami relief efforts. Through interview data with civil society actors and evaluation of reports produced by civil society organisations, one can begin to see an additional side of the story.

As described above, Sri Lanka stood out as one of the earliest “adopters” of the Guiding Principles in the manner in which they were utilised by research and advocacy organisations. In an interview with a civil society leader who has been active in IDP assistance and protection, within locally-based organisations, for more than 10 years, it was explained that the role of the Guiding Principles has changed over time (initially this interview was attributable, however the interview has been made anonymous here upon request after the interview was conducted, given the respondents appointment to a more senior position following our discussion; accordingly, both name and institutions have been withheld) (Anonymous NGO Staff no. 12, Interview, 2014). They describe the role of the Guiding Principles being particularly valuable during the early 2000s; consistent with evidence found concerning dissemination and implementation during the CFA of 2002. When asked specifically what function the Principles served, it was explained that they ‘provided a common language for people working in this area. We all came from different places, and we were talking to each other with different vocabularies at first.’ According to this respondent, the Principles provided a language they could all use, in the first instance. Moreover, this respondent expressed similar experiences to those provided above wherein the Principles were used, in particular by the Swiss Development Corporation, in order to lobby the Bilateral Donors Group countries, to adhere to the human rights standards defined by the Principles in their activities. This is consistent with what Dr. Jayatilaka said – that the

Principles provided a framework for advocacy above anything else (this is echoed further in the next chapter regarding resettlement programmes) (Interview, 2014).

However, the understanding and role of the Principles were not only used for advocacy. Rather, they also provided a framework for understanding more generally (perhaps being the antecedent to advocacy in such settings). The Centre for Policy Alternatives (CPA) is a leading civil society advocacy and research think tank in Sri Lanka. CPA, along with, CHA (described above) stands out as one of the first local institutions to utilise the Guiding Principles in a comprehensive way. Interviews with the Executive Director, Dr.

Saravanamuttu as well as two of their leading researchers, Iromi Pererra and Bhavani Fonseka, illuminated both the understanding of the Guiding Principles, as well as their potential function(s), from a civil society perspective (all of which will be explored in greater detail in chapter 7 as their interview responses were largely in relation to current context and protracted displacement) (Saravanamuttu; Pererra; Bhavani; Interviews, 2014). For current purposes it is worth evaluating a report that CPA published in 2007 entitled Human Rights Violations of Internally Displaced Persons and Government Policies, Classified by Reference to the UN Guiding Principles on Internal Displacement (CPA, 2007).

This report, whilst published in 2007, reflected research conducted in the previous year, and evolving understandings of IDP assistance and protection that stretched across years prior (Fonseka, Interview, 2014). As a whole, the report includes a step-by-step analysis of violations that the government, and LTTE, were guilty of in relation the Guiding Principles – going through every one of the 30 Principles illustrating at least some of the examples wherein there is credible evidence of violations. This analysis is perhaps the most comprehensive monitoring and impact evaluations of Sri Lankan policy towards IDPs – using the Guiding Principles as a framework for analysis. However, the number of failures that are included – of which are many, indeed – is not the subject of analysis here. Rather, the fact that the Principles were used for this purpose is of paramount significance. Indeed, it is worth mentioning that in almost every civil society-based interview I conducted I was asked at some point, ‘have you read the CPA report?’. Given the prominence of CPA in Sri Lanka, their use of the Guiding Principles in a report of this kind has expanded the awareness and recognition of the Principles as a whole.

This use of the Principles, whilst significant, would be incomplete without some analysis of the content. The most relevant aspects of this report, for this study, come from the summary

as this provides are more editorialised introduction into the subject matter. Interestingly, in the first paragraph of the report it introduces the concept of IDPs as ‘...people, whom the international legal jargon has reduced to the acronym IDP, do not enjoy the same rights as their fellow citizens’ (CPA, 2007, Summary, p. 1). The tone of this sentence is palpable and reflects on-going frustrations that CPA has with the international approach to assistance and protection. In an interview with Bhavani Fonseka I asked about the reductive nature the IDP definition has in relation to this description. In response she stated that ‘many people are in need of assistance, some more (so) than those we call an IDP... but this is way the UN has chosen to talk about things, so we were trying to use it the best way we could’. What follows in the report, as stated immediately above, is a scathing account of government policies when measured against the Guiding Principles – ranging from widespread discrimination against Tamil populations to evidence of pervasive sexual crimes perpetrated by government forces against internally displaced women. At every turn, and for 70 pages, these failures are put in “Guiding Principles” terms.

## **5.5 Conclusion: Shifting Narratives of Failure**

The analysis presented in this chapter reveals a fundamental shift in the way that the international community is understood, in the first instance; and also, how policy (be it from either the international community or locally-based institutions) is measured. Specifically, the Guiding Principles represents a transformative lens through which IDP policy is understood in the local sphere. The report described in the preceding section stands out not only because of the gross human rights violations that are evident and demonstrated throughout, but because of the ways in which these failures are characterised, understood and framed. Whilst it may have been possible before to write such a report based off of existing human rights law, the Guiding Principles provided a framework for understanding and presenting these violations in a more nuanced framework – specifically focused on the plight of individuals internally displaced (see Fonseka Interview, 2014, and also CPA, 2007). This understanding of state action in relation to international standards can be seen as similar to how dissemination was conceived beginning in at the turn of the 21st century. Moreover, one can also see how local assistance and protection capacity related to tsunami relief was understood in the context of global-local relations. Taken together, this period has been recast through the lens of local context and global norms. Yet, these observations only account for a segment of what can be accurately described as local per se. This is a reminder that the local sphere



cannot be reduced to one segment, but one must consider differentiation at the local level as well.

The way(s) in which local government officials, and state-generated documentation (in the forms of national frameworks and/or legal Acts), reveals further significant observations about the relationship between global norms and local context. The analysis of the Joint Strategy and RRR Framework, developed in the context of the CFA, reveals a much closer relationship between global and local norms, at least on paper. However, in the aftermath of the tsunami and the subsequent election of President Rajapaksa, against the backdrop of an increasingly violent civil war, the national instruments developed that have been classified as related to internal displacement took on a different tone. In some respects certain co-referenced norms were articulated regarding humanitarian obligations and also human rights protections; however, any explicit reference to the Guiding Principles was absent. This was explained by the fact that the government came to understand the international community as a whole as intruding in domestic affairs and causing disruptions as a result (e.g. Wigesinghe Interview, 2014 as well as Ranasinghe Interview, 2014). In any case, the nature of this disruption should be noted, even if in nuanced significance. This understanding points to the larger trend observable in this time period, which is that policy and practice became increasingly informed by the international community.

It is the argument here that this period illustrates a transformation of obligation and failure narratives. On the one hand, the Guiding Principles have been applied (to this point in the analysis) by civil society as a way to understand and therefore evaluate both the humanitarian and human rights obligations of the state in relation to its citizens within a new framework – the Guiding Principles. On the other hand, it can be seen that the state was operating, at least in part, in reference to the Guiding Principles, manifest in how IDPs were qualified and understood in the Resettlement Authority Act; but also in the ways in which the Guiding Principles became a reference point for rejecting the international community in certain ways. Moreover, the Principles were used, in at least one case, as a foundation for advocating against greater international involvement; instead emphasising the primacy of sovereignty and national authority as guaranteed and enshrined by the Principles themselves.

For all actors concerned, the presence of a humanitarian imperative, or otherwise humanitarian obligations have been internalised and reflected outward in both policy and action. The international community's approach in disseminating and attempting to

implement the Guiding Principles, continuing from conclusions reached in chapter 4 illustrate humanitarian norms in action. The various frameworks and legal instruments introduced by the state can be understood to embody these principles as well, as the texts indicate.

Moreover, the role of R2P has also been apparent in this process, whilst perhaps informing the international community's efforts on one hand; but also in the way it was wholly rejected by the government. Up until this point it is not clear how the moral and/or legal (i.e. institutional) duty of the international community has been affected (see the next chapter for more on this point). However, a rights-based discourse in relation to IDPs is evident all levels – despite the obvious divergences in how the notion of human rights is both understood and subsequently implemented. Taken as a whole, one can see that the Guiding Principles had become a framework and reference point for understanding differentiated narratives of obligation and also failure. Accordingly, with the evidence presented thus far it is plausible to conclude that the global norms surrounding internal displacement affected the local sphere in such a manner that it shifted the discourse to a more internationalised frame of reference. This observation supports the general conclusion offered from this chapter – that narratives of failure were affected in such a manner to be placed in relation to the international community.

This evolution of understanding is, however, only the first conclusion reached throughout the course of research. The local context analysed in this chapter began with a very brief account of Sri Lankan history in order to provide necessary context for all that will follow. After attempting to present only that historical information about the civil war relevant for this study, it then became more focused on the period of the war wherein the Guiding Principles were introduced and disseminated throughout the country. Following from that point and the conclusions outlined above, it is now necessary to consider the relevance, role, and understanding(s) that the Principles have had in the immediate post-war years, with specific focus on the resettlement efforts and policies initiated by the state, with the support of the international community.

## **Chapter 6: Resettlement and Normative Tensions**

This chapter begins, historically, where the previous chapter ended: the end of the 30 year civil war in Sri Lanka and the chaotic aftermath that followed throughout the island nation. More specifically, this chapter comprises an analysis of global norms concerning the assistance and protection of IDPs during the resettlement process. The time scale of the current analysis covers the first three years following the end of the war (from May 2009 to 2012). The decision to limit this chapter to these three years has been guided by government claims that during this time successful resettlement was achieved for a vast majority of those displaced as a result of the conflict or concurrent crises that occurred during the war (e.g. the 2004 Tsunami). This chapter begins with an analysis of the political context in the immediate post-war years. Next, it seeks to map and investigate both the primary actors engaged in the resettlement process throughout these years, as well as the trends of resettlement that can be identified. The chapter continues with an evaluation of what will be called the “international retreat”; referring to the substantive withdrawal of international staff in assistance and protection roles, as well as to the position(s) of deference the international community took in relation to the state authorities. This will lead to a section on what is being called a “humanitarian double-bind”; explained and then argued below as the result of institutionalised normative contradictions wherein certain actors are faced with a paradoxical situation of obligation (both moral and legal) and choice. Finally, this chapter will also include continued analysis of responsibility and duty, carried forward from the previous chapter, in light of the findings regarding research pertaining to resettlement specifically.

The data used in conducting this analysis and generating findings follows on from the data pool employed in chapter 5 with some minor differences. Like chapter 5, the current evaluation relied on a range of primary documents made available by the UN in the form of reports, media reports and press releases, reports and papers produced by local think tanks and research based organisations, as well as the interviews conducted throughout the field research phase of this study and any relevant observational data collected. Regarding documentation from the UN, this chapter shifts its focus away from the Guiding Principles as the most relevant international framework, in the first instance, to the IASC Framework on Durable Solutions for Internally Displaced Persons. Notably, the Guiding Principles do remain salient in this stage of analysis, insofar as the IASC Framework explicitly references the Guiding Principles (28-30). An additional shift in the data employed will be found in the

lack of local scholarship and secondary sources utilised here (see below for explanation regarding the originality of this contribution). Regarding field research, this chapter includes a more in depth analysis of the resettlement efforts in Kilinochchi and Mullaitivu. Combined, these two districts represent two of the most contested regions in the country, with significant proportions of violence and displacement on record. The field research presented below is the result of a series of interviews conducted with local officials as well as with senior military officials in both districts.

Apart from providing a more specifically tailored account of resettlement in Sri Lanka this chapter will make a few notable contributions to current understandings and scholarship present in this field. Whereas, much of the existing literature on international assistance and protection has been focused on either legal analysis of the Guiding Principles or their implementation; there has not been a significant body of work done relating to resettlement specifically (as the IASC Framework on Durable Solutions was only published in 2010). Indeed, one of the leading books on this subject, by Robert Muggah, entitled *Relocation Failures in Sri Lanka: a short history of internal displacement and resettlement*, was published in 2008 – one year before the end of the war and before the government launched its aggressive resettlement campaign in the postwar years. By focusing on global norms concerning the assistance and protection of IDPs as they relate to resettlement specifically, this research has yielded some valuable findings. As will be explored in the subsequent sections, when the documentary data is triangulated against field research as well as archival research from local authorities, a few themes come to the fore. In the first instance, constant expression(s) of “failure”, with explicit references made to the Guiding Principles, reveals that the international community’s presence, activities and dissemination of the Principles were successful in so far as they created an expectation or perception of international responsibility. The nature, form and function of this responsibility, however, are contested at best, and perhaps even contradictory, at worst. Accordingly, how notions and experiences of responsibility were understood in the local context forms a connective thread of the sections that follow here.

## **6.1 Postwar Political Context**

To understand the dynamics and politics of resettlement in Sri Lanka it is necessary to begin in the immediate post-war context. The Sri Lankan civil war ended with what can only be accurately described as an unequivocal military defeat of the LTTE (Anonymous NGO Staff Interview no. 2, 2014). The 2005 election of President Mahinda Rajapaksa marked a

profound turning point in the way the Sri Lankan government sought an end to conflict. The prospects for a political solution were quickly dismissed, in favour of a military solution. This shift in the government's approach is noted not only by NGO field staff critical of the regime, but also by the wider local/political community in the form of local think tanks and politicians alike (Saravanamuttu; Anonymous NGO Staff no. 6; interviews, 2014). One prominent politician, and Rajapaksa regime supporter, has written about this strategy directly in relation to external pressures that the Rajapaksa regime faced:

...the mounting external pressures on Sri Lanka could NOT lead to an easing of the final military campaign, but to result in its exact opposite, the determination to inflict the most complete and decisive defeat and destruction possible on the Tigers... (Jayatilleka, 2014, p. 280).<sup>25</sup>

The consequences of the final military assault on the LTTE culminated in an end to war and led to a situation wherein hundreds of thousands of people were displaced in Sri Lanka. Of course, it is essential here to also recognise that significant numbers of those displaced by the conflict were in fact the result of operations and activities of the LTTE as well as through the military assault launched by the government. Indeed, subsequent UN reports would find that there are credible allegations that both the government as well as the LTTE committed war crimes throughout the war, particularly in the later stages (UN SG, 2011, p.vii).

Despite the competing explanations and distribution of blame, the end of the civil war resulted in hundreds of thousands of people living in displacement, requiring a massive resettlement effort. Here, it is possible to begin to see the seeds of normative dissensus emerge relating to resettlement specifically. Whilst the IASC Framework on Durable Solutions (IASC Framework or Framework, hereafter) would not be published until 2010, earlier versions of the Framework were already circulating in the UN system since 2007 (see chapter 4). Moreover, the Principles that relate to resettlement of IDPs (28-30) had already been in place for a number of years, and also widely disseminated in Sri Lanka (see chapter 5). In the immediate post-war years the meaning of the term 'resettlement' took different forms.

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25. Note that for D. Jayatilleka the 'external pressures' experienced by the Sri Lankan government relate to what he describes as the Tamil diaspora's ability to influence global media and in turn the international community's efforts to pressure the government into a political solution (Cf. a military approach) to the civil war.

The UN has approached resettlement explicitly in the context of durable solutions which may range from successful relocation of IDPs to a new place of residence, the integration of IDPs in the communities wherein they were displaced to, or the reintegration of IDPs into their original places of residence (which can also include situations wherein they return their places of habitual residence but not the homes that they left) (Guiding Principles). In a report produced by the Sri Lankan Centre for Poverty Analysis (CEPA) Saparamdu and Lall argue that ‘[i]n Sri Lanka, the term resettlement has been used to describe all movement from transit camps or places of temporary stay to either the original residence or to different parts of the country (2014, p.8). What make these two concepts different are the normative contexts in which they are placed. As stated above, for the international community resettlement should be informed by the pursuit of durable solutions. Recalling chapter 4, this is necessarily grounded on a collection of human rights manifest throughout the Guiding Principles, and Principles 28-30 specifically. The normative elements that can be found in the relevant Principles are thus:

Table 6.1 Elements of Norms Concerning Resettlement

Principle 28	<p>Recognition of primary responsibility being with the state to facilitate resettlement that is voluntary, ensures safety as well as dignity.</p> <p>Efforts should be made to ensure participation of IDPs in the planning and management of their resettlement.</p>
Principle 29	<p>Upon resettlement IDPs should not experience discrimination; they should have right to full and equal participation in public affairs and have equal access to public services.</p> <p>All efforts should be made to recover IDPs' original property; where not possible they are entitled to appropriate compensation.</p>
Principle 30	<p>Authorities should grant and facilitate unimpeded access to humanitarian organisations and other appropriate actors.</p>

Source: adapted from Guiding Principles, 2008; emphasis added.

How these principles were perceived by national authorities, and subsequently implemented, however, is more complicated picture (see below).

It is important to note that the considerations made here, at the time in Sri Lanka, were only part of a much more complex and contested political context in the immediate postwar years. The Rajapaksa regime had facilitated an end to the war through increased political centralisation and hard-line military approaches (see chapter 5). In order to facilitate the resettlement of almost a million people internally displaced the regime continued along the same track. An analysis provided by the Internal Displacement Monitoring Centre states bluntly that when (and since) the civil war ended 'Sri Lanka's political system has reinforced the powers of the executive branch' (IDMC, 2014, p.4). This took many forms; some of the most prominent including the establishment of the Ministry of Resettlement, the creation of the Presidential Task Force, and the continued militarisation of assistance and protection

throughout the resettlement process. By analysing the centralised nature of resettlement approaches and policy it is possible to understand how the norms set out by the international community were perceived by the Sri Lankan state.

The Ministry of Resettlement (Ministry or MoR, hereafter) was originally established in 2005, following the election of President Rajapaksa. In 2007, with a broadened mandate, the Ministry was renamed the Ministry of Resettlement and Disaster Relief Services (via the Extraordinary Gazette no. 1482/9 of 29 January 2007). However, the Ministry's mandate to cover disaster services only lasted three years and in 2010 it was changed back to the MoR. Significantly, the MoR's 2009 Annual Progress Report states that by that year (including resettlement that occurred throughout the war) that the MoR has successfully resettled 752,114 persons in the Northern and Eastern Provinces 'in accordance with the international standards of Resettlement' (2009, p. vi). This explicit claim is also implicitly reflected in the language used by the MoR. For example, in their Programme for Resettlement it is stated that the main objectives are resettlement 'in a dignified manner.... Accordingly, work plans have been implemented in order to ensure participation of the displaced people' (MoR, 2009, p.9). The use of such language is consistent with the normative dimensions that can be found in the relevant international frameworks for assistance and protection throughout resettlement. Moreover, similar patterns can be found across the other five MoR Annual Progress Reports (2010, 2011, 2012, 2013, and 2014). This points to what may be called "normative (semantic) convergence"<sup>26</sup>. However, this semantic convergence only reveals an aesthetic link between state policy and international norms; to further investigate how the norms have been perceived and utilised it is necessary to rely on data gathered throughout field research.

Relevant field research for this analysis includes in depth interviews with Mr. Janaka Sugathadasa (the Secretary of the MoR), Major General Jagath Dias (the Security Forces Commander of the Mullaitivu District during the field work conducted and current Chief of Staff of the Sri Lanka Army), Major General Sudantha Ranasinghe (Security Forces Commander of the Kilinochchi District during the field work conducted), Mr. N. Vethanayahan (the District Secretary/Government Agent of the Mullaitivu District during the field work conducted), as well as shorter interviews conducted with other senior military

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26. Or what may otherwise be described as normative co-reference (without convergence) (see Schroeter and Schroeter, 2013).



officials, in depth interviews with a number of civil society leaders, as well as with local NGO field staff.

Discussions with Secretary Sugathadasa produced significant observations about how the government approached and understood the relationship between the bureaucratic state apparatus and the international community, as well as the operational relationship between the bureaucracy of Colombo and the military forces in the field. Sec. Sugathadasa stressed, from the outset, that the complexities of Sri Lanka in the immediate postwar years were not quite understood by the international community (Sugathadasa, Interview, 2014). More to the point, this becomes important when considering how international standards and norms were deployed by national authorities. Here, one comes to see that there is not only a gap between international norms and state policy, but also in the ways that responsibility, assistance and protection are understood by the two groups. Sec. Sugathadasa explained that the MoR determines its policy programming in a hierarchical way, prioritised thus:

1. Establishing security in affected regions
2. Initiating development projects
3. Resettling affecting populations

With regard to security, the MoR was (and remains) focused on demining before any subsequent efforts could be made. Whilst much of the demining has already been accomplished, some of the marsh lands have yet to be as it is more difficult to conduct such operations in that context. Indeed, whilst staying in the Mullaitivu Army Camp I observed several areas that are still marked with warnings about the presence of land mines, including a mile-long stretch of highway that leads to the town. In a presentation given to me by four Military Officers whilst in Mullaitivu, they shared a number of maps that illustrate where demining has yet to occur. For Sec. Sugathadasa, as well as for Maj. Gens. Dias and Ranasinghe, this fact is used to stress that resettlement must be first and foremost guided by security priorities (respective Interviews, 2014). More to the point, Sec. Sugathadasa used this situation as a way to stress that the norms advocated for by the international community may not have been helpful in relation to the situation faced by local actors. Towards the end of the interview he went so far as to state that the international community actors 'have all this theoretical stuff in their head, but we had a hands on approach'. This hands on approach was justified in service of humanitarian needs of those displaced, that they needed to act quickly and comprehensively in response to the needs of the entire population, and that international

norms may not have been the most valuable framework for accomplishing this (Sugathada, Interview, 2014).

Despite this ostensible tension between the MoR approach and the international norms concerning resettlement, Sec. Sugathadasa was well versed in all of the relevant international frameworks delivered. As a member of the PTF, he confirmed that the UNHCR presented the Guiding Principles and IASC Framework on Durable Solutions a number of times, but that the ‘common sense’ approach to resettlement that the government needed to employ made engagement with the international ‘challenging at times... but not necessarily problematic.’ His understanding and familiarity with the international frameworks may seem like a small or insignificant observation, but it takes on significance when compared with responses received from Security Force Commanders of Mullaitivu and Kilinochchi respectively. In discussions with Maj. Gen Dias (Mullaitivu), the subject of international standards elicited hesitation and transitions to different topics of conversation. By returning to the frameworks in question multiple times throughout the two interviews conducted, Maj. Gen. Dias expressed a fleeting recognition that they existed, but went so far as to ask for the names of these documents to be written down in order for him and his staff to look into them more. The veracity of this exchange is, of course, impossible to discern; however, it is not necessary to confirm his knowledge, or lack thereof, of the frameworks in order to understand the implications this has on the prevalence of related international norms on the ground. Notably, international norms were not referenced in any of the discussions with his Officers about how resettlement has been programmed, nor in the presentation they provided on the progress and current plans for the District.

Similar to the exchange with Maj. Gen. Dias, the Security Forces Commander of Kilinochchi, expressed a view that international standards did not apply or were not relevant. Unlike Dias, however, Maj. Gen. Ranasinghe was unequivocal in his rejection of their value. Maj. Gen. Ranasinghe, as the Commissioner General of Rehabilitation for Manik Farm (the largest IDP camp in Sri Lanka) and Security Forces Commander, took part in regular monthly meetings with all actors engaged in the provision of assistance and protection at Manik Farm. Despite the regular engagement with UNHCR and OCHA, as well as UNDP and UNICEF, according to Ranasinghe neither the Guiding Principles nor the IASC Framework were ever even introduced or presented. Upon follow up questions referencing contradictory accounts obtained from NGO field staff interviews (specifically in reference to interviews from Anonymous NGO Staff, nos. 3-5, 7, and 9-10, for example), Maj. Gen. dismissed this

assertion outright exclaiming ‘this is Sri Lanka, we have our own Principles’ whilst pounding his fist on his desk, continuing that ‘not a bugger was there’; claiming that when they took on the largest number of IDPs the UN agencies were not yet operating in that area. Maj. Gen. Ranasinghe did, however, say the Army had a comprehensive training programme for their soldiers on human rights law and international humanitarian law; however, there was no recognition of the rearticulated forms of these in the Guiding Principles or IASC Framework. Throughout this interview, it was made abundantly clear that Maj. Gen. Ranasinghe completely dismissed the content of such frameworks; only referencing international norms and standards when describing how the Army made this a priority through its own training programmes.

Whilst these three interviews are only three of those conducted, they comprise views and responses from some of, if not the, the most senior government officials in charge of the regions in question – regions that were and remain central to the issue of internal displacement in Sri Lanka. Accordingly, the rejection and lack of recognition of the Guiding Principles (from the military), and the qualification of their relevance (from the MoR), is significant. From the military leaders, it was quite clear that they perceived the international norms surrounding assistance and protection of IDPs as insignificant; and in the case of Maj. Gen. Ranasinghe they appeared to be outright offensive.<sup>27</sup> It is with this in mind that one should consider the mapping of governance structures and programming of policy that has been implemented throughout the resettlement process.

### **6.1.1 Governance Structure, Process and Outcomes**

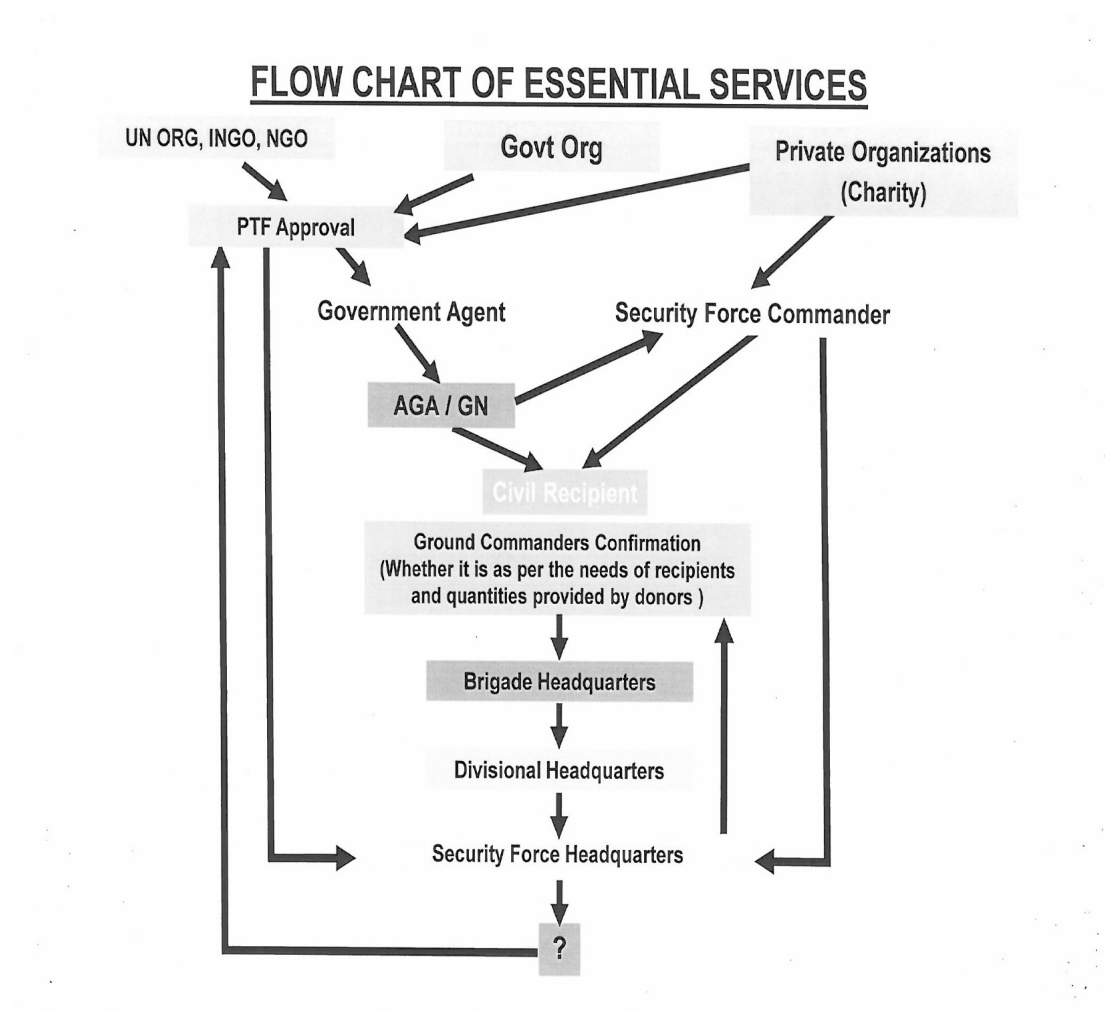
As in the case in any complex emergency, the provision of assistance and protection is an intricate and multifaceted process. By evaluating the governance structures programmatic considerations in the context of this study it becomes possible to understand where and how global norms gain entry into the local authoritative sphere. Put simply, it becomes possible to understand how norms travel from the global to the local, and how they are subsequently understood and/or implemented.

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27. NB, in the continued exchange about the irrelevance of global norms more generally, Maj. Gen. Ranasinghe expressed personal offense stating that ‘because of these norms, I am not even allowed in your country! I would be thrown in jail.’ Here, he was referencing the fact that he was rejected for travel to the US in 2013 (see Ferdinando, 2013, for an account of this).

Throughout my stay at the Army Camp in Mullaitivu, as referred to above, I was given a presentation of resettlement efforts in the region by four Military Officers. This presentation yielded similar observations from the interviews when considered as a whole or more generally; most emphasis and evidence was placed on how effective the military has been in facilitating resettlement – ranging from securing the region (land mines), initiating development projects (housing, water, and other essential services), to the eventual return of displaced persons (resettlement). Notably, this is also consistent with the priorities set out by MoR Secretary Sugathadasa (see numbered list above). However, there were also some inconsistencies in how this process was governed and implemented. Below is a chart that was made available during the Mullaitivu presentation, reproduced here with the permission of Maj. Gen. Dias.

Figure 6.1 Governance Structure of Essential Services Provision



Source: Military Presentation (Mullaitivu, September 2014)

At the top of the chart it is significant to note the central role the military played (and continues to play)<sup>28</sup> in this process, as well as the PTF. More specifically, for the purposes of understanding how global norms travel to the local sphere, the relationship between UN agencies and INGOs and the PTF illustrates how the PTF served as a clearing house for proposals and activities originating in the international arena. The PTF was established by President Rajapaksa in 2009, under Article 33 (f) of the Constitution, in order to oversee the postwar reconstruction and resettlement efforts (Ministry of Defence, 2014).

The PTF comprised 19 senior government officials ranging from Ministers to Military leaders; its mandate commissioned the Task Force to:

- Coordinate activities of the security agencies of the Government in support of resettlement, rehabilitation and development.
- Direct and oversee the implementation of the said plans, programs and projects of the relevant state organizations including the relevant provincial authorities.
- Liaise with all organizations in the public and private sectors and civil society organizations for the proper implementation of programs and projects.
- Seek, identify and apply innovative solutions to problems and constraints confronted in the execution of the mandate of the Task Force.
- Regularly review the progress of the implementation of the said programs and projects and to take immediate corrective actions where necessary.

(Source: *ibid*)

The substantial authority vested in the PTF is only paralleled by the authority vested in the Security Force Commander(s). Accordingly, this seems to place the PTF as the central entry point for the dissemination of international norms surrounding IDP assistance and protection. As previously illustrated in the observations gained from interviews with Sec. Sugathadasa, these norms were recognised but seen as having only marginal influence in the creation of policy on the ground. By analysing this flow chart, it is clear to see the military enjoyed/enjoys significant discretionary power in the implementation of the policy once it

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28. According to Maj. Gen. Dias this structure remained in place throughout the time that field research was conducted.

was cleared by the PTF. This observation is supported by the interviews conducted with members of the military, but also other civil society actors that worked in this context. The conclusion from these observations taken together is that the programming and delivery of services throughout resettlement was a highly militarised process. Accordingly, decisions taken were informed by a military logic – wherein the Guiding Principles and IASC Framework were either marginalised or otherwise disregarded.

This mapping of governance and process, however, provides an illustration that is not consistent with alternative accounts. Most relevantly, MoR Sec. Sugathadasa argued that this depiction is outdated and over-emphasises the role of the military. Rather, he says that the military does not enjoy such pervasive discretionary authority in the implementation of policy. Whilst there may be some disagreement on this point, there was agreement on issues more immediately relevant for this study – namely the way in which the government actors involved perceived international responsibility in this process. Across the MoR, all interviews conducted with the military, as well as the interview I conducted with the Mullaitivu District Secretary/Government Agent, when discussion focused on what responsibility the international community had there were two responses: that it had a responsibility to help the national authorities (all respondents within this pool provided answers in line with this observation) and that it also had a responsibility to respect the sovereignty of the Sri Lankan state (emphasised in the interviews with the SFCs). This will be significant to consider in relation to how responsibility of the international community was/is understood amongst respondents from civil society organisations (see section 6.2 below).

## **6.2 International Retreat**

Heretofore this chapter has explored how basic principles embedded – explicitly and implicitly – within frameworks developed by the international community have been understood by senior government officials in charge of IDP assistance and protection throughout resettlement. Whilst this is an essential component to this stage of research, by themselves these interviews do not represent a comprehensive account. Accordingly, for the remainder of this chapter the interviews already presented will be complemented and compared with additional observations gained from a collection of interviews conducted with civil society leaders and NGO field staff, as well as relevant UN reports and documents made available by local research and advocacy organisations. This stage of findings will be presented against the backdrop of the dramatic developments that occurred in Sri Lanka in the early resettlement process. The time scale focused on here, from 2009 to 2012, is

characterised by mass movements of people (often forcibly) in and out of IDP camps – or what the government refers to as welfare centres or villages. It will be argued below that the “seeds of contradiction” identified in chapters in 4 and 5 begin to grow into more fully formed instances of normative dissensus and institutional failures.

The MoR, Sri Lankan Army, and wider government claims this period to be one of unprecedented success, with the effective resettlement having been facilitated for hundreds of thousands of IDPs – primarily in the Eastern and Northern Provinces. Indeed, Maj. Gens. Dias and Ranasinghe, as well as DS/GA Vethanayahan emphasised how successful these efforts were. Significantly, the MoR, in each of the Annual Reports available for this period, claim that this resettlement was characterised by both the effective delivery of essential services and in accordance with international standards.

This ostensible effectiveness and successful implementation of policy was not simply part of the narrative offered by the Sri Lankan government. Rather, there is evidence that demonstrates that the international community also celebrated the actions taken by the government during this period. In 2012 Subinay Nandy, the UN Resident Coordinator at the time, described the closure of Manik Farm (in September of 2012) as ‘a significant sign of the transition from conflict to sustainable peace and the commitment of the Government to resettling tens of thousands of people back to their homes’ (UN Press Release, OCHA, 25 September 2012). As documented by the UN, in just three years after the war came to close, the government had ‘successfully resettled a total of 242,449 IDPs’ (CCPR/C/LKA/5, 2013, p. 11). On that basis, one might argue that it makes sense for the MoR to have claimed that all resettlement programmes were in line with international standards. However, greater analysis and subsequent reports paints a very different picture.

Upon consideration of interview data and closer examination of subsequent evaluations of resettlement it becomes clear that there were a number of problematic areas in not only the government’s approach to resettlement, but also the involvement of the international community. In the interviews conducted with field staff that worked in the service delivery to IDPs, significant abuses were noted in relation to how the government managed IDPs. By all accounts (in the 12 NGO interviews conducted), those individuals that made it to Manik Farm were forcibly detained and did not enjoy any degree of freedom of movement (a clear violation of human rights included in the legal annotations to the Guiding Principles). One respondent, a field staff worker for the largest Tamil based NGO, alleges that there were in

fact forced marriages between young Tamil women and Sinhalese IDPs (Anonymous NGO Staff no. 2, Interview, 2014). When asked about this claim, Maj. Gen. Ranasinghe dismissed it outright as a product of Tamil propaganda designed to turn the international community against the Sri Lankan government. Indeed, he went on to explain that under his supervision if relationships were formed whilst individuals were living in Manik Farm they allowed for household living arrangements and would help facilitate marriages. Again, here the veracity of this defence is not possible to discern, nor is it entirely necessary for the current purposes. In fact, as the alleged abuses carried out by the Sri Lankan government are thoroughly documented elsewhere (see for example the Petrie Report, below), the focus here is placed on the role of the international community, as it relates to the norms it created and advocated for these types of circumstances.

In 2010 the UN Sec. Gen. established a “Panel of Experts on accountability in Sri Lanka” (UN Press Release, 2012a). The purpose was to provide him with an evaluation of accountability as the civil war drew to a close. Whilst this report contained a number of problematic findings relating to the conduct of parties to the conflict, it also found that there was a need to evaluate accountability in relation to the role of the UN and its staff. In the report produced in 2012 it stated that despite commendable efforts by many other elements of the UN apparatus ‘did not adequately invoke principles of human rights that are the foundation of the UN but appeared instead to do what was necessary to avoid confrontation with the government’ (Memorandum from the Panel of Experts to the Secretary-General, 2012). This led to the UN Sec. Gen. establishing an “Internal Review Panel” on UN actions that was eventually submitted in 2012. This report has come to be known as the “Petrie Report”, as it was spearheaded by Charles Petrie, the Head of Panel. What followed from his report was a sobering account of the numerous ways in which the UN failed to meet its obligations in the final stages of the war and early days of resettlement.

Of the various failures identified in the Petrie report, paragraph 54 stands out in paramount significance for the purposes of this study. Accordingly it is worth considering it at length. Regarding access, involvement and freedom of movement, the Petrie Report found that in the immediate aftermath of the war:

The Government asked the UN to help it build and maintain camp infrastructure but it rejected UN appeals for freedom of movement for IDPs in camps and imposed severe restrictions on the UN’s access to the camps



and on communication with IDPs. There was considerable consternation within the UN and wider *humanitarian community* over their involvement in camps under these conditions. The UN had decided to engage in the camps under what it considered to be a *humanitarian imperative* to assist IDPs arriving in a desperate state. Nevertheless, there was a perception among many working-level UN staff and some members of the diplomatic corps that the continuing engagement of UN agencies in the camps for many months after the Government failed to address violations was also influenced by UN agencies' desire to access funds that were available to finance post-conflict assistance. (2012, pp. 20-21, para. 54; emphasis added).

Here, one can see perhaps the most explicit reference made to the notion of a humanitarian imperative informing UN policy and action. The underlying principles of humanitarianism was central to the decisions made on the ground in these contexts (see chapter 2 re: humanitarianism theory). Moreover, one can also observe that the human rights-based obligation to ensure freedom of movement was further abrogated when agencies saw an opportunity to access increased funding not otherwise possible if they had adequately reported abuses by the Sri Lankan government.

Significant for the purposes of this study, the observation made by Petrie in his report is not the only account of UN failure(s) in this regard, as interview data reveals. In every interview carried out amongst civil society leaders and NGO field staff there were claims made amounting to some form of failure assigned to the UN system. One of the in-depth interviews carried out with local civil society leaders, such accusations were both corroborated and also expanded on. Mirak Raheem, at the time of writing, was a free-lance researcher that publishes primarily with the Centre for Policy Alternatives (CPA). Previously, however, he also worked with a local NGO (withheld here per his request), wherein he worked in various transit sites that housed IDPs on their way to Manik Farm, as well as when they left. At one site in particular (also withheld here per his request), Raheem explains that at one point the UNHCR displayed the text of both the Guiding Principles as well as the IASC Framework on Durable Solutions in the form of posters throughout the transit site. Significantly, the NGO community saw this as a considerable achievement as they had lobbied the UN to do this, and because they were displayed in all three languages (English, Tamil and Hindi). The purpose of displaying these normative frameworks was to try and inform those IDPs in transit of the rights they were entitled to – from both the government and the UN. He recounted the chaos

that followed once they were displayed, with the government (here, military forces) demand that they be removed, the UN staff complying, followed by the UN staff reinstalling them after NGO workers argued in their favour. Eventually, within only days of their production, the posters were removed and would not be displayed again.

When asked about what value he saw in the Guiding Principles and the IASC Framework he provided a two-fold response. On the one hand they were valuable insofar as they could be referenced when his organisation lobbied UN agencies, advocating or trying to compel them to enforce the standards contained within. On the other hand, there were useful more generally in understanding what was happening in a wider human rights framework.

Regarding the latter, similar views were expressed in other interviews with NGO field staff. Two interviews with NGO field staff working for local NGOS, one a senior staff member of a predominantly Tamil-based organisation, conveyed experiences of referencing the IASC Framework specifically, whilst participating in meetings with UNHCR and UNDP staff (Anonymous NGO Staff Interviews, nos. 2 and 8, 2014). According to one account, when their organisation attempted to point out that UNHCR provision of services in a transit site (provision of food and water specifically) was assisting the government with forced relocation, a UN representative responded by saying ‘we can only do what we can do’ (Anonymous NGO Staff no. 8, Interview, 2014). Of course, this is necessarily hearsay so does not amount to a credible piece of evidence against the UN. However, it does reveal both the value of the international frameworks and the frustration of (at least some) field staff in how they were applied. Interestingly, both of the views expressed by Raheem (above) concerning the value of the frameworks (intellectual clarity and advocacy directed at the international community) were echoed in other interviews with local civil society leaders and practitioners.

Dr. Paikiasothy Saravanamuttu, who is the Executive Director of CPA, expressed similar views about the value of the Guiding Principles and IASC Framework insofar as they help to define more clearly the contours of assessment of human rights protection. However, he was also quick to note that there is ‘no point in these being aspirational only’; rather, arguing that these frameworks need to be utilised in an operational manner if they are to mean to anything at all (Interview, 2014). He stated in no uncertain terms that ‘the international community has a role to play here in Sri Lanka, but they need to decide how committed they are’.

Significantly, this is precisely what his organisation has attempted to do in specific ways (recall that CPA was the organisation that produced a report in 2001 measuring state policy

against the legal norms set out in the Guiding Principles). Two interviews with members of his staff at CPA, with Bhavani Fonseka as well as with Iromi Perera (both researchers and advocates at CPA), revealed similar findings in relation to international norms in the resettlement process. Separately, they have both employed the normative frameworks provided by the international community in order to both advocate for policy or even adjudicate legal claims in local courts, as well as with the intention that by using such frameworks the international community might become more responsive to alleged abuses on the ground.

These interviews reveal a different sort of understanding about the value of international norms in this context. In contrast to the views expressed by military officials and other government authorities, for civil society these norms took on a different value. In the more abstract sense, they enabled local civil society leaders and practitioners to use the normative frameworks as a frame of reference for understanding failures in assistance and protection. More concretely, these frameworks have provided a foundation upon which local advocacy can be (re)directed towards the international community, with the intention of encouraging compliance amongst UN agencies and other IGOs (see chapter 7 regarding the World Bank on this point), with the norms that these agencies have created in the first place.

Taking a step back from the specific, and often very personal, accounts provided thus far, it is possible to discern some significant trends in the data thus far. First, as argued in chapter 5, it is necessary to disaggregate the notion of the state or “local sphere” when considering such a complex context. Where that was observed in the previous chapter, here it has materialised to some degree. Secondly, and with that in mind, it has become clear that the understanding, perception and operationalisation of global norms surrounding assistance and protection of IDPs during resettlement differs greatly depending the category of actor(s). Thirdly, this difference reveals the varied ways in which international responsibility and/or obligation is understood in this context. Taken all together, the preceding sections of this chapter as well as the proceeding chapters in the case study lead to one of the more significant contributions this thesis seeks to make – an interpretive analysis of the normative contradictions that seem to appear when humanitarian principles are institutionally linked with human rights.

### **6.3 A Humanitarian Double Bind**

Following from the observations presented in the two sections above, it is necessary to contextualise these responses with other interview data gathered from a larger range of

respondents. As it will be introduced and demonstrated (in part) in the following section, an analysis of the responses received reveal an underlying tension between the implicit and operational humanitarian principles that drive and shape IDP assistance and protection and the human rights standards that are explicitly set out in the frameworks developed by the UN, and which are meant to inform international policy in these contexts. Through interrogation of the interview data that was gathered it becomes possible to understand the contradictions apparent between a human rights approach and humanitarian principles as what is being called here a “humanitarian double bind”.

Thus, it is necessary first to make clear what is meant by a “double bind” in general terms. The notion of double bind, here used and applied by analogy, comes from research and theoretical contributions made, initially in the 1950s, in relation to the onset of schizophrenia (Bateson et al, 1956). In short, the notion of a double bind goes beyond simplistic understandings of a “no-win” situation by explaining how a subject that experiences paradoxical demands may experience and understand their obligations in both explicit and implicit ways, such that the subject is not able to garner a more complete understanding of their quandary (ibid). This reference to psychology and psychiatric diagnosis is used here in so far as it provides a conducive framework for understanding the tensions between humanitarian principles and human rights law that have described above.

Throughout interviews with key informants about how the international standards and relevant frameworks (Guiding Principles and IASC Framework for Durable Solutions) were understood and operationalised throughout the resettlement process a dominant theme became apparent. On the one hand, local actors understood their obligation to service vulnerable populations and therefore provide what can be aptly described as humanitarian assistance in relation to 1. Entrenched norms of humanitarianism per se; 2. On the other hand, they (and civil society/local NGO actors) also understood this obligation as being reinforced, or at least informed, by both the Guiding Principles and the IASC Framework for Durable Solutions.

In an interview with the Chairman of one of the biggest humanitarian NGOs in Sri Lanka, he explained their actions, in the first instance, in relation to a humanitarian imperative. In initial conversation he explained that his organization was not unlike others in that they ‘wanted to bring peace and reconciliation... and more trust’ between those displaced and state authorities (Navaratne, Interview, 2014). He stated that his organisation, consistent with the official

mandate, was there to provide humanitarian assistance when and where possible. Accordingly, he made clear that his organisation operated then, and continues to operate, with only rarely qualified deference to the Sri Lankan state on questions of human rights. This approach, at the time, meant that they were given greater access to affected populations. Indeed, he stated that this NGO was in fact working with the Tamil Rehabilitation Organisation (TRO) in Kilinochchi and Mullaitivu during the most dramatic phases of displacement, especially at the end of the war in 2008/2009; and continued working in these areas on resettlement after the TRO was effectively disbanded. The willingness to initially collaborate with the TRO was, in his words, ‘an operational reality.... They were there, we were there’, and both had resources that people needed (ibid). Working with the displaced populations in the North and North East comprised a range of activities including, but not limited to, delivery of foodstuffs and water, construction of (temporary) shelters, and assistance with the provision of personal identity documentation. According to this Director, they were able to effectively employ TRO staff at times in order to make sure that resources were not wasted (ibid), but he also noted that type of overlap was both common and difficult to track given the complexities of assistance programmes at this time. It must be mentioned here, again, that this claim is difficult, if not impossible, to verify. Yet, the verification of this claim does not have any bearing on the value of the responses received throughout the field research for the purpose of this study.

The collaboration between this NGO and the TRO is significant here insofar as it establishes the humanitarian element of their operations and the application of principles of neutrality if that meant greater access. Within an explicit and exclusive humanitarianism lens this approach is not problematic per se, and can in fact be justified when considering their relationship with the Sri Lankan government and military officials. Indeed, their involvement in the field allowed for those being serviced by the TRO, which was and remains in disrepute with the Sri Lankan government and some elements of the international community at large (namely the US State Department) to gain greater access to basic services and provisions. However, questions arise when their actions are measured against the Guiding Principles and the IASC Framework for Durable Solutions.

The Chairman of this NGO was forthcoming in explaining how the international community and the concomitant frameworks they provided helped inform their work. He, as the Director, was very familiar with the Guiding Principles in particular. In the specific context of resettlement, he stated, a number of times, that both the government and the international

community (here the UNHCR) stressed the need to ‘resettle now’ (ibid). The Director had many meetings wherein there were government/military representatives present, as well as representatives from the UNHCR in 2009 when the resettlement efforts were about to take full shape. When questioned further, he stressed that the objective of ‘resettle now’ (ibid) was initially the position of the government, but was reinforced in subsequent meetings with the UNHCR without government officials present. When pressed on how his NGO considered and programmed their decisions, he responded:

You can talk about your values and principles but when [the] need is so urgent you must provide assistance... ethically and morally we are in the field, but the government is most powerful and they said “resettle now”... so we did what we could. (ibid)

This response serves to illustrate the primacy of the humanitarian imperative that drives such organisations. He did go on to say that as an organisation they constantly ‘tried to find their ethical and moral space’ and that the need of individuals on each day surpassed the need to deliberate further. Whilst this is only one account from an NGO Director, it does come to embody the sentiment expressed by other NGO actors interviewed whilst in the field, but with less nuance or complexity in presentation (e.g. Anonymous NGO Staff Interviews nos. 5, 9 and 11). The responses from NGO field staff in other organisations did not include explicit recognition of international principles, but they did include statements that can most accurately be understood as expressions of humanitarian principles. One field staff respondent stated that ‘when people are hungry they should be fed... we could have done more if the SLA (Sri Lankan Army) didn’t run everything’ (Anonymous NGO Staff no. 9, Interview, 2014). Through conversation it was revealed that this statement implied that the government was diverting resources. This claim is neither verifiable nor necessary for the current purposes of this study, however. A colleague of the field staff worker just referenced stated further that, ‘the UN is shit. We did everything... at least we tried’ (Anonymous NGO Staff no. 10, Interview, 2014). These responses are indicative of both the tone and content of conversations carried out with field staff workers that were active throughout the period of resettlement from 2009 to 2013. In these responses, and in the interaction with local staff the sense of UN failure was palpable.

Apart from these interviews, there is also evidence to suggest that the UN did not maintain obligations and responsibilities that it, itself, had sought to develop and disseminate: namely the Guiding Principles and the (quasi) legal protections they portended to offer.

The proposition that the UN and the international community at large failed in their role(s) during the early resettlement of IDPs in Sri Lanka is not a novel or original claim, and it is not the purpose of this evaluation to measure performance of UN bodies. Rather, the purpose is to understand how the principles set down and subsequently disseminated by the international community were understood in the local sphere. Taking all above in this chapter in context it becomes clear that the Principles/Frameworks were perceived in a dialogical fashion – on the one hand empowering certain local groups (and also the UNHCR) to provide humanitarian driven assistance to those displaced; whilst also, at the same time, furthering a human rights framework for policy and action that would prove incompatible with the humanitarian imperative that underlies policy and policy programming. Recall from chapter 4 the argument that the normative frameworks developed by the international community have both implied and, at times, express humanitarian fundamentals at their core. Indeed, with regard to the Guiding Principles specifically, the then Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mr. Jan Egeland, wrote in a foreword to the section edition of the their publication that ‘[r]esponding to the protection and assistance needs of the internally displaced is therefore one of the key challenges of the humanitarian community today’ and moreover that the Guiding Principles were ‘are a critical tool in this regard, providing an advocacy and monitoring framework for the assistance and protection needs of the internally displaced’ (2004, pp.3-4). This explicit link of humanitarianism, in even the most general sense, to the Principles is significant when one considers them along side human rights norms.

Here is where the institutionalised contradiction between humanitarian principles and human rights obligations will take full form. Thus far (above) in this section, the policy and provision decisions made in the context of resettlement have been placed in the context of a humanitarian imperative, at the most extreme, and within humanitarian principles at the least.

This approach to protection and assistance is not inherently problematic. Indeed, the well documented vulnerabilities and needs of those in situations of displacement (described in chapter 1) most certainly warrant a humanitarian solution. However, this thesis seeks to advance the argument that what becomes difficult to reconcile is when humanitarian

principles are institutionally embedded in a human rights framework – or vice versa, which human rights norms become situated within a humanitarian context. Field research in this area revealed the creation of the Guiding Principles as well as the IASC Framework for Durable Solutions as leading examples of this tension. Recall from the example above wherein a field staff worker named Raheem described a situation wherein the UN agreed to comply with the government's request that translated posted of the Guiding Principles and the IASC Framework be taken down. As he and other NGO workers pointed out, this was only a symptom of the problems they encountered with the UN, not the problem itself. Throughout the course of the interviews, the leading claims of transgressions attributed to the UN are thus (with particular reference to the general Principles as well as those related to protections throughout displacement and resettlement):



## Specific Claims Made Against the UN in Interviews

Principles	Norm	Claimed Transgression
Principle 4, para. 1	These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.	Ongoing discrimination against protracted or ‘old’ IDPs; in particular muslim IDPs in Puttalam.
Principle 14, paras. 1 & 2	<p>1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.</p> <p>2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.</p>	Provision of assistance to camps wherein IDPs were essentially imprisoned
Principles 21, para. 3 (similar to Principle 29, para. 2 on restoration of property)	Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.	UN complicit via participation in resettlement programmes led by the state wherein this property was destroyed and/or illegally appropriated (to this day).

Source: Interviews conducted during field research (various, 2014)

Significant for the purposes of this study, the claims made here against the UN are not intended to be a measure of UN performance in relation to the Principles (this can be found throughout the Petrie Report). Rather, these claims stand out because according to the Raheem and additional field staff interviews, local service providers attempted to lobby the

UN on these specific grounds, arguing that by acting in concert and deference to the state, the UN was complicit in the violation of these human rights standards (see legal annotations for a thorough account of specific legal mechanisms related to each principle listed above). To a large extent, that this was even possible points to initial success in the UN's attempt to disseminate the Principles as much as possible. However, this success empowered local groups to a point where the very standards the UN helped create and broadcast that they were now being reflected back at the UN – with local actors arguing that the UN was violating the very standards they are responsible for.

In further discussion with Raheem I asked him what they would have preferred the UN do. He acknowledged that withholding goods such as water, foodstuffs or sanitation services (constructions of toilets, etc.) that the situation could have gotten worse for those IDPs being assisted, but that it made 'no sense' for the UN to 'talking about human rights' whilst 'helping the government' that was so obviously violating them.

Herein lies the crux of this tension between humanitarian principles and human rights standards; and, as I argue, the culmination of a double bind. On the one hand, servicing ones humanitarian obligations or moral duty to help those in need, there is a risk that this activity violates obligations set out by human rights law. On the other hand, if the maintenance of human rights standards entails not acting in concert/deference with a government that is violating international human rights law, access can be restricted and therefore one's humanitarian obligations are not met. Simply, servicing one obligation means necessarily violating another. Moreover, this moral dilemma is compounded by the fact that the subject(s) (here, service providers of protection and assistance) are faced with far from perfect information regarding the consequences of their decisions, and therefore are not able to gain more knowledge about their dilemma. Thus, one can see the contours of a humanitarian double bind that comes to characterise IDP assistance and protection under the normative frameworks developed by the UN. Carrying the analogy forward, in psychiatry, a double bind can lead to a schizophrenic break in patients. In the case of humanitarian assistance and protection, we can see the fragmenting of policy directed by inconsistent and shifting directives and a general state of confusion and incoherence that manifests in the field.

In many ways this can be understood as an extension of the arguments made at the end of chapter of 5 – the internationalisation of failure. However, where in chapter 5 this analysis revealed a new way to understand state failures in relation to domestic populations, here it

becomes possible to see how the creation of the international normative frameworks related to internal displacement also changes the way in which the performance of the international community is understood in this context. One would be hard pressed to find any respondent that said simply, yes the UN did the job it was supposed to do and did so in the manner that it was expected; indeed, none of the respondents consulted throughout the entirety of field research had such a benevolent view of the UN, and neither do any of the reports produced by the UN about their performance. On this, there seems to be virtual consensus. However, the disagreement seems to come in when the many different narratives of UN failure are expressed. Some say they did not fulfill their humanitarian duty in assisting and protection enough people or sufficiently. Others argue that they did not maintain human rights standards by supporting a government that was clearly violating them. Still yet, officials from the state have argued that the international community failed in the way that it did not defer to state enough and that the assistance and protection policies did not sufficiently respect Sri Lankan sovereignty. How one understands ‘failure’ in this respect, then, depends on perspective. The notion of a humanitarian double bind is helpful because it illustrates the competing obligations that the international community faces in these situations and the impossibility of servicing all duties simultaneously.

#### **6.4 Conclusion: Responsibility and Duty Reconsidered**

It is important to recognise both the benefits but also limitation of this argument. On the one hand the findings presented in this chapter represent more coherent accounts of normative tensions or inconsistencies that manifest in the field. Moreover, this analysis is significant because of the institutional nature of the Guiding Principles and the IASC Framework. Normative tensions can exist in any of number of contexts, however, in this instance it is possible to see that these tensions were inscribed into institutional mandate(s). Whereas these same tensions most certainly would have existed before, as both humanitarianism and human rights law have been around for far longer the Guiding Principles, the normative frameworks developed by the international community in order to try and fill the gaps of IDP assistance and protection have entrenched these tensions more formally. This, accordingly, can be a helpful approach to understanding the dilemmas in the field. This argument does not, however, imply that either humanitarian principles or human rights standards are in themselves deficient in some manner or that the pursuit of either of them is necessarily problematic. Rather, by identifying the humanitarian double bind in this way, it helps one to

understand the issues that arise when they are combined and institutionalised as they have been here.

That such an argument can be made at all is, in fact, the result of at least some relative success in the UN's approach to IDP assistance and protection. Upon completion of the Guiding Principles the first challenge was going to be dissemination – making people aware of this new framework so that it could begin to have an impact. In the case of Sri Lanka, one can see that the knowledge of the frameworks was relatively widespread (with the notable exception of the military leaders interviewed for this thesis). This success in dissemination, however, would have a reflexive impact on the UN wherein local NGOs began using the Guiding Principles in order to advocate for a more human rights based approach to UNHCR activities in particular. This is an interesting dilemma for the international community, and one that would be a fruitful topic for future research (as attempts to secure interviews with UNHCR officials was interrupted by the OISL and therefore not possible).

At this point it is also worthwhile to consider how these findings relate to the theoretical framework set out in the first half of this thesis – namely in how IDP assistance and protection relates to the Responsibility to Protect Doctrine as well as Institutional Cosmopolitan Theory. The third theoretical dimension of this thesis – humanitarianism – can be seen in the arguments made directly above in relation to the humanitarian double bind (and will be expanded on in the Conclusion chapter). Having developed the notion of a humanitarian double bind already, it becomes possible to draw insights about what this means for responsibility more broadly. As argued in chapter 3, the development of the R2P doctrine was initially intimately connected to the emergence of internal displacement in the international security agenda of the 1990s. R2P, as it is now currently envisaged, however, has become much more about military intervention with a checkered history when it has been invoked (see chapter 3). However, throughout the course of fieldwork, it has been possible to see a new understanding of international responsibility in relation to the Guiding Principles and the IASC Framework. Similar to the data trends that illuminated the tensions between humanitarian principles and human rights standards, it is also possible to see that local civil society leaders now increasingly use the normative frameworks on IDPs as reference points when explicating for international responsibility for humanitarian action when the state is failing to effectively protect its population. This has been evident in the CPA reports analysed in chapter 5, in interviews with civil society leaders – Saravanamuttu, Navaratne, Hashim, Dr. Jayatilaka, etc. – as well as in interviews conducted with more junior-level NGO field staff

that worked throughout displacement and resettlement periods. That the UN can be described as having failed in their protection efforts indicates that many in the local sphere increasingly see the UN as responsible for providing this good. This is consistent with fundamental principles of the R2P, as well as the international community's acceptance of the Guiding Principles, despite the repeated qualifications of responsibility made in the Guiding Principles wherein it is often stated that 'primary' responsibility rests with national authorities. Whilst not explicit, it now seems apparent that there is at least an operational understanding of "secondary" or "proximate" authority resting with the international community. This observation is important to keep in mind when considering the principle finding of this chapter, the presence of a humanitarian double bind.

Moreover, and in specific relation to the duty of the international community as understood under the auspices of Institutional Cosmopolitanism, it is possible to see how this has begun to manifest in relation to IDP assistance and protection. To be clear, and recalling the theoretical analysis in chapter 3, for the normative frameworks in question to qualify as Institutional Cosmopolitanism, there must be some recognition of (international) institutional responsibility and/or obligation in addressing the plights of individuals in need. By relying on a combination of data from the Petrie Report to interview responses, it is plausible to claim that the international community is responsible for ineffective responses, if not for the actual conditions that led to displacement in the first case. These implications for theory will be expanded upon and brought to the fore in the conclusion to this thesis. The greater point to be taken from this chapter is most aptly captured in the idea of an humanitarian double bind. Those agencies, organisations, and individuals that are operating in a theatre of assistance and protection of IDPs, are faced with a seemingly impossible contradiction between moral imperatives in line with humanitarianism and the human rights standards that are, or have been, articulated in relevant frameworks for policy in this field. Moreover, the inability of these actors to gain more information about the potential consequences of their actions makes this problematic more than just a moral dilemma – hence, the notion of a double bind that has been applied here.

Before that analysis is possible, however, it is necessary to complete the case study component of this thesis with a final chapter that focuses on more contemporary issues related to internal displacement.

## **Chapter 7: Current Context**

In this final case study chapter of this thesis it is necessary to bring this analysis as close to the present as possible at the time of writing. In general this chapter will pick up where the previous one left off, considering resettlement from 2013 to present. However, given the nature of displacement that will be evaluated in this chapter it will be necessary to consider many factors that came before 2013 – as will be clarified below. Attempting to complete an analysis of this kind is no simple task – as the complexities of internal displacement in Sri Lanka have not diminished, even after the large scale resettlement between 2009-2013. Instead, it is incumbent that additional, in some ways more contemporary, dimensions of internal displacement be examined in order to approach a comprehensive account of this case study. This will require aspects of displacement that have origins in earlier periods, but are of paramount significance today.

First, it is simple to see that resettlement programmes would be continued from 2013 to present, in many ways similar to the analysis presented in the previous chapter. Second, it is during this contemporary period that one begins to see clearly the presence of protracted displacement; therefore, it will be necessary to examine this phenomenon more closely. Moreover, it is important to understand the different types of protracted IDPs in Sri Lanka and also the locally derived typologies of ‘old’ IDPs versus the ‘new’. As a protracted IDP can be understood to be an individual that has lived in displacement for five years or more, examining this phenomenon will require that the time scale reaching further back than 2013.<sup>29</sup> The same must be done for the third theme of this chapter – development induced displacement – as some of the domestic mechanisms intended to address this were created in the early 2000s. Despite the need to reach further back in time, both protracted IDPs and development induced displacement have been placed in this time period because they reflect core aspects of the current internal displacement context in Sri Lanka. Finally, this chapter will return to the very beginning of this thesis and re-examine the role of the notion of an IDP more fundamentally, and in light of all the complexities that have been considered in this chapter.

### **7.1 Continued Resettlement**

Understanding the current context from 2013 to present requires consideration of a number of elements. Indeed, to understand the continued resettlement from 2013 onward it is first

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<sup>29</sup> A more thorough account of defining a protracted IDP is examined in section 7.2 below.

necessary to understand the broader political landscape of the country at this time. By doing do, this will help one to understand the fundamental aspects that have come to characterise this time period. This section, like those that will follow, will be based on a series of reports written about internal displacement during this period, as well as observations and interviews obtained throughout field research. Of course, the purpose here remains: understand how the global norms surrounding internal displacement have both affected the local sphere, and also how they have been perceived and understood by local actors. Accordingly, this section is divided into two subsections: figures and trends, as well as relevant policies.

The first step to contextualising this period is to develop an account of the figures and trends of internal displacement throughout this period. According to the IDMC, as of July 2015 there were still at least 73,000 IDPs in Sri Lanka (IDMC, 2015b), large proportions of which have been residing in the Northern and Eastern provinces. Moreover, there were also more than 7,000 IDPs still living in camps during at this time primarily in Jaffna (Northern Province) and Trincomalee (Eastern Province) (ibid). For those IDPs that were still living in camps, it has been explained by the fact that the government was occupying their land in one manner or another (this will be explored further in the next section on Protracted Displacement) (Oakland Institute, 2015; Amirthalingam, Interview, 2014). During the two years that comprise this period resettlement efforts have continued, alongside livelihood programmes initiated by both (I)NGOs and local government authorities, primarily consisting of programmes led and facilitated by the Sri Lankan Army. According to the IDMC, by 2013 more than 480,000 IDPs ‘had registered as having returned to their areas of origin in Northern and Eastern provinces since April 2009’, but that tens of thousands were resettled without adequate shelter, water, sanitation and other infrastructure in place’, leading to a situation wherein ‘their fate remains a cause for concern’ (2014, p. 6).

This finding was substantiated by observations obtained during field research, particularly in Mullaitivu, Kilinochchi, and Trincomalee. In Mullaitivu, in particular, the conditions of those resettled were striking. According to an Army officer who was assigned to give me a tour of the town, before 2010, the entire town was essentially empty (as this was the sight of the last battle in the civil war) and that no civilians lived there until the Army began their resettlement efforts (Anonymous Military Officer no.2, Interview & site visit, 2014). The town now appears to have two faces. In certain areas one can see rows of houses built by the international community, identified clearly by the organisational branding painted on the rooftops of these homes. See image 1, below:

Image 1: Red Cross Home



(Representative photo of INGO homes built in the town)

These homes, which provide adequate housing in line the Durable Solutions Framework, sit along side many others that can only accurately be described as dilapidated – many still writtled with bullet holes. See image 2, below:



Image 2: Dilapidated Home



(Another inhabited home on the same street as the one pictured above)

Whilst this is only evidence from one town, it serves to triangulate the findings published by the IDMC, to some degree.

As explained in chapter 1, figures in this field are hard to come by and often not reliable as hard fact. This must be kept in mind when considering the most current data available concerning the (at time of writing) present statistics about IDPs in Sri Lanka. According to the IDMC, there were still 73,700 IDPs in the country as of July 2015. This data is contested, however, by the Sri Lankan government in at least two ways. First, in the interview with Ministry of Resettlement Secretary Sugathadasa, he indicated that according to government estimates the figure is closer to 30,000. In even greater stark contrast, according to interviews with Security Force Commanders Dias and Ranasinghe, after 2013 resettlement was finished (Interviews, 2014). When asked about the discrepancy between figures one potential explanation offered by an Army Officer was that they are continuing to help those who have only recently decided to return and that anyone still living in camps, are ‘living there because they want to’ and that these figures are exaggerated by international community as a result of ‘Tamil propaganda’ (Anonymous Military Officer no. 4, Interview, 2014). One of the NGO

field staff interviewees shared their experience of this being a common argument made against the Tamil population. He went so far as to say that the conditions in the Sri Lanka should not be understood as post-conflict, but post-war only (Anonymous NGO Staff no. 4, Interview, 2014). The contested nature of figures about IDPs may not be immediately relevant for the core research aims of this thesis, however, they are necessary to include here in order to provide a more comprehensive account of internal displacement in Sri Lanka, in line with case study research methods.

Part of understanding the context of this contemporary period also comprises the evaluation of ongoing Sri Lankan responses to internal displacement throughout this time. In addition to the national instruments examined in chapter 6, it is necessary to consider also two government led initiatives that can be placed in this context: the National Action Plan for the Protection and Promotion of Human Rights: 2011-2016 (NAP) and the Draft Resettlement Policy (DRP) set out in July of 2013. NAP was developed by the Sri Lankan government in order to ‘take stock’ of the human rights in the country and also in accordance with the Vienna Declaration and Programme of Action that was adopted in 1993 at the World Conference on Human Rights in Vienna, Austria. Following this call, against the backdrop of a civil war that was about to end, and during the Universal Periodic Review in May of 2008, the government pledged to develop such a framework in order to improve the human rights conditions throughout the country. It must be noted that whilst this NAP was developed from 2008-2011, it is included in this section because it more accurately speaks to the current context of Sri Lanka than the immediate postwar years, as most of the timeline for implementation is scheduled after 2012/2013. Significantly, the NAP devoted an entire section to the Rights of IDPs (pp. 119-130). One of the most important activities included in their proposed actions was the plan to:

Adopt a broad National Policy on Displacement which takes into account all forms of displacement (conflict, natural disasters, economic development, etc.) drawing from the Guiding Principles on Internal Displacement Framework with specific attention to vulnerable groups. (NAP, 2011, p. 122)

This is the only explicit reference made in relation to the Guiding Principles, however, other significant similarities can be found as well. In the first instance, there is particular attention paid to the acute needs of more vulnerable populations such as women and children; this is

consistent with the emphasis found throughout the Guiding Principles. Moreover, many of the issues raised in the text also reflect the standards set out in the international frameworks (including the significance of documentation, housing, sanitation, and inclusion of IDPs in the process). The inclusion of the Guiding Principles in this context may signal a type of semantic convergence between global norms and local policy, but this does not say much, if anything at all, about the actual policies that would eventually be implemented (see chapter 4). Additionally, the fact that a draft policy devoted to IDPs was conceived is also consistent with the policy guidance offered by the international community (again, see chapter 4). It is worth noting that the national instrument that was eventually proposed is explicitly devoted to resettlement, and not internal displacement more generally.

According to the NAP the timeframe for a national policy was six months. It was not until June/July of 2013 that the Ministry of Resettlement published A Framework for Resettlement Policy, or what is being referred to here as the DRP.<sup>30</sup> There are a number of similarities that can be identified between the DRP and the Guiding Principles. For instance, these similarities are reflected in language that identifies acute vulnerabilities of certain groups (namely, women and children) which is consistent with the Principles as well as particular attention paid to documentation, non-discrimination, and participation and/or consultation throughout the resettlement process (see content analysis of the Principles in chapter 4). Perhaps most significantly, albeit general, the draft policy is framed explicitly in terms of rights – reflecting the overarching rights-based approach that the Guiding Principles have come to exemplify. Like the NAP, however, these similarities, or what has been called here semantic convergence, do not in reality or fact imply proper normative convergence. On this point, it is worth considering an IDMC analysis of the document at length:

The draft policy contains some verbatim and paraphrased text from the Guiding Principles, but while the attempt to incorporate them is laudable, the sections in question are too general. The specifics of implementing the Policy in the Sri Lankan context need to be spelled out, including reference to the institutions and organisations responsible for doing so. (IDMC, 2014, pp. 11-12)

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<sup>30</sup> Note: the IDMC lists the DRP as being published in July, whilst the document made available by the Sri Lankan government was published in June of that year.

In this context it is important to highlight a couple of things. On one hand, the fact that the norms set out in the Guiding Principles are reflected, even if only semantically, in national frameworks such as the DRP may indicate an enduring impact that the international community has had on the state. This observation, however, is only valuable insofar as we understand the language and discourse of the state; and does not account for the performance of the state against these norms (which have elsewhere been described as lacking and failing in many respects (recall chapter 4 regarding the international impact evaluations of Sri Lankan policy)). On the other hand, the fact that explicit reference to the Guiding Principles is absent in this national framework further reflects the increasingly nationalistic approach to assistance and protection. Recalling similar observations made in chapter 5 regarding national instruments concerning the assistance and protection of IDPs during wartime, one can see that this is a continuing trend – that national actors have increasingly reframed IDP policy in relation to national authority, subordinating the role of the international community at large. These observations will be explored throughout the remaining sections of this chapter, triangulated with interview and observational data.

## **7.2 Protracted Displacement**

Having examined the trends and figures of internal displacement in Sri Lanka as well as the national initiatives relevant for this time period, it is important to analyse more closely the dimensions of internal displacement that have come to characterise this period. One of the major themes that has characterised the current context of Sri Lanka is protracted displacement. Therefore, it is necessary here to begin with an evaluation of what a protracted IDP actually is; in the first instance considered in relation to the international community specifically (local conceptions will be turned to below as well). Following from this analysis it is necessary to evaluate the phenomenon of protracted displacement in the Sri Lankan context generally. Third, when these instances of protracted displacement are examined further it becomes apparent that there is an observable trend of discrimination based on the time scale of protraction. Fourth, the issue of land and military occupation will be important to analyse. This section will conclude by introducing a sub-case study of protracted displacement by analysing IDPs from Sampur (a region in the Eastern province).

Like so much of the content and phenomena relevant for this study, the definition of a protracted IDP has origins in both IGOs and global civil society. In documentation made available by the Brookings Institution, following an ‘Expert Seminar on Protracted IDP Situations’, it is explained that the origins of a definition for a protracted IDP came from prior

UNHCR articulations of the concept in relation to protracted refugees. This explication states that protracted displacement could be understood to be ‘those populations of 25,000 persons or more who have been displaced within their own countries for five or more years’ (Brookings-Bern, 2007, p. 2). However, the Expert Seminar concluded that this definition was too narrow for two reasons: 1.) because the figure of 25,000 was too arbitrary, and 2.) because the time frame ought to be more flexible (ibid). Accordingly, the definition refined:

... participants agreed that protracted IDP situations are those in which: the process for finding durable solutions is stalled, and/or IDPs are marginalized as a consequence of violations or a lack of protection of human rights, including economic, social and cultural rights. (ibid)

Significantly, the notion of durable solutions referred to in the first point of the definition was based on the IASC Framework yet to be published officially. This definition has henceforth become the referent point for international actors working in this arena (see for example IDMC, 2011). This Brookings report highlights a very significant point when it recognised that situations of protracted displaced are highly politicised because ‘in some instances a government may highlight the presence of IDPs to press for funding or political advantage, while in others it may deny their existence to minimise attention domestically and internationally’ (ibid). This observation is important to keep in mind when considering the interview data presented below. Moreover, this report emphasised the relevance of the Guiding Principles in this context – namely Principles 6 and 28,<sup>31</sup> ‘Together, Principles 6 and 28 suggest that States should begin to lay the groundwork for durable solutions as soon as possible once displacement has occurred (p. 3)’. It is, therefore, simple to see the relevance of global norms as they apply to situations of protracted displacement.

Following from this observation it is necessary to consider, briefly, how the notion of protracted (internal) displacement can be understood in the Sri Lankan case. From the outset, recalling that the civil war ended in 2009, it may, in fact, be possible to label virtually all IDPs in Sri Lanka during this time as protracted. The only IDPs in the country during that time that do not fit this definition would be the product of displacements that occurred after the war ended; more specifically those displaced by more recent natural disasters and development-induced IDPs (which will be explored in the following section). A 2013 study

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<sup>31</sup> Principle 6, para. 3: Displacement shall last no longer than required by the circumstances; and Principle 28 which clarifies the basic (primarily national) responsibility to facilitate resettlement in accordance with human rights standards.

conducted by Mirak Raheem (also an interviewee for this study) on behalf of CPA entitled ‘Protracted Displacement, Urgent Solutions: Prospects for Durable Solutions for Protracted IDPs in Sri Lanka’ is significant for a number of reasons. In keeping with the overall purpose of this study and its interpretive lens, both the content and context of this research is important to consider. Regarding the latter, given Mr. Raheem’s research and prominent role in Sri Lankan civil society, I attempted (unsuccessfully) to schedule an interview with him a number of times. When inquiring about views and research related to protracted displacement from a number of contacts I was often referred to Mr. Raheem’s research and this report in particular.<sup>32</sup> It was only after being introduced to him by an NGO informant that I was successful in talking with him. Even then, from the NGO informant that arranged the interview, I was told to be careful because Mr. Raheem is very cautious with the people he engages with because he was in a precarious position with the government given his work. This was eventually discussed with Mr. Raheem, but only in an ancillary manner. Before expanding on this context and his interview responses, however, it is worthwhile to consider some of the research he has conducted.

In the study referenced above Mr. Raheem attempted to set out an objective evaluation of protracted IDPs in Sri Lanka, considering both the international community’s role as well as the efforts the government has made, the failures that are evident, with policy recommendations in response. Very significantly, all of this was conducted through a framework comprised of global norms, with the Guiding Principles and IASC Framework as primary reference points. Indeed, the entire report is framed thus:

It maps key concerns and issues faced by these protracted IDPs and assesses measures taken to address them in the light of international standards especially the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons and the UN Guiding Principles on Internal Displacement. (2013, p. 12)

Recall, from above, that there was an increasing trend for national authorities and concomitant documents that reflected a move away from international normative frameworks in favour of nationalistic expressions. Instead, here, one can see how civil society leaders

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<sup>32</sup> Many of these recommendations do fit the remit of interview data given the nature of conversations just mentioned, but they do serve as observations obtained whilst in the field when considering the overall discursive environment experienced as a researcher.

continued to use the Guiding Principles and IASC Framework; and, as a result, were either marginalised or made to feel more cautious in their engagements as a result.

Turning to the content of his report, Mr. Raheem explains that the word “protracted” is rarely used in Sri Lanka when describing IDPs. Rather, IDPs are typically understood to be either “old” or “new”. In his words: ‘Any discussion on protracted displacement in Sri Lanka must account for the dynamics underlying this categorisation into ‘Old’ and ‘New IDPs’ because it has had significant implications in terms of policy objectives and actual outcomes for IDPs’ (2013, p. 20). Raheem explains the difference between the two groups thus:

The term ‘Old IDPs’ has been in use at least since the recommencement of large-scale hostilities in 2006-7, when it referred to those displaced before the 2002 Ceasefire Agreement. In 2008, a re-classification took place where the majority of persons displaced prior to April 2008 were categorised as ‘Old IDPs’ and those displaced in the Vanni post-April 2008 and those held in closed ‘welfare centres’ or camps by the Government were identified as ‘New IDPs’. (p. 21)

This distinction is significant insofar as it demonstrates some congruence between an old IDP and one that is protracted; however, it fixes this label in time. In other words, regardless of how much time has passed since the end of the war, those displaced in the final stages (2009) continue to be considered as new IDPs. These points of definition and classification are important for the purposes of this study, because both desk and field research have revealed a common trend of discrimination against the old or protracted IDPs; which, recalling chapter 4, is inconsistent with the Guiding Principles.

To be clear, the observation of discrimination against old IDPs in Sri Lanka is nothing new. Indeed, Mr. Raheem’s report on protracted displacement documents this well, as does a number of publications produced by global civil society actors such as the Oakland Institute in ‘The Long Shadow of War: The Struggle for Justice in Postwar Sri Lanka’ (2015), for example. However, in keeping with the purpose of this thesis, the primary consideration is to understand how global norms (via the Guiding Principles) have affected the local sphere, at this point considering the current context. Therefore, it is important to keep in mind the non-discrimination aspects of the Principles. Mr. Raheem’s report was very critical of the government as it relates to discrimination, but this view was limited to only local actors. In an interview with him, Mr. Raheem was cautious in his articulation but did make it very clear

that in his view the international actors (namely, the UNHCR) were also guilty of not paying sufficient attention to old IDPs. When asked why this might be the case, he indicated that IGOs became increasingly subordinate to the state in the final stages of the war, and that this diminished posture has been maintained in some forms. This is consistent with other observations obtained indicating that the international community was increasingly deferential to the state. Thus, it may be possible to understand what I am calling discrimination-via-deference: a situation wherein the international community, by acting in line with state authorities that are discriminating against certain portions of the population, become complicit in said discrimination. This idea will be explored further in the conclusion of this thesis.

For certain respondents, the consideration of the global norms pertaining to protracted displacement was rendered moot from the outset. This is particularly true for the military actors interviewed: SFCs Dias and Ranasinghe, as well as the four other (anonymous) Military Officers who presented on the Army's efforts in Mullaitivu, and the one officer that provided a guided tour of Mullaitivu. Recall from chapter 5 that there was little to no recognition that the Principles even existed at all. The most direct answer that I received about protracted displacement from the Army came from an Officer who gave me the tour of Mullaitivu when he said, 'look, if people want to come back, there are homes waiting' (Anonymous Military Officer no. 3, 2014). He was referring, specifically, to the model village called Keppapulavu. The Keppapulavu Model Village, it must be noted, is placed within the Army's territory, located only a minutes walk from the entrance to the Army camp itself. In the portion of the tour I was given, this model village appeared to be virtually empty, short of the one team of men working on one of the houses, and a functioning school for residents in the area. See images 3-6 below:



Image 3: Entrance to Keppapulavu



(Photo of the entrance to the Keppapulavu Model Village, taken minutes away from the armed gates of the Army Camp)

Image 4: Construction workers in Keppapulavu Village



(Photo of the only construction team working during the tour I was given)



Image 5: School Children in Keppapulavu



(The only functioning school in the region, in the Model Village)

Images 6: Empty Homes



(A representative photo of all residential streets in the Model Village)



The explanation I received about the lack of residents was that this was evidence of resettlement being finished, and that if people were displaced they could be moved here.

However, if this Army village can be understood to be one of the few options available for protracted IDPs from Mullaitivu – and indeed this can be inferred as it is held up as a ‘model’ village for other districts to replicate – then one begins to understand the criticism levied by people like Mr. Raheem who argue that protracted IDPs are faced with complex, often unsatisfactory, choices in resettlement. In the first instance, it is clear that IDPs were not afforded the participatory role that is stressed in the Guiding Principles. This was explained quite directly by the Army who stated that resettlement must only be conducted in certain areas because there remain significant portions of Mullaitivu not cleared by land mines. Indeed, part of the presentation that I was given and subsequent discussions with the four Senior Officers who presented, they showed me detailed maps of Mullaitivu where they still have not cleared the land mines. Requests to reproduce these maps were rejected, with the Army citing the ‘obvious’ security risk of making such maps public. That said, site visits appeared to confirm the prevalence of land mines in this region; see image 6 below:

Image 6: Land Mine Warnings



(Representative photo of land mine warnings lining the road into Mullaitivu)

However, when this information was presented to both Mr. Raheem as well as one local NGO worker active during both the war and resettlement, they both had very similar responses; exemplified best by the following response: ‘Of course, there are land mines’ (Anonymous NGO staff no.12, Interview, 2014), because the Army has no incentive to actually clear the landmines. According to both of them, the Army benefits from maintaining zones that have not been cleared because this allows them to control where people resettle. These observations cannot be verified, however, and are not necessary in the context of this thesis. The overarching point, at least as it relates to Mullaitivu specifically, is that the Guiding Principles and otherwise international standards are not in play here. Rather, a militarised security-based approach guides policy. This is consistent with the findings of both chapters 5 and 6, wherein the military explicitly expressed an aversion to the global norms, stating rather that security needs on the ground remain the most important driving force, and that according to this need they have acted accordingly – regardless of global norms in this arena.

In addition to discrimination, protracted IDPs face additional challenges in the form of available land. The example provided immediately above about Mullaitivu can be understood as emblematic of the problems and challenges facing old IDPs throughout the country. In a 2015 report on resettlement challenges the Oakland Institute outlined a series of issues that IDPs face in relation to land. Put simply, the report produced a compelling account of ‘the history and evidence of on-going land grabs, forced displacement, and continued economic, social, and political marginalization of the Tamil population in a nation built around the Sinhalese identity’ (2015, p. 6). It bears significance that as an independent research think tank writing about such issues in 2015, there was not one reference to the Guiding Principles – perhaps pointing to the increasingly limited application of this framework for global civil society actors outside of the IDP policy regime (Cf. the Brookings Institution, for example, which helped to create the Guiding Principles, and continues to reference them in most of their studies on this subject).

Continuing with the theme of both discrimination and land issues in the context of protracted, or old, IDPs, it is worthwhile here to introduce a sub-case study of Sampur that will be explored in the next section of this chapter. Sampur is a town located in the Trincomalee district (part of the Eastern province), with complex and long-lasting history of internal displacement. The decision to focus on Sampur as a sub-case study was made for two reasons: 1. The residents of Sampur have experienced different waves/causes of displacement, beginning in the mid-2000s in relation to the conflict; and 2. Because

throughout my field research in the North East I was able to focus on this region in particular as it relates to protracted displacement that is still on-going.

### **7.3 Causes and Drivers of Displacement: Development Induced Displacement**

What makes Sampur particularly relevant are the different causes and/or drivers of displacement that can be observed in this town. As explained above, a great deal of hostilities in the final stages of the war took place in the North and North East (Mullaitivu in particular). Whilst Sampur is further South, it still stands out as one of the communities most affected in the final years of the war. In 2006 the Sri Lankan armed forces captured Sampur from the control of the LTTE. This resulted in thousands being internally displaced – caused by actions from both the government and the LTTE. When this occurred, the area (including Sampur town) was labelled a High Security Zone (HSZ) in September of 2006.<sup>33</sup> This, however, was done against the backdrop of other development plans set out for this area. In 2005 the National Thermal Power Corporation, an Indian energy company, announced that they were going to submit plans to the Sri Lankan Government to set up a coal power station to be based in Trincomalee. As these plans progressed between the Sri Lankan Government and the National Thermal Power Corporation, the residents of Sampur remained displaced and were not allowed to return to their homes because of the HSZ designation. In 2011, the Sri Lankan Ministry of Power and Energy affirmed a modified plan for the power plant in 2012. Accordingly, the HSZ designation covering Sampur was replaced ‘[i]n May 2012, (when) the Government gazetted the area as a “Special Zone for Heavy Industries (SZHI)”...’ (Raheem, 2013, p. 32). Under the new Special Zone for Heavy Industries, the residents of Sampur remained displaced and their requests for return were rejected. Indeed, to this day, more than 3,000 people from Trincomalee, largely from Sampur, remain displaced with their requests for return continually rejected by the government (IDMC, 2014).

IDPs from Sampur are currently residing in both camps as well as within host communities. What makes this case interesting is the complexity it reveals about the causes and drivers of displacement. For the purposes of this study, causes are understood to be the initial reason that people became internally displaced; whereas, drivers can be understood to be the secondary or proximate grounds that explain why displacement persists. In the case of

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<sup>33</sup> Note, a different account, from a local media source, of displacement in Sampur in 2006 states that the area was designated a Special Economic Zone (SEZ) at this time (Nathaniel, 2015). Given the more robust empirical nature of the study cited above, this is the account that has been relied on for this thesis. Yet, the confusion or competing narratives of this distinction serves to illustrate the complexities of displacement labels, which is valuable for the current analysis.

Sampur the cause can be understood to be the civil war – i.e. conflict affected displacement; however, with the establishment of the SZHI Sampur residents remain displaced because of development concerns – i.e. development-induced displacement. Thus, this example illustrates a complex nexus that emerge between the causes and drivers of displacement. Whilst the IDPs from Sampur may have been conflict affected IDPs in 2006, today they can most accurately be described as development-induced IDPs. Recalling the debates about an IDP definition set out in chapter 1, the causes and drivers in this instance should not matter – as both conflict-affected and development-induced instances of displacement were included in the UN definition. Bearing this in mind, the security-based arguments for protracted displacement seem to fall apart, as even the government felt comfortable enough to remove the label of HSZ, indicating that a security threat was no longer present. Indeed, a development project of this scale and magnitude would not be initiated in an area where there was a persisting security threat. However, the removal of the HSZ label can only accurately be understood in relation to the replacement with the SZHI designation.

The detail provided above, albeit brief, is necessary for understanding the context of this region, but this narrative alone does not fulfil the aim of this thesis. In order to accomplish this, it is important to consider how the global normative frameworks surrounding internal displacement can be understood in relation to this example. In an interview with a senior staff member of a very small NGO based exclusively in Trincomalee, some observations were made about the role of the international community more generally. It is necessary to note here that both the name and institutional affiliation of this respondent have been withheld per their request; the institutional affiliation was also not included in the methodology chapter as this may have led to identification given the limited number of civil society actors working in this area. When asked about the role of the international community, they explained that immediately following the end of the war the number of organisations providing assistance to Sampur IDPs dropped drastically – both locally and internationally (Anonymous NGO Staff no. 11, Interview, 2014). He did note that the UN World Food Programme (WFP) continues, to this day, to deliver food and water assistance to the camps in the area, but that this is marginal in relation to the needs of the people and that requests for more assistance to UNHCR have been unsuccessful. Requests for interviews or corroboration from the Sri Lanka WFP office were not responded to. When the Director of this local NGO was asked about the Guiding Principles specifically, as they might apply or be understood in relation to the work he is doing, his answer was striking. He stated ‘those things (Principles) don’t exist here...

I've heard of them, sure, and before the UN talked about this stuff. But we don't have the time to think like that'. For this organisation, the Guiding Principles were abstract and completely irrelevant. As one of the only NGOs servicing the camps in this area, the point was to secure as much resources as possible and distribute it as soon as possible. The only norm or principle that seemed to drive their actions was a humanitarian imperative. Similarly, the different distinctions of internal displacement – be it either conflict or development induced – did not matter in the slightest.

The nexus of displacement causes and drivers in Sampur highlight development-induced displacement as something that is lacking in the overall approach(es) to IDP assistance and protection – both local and those efforts made by the international community. However, Sampur only provides one example of development-induced displacement of the country, and it has been understood here as an example of protracted and/or old IDPs. Therefore, it is necessary to also consider other elements of development-induced displacement that may not fall under the umbrella of protracted/old distinctions, and how these elements are related to the global norms established in this field.

One of, if not the, most significant examples of development-induced displacement in Sri Lanka can be found in the on-going Metro Colombo Urban Development Project (MCUDP). The MCUDP is a project that is supported by the World Bank that has comprised, in the words on the World Bank:

... a loan of \$213 million to Sri Lanka in support of the government's drive to transform Colombo city into a competitive hub by 2016. The loan assists crucial efforts carried out as part of the Metro Colombo Urban Development Project (MCUDP) which envisions developing the Colombo Metropolitan Area as the environmentally sustainable, modern capital of Sri Lanka. (World Bank, 2013)

Moreover, on the project page made available by the World Bank this project has three primary components: 1. 'flood and drainage management'; 2. 'urban development, infrastructure rehabilitation and capacity building for Metro Colombo local authorities'; and 3. 'implementation support' (World Bank, 2015). This project has many components, most of which are beyond the relevant scope of analysis for the research aims of this thesis. Most relevantly, the MCUDP implementation has brought with it widespread displacement for residents of Colombo in the last couple of years (at time of writing). Many of these

displacements have been conducted under the auspices of the Sri Lankan Urban Development Authority, under the LAA (referenced above). More specifically, in order to improve both flood and drainage management as well as ‘infrastructure rehabilitation’, tens of thousands have been displaced in order for the government (and the World Bank acting as a complementary actor) to make required space available for reconstruction. Here, it is important to make clear, in keeping with the constructivist approach, the biases and/or understandings that have been brought to this study in this context. This MCUDP programme has here been described as development-induced displacement, as families have been compelled and/or forced to vacate their habitual places of residence for development aims. This is consistent with the Guiding Principles definition of an IDP, but it is language neither preferred nor tolerated by both the Sri Lankan government and the World Bank in relation to this project. Instead, both have opted for the term ‘involuntary resettlement’. The difference in language is important to bear in mind, and will be returned to in the section below.

Before turning to the importance of language, it is necessary to examine how leading civil society actors have addressed this element of development-induced displacement in relation to the normative frameworks put forth by the international community. Part of my field research included an in depth interview with Iromi Perera, a researcher and advocate with CPA, that has focused on current development-induced displacements in Colombo. First, it bears mentioning that none of the major international actors that are typically involved in the assistance and protection of IDPs have been active in the MCUDP context. According to Ms. Perera, UNHCR has had ‘no involvement’ in this issue, despite their efforts to make this issue relevant for the UN. When I asked why the UNHCR was not involved, she explained that their focus was on people displaced from the war – more conventionally understood IDPs (Perera, Interview, 2014). As a leading advocate for displaced persons she has led efforts for local (Colombo) residents to make claims for restitution given their experiences. However, these efforts have been constantly muted or rejected with both the international community and also the local court system. Most relevant for the purpose of this thesis, I asked her about the role of the Guiding Principles generally, and she said that they have tried to use the Guiding Principles in certain court cases for Colombo residents that they are supporting, but that this was mostly an effort to maintain a perspective that continues to uphold international standards. According to Ms. Perera, more than 700 families have been affected by the MCUDP, but none of them have been afforded any international protection or even benefited from normative positions/advocacy of leading IGOs. Having learned this, I enquired why, in



this context, that she and CPA more generally continued to try and use the Guiding Principles in this context. Her answer was simple, if not also disheartening, when she said that the Principles allowed for them to advocate for human rights with an international focus – knowing full well that they would not be recognised by the government. She even recounted a story wherein a judge faced with claims based on the Guiding Principles was mostly confused and did not consider this aspect of their legal claim(s). To be clear, this is not necessarily problematic in legal terms as the Sri Lankan government continues to exist in a context of legal dualism in relation to international law – and that Sri Lankan law both pre-empts and supersedes international law. The choice to apply the Guiding Principles, is significant. Recall from above that even certain global civil society actors had stopped using and/or referencing the Guiding Principles. Despite these developments external to local civil society, CPA and Ms. Perera specifically, continue to see some value in the application of global norms to local context.

What Ms. Perera's contributions point to above relate to an overarching question about language surrounding the issue of displacement. Whether it is the nexus between conflict or development affected IDPs, or the very use of the term "development-induced displacement", it is clear that language matters in this arena. The application, use, and acceptance of "displacement" language has significant impacts on how internationally constructed normative frameworks come to be understood and applied in local spheres. Given this observation, the value of language deserves greater attention.

#### **7.4 The Value of Language: Defining Displacement**

As the last section of the final case study chapter of this thesis it is necessary to try and tie everything presented thus far – in both this chapter as well as the entire case study section – into some coherent whole. Following from the observations made above regarding development-induced displacement, this section endeavours to consider further the value of language more closely. Accordingly, this section will proceed with an analysis of distinctions and designations that have been applied to internal displacement, as they related to global norms in this field. Next, this section will include an in depth analysis of the very term "internally displaced person" in light of the case study presented here. The latter section will bring the reader(s) back to fundamental issues that were analysed in chapter 1, wherein the definition debates were presented and analysed. Moreover, this section will present the third primarily claim this thesis seeks to make.

The contemporary context of internal displacement has revealed greater nuances and complexity than when this issue was considered in relation to conflict exclusively, or resettlement efforts. Protracted displacement has proven problematic for both the national authorities of Sri Lanka as well as civil society actors. Similarly, development-induced displacement presents new and ever more complex challenges for actors operating in this field. One of the overarching observations that can be made is that the role of the Guiding Principles seems to be diminished in the contemporary context. On the surface, this ostensible irrelevance may lead one to the conclusion that the observations made above do not immediately address the question(s) this thesis seeks to answer. However, closer consideration of this contemporary context, and the absence of the Guiding Principles in the issues discussed in this chapter, does reflect a relevant trend – the diminishing marginal value of global norms, wherein the very term IDP becomes either less useful or even problematic. Perhaps the best example of this comes in the issues surrounding development-induced displaced outlined in the section above. Here it becomes necessary to consider the use, and therefore value, of language. Accordingly, this section will proceed by evaluating the different distinctions that can be seen in the field of internal displacement in Sri Lanka. This will lead to a more fundamental analysis of the use and value of the very term “IDP”.

Recall from above that the World Bank is the primary international partner for the MCUDP. Given this fact, it is necessary to consider how the World Bank has sought to mitigate the issue of internal displacement in relation to projects that they fund and support. Acknowledging the potential deleterious effects that development projects could have on local populations the World Bank, in 2004, produced the “Involuntary Resettlement Sourcebook, Planning and Implementation in Development Projects”. This remains the primary framework applied by the World Bank when embarking on a project that may lead to “involuntary resettlement”. It should be noted that this Sourcebook does acknowledge how resettlement may affect vulnerable populations. In particular it makes explicit statements that are consistent with some of the targeting criteria set out in the Guiding Principles:

Involuntary resettlement affects poor and vulnerable segments of populations more severely than those that are better off. Bank project experience shows that the poor, women, children, the handicapped, the elderly, and indigenous populations are often susceptible to hardship and may be less able than other groups to reconstruct their lives after resettlement. (2004, p. 71)

This degree of semantic convergence and/or co-referencing of norms set out in the Guiding Principles should not be exaggerated, however. Indeed, even the title of this document stands out as significant for the purposes of this study; but the significance of this must be understood in a broader historical context at the time this was published. This framework was published in 2004, six years after the Guiding Principles were published. Despite the widespread dissemination efforts of the Guiding Principles in the early 2000s, wherein development was included as cause of displacement, the World Bank chose to use the term “involuntary resettlement”. This careful use of language is significant in what has been omitted. In this document that is 435 pages long, there is not a single reference to the Guiding Principles. Moreover, through content analysis it was found that there is also not one reference to “human rights” of affected populations throughout the entire document. There are numerous references to land rights, and how these should be managed in situations of involuntary resettlement, but at no point does the World Bank seek to address the potential human rights violations that may be at risk as a result of moving populations for development purposes. The absence of reference(s) to the Guiding Principles, to human rights, and also the choice language of the title of this framework is significant.

In the interview with Iromi Perera, the World Bank’s role in on going development-induced displacement was discussed at length. In the first instance, even describing the “involuntary resettlement” that has taken place in the implementation the MCUDP as displacement per se is a controversial formulation of language. According to Ms. Perera, the local World Bank staff is entirely intolerant of using the term “development-induced displacement” because of the political implications this has. It is important to clarify here, that according the Ms. Perera the World Bank claims to be conducting all of its operations in accordance with relevant international standards; and the Sri Lankan government claims that its policies are in accordance with the LAA, which includes protections and policy prescriptions for reimbursement for those resettled for development purposes. However, when asked if the MCUDP qualifies as displacement she affirmed that, yes, it does. Moreover, she explained that many of the individuals “resettled” as part of the MCUDP have been subject to intense and on-going intimidation tactics employed by the government – with examples including military officials arriving as residents’ homes, guns in tow, in order to put pressure on families to vacate their homes. In many instances, the families that were relocated were given housing in accordance with the LAA, but this often resulted in them being placed in significantly smaller homes, miles away from where these families have established

livelihoods or where they send their children to school. For those residents unable to travel such distances due to lack of travel opportunities, this has led to acute impoverishment. Despite this, according to Ms. Perera, the World Bank refuses to engage with analysis and advocacy that uses the term “displacement”. She went on to describe private meetings with World Bank staff wherein they admitted to her that they simply cannot use that language because the government would not tolerate it and they would be forced to leave the country. This is consistent with observations made above about how the international community has increasingly tended towards deference to the state; whether it was UNHCR in the final stages of the war, or the World Bank refusing to use certain language for fear of expulsion, there has been a constant trend of defence to the state, subordinating the norms that the international community has sought to establish in relation to internal displacement. The observation provided here regarding the World Bank would not be so valuable if it came from someone that was not in the position such as Ms. Perera. Given her role in a leading civil society organisation, combined with her extensive experience working with World Bank staff allows for the use of her responses to establish and explain this problematic.

The fact that the World Bank is so resistant to using the term “development-induced displacement”, especially when coordinating with a local NGO that is very active in the field of internal displacement reveals two important observations. On the one hand, the fact that using displacement language is considered too controversial indicates that the issue of internal displacement, as set out and pursued by the international community, has risen into the ranks of the local government. Indeed, the fact that this language is too controversial points to the fact that the government has been impacted by the global norms surrounding it – that if they were to call involuntary resettlement “displacement” this would then entail a host of obligations and rights that the state is not in a position to tolerate or address.

On the other hand, the fact that the World Bank defers to the state on this matter, and in turn also the CPA, this indicates a limited relevance of the IDP distinction when applied to development contexts. Thus, it becomes possible to see that there is a diminishing marginal value of global norms in this field, as contemporary displacement context become ever more nuanced and complex. A similar trend can be found in the example of Sampur (described above). In the case of Sampur the classification of IDPs from that town has had implications for how they are assisted. Given the initial designation of Sampur as an HSZ, it is simple to classify IDPs from this region as conflict affected. However, once the HSZ designation was replaced with the SZHI designation, those displaced are no longer considered conflict

affected, but rather development-induced. This becomes a salient development because, recalling interview responses from the Ministry Secretary presented in chapter 6, the Ministry of Resettlement is only mandated to provide assistance for those displaced by the war. Thus, the distinctions of IDPs, whether they are labelled conflict-affected, or development-induced, come to take on huge significance for the types of assistance that IDPs may be eligible for. Across these observations, something more general becomes even more apparent – the role of the Guiding Principles and global norms more generally do not feature in the discourse as much as they have when considering conflict and resettlement. Therefore, it is possible to make the claim that the more nuanced internal displacement becomes, particularly in the contemporary context of Sri Lanka, the less value the Guiding Principles seems to have. This is not to say, however, that the fundamental developments that have occurred in the international community about internal displacement have not had lasting effects or implications. To consider this further, it is necessary to narrow even further into an analysis about the very concept of an IDP.

Recall from chapter 1 that when the international community set out to try and address the assistance and protection gaps of IDPs the first step was developing an accepted definition of what an “internally displaced person” actually meant. This considered, it is worth revisiting what this definition came to be:

... 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. (OCHA, 1998, p. 7)

This definition was set out by the international community in the context of introducing the Guiding Principles. Prior to this definition the notion of an IDP was often conflated with refugees, wherein IDPs were regularly referred to as “internal refugees”. This articulation became insufficient when it became apparent that the number(s) of IDPs were rising and that their needs were unique and that the international community needed to do something to address their plight more fully. Following from the official definition offered by the UN, in close collaboration with the Brookings Institution, the term IDP became codified in the Guiding Principles. Every element of this thesis has been concerned with how the Principles

have been both applied and understood in the Sri Lankan context, but underlying this endeavour has been a more fundamental dimension concerned more with the relevance, acceptance, understanding and use of the very term “IDP”. Accordingly, it is necessary to consider this more closely across the interviews that were conducted throughout my field research.

The first observation to be made here is striking. In every interview that was conducted, those included here, as well as those that have been removed from this analysis upon request, towards the end of the interview I asked if the term or label of IDP was useful. Without exception, every interview respondent answered positively, saying, in some form or another, that the notion of an “IDP” was both valuable and useful. That said, the manner in which the term was understood as useful differed and was qualified in a number of ways. Therefore, in completing this case study, it is important to understand why and how this term has been ostensibly universally accepted throughout the case study research. General classifications for these responses can be divided between national authorities (primarily the military respondents and the two other government officials interviewed) and local civil society actors (ranging from civil society leaders to local NGO field staff).

Regarding the military and other government officials, the term IDP was useful for a few basic reasons. First, it helped the military in understanding the resettlement efforts that they would eventually facilitate. According to Maj. Gen. Dias, the country was inundated with IDPs at the end of the war, and understanding that certain portions of the domestic population were displaced meant that ‘we needed to find a way to get people home’ (Dias, Interview, 2014). For SFC Ranasinghe of Kilinochchi, the answer was more simple. He explained that the term was useful in simply describing the reality, and that ‘everyone (he) dealt with was an IDP’, and that the camp he was responsible for was always ‘going to temporary, until we could demilitarise, secure the areas, and get people back’ (Ranasinghe, Interview, 2014). Responses from the other military officers interviewed were more casual and also quite straight forward. What stood out from these conversations was not the value they attributed to the term “IDP”, but rather that this acronym had become a fixture of their lexicons when discussing their work both in the final stages of the war, but also in the resettlement years of 2009-2012. The constant use and regular understanding of the term IDP was also evident in the interview I conducted with the District Secretary of Mullaitivu, Mr. Vethanayahan, as well as the Secretary of the Ministry of Resettlement, Mr. Sugathadasa. For the former, the value of a defined IDP was evident as he explained his role in relation to affected populations

– wherein he described various initiatives that he has led in his role with the aim of facilitating return and also supporting livelihood promotion for IDPs (Vethanayahan, Interview, 2014). For the latter, the value of an IDP definition was more nuanced. As the Secretary for the Ministry of Resettlement his work is almost entirely devoted to IDP issues. According to Sec. Sugathadas, the label “IDP” has been useful because it allows the government to target the ‘most vulnerable’ groups that were affected by the war (Interview, 2014). This articulation serves to support the overall point of the argument being made here, that the term has been useful, but it also hints at limitations the term implicitly carries (which will be discussed in the latter portion of this section).

Regarding civil society actors, the basic value of an IDP definition, used as a label, was also affirmed for very similar reasons as those mentioned above. Most generally, the IDP label has allowed for more effective targeting of assistance and protection for the most vulnerable sections of the Sri Lankan population. For all interviewees that fall under the umbrella of local civil society, the term IDP is common usage and it is clear it has become a common feature of their collective lexicon. This basic observation is similar to that made above regarding the military and government officials. However, within civil society, the label of IDP has been more critically understood and therefore applied with greater nuance. For the purpose of structure civil society responses on this issue have been divided between civil society leaders and NGO field staff.

With regard to civil society leaders, which includes interviews conducted with three directors of leading civil society organisations, as well as senior researchers working for CPA in particular, there were some consistent answers. Similar to the responses from government official presented above, all civil society leaders expressed a view that affirms that the definition and/or concept of an IDP was both relevant and useful for targeting purposes. For CPA and CHA specifically, the IDP label has been thoroughly embedded in not only their personal understandings, but also in how their institutions have sought to engage with this issue. For a senior staff member of Sarvodaya, one of the largest NGOs in Sri Lanka, the label “IDP” has been useful for, again, the same purpose – that it has allowed for more narrowed and focused programming of assistance efforts (Anonymous NGO Staff no. 1, Interview). Very similar sentiments were expressed by Mr. Navaratne as well, the Chairman of the Sevalanka Foundation (Interview, 2014). All of these observations taken together up until this point, seem to present a uniform and singular view of the IDP language. However, the notion of an IDP becomes more complex in its relevance when coming closer to the

ground. For both Bhavani Fonseka and Iromi Perera, both researchers for CPA, the term “IDP” was much more nuanced in the ways that they have used it. For both, using the term “IDP” was intrinsically linked with the broader global normative approach to this issue, in the form of the Guiding Principles (various Interviews). Using the definition of an IDP for them allowed for an opportunity to connect their research and advocacy efforts to the international community, wherein IDP needs have been rearticulated and specified in the Guiding Principles. In the words of Ms. Fonseka, their work at CPA concerning IDPs pre-dated even the dissemination of the Guiding Principles in Sri Lanka, but that once they arrived, this gave a more solid foundation/framework that they could employ in describing and analysing human rights violations as they might apply to IDPs specifically. For Ms. Perera, the use of the term “IDP” has been equally useful in how she has researched this issue, allowing for her to understand even the most contemporary context in these terms; however, given the politicised nature of this label, she has been compelled to not use this language for fear of alienating their organisational relationship with the World Bank, which in turn reserves the use of this language for the same reasons, but more specifically in relation to their working relationship with the Sri Lankan government.

This latter point illustrates the kind of limitations that the global norms surrounding internal displacement, specifically in reference to the definition of an IDP and its use, can have in a local context. The politicisation of “internal displacement”, thus, represents a success for the international community insofar as this notion has been internalised for a range of local actors. Yet, this success also comes with limitations – the fact that this term, per se, has been internalised and therefore a constituent element in understanding obligations and duties, means that it must be avoided and omitted in order to maintain operational relationships (i.e. with the World Bank or Sri Lankan government). On one hand this illustrates a sort of progress that can be assigned to the global norms under consideration here; on the other hand, this illustrates the limitations these norms have in contemporary contexts, characterised by ever more nuance.

## **7.5 Conclusion: Diminishing Marginal Value of Global Norms**

This chapter has presented research and findings that illustrate a trend best characterised as the diminishing marginal value of global norms, as this the dilemma is brought into more contemporary contexts, and also when the issues and implications of “IDPs” as a concept become ever more nuanced. Accordingly, the analysis presented above attempted to provide an account of the most salient aspects of internal displacement that constitute the current Sri



Lankan context. In order to accomplish this, this chapter began with an account and analysis of on-going resettlement efforts that continued from the end of 2012 to the beginning of 2013. This analysis required that this chapter looked further back in time in order to account for and evaluate currently relevant domestic policy initiatives that address the internal displacement dilemma, in particular the Human Rights National Action Plan as well as the Draft Resettlement Policy. Moreover, the concept of protracted displacement has been important to consider as a primary theme that characterises this period for Sri Lanka. In evaluating protracted displacement it became clear that discrimination remains a paramount concern. In addition to the issues related to protracted displacement, development-induced displacement has risen to the fore as a primary trend that must be considered when analysing the contemporary context of displacement in Sri Lanka. By considering development-induced displacement it became apparent that the various distinctions of internal displacement per se had significant implications for understanding global norms and local context. The different displacement distinctions made possible under the UN definition of an “IDP”, as explained above, have implications about how the label “IDP” is understood and applied. This observation led to an analysis of the fundamental value of an IDP definition, wherein one can find a degree of consensus; but, also, wherein the use of this term has different purposes/functions for different actors, depending on their disposition(s).

Taken as a whole, the observations presented in this chapter do point to the diminishing marginal value of the Guiding Principles when internal displacement is evaluated with more nuance and in contemporary context(s). The fact that the Principles were not relevant in interviews about protracted displacement (to some degree), and more so in relation to development-induced displacement, wherein the very use of the word “displacement” has been deliberately avoided and omitted by actors working in this field, illustrate both the value of Principles but also their limitations in this current context. This reveals both the value of language made available through the production of global norms, but also its limitations when local political considerations pre-empt the application of an explicit international framework because of the politicised nature of such language. These findings, along with all others made thus far will be considered more fully in the conclusion chapter that follows.

## **Conclusion**

At time of writing it is estimated that there are currently between 30,000 to 75,000 people internally displaced in Sri Lanka. Thousands of people forced to leave their homes as a result of violence in the country's civil war remain in situations of protracted displacement, and thousands more have experienced displacement because of natural disasters and development in recent years. Bearing this in mind, it may seem possible that a study such as this one could be extended indefinitely as the dilemma of internal displacement shows no signs of coming to a close. Yet, it is necessary to try and bring this study to an end in a coherent manner. In order to do so, this conclusion will be divided into four sections: first, and very briefly, it is necessary to review the content and findings that have been presented in each chapter; second, the findings of this thesis have certain policy implications that warrant attention; third, there are also theoretical implications that will be presented; fourth, and finally, the limitations of this study will be considered in relation to the opportunities for future research. Taken together, this concluding chapter attempts to highlight the contributions this thesis has made, consider the implications that can be drawn from the findings presented, and also offer opportunities for future research given the limitations imposed on this study.

## **Summary of Thesis**

This thesis set out to understand how global norms surrounding internal displacement can be understood in a local context. This required that one also ask, how have the global norms traveled to the local sphere in the first place?; as well as, how have they been understood, and subsequently applied?

In an attempt to answer these questions, this thesis has been presented in two parts: 1. Theory and Method; and 2. A Sri Lankan Case Study. The first half of the thesis comprised chapters on relevant academic literature, theoretical foundations, as well as methodology and methods. The literature review (chapter 1) for this thesis was focused on literature concerning “international assistance and protection” of IDPs specifically. A critical survey of this research revealed a few primary observations: first, it is clear that the distinction between scholars who work in this field, and civil society practitioners that have led the development of IDP policy in the international community is a very grey area; with leading research about internal displacement often written by the architects of the Guiding Principles, arguing and advocating for their value and ongoing dissemination. In addition to advocacy based research, it became clear that there is a growing body of work on the legal analysis of the Guiding

Principles – even though these analyses concede that the framework is in fact not legally binding – as well as more nascent but increasing research on the impact that the Guiding Principles have had on policy. The latter has largely taken the form of impact evaluation research. Therefore, it has been argued from the outset, that a thesis of this kind has the potential to make an original contribution to this field by focusing more on the nexus between the norms of international IDP policy and the local sphere, with an emphasis on how these norms can be understood intersubjectively.

The theoretical framework for this thesis was developed in three dimensions. First, given the historical and conceptual links between the creation of the R2P doctrine and the plight of IDPs entering the international community's agenda, state sovereignty and R2P were examined. This was necessary in order to establish a foundation for understanding the idea of positive duty conferred to the international community in instances wherein the state in question is either unable or unwilling to provide sufficient protection(s) to its populations. Second, the theoretical framework included a brief account of different variants of cosmopolitan theory that may help shed light on this context. Institutional cosmopolitanism in particular has been useful in understanding the link between moral and legal obligations, wherein institutional obligation can be identified and placed on certain segments of the international community. The manner in which obligation and duty are conferred to the international community in Pogge, however, is different from what has been found throughout the research for this thesis. Accordingly, this will be returned to below when theoretical implications are considered. The third theoretical dimension presented was humanitarianism. It has been argued that the international community's approach to assistance and protection can accurately be called humanitarian action; however, the principles of this theory needed to be unpacked in order to understand the complexities it entails and how this affects the subject at hand. The methodology and methods chapter included a survey of available methodological approaches, in order to demonstrate a thorough understanding of the tools available. It was determined that a constructivist approach to this issue would be best, complemented by hermeneutical and interview techniques applied in a single case study.

The second half of this thesis comprised four chapters. The fourth chapter presented was focused on the global norms of IDP assistance and protection. It included a document review and content analysis (in the hermeneutical tradition) of the primary documents produced by the international community setting out the recently developed normative framework for IDP

policy. This chapter was essential for this study because it allowed for the opportunity to understand both the general themes of these documents, but also some of the nuances that were embedded throughout. The principle findings established that international IDP policy frameworks are largely grounded in humanitarian principles, even if these principles are only made explicit in limited areas, and can be understood as implicit or embedded otherwise. This finding is relatively uncontroversial, however it was essential to demonstrate in order to conduct further research that relies on this conclusion (chapter 6 and the humanitarian double bind in particular, see below). Moreover, the idea of a secondary or proximate responsibility (of the international community, in relation to the primary responsibility of the state) was developed. Similar to the observations about humanitarian principles, the presence of a proximate authority is not explicit; however it is possible to infer and existing implicitly in not only the content of the international documents, but also the context in which they were produced.

Chapter 5 began with a historical account of the case study, but came to focus on the early 2000s, when the Guiding Principles were disseminated in Sri Lanka, up until the end of the civil war in 2009. By relying on interview data as well as documentary evidence from local actors, it was possible to see that the dissemination of the Guiding Principles was effective insofar as they were adopted by civil society leaders and organisations as a way to understand the failures of IDP assistance and protection in a human rights context. Thus, it was argued that there has been an “internationalisation of failure narratives”, wherein failures of both the state and international actors could be understood using the Guiding Principles as a preferred lens for understanding and articulation. Similar observations were made in chapter 6, which focused on the large-scale resettlement efforts that were made in the immediate postwar years (2009-2012 specifically). Moreover, the interview and documentary evidence for this period revealed what has been called here a humanitarian double bind. This double bind has both policy and theoretical implications that will be turned to in the next two sections. The final case study chapter focused on the contemporary context of Sri Lanka today. Ironically, however, this required that contemporary understandings be contextualised with developments that had their origins in earlier time periods. By examining trends of protracted displacement as well as development-induced displacement, it became apparent that the more nuanced and more contemporary the analysis of internal displacement becomes, there seems to be a diminishing marginal value of the global norms. This, however, only reflects the

findings from this single case, and therefore warrants qualification (see the final section on limitations below).

As a whole, and despite the recognised limitations, this thesis has led to valuable original contributions to the field of forced migration in general, and internal displacement in particular. These findings, moreover, have illuminated implications for both policy and theory.

### **Policy Implications: Agendas and Priorities**

Generally speaking, the policy implications claimed as a result of this research can be broadly classified as concerned with the agendas and priorities of international actors active in the assistance and protection of IDPs. Under this umbrella of policy implications there is somewhat of a range – from basic and fundamental implications, to more radical and therefore controversial claims. In the first instance, it might be said that the international community, given the findings of this research, might benefit from a refined agenda-setting process that makes clear how they envision local ownership of normative dissemination. Recall from chapter 5, wherein it was observed the international community was “successful” in their dissemination efforts insofar as the Principles were welcomed by leading civil society groups. Significantly, early dissemination efforts were led by one person, Dr. Danesh Jayatilaka, under the auspices of the Consortium for Humanitarian Agencies (the principle organisation for coordination of humanitarian action in the country). Dr. Jayatilaka’s account of this process revealed a complex and contested relationship between the UNHCR and local efforts. Dr. Jayatilaka’s efforts included the conventional mechanisms of dissemination, such as presentations and leaflets, presented and offered in workshops throughout the country with affected populations, relevant agencies (both local and international), as well as local government officials. However, his efforts also included more innovative approaches such as board games, illustrated story books, wooden block exercises etc. According to Dr. Jayatilaka, these complementary dissemination mechanisms were necessary in order to effectively translate the global norms found in the Guiding Principles to the diverse local groups of the country. However, this view was not shared by the UNHCR affiliates and this contestation led to a situation wherein Dr. Jayatilaka was eventually relieved of his post in leading the dissemination efforts. Despite this fact, the curriculum developed by Dr. Jayatilaka still features in the collection of syllabi made public by the UN. Given this context, it becomes possible to infer that there were limits to the localisation of dissemination; leading

to the claim here that the international community could benefit from a clarified approach to local adoption.

In addition to the need to clarify just what the role of the local actors will play in dissemination, there is another basic observation that may have policy implications for the international agenda and priorities. This relates to how the different distinctions of internal displacement are prioritised in the agendas of the international community. Here it is important to recall that the definition of an IDP, according to the UN, includes not only those that are displaced by conflict, but also disasters and development causes. However, evidence presented in chapters 6 regarding the “international retreat” that took place in the final stages of the civil war and throughout the resettlement years of 2009-2012, as well as evidence concerning both protracted displacement that remains an issue and the ostensibly development-induced IDPs that have been displaced since the war ended (see chapter 7), it seems apparent that the international community could benefit from clarifying its priorities about what type of IDPs fall under their purview of concern and action. It is clear that the UNHCR, in particular, was very active in assistance and protection throughout the war; however, certain distinctions of IDPs (included in their definition) do not seem to feature as a high priority on the international agenda any longer. Accordingly, the international community’s role in assistance and protection may benefit from a more specific mandate and/or clarification of priorities.

The lack of focus on protracted IDPs and development-induced displacement may point to an underlying motive that drives the programming decisions of the international community based on targeting of acute vulnerability. The practice of focusing on certain populations deemed most vulnerable was justified and understood under the humanitarian principle of impartiality (see chapter 2). This focus is apparent in the various mandates of relevant IGO agencies (indeed, more so for INGO mandates) that set out goals of assisting those populations most in need. It may be further justified by a combination of scarce resources for assistance and protection programmes and an underlying humanitarian imperative that drives their work. However, it is the argument here that this humanitarian approach, if indeed a driving force in prioritising certain groups in their agenda(s), should be made more explicit. At the very least, such clarification would accomplish two things: in the first instance it would manage the expectations of those on the ground that work in local contexts permanently. Recall from evidence presented in chapters 5 and 6 the various ways in which local NGO field staff have come to understand the UNHCRs action as insufficient. Whilst

there were different accounts and varying understandings of the UN's failure, the overarching claim was that the UNHCR should have been doing more and/or that they should have stayed longer. With regard to evidence presented in chapter 6, in the analysis of the humanitarian double bind, the expectation of some civil society leaders was that the UNHCR should be upholding the human rights standards that the Guiding Principles explicitly linked to IDP assistance and protection. However, as illustrated in the claims and explanations made in the Petrie Report, many of the UN failures that have been identified in relation to their own work were explained because the field staff was attempting to conduct work under the auspices of a humanitarian imperative. However, servicing this humanitarian obligation, in order to maintain access to the IDP camps, necessarily meant that certain human rights standards were subordinated and not respected in full. This brings into clear focus the dilemma of the humanitarian double bind presented in chapter 6.

On the one hand, as has been argued in chapter 5, all of the normative developments towards an international framework for assistance and protection of IDPs, as well as the implementation of assistance on the ground, has been informed by humanitarian principles. However, the Guiding Principles is not simply a restatement of implicit humanitarian action required for IDPs. Rather, the Principles bring together humanitarian principles, international humanitarian law, and human rights law into one common framework. This was ostensibly necessary (see chapter 1 for a summary of this argument) because previous studies identified significant grey areas and gaps wherein existing international law was insufficient in addressing the needs of IDPs. However, by producing a document – a framework – of this kind, the UN spliced together, what has been argued here, sometimes competing and conflicting obligations. In servicing a humanitarian obligation to assist those in need, field staff might in turn violate the human rights standards set out in the very same framework; for example, providing assistance to camps where freedom of movement was being clearly violated. However, if these same actors were to withhold assistance to such camps, and not defer to the government's approach to resettlement, under the auspices of servicing human rights, then this may have led to the abrogation of obligation and duty characterised by a humanitarian imperative. To compound this quandary even further, the actors on the ground – and indeed even those making decisions about assistance and protection from distant offices in Geneva – are unable to gain more knowledge or information about the dilemma they face; there is no benefit of reliable counterfactual consequences when one decision is made over another. Hence, one can see what I have termed here the humanitarian double bind.

Recall from chapter 6, that the notion of a double bind was borrowed, by analogy, from psychology, wherein such a condition may lead to a schizophrenic break in patients.<sup>34</sup> Carrying the metaphor forward, a diagnosis of this kind is not only valuable for understanding, but also for prescribing treatment. In this context, it is not sufficient to only use this framework as a way to understand the dilemma more fully; rather, it also points to possible policy prescriptions that might help to mitigate the situation that has been presented throughout this thesis. This is the reason why it is being claimed here that the international community could benefit from a clarified position on the humanitarian obligation(s) it/they are attempting to service. Where this obligation is placed on the international community's agenda, and how it is prioritised, is not presently clear or sufficiently articulated.

Similar observations may be made about the "responsibility" of the international community in these contexts more generally. Policy implications regarding responsibility, however, take on more abstract and contested forms. In 2001 the Responsibility to Protect was published in order to create a framework for international action when states are unwilling or unable to provide sufficient protection to its populations. The creation of the R2P doctrine, especially in its earlier iterations (e.g. *Sovereignty as Responsibility*) has deep historical roots with the concerns about internal displacement that arrived on the agenda(s) of the international community in the 1990s (see chapter 2, regarding the rise of internal displacement and R2P theory). This link, along with evidence throughout field research, has certain theoretical implications for the R2P doctrine; however, before turning to these, it is necessary to consider the pragmatic implications – in the form of policy – more closely. Evidence from field research presented in chapter 6, specifically, demonstrated that local civil society actors (researchers and field staff, alike) had come to understand that the international community had a responsibility to provide assistance and protection to IDPs. This observation reveals a version of responsibility, of the international community, that has been internalised within the local sphere such that it has been reflected outward, back to the international community given this new understanding of duty and obligation. Indeed, the Guiding Principles were in fact used as a basis for advocacy when local civil society groups met with the UN. This understanding of international responsibility was clear in the interviews that were presented. Yet, they should be understood in contraposition to the articulation(s) of international

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<sup>34</sup> Nb, it is important to re-emphasise the idea of double bind has applied here only by analogy, and it not meant to equate a psychological condition with an observed social phenomenon. The value in applying this analogy is the nuance the notion of a double bind affords the reader in understanding the dilemmas faced by those attempting to provide assistance and protection to IDPs.



responsibility that were expressed by the state actors interviewed for this research (ranging from military officials to government representatives). Whereas civil society actors expressed international responsibility in the form of assistance and human rights protections, state actors re-emphasised the responsibility of the international community to serve in concert with the state, and in full respect of state sovereignty. Needless to say, this presents two very different views of just what the international community's responsibility truly is.

Observations made in chapter 4, regarding primary responsibility of the state explicitly stated throughout the various documents analysed, seems to support the state's view of the role of the international community. However, as was explained throughout chapter 4, the emphasis of primary responsibility seemed to support, or at least hint at, the implied concept of secondary responsibility, when the state fails to meet certain standards. This claim was further supported by empirical evidence of how local civil society actors understood the role of the international community. Without delving into the theoretical implications of this, from a policy perspective, it may be claimed that the international community ought to clarify and expand on what their responsibility is in the context of internal displacement assistance and protection. The R2P doctrine remains broad, in its original articulation, and contested and perhaps even distorted in recent practice (see chapter 2 on how the R2P framework has been invoked). Therefore, the research presented here may provide a basis for reconsidering international responsibility in more nuanced and clearly defined areas – such as the assistance and protection of IDPs. Such a clarification would add missing depth and nuance to the idea, understanding and implementation of international responsibility as it is concerned with IDPs, in such a manner that would remove this question from the R2P debate more generally.

The above policy recommendation regarding responsibility is intrinsically linked to the former one presented further above, regarding the need to clarify humanitarian obligation; they both speak to different elements of how the role of the international community could be improved through more nuanced and details articulations of the their priorities and duties. Taken together, however, they point to a more radical policy implication regarding human rights and humanitarian action more generally. To be sure, what follows is an argument offered as the result of field research in this area, and is not meant to claim and overarching need that must be met by the international community as a whole. Rather, what follows is a recommendation for something that the international community might consider in light of the findings of this thesis.

The humanitarian double bind of assistance and protection of IDPs, the ambiguity of humanitarian principles as a driving force for policy, as well as the uncertainty of international responsibility, per se, may lead one to consider a situation wherein humanitarian action could be decoupled from human rights protection. The link between human rights and humanitarianism is not a new phenomenon. However, the Guiding Principles stand out as a contemporary example of how these two ideas have been institutionalised into one common framework. The competing obligations that are thus placed on field staff have led to situations wherein the only obvious and simple conclusion that can be reached is that the international community is failing. However, by the very definition of a double bind, these actors cannot serve both duties at the same time. For certain organisations that have an explicit humanitarian mandate, to assist not just everyone but those most vulnerable and in need, this may not be problematic. However, for IGO agencies such as the UNHCR, the humanitarian imperative that underlies their work, becomes confused with the protection and enshrinement of human rights standards when servicing the former necessarily compromises the latter. Accordingly, the prospect of decoupling humanitarian action from human rights ought to be considered in some form. At the most extreme, this would entail re-programming of organisational activities in light of this contradiction. But this is not the only implication resulting from this observation. More mildly, this contradiction, and the problematic consequences of linking the humanitarian obligations together with human rights in institutional settings, should be part of the discussion as assistance and protection efforts are constantly refined.

The policy implications provided above should not be conflated with policy prescriptions. It is beyond the scope of this research study to offer definite prescriptions that would claim to fix the problems identified. That said, the implications considered here do appear to be relevant given the findings of this thesis. The most ideal outcome of this research would be that these issues are given greater consideration in the discussions that take place in the international community about IDP assistance and protection.

### **Theoretical Implications: Humanitarianism, R2P, and Cosmopolitanism**

At the outset of this thesis a theoretical framework was developed that included R2P, (institutional) cosmopolitanism and core tenets of humanitarianism theory. As the primary aim of this thesis was to make an empirical contribution, the three dimensional theoretical framework developed was not meant to be an all-encompassing survey of any and all theoretical approaches that may apply to the assistance and protection of IDPs. Rather, the

framework offered in chapter 2 was designed to create a theoretical foundation for understanding this issue more comprehensively. That said, from this narrowed focus and application of theory, insights were gained in the course of research that have implications for the theories selected. To be clear, this thesis is not claiming to make original theoretical findings, in the form of a new theory; instead, the focus here is on *implications* for theory that might be useful in further research projects (see the final section for an expansion on this point). Specifically, theoretical implications can be identified for humanitarianism, R2P, and institutional cosmopolitanism and separately.

### Humanitarianism

The first set of theoretical implications made possible by this thesis is concerning the theory, or theories, of humanitarianism. It is important to note here that the use of humanitarianism theory in chapter 2 was included in order to provide a basis for understanding the underlying principles that have informed both the international community's increasing attention to the plight of IDPs, and also the subsequent development of institutionalised normative frameworks meant to improve assistance and protections. In light of this, only the basic and fundamental tenets of humanitarianism theory were reviewed. It is also necessary to acknowledge that these implications are not meant to make original claims about humanitarianism theory, but rather to illustrate how the assistance and protection of IDPs may be used to advance ongoing debates. With that in mind, the first theoretical implication for humanitarianism that comes out of this research concerns the issue of neutrality. As one of the three basic principles of humanitarianism, and a driving force for many humanitarian agencies, neutrality is one the most important elements of this theory, but also one the most questioned and controversial.

Relying on evidence that was presented in the humanitarian double bind, it is clear that the issue of neutrality is of paramount difficulty when international actors engage with the local sphere. Indeed, it bears repeating here a reflection offered by Dr. James Orbinski, wherein he described that his experiences led to a situation wherein he came to understand humanitarianism as not '...separate from politics but in relation to it...' (2008 p. 6). Through extensive analysis and field research, the same can easily be said in relation to the Sri Lankan case. Given the evidence gathered and presented in this thesis, this study has implications for how ostensibly "neutral" humanitarian actors can be understood. Here it is important to clarify that I am referencing action by IGO agencies such as the UNHCR, wherein it has been

argued above (in chapter 4 in particular), that the entire approach to IDP assistance and protection is informed by humanitarian principles. The challenges faced by those in the field, when faced with a double bind context, being neutral becomes utterly impossible. Therefore, it is claimed here that further theoretical work in the field of humanitarianism would benefit from even greater critical explications of the norms that underpin this philosophy. Moreover, the notion of impartiality – also a core tenet of humanitarian theory – should be questioned and refined in future theoretical work on humanitarianism in general. The idea that humanitarian action is universal and impartial rests neatly and comfortably on the shoulders of philosophers, but in the hands of those on the ground this principle becomes more difficult to manage when confronted with questions about access and scarce resources. Indeed, ostensibly humanitarian efforts in Sri Lanka were curtailed, first in deference to the state policy priorities, and secondly, in relation to the complexities facing actors on the ground. The principle of impartiality, within humanitarianism theory, can justify and explain the practice of prioritising certain groups over another; however, this decision was equally informed by access and politics as it was informed by the recognition and knowledge of need. In line with this idea, discrimination in favour of some IDPs has been demonstrated in both chapters 6 and 7 in the case study section of this thesis. Moreover, today there is little international involvement in terms of assistance and/or protection for development-induced IDPs in Colombo. This is not, to be very clear, an indictment of those working the field – rather it is a call to scholars who may write on these questions in the future. If we are to understand the work being done to assist and protect IDPs under the auspices of humanitarianism, then the contours of this theory should be revisited and considered in light of the many complexities that exist in reality.

One potential avenue for this latter observation to be carried forward would be that humanitarianism is not only disaggregated and refined according to principles that underpin and inform the theory as a whole, but also that the theory be considered in specific relation to what can be accurately be described as a class or group of humanitarian actors. Such a classification of actors would not fit within one category of actors as they are typically conceived. Rather, it would include certain IGO agencies, the typically understood INGOs as humanitarian organisations (but could be disaggregated further to account for certain policy programmes), local governmental operations that fall under the auspices of performing a humanitarian function, as well as local civil society groups insofar as they too fulfill humanitarian action. A theoretical interpretation of humanitarianism that accounts for the

other roles that these actors play would benefit the theory by adding needed nuance and complexity to such an important concept.

#### The Responsibility to Protect in question: challenges and opportunities

Regarding R2P, it is important to consider the theoretical implications in relation to the history and policy record available. It should be noted that R2P is relatively new as a theory of international responsibility developed formally only in 2001. The subsequent use of R2P has largely been focused on the question of military intervention, as explained in chapter 2. From a theoretical perspective, however, it is necessary to return to the more core elements that characterise this theory. First, it is important to note and recall that this theory is necessarily grounded in a qualification of state sovereignty. Through the work of leaders like Kofi Annan and Francis Deng, for example, sovereignty was qualified to entail the responsibility of states to protect its populations. When states demonstrate an unwillingness or inability to perform this function, the R2P doctrine states that the international community has a responsibility to step in. However, this responsibility, even under the most contemporary articulations of R2P theory, remains within the domain of moral duty. This moral duty has transformed into legalistic and institutional forms of duty through select and oft contested Security Council Resolutions.

These manifestations of R2P in reality have even led to critiques that have labeled this “responsibility to protect” as a “right to intervene” (see chapter 2). Whilst the idea of full-scale intervention is beyond the scope of this thesis, the idea of a right bestowed to the international community to take action is relevant and deserves consideration. In order for the moralistic theory of an international responsibility to protect individuals in need (via notions of individual sovereignty Cf. state sovereignty), this doctrine needs to be updated and further refined in such a manner that it provides qualifications according to the different contexts wherein this doctrine may apply – not as a whole, but in more finite and explicated situations. This would require that the theory of R2P be refined and substantially expanded to include situations wherein large portions of a population are in need of assistance because a specific cause, or a number of causes, but wherein military intervention is not considered as part of the international response. In this way, it is possible to see that this theory must account for reality; and not rest in the ethereal realm of theory for theory’s sake. Through a greater clarification of R2P in this way, it may be possible for operational actors to understand the

responsibility of the international community in more nuanced ways, lending to greater coherence and operational knowledge and expectations.

### Institutional Cosmopolitanism

The final theoretical implication offered here is concerning cosmopolitan theory and the institutional variant more specifically. After considering both the basic tenets of cosmopolitan theory as a whole, and then six distinct variants, this thesis relied on the concept of institutional cosmopolitanism in order to ground international responses (replete with positive duty and obligation) to IDP needs in a theoretical context. The value of institutional cosmopolitanism was important because this variant presented an argument for how international institutions can come to be responsible for global bads that exist in the world. More specifically, the application of institutional cosmopolitanism relied on the work of Thomas Pogge. Accordingly, it is necessary to qualify claims made here; that they do not reflect on theoretical deficiencies of cosmopolitanism generally, but is rather reflective on the implications that this research can have on the institutional variant more specifically. Pogge used cosmopolitan theory, replete with notions of obligations and duty, in order to explain how certain international organisations and/or agencies may have a responsibility and obligation to correct the bads that they have been responsible for creating. This is important for two reasons: first, it points to a negative duty that is conferred onto the international community – that such actors should restrain from implementing policies that produce deleterious effects – not only for one nationally determined group of people, but for people as a whole. However, it is the argument here that this conception of obligation and moral responsibility also entails positive duties – the duty to try and correct global bads and take concerted action towards those ends. The idea of a positive duty in this respect of cosmopolitan theory is consistent with the theoretical contributions made by the R2P doctrine (explained above), wherein the international community in general, or specific agencies in particular, have a duty of care to those that such agencies are mandated to affect in some way.

What makes this thesis relevant in relation to institutional cosmopolitanism is the way in which duty and obligation is conferred to the international community. For Pogge, who writes extensively about the bads produced by the global economy and the leading agencies responsible for economic governance, the obligation and duty to correct the “bads” is grounded on the fact that these institutions have perpetuated a system that produced these bads. Put simply, these institutions are culpable for the bads, and therefore are obliged to

correct and/or mitigate them. In this context, applying institutional cosmopolitanism to internal displacement, it may not be possible to assign culpability to the international community per se. Perhaps the only way in which this would be possible, would be to say that the UN system perpetuates state sovereignty, and this in turn is the reason why IDPs are vulnerable. Such a claim would be tenuous at best, and it is not being made here. Rather, it is possible to see and understand the conferment of international obligation and duty through other mechanisms – namely, through the deliberate appropriation of such responsibility and, in turn, obligation and duty.

The clarification provided immediately above is what makes this theoretical implication new and different from what has come before. Under the Pogge framework, positive duty was only ever conferred through an external theoretical exercise. The argument made here is that there are other ways in which positive duty and/or obligation can be placed on selected international institutions. The creation of the R2P doctrine, and the subsequent development of the Guiding Principles illustrate this point. For the latter, in particular, the international community took very concrete and elaborate steps in order to make their role more important and central to the assistance and protection of IDPs. This was reinforced by the expansion of UNHCR operations to focus more on internal displacement in the late 1990s and early 2000s (see chapter 1). In this context, the obligation and duty to provide assistance and protection to IDPs was not applied to the international community externally or through a purely intellectual understanding of the issue(s). Rather, the international community took steps in order to make this their responsibility, explicitly. This observation is characterised by a wholly different mechanism of conferring positive duty and obligation – namely through deliberate effort made by international institutions. However, this only represents one different way that responsibility can be understood and applied to the international community; it is not the claim here that this is the only alternative process relevant for institutional cosmopolitanism. Accordingly, future iterations of cosmopolitan theory may benefit from a more complex and nuanced understanding of the mechanisms whereby moral obligation and duty of the international community can and does confer responsibility to certain international institutions.

### **Limitations and Opportunities**

Finally, this thesis would not be complete without the objective recognition of the limitation(s) that were present throughout the study conducted. The choice to acknowledge the limitations of this research, not just as a subject, but as the researcher, is in keeping with

the remit of properly conducted constructivist research wherein biases and limitations need to be expressed explicitly. Therefore, the primary limitations this study will be presented below, along the three following lines: 1. Content and substance of research; 2. Access challenges with both the international community and local actors; 3. The limitations of conducting a single case for this research study.

To start, it is necessary to acknowledge the limitations of this study in relation the content and substance of the research that has been presented. In this regard two limitations are apparent: past internal displacement issues and those that persist in the current context. With regard to the former, there was limited research conducted on how things developed and unfolded both during and in the aftermath of the Tsunami. This relates to a general gap in the study surrounding disaster-affected internal displacement in Sri Lanka. Given the limited evidence presented on this event, it is clear that future research on internal displacement in Sri Lanka, specifically, would benefit from a more thorough account of how the relationships between the international community and the local sphere were affected by this issue. Regarding other internal displacement issues in the past, future studies would benefit from a greater and more comprehensive scope of analysis. The conditions of this study limited the empirical observational and interview data to the regions that have been detailed in this thesis. Moreover, this study was limited in the elements that comprise the most present and contemporary context in Sri Lanka. In particular, this study did not consider the vast amount of IDPs that have very recently been affected by natural disasters (largely from storms and mudslides) that occurred in 2014. According to the IDMC, the numbers of people displaced by natural disasters in 2014 may even reach 151,800 people. As these disasters occurred after my field research was concluded, and the fact that these figures have only recently been made available, it was not possible to account for this at the time of writing. Future research, especially in light of the findings presented in this conclusion, would benefit in significant ways from incorporating ongoing natural disasters into analysis. Moreover, this would reflect the overall trends of research about internal displacement more generally, wherein disaster-affected instances of displacement are becoming more important and focused on in recent scholarship (see chapter 1).

The second limitation of this research comes in the form of access that I, as a researcher, encountered whilst attempting to conduct field research. Issues of access were experienced in relation to both the international community as well as the local actors in question. Regarding the pool of respondents from the international community, the original field research plan for



this study included planned interviews with relevant staff local (I)NGO staff, as well as local civil society. However, significant difficulties were encountered. The context and timing of field research must be recalled here. I embarked on field research in Sri Lanka in July of 2014, only weeks after the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) was actually launched. Upon arrival in Colombo initially, I made contact with a number of people that I thought would be key informants working for three different UN agencies (UNHCR, UNDP and the WFP specifically). As a result of these contacts I was able to immediately secure interviews with UNHCR field staff based in Colombo, as well as with contacts working with UNDP and the WFP. From this point, I was able to establish contacts and conduct interviews with other UNHCR employees based in Colombo in the first three weeks following my arrival. In fact, I was told by the UNHCR, via email, that it would be possible to have access to staff in the UNCHR field office in Kilinochchi, which was at the time of research responsible for IDP assistance and protection in both the Northern and Eastern provinces. Through informal communication with my contact in the Colombo UNHCR office, I was informed that my research would not be supported in the end. Indeed, all repeat efforts to be in touch with the UNHCR country director were not responded to. I was told, again informally, that because the OISL was underway, they needed to be more cautious and restrict any official statements, as they may become evidence for the UN report. Accordingly, all access to UN agencies was curtailed at this point. Moreover, I was instructed that the interviews I was able to conduct with local UN staff cannot be included in my research. In line with requisite research ethics guidelines, no interview data obtained from UN respondents have been used in the completion of this thesis. This points to an obvious limitation/gap in the research presented here; and one that can be addressed in future research endeavors.

Apart from access to relevant international actors, there were also limitations in the access to local civil society actors. Throughout the course of field research I was able to secure unprecedented access to the military and government officials. This, however, does not come without some limitations. The access that I was given to the military was significant and has led to substantial findings for this thesis. This access was complemented by the access I was granted in interviewing the Secretary of the Ministry of Resettlement, as well as an interview with the District Secretary of Mullaitivu (both of which were very sensitive in nature, and only made possible through a slowly nurtured contact made with a prominent journalist in the country. Whilst these interviews were invaluable for the research purposes of this study,

future research in this area would benefit from greater access to more government officials. The issue of access with the local sphere was slightly easier to manage in relation to local civil society organisations, and civil society leaders, in particular. This study has benefitted from views put forth by leaders of some of the major civil society organisations as well as senior staff in those organisations included in this study. Through the range of interviews conducted, and access given, it has been possible to make claims that are both empirical and robust. That said, the access that I was able to obtain, and that which has been presented in the form of interview data (in chapters 5, 6 and 7), could be improved with a larger sample size of civil society actors. For example, access to local NGO field staff that actually worked during the war and throughout the resettlement years (2009-2012) was more difficult to establish.

Through key contacts, I was able to establish contacts with local NGO field staff from some key organisations, but the names of these individuals and their organisations have been withheld upon request of the respondents, and in line with research ethics. For example, for some of the NGO field staff respondents had only recently returned to Sri Lanka, having previously fled due to threats on their life (that were only passed onto them through friendly governmental contacts during the war). For the purpose of research ethics, these respondents were no longer deemed to be part of a vulnerable population; however, their willingness to engage on these issues was limited and cautious. These claims, of course, could not be substantiated or verified for objective research purposes. The overarching point to be taken from this account of research is that future research would benefit from more unqualified access to local actors active in this field.

A final limitation to this study that demands recognition comes in the formulation of this study more generally; specifically, the limitations that are inherent in a single case study approach to empirical research. The decision to limit this study to a single case study was informed, in the first instance, by pragmatic concerns. Given the limited resources for field research that would support this thesis, it was determined that a single case study was the best option available. In the second instance, however, Sri Lanka was selected for three reasons: 1. Sri Lanka has a long history of internal displacement; 2. The country has a long-standing history of engagement with the international community, which may be linked to its colonial history; 3. The internal displacement dilemma evident in Sri Lanka included all dimensions of the internationally constructed definition of what an IDP meant in the newly developed and established definition, finalised in 1998. These considerations made Sri Lanka an ideal case

for this thesis. However, the always present limitations of a case study approach (explored in chapter 3) remain relevant here. The basic limitation here is that of “external relevance” whereby case study research is not deemed valuable for other research because it does not establish a scientifically accepted conclusion of causality. This limitation was recognised, however, in chapter 3 when the choice of employing a constructivist framework was justified. It is the claim here that this research is valuable, if not for pragmatic reasons, because these issues can only be understood through the course of in depth research that attempts to take account of local context as a constituent element of the research design. Indeed, future research in this vein may be improved by a comparative method; but the nuance of a case study approach remains valuable and should not be lost in any future project attempting to make the claims that this thesis has presented.

The findings summarised and considered in this conclusion have been intended to bring this thesis to a close. The different observations summarised, the policy and theoretical implications, as well as the observations about limitations to this study in relation to future research endeavors represent only the final concluding thoughts of this thesis. The dilemmas of internal displacement remain pronounced and acute throughout the world; internal displacement in Sri Lanka remains an enduring issue that must be addressed; and research remains wanting in this field. The modest aim of this thesis is that, with the insights recounted here, we now have more to think about when considering international assistance and protection of internally displaced persons; and there are also new ways to think about this issue as a whole.

## **Appendix I: Guiding Principles on Internal Displacement**

By the mandate and encouragement of the Commission of Human Rights

(E/CN.4/RES/1996/52, para. 9) and the United Nations General Assembly, Representative to the Secretary General on Internal Displacement, Francis Deng, led efforts to develop this document setting out existing and relevant international law in order to address the gray areas and gaps in IDP protection and assistance. He was assisted by a team of international legal scholars, chaired by Mr. Walter Kälin (now Representative of the Secretary-General on the human rights of internally displaced persons). The resulting Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) were presented to the Commission on Human Rights in 1998. Further legal annotations have been provided, with the most recent being provided in 2008.

### **INTRODUCTION: SCOPE AND PURPOSE**

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. 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.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
  - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
  - (b) States when faced with the phenomenon of internal displacement;
  - (c) All other authorities, groups and persons in their relations with internally displaced persons; and

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

## SECTION I - GENERAL PRINCIPLES

### Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced. 2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

### Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

### Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

### Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

## SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

### Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

### Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

The prohibition of arbitrary displacement includes displacement:

- (a) When it is based on policies of apartheid, Aethnic cleansing or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment. Displacement shall last no longer than required by the circumstances.

### Principle 7

1. Concerned authorities shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons. Prior to any decision requiring the displacement of persons, the authorities shall ensure that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

#### Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

#### Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

#### Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favor or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

#### Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.



2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

#### Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

#### Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

#### Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

#### Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

#### Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

#### Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

#### Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

#### Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

#### Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

#### Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
  - (a) Pillage;
  - (b) Direct or indiscriminate attacks or other acts of violence;
  - (c) Being used to shield military operations or objectives;
  - (d) Being made the object of reprisal; and
  - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

#### Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

#### Principle 23

1. Every human being has the right to education.
2. concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

### SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

#### Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

To give effect to this right for internally displaced persons, the authorities

#### Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

#### Principle 26

Persons engaged in humanitarian assistance, their transports and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

#### Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

### SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

#### Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in

safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

#### Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

#### Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

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