

# **Unintended consequences of adjacency claims: the function and dysfunction of analogies between refugee protection and IDP protection in the work of UNHCR**

## **1. Introduction**

This article analyses the role of adjacency claims in developing the normative and institutional framework for the international protection of internally displaced persons (IDPs). I argue that the same adjacency claims that justified international normative expansion also resulted in the expansion of the mandate of the UN refugee agency (UNHCR) to include responsibility for IDP protection, and a replication of the institutional approach to protection from the analogous older issue-area (refugee protection) to the new issue-area (IDP protection). This approach to protection, designed for the peacetime protection of those who have crossed an international border, is dysfunctional in the operational context of armed conflict in countries of origin. Specifically, it is overly state-centric, and reflects a legalistic understanding of protection focused on citizenship rights and at least one step removed from addressing physical violence and insecurity.

### ***1.1. From adjacency claims to bureaucratic dysfunction***

An ‘adjacency claim’ asserts a relationship between an existing norm and an emergent norm. Constructivist scholars in IR have shown how the construction of such linkages or associations helps garner acceptance for new norms, particularly in the area of human rights and humanitarian law.<sup>1</sup> In this article, I show that while adjacency claims can indeed be extremely useful in gaining agreement to extend international norms and institutions to new issue-areas, they may also result in sub-optimal international institutional arrangements for dealing with the new issue-areas. I thus offer an important counterpoint to the literature which uncritically assumes positive effects of adjacency claims on human rights protections.

Constructivist scholarship in IR has established that, all other things being equal, where a new norm resonates with existing or established norms, it is more likely to be accepted by states or other international actors whose behaviour is to be shaped by that norm. Thus moral entrepreneurs seeking to promote a new norm deliberately construct analogies between that norm and one or more already established norms. Richard Price, for example, emphasized the importance of what he terms *grafting*, ‘the combination of active, manipulative persuasion and the contingency of genealogical heritage in norm

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<sup>1</sup> Finnemore & Sikkink 1998; Price 1998.

germination' in bringing about the land mine ban.<sup>2</sup> Likewise, Martha Finnemore and Kathryn Sikkink state that 'activists work hard to frame their issues in ways that make persuasive connections between existing and emergent norms'.<sup>3</sup>

These framing processes involve actively and strategically constructing analogies between two phenomena—an existing norm and an emergent norm—and in many cases an analogy could just as easily be constructed between the emergent norm and some other phenomenon. To make the adjacency claim most convincing, analogies between the existing norm and the emergent norm may be emphasized or even exaggerated, while differences are understated. This has the effect of making two issue-areas appear more similar than they really are, and hence creates the impression that a policy approach designed to address the older issue-area is appropriate for addressing the new issue-area, when in practice that new issue-area requires a distinct response. In this way, knowledge and rules from one context are applied to another context, for which they are unsuitable.

Michael Barnett and Martha Finnemore have coined the term 'bureaucratic universalism' to refer to a dysfunctional behaviour pattern produced by IOs when they apply generalised knowledge or rules across different contexts, and particular circumstances are not appropriate to such knowledge or rules.<sup>4</sup> However, Barnett and Finnemore do not tell us the conditions under which we can expect such dysfunctional behaviour to occur. The present article highlights how adjacency claims can create such conditions. Since most IR scholarship on the emergence of norms has focused on progressive norms that are viewed as positive by their respective scholars, adjacency claims are also viewed as positive. By contrast, this article highlights the unintended consequences such analogies can generate, and argues that they may lead to dysfunctional policy approaches for the implementation of the new norms.

In making these arguments, I contribute to critical literature on the role of international organizations (IOs) and nongovernmental organizations (NGOs) in the development and promotion of human rights norms. Much of this more critical literature focuses on questions of issue-emergence or issue-selection by 'gatekeeper' NGOs, asking why some causes are promoted while other equally deserving causes are ignored.<sup>5</sup> Following that logic, adjacency claims could result in a 'mis'-prioritisation of issues and causes by the international community if they generate support for some norms at the expense of others. Furthermore, Clifford Bob has argued that the framing necessary to generate international support for a cause can lead to the watering down of claims, and the alienation of the very people whose rights are supposedly being promoted, and can

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<sup>2</sup> Price 1998, 617.

<sup>3</sup> Finnemore & Sikkink 1998, 908.

<sup>4</sup> Barnett & Finnemore 2004, 39-41.

<sup>5</sup> Bob, 2005, Carpenter, 2007.

actually be detrimental to the cause.<sup>6</sup> Such critical perspectives on adjacency claims are the exception rather than the rule, and the present article contributes to them by identifying an additional mechanism through which adjacency claims can have unintended consequences.

It also contributes to the nascent literature on the *implementation* of international norms by *IOs*. The literature on norm development focuses mainly on norm emergence, promotion and acceptance, rather than implementation.<sup>7</sup> There is a vast amount of work—by both IR and international law scholars—on state compliance with international law.<sup>8</sup> However, only recently has a body of literature on the implementation of non-legal norms by states, and on the implementation of both legal and non-legal norms by non-state actors, emerged.<sup>9</sup> This work examines why and how norms are implemented, and the present article adds to this by linking the process of norm development and promotion to that of implementation.

## ***1.2. Methodology and approach***

This article is based on a combination of primary and secondary literature, plus interviews with UNHCR field staff in Colombia in 2010, Myanmar in 2013 and the Democratic Republic of Congo in 2014.

The rest of the article proceeds as follows. In section two, I show how adjacency claims were employed by norm entrepreneurs to generate support for a norm of IDP protection. In section three, I argue that the same analogies were instrumental in justifying the expansion of UNHCR's mandate to encompass IDP protection. In section four, I show how UNHCR has replicated its understanding of protection from refugees to IDPs. I argue that, because there are in fact fundamental differences between refugees and IDPs, this replication has yielded a dysfunctional approach to the protection of IDPs. Finally, I conclude with some thoughts on the implications of this analysis for theory and policy.

## **2. The emergence of the IDP policy category in the 1990s**

Acceptance of a norm of IDP protection depended on establishing IDPs as a special category deserving of dedicated international protection. The designation of IDPs as a policy category, and the development of the associated policy framework was undoubtedly facilitated by the world time-context<sup>10</sup> and the interests of states at that time. The end of the Cold War yielded the end of the bipolar structure that had

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<sup>6</sup> Bob 2005, 184-185.

<sup>7</sup> Finnemore & Sikkink 1998; Risse, Ropp, & Sikkink 1999; Simmons, Lloyd, & Stewart 2018.

<sup>8</sup> Chayes & Chayes 1998; Hafner-Burton 2008; Kingsbury 1998; Simmons 2010; Slaughter 1995.

<sup>9</sup> Betts & Orchard 2014; Risse, Ropp, & Sikkink 2013; Schneiker 2017.

<sup>10</sup> Finnemore & Sikkink 1998, 909.

constrained multilateral international action within sovereign states. This provided the opportunity for the international community to become more involved in what had hitherto been considered the domestic affairs of states. In addition, European and North American states were adopting increasingly restrictive asylum policies and practices in the 1980s and 1990s.<sup>11</sup> As a consequence of the increasing reluctance of states to accept refugees, IDP protection came to be seen as both a humanitarian solution and as a means to contain would-be refugees in their countries of origin.<sup>12</sup> In other words, there existed not only the geopolitical opportunity but also rational incentives for major states to support efforts to protect and assist IDPs in their own countries.

In addition, a number of norm entrepreneurs made the moral case for IDP protection. The Brookings Project on Internal Displacement was instrumental in driving the IDP agenda and in pushing for IDPs to be recognised as a category of concern, with individuals such as Roberta Cohen, Francis Deng, Walter Kälin and Erin Mooney advocating for a separate humanitarian category for IDPs. Their publications in the 1990s focused on raising the profile of IDP needs, and also on reconceptualising the international community's approach to sovereignty and intervention in situations in which national governments are unable or unwilling to protect their citizens.<sup>13</sup> The reconceptualization of 'conditional sovereignty' or 'sovereignty as responsibility' provides a justification for international involvement in states that fail to protect their people, but does not *a priori* imply any particular focus on displaced people, since the non-displaced may be equally unprotected by the state. Thus their emphasis on the particular needs of IDPs, and on the similarities between refugees and IDPs, were crucial to the establishment of the IDP policy category.

The introduction of an IDP-specific policy framework was contested. Those advocating increased attention to the predicament of IDPs made two main arguments. The first argument maintains that those who are internally displaced often have greater or different vulnerabilities and needs from the non-displaced population, and that they therefore merit specific policies.<sup>14</sup> The second argument claims that those who have displaced internally often meet all the criteria for refugeehood apart from the requirement to have crossed an international border, and that it is therefore unjust to accord them lesser rights, protection and assistance than those to which refugees are entitled.<sup>15</sup> In short, the arguments in favour of the IDP policy category sought to distinguish IDPs from the broader civilian population, and to construct analogies between the plight of IDPs and that of refugees.

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<sup>11</sup> B S Chimni 1998; Gibney 2004; Gilbert 1998; Loescher 2001.

<sup>12</sup> Dubernet 2001; Duffield 1997; Phuong 2004; Shacknove 1993.

<sup>13</sup> Cohen & Deng 1998; Deng et al 1996.

<sup>14</sup> Cohen 2006, 89; Geissler 1999, 452.

<sup>15</sup> Cohen 2006, 88; Lee 1996.

Those appealing for caution in developing IDP-specific policies and mandates countered that the non-displaced in a country may have the same or greater needs than the internally displaced, such that singling out IDPs for special treatment was morally questionable.<sup>16</sup> For example, James Hathaway observes that ‘the real community of interest is not ... between refugees and IDPs, but instead between IDPs and other internal human rights victims’.<sup>17</sup> They also argued that the fact of having crossed an international border is absolutely material in justifying a special commitment from the international community, and a special legal status, for refugees. According to this perspective, it is precisely because a refugee is outside her country of origin that the international community has the competence and capability to protect her.<sup>18</sup> Disputing the need for a special legal status in particular, several scholars pointed out that IDPs were—together with the non-displaced population—already covered by international human rights law and international humanitarian law.<sup>19</sup> Since refugee rights are at best equal to, and usually less comprehensive than, the rights granted to nationals, IDPs (as nationals) are already legally entitled to the same or better standard of treatment as refugees on the same territory.<sup>20</sup>

In sum, contestation over the appropriateness of designating IDPs as an international policy category distinct from the broader populations to which they belong hinged on differing perspectives as to the extent to which we can and should see refugees and IDPs as similar, and in similar predicaments. Those advocating for a special IDP category and policy framework won the day; in 1992 Francis Deng was appointed by Boutros Boutros-Ghali to be the first representative of the Secretary-General on IDPs, and six years later he published the Guiding Principles on Internal Displacement.<sup>21</sup> By the end of the 1990s, then, IDPs were firmly on the international agenda, and the Guiding Principles—which reflect, and are consistent with, international humanitarian law, international human rights law and, by analogy, refugee law<sup>22</sup>—provided a soft law framework for their protection

### **3. Institutional arrangements: mandate expansion in UNHCR**

The IDP protection norm was established, but it was not clear who should be responsible for implementing that norm, and contestation over what institutional arrangements should be adopted to address IDP needs persisted well into the 2000s. Francis Deng and many others advocating for the international protection of IDPs

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<sup>16</sup> Aeschlimann 2005, 26.

<sup>17</sup> Hathaway 2007, 359.

<sup>18</sup> Goodwin-Gill 2000; Hathaway 2007, 353.

<sup>19</sup> Geissler 1999, 457.

<sup>20</sup> Hathaway 2007, 358.

<sup>21</sup> UN Commission on Human Rights 1998.

<sup>22</sup> Deng 1995; Kälin 2008.

believed that a dedicated agency was required.<sup>23</sup> Some favoured creating a new UN forced migration agency to take on the responsibilities of UNHCR for refugees and to address the protection and assistance of other—internally and externally—displaced persons.<sup>24</sup> Others proposed creating a new, IDP-specific agency, or mandating an existing agency, most likely to be UNHCR, with IDP responsibilities.<sup>25</sup> Two issues were at stake here: (1) whether a single agency was required to take on formal responsibility for IDPs or whether that responsibility could be shared across several different agencies; and (2) if a single agency were required to take on responsibility, whether or not that agency should be UNHCR.

The initial solution was to address IDP needs through inter-agency coordination. In 1998, the UN Office for the Coordination of Humanitarian Affairs (OCHA) was designated the international community's focal point for IDPs, and governments urged operational agencies including UNHCR to appoint their own focal points, to liaise with the newly-appointed Senior IDP advisor in OCHA.<sup>26</sup> In September 2000, the Inter-Agency Standing Committee (IASC) set up the Senior Inter-Agency Network to Reinforce the Operational Response to Situations of Internal Displacement, which was tasked with conducting country reviews and making recommendations on how to improve the institutional response to internal displacement.<sup>27</sup> On the recommendation of the chair of the Senior Network, and under the so-called collaborative approach, a non-operational Internal Displacement Unit was launched in January 2002 (renamed the Inter-Agency Internal Displacement Division in 2004) to promote more effective inter-agency, operational responses to internal displacement.<sup>28</sup> The aim was to ensure greater focus on IDP needs across operational UN agencies, but failings were identified in terms of gaps, overlaps and a lack of predictability.<sup>29</sup>

In parallel with these developments, the second issue—the question of UNHCR's role—was debated. For its part, UNHCR was happy to be involved with IDPs on a discretionary and *ad hoc* basis but, seeking to maintain flexibility, resisted calls in the 1990s to incorporate formal responsibility for IDPs into its mandate.<sup>30</sup> In 1994, UNHCR published three documents seeking to clarify its role with IDPs, reviewing its prior experience with IDPs—which was largely focused on assistance rather than protection—and emphasizing that its mandate to undertake activities on behalf of IDPs was limited, conditional, and discretionary, and looking to develop criteria on which

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<sup>23</sup> Turton 2011, 8.

<sup>24</sup> Martin 2004.

<sup>25</sup> Loescher 2001, 355; Turton 2011, 8.

<sup>26</sup> Loescher 2001, 355; Turton 2011, 8.

<sup>27</sup> Phuong 2004, 109; Turton 2011, 8.

<sup>28</sup> Phuong 2004, 109-110; Turton 2011, 8.

<sup>29</sup> Loescher 2001, 354-356; Martin 2004, 310.

<sup>30</sup> Loescher 2001, 293-294; UNHCR 1994a.

decisions about involvement could be based.<sup>31</sup> In a number of documents, UNHCR highlighted the fact that IDPs are often in the same place and the same predicament as the refugees UNHCR is mandated to protect and assist.<sup>32</sup> Thus it was argued from an ethical perspective that since UNHCR was responsible for protecting and assisting the refugees, it should also protect and assist those IDPs in the same place. In a second step, functional arguments pointed to purported similarities between what UNHCR was already doing for refugees and what was needed for IDPs. For example, in policy documents from 1998 and 2000, UNHCR identified its expertise and experience with refugees as qualifying it to provide protection and solutions for IDPs.<sup>33</sup>

Claims about UNHCR being well-qualified to protect IDPs were contested, with some scholars disputing the claim that refugee protection and IDP protection are such similar tasks, and the corresponding claim that UNHCR has the competence to protect IDPs.<sup>34</sup> However, the main arguments against UNHCR mandate expansion focused on how working to protect and assist IDPs could limit or damage refugee protection efforts. At their most basic, such arguments point to the potential diversion of resources from refugee protection. They also suggest a more fundamental conflict of interest. Based on UNHCR experience in the former Yugoslavia in particular, some have argued that in-country presence in armed conflict results in the politicisation of UNHCR and its frequent instrumentalization by parties to conflict.<sup>35</sup> Several seasoned analysts of refugee law and related issues have further suggested that increased engagement in countries of origin—and associated compromising of principles—weakens UNHCR’s moral authority to push states to meet their obligations in refugee protection, and hence serves to erode the institution of asylum.<sup>36</sup>

By the mid-2000s, however, there was quite wide agreement that the collaborative approach was inadequate, and UNHCR was the only serious contender to take responsibility for IDP protection. In 2005, the collaborative approach was replaced by the ‘cluster approach’, a coordination structure involving UN and non-UN humanitarian organizations at both the global level and country level. Each cluster focuses on a particular aspect of emergency response,<sup>37</sup> and has a clearly defined lead agency, and a provider of last resort. For conflict-induced IDPs, UNHCR was appointed the Global Cluster Lead for the three clusters of protection, emergency shelter, and camp coordination and camp management. In situations where internal displacement is

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<sup>31</sup> UNHCR 1994a, 1994b, 1994c.

<sup>32</sup> Morris 1997, 496; UNHCR 2000, 3; 2007a, para. 36.

<sup>33</sup> UNHCR 1998, para. 12; 2000, 5.

<sup>34</sup> Goodwin-Gill, 2000.

<sup>35</sup> Cunliffe & Pugh 1997; Krever 2011.

<sup>36</sup> Barutciski 2002; B. S. Chimni 2000; Frelick 1992; Goodwin-Gill 2000; Turton 2011, 10.

<sup>37</sup> The 11 clusters are: food security; camp coordination/management; early recovery; education; emergency shelter; emergency telecommunications; health; logistics; nutrition; protection; and water, sanitation and hygiene.

exclusively due to natural or man-made disasters, UNHCR shares responsibility at the field level with the UN Children's Fund (UNICEF) and the Office of the High Commissioner for Human Rights (OHCHR).

Had IDPs been understood to have more in common with other (non-displaced) internal human rights victims than with refugees, the institutional arrangements for their protection might have looked very different. However, given the analogies constructed between refugees and IDPs, UNHCR's expertise with refugee protection was seen to make it uniquely well-placed to protect IDPs. Thus Roberta Cohen claimed that 'UNHCR's long involvement with protecting refugees makes it the obvious candidate for dealing with the internally displaced.'<sup>38</sup> Likewise, in outlining the particular assets at its disposal with which to undertake the task of IDP protection, 'the expertise, competence and capacity that UNHCR has developed in protecting uprooted populations' is described as the most significant.<sup>39</sup> In sum, adjacency claims between refugees and IDPs were used not only to make the case for a norm of international protection for IDPs, but also to make the case for UNHCR to be the international actor with primary responsibility for implementing that norm.

#### **4. Replication of approaches from older tasks to new task**

Following the logic of the adjacency claims, UNHCR then replicated its understanding of, and approach to, protection from the old task of refugee protection to the new task of IDP protection. To the extent the new task is different from the old task, replication can limit the efficacy of the way that the new task is addressed. In this section, I highlight two key characteristics of the UNHCR understanding of refugee protection which make sense in that context, but that are dysfunctional when applied to the task of IDP protection, for which they are not appropriate.

##### **4.1. *State-centric approach to protection***

UNHCR refugee protection efforts are based on the idea that states provide protection. Where a state fails in its responsibility to protect a citizen, UNHCR works to get another state to take on responsibility, through the granting of refugee status. The approach taken by UNHCR to IDP protection is likewise first and foremost focused on the state. However, the 'IDP problem' is fundamentally different from the 'refugee problem' as there is no second state involved. In the case of an IDP, one state has failed in its responsibility to protect that person, and UNHCR works to get that same state to resume its protection responsibility. This is a very different task, and the disjuncture between the understanding of protection carried through from refugee protection and the actual requirements of in-country protection limits the scope of protection by UNHCR.

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<sup>38</sup> Cohen 2006, 95.

<sup>39</sup> UNHCR 2007a, para. 11.



In armed conflicts, UNHCR recognises that ‘governments may not be in a position to ensure the necessary protection. The displaced may be in areas of territory over which the authority of the State is absent, or difficult to enforce, and State policies may themselves cause or aggravate forced displacement or hinder humanitarian work’.<sup>40</sup> Where the state is itself the cause of displacement or other rights violations, the international protection of IDPs is a particularly difficult task.<sup>41</sup> In spite of this, and the fact that most of UNHCR IDP operations take place in the context of armed conflict, UNHCR maintains a state-centric approach to IDP protection.

The contradictions and limitations of this state-centric approach became apparent in interviews. In Colombia and Myanmar, for example, UNHCR staff acknowledged that the state did not have access to the whole country.<sup>42</sup> In some guerrilla-controlled areas of Colombia, anyone working for the state, including school teachers or nurses, would be targeted. In addition, in some regions the former AUC paramilitaries and their successors had infiltrated the state apparatus to such an extent that UNHCR’s state-centric focus severely limited in its scope for action.<sup>43</sup> In the DRC, working with the state was seen as ‘very important’,<sup>44</sup> despite the fact the government was not deemed a strong interlocutor, and the role of the state understood to be very limited.<sup>45</sup> Highlighting the universal deferral of responsibility to higher-level colleagues by interlocutors across the different levels of government in Myanmar, one interviewee questioned whether the problem was genuine disorganisation or deliberate manipulation, noting that UNHCR likes to see itself as a partner of the state, but that the government may have different goals.<sup>46</sup> In Colombia, interviewees acknowledged that the state could do more to prevent displacement and protect IDPs.<sup>47</sup> In all three countries, the state itself was often the cause of displacement or posed a threat to IDPs.<sup>48</sup>

The corollary of emphasising the state is that armed non-state actors are conspicuous by their near-absence in UNHCR efforts to protect IDPs. Analysis of UNHCR policy documents reveals three kinds of reference to non-state armed groups. First, the applicability of IHL and the relevant provisions of the Guiding Principles to such groups is affirmed.<sup>49</sup> Second, there are references that claim that successful protection from armed attacks can only occur when all parties to a conflict pursue policies based

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<sup>40</sup> UNHCR 2007b, para. 7.

<sup>41</sup> Deng 2006; Orchard 2010.

<sup>42</sup> UNHCR interview Medellín, Quibdó

<sup>43</sup> UNHCR interview Barranquilla

<sup>44</sup> UNHCR interview, Goma

<sup>45</sup> UNHCR interview, Kinshasa

<sup>46</sup> UNHCR interview, Sittwe

<sup>47</sup> UNHCR interview Bogotá, Neiva

<sup>48</sup> UNHCR interviews Bogotá, Goma, Kinshasa, Medellín, Myitkyina, Pasto, Yangon

<sup>49</sup> UNHCR 2007b, para. 17.

entirely on humanitarian principles.<sup>50</sup> Third, UNHCR envisages some interaction with armed non-state parties to conflict. However, such interaction is not directed at protecting refugees and IDPs, but rather with institutional neutrality and staff security in mind.<sup>51</sup>

In Colombia, UNHCR staff were not permitted to exchange information with members of non-state armed groups, and had contact with them only when the armed groups required it.<sup>52</sup> Some interviewees reported that it was better to avoid contact for reasons of staff security, or because the armed groups could manipulate aid,<sup>53</sup> but others believed the lack of dialogue and relationships with armed groups had a negative impact on protection.<sup>54</sup> In the Kivus, UNHCR was engaging with some non-state armed groups on protection issues to a limited degree,<sup>55</sup> but not in the rest of the DRC.<sup>56</sup> In Myanmar UNHCR engagement with armed groups was minimal, especially in terms of a dialogue on protection.<sup>57</sup> One interviewee pointed out that UNHCR is not used to talking to non-state elements.<sup>58</sup> Clearly this imposed a significant limitation on UNHCR's protection work, given that in some states, the majority of IDPs are in areas controlled by non-state armed groups.<sup>59</sup>

Better protection outcomes for IDPs could be achieved if non-state armed groups abstained from threatening them, and in some cases such groups could also play a more proactive protection role.<sup>60</sup> For these reasons, there is a broad consensus among humanitarian policy analysts that greater engagement with armed non-state actors is a necessary (if insufficient) condition for improved protection outcomes.<sup>61</sup> UNHCR itself also identifies armed non-state actors as a significant cause of physical insecurity and danger to civilians, and a cause of internal displacement, and consistently argues that addressing the causes of displacement is necessary for effective protection. Ignoring armed non-state actors is thus inconsistent with UNHCR's own analysis, and with the broader consensus on the importance of armed groups in determining protection outcomes. It is, in short, dysfunctional for IDP protection.

#### ***4.2. A legalistic understanding of protection with insufficient attention to armed conflict and violence***

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<sup>50</sup> UNHCR 1988, para. 34; 1989, para. 45.

<sup>51</sup> UNHCR 2007b, para. 39.

<sup>52</sup> UNHCR interviews Bogotá, Cúcuta,

<sup>53</sup> UNHCR interviews Apartadó, Bogotá

<sup>54</sup> UNHCR interviews Pasto, Villavicencio

<sup>55</sup> UNHCR interview Goma

<sup>56</sup> UNHCR interview Kinshasa

<sup>57</sup> UNHCR interviews Mawlamyine, Yangon

<sup>58</sup> UNHCR interview Yangon

<sup>59</sup> UNHCR interviews Mawlamyine, Myitkyina, Yangon

<sup>60</sup> Ruardel 2013; South 2012.

<sup>61</sup> ADH 2011; Zeender 2005.

International refugee law accepts that states will not always treat their citizens perfectly, and seeks to deal with this largely inescapable fact. It offers an alternative solution whereby another state offers legal status to those who have fled their own state because it was unwilling or unable to protect them. When it comes to IDP protection, rather than offering an alternative solution in another country, UNHCR seeks to change the fact that a state is not protecting its own citizens. It does so through the same kind of legalistic approach used in its refugee protection work. The content of protection laid out in the 1951 Refugee Convention and its 1967 Protocol is largely defined by analogy to the rights and benefits accorded either to nationals or to other aliens in the country of refuge. Essentially these treaties provide for a refugee to reside legally in the country of refuge, and not to be discriminated against in terms of economic and social rights. Following the same logic, UNHCR frequently reiterates a rights-based approach to IDP protection, which it defines as being ‘based on the principle that IDPs, *like all other citizens*, are entitled to full protection under international human rights and humanitarian law, as well as national law, at all stages of the displacement process’.<sup>62</sup>

While UNHCR does not advocate for a special legal status for IDPs, it nonetheless views protection in terms of judicial protection rather than the provision of physical security. The focus is on the legal entitlements of IDPs rather than the threats they face, and it is not made clear whether or how such judicial protection is expected to translate into physical protection. Whereas for refugees, legal status and some quasi-citizenship rights are exactly what they need in order to be able to live without harassment in a host state, legal protection may not be of much importance to IDPs if it does not translate into physical protection. Furthermore, the legal protection capacity of UNHCR extends only to those who have crossed an international boundary.

Analysis of relevant policy documents from the 1990s suggests that UNHCR conceptualised legal protection as one among multiple means to IDP protection. UNHCR took the view that ‘meeting the protection needs of the internally displaced and those at risk of displacement and promoting solutions is not only, and often not even primarily, a question of legal norms and remedies’.<sup>63</sup> At that stage, UNHCR was averse to committing itself to ongoing involvement with IDPs. However, as UNHCR has expanded its IDP protection role, judicial protection has become the main focus of its IDP protection efforts. What was described as only one, and often not the primary, means to protection has come to be seen as an end in itself. Since UNHCR became the lead UN agency for IDPs in 2006, policy documents emphasise ‘protecting the *rights* of

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<sup>62</sup> UNHCR 2007a, para. 26, emphasis added.

<sup>63</sup> UNHCR 1994a, para. 26.

the internally displaced’<sup>64</sup> and ‘the establishment of national laws, institutions and mechanisms that safeguard the rights of IDPs’.<sup>65</sup>

This legalistic approach carries through from policy to practice. In IDP contexts, UNHCR places great emphasis on developing the national legal framework (often in line with international laws and principles, most notably the Guiding Principles but also regional legislation), persuading the state to adhere to its obligations as set out in the legal frameworks, and informing individuals of their rights and how to claim them. UNHCR staff across Colombia, the DRC and Myanmar consistently identified conflict and violence as the major protection threats at the same time as most emphasised law as central to their response. Yet the legal framework is at least one step removed from conflict and violence, and it is frequently unclear how judicial protection is expected to translate into physical protection.

In many contexts, UNHCR also undertakes activities in which it provides services directly to populations of concern. These activities are broadly aimed at the realisation of citizenship rights and the prevention of discrimination against IDPs on the basis of their displacement. For example, legal documentation is provided with the aim of enabling IDPs to access social services and education, and to participate in elections.<sup>66</sup> Supporting the state to register and provide documentation to IDPs was a key element of UNHCR’s protection work in Colombia.<sup>67</sup> Likewise, in Myanmar UNHCR considered working on citizenship issues and documentation to be of paramount importance.<sup>68</sup> In the DRC, UNHCR had wanted to make IDP registration a major activity, but had to cut back due to insufficient funding.<sup>69</sup> This is in keeping with the focus of the Guiding Principles on making sure people in ‘refugee-like’ situations are ‘provided with the formal protection that comes from being a citizen of a particular state’.<sup>70</sup> It likewise mirrors activities UNHCR undertakes with refugees which include the provision of identity documents and the negotiation of refugee status to ensure refugees can access social services and education in their host country.

In the Myanmar context, given high numbers of stateless people, and significant restrictions of movement imposed on segments of the population in Rakhine State, the protective logic of documentation is obvious. Some staff members reported that citizenship or residence status meant everything in Rakhine, because without some kind of formal status, individuals could be deported to Bangladesh or disappeared.<sup>71</sup> In such

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<sup>64</sup> UNHCR 2007a, para. 20, emphasis added.

<sup>65</sup> UNHCR 2007a, para. 28.

<sup>66</sup> UNHCR 2007c, para. 33.

<sup>67</sup> UNHCR interviews Cúcuta, Pasto, Villavicencio

<sup>68</sup> UNHCR interviews Sittwe, Yangon

<sup>69</sup> UNHCR interview Kinshasa

<sup>70</sup> Turton 2011, 8.

<sup>71</sup> UNHCR interviews Sittwe, Yangon

a setting, documentation is a necessary, though insufficient, condition for protection. Elsewhere, the protective impact of registration and documentation is more doubtful. An interviewee in the DRC told me that having identification was relatively unimportant for IDPs, and that the value of registration and documentation activities lay in assistance delivery and tracking population movement and dynamics.<sup>72</sup> In other words, these activities facilitated the work of UNHCR—in terms of providing assistance and monitoring movement—but contributed to the protection of those who were registered at best only indirectly. In Colombia, one interviewee acknowledged that carrying documentation of IDP status could in some cases actually place IDPs at greater risk of violence.<sup>73</sup>

#### **4.3. *Alternative explanations for the state-centric and legalistic approach***

The UNHCR approach to IDP protection is state-centric and legalistic, with correspondingly insufficient attention to violence, conflict, and armed non-state actors. These characteristics yield a dysfunctional approach in that they limit the ability of UNHCR to respond to the main protection threats faced by IDPs. They are also consistent with a replication of policy from refugee protection to the new issue-area of IDP protection. However, the question remains as to whether it is *because* of the links constructed between refugee protection and IDP protection that these characteristics have been adopted in its IDP protection work, or whether other factors have determined the institutional approach to IDP protection.

Mainstream rationalist perspectives in IR attribute the behaviour of IOs largely to state interests. At the extreme end of the spectrum, neo-realists argue that IOs simply serve the interests of powerful states and have no independent effect on state behaviour.<sup>74</sup> According to this view, an IO would address any issue-area within its mandate in line with the desires of powerful states. While pressures from powerful states—in particular restrictive asylum practices and the desire to contain would-be refugees in countries or regions of origin—might help account for the normative and institutional developments that led to UNHCR taking on responsibility for the international protection of IDPs, it does not take us far in explaining the state-centric or legalistic nature of UNHCR's approach to IDP protection.

Where armed groups are designated as terrorist organizations, engagement with them is increasingly being criminalised by the US and other powerful states.<sup>75</sup> However, these restrictions are case-specific and not sufficiently wide-reaching to explain the overall approach to protection. The fact that UNHCR policy documents envisage engagement

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<sup>72</sup> UNHCR interview Kinshasa

<sup>73</sup> UNHCR interview Medellín

<sup>74</sup> Mearsheimer 1995.

<sup>75</sup> HPCR 2011; Pantuliano, Mackintosh, Elhawary, & Metcalfe 2011.

with armed non-state actors for the purposes of staff security and operational neutrality more than for the protection of IDPs suggests that the state-centric approach to protection stems not from any prohibition on such engagement, but rather from a particular understanding of protection.<sup>76</sup> It is difficult to see why powerful states would encourage a legalistic approach which focuses on citizenship rights and documentation, and largely ignores violence and physical insecurity. Indeed, there is evidence that a focus on violence and physical security is exactly what third party states expect of humanitarian protection work. For example, diplomats working in Sri Lanka in 2009 subsequently reported to the panel of an internal UN review that, because ‘UN documents referred prominently to protection they assumed that the UN had a monitoring and response system to address attacks on civilians and other violations.’<sup>77</sup>

Liberal institutionalists also view IOs as serving state interests, but they have a more expansive view of what those interests entail. They point in particular to the ability of IOs to help states to overcome cooperation problems and realise common interests.<sup>78</sup> According to such a perspective, IOs are the agents of states, but states cede some power to IOs because centralisation and independence enable IOs to support state interaction and undertake operational activities more efficiently than could a collective of states without any formal organisation.<sup>79</sup> In this way, IOs are able to exercise autonomy, but only so much autonomy as states choose to grant them. In the case of UNHCR, the General Assembly defines its formal institutional mandate, but leaves significant scope for UNHCR to define its own competence and role.<sup>80</sup>

Beyond pressures from powerful states or constraints from member states, IOs operate in a broader institutional structure which can affect the exercise of their autonomy. For example, the competition and marketisation of transnational civil society create perverse incentives such that the IOs do not always pursue the best approach to achieving their stated goals.<sup>81</sup> According to this perspective, we might expect UNHCR to adopt a less than optimal approach to IDP protection if such an approach allows it to carve out a niche in an otherwise crowded protection space, thereby allowing it to retain its relevance or to help ensure funding for its own continued existence. Notwithstanding the point about counter-terrorism above, major donors are unlikely to demand a state-centric and legalistic approach to protection. Indeed, some donor states actually push UNHCR to emphasise the role of armed non-state actors rather than states. For instance, as a major donor to UNHCR in Myanmar, the UK Department for International

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<sup>76</sup> See, for example, UNHCR 2007b, para. 39.

<sup>77</sup> Internal Review Panel 2012, para. 48.

<sup>78</sup> Hasenclever, Mayer, & Rittberger 1997; Keohane & Martin 1995.

<sup>79</sup> Abbott & Snidal 1998.

<sup>80</sup> Bradley 2016a, 31.

<sup>81</sup> Cooley & Ron 2002.

Development was insisting on protection activities in non-government-controlled areas.<sup>82</sup>

On the other hand, the pressure to compete for funding may indirectly push UNHCR to accept constraints on its operations imposed by affected states in exchange for access. Governments sometimes worry that when international agencies interact with the non-state armed groups on their territories it accords some international legitimacy to the groups. In Colombia, for example, the Uribe government banned UNHCR and other aid agencies from contact with the armed groups.<sup>83</sup> In Myanmar, government restrictions on travel severely limited UNHCR's access to non-government-controlled areas.<sup>84</sup> Yet this combination of funding and access constraints is not an entirely compelling explanation for the state-centric and legalistic nature of UNHCR's approach to IDP protection. Many states do not impose such restrictions on the work of international agencies and, where they do, those restrictions apply not only to UNHCR but to most or all other international agencies too—and other operational humanitarian agencies have not adopted such a state-centric and legalistic approach.<sup>85</sup>

Humanitarian protection by other actors both within and outside of the UN system mostly does not focus exclusively on IDPs, but rather on civilians in conflict more broadly. Elsewhere in the UN various influential actors specifically promote interaction with non-state armed groups as a means to increase protection for civilians. For example, in 2006 OCHA published a manual for humanitarian practitioners on negotiation with armed groups.<sup>86</sup> In a similar vein, in a 2009 report on the protection of civilians the UN Secretary-General stated that 'humanitarian actors must have consistent and sustained dialogue with all parties to conflict, State and non-State... the absence of systematic engagement will almost certainly mean more, not fewer, civilian casualties in current conflicts'.<sup>87</sup> Furthermore, in the Guiding Principles, UNHCR has at its disposal a normative framework for IDP protection that is explicitly intended to apply to non-state armed groups, but UNHCR focuses on those sections of the Guiding Principles that imply obligations of states. In other words, there would appear to be normative pressures from the wider UN system to take a less state-centric approach.

When it comes to explaining the legalistic nature of UNHCR's approach to IDP protection, attention to the broader normative or social environment is instructive. The most widely agreed-upon definition of 'protection' among humanitarians came out of a series of workshops organised by the ICRC between 1996 and 2000, according to which

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<sup>82</sup> UNHCR interview Myitkyina

<sup>83</sup> Bradley 2016b.

<sup>84</sup> UNHCR interviews Mawlamyine, Myitkyina, Yangon

<sup>85</sup> Bradley 2016a, 130-149.

<sup>86</sup> UN OCHA 2006.

<sup>87</sup> UN Security Council 2009.

the concept of protection encompasses ‘all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law.’<sup>88</sup> This definition, together with the Guiding Principles, informed the IASC’s 1999 policy paper on the protection of IDPs,<sup>89</sup> which in turn influenced UNHCR’s policy on IDP protection. However, given the breadth of the definition cited above, a focus on citizenship rights was by no means the only possible interpretation.

Many humanitarian actors adopted a narrower and more practical operational definition. For example, the International Committee of the Red Cross conceptualises protection in terms of ‘the safety, physical integrity and dignity of those affected by armed conflict and other situations of violence,’<sup>90</sup> and Oxfam understands protection as ‘improving the safety of civilians.’<sup>91</sup> For the UN World Food Programme, ‘protection means designing and carrying out food and livelihood assistance activities that do not increase the protection risks faced by the crisis-affected populations receiving assistance. Rather, food assistance should contribute to the safety, dignity and integrity of vulnerable people.’<sup>92</sup>

There appears to be an important difference between those humanitarian actors who seek to protect IDPs as part of their efforts to protect civilians in general, and those who seek to protect IDPs qua IDPs. While the former may seek to address the particular needs and vulnerabilities of IDPs,<sup>93</sup> they see them first and foremost as part of the wider internal civilian population and correspondingly see IDP protection first and foremost as safety from violence. By contrast, the latter (which includes UNHCR) see IDPs as people in refugee-like situations, and correspondingly see IDP protection as refugee protection-like. With respect to the approach taken by UNHCR specifically, analogies between refugees and IDPs may have had both this kind of direct effect on how IDP protection is understood, and also an indirect effect through mandate expansion and the replication of standard operating procedures from refugee protection. Organizations generally understand ‘problems’ in terms of the solutions they are able to offer. Since UNHCR’s expertise is in refugee protection it is unsurprising that UNHCR applies refugee protection procedures to the new ‘problem’ of IDP protection.

## 5. Conclusion

Adjacency claims were central not only to extending a norm of international protection to IDPs, but also to expanding the institutional mandate of UNHCR. Both UNHCR and

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<sup>88</sup> Giossi Caverzasio 2001, 19.

<sup>89</sup> IASC 1999.

<sup>90</sup> ICRC 2008, 752.

<sup>91</sup> Oxfam 2009.

<sup>92</sup> WFP 2012, 7.

<sup>93</sup> See, for example, Hickel 2001.



outsiders in favour of UNHCR mandate expansion highlighted its experience with refugee populations in order to make the case that it is in a strong position to meet the needs of internally displaced populations. Adjacency claims have emphasised the similarities between refugee and IDP protection while ignoring or downplaying the differences. As the tasks have been constructed as near-identical, it is unsurprising that the approach taken to IDP protection is near identical to the approach taken to refugee protection.

The overemphasis on similarities and analogies is problematic because the two tasks are in fact quite different. The approach taken by UNHCR in the name of in-country protection of IDPs during armed conflict closely mirrors the approach taken by UNHCR to refugee protection in peacetime. However, the new task is characterised by three significant differences: (1) the existence of armed conflict and a corresponding shift in the protection needs and priorities of the displaced; (2) the location of the protection efforts within the territory of the same state which has failed to protect the individuals and communities in question; and (3) the lack of a binding international legal framework with which to protect the internally displaced. The failure to adapt this approach to these specific features of in-country protections situations necessarily limits the scope of protection UNHCR can offer to IDPs in the midst of conflict.

This is not to deny that there are some similarities between the needs of IDPs and the needs of refugees. With respect to *material assistance*, for example, refugees and IDPs are both without their homes and lands, and are therefore likely to lack their normal possessions and need assistance with shelter, cooking facilities and other physical goods. However, in terms of *protection*, refugees and IDPs are not in an identical predicament. In a conflict context, both refugees and IDPs are likely to be in a similar situation of physical insecurity due to conflict-related violence, but refugees additionally require legal protection that permits them to remain in the territory in the absence of holding the nationality of that territory. UNHCR expertise in refugee protection relates to this second refugee-specific task, and it is not clear that UNHCR has ever had the ability to provide for the physical security of refugees in the midst of armed conflict. In other words, the analogy holds with respect to assistance not protection, or to the protection tasks at which UNHCR is weakest.

This calls into question the appropriateness of UNHCR taking on this role. However, the reality is that UNHCR has expanded its mandate to be the lead UN agency in IDP protection, and is highly unlikely to reverse this expansion. Therefore, UNHCR should work to minimise the negative effect if its IDP protection work on refugee protection outcomes. Furthermore, UNHCR should seek to address the dysfunctional characteristics of its IDP protection efforts identified in this article, by adapting its approach to IDP protection to make it better suited to the task at hand. Specifically, the approach could be adapted through increasing attention to the violence faced by IDPs in conflict contexts, and through greater engagement with the perpetrators of violence, including armed non-state actors.

From a theoretical perspective, this article suggests that while adjacency claims can be extremely useful in gaining agreement to extend international norms and institutions into new areas, they may also result in less than optimal international institutional arrangements for addressing the new issue-areas. Adjacency claims rely on analogies being established between two issue-areas. Such analogies are most convincing when similarities between the two issue-areas are emphasised or exaggerated, and when differences are understated. As a consequence of focusing on the similarities, the new issue-area is constructed as being more similar to the old issue-area than is actually the case. Given the apparent similarity, objectives, means and methods are taken from one issue-area and applied to another issue-area, for which they are often inappropriate. In this way, it appears that the adjacency claims often employed to justify normative and institutional expansion are also prone to yield policy approaches susceptible to charges of 'bureaucratic universalism'.

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