

BSC THESIS

Black cloud with a golden edge?

Protection of Human Rights of IDP's through
Humanitarian Action

Hananja Elisabeth Krufft

Januari 2014

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ABBREVIATIONS

HRL	Human Rights Law
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHL	International Humanitarian Law
IDP	Internally Displaced People
JEM	Justice and Equity Movement
LRA	Lord Resistance Army
SLA	Sudan's Liberation Army
SPLA	Sudan's People Liberation Army
UDHR	Universal Declaration of Human Rights

INTRODUCTION

Since the end of the cold war an increasing number of people have been forced to leave their homes as a result of armed conflict, internal war and serious violations of human rights. They are besides the traumatic human rights violations which made them leave in the first place, on a daily basis frightfully exposed to various human rights violations: inadequate shelter, food, violence, exploitation, lack of access to education and health care and insecurity. (Vincent, 2000) Where refugees flee to neighboring countries and subject to an established system of international protection, internally displaced persons (IDP's) flee their homes for the same reasons, but seek security within the borders of their own country: they are dependent on a government who is often unwilling or unable to protect them. (Chang, 2007) With a global community of human rights, the international community is at least morally obliged to offer protection to the human rights of IDP's. The current situation shows however, that in practice this remains extremely problematic and complex.

This research aims to give insights in the complexity of the protection of human rights of IDP's. It examines the difficulties and challenges within humanitarian action to protect the human rights of IDP's. Like highlighted above, the plight of IDP's hosts both academic and societal relevant questions. With the modern media, everyone in the modern world is sharer of the IDP's suffering, looking at newsflashes with astonishment and pity. They point towards the international community to take responsibility and bring the human rights protection into practice. The situation also host many academic relevant questions because of the complexity in doing this. Unlike refugees, who are subject to an established system of international protection, IDP's are dependent on their own governments and no specific convention about their plights exists. (Cohen, 1998) IDP's are nevertheless concern of international law and thus entitled to be protected in the name of human rights law. (Newman, 2003) This poses questions of responsibility, how different systems of legal protecting relate to each other and moreover how human rights can be translated into effective humanitarian practices on the ground.

Sudan offers an opportunity to examine and analyze the situation of IDP's, because the country hosts more than a quarter of the total IDP population. They are an example of the many people who are displaced because of internal violence and dependent on a government who is not able or not willing to provide protection against the massive human rights violations. In 2004, the number of internally displaced was estimated around six million, due to a conflict that is destroying Sudan for many years now. (Huylbroeck, 2013) A sizeable number of these IDP's are located in Darfur, the Western part of the country. The conflict in Darfur nowadays constitutes one of the greatest challenges to the international community. The conflict is rooted in historical and political tensions, and became so bad in 2006 that it was characterized as the worst human rights abuse in recent history. (Chang, 2007) The conflict in Darfur demonstrates the need to critically analyze how human rights of IDP's can be protected through humanitarian action.

Against the backdrop of above, the research question of the report can be formulated as: *How does international humanitarian action protect the human rights of IDP's?* We will look into what is meant with human rights protection, the nature of humanitarian action and use the case of Darfur as a clarification of the tensions and complexities.

It is essential to keep in mind that this paper is constructed on two main principles. Human rights, considered as the standards to which individuals are entitled and humanitarian action, which seeks to restore some of those rights. The aim of this paper is to provide a nuanced understanding of the complexities within humanitarian action to restore the human rights of IDP's, in the context of non-international, armed conflicts, like the situation of Darfur. The goal is therefore far from evaluating or criticizing the work of humanitarian action. Although not always stressed out, humanitarian action is meant to mean *international* humanitarian action.

In the first chapter we will address first concept: the human rights of internally displaced people. We will start with exploring the concept of human rights in general: What are human rights, how are they used and what difference do they make. The chapter continues with the elaboration of the legal protection of IDP's, to explore how the human rights of IDP's are legally organized. Both humanitarian law, human rights law and the Guiding Principles will be discussed. In the last part the above will be challenged, in order to conclude that if the rights of IDP's are violated it is not because of inadequate legal protection, but because of the willingness of governments.

The second chapter focuses on the second concept: international humanitarian action. It unravels the different tensions existing in the operation and decision making of humanitarian action, which uncovers a difficulty in humanitarian action regarding restoring human rights.

The third and last chapter will give an overview of the case of Darfur, aiming at exemplifying the tensions unraveled in the foregoing chapters. It points out the way in which the government of Sudan has used sovereignty as a shield to violate human rights and shows some challenges in the 'on-the-ground' practice of humanitarian action.

CHAPTER 1 Human Rights

“Different circumstances of respect and enforcement tell us nothing about who has what rights. To have right x, means being specifically entitled to x, whether the law that gave you that right is violated or not, whether to promise that give rise to the contractual right is violated or not or whether others comply with the principles of righteousness that establish your moral right or not.” (Donnelly, 2013, p10)

Human rights – menseregte, derechos humanos, droits de l’homme, Menschenrechte – all around the world we all have them, just because we are humans. They are activities, conditions and freedoms, essential to live as human beings– basic standards without which people cannot survive and develop in dignity. They are known to all, used everywhere and regularly referred to in case of something horrible. If we would ask people on the streets what human rights are, everyone will know where we are talking about, but we would nevertheless get many different answers. This is probably the result of human rights not being as simplistic as they might seem. To get more insight in the extent to which humanitarian action can restore the human rights of IDP’s, we will start in this chapter with addressing the human rights of internally displaced people. We start with exploring the concept of human rights in general: What are human rights and where do they come from? The chapter continues with the elaboration of the legal protection of the human rights of IDP’s, to explore how the protection of human rights of IDP’s is legally organized. We will find that different sets of law are working together but also creating tensions in an effective protection of human rights.

1.1 WHAT ARE HUMAN RIGHTS? - HISTORY

Human rights can be understood as the minimum standards to which individuals are entitled. Their roots lay in a moral understanding of rights: we can recognize them throughout all history in traditions, behavior and documents of many cultures. The philosophical basis of human rights has its roots in the ideas of nature laws, which states that some rights are just congenital. People have had a sense of rights and responsibilities by belonging to a group, religion, community, class etc. Most communities have always known rules like “do unto others as you would have them do unto you”. Biblical principles like “thou shalt love the stranger”, and “thou shalt not kill” are accepted for thousands of years by many. The Bible, Koran, Hindu Vendas, Babylonian Code, they all speak about people’s rights and their responsibilities. Even in politics, elements are recognizable of good governance, democracy, equality, duty and freedom. (Flowers, n.d.)

It nevertheless took thousands of years for the moral rights to become legislated. It was in the shadows of a global war and the Holocaust, when governments committed themselves to promote international peace and preventing conflict with the creation of the United Nations in 1945. With the horrifying extirpation of millions of disabled, homosexuals, Jews and Gypsies still in mind, the members of the UN agreed that never again anyone should be denied from life, nationality or freedom. The huge modification within the idea of human rights laid in the change from the former Westphalian system to the UN system, which had

massive implications for the sovereignty and legitimacy of states. Although sovereignty, which sets that the state is the highest authority within its territory and not subject to any higher power, is and was still an important starting point in the UN system, states were from that moment on more than ever connected and subject to international rules and restrictions. Not only states, also groups and individuals were seen as actors within the humanitarian system. (Held, 1991) A commission was established to develop a document in which the fundamentals of human rights were spelled out. (Flowers, n.d.) On the 10th of December, 1948 the Universal Declaration of Human Rights (UDHR) was adopted, in which a common standard of rights is set:

“All people have the right to life, liberty, and security of person” (article 3); “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (article 5); “everyone has the right to freedom of thought, conscience, and religion” (article 18), and to “freedom of opinion and expression” (article 19); everyone has “the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services” (article 25). Moreover “everyone is entitled to a social and international order in which the rights and freedoms set forth in Declaration can be fully realized” (Weiss, 2000, p. 27).

This declaration was drafted by representatives of all regions of the world, and accepted as a contract between a government and its people. Regardless of religion, culture and tradition, human rights are from that moment on known as what is in the declaration model. (Donnelly, 2013). The declaration is, however, a voluntary agreement of states and in itself not legally binding. It is the primary responsibility of governments to protect the human rights of its own citizens and the rights are only enforceable when they are codified into conventions or covenants, or when they become part of customary international law. Therefore the declaration is the foundation and statement of human rights which are spelled out and elaborated in many instruments.

Indeed, after the UDHR was drafted and adopted the work began to codify the rights into conventions. For rights to be legal a force, they must be written in conventions, also referred to as treaties or covenants. When a government signs a convention, it is legally bound to uphold the standards. With the establishment of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), human rights were included in legally binding instruments, falling under the umbrella of Human Rights Law (HRL). Together these two are often called the ‘International Bill of Rights’ and thus provide legally enforceable rights. It concerns inter alia the right to life, privacy, fair trial, equality before the law, freedom of expression, thought, religion and freedom from torture. Work and working conditions; an adequate standard of living, including food, clothing, housing, protection of family, highest attainable standard of physical and mental health, education, participation in cultural life. (Levin, 2013) Besides this, within Human Rights Law there are also some treaties around specific human right, for example the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention to eliminate all forms of discrimination against Women (1979) and of course the Convention on the Rights of the Child (1989). Also various regional conventions are established in Europe, Africa and America. (Huylbroeck, 2012)

All United Nations member states have ratified at least one of the 9 core human rights treaties, 80 percent of the countries have ratified 4 or more. (UN)

There is an ongoing effort to develop and harmonize different rights under the umbrella of human rights. The goal is to create a global community based on universal but developing standards of morality and dignity. (Newman and van Selm, 2003)

1.2 PROTECTION OF HUMAN RIGHTS OF IDP'S

Like explained in the introduction, the human rights violations of IDP's constitute one of the greatest humanitarian challenges today. For a long time, IDP's were not even discussed internationally. Unlike refugees, internally displaced persons do not benefit from a specialized international regime which ensures protection and assistance when their own government fails to. (Newman and van Selm, 2003) Because IDP's stay within the territory of their own government, they are subject to the sovereignty and responsibility of their states. When in the 1990s an increasing number of people were uprooted within their own countries because of conflicts, internal strife and systematic human rights violations, non-governmental organizations and human rights activists began calling for more attention to the human right protection of IDP's.

1.2.1 HUMAN RIGHTS LAW VERSUS INTERNATIONAL HUMANITARIAN LAW

The human rights of IDP's are like any other's broadly spoken protected through International Human Rights Law, as discussed above. States that signed and ratified the agreement are obliged to ensure respect for the universal recognized rights essential to ensure survival, well-being and dignity. However, the first limitation that we can distinguish is that HRL is primarily concerned at regulating the relationship between the state and its citizens in times of peace and its direct application is therefore not particularly suited for emergency situations. (Cotterell, 2005) However, International humanitarian law (IHL) sets limits to behavior during war and is therefore the primary basis for protection during in situation of armed conflict. We will start looking at the legal relationship between IHL and HRL, to find how they both work towards a legal protection of rights for IDP's. However this paper does not provide the scope and knowledge for a comprehensive, in-depth analysis of both laws, we will see that both IHL and HRL are applicable to protect the IDP's, but not specifically suited to the needs of IDP's.

International Humanitarian Law is "a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict." (ICRC, 2004, p. 1) Principles of IHL are established in the four 1949 Geneva Conventions and in the Law of The Hague 1907. With a few exceptions, IHL is only applicable in a situation of armed conflict or occupation and it establishes minimum rules that protects both those who do not take part in the fighting, and the ones who ceased to take part. Although it was traditionally only applicable to wars between two or more states, since the Geneva Conventions also non-international armed conflicts are subject to IHL. However the threshold for such conflicts is not clearly defined, acts in the nature of internal unrest, riots, isolated and sporadic acts of violence are excluded. (Naert, 2008)

Although IHL and HRL both lay restrictions on states, which strive at least partly to protect individuals (Naert, 2008), Humanitarian Law does not in itself protect human rights. Where the IHRL provides the standards to which individuals are entitled, the IHL sets limits on behavior during war. It is designed for situations of armed conflict and only particular categories (prisoners, wounded, sick, civilians and non-combatants) are protected in its name. It thus does not apply to all human beings by virtue of their humanity, as is the case with human rights. It is furthermore much narrower scoped than human rights, it does not address all the existing human rights and is focused on the obligation of the duty-bearer and not on the rights of the individual. (Cotterell, 2005) Individuals are less able to sue a state, and courts only play a role in cases of serious offenses defined as war crimes. (Naert, 2008)

Some other academics see humanitarian law nevertheless as part of human rights law, because it is argued that in times of conflict IHL may be better equipped than HRL to provide basic rights. Like explained before, HRL is primarily concerned at regulating the relationship between the state and its citizens in times of peace and its direct application in times of war therefore often turns out to be limited. (Cotterell, 2005) Firstly, unlike in Humanitarian Law, in case of war or emergency, there could be a deviation from the obligations under Human Rights Treaties. In time of war or in case of any other emergency that threatens the existence of country, derogation is permitted. The condition is that the seriousness of the conflict strictly requires this derogation, that it is temporary and that it does not conflict with other obligations under international law, which refers to both human rights and other IHL. Exceptions to the rule of derogation are the prohibition of torture, inhuman and degrading treatment, the prohibition of slavery and punishment without law. (Naert, 2008) It could be argued however, that also the fundamental non-derogable rights like right to life are violated by war. Furthermore, IHL is also binding to non-state actors; it provides rules towards the duties of belligerents towards the ones affected by war. It also provides more detailed obligations which are missing in human rights law, for example the duty to provide information about missing persons. (Cotterell, 2005)

All in all, in case of armed conflict like the situation of the IDP's we aim to discuss, human rights law is still applicable, but subject to restrictions. Humanitarian law is also applicable, but there are many different categories and the protection regime for internal armed conflict is complicated and more limited than international conflict. For example, civilians in occupied areas are better protected under IHL than civilians in the national territory and victims of internal conflict. With the establishment of additional protocols the legal protection of victims of internal conflict is already improved, but it is still unequal, which is probably because of the old conception that a state deals with its own citizens and no obligations should be created for their relation. (Nylund, 1998)

In case of IDP's, Article 3 from the Geneva Conventions and additional protocol 2 are basically the only articles from IHL applicable. Article 3 presents the minima to be observed and is therefore sometimes called a miniature declaration. (Huylensbroeck, 2013) It states *inter alia* that

"Persons taking no active part in the hostilities, including member of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without

any adverse distinction founded on race, color, religion or faith, sex, birth or wealth or any other similar criteria.”(Huylbroeck, 2013, p36)

What we should understand by ‘inhume treatment’ is not established, but the Article does give an enumeration of actions that are in violation with this. Also the clause ‘or any other similar criteria’ is notable. In this part the dynamics between IHL and HRL are clearly visible, in that human rights can and need to play a significant role in the interpretation of this. (Huylbroeck, 2013) The second protocol of the Geneva Conventions is also applicable to internal conflicts. It must be seen as an addition and completion of the Article 3.

As we will discuss later, both the second protocol and common Article 3 also provide a basis for humanitarian action and relief, in that it provides that ‘an impartial humanitarian body, such as the [ICRC], may offer its services to the Parties to the conflict’, (GSDRC, 2013, p 29) provided that the aid is ‘of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken’. (GSDRC, 2013, p 29)

1.2.2 GUIDING PRINCIPLES

From the above, we can conclude that both IHL and HRL provide legal protection for IDP’s, but both not specifically tuned to the needs of IDP’s. When in the 1990s, like explained, the attention for IDP’s increased; the question arose within the UN if the combination of HRL and IHL provided a legal protection to the needs of IDP’s. This resulted eventually in the establishment of one single document in guidance with the different international standards that are applicable to IDPs: the Guiding Principles. (IDMC)

Francis M. Deng, appointed as representative of the Secretary- General on Internal Displaced People, investigated if the law provided a legal protection to the needs of IDP’s was investigated by. In the first phrase, Deng reported in 1996 his ‘Compilation and Analysis of Legal Norms. In this, he stated:

‘[i]t can be concluded that in many aspects relating to the right to life, the prohibition of torture, the prohibition of hostage-taking, the prohibition of contemporary forms of slavery, subsistence rights and many aspects of religious rights, present law seems to protect sufficiently most of the specific needs of internally displaced persons. If these rights are violated frequently, the reason does not lay in inadequate legal protection but rather in the unwillingness of States and/or in non-international conflicts of dissident forces, to observe binding obligations.” (Huylbroeck, 2012, p. 58)

After stating this, Deng however starts addressing the gaps and challenges within the protection of IDP’s. The first category of gaps is the consensus- gaps. It consists of situations where a general standard exists, but where a more specific right needs to be formulated. An example is this is the standard of non- discrimination, where displacement should be formulated as an explicit, prohibited ground of discrimination. Another category of gaps is applicability gaps, which refers to situations in which a legal norm exists, but is not applicable in all situations. These gaps are numerous, for example, because of derogation of the legal guarantees. Normative gaps are the ones where no legal protection exists for the needs of IDP’s, which are few however. One example is the right to restitution or

compensation of lost property. (Deng, 1998) Deng thus stated that the law provides substantial coverage for protection of the human rights, but that there still remain some gaps in legal protection. (Newman, 2003)

Deng concluded that it was important to provide the international community with a framework in which principles of protection are described in more detail and where the existing gaps in law are addressed to future international instruments. This resulted in 1998 to the formulation of the “Guiding Principles on Internal Displacement”. (Newman, 2003)

The Guiding principles bring together the provisions of both Human Rights Law and the International Humanitarian Law, based upon the idea of sovereignty as responsibility. It contains 30 principles which enumerate the rights of IDP’s. No new rights are established, but in some cases the authors have derived specific norms out of general principles of international law. The principles are targeted on all the phases of displacement and aimed as a guide for the Representative of the Secretary- General on IDP’s, States and all other authorities, persons, groups or organizations dealing with Internal Displacement. (Huylbroeck, 2012)

Although based on law, the Guiding Principles are not a binding document unless they are included or transformed in national legislation. The protection of IDP’s is thus still the primary responsibility of states. They have nevertheless gained considerable recognition and adapted by many major development and humanitarian organizations which have implemented and applied the principles in the field. (Cohen, 2010) It is a significant step in international governance relating to internally displaced people and forces states at least to a certain extent to adapt to international standards and norms. (Celik, 2005)

1.3 CHALLENGES

A couple of notes need to be made against the backdrop of above: the difference between legal and moral human rights, the universalism of human rights and the tension of sovereignty.

1.3.1 MORAL RIGHTS

Now we have discussed the legal framework in which IDP’s are protected, the distinction between human rights as moral ideas and human rights as legalized needs to be clear. We simply do not have a right to all things that are good, or to things we think of as good. For example, we do not have rights to love, charity, and compassion. Most good things are simply not a human right. (Donnelly, 2013)

To clarify this difference, we can look to the word ‘right’. ‘Right’ is both morally and politically charged; it means both rectitude and entitlement. On the one hand, we speak of something ‘being right’, the right thing to do, or, something not being right; an issue of morality. On the other hand, we speak of someone having a right. Having a right to x means being entitled x; it is owed to you. If this x is threatened, the rights-holder is thus authorized to make claims to action. Denying someone something that is right or, that would be right for someone to enjoy in this world is thus totally different from denying something that a person is entitled to enjoy. In the understanding of this paper it is thus very important not to confuse human rights with ‘good deeds’; with practices like social justice, natural law or

moral duty. (Donnelly, 2013) In this paper we merely address the legal understanding of human rights.

1.3.2 UNIVERSAL RIGHTS

Where we discussed the evolution of human rights as the effort to create a global community, some notes about this global community needs to be made as it is not without complexities. In academic spheres, one of the greatest complexities is the ongoing discussion on the universality of human rights, which we will discuss.

Some rights and standards are retrievable in all cultures: essential forms of social assistance to guarantee life and limitation on violence, for example. But there remain rights which take precedence and variation in different cultures. (Messer, 1993) Some local authorities find human rights to undermine the capacity to strive towards justice in a way that they find needed; local leaders in different parts of the world resist to the human rights claims, by stating that it is not suited to local normative systems, Western import and that local values are distinct from the human rights. (Merry, 2006) Therefore, anthropologists inter alia tend to reject or at least question the notion of universal human rights. They highlight that different cultures have different notions of rights and subordinate themselves to different authorities. (Messer, 1993) Not too long after the establishment of the Universal Declaration of Human Rights, the American Anthropological Association submitted a statement opposing the declaration, with the central question: "How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America?" (Merry, 2003, p.4) The statement declares that a person is committed to certain values because of the social group he belongs to, and that he should therefore not be judged by other standards. It asks for tolerance for difference and critiques the ethnocentrism, stating that "a man is only free when he lives as his society defines freedom" (Merry, 2003, p.4)

In the book 'the Politics of Human Rights' Richard Rorty firmly discourages this advocating of more culture bound human rights perception, referring to experiences of David Rieff in Bosnia:

"A Muslim man in Bosanski Petrovac.. [was] forced to bite of the penis of a fellow-Muslim man.. If you say that a man is not human, but the man looks like you and the only way to identify this devil is to make him drop his trousers – Muslims man are circumcised an Serb man are not – it is probably only a short step, psychologically, to cutting of his prick.. There has never been a campaign of ethnic cleansing from which sexual sadism has gone missing" (Rorty, 1999, p. 67)

Rorty explains that this quote shows that in many cases, rapists or murderers do not see themselves as violating human rights. The Serbians in this example are not doing this to fellow humans, but to *Muslims*. They are even acting in the name of humanity, by purifying it from pseudo humanity. Unfortunately, the examples of this are numerous. Thousands of white man owned slaves while they at the same believed that all man are equally made and owned by a Creator. They had convinced themselves that the consciousness of Blacks is like animals. Nor those white men, nor these Serbians, nor the Nazis believed that they are violating human rights, because they mix up the word 'men' with 'people like us'. When we think of the Serbian rapists like animals, we look at them at exactly the same way as the Serbian look to Muslims: *inhuman*. (Rorty, 1999)

Rorty used this example as a clarification of why he rejects the advocating of a culture bound human rights perception. It however also reminds of us of the complexity of both the establishment and operation of human rights. People not only tend to 'color' them according to their own ideas, but to fulfill its purpose human rights must wring and even dominate with deep feelings and beliefs about morality of people. Human rights violations are not always the work of abnormal mentally madmen who can't control themselves. Violators are most of the time ordinary people responding to situations and incentives of their environment; calculated. In the eyes of the violators it is a reasonable calculated consideration of benefits and loss. This clearly explains the gap between promises of the declaration and actual practices of the state.

1.3.3 SOVEREIGNTY

Where we discussed the nature of human rights being doubtfully universal, within policy and international law there are also some notes to make regarding the global community. At policy level, the notion of sovereignty highly contributes to the above mentioned gap and can be identified as one of the major challenges in protecting IDP's.

The principle of national sovereignty concerns that a state is the highest authority within its territory, and therefore not subject to any higher power. Because an IDP remains in the territory of its national state and not crosses any international border, the IDP is subject to the responsibility of its own governments and legally distinct from a refugee. IDP's are primarily treated as an internal affair and problem. This means that national authorities are responsible for the protection of the rights and the freedoms of their citizens and furthermore that interference in national affairs is not legitimate unless the state gives permission. So when governments insist that they can handle the situation themselves, internally displaced people are deprived of assistance. (Huylbroeck, 2012)

This creates major tensions in the protection of IDP's when the national state fails. Not only is it the reason why IDP's are treated differently than refugees, it also holds at an international statute or international organization to protect IDP's.

This tension is also visible in the nature of the UN. On the one side, the UN also asserts that it does not have the authority to interfere in national issues, based upon the concept of sovereignty. It declares that 'the organization is based on the principle of sovereign equality of the nation states' and introduces the concept of non-intervention. (Nylund, 1998, p. 85)

On other side, with the range of human rights and international agreements signed and ratified, the international community not only required member states to protect the human rights of their citizens, but they also require them to allow other states to keep track of their records. Failing to fulfill these obligations means opening up to a range of international actions; (Cohen, 2010) the ambiguous objectives of the United Nations to 'save succeeding generations from the scourge of war' and 'maintaining the international peace and security', express a framework for the legalization of action. Also, in the light of international responsibility the UN also explains some more detailed purpose. It aims itself, inter alia, to strive for: 'International cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms' (Nylund, 1998, p 81) This makes humanitarian interference an international duty to member states of the UN. This is further established in

article 55: 'With a view to the creation of conditions of stability, and well-being which are necessary for peaceful and friendly relations among nations... the United States shall promote: solutions of international economic, social, health and related problems, universal respect for, and observance of; human rights and fundamental freedoms.' (Nylund, 1998, p. 82) Incredibly important is furthermore the addition of article 56: "All members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of purposes set forth in Article 55" (Nylund, 1998, p. 82). This implies that member states commit themselves to take the necessary action to protect basic human rights. Although the exact scope and responsibilities of the member states are not particularly detailed, these Articles surely show the 'right' of states to be concerned, as well as their responsibility to take action.

Here we clearly distinguish a gap in the protection of IDP's. The gap is aggravated by the fact that often internal divided countries do not have, consciously or not, the possibilities to protect IDP's. They often hide behind the principle of sovereignty because they are suspicious about every form of interference. The question that therefore remains is how far this sovereignty goes when a state is not able to protect its citizens. (Huylbroeck, 2012) To answer this question we must look at the different understandings in the meaning of sovereignty. If national sovereignty is addressed as an absolute concept, it is difficult to unite this with human rights. Various forms of development within international law and the increasing idea that sovereignty threatens peace and safety made the idea of absolute sovereignty weak and criticized, which catalyzed the upcoming of the notion of relative sovereignty. Relative sovereignty treats sovereignty as a part of international law and not above it. Human rights violations thus outweigh the notion of sovereignty. (Huylbroeck, 2012)

The concept of sovereignty has thus evolved in an understanding in which the freedom of states is limited because of the freedom of other states and dependent on international law. The last years an understanding of sovereignty as a positive concept, which implies the responsibility to protect own citizens, is evolving. In the Guiding Principles, which we discussed before, Deng used this concept of 'sovereignty as responsibility.' (Huylbroeck, 2012) It basically states that "as a measure of their sovereignty, states have the fundamental responsibility to provide life- supporting protection and assistance for their citizens. If they are unable to do so, they are expected to request and accept offers of outside aid. However, if they refuse or deliberately obstruct access and put large numbers at risk, the international community has the right and even responsibility to assert its concern" (Cohen, 2010, p. 2). The understanding of sovereignty as responsibility thus implies that if the state fails to honor its responsibilities towards its citizens, it loses its sovereignty and international interference is allowed. (Huylbroeck, 2012)

Nevertheless, international interference and responsibility for human rights stays politically very sensitive. Therefore, even in the Guiding Principles nothing is said about international protection or action when states fail. Principle 3 states that that the national state is responsible and Principle 25 additions this by stating that international organizations, NGO's or states can help to facilitate this. This is however not an obligation and can thus still be refused, which is shown in the next part. (Huylbroeck, 2012)

All in all, sovereignty contributes to a serious gap in the legal protection of IDP's. Although it is widely acknowledged that human rights violations raise issues of international law and are a matter of international concern, because of the sovereignty principle the idea of international responsibility and action stay a cumbersome subject. Sovereignty is obviously limiting, but not completely ignoring the capacity of the international community to protect human rights, because of the shift in the understanding of absolute sovereignty to relative sovereignty or sovereignty as responsibility. To consistently deal with the gap in the international protection of IDP's, adapted international instruments are needed that incorporate the vision on the sovereignty principle and provide legal guarantees. The efforts to establish an international statute for IDP's has so far jammed on the principle of sovereignty, leaving them subject to the abilities and preferences of their own government. (Huylbroeck, 2013)

1.4 CONCLUSION

Looking at the aim of this study to assess to ability of international humanitarian action to protect the rights of IDP's, we can thus far already conclude that IDP's are certainly subject to international law but that some serious limitations needs to be highlighted. Human rights as the minimum standards to which all individuals are entitled are increasingly translated into different segments of law. The fact that no state would want to go on record as violating human rights is probably one of the greatest transformations of the last century. In case of displacement, both human rights law and humanitarian law provide a basis for humane treatment, protection and rights for IDP's. The Guiding Principles are developed as tool for both state and non-state actors to oversee provisions in HRL and IHL and function as a guide to offer the IDP's what they need. Although there remain areas in which the law fails to provide sufficient protection to IDP's, Deng stated in the compilation and Analysis of Legal Norms that that "with respect to the right of life, the prohibition of torture, the prohibition of hostage taking, the prohibition of contemporary forms of slavery, subsistence rights, and many aspects of religious rights, present international law seems to sufficiently protect most of the specific needs of internally displaced." (Cohen, 1998, p.122) Therefore, if these rights are violated, the reason does not lay in inadequate legal protection, but in the unwillingness of states to observe obligations. (Cohen, 1998)

Therefore, the challenge and limitation that flows from this chapter is that there are little strategies for governments that are unwilling to provide protection. It is the primary responsibility of the national government to protect the human rights of their citizens. IDP's are no distinct, legal category and thus do not have a legal framework that ensures that their specific rights and needs are met when the responsible government fails. The plight of IDP's is not yet an international responsibility because it conflicts with the idea of sovereignty.

CHAPTER 2 Humanitarian Action

“Internal displacement has emerged as one of the greatest human tragedies of our time. It has also created an unprecedented challenge for the international community: to find ways to respond to what is essentially and internal crisis... protection should be central to the international response and assistance should be provided in a comprehensive way that brings together the humanitarian, human rights and development components of the United Nations” (Kofi Annan)

Like shown in the last part, International Humanitarian Law lays down an important role for humanitarian actors. Common Article 3 simply provides that ‘an impartial humanitarian body, such as the [ICRC], may offer its services to the Parties to the conflict’. (GSDRC, 2013, p 29). And indeed, in the recent years, a broad range of humanitarian, development and human rights organizations have started to provide IDP’s with protection and assistance. The world of international humanitarian action most people know about is the one seen on television or newspapers: tent villages; dirty roads with refugees, food tossed from the back of a white UN trucks to hungry faces. (Cotterrell, 2005) However, moving from the world of policies to field operations yields a host of practical challenges. Good intentions are not enough for efficiently implemented operations that must have a beginning and an end. For as long efforts have been organized to assist and protect victims of conflict, the international community has faced difficult choices and trade-offs. (Weiss, 2000)

Now we have discussed the tensions existing in agreements concerning the protection of IDP’s in the former chapter, the aim of this chapter is to get insights in the ability of international humanitarian action to protect the human rights of IDP’s. We will do this by describing the tensions within humanitarian decision making; the choices, barriers and trade-offs that are unavoidable but influencing the ability of international humanitarian action to restore human rights in situations where they are deprived of them: internal displacement.

2.1 HUMANITARIAN ACTION

“You don’t get mixed up with development and you don’t get mixed up with human rights, that’s none of your business. You certainly do not speak out, because that is dangerous. The whole thing is action oriented and morally self-justifying because when you provide humanitarian aid you are doing something good” (IDC, 1999a)

Before we dive into the tensions of humanitarian action practices ‘on-the-ground’, we need to identify what is meant with humanitarian action, unravel some of the complexities and explore how humanitarian action is organized in general. By defining humanitarian action we will see how humanitarian action has evolved over the years and eventually the consequences of the different goals and mandates on practices on the ground.

We define humanitarian action as one of the ways in which the international community tries to approach human rights in a humanitarian crisis. Other approaches are punitive justice or intervention for example, but these lay outside the scope of this paper. (Cotterrell, 2005) The ‘humanitarian’ part of the concept refers to humanitarianism, ‘an ethic of human

solidarity', based on respect for life, responsibility for future generations, protection of human habitat and altruism. (Beighbeder, 1991) The action part refers to humanitarians providing relief and protection to victims of war. Their tasks persist of gathering data, negotiating frameworks, mobilizing and arranging resources, delivering goods, staffing the operation: the provision of relief. (Weiss, 2000) Taken together, in this paper a widely acknowledged, general definition of humanitarian action is maintained: the responses of the international community to help victims through provision of relief and the protection of fundamental human rights. (Weiss, 2000)

As we will discuss, the combination of relief and protection of fundamental rights is relatively new. Over the years there has been a large shift in the goals and mandates of humanitarian organizations, leading to various consequences and trade-offs for practices on the ground.

RELIEF

The provision of relief is often referred to as assistance, which aims at protecting the lives of the victims through the provision of supplies and services essential for their survival. For a long time, relief has been the major goal of humanitarian action. Besides a human morality, also IHL provides a basis for the provision of relief. Common Article 3 simply provides that 'an impartial humanitarian body, such as the [ICRC], may offer its services to the Parties to the conflict'. (GSDRC, 2013, p 29). Although not clearly defined in IHL, a description of rights and duties to the actors are given, referring to the supply of food, clothing, medicine and shelter as well as the necessary means of transport and delivery. (Nylund, 1998). Relief is furthermore addressed in Article 18(2), of Additional Protocol 2 which states that where the civilian population 'is suffering undue hardship owing to a lack of supplies essential for its survival, such as foodstuffs and medical supplies, relief actions [...] of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken'. (GSDRC, 2013, p 29)

Relief to have 'an exclusively humanitarian and impartial nature' is referring to the humanitarian principles: humanity, neutrality, impartiality and operational independence. Impartiality means assistance without any discrimination, where neutrality means not taking sides in controversies linked to the conflict. This neutrality means that any form of advocacy in favor of a party is ruled out, but it does not mean that keeping silent in victim's rights is required. (Weiss, 2000) The difficulty of this will loom further on in this paper, but for now it shows that relief is distinct from human rights action. Although relief can be linked to the rights of life; food, health, and the prohibition of inhumane treatment, human rights action in times of conflict focuses on effort to document and expose abuses, violations and mobilizes international pressure to halt these practices. Human rights action is thus not neutral and does not provide relief. Even so, humanitarian action needs to be separated and distinguished from development aid, which comes into play in post conflict situations and not during emergencies. (Weiss, 2000)

PROTECTION

In the past the main goal for humanitarians has thus been to solely relieve suffering and provide basic needs. However, the protection of human rights is nowadays included in the

definition of humanitarian action. As we will discuss, this fades the explained borders between human rights action and humanitarianism.

A long time, humanitarians acted strictly according to the principles of neutrality and impartiality. Human Rights issues were left to human-rights organizations or politicians. The upswing of human rights however influenced the humanitarian sector and kindled a 'new humanitarianism'. Humanitarian actors started to work towards the fulfillment and of rights, instead of working towards meeting the needs of victims; victims became rights holders and humanitarian agencies became their advocates. The use of a human rights framework came along with the aim of goal-orienting, where the expected future consequences of the intervention were assessed. Where in the past the minimal aim of relief was saving a life, general rights like education, culture and gender were now included. A political positioning of the agencies included to take side in wars and conflict; to speak out in public and giving testimonies in war crimes. (Fox, 2001) Overall, the new way of looking and doing humanitarian action was said to be more people-centered, empowering, universal, anti-charity and dignified and in conflict zones, new emphasis was placed on the concept of protecting besides relief assistance. (Darcy, 2004).

Not only within agencies this new influence of human rights on humanitarian action is observable, but across a wide range of governmental and multilateral bodies there was an increasing use of rights as a frame of reference. Within the UN human rights were mainstreamed throughout the organization and in policy and aid formulations rights served provided ethical core to foreign policy. Not only has a human rights approach gained ground in humanitarian action, also the human rights organizations have made efforts to exist within the field of humanitarians. As a consequence, the discourses of human rights and humanitarians more and more co-exist. This is also visible in the mandates of humanitarian organizations, MSF 'sets out to alleviate human suffering, to protect life and health and to restore and ensure respect for human beings and their fundamental rights', .. Unicef does what it does because 'children have rights', and Oxfam strives for 'a just and safer world, in which people take control over their own lives and enjoy their basic rights'. (Darcy, 2004, p6) This co-existing however comes along with various tensions and trade-offs, which we will explore in the next part.

'Protection' in the definition of humanitarian action nowadays means the protection of life, physical safety and freedom and other fundamental human rights. We therefore use the definition of protection as "all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law". (Bagshaw, 2004, p 26). This definition of protection is however not specifically defined in any legal instrument. Like explored in the first chapter, in case of IDP's, these 'relevant bodies of law' are human rights law and international humanitarian law. These bodies are in an understandable manner brought together in the Guiding Principles. The Guiding principles clearly express not only the need for physical security but also for a broad range of other rights. For example, Humanitarian Assistance, Movement Related Rights, Family Life, Food, Water and Sanitation, Basic Shelter and Adequate Housing, Health, Recognition, Issuance and Replacement of Documentation, Property and Possessions, Employment, Economic Activities and Social Protection, Electoral Rights and Education. (Deng, 1998) See Appendix 1 for an elaboration on each right.

2.1.1 PRINCIPLES OF HUMANITARIANISM AND HUMAN RIGHTS

Against the backdrop of above, in this paper we define humanitarian action as both relief and the protection of human rights. In essence, humanitarian action is subject to the principles of humanity, neutrality, impartiality and operational independence. Until recently, the 2 essential humanitarian principles *neutrality* and *impartiality* have thus been quite non-controversial. With the increasing human- rights based approach of humanitarians, this changed; protection of human rights within the humanitarian action poses a serious threat to the principle of neutrality. Leaving the principle of neutrality behind, means that provisions in humanitarian law no longer apply, taking away the duty of authorities to allow humanitarian assistance. The principle of neutrality by all means introduces different trade-offs on the ground, which we will discuss. (Darcy, 2004)

Amongst humanitarian organizations, there is much controversy about this new humanitarianism and the rejection of the concept of neutrality. ICRC, for example, refuses to speak out against human rights abuses and wants to remain neutral in every conflict. The central problem is that the government can withdraw consent for humanitarian actors to deliver material assistance if it is openly criticized for human rights violations, due to its sovereignty which we will discuss in the next part. ICRC states that becoming involved in politics is going to undermine the humanitarian space that always has been granted to neutral humanitarians; taking human rights on board of humanitarian action means that there are cases in which no relief can be offered. (Fox, 2001) In example of this is humanitarian aid in Nicaragua:

“During the 1980’s, the United States government provided assistance to the Contras, a militia group that was opposed to the Sandinista government of Nicaragua. The government accused the US of violating international law by providing humanitarian assistance. The International Court of Justice affirmed that humanitarian assistance in not contrary to international law, but that the assistance the US provided was not humanitarian by nature. The aim of its assistance was not to prevent and alleviate human suffering. Moreover it was provided in a discriminatory fashion, only to the Contras and their dependents. As such, it did not satisfy the criteria required to qualify as humanitarian assistance” (GSDRC, 2013, p25)

Organizations like ICRC are holding upon their minimal aim of saving a life. The discussion within the humanitarian sphere is whether this aim is enough; whether it makes enough difference and whether neutrality is possible. The RC is helping both terrorists and the victims of the terrorist; neutrality can thus mean to be as much on the side of the terrorist as on the side of the victim. Besides the fact that neutrality is said to be unethical it may lead to the continuation or intensifying of the conflict, by rescuing people and providing goods. Furthermore, it does not address the root causes of the problem: according to some organizations it is absolutely necessary to expose human rights violations to provide an incentive for the host government to stop and change it practices. Human rights groups argue that less aid is needed if more attention is given to violations, and that ignoring kidnapping, torture and killing of often targeted individuals like intellectuals, organizers or other leaders, is a threat to leadership in the community, which is absolutely necessary for post-conflict reconstruction. (Darcy, 2004) Therefore, often is said that all international action should be evaluated according to its contribution to human rights. Only relief of

human suffering in emergency situations is seen as past tense and insufficient. It is blamed for worsening wars. (Fox, 2001)

On the other hand, besides the risk of losing humanitarian space other questions and dilemma's arise. Should humanitarians be doing politics and thus be judges in third world conflict? Isn't there too much influence of western governments and aren't human rights based on Western notions? Is it possible to predict the long term impact of aid and is ethical to create a hierarchy between victims, deserving and undeserving? These are all questions that come along with the human rights approach of humanitarianism. The case of Zaire, contemporary Congo is one of the examples of the drawbacks resulting from the new approach. It concerns the refugee camps in Zaire, between 1994 - 1996 where after the conflict in Rwanda Hutus were displaced and seeking shelter. Both the Hutus who took part in the genocide and the Hutus who were afraid of new attacks were established in these camps. Because of the aid delivered in the camps, they became a place from where new attacks were organized and performed. The aid to this camps was thus seen as 'being on the side of the terrorist', and as worsening and lengthening the war. Many organizations put in place the 'goal-oriented-relief' and stopped delivering aid, although they knew that that would affect the lives of thousands of innocent people. Eventually, the decision was made to close the camps and send the refugees back to fasten the end of the conflict. This however did not at all solve the conflict, but prompted two major wars. (Fox, 2001)

All in all, human rights and humanitarianism are inseparable but at the same time complicated to combine. Both sides of mandates and goals have massive implications for an effective operation of humanitarian action on the ground.

2.2 SOVEREIGNTY

Like explained above, humanitarian actors need to operate carefully and thoughtfully because they are fully dependent on the willingness of the government to cooperate in the humanitarian action. The tension that exists here is thus again to be traced to the nature of sovereignty. Where the first part discussed sovereignty as the blockade in the establishment of an international protection regime and a major flaw in legal protection, also in the operation of humanitarian action the principle of sovereignty creates a serious limitation.

As explained in the first chapter, sovereignty entitles states to no- interference in their internal affairs, and the government is therefore the primarily one to decide the extent to which their sovereignty may be diminished to conform to human rights norms. Indeed, recent study showed that the most important factor in the protection of IDP's the willingness of the state is. (Huylbroeck, 2012) If governments insist that they can handle the situation themselves, citizens are deprived of any international humanitarian assistance. (Celik, 2005) States are powerful actors in the humanitarian system but often the least predictable. A state's involvement in a humanitarian crisis dramatically vary because of political, social, economic and security considerations and other actors in the humanitarian system cannot rely upon states for consistent support or behavior. (Weiss, 2000) The sovereignty of the state therefore limits the potential of international humanitarian action.

There are also people who call for more caution with regard to international interference and action. They claim that interference hollows the responsibility of the national sovereign

to protect the IDP's, and furthermore make it dependent on the international community. Within international operations there should be more effort to strengthen and broaden the national its capacity to fulfill the responsibilities and to navigate them in the right way by adapting various principles and treaties. (Huylbroeck, 2012) There is a flow of people that propose that no third party organizations may enter the field of the conflict. They request that IGO's, NGO's or governments provide the relief assets directly to the state government or a specific regional entity to make sure that the assets are distributed in a conscious manner which will strengthen the capacity of the state to assist its own population. (Weiss, 2000)

2.3 FROM RELIEF TO DEVELOPMENT

"International concerns and practical attention have been weighted on the side of emergency responses to displacement. No matter how effective they are, however, emergency responses are not solutions. It creates the conditions on which long term solutions are built." (Fagen, 2013)

Humanitarian relief is distinct from development assistance but they do overlap and should gradually work together. Internally Displaced people need protection and emergency aid during acute stages of fighting, but they also need assistance in reconstructing their lives after the violence has reduced. Most displaced persons return home with few prospects of rebuilding their lives. They experience basic survival problems because schools, houses, roads, hospitals and crops are destroyed. The community is psychologically and physically damaged and individuals experience theft of property and savings. (Mooney, 2013) The needs and rights of IDP's thus require both long and short term action, but operationally this combination is complex. We will look into this complexity and try to decide when the specific humanitarian action to IDP's should end.

The dilemma that is rising from the combination of long and short term action is foremost a dilemma in the nature of funds. Funds for emergency aid are mostly in short supply. Also, because of preferences of donors and mandates of organizations, funds can often not be used for both development and relief. A trend is observable in the preference for emergency aid. Funding for emergency aid is on the rise, while within development assistance there is a constant demand. Emergency funds can nevertheless thus not be used for reconstruction and development goals, and those funds cannot be used for emergency. Consequently, the UN and other international humanitarian agencies have increasingly sought a way to work towards an emergency – development continuum, in which inputs at emergency level are serve long term development and especially do not harm local coping capacities. This ideology may sound straightforward, but in practice this continuum may be misleading. It is very simplistic: in reality there are no distinct points where the emergency has stopped and can make place for development. Even so, donors prefer 'loud' emergencies with much media attention; there is a lack of resources and serious distinctions in the considerations of development work and that of relief operations exist. Also the fact that relief agencies emphasize delivering of assets over empowerment is a problem. Although emergency and development are not self-contained and not mutually exclusive, linkages must be made, which is difficult operationally. (Weiss, 2000)

To clarify the foregoing, I will elaborate on donors preferring 'loud' emergencies with much media attention. The resources are thus not exhaustive and when the situation becomes more silent the funding decreases drastically. Logically, if the sector knows the funding will dry up and reconstruction and development resources will not be available in the post-conflict period, the emergency aid needs to include empowerment action to locals. In reality however, this is not happening operationally because the entities that deliver relief assets are different from the ones that have mandates for reconstruction and development. (Weiss, 2000) Both entities are asking different questions. The ones concerned with relieve may ask: "what are the most urgent requirements for food, medicine and sanitation?". For those who address development a more urgent question is: "how do we address the social, political and economic factors that have contributed to the destabilization of this society?" (Weiss, 2000, p. 147)

Nevertheless, there need to be worked towards a durable solution for IDP's. The Guiding principles envision three possibilities: 1. return to home areas; 2. settling in the areas where they are displaced; and 3. resettlement in another part of the country. (Frelick, 2013) Authorities are called to facilitate the reintegration, in accordance with safety and dignity, non-discrimination and recovery or compensation for property and possessions. (Mooney, 2003). Refugee and IDP camps are thus not seen as being a durable, long term solution. Countries do everything possible to prevent that camps become established in the long term. Nevertheless, during the 80s, Cambodian and Afghan refugee camps were set up on the borders, and became quasi-towns. They created an own exchange- economy, services, sometimes even forces. Also in Khartoum, the thousands of people displaced established their own neighborhoods in cities, but were constantly uprooted and forced to move by the authorities. Like the example in the introduction of this chapter, government made lands available for resettlement, proclaiming to be a durable solution. The land however came without the necessary resources, like inputs and materials, to make the land viable. IDP's found themselves living in camps on the available land, without the ability income generation or to be self- sufficient. (Fagen, 2013) The other problem is that there is a majority of internally displaced persons, who are not visible because they do not live in camps or found in settlements. There are millions of people, who have found their way into homes, villages, big towns and houses of family. Their number is impossible to count and fall through the cracks because their conditions are unknown and less monitored. (Fagen, 2013).

Again, this shows that it is not clear when displacement end. When does and should the international protection of IDP's end, because IDP's are no longer IDP's but just citizens in a perhaps fragile country? The Guiding Principles do not particularly address when displacement ends, or when the principles do no longer apply. This is because they have specific protection and assistance entitlements, but do not constitute a legal, distinct category. Their status does not have to be legally recognized to be entitled to rights, but are entitled through human rights law and humanitarian law, as to everyone else in their country. (Mooney, 2013)

Nevertheless, three approaches exist of how to look at the end of displacement: The first one is through looking at the causes of internal displacement. Does the cause of the displacement have been resolved and are the circumstances changed? This could be the ending of a war or conflict for example. However, when causes disappear, durable solution

does not have to follow automatically. Or contrasted, when a situation does not change or the conflict seems to be never-ending, it is questionable if it is in the best interest of the IDP to keep considering them as such. (Mooney, 2013)

We could also look to the possibility of returning, whether and IDP decides to do so or not. This is the approach the US Committee of Refugees prefers. However, in both the cases of Guatemala and Sierra Leone we see that where after a mass resettlement program the governments declared that there were no long IDP's in the country, on the ground there were much challenges in the nature of lack of safety, inadequate reintegration, lack of property restitution, illegal occupation of land, inability of IDPs to vote, access public services or obtaining identification for children. The same is visible in the history of Rwanda, where different agencies, using different criteria, stated that there were no IDP's left in the country. However, the ones resettled were suffering from basic needs and sufficient means to sufficiency. (Mooney, 2013)

An argumentative next approach is then to look when the specific needs and vulnerabilities of IDP's do no longer exist. This would be the IDP's who are again in the protection regime of their own government and therefore do no longer deal with the vulnerabilities specific to IDP's. (Mooney, 2013)

All in all, there is a lack of an integrated, systematic planning and policy on the long term implications of internal displacement and humanitarian action. (Fagen, 2013) IDP's need long term action but although the Guiding Principles do show an understanding of humanitarian action that goes much further than just 'saving lives', in practice reconstruction and development are not specifically the goal of humanitarians. It is furthermore unrealistic to think that long term action follows gradually on emergency care; they need be linked and work together.

2.4 RELIEF CREATES DEPENDENCY

In the same pattern of trade-offs in practice, is the threat that emergency relief can create dependency. There are many critics against relief that is provided too long or too soon. Mainly because when the relief is offered too long or in a wrong way it creates dependency of the community to the external delivering of goods. (Weiss, 2000)

To cope with the risk of dependency, humanitarian agencies are working towards the amelioration of the dependency trap in different ways: more knowledge about the local capacities of internally displaced to tune relief plans, coordination assistance to avoid an overwhelming amount of relief, paying more attention to determine the 'displaced' status of those who ask for assistance and by discontinuing assistance as soon as possible.

The other way to prevent dependency is an increased focus on empowerment strategies. This could be, for example, increasing the participation of IDP's in the decision-making process and efforts to empower local institutions and persons. It is important however that this is tuned to the specific cultural constructs of a country rather than a 'one-size-fits' all package of relief and development aid: it is often argued that humanitarians are taking too little time for this empowerment; not satisfactorily training and recruiting local people because of cultural bias and only working with their own well trained and often Western

relief workers. On the other side, some humanitarians are criticizing the fact that this empowerment is leading to delays in the delivering of aid. (Weiss, 2000) The other difficulty with this empowerment is that it is also a political process. Thomas Weiss (2000) for example, refers to the case of gender inequality. If the culture of the people being assisted does not recognize gender inequality and therefore not the human rights of women, is the international community then truly responding to international law by recruiting locals who respect the cultural values? In this case it could lead to ignoring women in cultures where women are subordinated. Furthermore, the empowering contains some serious ethical constraints to be overcome. For example in the distribution of assets, should the international community take full responsibility in this distribution and ensure that children and vulnerable groups are getting what is needed, or giving the resources to communities and hope that the interests of all vulnerable groups are met? If the international community takes full responsibility, it disconnects the community from its own responsibilities. On the other hand, some cultural values exist in which the needs of males are priority and the suffering of children and may remain acute. (Weiss, 2000)

2.5 WAR ASSETS

“The whole aid community has been overtaken by a new reality. Humanitarianism has become a resource and people are manipulating it as never before. Sometimes we just shouldn't show up for a disaster” (Branczik, 2004)

In discussing the trade-offs of protecting human rights in humanitarian action practices, we cannot get around the risk of humanitarian becoming a tool that contributes to war or the conflict.

The quote above comes from the former president of the International Rescue Committee after the horrors of the Hutu refugee camps in Zaire, which is nowadays the DRC. Refugees were gathered in camps, roads or forests and either taken away or shot right on the spot where they stood. These ruthless killing of refugees continued for months. One of the lows was when one night one of the refugee camps was totally emptied. Aid workers returned in the morning like usual, but found no one. Everything was emptied. No bodies. Even in the hospital was no sign of patients. The camps had been used as a base from which launched raids on Rwanda to continue the killings. This case illustrates the complexity and paradox of humanitarian action. It can fatally contradict to its humanitarian purpose of saving lives and even prolong the suffering it aims to alleviate. The aid that was intended to reduce the misery of the victims empowered the ones who had caused the tragedy. (Terry, 2013)

Unfortunately, the quote above from the president of ICR is not unique. Combatants steal the relief assets provided by the humanitarian agencies to exchange them with war assets, or to feed war combatants or provide them with medical supplies. It also happens that combatants steal the assets from the non-combatants to prevent that it reaches a specific population and attract them to areas where they will get killed. In the absence of the provided relief assets combatants enlist people or children and exchange them for sexual favors. In some cases relief agencies offer cash compensation to combatants to provide protection to workers or safe access to certain roads and areas. The fact that a portion of the

relief assets or resources is ending up with combatants is by some humanitarians simply seen as “costs of doing business”. (Weiss, 2000)

2.6 LIFE OF RELIEF WORKERS

It was March 28, 2003. Like every last Friday of the month, the board of administrators of Doctors without Frontiers met between 5 and 11 o'clock on the upper floor of one of the impressive buildings in the eleventh arrondissement of Paris. Like every meeting, the atmosphere was filled with excitement and expectations. This time however, the most intense debate in the last years was taking place, which ruthlessly tarnished the soul of many of the attendees. The big question was whether the medical team of six should remain in Baghdad, given the danger it would face on the one hand, and given the likely limited efficiency of its presence, on the other hand? Should the lives of the risk workers be risked to save other lives? Should they really withdraw after the successes in concession of the Iraqi Government? (Fassin, 2007)

The next choice that humanitarians face while working on the ground is quoted in above citation. Should the lives of risk workers be risked to save other lives?

On March 11, the same year, the MSF succeeded in establishing an agreement with the Iraqi regime to allow MSF to provide medical assistance in one of the hospitals in Baghdad and care for the potential 20 million displaced people. Unfortunately, when the days passed, the Iraqi authorities turned out to be unwilling to keep their word, denying workers access to the hospital. When the week following President George Bush appealed to Saddam Hussein to leave Iraq and international organizations were evacuating their staff, six members of MSF decided to stay – despite the highly dangerous situation. In the midst of the clashes the team turned out to be less useful than expected, especially given their small number, but kept saying that they were preparing for what might come. Four days after the MSF meeting, 2 members of the team were abducted. (Fassin, 2007)

The avoided truth within the meeting of MSF that made the tempers rise was about the radical inequality in human lives. The clashing between the ethics of principles and conviction (saving a life) and ethics of responsibility (not want to endanger the lives of workers at risk), showed that although there is physically no difference between lives, in practice the ideological equality of life is not that untouchable. A distinction indeed can be made: the life of someone who voluntarily endangers his/ her life against someone who is unfortunately in a plight. Humanitarian organizations prove to establish the well-being of their employees above that of citizens. A distinction is even so made between Western volunteers (expatriates) and National employees, where expatriates have more rights and protection. (Fassin, 2007)

2.7 CONCLUSION

In the humanitarian sphere, we must face the inevitable, unintended consequences of humanitarian action. Although the agreements discussed in the first chapter provide a basis and guideline for humanitarian action, practices on the ground show different challenges. Restoring human rights through humanitarian action is not as straightforward as sketched

in agreements; various tensions in the 'on-the-ground' practices limit the capability of humanitarian action in restoring human rights.

The two main tensions that flow from this chapter are that in order to fully protect the human rights of IDP's both underlying causes and long term solutions need to be addressed. Addressing underlying causes is complicated for humanitarians, due to their principle of neutrality and their dependency on the national government. The government may address the activities related to root causes as political and therefore deny access and cooperation in the provision of relief. Therefore, human rights can be shortchanged in order to get access. The provision of long term solutions is neither fully integrated in humanitarian action, due to its emergency nature. Due to mandates, resources and practices, relief is distinct from development aid and complicated to merge. These limitations again show the government as the most important factor in protecting human rights.

Even so, many 'smaller' tensions exist: Development can suffer due to emergency and relief that it provided too long or in a wrong way can cause dependency. Also the complexity that relief tools can be used as war assets and the choices that needs to be made regarding human lives in dangerous situations are limitations to the potential of humanitarian action to protect the human rights of IDP's. These underlying tensions not only strengthen the first two, but also show that practices interweave and that the action is not without consequences.

CHAPTER 3 International response to Sudan

As explained in the introduction, Darfur in Sudan is an excellent case to clarify and summarize the foregoing chapters. With the case of the Darfur, the complexity of the problem of internal displacement becomes apparent: the need for a broader perspective into root causes, how agreements impede the practice of humanitarian action on the ground and the difficulties humanitarian agencies experience. To get a clear picture, we will start with discussing the context of the conflict and the displacement, and continue with the international response and problems encountered in the humanitarian action. With help of particularly the recently published ALNAP analysis¹, we will go into some characteristics of the challenges of international humanitarian action in the case of the Darfur crisis.

3.1 HUMANITARIAN CRISIS IN DARFUR, SUDAN

Darfur is the Western part of the country of Sudan, an area with the size of France. It is home to about 5 million people, living in nearly 100 different tribes. From 1916 until Sudan's independence, Darfur had been completely neglected. After the independence the situation changed little, still leaving Darfur on its own without any support out of Khartoum. The region is remote, agricultural and for a long time dragged in complex political stratagems of Sudan. The neglect of Darfur by Khartoum was the major reason for the start of protest and rebellion. Khartoum responded to the unrest with increasingly violent repression. (Middleton, 2006)

The remarkable person Ahmed Ibrahim Diraige was around the 1980s for a short period the governor of the provincial parliament of Darfur. He created the DDF, Darfur Development Front to advocate for the regions interests. He wanted to create a secular, multicultural and democratic state. Out of Diraige's objectives the Sudan Liberation Movement (SLM) and its armed wing the Sudan Liberation Army (SLA) emerged. The movement campaigned for more autonomy and equal distribution. A second movement, the Justice and Equality Movement (JEM), appeared shortly after the appearance of SLA. (Middleton, 2006) These two rebellion groups started fighting against the Sudanese government over its policies of discrimination, underdevelopment and marginalization of their region. (Islam, 2006)

The two rebellion forces launched attacks on government targets. Attacks police stations and the military section of the airport destroyed aircrafts, and killed many different soldiers. The government of Sudan launched an ethnic based approach to an ethnic- based protest, by sponsoring an Arab group of militias called the Janjaweed. The Janjaweed was mostly recruited from inside Darfur, and aimed at assisting the Sudanese troops with targeting civilians who are suspected of helping the rebels. The Sudanese troops and Janjaweed

¹ ALNAP is an analysis that brings together the evaluations of six major agencies in the field of Darfur: UNHCR, UNICEF/DFID, UN interagency study of the OCHA, MSF- Holland, Oxfam and Care international.

destroyed many villages; used systematic crimes of ethnic cleansing and slavery and killed many civilians as a collective punishment for aiding and supporting the rebels. The Janjaweed committed human rights in an undisrupted, indiscriminate way. Massacres, rapes and other sexual crimes, leaving villages razed, crops burned and water sources destroyed. (Islam, 2006) To search safety, survivors flee their homes which caused a massive displacement and created a humanitarian crisis in which around 2 million people are displaced, vulnerable to sexual violence, armed attack and deprived of healthcare, education, food and shelter. (SAIS, 2004) Beside the need of water, food, shelter against seasonal rains, medicines against polio and cholera, they are alienated from their means of safety. The situation in and around the camps is mortally dangerous because the Janjaweed is not reluctant to attack the IDP's and steal the assets. (Islam, 2006)

This context provides us with a better understanding of the attitude of the Sudanese government towards IDP's and the broader framework in which the issue of displacement need to be seen. The government of Sudan is not just now neglecting the issue of displacement, but the complete neglect of Darfurians is visible throughout history. Darfur has always struggled for rights; contemporary intolerance of the government of Sudan is a continuation of its indifference for the people of Darfur. Besides the fact that the conflict is rooted in political stratagems and deteriorated by political motives, it is the way in which the government responded that created the seriousness of the displacement and misery. By all means is displacement not an isolated problem, but linked to root causes of differing systems of governance, poverty, multi-racial populations, primacy of violence over peace and moreover the willingness of the government.

3.2 INTERNATIONAL ATTENTION

Khartoum has the responsibility to protect its own citizens, but has neglected this. It is even the main mover behind the ethnic cleansing and has launched the Janjaweed militias on the people of Darfur. (Grono, 2006) It seems to be an almost classical example of a government who is 'not able or not willing' to protect its citizens, and thus there is a responsibility for the international community. What then is the story of international attention to the crisis?

In the last years, the international community has given much attention and priority to IDP's. The focus has been on improving the responses to IDP, aiming at not repeating the mistakes made in the 1990's. Humanitarian agencies have been aware that refugees are often better protected than the IDP's, and sought to balance this by focusing more on IDP's. (Minear, 2004) UN Secretary General Kofi Annan said in relation to Darfur that "the international community cannot stand idle in the face of such widespread human rights violations". (Slim, 2004, p 1)

A very critical moment in every crisis is the wake- up call; the 'we need to do something' moment. In Darfur, this was only after a very late start. The MSF- Holland evaluation states: *"The distinguishing feature of the Darfur crisis has been the lateness and inadequacy of the humanitarian response. It has been so serious that it amounted to "systemic failure"*". (Minear, 2004, p 77). The first signs of the upcoming emergency were around March 2003, when fighting started between the Government and the two insurgent groups SLA and JEM. From

this moment on the numbers of refugees arriving in Chad heavily increased and internal displacement numbering over 500 000 already (Minear, 2004)

At this time, a number of agencies were already working in Sudan. Drought has caused widespread food insecurity and distress. The agencies were working on development terms and failed to recognize the evolving emergency in an early stage and were therefore very slow with providing the necessary assistance. The same is true for the United Nations. There were some early signs coming from Human Rights NGO's and reporters, but it took a serious amount of time before the UN became involved in the emergency. A couple of reasons explain partly why the mobilization took this long.

The major reason why there was little progress in humanitarian action in 2003 was the systematic obstruction by the government of Sudan. Human Rights organizations, notably MSF and Amnesty International, were lobbying hard, but were very effectively neglected and deceived by the authorities. (Slim, 2003) Access to Darfur was therefore very problematic and limiting the mobilization efforts, foremost because the government kept the agencies on a short strap. Impulses of Khartoum authorities had major consequences and the granting of visas for personnel and import licenses for relief material was used to exercise political control over the emergency activities. In addition, putting pressure on Khartoum to gain access means the risk of alienating the authorities. Cooperation of Khartoum authorities was however essential in achieving the North- South peace, which is also a humanitarian goal. Another reason for the slow start was the difficulty to decide the extent of the need. There was little reliable information, much variation in needs between North, South and West Darfur, the roads and terrains in Darfur are remote while the situation was fast- moving with constantly ongoing and uprising incidents that regularly create new displacement. Besides that, the world's media wasn't mobilized. Besides that fact that the media was physically refused from Darfur by the authorities, in the competition for priority, media attention and resources, Darfur had to go to the wall for the crisis in Afghanistan and Iraq, which had lesser humanitarian magnitude but a greater political signet. (Minear, 2004)

This again shows the systematic obstruction of the Sudanese government, this time in the allowance of humanitarian access, providing information and the granting of visas. Despite of the provisions in international law, Sudan does not seem to be bothered by its responsibilities and access to victims is not guaranteed. Also the tension between peace and relief highlights a dependency on the willingness of the government. This raises questions of the possibilities of both humanitarian action and international law. Effectiveness is limited due to a lack of enforcement of international law, which translates into limited humanitarian action possibilities when a government is not very willing to cooperate.

While the humanitarian relief workers were prevented from operating, the Sudanese army and Janjaweed militia were not, and the assaults and war continued. All in all, the mobilization delayed for around a year and it was not until February that the international community began to engage. Towards the end of February international activity finally gathered more progress: talks were finally scheduled for late March in N'djamena. Although the talks started initially with 8 days of getting nowhere, the Sudanese government eventually signed an agreement to a 45- day military pause to enable humanitarian access. Teams were sent to explore the situation, assess the humanitarian situation and make

appropriate recommendations. It reported a reign of terror, acts of crimes against humanity, descriptions of violations, suffering and an emphasis on the likelihood of future famine resulting from forced displacement. Towards the end of May the authorities in Sudan started to authorize visas, which increased the humanitarian assistance and large scale operations became possible for NGO's and the UN. However, funding was still far too short. The UN called a donors conference and Oxfam revealed the internal funding discrepancy of Iraq receiving 2 billion US dollar in 3 months, with Sudan receiving only 200 million US dollar out of an appeal for nearly 639 million. (Slim, 2003)

The major challenge that the international community is facing is how to subdue the sovereignty of Sudan in order to address the issues of the Darfurians. Sovereignty has been used as a shield for the Sudanese government to do as they please. They have strongly resisted against interferences of the international community in what they see as domestic affairs.

3.3 HUMANITARIAN ASSISTANCE

“Although WFP and most humanitarian agencies have attempted to be neutral and to provide assistance impartiality in conflict situations, the assistance provided – especially bulk food assistance – has not been without consequences for the course of events and the actions of the parties. Lives have been saved, but many needy people have not been reached, there have been unintended side effects, delivery costs have been high, some food has been lost, stolen or misused and increasing number of WFP and other humanitarian workers have been killed or injured. In most conflict situations, food has been used as a weapon and source of influence and, in some cases, warring parties have profited from or sought to impede assistance operations”.
(Minear, 2004, p 106)

Above quote is from a study from WFP, called 'Recurring challenges in the provision of food assistance in complex emergencies'. When a conflict breaks out and the national authorities are not able to provide security, it is the general expectation that international humanitarian actors are not only allowed, but also fill the gaps and restore the basic living standards. Like the above quote states however, humanitarian actors faced many challenges in Darfur; resonating with the tensions introduced in chapter 2.

3.3.1 COORDINATION

When the international community began to respond to the crisis, a very strong international coordination was lacking; there was no institutional central point for the internally displaced. During the visit of the UN interagency team in 2004, it has recommended to establish a lead agency to manage the IDP camps. Initially, the UNHCR seems most fitting to fulfill this role, but when proved to be unable, the OCHA was asked to identify NGO's to manage the camps. In the beginning of 2005, 39 NGO's had come forward but most inexperienced in camp management. They did sign an agreement with the OCHA, but an evaluation observed that the NGO's did not consider themselves very accountable to the OCHA. Furthermore, the OCHA was not able to monitor their performances, which thus left the 39 NGO's unsupervised. The wide variety of involvement led to unevenness in the

quality of services, and leaving 600 000 IDP's in camps without a coordinator. (Minear, 2004)

An Oxfam evaluation presents that the UN leadership in Darfur was not strong, leaving the NGO's on their own, trying to fill the gaps, avoid duplication and assure a certain need. (Minear, 2004, p. 84) This is probably the reason why there are also some serious flaws in coordination regarding to capacity. All organizations face weaknesses in their capacity, but in case of Darfur, there was no or too little efforts to balance and coordinate the comparative advantages. This led to limitations in terms of coverage. A study of the UN reveals that at the end of September 2004, some 88 percent of the afflicted people had reached. This was however greatly varying in means and sectorial coverage. High coverage existed in food (70 per cent) and health care (67 per cent), but lows in potable water (40 per cent) and sanitation (42 per cent). The agencies were thus having serious difficulties to gain control of the situation. And indeed, the assistance provided by the international community never really caught up with the crisis. (Minear, 2004)

Besides the coverage issue, the given aid turned out to be biased in favor of people living in government controlled areas. Obviously, this bias was not intended; no humanitarian organization wanted to exacerbate the conflict and all are committed to impartiality. It was the circumstances on the ground that sneaky contributed to this development. Insecurity, travel restrictions and other issues reinforced by the government prevented agencies from distributing to IDP's in rebel held areas. (Minear, 2004) Furthermore, there was a reduction of the quality of food and an increase in it costs. Assets that were delivered one day before the arrival of the staff, was stolen by those who were supposed to guard them, food was distributed only after taken the high- value items and in a corrupt manner. It was difficult to keep the assets out of military hand. (Minear, 2004)

Although foregoing chapters did not in particular pay attention to the institutional framework of humanitarian action regarding protection of IDP's, it becomes clear that the lack of a governing body and divided responsibility leads to unplanned effects and chaos. This shows the complexity in the translation of policies into effective practices on the ground, despite of the comprehensive Guiding Principles. It shows the versatility of internal displacement to be too big to handle for humanitarian agencies. Well planned practices can get disturbed and turn out to not equally and fully protect human rights practices. Despite all the efforts, the sectorial coverage results in incomplete protection. The bias worsens this in that it shows the probably most needy not getting reached. All in all, it shows a very limited capacity of international humanitarian action to ensure that everyone is fully supported in their needs.

3.3.2 PROTECTION

The crisis in Darfur is recognized as foremost a human rights crisis and a crisis in physical protection. The reality of the emergency as a crisis in protection was extremely visible in the violence against women. An analysis of the DFID notes: "The most shocking element of the brutality of the Darfur conflict has perhaps been the widespread, repeated and systematic sexual violence inflicted on women by the Janjaweed militia."(Minear, 2004, p. 88) To be able to assist their families, woman had no choice than endure sexual violence. Reports of

rapes of women and the flagrant abuses of their fundamental rights established Darfur as a tragedy of international concern. (Minear, 2004)

This also confronted humanitarian agencies with some awkward issues, because no UN agency has a protection mandate for IDP's and no protection strategy existed to respond effectively to these protection issues. Organization CARE admitted "confusion at different levels within the organization about what role CARE staff should play in protection or how to assess risk associated with engaging in protection work." (Minear, 2004, p. 88) Especially the fact that given aid has sometimes increased the risk of attacks, uprooted urgency and questions of advocacy and access. Same story is true for the protection of children. Although the protection of children is a priority for many agencies, eighteen months into the conflict of Darfur organization Save the Children observed that children continued to be victims and directly targeted. (Minear, 2004)

The reports of raping, murder, torture, disappearances, destruction of lives and villages and forced displacement has shown the failure of protection in at least the first 2 years of the conflict. Many agencies have successfully delivered relief aid in Sudan, but all the food, medicines and seeds have not protected the affected from the serious assaults. (Minear, 2004)

This directly relates to the definition of protection and the nature of humanitarian action, as discussed in the foregoing chapter. Relief as the provision of assets is not enough to effectively protect the lives of IDP's. The Guiding Principles acknowledge this and make specific references to situations that can lead to inhuman and degrading treatment. The rights of free movement or dignity and integration, for example, give special guidance to the need to protect IDP's from actions that result in death, slavery or sexual employment. We however also see that the humanitarian actors are not yet fully equipped to meet the guidelines elaborated in the Guiding Principles.

3.3.3 LONG TERM

All agencies experienced struggles. MSF for example found that a shortage of expats was a serious problem and contributed to its inability to maintain presence in Darfur after its first intervention in 2003. It states that: "The Darfur response suffered from a shortage of field staff with the necessary knowledge and experience of starting up a large- scale acute emergency response." (Minear, 2004, p. 111) More agencies experienced challenges with personnel. Expat- heavy humanitarian responses furthermore face the weakness of a poor understanding of local contexts. Although there is a general understanding of complex emergencies, organizations fail to have done little thorough research to the situation and the roots of the conflict. This insufficient understanding of livelihoods, cultural relationships and survival strategies for example are serious obstacles to effective action in the Darfur region.

The UN interagency team released in one of it evaluations that the IDP's in camps evaluated the health services as better than they had ever had. This is both an accomplishment and a sign of the low level of general development in the region, which is important to keep in mind to not grant the IDP's a privileged status. The UN interagency team also found that there was too little awareness and attention to the environmental impact of the

humanitarian assistance, for example a lack of engagement in existing leadership structures. Again was affirmed the difficulty of providing goods and gaining access because of manipulation of authorities. (Minear, 2004)

Like explored in the chapter 2, debates have increasingly paid attention to dilemmas of long term and development goals within emergency assistance. Should relief activities be tuned to people their ability to provide for themselves, beyond providing lifesaving inputs? And how? One of the changes coming from these insights is increasing attention for the protection of livelihoods. The Sphere handbook which presents standards in disaster response, states to “eliminate the need for survival strategies which may result in long term, negative consequences to human dignity, household viability, livelihood security and the environment” and to “provide a short term income transfer .. to allow household resources to be invested in recovery and long term development” (Minear, 2004, p. 95)

Several agencies working in Darfur have adopted this new way of thinking and conducted livelihood surveys. Save the Children for example concluded that while food reserves and livestock of inter alia IDP's were completely depleted, in some circumstances vaccinating animals or providing seeds is a higher priority than problems like poor healthcare. (Minear, 2004)

3.3.4 HUMAN RIGHTS/ RELIEF

Like briefly noted in the first paragraph, Darfur shows tensions between development and relief. In this case in particular the tension between peace in the long term and the necessary means for emergency relief are visible. The conflict in Darfur is sometimes even evaluated as representing a missed opportunity to proceed on peace in tandem with relief. There were two peace talks. In Naivasha, Kenya, Sudan's North-South conflict was discussed, while in Abuja, Nigeria, the Darfur conflict was discussed. These peace talks were also of great importance for humanitarian organizations while it could have consequences in the future as well as emergency operational implications. A success in the North/ South peace talks would provide a resettlement opportunity for some 4 million IDP's. At the same time, progress in the Naivasha talks triggered groups in Darfur because they feared to lose power and influence as peace-agreements were reached in the South. Also, the press for the need for the cooperation of the Khartoum authorities in the peace talks had left diplomats and other agencies more unwilling to keep wringing the authorities for issues like humanitarian access for Darfur. There thus arose some tension between the human rights advocates, who wanted to end the bloodshed, and other humanitarian groups who wanted to provide life- saving relief in and gaining access to the victims. (Minear, 2004)

Deng said about the meaning of peace- talks after a visit to Darfur: “Ultimately, sustainable peace and security in a region can only be possible if the root causes of the conflict are effectively addressed. The grievances of the region are deep rooted and focus on marginalization, neglect and discrimination based for the most part on racial identification of the population as predominantly non-Arab”. Assistance and protection would thus be palliative if the root causes are not addresses substantially. (Minear, 2004, p98)

Activities in the area of advocacy also illustrate the complexity of managing the relations and tension between humanitarian action and politics and peace on the ground. Said is that

diplomatic challenges have been sidelined to, due to the emphasis on humanitarian activities. Most agencies were involved in advocacy activities, although in different gradations. They were nevertheless afraid that speaking about political sensitive issues like the causes of the conflict or sanctions would negatively affect their perceived neutrality or presence. This led to the Sudan Advocacy Coalition stating in one of its evaluations: “By 2006, it is likely that donors will have spent over half a billion dollars, if not more, without addressing a single long term cause of the conflict. .. The conflict is the very nature of Sudanese identity, with the Sudanese state itself as the heart of the problem”. (Minear, 2004, p101)

It is almost unnecessary to repeat that the difficulty to pair off humanitarian action and development, like explained in the second chapter, leads to dramatic limitations in the protection of IDP’s. Against the backdrop of above, sustainable human rights protection goes together with addressing root causes and thus needs to go deeper than the aim of saving a life. If the concept of sovereignty is not sorted out properly, which leads to restraint of political activity and addressing root causes by humanitarian actors, humanitarian action will not be able to fully restore human rights.

3.4 TEN YEARS LATER

All in all, evaluations conducted in 2004 stated that the humanitarian interventions “have drastically improved the situation, which nevertheless remains precarious.” (Minear, 2004, p. 84) What becomes clear is that Darfur has been a disaster with regard to IDP protection. The Sudanese government has been able to twist international responses in their preferences and Darfur highlights furthermore the gaps in protection and illustrates the need for leadership.

In 2013, little has changed. The authorities of Darfur are admitting that violence and the situation are beyond their control, but The Human Rights Watch declares that the Sudanese regime continues to deny access to peacekeepers, which has a direct impact on the assessment of humanitarian needs and people receiving the assistance they need. (Irin, 2013)

Increased clashes and movement of armed groups are contributing to the problem, with 300.000 newly displaced people in 2013 only. UN estimates still indicate around 1.4 million Darfur victims living in camps, with the number of internally displaced being even higher due to people living in smaller camps. In total, 3.2 million persons are in need of humanitarian assistance, which is one- third of the population of Darfur. (Irin, 2013)

OCHA states that road insecurity remains a major problem limiting the movement of staff and supplies. The deteriorating security situation has led to humanitarian agencies not able to keep their staff working on the ground in Darfur. Peacekeepers and aid workers have not been spared. In July 2013 again seven peacekeepers were killed, bringing the number to 13 in total since the end of 2012. Field offices are robbed, dozens of aid vehicles are carjacked and ambushed and commercial transporters are unwilling to transport relief supplies in certain areas. (Irin, 2013)

Sudanese analyst Eric Reeves declares: “over the past year and more... violence has called into serious question the viability of any substantial ongoing relief efforts in the region. Virtually no international (expatriate) staff remains in Darfur, certainly not in the field or in remote locations - either for critical assessment work or to provide oversight for aid distribution. And as the recent killing of two workers for World Vision in their Nyala compound makes clear, there is no place of real safety in Darfur.” (Reeves, 2013)

CONCLUSION

In this thesis I assessed the potential of humanitarian action to provide protection to the human rights of IDP's. The research question states: How does international humanitarian action protect the human rights of IDP's? To answer this question the chapters looked into what is meant with human rights protection, the nature of humanitarian action and made this less abstract by using the case of Darfur, as a clarification of the tensions and complexities within effective humanitarian action.

After addressing the needs of IDP's and its legal provisions in the first chapter, it can be concluded that the problems existing in the protection of IDP's are not foremost a problem of a short of legislation. Many essential rights are warranted by human rights and humanitarian law and brought together in a comprehensive way in the 'The Guiding Principles on Internal Displacement'. Although the existing bodies of law cover many aspects of particular relevance to the IDP's, there remain areas in which the law fails to provide sufficient protection. Most problematic however, is the gap in protection created by sovereignty. Where refugees flee international borders and enjoy protection of a specific, international statute, IDP's flee without crossing these borders and are subject to the sovereignty of their own state; treated as an internal affair. There is no international process of legal accountability for the failure of containing and addressing such a crisis. IDP's are nevertheless subject to international law and international concern.

It was in the second chapter where we analyzed the nature of humanitarian action as one of the ways in which the international community tries to approach human rights in a humanitarian crisis. Again, the willingness of the government turns out to be the most important factor in the success or obstruction of effective action. Firstly, humanitarian actors are dependent on the government to grant them access to the victims. Importantly, the cooperation of the government is also the reason why humanitarian organizations have fear to address root causes of displacement and the violations, which is in direct conflict with their aim to protect human rights. Although there are provisions of humanitarian assistance in international law, this assistance consists out of providing assets to the immediate needs of victims of emergency situations. Agreed upon is however that these emergency responses are not solutions to the problem and long term solutions are necessary. To work towards long term solutions and tackle the root causes of the problem, it is necessary to expose human rights violations and stimulate the host government to stop and change its practices. In other words, assistance without protection may lead to further human rights violations. States however consider protection as an element of political activity, and are reluctant to allow this, fearing interference and restrictions in their domestic issues. Secondly, the nature of humanitarian action is emergency response, while IDP's are in need of long term action and solutions also. These two tensions clearly show limitations in the nature and scope of both international law agreements and humanitarian action. If not sorted out properly, they will continue to lead to drastic inabilities for humanitarian action to restore human rights.

Darfur clarifies the challenges to the international community on different levels. While the Guiding Principles are helpful in terms of positioning IDP's in HRL and IHL and is therefore an important tool for developing national policies for willing governments, the case of Darfur shows that there are little strategies for governments that are unwilling to provide safety and protection to IDP's. The case proves above assertions that the willingness of the government is the most important factor in the success or obstruction of the action: It is the Sudanese government itself who is the main abettor of the human rights violations; the Sudanese government neglected nearly all existing human rights, humanitarian law and the Guiding Principles. Darfur therefore shows the overarching problem with international law in general, that it is difficult to enforce. There is no governing body which states are held accountable to and no system of enforcement exists. This leads to little predictability, which gives little force when a disaster unfolds.

Darfur also exemplifies the elaboration of this legal challenge for humanitarian action on the ground. Although humanitarian actors have a legal basis for action, effectiveness is hindered by unwillingness of the government. The case shows both the need and challenge to effectively address root causes, in particular managing tensions between relief and development and between assistance and peace. In combination with challenges in resources, understanding of local context, coordination and the need for international attention, the situation of Darfur therefore shows the inability of humanitarian action to substitute the responsibility of the government to protect the human rights of IDP's.

I therefore dare to answer the research question by stating that humanitarian action is making a difference to human rights, although like a drop in the ocean. What is clear is that work towards the human rights protection of IDP's has made great progress in the last years. The situation of Darfur however shows that there are no strategies to deal with unwilling governments. Governments that are unwilling or unable to protect human rights often hide their willingness behind the principle of sovereignty, which is the main obstructer in protecting the rights of IDP's through humanitarian action. The nature of humanitarian action is to be neutral and emergency, which limits its capacities to truly restore human rights compared to crisis management. Humanitarian action is nevertheless needed and very welcome to the plight of IDP's, but on themselves, not in the position to guarantee restoration of the human rights of IDP's.

DISCUSSION

This thesis clearly suffers from the fact that it needed to be written in an amount of time appropriate for a bachelor thesis. It only represents a small part of the information and knowledge around the topics of humanitarian action, human rights and IDP's. Where I provided a brief, non-comprehensive overview of the legal framework of protection of IDP's, much more can be said about international law. I did, for example, not pay much attention to refugees and refugee law, while the needs of IDP's and refugees are often of similar nature. The same applies for the concept sovereignty, which could constitute its own thesis. While I mentioned it quickly, I could have gone deeper into the distinctions of urban IDP's, to analyze if they have particular challenges. For example, the definition of IDP's could be confused with urban migrants, which possibly host many discussions in academic and operational spheres.

A gap I acknowledge after finishing my thesis is the lack of an institutional framework, in which an overview of the current organizational structures of IDP's protection is given. Only after analyzing the case of Darfur, it became clear to me that many of the challenges in the operation of humanitarian action have to do with coordination and responsibility.

It would be furthermore very interesting to do more research to the role humanitarian workers play in the reconstruction of South Sudan. Relief workers play their part in the establishment of the Constitution, for example, which can make major changes for human rights and the protection of IDP's. Unfortunately, too little research has been done to include this in this paper. Also, it would be incredibly interesting to analyze when the notion of 'internal displacement' gets weak, because a part of the country claims its independence. The region claims IDP's to be refugees and thus neglect the responsibility. There are signs of this in the independence of Somaliland of Somalia, but again the lack of information and literature restrained me from researching.

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APPENDIX 1:

Guiding Principles

Humanitarian Assistance

Assistance is often necessary for the practical exercise of rights to adequate food, water, housing, medical service, clothing and other necessities. Principle 3 and 25 in the Guiding Principles are meant to protect the right of IDP's to humanitarian assistance, as it sets out the responsibility to national authorities to provide humanitarian assistance both through their own means and with international cooperation. This also includes allowing and facilitating rapid and unobstructed passage of relief to the civilians, freedom of movement for authorized personnel, protection of relief personnel, goods and objects and punishment of attackers. The state also bears responsibility for the care of victims through humanitarian assistance, and facilitated through the waiver of requirements for visas, entry, transits etc. (Brookings, 2008)

Movement Related Rights

Principles 14, 15 and 28 are purposed to ensure that IDP's can freely move. Sometimes IDP's are unable to return home, want to flee to a safer part but are not allowed to escape danger zones or even managed to flee but forced to go back. Freedom of movement encompasses that everyone is free to choose own place of residence. This responsibility of the state also includes facilitating the return home or the integration and settlement in another part of the country. The rights are nevertheless subject to restrictions, and may be temporary postponed in case of public emergency. (Brookings, 2008)

Family Life

Every human being has the right to respect for family life. Guiding Principles 16 and 17 protect this right, obligating states to uphold family life, seek for family reunification, respect for the missing and dead. In the chaos of displacement, a family is easily separated and it is often difficult to find missing members because of the disruption of communication networks and the practical impediments of freedom of move. The separation has an impact on all the family-members, as the family is often the source of safety and stability for every individual member. If children or woman are separated, they are increasingly vulnerable to sexual exploitation, violence, exploitation or recruitment. Separation of for example elderly and people with disabilities or illness furthermore from their caregivers pose a serious threat to life and health. Therefore the responsibility to protect the right to family life not only include natural relationships, but also cares for family ties in the form of shared life, emotional ties, or the wish to live together. In all actions, the best interests of the child are the primary consideration and spouses must be equal in their rights and responsibilities. Families must be accommodated together and in case of lost or dead, the return of mortal remains and graves must be treated with fullest respect. (Brookings, 2008)

Food

Food is a necessary element for survival and therefore essential in the exercise of rights. Principle 18 of the Guiding Principles is established to protect this right, meaning to ensure both physical and economic access to food. This includes the availability of food of sufficient quality, physical and economic access, cultural and consumer acceptability, quality of food and non-discrimination in access to food. Starvation as a method of war is a crime and targeting of livestock, supplies and foodstuffs is illegal. IDP's are often dependent on humanitarian aid for their daily food, because of the lack of economic self-sufficiency. This creates risk to both exploitation and durable solutions of livelihoods. Coping strategies as a

result of food shortage often develop new protection problems, for example if IDP's are leaving safe areas in order to search food. (Brookings, 2008)

Water and Sanitation

Like the right to food, water is an essential precondition to fulfill human rights. Because of displacement, IDP's are often cut off their prior sources of water. The lack of water poses threats to life and health, and because water is besides personal needs also used for economic activity in the host communities, disputes over water rights are often a cause of conflict. If there is less privacy or sanitation facilitations, girls are exposed to rape. Like the right to food, the responsibility of the state includes availability, physical and economic access, access to information, quality and non-discrimination. (Brookings, 2008)

Basic shelter and adequate housing

As element as the right to an adequate standard of living, all persons enjoy the right to adequate housing. The Guiding Principle 18 provides for this through the duty of providing safe, habitable emergency and transitional shelter. The adequacy of housing must be judged in the light of circumstances, resources available, but is defined as including inter alia: legal security of tenure, available services and infrastructure, affordable housing costs which do not threaten the attainment of other basic needs, habitability in the sense of space, safety and protection, accessibility, compliance with safety standards and physical location which allow access to employment, health care and schools. Within humanitarian response, housing often means the very basic form of shelter. (Brookings, 2008)

Health

Principle 18 of the Guiding Principles ensures that IDP's are provided with essential medical services. Additionally, Principle 19 requires the state to care for the wounded and sick, with medical care and psychological and social services. Displacement often results in an increasing vulnerability to health issues, due to lack of food, housing, water and sanitation. The experiences can also lead to mental conditions like deprivation, injuries, or trauma. IDP's do often not have access to their documentation, making effective treatment difficult. (Brookings, 2008)

Recognition, Issuance and Replacement of Documentation

As mentioned in the right to health, IDP's often lack access to documentation. Individuals are frequently required to establish their identity in order to exercise their rights, but have often lost their papers or left them behind. Principle 20 of the Guiding Principles guarantees that IDP's are not refused to exercise their rights because they lack documentation or possibilities to replace them. According to international law, everyone has the right to recognition. This right is non-derogable and must thus be respected at all times, without any exception. States must therefore make sure that the IDP's have sufficient documentation to enjoy their entitlements and human rights, without any discrimination. (Brookings, 2008)

Property and Possessions

According to the law, everyone has the right to ownership and enjoyment of property and possessions. The property rights of IDP's must thus be respected, which means that property and possessions which are left behind are protected and returned to the owners in context of durable solutions. This is provided for through Principle 21 and 29 of the Guiding Principles. Home and lands left behind by IDP's are often among the most valuable assets in terms of identity and livelihood. When left behind the property can be destroyed, occupation and use by others which all form an obstacle in the return of the IDP. In some cases the property rights of the IDP are even contested. If the protection of rights is violated, the victims are entitled to remedies, such as reparations. If restitution is impossible, a fair compensation needs to be provided. (Brookings, 2008)

Employment, Economic Activities and Social Protection

Rights that provide for an adequate standard of living include the right to work and to minimum social security standards. For IDP's, their displacement not only leads to a loss of job, but in many cases also to the assets that provided them and their families. They often end in places far from work, or cannot find work at all, partly due to discrimination. Besides that, IDP's often fail in accessing the existing social security benefits. In cases of old-age pensions, unemployment allowances, or child benefits, this can put individuals and families in an extremely vulnerable position. This keeps IDP's dependent on the assistance or vulnerable to work in the informal economy, which both can have long lasting consequences for durable solutions. Principle 18 and 21 from the Guiding Principles provide for the right to an adequate standard of living, whether an individual is working or not. An IDP should be able to participate in economic activities without discrimination, and steps needs to be taken to ensure that IDP's do not fall into long-term dependency on aid. (Brookings, 2008)

Electorial Rights

Principle 22 of the Guiding Principles is established to protect the right of IDP's to take part in the government of his country, without any discrimination. This means for example participating in elections and referenda, which is often an important aspect of the peace-building of a country; to be a tool for ending conflict permanently, the outcome must be seen as legitimate by all parties. It is thus important that all marginalized groups, including IDP's have access to elections and are represented. Although IDP's remain citizens of their country and are thus entitled to the same political rights as the rest of the citizens, they are often displaced from the areas where they are registered to vote or lack access to their documentation. (Brookings, 2008)

Education

As a result of displacement, IDP's do no longer enjoy access to educations. Arranging educational services in the place where they find themselves displaced is often difficult, and building something up in a camp or grouped shelter is complicated due to a lack of resources and expertise. Nevertheless, all human beings have the right to education, which should be ensured by the state. Guiding Principle 23 refers to this right and establishes that education should be accessible during displacement, also in the light of durable solutions. The education needs to be free and compulsory at the primary level, and respect identity, language and religion. Thereby efforts need to be made to ensure full and equal participation. (Brookings, 2008) Besides access to school, a number of other problems arise. Again lack of documentation is problematic, children are often influenced by trauma, feel themselves required to abandon school in order to ensure the family's survival, large groups of IDP's can lead to overcrowded classrooms and they may suffer discrimination because they do not belong to the local culture. (Brookings, 2008)