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Forced migration and internally displaced persons: Latin America and Europe

Migração forçada e deslocamento interno de pessoas: América Latina e Europa

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Abstract

The aim of this research is to analyze immigration and internal displacement focusing on human rights. The analysis will concentrate on conflict induced internal displacement, causes of internal displacement due to environment change, natural disasters, which are in most of the cases interlinked with political conflicts, causing the forced movement of families (Borton et. al. 2005, Brun 2012, Halbroke 2000, Mertus 2003, Phuong, 2004, UNCHR 2012, 2014). This is an empirical research which critically will examine the changing dynamics of

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forced displacement and the challenges faced by affected states and the international community. More specifically, it analyzes key developments in immigration policy and practice; it re-examines the contemporary scenario around durable solutions in a context of policy issues related to internally displaced persons and stateless population.

Keywords: internal displacement; natural disasters; political conflicts; social disruption; human rights violations.

Resumo

O objetivo desta pesquisa é analisar a imigração e o deslocamento interno com foco nos direitos humanos. As análises concentram-se no deslocamento interno induzido por conflitos, em causas de deslocamento interno devido a mudanças ambientais, em desastres naturais, que estão na maioria dos casos interligados com conflitos políticos, causando o deslocamento forçado de famílias (Borton et al. , Halbroke 2000, Mertus 2003, Phuong, 2004, UNCHR 2012, 2014). Trata-se de uma pesquisa empírica que examinará, de forma crítica, a dinâmica cambiante do deslocamento forçado e os desafios enfrentados pelos Estados afetados e pela comunidade internacional. Mais especificamente, analisa os principais desenvolvimentos nas políticas e práticas de imigração; Reexamina o cenário contemporâneo em torno de soluções duradouras num contexto de questões políticas relacionadas com deslocados internos e população apátrida.

Palavras-chave: deslocamento interno; desastres naturais; conflitos políticos; ruptura social; violação dos direitos humanos.

1. Introduction

On analyzing immigration and internal displacement, it is important to keep in mind that these persons or groups of persons are not refugees, but have been forced or obliged to flee or leave their homes or places of habitual residence. Focusing on political rights the analysis will concentrate on conflict induced internal displacement, causes of internal displacement due to environment change, natural disasters, development projects, which are in most of the cases interlinked with political conflicts, causing the forced movement of families.

Historically, in the aftermath of the Second World War, large-scale conflict was still thought of in terms of wars between states, civil war and liberation struggles followed, many were identified and supported by the Cold War (UNCHR, 2012, p. 13). Conflict is inherent in all societies – and

between them, as there are different groups, political interests, and broader relationship between the states, the human rights context should be conceptualized.

Presently, conflict and human rights abuses affect some 25 million persons across the world, despite the 1951 Refugee Convention and the 1961 Convention on the Reduction of Statelessness (KI-MOON, 2012, p. XI).

. These are the traditional drivers of displacement, which are increasingly intertwined with and compounded by other factors, such as population pressure, food insecurity and water scarcity. The so-called *internally displaced persons* are growing in numbers due to the relentless advance of climate change, uprooting natural disasters, wars, political persecutions, and many other factors.

As they are the poorest and most vulnerable members of society, they are forced to abandon their homes, flee elsewhere in order to survive, and often are chased by the police, persecuted and sent to jail, facing political abuses. As part of these persecutions members of the family, including children, are detained and subjected to illegal and arbitrary searches of their homes, suffering threats against their lives and personal integrity. Extrajudicial executions are reported in several Latin America countries, as well as in Europe, Asia and Africa.

Hundreds of people try to escape to another country every day and are confronted with extremely hazardous journeys, in death boats as the ones crossing the Mediterranean Sea trying to arrive safely in Europe. Because they have not crossed an international border, they are not protected by the international regulations which concern refugees. They are people whose states are unable or unwilling to see that their needs are recognized and met. Guterres emphasizes that “those who succeed in reaching their intended destination are likely to be faced with new threats and dangers” (GUTERRES, 2012, p. X).

This paper indicates the scope of the problem and the responses to it according to the international agencies and human rights commissions, aiming at presenting some study cases, as well as the correspondingly Court decisions providing updates and additional legal information. The main question is what is the significance of the problem? In terms of governance, immigration and internal displacement are unsolved fundamental problems. The problems also address to social consequences as they will suffer racist discrimination and xenophobic violence, expulsions, physical

dislocations, separation from everyday practices and familiar environments. Dramatic changes in family structure and gender roles alter the daily life of persons. Women are thrust into the role of head of household because men are recruited to combat, stay behind to maintain land, or migrate in search of work, as in Syria, Iraq, Haiti, Bosnia and Herzegovina, Somalia, Colombia, for example.

This creates the conditions for a variety of rights deprivation, leading to the risk of statelessness and other discriminatory labels.

2. The Impact of Contemporary Immigration

Social consequences of migratory waves and internal displacement have been put to the fore in the 1990s due to the growing number of international conflicts spread around the world causing internal displacement. During the final years of the Cold War the superpower nations had been successful in stopping some internal conflicts in African countries, Central America and East Asia (MIALL; RAMSBOTHAM, 2000, p. 04). With the collapse of the Soviet Union the instability in the international scenario worsened, demanding separatists tendencies, as well as causing ethnic conflicts, secession wars and a power crisis in the 1990's. Gaddis says that "the Cold War was not only a geopolitics competition or a nuclear weapons race ... It was in question something as relevant as human survival: how to better organize the human society" (GADDIS, 2006, p. 80).

Migratory fluxes, refugees, asylum seekers and internally displaced persons and other vulnerable groups on the ground are being analyzed by practitioners, advocates, teachers, lawyers, government officials, and organizations. On one side of the debate are the UN and the Brookings-Bern Project on Internal Displacement (formerly the Brookings-SAIS project) including Antonio Guterres, the Resident Representative of UNCHR in Geneva, the Georgetown Law Human Rights Institute, the Department of Sociology and Criminology at Saint Mary's University in Halifax, Canada. Some commentators as Dr. Francis M. Deng, Robert Cohen and Erin Mooney and Professor Walter Kalin, advocate for a separate humanitarian category of IDPs, an argument that continues to dominate the tone of most research onto IDPs (BRUN, 2014, p. 04). The opposing view is represented by the International Committee of the Red Cross (ICRC). The ICRC is critical working with internal displacement as a separate humanitarian category,

and on the ground the ICRC does not separate between IDPs and other civilians affected by conflict (2014, p. 04).

This is a philosophical question that inherits both an analysis of International Human Rights Law, as a branch of international law, and International Humanitarian Law. We should focus on the question of the nature of law itself. Is law enacted, or is it somehow “natural” or “in nature”? Why the States should worry about internally displaced persons? Would the “positivist” view be put in the first place, or should the authorities analyze it as “universalist” worries? Why should governments at the end of the Cold War, call the attention of the United Nations General Assembly in 1949, to the problems of displaced people? What would be the economic burden of “people displaced internally by war”? These were the main questions placed by the Greek government, according to United Nations Office for the Coordination of Humanitarian Affairs (2003). It highlighted the constitutional rights of displaced persons by war and stated that they “should have the same access to international aid as refugees, even if they did not need international protection” (2014, p. 4). The request was repeated by India and Pakistan after partition. How could a body of laws fit the needs of displaced persons due to political conflicts? Internally displaced persons do not have a legal status because they are not refugees, even fleeing to another country they are still under the jurisdiction of their own government and may not claim any rights additional to those of shared by their compatriots (2014, p.03), although circumstances show that in most of the cases they need special protection.

Many displaced persons leave their countries with no money or documents, running away from the enemy, crossing conflict war zones, swamps, mining terrain, hiding in forests or facing desert areas, without basic needs such as food and water. On crossing the borders they are obliged to live in crowded camps, or taking-up residence in run-down urban neighbourhoods, squalid shanty towns, facing gangues and being extorted by local mafias.

These circumstances confine internally displaced persons; affect their families to situations of poverty and exclusion, and show their fragilities even on analyzing the theoretical issues especially the UN Refugee Convention adopted in 1951, the American Convention on Human Rights and the American Convention to Prevent and Punish Torture should be also brought to the fore.

On this basis, the objective of this paper is to present a series of study cases which have been submitted to the European Court of Human Rights for violation of Human Rights, as the case of *Barrios Family v. Venezuela* in 1998. The Barrios family, including their children, were harassed by the Police of Aragua state. As part of this persecution, five members of the Barrios family have lost their lives and several of them have been detained and subjected to illegal and arbitrary searches of their homes, suffered threats against their lives and personal integrity, and have been forced to move from their place of residence. This case is part of a more general context of extrajudicial executions in Venezuela and most of the incidents that violated the life and personal integrity of the victims took place after the Inter-American system had requested protection for the Barrios family through provisional measures. The Court found that the State violated the American Convention of Human Rights and the American Convention to Prevent and Punish Torture (article 10 Jurisdiction Protection).

Current trends in forced displacement are testing the international humanitarian system to an unprecedented extent. The Office of the United Nations High Commissioner for Refugees (UNCHR) is facing a large proportion of internally displaced and stateless people around the globe, as the number of 'people of concern' increased from 19.2 million in 2005 to 33.9 million at the start of 2011, the proportion of refugees among them decreased from 48 per cent to 29 per cent – and these figures do not include the millions of displaced Palestinians who come under the mandate of the UNRWA (2012, p. 01). The situation is likely to be exacerbated by ethnic conflicts and discrimination.

Ethnic minorities may be arbitrarily excluded from citizenship since states were formed, and this discrimination is enshrined in law. This includes minorities brought to the country during the colonial period to perform specific types of work, such as the African slaves in Brazil. Another example are the Hill Tamils in Sri Lanka, whose situation had to be resolved through an innovative law reform and citizenship campaign in 2003.

Similarly, in the Caribbean, statelessness mostly affects children of Haitian migrants born outside of Haiti, who may face legal and practical obstacles to obtain birth registration or to be recognized as a national, either in the country they were born or in Haiti (UNCHR, 2012, p. 04).

Haiti and the Dominican Republic has a long history resulted from a substantial population of persons of Haitian descent living in the country.

Historically, Haiti and the Dominican Republic share the Caribbean island of Hispaniola, where Christopher Columbus landed in 1492. Subsequently, in 1804 Haiti became the first independent state in Latin America, and occupies the western third of the island. On the other hand, the Dominican Republic whose independence dates from 1821, occupies the eastern part (2012, p. 04).

After the First World War, the sugar industry bloomed in the Dominican Republic, and hundreds of thousands of enslaved Africans were imported to work the sugar cane plantations of Haiti, by the French colonizers. Notwithstanding the decline in the sugar industry activities in the late 1980s, the Dominican Republic remained a consistent draw for people from Haiti. Dominican law prohibited citizenship for foreigners, except for children of diplomats and parents who were 'in transit', through the *jus soli* principle. The 'in transit' exception applied to children of parents who remained in the country for a period of 10 days or less. Present-day relations between the neighboring countries are fraught with tension, the culmination of volatile incidents, comparative economic disparity and opposing perspectives on European influences. The independent Hispanic website *Voxxi News* reports that Haitian and Dominican relations are currently the worst they have been in 75 years (ABEL, 2015). In 1937, Dominican dictator Rafael Leonidas Trujillo Molina, who was of mixed race, commanded his army to kill all Haitians living in the northwestern Dominican Republic that borders Haiti.

According to "*Foundations of Despotism: Peasants, the Trujillo Regime, and Modernity in Dominican History*" published by historian Richard Lee Turits, Stanford University Press (TURITS, 2013), from Oct. 2 to Oct 8, 1937, hundreds of Dominican soldiers and local militia groups confined and slaughtered an estimated 15,000 Haitian people living in the area. Most of the victims were small farmers born in the Dominican Republic into families settled in the area for several generations. According to the Dominican Republic's own constitution, most of the victims would have been considered citizens.

Over the past decade, a great controversy has arisen in the Dominican Republic concerning the countries' law and its interpretation, by denationalizing many Dominican citizens of Haitian descent.

In this context, the Inter American Human Rights Court has received dozens of complaints of families, of Dominican citizens of Haitian descent,

who have been rendered statelessness or at risk of statelessness, being prohibited to have access to their personal documents and have been expelled from the country.

In 2014, five families' descendants of Haitians and Dominicans presented their official complaints to the Inter American Human Rights Court showing that they were taken from their houses and thrown out in the street, and compulsorily extradited. The Court found that the State violated the American Convention on Human Rights, Article 22 – freedom of Movement and Residence, Article 22 (5) Prohibition of Expulsion from, or Denial of Return to, State of Nationality.

The Court noted that the facts of this case occurred in a context in which, in the Dominican Republic, the Haitian population and those born in Dominican territory of Haitian descent usually lived in poverty and frequently suffered derogatory or discriminatory treatment, even from the authorities, which increased their situation of vulnerability. This situation was related to the difficulty encountered by the members of this population to obtain personal identity documents. The Court also verified that in the Dominican Republic, at least at the time of the events of this case and throughout almost all the 1990s, there was a systematic pattern of expulsions of Haitians and persons of Haitian descent based on discriminatory concepts, including collective expulsions or proceedings that did not include an individualized examination. The members of each of the families that were victims in this case have received compensation for their loss. The Dominican Republic was notified to reimburse the amount established to the Victims' Legal Assistance Fund. In addition, the State received a notification that it has to provide the Court with a report on the measures adopted to comply with the Judgment. The Court would monitor full compliance with the Judgment, in exercise of its attributes and in fulfillment of its obligations under the American Convention on Human Rights, and also would consider the case concluded when the State and complied fully with its provisions.

Notwithstanding, this is not an isolated case, approximately 500,000 Dominicans of Haitian descent are living in the Dominican Republic (2013). Access to education for Dominicans of Haitian descent has been curtailed by discriminatory school policies and the arbitrary application of laws guaranteeing equal access to education (2015). The government of the Dominican Republic has denied Dominicans of Haitian descent born on Dominican

soil birth certificates, identity card (ARENDR, 1958), and also the right to education (1948) Official allegations are based on the presumptions that parents or ancestors of these individuals entered the country without legal authorization. In September 2013, the Constitutional Court of the Dominican Republic judicially mandated the retroactive revocation of the citizenship of hundreds of Dominicans descent from undocumented immigrants, creating a multi-generational problem, as entire families lack official documentation; children are prohibited to attend classes, aggravating their situation of poverty and exclusion. Many families continue to occupy the isolated and impoverished *bateyes* built to house labourers during the heyday of the sugarcane industry.

The situation of persons of Haitian descent is not unique to the Dominican Republic. While each country in the Caribbean has its own laws and regulations regarding nationality, a similar situation exists in both the Bahamas and the UK Overseas Territory of the Turks and Caicos Islands¹, as well as in other countries in Latin America (UNCHR, 2012).

Wealthier countries are usually far removed from countries in crisis, and have put in place, with varying degrees of success, an array of measures to deter and prevent the arrival of asylum seekers and refugees.

3. Conflict and Displacement: armed groups and terrorists

On thinking about the international legal framework it comes to the fore the 1951 Convention conceived as a human rights instrument, non-discriminatory in its application and global in scope, especially concerning the present conflicts.

Africa is the region/continent worst affected with more than 13 million IDPs, considering rebel activities and inter-communal violence. These

¹ From time-to-time, debate emerges in Canada's political circles about the prospect of the Turks and Caicos Islands' joining Confederation as a province or territory. Canada has long been involved in promoting security in the Caribbean region. Operation Caribbe, established in 2005, sees vessels of the Royal Canadian Navy (RCN) patrolling the Caribbean to intercept narcotics shipments. Canada participates each year in Exercise Unitas, a large-scale multilateral exercise held off the Central American coast. Perhaps more importantly, Haiti is the largest beneficiary of Canadian development assistance and the Canadian Forces have played an integral role in various humanitarian missions in the country, such as the United Nations Stabilization Mission in Haiti (MINUSTAH) and the Stabilization and Reconstruction Task Force (START). Also, there is an agreement between the Government of Australia and the Government of the Turks and the Caicos Islands on the Exchange of Information with Respect to Taxes. Organization for Economic Co-operation and Development's, March 2002. Access at: <<http://www.oecd.org/countries/turksandcaicosislands/44939683.pdf>>. August 27, 2015. (NATO, 2015).

are the main key factors in the displacement of civilians, although in several countries government armies or proxy forces also forced people to flee.

In Latin America, the last decades have shown serious bloody conflict in Colombia due to drug cartels. The Government of Colombia asked for international aid, and is constantly struggling to find durable solutions for people uprooted in conflicts that had long ended. In Peru and Guatemala, the return and reintegration of the displaced was agreed in the mid-1990s, but these agreements have never been fully implemented (BRUM, 2012).

The Inter-American Human Rights Court registered on 24 January 2001, the detention, disappearance and execution on October 6, 1987, *Case of the 19 Merchants v. Colombia or 19 tradesmen* (2016), in the municipality of Puerto Boyacá, in the Magdalena Medio region. The 19 tradesmen, of the same kin, were executed by members of the National Army and members of a “paramilitary” group. According to members of the jury, some suspicious indicated that the Colombian government had no intention on repairing the families to the extrajudicial execution of their siblings. On the other hand, during the public hearing on merits and possible reparations and costs, the State undertook to forward to the Court a copy of all the files of the proceedings processed before the Cúcuta and San Gil courts, and indicated that it should not be understood “that the Colombian State had any intention of hiding documents or failing to provide them,” but that the problem arose from “the difficulty for the State to photocopy nearly 60,000 folios” (supra paras. 19, 21, 45, 46, 48, 49 and 51).

Colombia has been a State Party to the American Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court on June 21, 1985. Therefore, the Court is competent to hear this case under the terms of Articles 62 and 63(1) of the Convention. The witnesses reported they the 19 tradesmen were simple and hard workers who used to transport household appliances to Medellín and trade them, in five vehicles: the blue vehicle driven by Antonio, a red 1960 truck, a black taxi, a blue and white jeep, and an orange and white jeep, always going to alternate roads to avoid Customs and pay very little at the military bases and on the road, so as to make a profit.

When they disappeared, no information was given to the families about the case. The disappearances affected all the families’ members. In fact, they could not assimilate the “disappearance” of the 19 tradesmen. They have still not accepted it. The fact that the events have not been clari-

fied and that those responsible have not been prosecuted or punished makes the witness and their families feel indignant and impotent.

The sudden “disappearances” of the alleged victims’ ended household harmony, in all families the standard of living was drastically reduced, food began to be scarce; some had to sell their houses to pay off debts and for their children's schooling.

Although looking for proofs of the “disappearances” the witness were afraid to testify, because, where they live, there are many “paramilitary personnel” who have the support of the Police and the Army. The witnesses fear for their lives, the lives of their families and all relatives. The so called “paramilitary groups” used to exercise firm control over the municipality of Boyacá, and had a meeting at which they decided to kill the tradesmen and seize their merchandise and vehicles, because the tradesmen did not pay the “taxes” that the said “paramilitary” group charged to transit the region with merchandise, and because they also thought they used to sell arms.

On June 8, 1989, the State issued Decree 1194 “extending legislative decree 0180 of 1988, to punish new criminal activities, since this was required in order to re-establish public order.” One of the preamble paragraphs of this norm stated that “events that have been occurring in the country have demonstrated that there is a new criminal activity consisting in horrendous acts being committed by armed groups, mistakenly called “paramilitary groups,” formed into death squadrons, bands of hired murderers, self-defence or private justice groups, whose existence and activities gravely affect the social stability of the country, and which should be suppressed in order to re-establish public order and peace.” This decree classified as crimes the promotion, financing, organization, leadership, encouragement and execution of acts “designed to train or provide access of individuals to the armed groups, commonly known as death squadrons, bands of hired murderers or private justice groups, erroneously called paramilitary groups.” It also classified as a crime, having connections to or belonging to such groups, as well as instructing, training or equipping “individuals in military tactics, techniques or procedures for carrying out the criminal activities” of these armed groups. It also stipulated that acts “committed by active or retired members of the Military Forces or National Police or State security agencies” would be considered as aggravating the

said conduct. This decree was subsequently converted into permanent legislation by Decree 2266 issued on October 4, 1991.30.

Basically, causes of conflict-induced displacement can be divided into root causes and proximate causes. Root causes are those which “initiate a conflict and its displacement, although these can be hard to isolate as most of today’s conflicts must be understood as self-perpetuating and their resulting displacement can be seen not only as an effect of the conflict but also eventually as a cause of its continuation”. Most conflict causing internal displacement are a combination of internal fighting and direct foreign military intervention, most often linked to civil war (BRUM, 2005, p. 06). Brun says that “the causes are fueled by deep structural problems, often rooted in acute racial, ethnic, religious and/or cultural cleavages as well as gross inequities within a country”(2005, p. 06).

Armed groups in Latin America have been a long lasting problem. In the late 1960’s there was a recurrence of terrorism in Latin America. This was not nationalist separatist in character but drew its inspiration from the extreme left. They emerged in a country, but for many years had been the most progressive in Latin America, and even in the 1960’s was among the more liberal. The Tupamaros, from Uruguay (MOORE, 2015), who stood for radical political and social change, attracted some of the energetic, best and most idealistic from the younger generation, and they were engaged in bank robberies, and kidnappings but not in indiscriminate murder. Moore observes that “during the late 1960's and early 1970's, Uruguay was rocked by a state of internal war created by a group of urban guerrillas known as the Tupamaros”.

Initially their illegal activities and acts of serious crime were very successful, proving that a civilian legitimate government could be easily shaken up and disrupted. The Tupamaros initially attracted a great deal of attention in the international media, but in the final analysis the only result of their illegal operation was the destruction of freedom in Uruguay that almost alone in Latin America had an unknown democratic tradition, however imperfect.

The terrorist groups were identified as: 1. Fuerzas Armadas Revolucionarias de Colombia (FARC). 2. Ejército de Liberación Nacional (ELN, or National Liberation Army). 3. Autodefensa Unida de Colombia (AUC, or United Self-Defense [forces] of Colombia). 4. Sendero Luminoso (Shining Path). The first three terrorist organizations operate in Colombia, whereas

Sendero Luminoso is Peruvian. Out of the four organizations, only the AUC is rightist. The 2006 Country Reports on Terrorism mentioned that no Islamist group of terrorists' cells operated in Latin America (US Department of State, 2007, p. 160). This is a very important conclusion. The Latin American region, therefore, has not been seen as a hotspot in the US led "War on Terrorism".

In the 1970's and 1980's, Latin America was considered as one of the two regions, along with the Middle-East, where anti-US terrorist attacks were the most frequent. In the 1970's and early 1980's, terrorism was sometimes employed as a tactic by rebel groups in Argentina, Uruguay, and Chile. The concept of "Narco-Guerrilla" appeared in late 1980's and became "Narco-Terrorism" in the aftermath of 11 September 2001.

The 2006 Report on Terrorism emphasized the alliance with the Tri-Border Area (TBA): Argentina, Brazil and Paraguay, as they were concerned with arms and drugs smuggling, document fraud, money laundering, and the manufacture and movement of contraband goods through this region. An official mechanism was established to address those illicit in the early 1990s. In 2002, at their invitation, the United States joined Argentina, Brazil, and Paraguay in what became the "3+1 Group on Tri-Border Area Security" to improve the capabilities of the three TBA states to address cross-border crime and thwart money laundering and potential terrorist fundraising activities. The United States remained concerned that Hezbollah and HAMAS were raising funds in the TBA by participating in illicit activities and soliciting donations from extremists within the sizable Muslim communities in the region and elsewhere in the territories of Argentina, Brazil, and Paraguay, although there was no corroborated information that these or other Islamic extremist groups had an operational presence in the area, but some events turned the region into a suspicious one.

In Brazil, Ação Libertadora Nacional or National Liberating Action and Movimento Revolucionário 8 de Outubro or Revolutionary Movement of 8th of October (NOVITSKI, 2005, p. 01), besides kidnapping diplomats, as US Ambassador Charles Burke Elbrick in Rio de Janeiro, on September 4th, 1969, and Mr. Abilio Diniz, an important Brazilian entrepreneur, the world was made aware of the existence of a guerrilla movement in the country. These events showed that the guerrilla movement comprised young people in the fifteen to twenty-five age group who belonged to the urban middle classes who used to live in the most sophisticated neighborhoods of Rio de

Janeiro (ABREU, 2016). The young generation was also influenced by Brazilian guerrilla fighter Carlos Marighella, in 1969, who wrote the *Minimanual of the Urban Guerrilla*².

Other political cases are highlighted by *Carpio-Nicolle v. Guatemala* (1993). The important politician Jorge Carpio Nicolle³ was killed on July 3, 1993, by more than 15 armed men in the place known as Molino El Tesoro, in the municipality of Chichicastenango, [El] Quiché, and when they had identified him, they [allegedly] shot him at pointblank range (Article 23 – Political Rights). The politician was with a group of journalists who died at the same spot. The journalists were supposedly attacked by members of the Self-Defense Patrols of San Pedro de Jocopilas, who tried to prohibit another candidate to do campaign against the politician who was leading the government, he did not want any opponent to face him as a candidate. The Government did not investigate the case, and the Commission asked the Court, in accordance with Article 63(1) of the Convention, to order the State to adopt specific measures of reparation indicated in the application. Lastly, it requested the Inter-American Court to order the State to pay the costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the inter-American system.

A similar case happened with the Mayan indigenous political leader Kaqchikel, Florencio *Chitay Nech* (hereinafter “Florencio Chitay” or “Mr. Chitay Nech”), which occurred as of April 1, 1981, in Guatemala City, and the ensuing lack of due diligence in the fact-finding investigation, as well as the denial of justice to the detriment of his next of kin. Said disappearance was allegedly executed by armed men exiting a vehicle. Mr. Chitay Nech opposed resistance until one of the men pointed the barrel of a gun at his son, who was a minor, Estermerio Chitay Rodríguez who was with him, and

² The *Minimanual of the Urban Guerrilla* (Portuguese: *Minimanual do Guerrilheiro Urbano*) is a book written by Brazilian guerrilla fighter Carlos Marighella in 1969. It consists of advice on how to disrupt and overthrow an authoritarian regime, aiming at revolution.

³ On June 13, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) filed an application before the Court against the State of Guatemala (hereinafter “the State” or “Guatemala”), originating from petition No. 11,333, received by the Secretariat of the Commission on July 12, 1994. The State had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of This judgment is delivered under the terms of the Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an order of November 24, 2000, which entered into force on June 1, 2001, and according to the partial reform adopted by the Court at its sixty-first regular session in an order of November 25, 2003, in force since January 1, 2004. Accessible at: <http://www.univie.ac.at/bimtor/dateien/iacthr_2004_carpio-nicolle_vs_guatemala.pdf>. January 26, 2016.

therefore he quit resisting and got into the vehicle. After that, he disappeared, and for more than 29 years the governmental authorities never presented a single allegation for this forced disappearance. The Commission requested the Court to declare that the State be responsible for the violation of several articles including Article 23, Political Rights.

Besides political problems, terrorists groups used to kidnap foreign civilian persons, as in the case of *Lori Berenson Mejia*, detained arbitrarily at home on November 30, 1995, in Lima, Peru.

On July 19, 2002, the Inter-American Commission on Human Rights filed an application before the Court against the Republic of Peru on the basis of Article 61 of the American Convention for the Court to decide whether the State had violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 9 (Freedom from Ex Post Facto Laws) of the Convention, all in relation to the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Lori Helene Berenson Mejía or “the alleged victim”). It also indicated that the State had failed to comply with its obligation to adopt domestic legislative measures, in the terms of Article 2 (Domestic Legal Effects) of the Convention. All the foregoing, according to the Commission, in relation to the proceedings in which she was tried by both military courts and civil courts, to the inhumane conditions of detention to which she was subjected in the Yanamayo maximum security prison, and to the issue of Decree Laws Nos. 25,475 and 25,659, and their application in the said proceedings. The alleged victim was detained, and then tried, under the provisions of Decree Law No. 25,659, by a “faceless’ military court and with restrictions to her right to a defense. On March 12, 1996, Lori Berenson was sentenced to life imprisonment for “treason.” On August 18, 2000, as a result of Lori Berenson’s defense lawyers having filed an appeal for “special review of res judicata [“sentencia ejecutoriada”],” the Supreme Council of Military Justice annulled the judgment of March 12, 1996, and waived jurisdiction in favor of the ordinary criminal jurisdiction. The Commission added that the alleged victim was confined in the Yanamayo Prison from January 17, 1996, to October 7, 1998 (2 years, 8 months and 20 days), and during this period was subjected to inhumane detention conditions. The Commission added that, on August 28, 2000, a new proceeding against Lori Berenson was commenced in the ordinary criminal jurisdiction. This trial culminated in the judgment of June 20, 2001, which found Lori Berenson guilty of the crime of “collaboration with

terrorism,” established in Article 4 of Decree Law No. 25,475, and sentenced her to 20 years imprisonment. The Supreme Court of Justice of Peru confirmed the judgment on February 13, 2002. The Commission also requested the Court, in accordance with Article 63(1) of the Convention, to order the State to adopt specific measures of reparation, which were described in the application. Lastly, it requested the Court to order the State to pay the costs arising from processing the case in the domestic jurisdiction and before the organs of the inter-American system.

Peru has been a State Party to the American Convention since July 28, 1978, and accepted the jurisdiction of the Court on January 21, 1981. Consequently, the Court is competent to hear this case in the terms of Articles 62 and 63(1) of the Convention.

The victim, according to the Commission should be reimbursed, and the State should pay for expenses and reimbursements even pay for medical treatment to Lori Berenson.

A similar case was brought to the Inter-American Court of Human Rights concerning the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena with the Eastern Republic of Uruguay (hereinafter "the State" or "Uruguay"), denominated "*Gelman v. Uruguay*", in 1976, relating to the enforced disappearance of María Claudia García Iruretagoyena de Gelman, her detention in Buenos Aires, Argentina, during her advanced stage of pregnancy. It is presumed that she was then transported to Uruguay where she gave birth to a daughter, who was then given to an Uruguayan family; actions which the Commission notes were committed by Uruguayan and Argentine State agents in the context of "Operation Cóndor," and, to date, the whereabouts of María Claudia García as well as the circumstances in which the disappearance took place remain unknown⁴.

Ariel Dulitzky, expert member of the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), in South America⁵

⁴ Case *Gelman v. Uruguay*, Judgment of February 24, 2011 (Merits and Reparation). Articles 62(3) and 63(1) of the American Convention of Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 31, 32, 34, 62, 64, 65 and 67 of the Rules of Procedure of the Court Accessible at: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf>. January 25, 2016.

⁵ The United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), in South America. Access at: <<http://www.ohchr.org/EN/NewsEvents/Pages/EnforcedDisappearancesprogressandchallengesinSouthAmerica.aspx#sthash.5U1efT5R.dpuf>>. January 27, 2016.

reports the military and dictatorial governments in Latin America, and their actions that resulted in involuntary disappearances of thousands of people, civil citizens, rural peasants, who were persecuted and killed for reasons of race, religion, or for being members of a particular social or political opinion, as the following case:

Viviana Díaz, aged 61, remembers as if it were yesterday the morning when her father, Victor Díaz, after receiving a phone call, said goodbye to her, her mother and her two brothers and left his home in Santiago, Chile. It was 11 September 1973 and it would be the last time she would ever see him. After he left, Mr. Díaz lived in hiding for 32 months. Then, on the morning of 12 May 1976 her father was found by agents of the National Intelligence Directorate (DINA). He was tortured and detained. “That’s when our search began – a search that extends to the present day,” says Viviana, who has dedicated her life searching the truth surrounding her father’s disappearance and to the more than 1,000 victims of enforced disappearances during the dictatorship in Chile⁶.

In Argentina, human rights organizations estimate the disappearances of 30,000 people during the country’s military dictatorship, as well as the systematic theft and misappropriation of some 500 babies. “In relation to dealing with the issue of enforced disappearances, Argentina has a clear leadership in the region and is an example of how to do things,” said Luciano Hazan, a member of the UN Committee on Enforced Disappearances and a lawyer with the *Asociación Abuelas de Plaza de Mayo* - Association of Plaza de Mayo Grandmothers - an organization established in 1978 in response to the forced or involuntary disappearance of hundreds of children during that period.

Despite the size of the tragedy, “Argentina is at the forefront in terms of reparations to victims and their families, in the construction of memory spaces, the search for justice and the end of impunity,” stressed Estela De Carlotto, President of *Abuelas de Plaza de Mayo*. She said that the law to annul the amnesty laws and the hundreds of trials initiated for crimes against humanity during the dictatorship as well as the constant

⁶ United Nations Human Rights. Office of the High Commissioner of Human Rights. *Enforced Disappearances: progress and challenges in South America, 31 August 2012*. Access at: <<http://www.ohchr.org/EN/NewsEvents/Pages/EnforcedDisappearancesprogressandchallengesinSouthAmerica.aspx#sthash.pFpKGIYu.dpuf>>. January 27, 2016.

search for babies kidnapped by military agents are various initiatives that highlight the nation's progress.

It is important to compare the past, in a context of military regimes in Latin America and political and individual persecution.

3.1 Lack of Assistance and Protection: political problems

Assisting and protecting the victims is a legal and social issue. Slim and Eguren state that "protection may be defined as the challenge of making states and individuals meet their humanitarian responsibilities to protect people in situations of war, and filling in for them as much as possible when they fail to meet these responsibilities"(2016). This does not normally occur in situations of internal displacement. In most of the cases, protection may not be secured by the government, citizens will lose properties, social networks and will have to defend their own lives. Efforts to secure the protection of the citizens may be provided by the humanitarian community, but this is not directly applicable to IDPs, once they are not refugees, and the principle of 'non-refoulement' cannot be used or borrowed from refugee law, even if they are at risk. Borton says that the application of these different bodies of law to the protection of IDPs is complicated, diffused among many different instruments and therefore not easily during each phase of internal displacement, and although not a binding document (2016). With the uprooting of a conflict, it is difficult to distinguish between civilians and soldiers, their own enemy may be their own government, or armed groups within their community. Fighting may make access impossible, or terrain or meteorological conditions do not allow passage of relief goods, or convoys are looted, and the citizens will not be able to know whether or not a peace agreement has already been reached and is being honoured, they are constantly on the move. These impediments can lead to disastrous consequences, as events in Somalia, Bosnia, or southern Sudan have shown (RAPER, 2003). In the case of the South Caucasus, for example, people have been displaced for more than a decade with few prospects of return. To return, the internally displaced have to receive relief- and advocacy- oriented rather than focused on long-term development. Solutions in situations of displacement involve (i) voluntary repatriation; (ii) resettlement in a third country (or third location), and (iii) local settlement (also termed local integration). How can the displaced persons become self-sufficient, independent from aid, and able to participate fully in social and

economic life, either in their new home or back where they fled from?(RAPER, 2003).

The legal capacity to address the problem of internally displacement needs updating the refugee definition, by deleting the border-crossing element, and giving the states, international organizations and NGOs the legal capacity to address the problem. The crucial solution remains in the political situation of border-crossing. Governments do not accept refugees, asylum seekers, internally displaced persons or returnees crossing their frontiers without being questioned. It is a question a legal question that leads us to human rights. There is in fact a clear and unfair distinction between groups, as discussed in the following topic.

3.2 Solutions to Excluded Minorities

Internally displaced persons and refugees should have the chance of repatriation, since most crises either political or environmental ones are protracted ones. Unfortunately, as the case of Haitians the government has not taken effective measures to rebuild the country and offer a safe return to the citizens, as well as employment. On talking about Syria, Iraq, southern Sudan, conflicts and terrorists attacks continue to challenge the international humanitarian community. Another huge exodus emerged as the tragic accompaniment to the unfolding political drama of the Arab-Spring in February 2011 (BIJOS, 2013). In Libya, around a million people left the country in a matter of months, crossing mainly into Tunisia and Egypt, but also into other neighbouring countries. Most were migrant workers who had found employment in Libya, but over 100,000 were Libyans seeking protection outside their country. Still others were refugees from places such as Eritrea and Somalia who had sought refuge in Libya over many years. More than 20,000 people, mostly sub-Saharan Africans, took boats in an effort to reach Italy or Malta (UNCHR, 2012, p. 20).

A Spanish navy frigate operating in the Mediterranean, on 11 July 2011, rescued more than 100 people of various nationalities who had fled the conflict in Libya in an unseaworthy boat and had been in distress at sea for several days, but Malta did not allow the frigate to dock, ordering the *Almirante Juan de Borbón*, operating under the authority of the North Atlantic Treaty Organization (NATO) to take the passengers to Italy or Tunisia. Some passengers were brought ashore in Malta because they were very sick, then NATO started a really ordeal, seeking disembarkation in several

other European countries, including Italy and Spain, without success. None of the countries wanted the famine and excluded immigrants. The NATO frigate then headed for the Tunisian coast, where it transferred the passengers to a Tunisian naval vessel.

This incident affected a relatively small number of people, but a lot of questions about the facts remain unclear. The International Maritime Law should be analyzed to point out where exactly did the rescue occur, and in which country's Search and Rescue Areas? Which countries were approached with the request of disembarkation, what nationalities were the passengers? How many were refugees or asylum seekers? Why Tunisia accepted the passengers being poorer than Italy or Malta?

Above all the circumstances on analyzing the tension of Almirante Juan de Borbon, it states sovereignty and efforts to ensure international protection to the displaced persons illustrates the lack of solidarity (UN-CHR, 2012, p. 194). Varella points out that the State continues with a central role in a globalized world. Notwithstanding, both the great powers, as the peripheral states build their policies both at the international level as at the local level. At the international level, the States turn to three conceptions of international law: construction of an international society with advances in different issues towards a certain kind of coordination and not just coexistence between nations; then with an identity of interests, we move forward to a concept of international community and, finally, up to a sense of international solidarity with the construction of a concept of humanity (2012).

Presently, the number who perished at sea remains unknown, and continue to perish as the migratory flux continues. The international refugee protection system is founded on national responsibility, that is, on the compliance of states with their legal obligations towards refugees and others at risk.

In areas affected by floods, earthquakes, tsunamis, or poisonous environment, emphasis on repatriation as the preferred solution may create false expectations, frustrating dreams, as the political solution for the conflict between Israel and Palestine.

Peace is a precondition for the end of internal displacement. Notwithstanding, some examples show that it is not in itself a guarantee of its end, as the case of Bosnia and Herzegovina. Even after the Dayton Peace Agreement, dated of 30 November 1995, more than 310,000 people are

still living as internally displaced in Bosnia and Herzegovina (Internal Displacement Monitoring Centre, 2015).

Vulnerability and marginalised communities bear the brunt of displacement in Haiti and Colombia. On 17 of August 2015, a group of Colombian smugglers allegedly ambushed members of the Venezuelan military, injuring three of them. What began as a simple security situation in the socialist country then quickly escalated. Following the incident, President Nicolás Maduro decided to take increasingly disproportionate measures, including unilaterally shutting down the border for 72 hours and deporting Colombian citizens from Venezuela. He ordered soldiers to mark the homes of those Colombians living near the border, destroy vacant houses, and take the belongings of those who have been deported, as a unilateral measure (GARAY, 2015). In Colombia people migrate due to guerrillas or conflict-induced displacement. It is estimated that 87 percent of the displaced people in Colombia who owned land have had to abandon it.

In Haiti because they suffer from the lack of infrastructure, no houses, no shelters, no jobs. UN agencies, Non-Governmental Organizations and religious groups are unable to offer all the aid the population needs, so famine and excluded people decide to leave the country labelled as environmental displaced migrants.

Political conflicts lead to persecution, assassinations, murders, and also, involuntary disappearances, which turn female headed households, with restrictions on women's ability to own, acquire, manage or dispose of property an impediment to their reintegration. Women cannot officially prove that their husbands have been murdered and are unable to get the death certificate.

The same happens in Asia and Africa. In Burundi and Rwanda, according to Cohen "women are unable to inherit land or other immovable property from either their husbands or parents (unless they have sons) and therefore often lose the property to their deceased husband's relatives" (1998, p. 16).

Social differences can be seen in camps where the lower classes/castes belong, while people with wider networks and/or access to more resources tend to move out of the camps and stay in rented houses, acquire good jobs, or even move abroad (SCHRIJVERS, 1999, p. 16). Living in camps both for men and women results in physical violence, discrimination, exhortation from local gangues, and other forms of abuse (MERTUS, 2003).

Displacement causes marginalisation, suffering and distress, humanitarian actors respond slowly and they are tied to international mechanisms to solve problems. Several different contexts occur in each camp, each country, thus contributing to an understanding of the variables in displacement situations and shedding light on how the international community could respond in specific contexts, as they rely on governmental solidarity, financial resources, authoritative regimes that limit involvement in decision-making preventing displaced persons from obtaining official documents, obstructing information concerning vacant posts, and livelihood activities which are essential for planning their own future.

4. Internally Displaced and International Migration

Internal displacement is often thought of as a highly localised phenomenon, linkages between the internally displaced and international migration must be taken into account (VAN HEAR, 2002).

The durable solutions should take as its starting point the assumption that people belong to one place, or at least that they only relate to one place at a time (BRUN, 2014).

The international strategies to solve these problems should rely on integration, resettlement or return as the desirable solutions to displacement. Van Hear says that “the extensive use of translocal strategies among some displaced populations indicates that these may at least be considered as ‘enduring’ if not ‘durable’ solutions to displacement” (BRUN, 2014, p. 18).

Vulnerable groups are categorised as ‘internally displaced persons’, ‘forced migrants’, ‘refugees’, and who fall within these categories are ‘out of place’, once they belong somewhere else. When they receive such labels, as ‘out of place’, even as temporarily, as of excluding refugees and internally displaced persons, they will be excluded from exercising some citizenship rights because they are not formally registered as local citizens in their place of refuge (SHACKNOVE, 1985).

4.1. Haitians in Brazil

Haitians in Brazil, for example, when crossing the border, are identified by members of the Federal Police, and receive a previous entrance identification which will be used by Ministry of Justice and Ministry of La-

bour to provide them with a Professional Employment Card, entitling them to travel to other provinces and to look for a job.

Despite the bilateral cooperation between Brazil and Haiti, the impact of the continuous flux of Haitians migrants in the country is causing a lot of local and regional impact. Most of the migrants cross the north frontier of Acre and enter into the city of Brasiléia and in Tabatinga (BIJOS, 2015).

The Governor of State of Acre receives a monthly governmental subsidy from the Federal Government amounting to R\$ 1 million reais, for sheltering and feeding the immigrants, processing the identification documents and sending them by bus to São Paulo, where the Governor will provide support, identify the vacant posts and insert them in temporary jobs or send them to other States in the South of Brazil where agricultural projects need manpower.

Presently, Brazil has more than 50,000 immigrants from Haiti in several provinces, demanding official documents, shelter, jobs, school for their children, health assistance, besides Portuguese classes, as they speak Haitian Creole and do not speak Portuguese.

As Brazil is facing economic problems with lack of employment for its own citizens, the Brazilians question the special protection offered to the immigrants.

As a result of the bilateral agreement signed between the President of Brazil and the President of Haiti, a donation of US\$ 50 million was offered by Brazil for rebuilding the country. A Military Force was also sent to Haiti to help in the recovery of infrastructure, provide security, health assistance with vaccines and medication, as well as voluntary aid from Brazilian NGOs, religious groups and team-forces as the one commanded by Dr. Zilda Arns, in charge of leading a group of doctors and nurses. She was one of the victims of the earthquake in 2010, which lasted only three minutes and devastated the country.

4.2 Ethnic Discrimination

Common citizens stigmatise immigrants and refugees in the country, since they are treated differently, ethnicity differences, identity attributes to foreigners.

Labels determine the rules of and access to particular resources and privileges. In order to secure these entitlements and be successful in their

dealings with the institutions involved, individuals often have to accept and adjust to categorisation and conform to existing humanitarian labels (STEP-PUTA; SORENSEN, 2001). Highlighting such negative effects might make it difficult to see the usefulness of the internally displaced persons category, as well as immigrants, and refugees. A non-labelled solution cannot exist: there is no escape from terms like 'refugee', environmentally displaced persons, immigrant, if we are going to assist people forced to migrate from their homes, protect and accept them in our country, as members of our society.

5. Conclusions

The political reality is collapsing under the weight of the large, countless mass of internally displaced persons around the world. The European countries are curbing the entrance of immigrants, training and organizing forces to detain persons who show their babies and elderly relatives in a desperate act, trying psychologically to touch the security policemen at the frontier. Management the complexity of social life is the main objective of all contemporary states. Legal orders and normative orders presuppose a world where everyone belongs to a state is recognized as a citizen and forms a bond with the society.

Humanitarian action is predicted and defined by respect of its principle: humanity, impartially, and, neutrally; also independence characterizes the standing of the action, meaning that it is not subordinate to or subject to control by others (STEPPUTAT; SORENSEN, 2001). Although international agencies work hard contacting the governments, delivering standard protection and assistance to civilians caught up in conflicts, they cannot solve the daily problems in each country. In situations of conflict only the countries can take main decisions to stop or detain it.

The 1951 Convention relation to the Status of Refugees and its 1967 Protocol as the cornerstone of this effort have just contributed to building a world in which human beings could find safety from persecution and enjoy freedom from fear. The authors of the 1951 Convention believed in the fundamental rights that in fact helped to anchor the concept of refugee protection in the international legal system.

The Convention certainly can be applied to mass influx situations as well as individual arrivals, it does not set out an explicit framework for responsibility-sharing and is limited in the extent to which it addresses solu-

tions to refugee problems. It is also important to note that the Convention is not an instrument to manage migration (STEPPUTAT; SORENSEN, 2001, p. 36).

States have a sovereign right to manage immigration and to control the entry, stay and removal of foreigners, especially after the terrorists' attacks on September 9, 2001 in the United States.

Although reaffirming that the 1951 Convention and its 1967 Protocol are the 'foundation of the international refugee protection regime' and have 'enduring value and relevance' the UN member states are concerned about their obligations, the costs of accepting the refugees, being apprehensive about multilateral engagement, loss of flexibility, and besides that the potential for abuse when displaced people are harassed by totalitarian governments.

The accession to the universal legal instruments reflects the countries generous tradition, strengthens the international refugee legal status and desires, but this is not sufficient. The contracting states must also establish national laws and procedures reflecting the Convention obligations; which means adopting an appropriate asylum legislation⁷.

The historical event shows Italy returning migrants and asylum seekers to Libya in 2009 (UNCHR, 2012), and presently being unable to offer effective protection to thousands of African migrants arriving in the country. In 2014, more than 3,000 people with different profiles and needs, including asylum-seekers and refugees, lost their lives in the Mediterranean Sea. These individuals took to the sea to escape violence and persecution in their homeland, hoping to find sanctuary and a better life in Europe, but vessels were too often unseaworthy and distress calls too distant. Asylum-seekers and refugees use the term "boat of death" to describe the dangerous sea journey to cross the Mediterranean Sea. Many are beaten, raped, tortured or tossed overboard simply for having tried to move in a crowded vessel. Of the 160,000 who disembarked in Italy in 2014, the majority were rescued at sea by the Italian Navy operation Mare Nostrum (UNCHR, 2014).

⁷ In 2000, Mexico ratified the Convention, and the High Commissioner Sadako Ogata noted: "Mexico has had a long tradition of asylum (...). Its accession to these universal instruments reflects this generous tradition and further strengthens the international protection regime", 'UNHCR Hails Mexico's Accession to International Refugee Instruments', UNHCR Press Release, 20 April 2000. See also: UN High Commissioner for Refugees, 'Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy', March 2000, endnote 48.

The 1951 Convention has been complemented by regional instruments in Africa, Latin America, and the European Union (EU), presenting also a proposed agreement between Australia (a signatory to the 1951 Convention) and Malaysia (a non-signatory) for the transfer to Malaysia of 800 non-Malaysian asylum seekers.

The 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (the OAU Convention) translated the 1951 Convention into the African context at the time, especially concerning the large-scale refugee flows which have resulted from Africa's wars of independence, and implies a wide spectrum of solutions involving temporary residence, voluntary repatriation, employment and social assistance.

In Latin America the 1984 Cartagena Declaration on Refugees encouraged all countries to enlarge the concept of a refugee beyond the definition contained in the 1951 Convention, including persons who have fled because of 'generalized violence' or other circumstances which have 'seriously disturbed public order'⁸. By 2001, 148 countries had ratified the 1951 Convention and/or its 1967 Protocol, yet more than 40 per cent of refugees under UNCHR's mandate were hosted by states which had not acceded to either of these instruments. Most refugees hosted in Europe, North America and Australia offered individual asylum, but today 1 million individual asylum applications are being filled in around the world. Statistical data show the top ten destinations of asylum seekers being: Turkey, 1,5 million; Pakistan, 1,2 million; Lebanon, 1,3 million; the Islamic Republic of Iran, 0.8; Ethiopia, 0.60; Jordan, 0.60; Kenya, 0.50; Chad, 0.40; Uganda, 0.30; China, 0.26 (2014).

Nonetheless, it is clear that to grant protection to a person either seeking for refugee, asylum or as an internally displaced individual, has turned to be a thorny issue. Another difficult issue is analyzing children seeking asylum alone. They leave their countries for various reasons, including war, persecution, and lack of opportunity, family pressure and other factors. Of course the child rarely make the decision to leave; parents or

⁸ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, OAS/Serv.L/V/II.66, doc. 10, rev. I, pp. 190-193. Part III paragraph 3 of the Declaration states: 'Hence, the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.' (UNCHR, 2012, p. 40).

extended family usually are involved. Children who seek asylum alone are often described as 'unaccompanied or separated', since some are in fact accompanied, for instance by older youth or family members. Unaccompanied or separated children often lack accurate information about asylum procedures, but most wait until arriving in a particular destination to be assisted by authorities (UNCHR, 2012, p. 46).

Law exists to have an effect on the world, in theory, the social contract model reigns. Notwithstanding, the law system is losing touch with human experience sacrificing people and throwing them to unsolvable destinies. The reality shows that the cessation of refugee status is not temporary, it is much more complex to dig out someone from a difficult situation. The main objective of creating a boundary around Article 3 of the European Convention on Human Rights is reasonable, but there will be cases where this legal order produces harsh results (PHUONG, 2004).

The malaise resulted from the internally displaced persons is affecting everyone that see the human suffering from its sitting room every night during the breaking of the news. Political facts, as reflected in legal categories, show the sovereignty of the nations, and determine the nature of responses. There must be an attempt to manage this phenomenon more effectively by creating a framework for addressing the reality of internal displacement, focusing on innovation, determining an international solution. Exploring the importance of international humanitarian law should be important, especially considering that internal displacement is often the result of armed conflict.

Protection strategies should be revised assessing effectively measures to protect the internally displaced, avoiding human rights violations, abuses and focusing on 'preventive protection' and 'safe areas'. The state should protect the internally displaced persons, even when it is the state that is the cause of the displacement. If the state breaks the social contract in a sustained and serious way, the other countries cannot just watch from the sidelines, but act to solve the internal problem. Passivity is not acceptable in the international sphere as it deals with human lives.

The international community should be sensitive concerning new means to assure long-term answer in the promotion of peace and stability.

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