

Dignity across borders : rethinking the protection of refugees and IDPs from an ethical perspective

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**BOSTON COLLEGE
SCHOOL OF THEOLOGY AND MINISTRY
WESTON JESUIT DEPARTMENT**

**Dignity across Borders
Rethinking the Protection of Refugees and IDPs
From an Ethical Perspective**

A Thesis
Submitted in Partial Fulfillment
of the Requirements for the Sacred Theology Licentiate (S.T.L.) Degree
from the Boston College School of Theology and Ministry

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March 2010

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ABSTRACT

The purpose of this reflection – *Dignity across borders: Rethinking the protection of refugees and IDPs from an ethical perspective* – has been to challenge contemporary ways of thinking and dealing with issues related to refugees and IDPs. Today, refugees and IDPs are often reduced to their needs. They are often perceived as bodies to shelter, to heal or to clothe; mouths to feed; victims of persecution to protect, etc. In the same perspective, contemporary debates on treatments of refugees and IDPs tend to rotate around the financial costs of processing claims, social security benefits for asylum seekers, and social tensions arising from the presence of large numbers of refugees and IDPs in receiving countries or communities. While acknowledging the importance of all these issues and needs, the stance of this reflection has been to refocus the debate on the concept of human dignity which transcends borders such as nationality, ethnicity, religion, race, etc. From this standpoint, the debate changes and gains more fundamental and moral depths.

From the same stance, but grounded in the biblical experience, the Roman Catholic Church's social discourse on refugees and IDPs challenges the current international refugee protection regime. Because all are created in the image and likeness of God, all humans share the same dignity. Their dignity and their rights as humans are not related to their citizenship, but to the fact that they have been born into the human family. This is the foundation of Christian universalism that challenges the current refugee protection regime that is based on the membership of states. Yet, Christian universalism includes also a realism that respects the state sovereignty within its borders. Conversely, the main claim of Catholic social teachings on refugee issues is that the refugee issues should not be perceived only from the standpoint of the state, such as national security concern and borders control. Above all, refugees should be perceived as human beings, as dignities across borders.

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ACKNOWLEDGEMENTS

I wish to thank the Boston College School of Theology and Ministry (BC-STM), faculty members, students, and staff. BC-STM has been one of my favorite places of study. I got the opportunity to read a lot, to reflect, to learn, and to discuss with teachers and fellow students.

I wish also to thank the Weston Jesuit Community in Cambridge for the friendship, fraternity, and all kind of supports that have made possible and pleasant my stay and studies in the United States of America.

I am grateful to William Glenn, S.J. and William Russel, S.J., who have been helpful in correcting and polishing my English since this is a foreign language.

I am particularly grateful to Professors David Hollenbach, S.J., and Thomas Massaro, S.J. for their corrections, remarks, and suggestions that were very helpful to improving this study.

LIST OF ABBREVIATIONS

IDPs:	Internally Displaced Persons
JRS:	Jesuit Refugee Service
NGOs:	Non-Governmental Organizations
OAU:	Organization of African Unity
R2P:	The Responsibility to Protect
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees

CHAPTER 1: INTRODUCTION: THE BORDERED DIGNITY OF REFUGEES AND IDPS

1.0- Introduction

In order to establish the importance and the interest of this topic, I will try to depict the figure of the refugee and the internally displaced person (hereafter, IDP). I will explain how being a refugee or an IDP means to have a bordered dignity. That is why the statement of purpose of this thesis will be centered on the protection of refugee dignity from threats that works against it. The opening chapter will define the object of the research and the main concepts, and also the field of research in which this reflection will be grounded. Moreover, it will briefly present the methodology through the models of ethics that will be applied in this research. Finally, this chapter will introduce the main argument of the whole thesis and will explain how I will proceed to develop this main argument through the chapters of the thesis. The aim of this introductory chapter is to define the scope and the goal of this study about the protection of refugees and IDPs dignity within and beyond national borders.

1.1- Threats to the Dignity of Refugees and IDPs

To be a refugee or an IDP is to be in an extremely vulnerable situation.¹ Yet, there are some refugees who have favorable conditions of life. However, the majority among them and especially those from Africa have very hard conditions of life. Let us illustrate this by quoting Judy Mayotte who gave this powerful and poignant account of Ethiopian refugees fleeing the war in 1984:

Men and women, old and young, their numbers legion, appeared on our television screens. Barefooted men, raggedly clothed, carried cloth-wrapped bundles on their heads. Each seemed to have a walking stick and a plastic water jug. Women and children mingled farther behind, their clothing torn and soiled. On their veiled heads, they carried woven baskets, water jugs, and clay cooking vessels. Children, too tired or too small to walk, rode in shawls tied around their mothers' backs. They stopped in barren, sandy, practically treeless areas. They clustered their few belongings close to them and gathered what wood they could find. The men poked sticks into the ground and hung thin cloths – poor shelter from the burning sun or cold desert nights.

We saw them tired, sick, hungry, frightened, and dying. They sat enervated, too weak to brush flies from their gaunt faces. We watched in horror as children with bone-tight skin and bloated bellies died in their mothers' emaciated arms. Others, too listless to cry, could not get milk from their mothers' dry breasts. Epidemics hit old and young alike in overcrowded, unsanitary, hastily established camps. We sent relief and watched until our eyes could take no more. We too were enervated. We moved on to other stories.²

What is said here about Ethiopian refugees in the nineteen-eighties is still true today for refugees of the Great Lakes in Africa, for those in Sudan, in Chad, in Liberia, etc. When you visit a refugee camp, you can easily read the anxiety, the frustration and the humiliation on refugees' faces. They have been disfigured by suffering, sickness, poverty, injustice,

¹ See David Hollenbach, ed., *Refugee Rights. Ethics, Advocacy, and Africa* (Washington, D.C.: Georgetown University Press, 2008), 5.

² Judy A. Mayotte, *Disposable people? The Plight of Refugees* (Maryknoll & New York: Orbis Books, 1992), 2-3.

violence, hatred, and so forth. Their dignity, as humans, is at stake by the fact that refugees are subject to many threats:

Threats in their own country: Refugees and IDPs have no protection from their own state, or they are unwilling to avail themselves of the protection of their state which usually constitutes the main threat to their security. This is, for example, the case of some tribes in Darfur who cannot rely on the Sudanese government to protect them, and who either have crossed national borders in order to find protection in Chad, or are internally displaced people in Sudan. Refugees and IDPs are often by-products of “failed-states” that are unable or unwilling to provide security to all their citizens. They are fleeing lands devastated by war, or by oppression, famine, poverty, and other threats to their lives.³ It is evident that such situations burden their dignity as humans.

Threats in the host country: Nowadays, former host countries become less and less generous in welcoming refugees. Their traditional hospitality has been replaced by restrictive policies, for the reason that the sociopolitical and economic costs of dealing with

³ The causes of refugee plights are very diverse and complex even if political causes and especially war is the main cause. As the UNHCR states: “The security of many people is currently being threatened by a complex mixture of factors: by unbalanced development, economic decline and environmental degradation; by state collapse, state formation and the authoritarian exercise of state power; and by new forms of violence and warfare, which, although based in many instances on communal allegiances, also serve as camouflage for personal or factional gain.” See UNHCR, *The State of the World’s Refugees 1997-1998. A Humanitarian Agenda* (Oxford: Oxford University Press, 1997), 27. For a deeper analysis about the causes of the plight of IDPs and refugees, see Gil Loescher, *Beyond Charity. International Cooperation and the Global Refugee Crisis* (New York / Oxford: Oxford University Press, 1993), chapter 1: Refugee Movements: Causes and consequences.

refugee issues have become a heavy burden to bear. And there is theoretically no room to compel a country to welcome refugees. In fact, even though the *Universal Declaration of Human Rights* acknowledges the right to emigrate, it does not acknowledge the right to immigrate which still is a matter of national sovereignty. As Michael Walzer explained this paradox, “The restraint of entry serves to defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life. But the restraint of exit replaces commitment with coercion.”⁴ It is therefore difficult for refugees to cross national borders. Even when refugees succeeded in crossing national borders, they are not always safe. As Pecoud rightly states, “[Forced] migrants are not only banned from entering a country; once they are in, they are often inhibited in their participation and incorporation in the receiving society, particularly in terms of welfare, rights and citizenship.”⁵ That is why it is no exaggeration to say that refugee dignity is bordered and limited by very complex factors.

Threats in the way that they are defined: The situation of forced migrants has changed while the international regime of legal and humanitarian protection has not evolved. There are new forms of forced migrants who do not fit the concept of refugee in the international legal system.⁶ For instance, in 2008, there were about *11.4 million refugees* who crossed national borders because of persecution or war, and who legitimately claim to be refugees

⁴ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Oxford: Robertson, 1983), 39.

⁵ Antoine Pecoud and Paul de Guchteneire, ed., *Migration without Borders: Essays on the Free Movement of People* (Paris: UNESCO Publishing & New York/Oxford: Berghahn Books, 2007), 20.

⁶ I will analysis the concept of refugee in the international legal system below.

according to the international legal system. But there were also about *26 million people who have been displaced* for man-made reasons inside the borders of their own countries, and who are refugee-like people. In this context, the concept of refugee is becoming a limited concept. In fact, there are other categories of people who need international protection, in addition to refugees, including asylum-seekers, returnees, stateless persons, and internally displaced people. So, forced migration nowadays cannot be reduced to refugees, but to all these categories of people. Failing to provide protection to all these categories of refugee-like people will result in a huge threat to the lives of many millions of people.

Threats in the ways that refugees and IDPs themselves behave: Refugees and refugee-like people often constitute a threat for themselves and for others. They are not always innocent people. It can happen that some refugees are former warriors who are fleeing because they have lost the fight. Some of them might have committed grave violations of human rights. Therefore, they are not always victims; some have been torturers and executioners. One of the things which strikes visitors to refugee camps is the presence of violence in refugee behaviors even toward people who are helping refugees. Sometime, this situation explains why some volunteers who worked in refugee camps do not want to continue. That is why restoring or preserving refugee dignity does not mean idealizing the state of being a refugee; but to be able to interact with refugees in order to encourage progress in their behavior. For instance, one of the features of the Jesuit Refugee Service (JRS) is to criticize refugees. As Dieter Scholz of the JRS pointed out: “It sounds shocking, but the closed environment of the camp creates a hothouse for ideas and distorted

interpretations. Only someone who is accepted and trusted can introduce a dose of reality and criticise the unreal interpretations of the refugees. Moreover only someone who is well informed and has a balanced judgment can play this role.”⁷

1.2- Thesis Statement

Above all, one of the most important threats to refugee dignity, something that this thesis especially wants to address, is the *threat present in the ways that problems related to refugees and IDPs are responded to by those seeking to end them*. Refugees, very often, are dealt with as if they were only victims of persecution to protect, mouths to feed, bodies to shelter and to heal, etc. In the way that many policies deal with refugees and, in general, with forced migration issues, the focus is often on the technical aspects of the issues, that is to say, the focus is generally on the political, or humanitarian, and social aspects, etc. This focus does not always take seriously into consideration what is behind these technical aspects, that is, the forced migrant himself/herself as a human person.

In other terms, behind any dimension of forced migration issues, there is human dignity which should be considered. As Christoph Schwöbel states, “on the one hand, the notion of human dignity is affirmed as a foundational principle of society. In some cases ...

⁷ See Jesuit Refugee Service, *Everybody's Challenge. Essential Documents of Jesuit Refugee Service. 1980-2000* (Rome: Jesuit Refugee Service, 2000), 88.

the principle that the dignity of the human person is inviolable is solemnly stated in [states' constitutions]. On the other hand, we encounter a profound insecurity with regard to the practical application of the principle in most spheres of social and personal life,"⁸ and especially in issues related to forced migration.

Regarding the issue of forced migration, borders constitute one of the important threats to the practical application of the recognition of the principle of dignity to forced migrants. "Bordering", according to D. Jacobson, "has become more multifaceted, taking on both geographic and non-geographic forms, of social, political, and economic characters."⁹ To be a forced migrant, means to cross borders like racial, national, religious, class, clan, even family and other kinds of boundaries. That is why it is important to reflect on borders that forced migrants have to cross and to try to find the best way to relate to these borders so that the dignity of forced migrants may be preserved. From this perspective, the title of this research is: "Dignity across Borders: Rethinking the Protection of Refugees and IDPs from an Ethical perspective." Let us provide more details about the object and the purpose of the research.

⁸ Christoph Schwöbel, "Recovering Human Dignity," in *God and Human Dignity*, ed., R. Kendall Soulen and L. Woodhead, (Grand rapids & Michigan, USA / Cambridge, U.K.: William B. Eerdmans Publishing Company, 2006), 44.

⁹ D. Jacobson, "The global political culture," in *Identities, Borders, Orders: Rethinking International Relations Theory*, ed., M. Albert, D. Jacobson, and Y. Lapid (Minneapolis: University of Minnesota Press, 2001), 161-79. See p.161.

1.3- Research Object and main concepts

The object of this research is not the principle of dignity itself nor the concept of border, but the relation between human dignity and borders in the protection of refugees and IDPs. The main concepts are therefore: “refugee”, “IDP”, “human dignity”, “protection of refugees and IDPs”, and “borders”.

***Human dignity**

The notion of human dignity is widespread in many discourses, whether theological, ethical, legal, philosophical, cultural, or political. Although there is a consensus that human dignity is a fundamental value and therefore is worth protecting at any rate, human dignity remains a contested notion. Scholars are divided on the source of human dignity. Is human dignity grounded in the human being himself/herself or is it grounded in God or something else? Likewise, what is the content of the notion of human dignity? Is human dignity only an abstract moral principle or does it have an objective content? Finally, is it possible to reconcile the different understandings of personhood that each conception of human dignity implies? I will briefly try to elucidate these questions while defining the meaning of human dignity that will be applied to this study.

Relating to the source of human dignity, there are basically two approaches. On one hand, there is the liberal secular tradition that conceives human dignity as being intrinsic to humanity. On the other hand, there is the religious tradition that conceives human dignity as being extrinsic to humanity in the sense that the source of human dignity is in God. According to the liberal secular tradition, human dignity is grounded in the person considered as being a “substantial self”. Here, human dignity is related to human nature from which we derive all value and meaning. Human dignity is conceived therefore on an internal basis or from an autonomous perspective where the human being has the right and the power of self-government.¹⁰ Immanuel Kant is one of the most representative scholars who conceive human dignity in such an autonomous way. As Solen and Woodhead wrote:

Kant argues that the incomparable dignity of human being (Würde) derives from the fact that he alone is ‘free from all laws of nature, obedient only to those laws which he himself prescribes.’ Capacity of autonomous rational agency is the root of human dignity, which in turn requires that all persons be treated and that they treat themselves as ends in themselves and never merely as a means to an other’s end.¹¹

This understanding of human dignity underlies contemporary democracies based on the rule of the people and which operates by the people. This conception also underlies the *Universal Declaration of Human Rights* of 1948 and contemporary western culture, where the individual plays a prominent role. From this liberal perspective, human dignity stands on

¹⁰ See Knut Wenzel, “Radical Subjectivity,” *International Review of Mission* 95, no. 378/379 (July/October 2006): 259-264. See also Oswald Bayer, “Self-creation? On the Dignity of Human Beings?” *Modern Theology* 20, no 2 (April 2004): 275-290.

¹¹ K. Solen and L. Woodhead, “Contextualizing Human Dignity,” in *God and Human Dignity*, ed., R. Kendall Soulen and L. Woodhead, (Grand Rapids, Michigan, USA: William B. Eerdmans Publishing Company, 2006), 10-11.

its own and is best expressed through personal autonomy and personal liberty. The idea of any dependence, either on God or on the society, is evacuated. For this reason, the liberal secular ideal of human dignity may have some difficulties to support the dignity of people whose autonomy and freedom have been undermined.¹² The dignity of IDPs, refugees, and disabled people, who often cannot stand on their own, raises questions. Indeed, liberal secular tradition has done much to protect human dignity by recognizing and protecting human rights. However, its ideal of human dignity can be improved. I agree with T. Minnema who states that:

Our ideal of human dignity needs to incorporate the reality of dependence. Human dependence ought not to be regarded as a weakness to which we at times have to resign ourselves. It must be given the status of a foundational virtue on all levels of life, both social and individual.¹³

Judaeo-Christian tradition and other religious traditions have integrated this dimension of dependence in their conception of human dignity. For Christians, human dignity is rooted in God. Therefore, human dignity is not a self-grounded possession; it is not intrinsic to the human being. Human dignity pertains both to the fact that humans have been created by God in a special act of creation, and to the fact that they have been configured in the image of God. Fundamentally and theologically speaking, human dignity is received as a gift from

¹² See Hans S. Reinders, "Human Dignity in the Absence of Agency," in *God and Human Dignity*, ed., R. Kendall Soulen and L. Woodhead, 121-139.

¹³Theodore Minnema, "Human Dignity and Human Dependence," Convocation address delivered at Calvin Theological Seminary on September 3, 1980, p.12.

God.¹⁴ This gift is granted to all human beings without exception. According to the Second Vatican Council,¹⁵ the dignity of the person is an inherent worth which can never be disposed of because it is intrinsically related to the human person as a creature of God. Despite the fact that man can go astray in a variety of ways, he will never lose this dignity.

For Christians, Jesus Christ is the one who reveals the highest summit of human dignity. As the Second Vatican Council states: “Whoever follows after Christ, the perfect man, becomes himself more of a man.”¹⁶ Since the Incarnation of Christ, human dignity is elevated to divine dignity. Likewise, all human beings share the benefits of Christ’s redemption.¹⁷ From this perspective, human dignity has an eschatological dimension in the sense that human dignity will find its full expression in the communion with God in Christ through the Holy Spirit.¹⁸

Here, the important idea to outline is the transcendental dimension of human dignity. Let us point out only two consequences of this transcendental dimension: At first, since human dignity is a gift from God, its norm resides not in social convention but in God and in

¹⁴ See this article of Damian P. Fedoryka, “The Concept of ‘Gift’ as Hermeneutical Key to the Dignity of the Human Person,” *Logos* 11, no.1 (Winter 2008): 49-69.

¹⁵ See Second Vatican Council, “Gaudium et Spes,” no .16.

¹⁶ *Ibid.*, no. 41.

¹⁷ *Ibid.*, no. 22.

¹⁸ See Wolf Krotke, “Hope in the Last Judgement and Human Dignity,” *International Journal of Systematic Theology* 2, no. 3 (November 2000): 270-282.

the pattern of God's action toward humankind in creation and redemption in Christ.¹⁹ For this reason, social conventions are not above human dignity. Human dignity remains the key value for the appreciation of social institutions and conventions. However, secondly, human dignity has a communal rather than an individual horizon because it is related to God and to all the creation. There is a fundamental solidarity between humans because they are all God's creatures so that human dignity cannot be achieved in autarky, but in relation. Thus, being a human means "being as communion."²⁰

To complete the definition of human dignity, let us try to clarify its content. Does human dignity have an objective content? For some thinkers, the main feature of human dignity is freedom. This is the case with Kant as quoted above.²¹ Although freedom is an important feature of human dignity, the latter cannot be reduced to the first. Otherwise, it will be almost impossible to render an account of the dignity of these people who cannot exercise their freedom because they have been deprived of it by others, or because they do not have the capability to enjoy it.

¹⁹ See K. Solen and L. Woodhead, "Contextualizing Human Dignity," 6.

²⁰ See John D. Zizioulas, *Being as Communion: Studies in Personhood and the Church* (Crestwood & New York: St. Vladimir's Seminary Press, 1985), 36-37.

²¹ Before Kant, Giovanni Pico della Mirandola (1463-1494) was one of the thinkers who outlined freedom as the content of human dignity. See his book, *De dignitate hominis (On the Dignity of Man)*, translated by Charles G. Wallis (Indianapolis: Bobbs-Merrill Company, 1965).

Likewise, other thinkers relate human dignity to rationality. Blaise Pascal, for instance, wrote: “The human being is obviously made for thinking; therein lies all his dignity and merit.”²² In other words, René Descartes wrote: “Cogito, ergo sum,”²³ that is, “I think, therefore I am.” Here again, there is a threat to the dignity of people with disabilities, for example, who do not possess the faculties of using their rationality.

So, these examples suggest that we should not identify human dignity with any specific human quality, or aspect, of dimension. In fact, to identify human dignity, for instance, with reason, freedom, race, religion, etc., will inescapably result in a reduction that threatens the humanity of some people, namely people with disabilities, or people in difficult conditions such as refugees and IDPs. The whole of the human is endowed with dignity, since dignity is an absolute anthropological trait of persons as human beings. Accordingly, human dignity does not rely on what a person can do or cannot do, or on what a person can have or cannot have.

All things considered, in this reflection, human dignity will be understood as human worthiness that transcends the person herself and that implies God and all God’s creation. Moreover, the fact of being born out of humans is the necessary and sufficient reason to be considered as a human person. This theological-based approach finds a common ground

²² Blaise Pascal quoted by K. Solen and L. Woodhead, “Contextualizing Human Dignity,” 10.

²³ See René Descartes, *Discourse on Method* 1637 (Pomona: Pomona Press, 2006), Part 1, article 7.

with the liberal secular approach by considering human dignity as the core value upon which rights and duties are grounded. The *Universal Declaration of Human Rights* is one of the objective common grounds for religious and secular approaches to acknowledge and foster human dignity.²⁴ For this reason, this reflection on the dignity of refugees and IDPs will privilege a human-rights based approach. However, the recognized and conventional human rights do not contain all the reality of human dignity which is and will remain a principle and a horizon that should guide and challenge the behaviors of individuals and communities, and social conventions.

***Refugees and IDPs**

I will use a broad definition of the concept of *refugee*, meaning all those people who have fled their country because of persecution, war, and humanitarian disaster. *The notion of Internally Displaced Persons (IDPs)* will be used to refer to the category of people who fled their homes for the same reasons as refugees but who do not cross national frontiers. They still live in their country, but they share the same difficulties and conditions with refugees.

²⁴ See David Hollenbach, "An Advocate for All. How the Catholic Church promotes human dignity," *America*, no.4837 (December 1, 2008): 14-16. See also Michael Novak, "Human Dignity, Human Rights," *First Things*, no. 97 (November 1999): 39-42.

The document “*Refugees: A Challenge to Solidarity*,”²⁵ one of the most significant documents of Catholic social teaching on refugee issues, uses the term “Refugee” to designate both “conventional refugees” and IDPs and refugee-like people. However, in this research, I will distinguish refugees and IDPs, because the international laws and the ways to address issues related to refugees or IDPs are substantially different. For example, because of state sovereignty within its borders, it is very difficult to provide relief to internally displaced people who are trapped within the borders of their own country.

Although refugees and IDPs are part of the larger movement of migrants, they constitute a specific category of migrants that is called “forced migrants”. In fact, migrants, especially economic migrants, choose to move in order to improve the future prospects for themselves and their families. On the contrary, refugees have to move if they are to save their lives or preserve their freedom. However, changes in policies related to migrants always affect the way that refugee issues are dealt with. That is why we should have in mind the entire context of migration, even if we will focus on forced migration. Next, we will clarify what we mean by “protection of refugees and IDPs”.

²⁵ According to the document *Refugees: A Challenge to Solidarity*, “For humanitarian reasons these displaced people should be considered as refugees in the same way as those formally recognized by the Convention because they are victims of the same type of violence.” See Pontifical Council ‘Cor Unum’ and Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Refugees: A Challenge to Solidarity* (Vatican: Vatican Editions, 1992), § 5.

***Protection of refugees and IDPs**

Usually protection of refugees refers to legal protection which basically means to grant asylum²⁶. Asylum includes assuring physical security, providing redress under law, providing humanitarian standards of living conditions, and respect for the principle of *non-refoulement* (non-return to a place of prospective persecution). Although granting asylum is a very effective way to provide protection to refugees, I agree with Arthur Helton who thinks that refugee protection should not be reduced to asylum. Helton suggests understanding protection as a broad humanitarian principle which means: “to secure the enjoyment of basic human rights and meet primarily humanitarian needs.”²⁷ Loren Landau also suggests conceptualizing protection as capability expansion. According to Landau, the “capability approach... is dedicated to expanding agency – the ability to choose different ways of living – while ensuring that fundamental prerequisites for survival are never compromised.”²⁸

²⁶ As Loren B. Landau noted: “From the UNHCR’s interpretation, protection is, inter alia, physical security, avoidance of torture or *refoulement*, and an adequate and dignified means of subsistence.” See Loren B. Landau, “Protection as Capability Expansion. Practical Ethics for Assisting Urban Refugees,” in *Refugee Rights: Ethics, Advocacy, and Africa*, ed., David Hollenbach (Washington, D.C.: Georgetown University Press, 2008), 109.

²⁷ Arthur C. Helton, “What is Refugee Protection? A Question Revisited,” *Problems of Protection. The UNHCR, Refugees, and Human Rights*, ed. Niklaus Steiner, Mark Gibney, and Gil Loescher (New York and London: Routledge, 2003), 26.

²⁸ Loren B. Landau, “Protection as Capability Expansion: Practical Ethics for Assisting Urban Refugees,” 104.

It is best to understand refugee protection as including everything that can preserve and restore refugees' dignity as full humans.²⁹ That is to include basic human rights, humanitarian standards of life, but also the way that all these reliefs are provided to refugees, and the way that refugees are seen and defined through laws, academic definitions, etc. From this dignity-preserving based approach, refugee protection consists not only in providing relief, but also in particular ways of doing and being with refugees with respect of their dignity as human beings. This approach helps to prevent reducing refugee issues to only technical issues but to consider refugee issues as being always a human problem where human dignity is at stake. In the same way, IDPs' protection has the same requirements as for refugees with respect to their dignity as humans. However, IDPs' protection will have an emphasis on monitoring of human rights violations in countries of origin in the hopes of stemming the sources of IDPs and refugees' plight.

***Borders**

In this research, I will use the term border both from a geographical and from a non-geographical perspective. From the geographical perspective, border will refer to the frontier

²⁹ This definition echoes the UNHCR's Cluster Working Group on Protection, which defines the protection as "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, international humanitarian law, and refugee law)." (Inter-agency Standing Committee Principals Meeting, Palais des Nations, Geneva, 12 December 2005, Cluster Working Group on Protection Progress Report, 3. Available from: <http://eos.io/pcwg/PCWG-report-dec05.pdf>; accessed on December 31, 2009).

line, the boundary line which separates one country from another, and which defines the territory within which a government can exercise its sovereignty by conferring citizenship and by organizing public affairs on this territory. This territorial border is called a national border because it really defines the state, and distinguishes it from other states. From the non-geographical perspective, border will designate the interiorized boundary line which defines the identity and the sense of belonging to one specific group rather than to another. Here, border will refer, for instance, to racial border, ethnic border, religious border, class border, etc. One of the main purposes of this reflection will be to reinterpret the concept of border in relation to refugee and IDP issues. After having defined the object and the principal concepts and notions of this research, I would like now to define the scope of the subject by defining the field of research and the model of ethics that will be applied in this reflection.

1.4- Field of Research and Methodology

A study of human dignity and borders involves many fields and academic disciplines. However, I will ground my research in social ethics. From this perspective, many academic disciplines such as exegesis, politics, law, anthropology, etc., will be considered since the issue of “dignity across borders” crosses many fields. This research will be grounded in the tension between two ethical models, Christian realism and cosmopolitan ethics. While

Christian realism³⁰ can provide an intellectual framework for approaching refugee issues by taking into account the “real-world” at the local level, cosmopolitan ethics³¹ will provide a horizon or a *telos* and an ideal to the same “real-world” at the global level, especially when dealing with refugee issues in a highly politicized world. The ethical principle of subsidiarity will help to combine harmoniously the local level shaped by the realist model, and the global level shaped by the cosmopolitan model.

1.5- Purpose of Research and Principal Argument

The fundamental question that guides this research is: *How may we best rethink the relation between borders and refugee issues in order to protect the dignity of refugees and*

³⁰ Christian realism, as developed by Reinhold Niebuhr and Eric Patterson, aims at understanding and involvement in politics based on a realistic standpoint. Christian realism takes into account the sinful nature of individuals and communities in political responsibility in search of the common good. As Eric Patterson wrote, “Christian realism articulates a conception of political responsibility for action to engage evil, recognizes the ubiquity of power politics in world affairs, and suggests pragmatic solutions for matching power with power in order to find proximate solutions to the issues of competition and struggle in social relations.” (Eric Patterson, editor, *Christianity and Power Politics Today: Christian Realism and Contemporary Political Dilemmas* (New York: Palgrave Macmillan, 2008), 180).

³¹ I will particularly refer to Kwame Appiah’s version of cosmopolitanism. See K.A. Appiah, *Cosmopolitanism. Ethics in a World of Strangers* (New York & London: W.W. Norton & Company, 2006). This version of cosmopolitanism emphasizes three points that are important for ethics in international affairs: Human dignity, universality and differences, universal responsibility. As Appiah states: “[Cosmopolitans] believe in human dignity across the nations, and they live their creed.” (Ibid., 137). In that way, cosmopolitanism gives many opportunities to protect human beings everywhere in the world, because human dignity is considered as being the fundamental and the highest value in national and international politics. Cosmopolitanism claims that all people are bound together by their humanity and by common values. These common values are not inferred by a kind of positivist deduction, but they emerge from interaction between different people. Moreover, in Appiah’s perspective, cosmopolitanism is a kind of a universal trait of humankind in a world of strangers. This implies a universal responsibility. As Appiah states: “Each person you know about and can affect, is someone to whom you have responsibilities: to say this is just to affirm the very idea of morality.” (Ibid., xiii). In brief, cosmopolitan ethics is more adequate to address international and global issues. It is therefore relevant for the refugee issues which scope always crosses national borders.

IDPs who always have to cross borders? My answer (thesis) to the above question is that the importance of the dignity of refugees and IDPs should be considered prior to borders. And the purpose of geographic and non-geographic borders is to protect persons and their dignity. Therefore, any policy that concerns refugees and IDPs should deal with this issue not only as a technical issue, that is, not only as political, humanitarian, or economic issues, but always as a human issue where human dignity is at stake. I will develop my argument in the next three chapters.

1.6- Plan of the thesis

After having defined the purpose and the scope of this reflection in this **first chapter**, the thesis will proceed as follow:

The second chapter will focus on the political context that shapes refugee and IDP issues in the contemporary world. The second chapter will try to answer these questions: How can one preserve the dignity of refugees and IDPs within national borders? And why is state sovereignty so important in refugees and IDPs issues? I will make an attempt to show how the Westphalian model of state and its role within its borders shape the question of refugees and IDPs today. This explains the fact that the actual international refugee regime operates within a highly politicized context, one in which governments are more likely to support assistance programs for security and foreign policy reasons than only for humanitarian concern. In such a context, the refugees and IDPs problem becomes essentially

political; and borders control becomes an issue of state sovereignty. In this situation, states deal with refugee and IDP issue not always as an issue that implies the dignity of refugees and IDPs, but often as an issue where the sovereignty and the security of the state are at stake. While challenging the heritage of understanding state's borders and the role of states within and beyond their borders, I will stress the fact that the contemporary world is more and more globalized so that it no longer fits perfectly with the model of the Westphalian world. The world is more and more interconnected, and borders do not play the same role as they do in a Westphalian model of the state. Yet, in the Post-Westphalian world, borders are still important. However, states are less and less the only masters within their borders. And the emergence of a non-state-based international community guided by a common ideal and rules – which includes human rights appeals to us to rethink state's borders and to balance state sovereignty with individual sovereignty. From this perspective, the second chapter will explore ways and means to rethink the international refugee protection regime so that it may be more effective in insuring protection to refugees and IDPs.

The third chapter presents an opportunity to use Christian ethical and biblical resources in the public debate on refugees and IDP issues. It will focus on a biblical understanding of refugee and IDP issues in relation to the problem of crossing borders. The aim of the chapter will be to find how the experience of Israel's exile and the teachings and the life of Jesus can inspire ways of liberating the surrendered dignity of refugees and IDPs. The biblical analysis will seek to understand how Israel's experience of exile had informed the First Testament teachings on refugees and the understanding of national borders. The

argument will be that, because the people of Israel had been refugees in exile and had been saved by God, therefore Israel should take care of the stranger and the refugee. Israel's relation to the land is also informed by its experience of having been a refugee. The land is still the land of the Lord, so that Israel is not free within its territorial borders to do everything it wants, especially when lives of foreigners and refugees are at stake. This chapter will also show how Israel's experience of exile is still relevant to the Second Testament's teachings. It will show how Jesus had crossed many borders, geographic and non-geographic borders. He had been a refugee in Egypt. What insights can we draw from this biblical experience of refugees in the two Testaments? The answer to this question will force me to rethink the refugee regime from the perspective of the Christian ethical principle of the universal common good. I will look for a way to hold together the universal common good and the particular good of individual nation-states from the perspective of refugees and IDPs protection. I will try to show how Christian social teachings deal with refugees always in relation to the reality of the human family.

The fourth chapter will focus on advocacy for refugees and IDPs. Advocacy is a very complex process. As Paul Cambridge and Lucy Williams wrote,

Advocacy is characterized by diverse paradigms of support and intervention, associated with a range of approaches and by sometimes contradictory or conflicting principles, such as protection and empowerment or control and autonomy.³²

³² Paul Cambridge and Lucy Williams, "Approaches to Advocacy for Refugees and Asylum Seekers: a Development Case Study for a Local Support and Advice Service," *Journal of Refugee Studies* 17, no.1 (2004): 97-98.

In this chapter, first, I will focus on three basic approaches, the welfarist approach, the legalistic approach, and the capability approach (Amartya Sen). From the assessment of these above approaches I will suggest the recognition approach (Paul Ricoeur). This latter approach is grounded on the principle of human dignity which offers a cosmopolitan understanding of rights and duties.

Finally, the **fifth chapter (general conclusion)** will summarize the main conclusions of the entire thesis on dignity across borders. It will stress the main ideas and actions to ensure a better protection to refugees and IDPs who should be considered as dignities who cross borders.

CHAPTER 2: STATE SOVEREIGNTY WITHIN BORDERS AND THE PROTECTION OF REFUGEES AND IDPS

2.0- Introduction

Refugees and internally displaced people (IDPs) crises usually emerge from states that failed in their duties of ensuring the well-being of their citizens. At the same time, these states rely on the principle of sovereignty, which does not allow for any intervention in the internal affairs of a state in order to end crises which result in IDPs and refugees plights. Host countries rely also on this principle of sovereignty to determine the number of asylum-seekers to whom they will provide legal protection. That is why, from the perspective both of the sending countries and of the host countries, politics matters a great deal in providing protection for IDPs and for refugees. And state sovereignty becomes a stumbling block that one should consider in addressing IDPs and refugees issues.

However, there is nowadays an erosion of sovereignty in favor of human rights protection. The contemporary world is in a transitional stage where the Westphalian understanding of state sovereignty within its borders coexists with a new global order that is moving the world toward a cosmopolitan society where state sovereignty is understood as responsibility and accountability. In accord with this transitional phase of the contemporary world, this chapter will, first, address refugees and IDPs protection from the Westphalian

heritage of understanding state sovereignty. This analysis will reveal that even if the international legal regime of refugee protection is under state dominion, practices of protection extend beyond existing international laws on refugees. Second, this chapter will try to rethink refugees and IDPs protection by taking into consideration changes that move the world politics from a Westphalian framework to a global and cosmopolitan framework. The third part will show how this new framework induces for states and for non-state actors some duties beyond national borders for finding solutions to refugees and IDPs crises.

The argument of this chapter is that the situation of refugees and IDPs can be improved, and especially that states should do better than they are doing now. Instead of arguing for the free movement of refugees in a world without borders, I will, rather, argue for an embodiment of sovereignty as responsibility and accountability for refugees and IDPs protection. In other terms, I will rethink refugees and IDPs protection from a human rights-based perspective.

2.1- Westphalian concept of sovereignty and the protection of refugees and IDPs

I will portray the political world in which the drama of IDPs and refugees takes place. Then, I will present how this context affects the international legal system of refugee protection, and how practices of protection exceed beyond the international legal system.

2.1.1- A political analysis of the world-context of IDPs and refugees

The contemporary model of states has its roots in the settlement of Westphalia in 1648.³³ This settlement ended the Thirty Years' War in Europe, and opened the way for the creation of independent states, which enjoy sovereignty to pursue their interests without destroying each other or the international system of which each is a part.³⁴ In the Westphalian model of state, territorial borders are very important and they are part of the definition of the state. There is no state without borders. Borders are marks of a state's sovereignty within its territory. States have the duty to ensure security and to organize the community within their borders. Borders are also a delimitation of state sovereignty in international relations. From this perspective, the state is understood as a territorial authority, which is considered to be supreme in jurisdictional terms. As Alan James explains,

A sovereign state... appears to have a free hand with regard to its internal lawmaking (as well as to the development of its legal relations with other states). Seemingly, it can, in principle, do what it likes, for it is not subject to any superior authority. It can tell other states and international bodies to keep their noses out of its affairs. This is the condition which is frequently regarded as justifying the use of the term 'sovereignty' to describe the regular territorial actors on the international stage. The usage is meant to reflect the fact that they enjoy jurisdictional independence.³⁵

³³ Making Westphalia the starting point of state sovereignty is conventional. As Philpott wrote: "Elements of sovereign statehood had been accumulating for three centuries, making Westphalia the consolidation, not the creation *ex nihilo*, of the modern system." (Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton and Oxford: Princeton University Press, 2001), 77).

³⁴ Gene M. Lyons and Michael Mastanduno, *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore and London: The Johns Hopkins University Press, 1995), 5.

³⁵ Alan James, "States and Sovereignty," in *Issues in International Relations*, edited by Trevor C. Salmon (London: Routledge, 2000), 7.

Therefore, the international system was built on the idea that states were the principal actors, and their sovereignty was considered absolute. In this way, all states were legally equal, even though in fact they were not. With this follows the decentralization of the system of international relations. According to Lyons and Mastanduno, the stability of this decentralized system was based on these elements:

A balance of power to prevent the rise of preponderant states and to contain unlimited aggression; the codification of rules of behavior through international law; the convening of international conferences to settle major differences; and the growth of diplomatic practices through which states would maintain continuing contact and be encouraged to negotiate differences among themselves. With the emergence of these institutions [and principles], the system of states was transformed into an international “society”, in which members were sovereign yet recognized commonly accepted norms, rules, and obligations.³⁶

These commonly accepted norms and institutions aim to avoid the reign of anarchy and to promote a well-ordered and peaceful international society based on states. However, states do not surrender their sovereignty by adherence to international norms and institutions like the United Nations Organization (UN) or the United Nations High Commissioner for Refugees (UNHCR). Even with such adherence, each state continues to determine the nature of its relations with other states, and each state is expected to take into consideration the standards of the international state-based community. These norms are only an expectation, a recommendation. That is why Joseph S. Nye insists upon understanding “international politics as politics in the absence of a common sovereign, politics among entities with no

³⁶ Gene M. Lyons and Michael Mastanduno, *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore and London: The Johns Hopkins University Press, 1995), 6.

ruler above them.”³⁷ Even the UN acknowledges this when its charter affirms: “The Organization is based on the principle of the sovereign equality of all its Members.”³⁸ This equality seems to be more an ideal than a reality because of the lack of genuine equality between nations, due to the dominance of superpowers over the rest of the world.

However, while state borders and sovereignty, which are the main features of the Westphalian world, are still relevant today, we have to take into account some recent developments of contemporary international relations which do not fit the Westphalian framework. In fact, nowadays, non-state actors, especially international non-governmental organizations (INGOs), are significant components of the international system and have participated in the international realm to a greater or lesser extent throughout western history. These constitute the so-called “international civil society” in relation to the international state-based community. Their recent growth is, in part, a response to increased interconnectedness among peoples.³⁹ These INGOs intervene in many issues such as refugees, peace building, etc. The increasing role of non-state actors reflects the shift from legal interrelationships among states to a broader, more inclusive, view of non-state participants.

³⁷ Joseph S. Nye, *Understanding International Conflicts. An Introduction to Theory and History* (New York & Boston: Pearson Longman, 2005), 3.

³⁸ See United Nations Organization’s Charter, article 2.

³⁹ This phenomenon has been much discussed in sociological literature. See *e.g.*, Anthony Giddens, *The Consequences of Modernity: Self and Society in the Late Modern Age* (Cambridge: Polity Press; and Stanford, CA: Stanford University Press, 1990).

This interdependence expresses that sovereign nation-states have common interests. They can no longer pursue their domestic interests without cooperating with others. Interdependence between states and non-state actors does not concern poor or weak states alone. Even superpowers can no longer claim to have complete sovereignty. One example of interdependence is that security is no longer only a domestic affair. We can see how refugees from Rwanda are a source of insecurity and war in the Democratic Republic of Congo.

Despite the existence of numerous international institutions and norms which undermine nation-state sovereignty by changing significantly the ways states govern and implement their sovereignty,⁴⁰ the state is still essential to the international system. And despite the fact that the international community has become an overlapping interconnection between nation-state actors, and between non-state actors, and between peoples across national borders, the state remains the most important actor in international politics and in the international community. It is in such an international community that IDPs and refugee issues should be understood. This political world constitutes the background on which I will analyze the international refugee protection regime.

⁴⁰ For example from the perspective of the United Nations' Charter, state sovereignty involves obligations as well as rights. See Article 2.

2.1.2- The international system of refugees and IDPs protection

The international system of refugees and IDPs protection is a by-product of the political world that I have tried to depict in the section above. From this perspective of a political world shaped by states, the protection of refugees and IDPs depends largely on states. This explains the fact that the actual international refugee regime operates within a highly politicized context in which governments are more likely to support assistance programs for reasons of security and foreign policy than for primarily humanitarian concerns.⁴¹ Therefore, the problem of refugees and IDPs becomes essentially political; and border control becomes an issue of state sovereignty. In this situation, states often deal with refugees and IDPs not always as an issue that implies the dignity of refugees and IDPs, but only as an issue where the sovereignty and the security of the state are involved. I will analyze the international refugee protection regime by explaining how the refugee is a political concept; and by describing the international legal definitions of the refugee as a political process that limits protection to only a small number of refugees. Through this analysis, I intend to provide a critical understanding of the refugee protection regime and to make some suggestions for its improvement.

2.1.2.1-The refugee as a political concept

The refugee is a political concept even if the reality to which it refers is more complex.

⁴¹ Gil Loscher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York and Oxford: Oxford University Press, 1993), 30.

The refugee can evoke a humanitarian issue, or a moral issue, or a development issue, and so forth. However, the contemporary concept of the refugee is related to the notion of national boundaries and state sovereignty. I agree with Ferris when she remarks perceptively that

If there were no nation-state system, if we lived in a world without borders, there would be no refugees, no migrants, and no reason to develop laws or procedures for dealing with them. While often couched in humanitarian – even moral – rhetoric, decisions about how to deal with refugees and the whole international system for dealing with the movement of people is based on the explicit recognition that it is the responsibility of states, and states alone, to determine who can enter their territory.⁴²

In fact, the refugee is a person who has crossed national borders, and who, unlike other migrants, has been forced to leave his/her country⁴³. But to be recognized as a refugee, it is not enough to cross national borders because one has been forced to do so. It is only the state that can recognize a person as a refugee. Thus the issue of refugees not only has a political dimension; but more than that, it is primarily a political issue⁴⁴ which involves many other considerations. This explains why politics shapes the legal definitions of the refugee.

⁴² Elizabeth G. Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post-Cold War Era* (Geneva: WCC Publications, 1993), 3.

⁴³ I will develop this definition when I address the legal definition of the refugee.

⁴⁴ That is why I agree with Gerald Dirks who states that “Sovereign and nationalism are essential precursors of the modern refugee phenomenon”. See Gerald Dirks, *Canada’s Refugee Policy: Indifference or Opportunism?* (Montreal: McGill-Queens University Press, 1977), 2. Gerald Dirks has been quoted by Elizabeth G. Ferris in *Refugees and World Politics* (New York: Praeger Publishers, 1985), 2.

2.1.2.2- Problems with International legal definitions of refugees

Before analyzing legal definitions of who is a refugee, we must keep in mind that the crucial question is not how international norms define refugees, but why they define them the way they do.⁴⁵ I suggest understanding the international norms about refugees as aiming not to define who a refugee is but to determine the ones whom the states choose to protect. That is why politics matters so much in the legal definition of a refugee.

That said, three official legal definitions of a refugee are most commonly cited; the first one from the 1951 Refugee Convention aims to be universal; and the two others are definitions from regional organizations, namely the Organization of African Unity (OAU) and the countries of Latin America. The 1951 Convention relating to the Status of Refugees is the key legal document in defining who a refugee is, their rights, and the legal obligations of states.⁴⁶ It defines a refugee as someone who

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁴⁷

⁴⁵ See Satvinder Singh Juss, *International Migration and Global Justice* (London: Ashgate, 2006), 198.

⁴⁶ This Convention had been completed by the 1967 Protocol which removed geographical and temporal euro-centric restrictions so that the Convention can be applied as a universal treaty.

⁴⁷ See the 1951 Refugee Convention, Article 1, A 2.

A careful assessment of this definition reveals that the 1951 Refugee Convention takes into consideration only political and civil rights. Basically, from this perspective, refugees are individual victims fleeing from persecution by governments. Therefore, the Convention excludes persons who flee from generalized conditions of violence, insecurity, oppression, or the economic impoverishment of “failed states”. This raises questions, as Antonio Guterres wrote: “When, for example, a country such as Zimbabwe began to implode, how were the millions of Zimbabweans crossing the border into South Africa in search of a semblance of decent life to be qualified?”⁴⁸ Moreover, the Convention does not consider as refugees those who are internally displaced because of war or persecution and who have not left their country of origin.⁴⁹ There are many other new categories of people who resemble refugees but who are not taken into account by the Convention.⁵⁰ However, the *OAU Refugee Convention* and the *Cartagena Declaration* have tried to broaden the definition of a refugee.

The OAU Refugee Convention⁵¹ includes in its definition of refugee

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order, in either part or the whole of his country of origin or

⁴⁸ António Guterres, “Millions Uprooted Saving Refugees and the Displaced,” *Foreign Affairs* 87, no. 5 (September/October 2008).

⁴⁹ I will address the question of the protection of internally displaced people later in the section “Responsibility to protect”.

⁵⁰ For more analysis on new categories of people who can be considered as refugees, see António Guterres, “Millions Uprooted Saving Refugees and the Displaced,” *Foreign Affairs* 87, no. 5 (September/October 2008). Or see Gil Loescher, *Beyond Charity*, 5-7.

⁵¹ The *Convention Governing the Specific Aspects of Refugee Problem in Africa* usually called the *AUO Refugee Convention* has been adopted on September 10th 1969 at Addis Ababa. It came into force on June 20th 1974.

nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his origin or nationality.⁵²

This definition extends protection to all forced transnational migrants who cross borders because of man-made disasters.⁵³ This definition also gives room for the legal protection of IDPs. By the same token, the *Cartagena Declaration*⁵⁴ gives a more extensive definition that includes persons who flee their countries “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”.

All these international legal instruments widened their definitions of who is a refugee in order to extend protection to many people who are not taken into account by the 1951 Refugee Convention. While almost all experts in refugee issues agree on the inadequacy of the official legal definitions of a refugee, they are divided on the matter of whether to widen these definitions. I agree with Antonio Guterres that

The idea that we could enlarge the concept of refugees, diluting the level of protection granted to them is, in my opinion, a real danger. I would prefer therefore not to touch the 1951 Convention. But one needs to determine then how the international community can cope with the problems of protection of people who move for interlinked reasons, factors beyond those that prompt normal migration.⁵⁵

⁵² The *AUO Refugee Convention*, Article 1(2).

⁵³ See Satvinder Singh Juss, *International Migration and Global Justice* (London: Ashgate, 2006), 193.

⁵⁴ See Article III (3) of the *Cartagena Declaration* adopted in a colloquium of Latin American leaders in 1984.

⁵⁵ António Guterres, “People on the Move: The Challenges of Displacement in the 21st Century,” IRC-UK Annual Lecture, Royal Geographical Society, London, 16 June 2008; available from: <http://www.unhcr.org/admin/ADMIN/48873def4.html>. Accessed on May 1st, 2009.

There is indeed a problem in the legal concept of a refugee. However, the lack of an adequate definition is not a sufficient reason for hindering refugee protection. In fact, in addition to these legal instruments, the framework of international law and standards about refugee protection includes the 1948 *Universal Declaration of Human Rights* and the 1949 *Geneva Conventions* on international humanitarian law, as well as an array of international and regional treaties and declarations, both binding and nonbinding, that specifically address the needs of refugees. Therefore, the issue is now primarily how to persuade the international community to take advantage of all these legal instruments to protect refugees efficiently. In other words, as Juss asks, “Why do so given a state-based international system with the sovereign right to exclude?”⁵⁶

My argument is that we can have the best legal definition of a refugee, but if we do not re-conceptualize the central role of national sovereignty, the protection of refugees will not significantly be improved. The fact is that even if the international laws prescribe that some people who resemble refugees should be allowed to enter the territory of other states, and even if NGOs and UN agencies can press governments for the sake of such people, ultimately, the national government decides who will be allowed to cross its borders and to enjoy protection. Despite international laws and standards, most of the states prescribe their own rules and procedures for obtaining refugee status, the bearers of which the state

⁵⁶ Satvinder Singh Juss, *International Migration and Global Justice*, 200.

commits to protection as refugees. Yet, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* states that

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.⁵⁷

Therefore, being a refugee and being legally recognized as one are two very different things. From the perspective of the 1951 Refugee Convention, it can happen that someone is a refugee, but at the same time he/she may not be recognized as a refugee by the receiving state. That is why the granting of refugee status is more a political act of the state than a legal act. In sum, the issue of refugees is, above all, a political issue even if its solution should not be limited to the political level. From this perspective, many organizations that work for refugees have understood that the means for achieving refugee protection are more diplomatic and political rather than legal and juridical. How do they address concretely this issue of refugees?

2.1.3- Practices of protection beyond the international laws on refugees

In order to solve the problem of restrictive legal definitions of refugee, many governmental and non-governmental actors usually offer a broad interpretation of the

⁵⁷ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, no. 28.

international laws on refugees. For example, the Jesuit Refugee Service (JRS) states in its Charter that

The mission given to JRS embraces all persons who are driven from their homes by conflict, humanitarian disaster or violation of human rights, following Catholic social teaching which applies the expression *de facto refugee* to many related categories of people.⁵⁸

Like JRS, many other organizations and especially NGOs are not bound by the internationally accepted definition of a refugee from the 1951 Refugee Convention. They use a broadened definition of refugee in order to provide relief to a large category of people who are like refugees, but who do not meet the formal criteria of international conventions. This is the case of internally displaced people who can benefit from a broader application of the legal concept of refugee. This a good way to deal with refugee issues within the restrictive legal framework. Yet, there are many criticisms against these practices that extend relief to large groups of people who resemble refugees. These criticisms are relevant especially when it appears that some people who take advantage of NGOs and Church-sponsored relief services are combatants, drug dealers, and so forth. As Ferris justifies, these cases weaken the credibility of churches and NGOs.⁵⁹ However, according to the ethical principle of the lesser evil, it is better occasionally to make mistakes by acting in a way that is too inclusive than in a way that is too restrictive, because human lives are at stake.

⁵⁸ See The JRS Charter, no. 8, in Jesuit Refugee Service, *Everybody's Challenge: Essential Documents of Jesuit Refugee Service. 1980-2000* (Rome: Jesuit Refugee Service, 2000), 15.

⁵⁹ Elizabeth G. Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post-Cold War Era*, 21.

In the same way, it is important to note that the UNHCR itself is involved with many categories of people who do not meet the formal criteria of refugee according to the 1951 Refugee Convention. In fact, the UNCHR annual *Global Trends* report, which reviews the statistical trends and changes in the global populations for whom UNHCR has been entrusted with a responsibility by the United Nations General Assembly, includes at least five categories of people, that is, refugees, asylum-seekers, returnees, stateless persons and certain groups of IDPs. The UNHCR names collectively these categories as “persons of concern”⁶⁰. Regarding the protection of IDPs in particular, the UN⁶¹ has developed a legal framework known as the Guiding Principles on Internal Displacement.⁶² However, these principles do not have the force of a treaty; they are not binding upon states. That is why Roberta Cohen suggests a UN reform that must build on this trend, “and address the tensions that exist between an emerging international responsibility to protect IDPs and more traditional notions of sovereignty that often obstruct humanitarian action.”⁶³ In sum, even though the international legal framework for refugees is very narrow, in practice, inter-governmental actors and numerous NGOs use a broad definition of refugees in order to protect large groups of people who are refugees, whether by legal status or in reality.

⁶⁰ See UNHCR, *2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* (June 2008), 2.

⁶¹ The legal framework was introduced into the UN Commission on Human Rights in 1998 by Francis M. Deng, the Representative of the Secretary-General on Internally Displaced Persons.

⁶² United Nations, Commission on Human Rights, *The Guiding Principles on Internal Displacement* (UN Doc.E /CN.4/1998/53/ Add.2, 1998).

⁶³ Roberta Cohen, “Strengthening Protection of IDPs: The UN’s Role,” *Georgetown Journal of International Affairs* (Winter/Spring 2006): 108.

Since the practices of refugee protection are already beyond the international legal framework, why do not rethink the refugee protection regime from the bottom up? In other words, why does not the international legal framework of refugee protection acknowledge the ongoing practices by updating the laws related to refugees? Perhaps the best question to ask is not why, but how and to what extent the refugee laws can take into account changes and practices that move the international community beyond a Westphalian framework. My argument is that we should move out of the Westphalian understanding of the state's sovereignty and focus instead on the international community. As long as the Westphalian framework continues to shape the world, there will be no fundamental progress in refugee protection. I agree with António Guterres who believes "that if the 1951 Convention were drafted today, it would not be as strong as the one drafted after the Second World War."⁶⁴ The reason is that, today, states are more jealous of their sovereignty. States are more concerned about their sovereignty because their sovereignty is now more than ever contested by some features of the globalizing world. In this situation, I suggest that instead of rescuing state sovereignty, we have to rethink it by taking into account the trends of the globalizing and more cosmopolitan world. What does this mean, and what are the likely implications for the refugee protection regime?

⁶⁴ António Guterres, "People on the Move: The Challenges of Displacement in the 21st Century," IRC-UK Annual Lecture, Royal Geographical Society, London, 16 June 2008; available from: <http://www.unhcr.org/admin/ADMIN/48873def4.html>; accessed on May 1st, 2009.

2.2-Rethinking the refugee protection regime in a globalizing world

The globalizing world and the emerging international human rights regime appeal for a new refugee protection regime where nation-states and non-state actors are all committed.

2.2.1- The globalizing world and the challenge to national borders: No “migration without borders”

The contemporary world is more and more interconnected, and borders no longer play the same role they did in the Westphalian state. Borders are still important. However, states are less and less the sole masters within their borders. In developed countries as well as in developing ones, the state has participated in constructing a global economic system and furthering a consensus to pursue this objective. This participation has affected the power of different agencies within the state and advanced the internationalization of the interstate system.⁶⁵ It is beyond doubt that in the contemporary globally interdependent world where ever more citizens pursue their happiness by consuming foreign goods and services or travelling abroad, nation-states can no longer realize many of their objectives in a kind of autarchy independent from other nation-states. However, as Sassen states,

There is a growing consensus in the community of states to lift border controls for the flow of capital, information, and services and, more broadly, to further globalization. But when it comes to immigrants and refugees, whether in North America, Western Europe, or Japan, the

⁶⁵ See Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996), 12.

national state claims all its old splendor in asserting its sovereign right to control its borders. On this matter there is also a consensus in the community of states.⁶⁶

In other words, the community of states permits the importation of commodities but closes the borders to immigrants and refugees. In order to address this problem, some analysts suggest “the migration without borders scenario.”⁶⁷ My argument is that this seems not to be an adequate solution. Yet, certain moral principles such as the unity of humankind (human family), and the universal common good, can justify a world without borders. From this perspective, there will be no refugees, since the notion of refugee presumes national borders. But, such an approach can cause more difficulties, because removing borders can mean removing responsibilities. There is no world government or no world authority that can ensure effectively the responsibility to protect forced migrants like refugees. Even the UNHCR relies on local governments to provide protection to refugees. That is why the ethical principle of subsidiarity is essential to achieving harmony as the local level is shaped by the states, and the global level is shaped by international organizations. State boundaries are indispensable. Instead of arguing for a world without borders,⁶⁸ we must rather argue for an interpretation of national borders as an assignment of responsibility.

⁶⁶ Ibid., 1.

⁶⁷ See Antoine Pecoud and Paul de Guchteneire, editors, *Migration without Borders: Essay on the Free Movement of People* (Paris: UNESCO Publishing; New York/Oxford: Berghahn Books, 2007).

⁶⁸ See Thuy Do and others, eds., *Refugees and the myth of the borderless world* (Canberra: National Library of Australia, February 2002).

Moreover, I will argue that the emergence of a non-state-based international community guided by a common ideal and rules including respect for human rights, promises to balance state sovereignty with individual sovereignty. Thus, in the globalizing world, although the state continues to play the most important role in refugee policy making and implementing, it is no longer sufficient simply to examine its formal role in this arena. It is also necessary to examine the transformation of both the state itself and the interstate system and what these changes mean for refugee protection.

2.2.2- Human rights and Individual sovereignty as a counterbalance to state sovereignty

One of the most important features of the globalizing world that is relevant to a new understanding of the refugee protection regime is the emergence of the international human rights regime. In fact, the much older Westphalian system of international law is aimed at protecting international order rather than human rights and justice.⁶⁹ But with the universal recognition of human rights and of supranational organizations, the Westphalian paradigm has become more and more inadequate and obsolete. In international law, this shift from maintaining order to protecting human rights is expressed by the emergence of the norms of *jus cogens* and the obligations of *erga omnes*. While *jus cogens* designs norms from which

⁶⁹ See Ernst-Ulrich Petersmann, "State Sovereignty, Popular Sovereignty and Individual Sovereignty: from Constitutional Nationalism to Multilevel Constitutionalism in International Economic Law?" *EUI Working Paper Law*, no. 2006/45, p.4.

no derogation is permitted, *erga omnes* designs obligations binding on all states without exception, with every state having an interest in their protection.⁷⁰ These two legal instruments are used in the human rights regime and they limit expressly the power of state sovereignty to renounce human rights treaties.

It is important to notice that human rights are not dependent on nationality, unlike political, social, and civil rights, which are predicated on the distinction between national and alien. Human rights override such distinctions and for this reason can be seen as potentially challenging state sovereignty.⁷¹ That is why international human rights, while partly rooted in the founding documents of certain nation-states, are today a force that can undermine the exclusive authority of the state over its nationals and thereby contribute to transforming the interstate system, the international legal order, and especially the international refugee protection regime.

From the perspective of the international human rights regime, membership in territorially exclusive nation-states ceases to be the only ground for the realization of rights. All residents, whether citizens or not, can claim their human rights. Thus, human rights begin to affect the principle of nation-based citizenship and the boundaries of the nation.⁷²

⁷⁰ For more analysis on *jus cogens* and *erga omnes*, see Christian Tomuschat and Jean-Marc Thouvenin, editors, *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Hague: Martinus Nijhoff Publishers, 2005).

⁷¹ Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization*, 13.

⁷² *Ibid.*, 13.

From such a human rights perspective, the international legal system must serve human rights and democratic self-government as the proper bases of sovereignty. In our contemporary world, human rights can erode the legitimacy of the state if states fail to respect such human rights. This is the case of Sudan faced with the mass-violation of human rights in Darfur. It is no longer merely a question of self-determination but of respect for international human rights. Asylum-seekers and IDPs whose legal status is not yet recognized can therefore claim their rights to be treated as human beings with respect to their dignity. The growing ability of NGOs and individuals to make claims on the basis of international human rights instruments has implications beyond the boundaries of individual states. It affects the configuration of the international order. At the same time, it shows a progress that goes beyond the expansion of human rights within the framework of nation-states. It contributes to a redefinition of the bases of the legitimacy of states under the rule of law and the notion of nationality and national borders. As Sassen explains, in this process,

The concept of nationality is being partly displaced from a principle that reinforces state sovereignty and self-determination (through the state's right/power to define its nationals) to a concept emphasizing that the state is accountable to all its residents on the basis of international human rights law. The individual emerges as the object of international law and institutions.⁷³

From this, one can appeal for a new basis for the refugee protection regime that can take into account the international human rights laws and also non-state actors who are involved in refugee protection. Let us develop these two points.

2.2.3- The Shift in refugee protection from the traditional international law perspective to a human rights perspective

I have already explained how the international legal definitions of refugee status are

⁷³ Ibid., 17.

political definitions,⁷⁴ and how states use these politicized definitions to limit mass refugee flow by granting refugee status to only a few people.⁷⁵ I have also explained how it is risky today to modify these international legal definitions of refugee status. For all these reasons, it will be more effective to ground refugee protection in the international human rights regime. Even though the 1948 Universal Declaration of Human Rights is not as binding as a treaty or a convention, it represents a kind of moral standard for the international community, so much so that there is nowadays a growing accountability of states to international human rights. Moreover, the Universal Declaration of Human Rights inspired many international⁷⁶ and regional⁷⁷ legal instruments that are binding for states. Certain analysts such as David Hollenbach construe human rights not only as moral norms, but also in a more compulsory way as legal norms:

Human rights are moral as well as legal norms, and ... when existing legal standards fail to serve the human dignity of displaced persons [and refugees], the law should be changed and developed in light of ethical requirements of human treatment.⁷⁸

The human rights approach to refugee protection provides the advantage of addressing the refugee issue on both fronts, that of the sending and of the receiving countries. The

⁷⁴ See also Elizabeth G. Ferris, *Beyond Borders*, 18

⁷⁵ See also Gilbert Jaeger, "The Definition of 'Refugee': Restrictive vs Expanding Trends," *World Refugee Survey* 1983; available from: <http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/21457/20132>; accessed on 02/23/2010.

⁷⁶ See for example, the 1949 Geneva Conventions, especially the 4th Convention "relative to the Protection of Civilian Persons in Time of War".

⁷⁷ See for example, the "Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights", June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III); or the 1950 "European Convention on Human Rights and the European Court of Human Rights"; or The American Convention on Human Rights of 1969 that came into force in 1978; etc.

⁷⁸ David Hollenbach, "Human Rights as an Ethical Framework for Advocacy," in *Refugee Rights: Ethics, Advocacy, and Africa*, edited by David Hollenbach (Washington, D.C.: Georgetown University Press, 2008), 3.

sending government can be held accountable for violations of human rights which usually constitute the main reason for refugee flows. Similarly, the receiving government can be held accountable for guaranteeing a better treatment of refugees and asylum-seekers on the ground of human rights. As Ferris argues:

With a human-rights approach, researchers and activists look beyond the United Nations High Commissioner for Refugees in arguing that uprooted people have needs which are greater than UNHCR is able to meet. Rather, agencies such as the UN Commission on Human Rights must become involved in examining the human-rights components of displaced people and in assuring protection in situations where UNHCR has no such mandate.⁷⁹

In sum, from an exclusive emphasis on the sovereignty of the people and on the state's right to self-determination, a shift of focus towards the rights of individuals regardless of nationality has occurred in the contemporary world. It remains uncertain whether the international human rights instruments which privilege individual rights will be universally implemented. However, the emerging international human rights regime offers far stronger grounds and better possibilities for refugee protection than the traditional international laws informed by state sovereignty and self-determination. This also opens the way for non-state actors to be involved legitimately in finding solutions for the plight of refugees.

2.2.4- Providing protection: interconnected efforts of states and non-state actors

Because of the process of globalization, the international community appears more and more as overlapping interconnections between nation-states and non-state actors, and

⁷⁹ Elizabeth G. Ferris, *Beyond Borders*, xxii.

between people across national borders. And because of the fact that individuals and non-state actors can make claims on states based on human rights, refugee protection should not be entrusted only to states or to intergovernmental organizations like the UNHCR. All actors, states as well as NGOs and individuals, should be allowed to play important roles. There are already many NGOs who are working with refugees; however there is little coordination between them, as is evident in their annual reports.

A promising next step might be to create a space for dialogue where all actors involved in a specific refugee crisis could build a common view or at least a minimum defining the protection of refugees in a particular situation. In fact, as it stands now, states and non-state actors can hold contradictory views of refugee protection. For example, Gil Loescher showed how,

humanitarianism has been adopted by states as a political tool... The practice of using refugees to serve strategic or military objectives has been used widely by small and big powers and even by refugee warrior groups.⁸⁰

In the same way, NGOs are not prevented from such a distortion. That is why a dialogue between actors can help to improve refugee protection. Of course, because of the diversity of actors, it will not be a single view or a single way of providing relief and protection. However, on the basis of human rights, it is possible through discussion to reach an agreement. From this perspective, refugee protection will appear as a kind of net effect of

⁸⁰ Gil Loescher, *Beyond Charity*, 28.

many overlapping efforts by NGOs and states on the willingness to cooperate with and assist refugees in endeavors for the good of a particular group of refugees and for the common good for all, for host countries as well as for sending countries. Moreover, a dialogue between diverse actors in resolving a refugee crisis in a particular place is more likely to be an important force of persuasion. As B.S. Chimni remarks rightfully,

While publications such as the *World Refugee Survey* are playing an important role ... it is the product of the efforts of a single NGO. In our view, a more collective effort would give the proposed report greater authority and circulation. The collective production of an annual *Refugee Watch* would persuade States to enter into dialogue with the transnational NGO network.⁸¹

In sum, the contemporary world is built on the heritage of Westphalia. However, many changes are moving it to a kind of post-Westphalian world where international relations are making a shift from a state sovereignty-based world to a human rights-based world. States will have to share the stage with actors whose actions go beyond geographical boundaries. More fundamentally, they will have to envision sovereignty and self-determination in conformity with the standards of human rights. That is why states have duties within and beyond their borders. This opens avenues especially for IDPs protection.

2.3-Duties within and beyond national borders

This section will present how sovereignty understood as responsibility implies duties within and beyond national borders to protect refugees and especially IDPs.

⁸¹ B.S. Chimni, "Reforming the International Refugee Regime: A Dialogic Model," *Journal of Refugee Studies* 14, no.2 (2001): 163.

2.3.1- Sovereignty reconceptualized as responsibility

International law still protects sovereignty and has in the state its main object. No simple way are the days of the sovereign state coming to an end⁸². However, the universal recognition of inalienable human rights requires interpreting state sovereignty and individual sovereignty in a mutually coherent manner so as to protect more effectively human dignity and other principles of justice across borders. From this perspective, sovereignty should be conceived not in legal terms as in Westphalian framework, but in a very concrete and objective way, both from a political and ethical perspective.

That is, from a political perspective, a state should be considered to enjoy sovereignty to the extent to which it can successfully look after itself, and can follow its own independent course in the international community. In other terms, a state that is effectively in command of its internal and external destiny, and which can assert a high measure of political independence, is likely to be substantially sovereign even if engaged in an interdependent relationship with others. On the other hand, a state which is less successful in this regard will be considered as less sovereign.

⁸² Alan James, "States and Sovereignty," in *Issues in International Relations*, edited by Trevor C. Salmon (London: Routledge, 2000), 22.

From an ethical perspective, a state should be considered sovereign to the extent to which it can provide an authority accountable for the well-being of a designated citizenry⁸³ in solidarity with the rest of the world. That is why Francis Deng argues that state sovereignty should be understood as responsibility within and beyond national borders:

The sovereign state's responsibility and accountability to both domestic and external constituencies must be affirmed as interconnected principles of national and international order. Such a normative code is anchored in the assumption that in order to be legitimate, sovereignty must demonstrate responsibility. At the very least that means providing for the basic needs of its people.⁸⁴

Sovereignty, therefore, refers less to a state's self-determination than to its ability to carry out its functions of government in coherence with human rights. The respect for human rights calls for states' accountability for upholding standards of human rights and responsibility for their implementation. Accountability and responsibility justify duties beyond borders⁸⁵ such as humanitarian intervention⁸⁶ in the short term, and cooperation and development in the long term. That is the international principle of the "Responsibility to protect" which is relevant, especially for the protection of IDPs.

⁸³ See William Maley, "A global refugee crisis?" in *Refugees and the Myth of the Borderless World* (Canberra: National Library of Australia, February 2002), 1.

⁸⁴ Francis M. Deng and others, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institution, 1996), xvii.

⁸⁵ See Stanley Hoffman, *Duties beyond Borders: On the Limits and Possibilities of Ethical International Politics* (New York: Syracuse University Press, 1981). See chapter 5: "An Ethics of world Order," pp.189-232.

⁸⁶ It is crucial to recognize that an international intervention presupposes the existence of a meaningful international community in whose name intervention may be carried out. Whether such a community actually exists, and whether, if it exists, it can be a principal agent of intervention, are fundamental yet contentious questions that divided scholars.

2.3.2- The responsibility to protect IDPS

The principle of the responsibility to protect was endorsed by the UN General Assembly in 2005 and unanimously reaffirmed by the Security Council in its Resolution 1674 of 2006. However, the principle remains hotly contested primarily because of its association with humanitarian intervention and the pervasive belief that its principal aim is to create a pathway for the legitimization of unilateral military intervention. In fact, the principle of the responsibility to protect is not to be mixed up with humanitarian intervention which is focused on the right to intervene rather than to protect. As Gareth Evans and Mohamed Sahnoun argue, focusing on the "responsibility to protect" rather than the "right to intervene" implies evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention. It implies also that "the primary responsibility rests with the state concerned. Only if that state is unable or unwilling to fulfill its responsibility to protect, or is itself the perpetrator, should the international community take the responsibility to act in its place."⁸⁷

The principle of the responsibility to protect is grounded on the duty to protect communities from mass killings such as ethnic cleansing and genocide. The proper authority to conduct a military intervention on the basis of the responsibility to protect is the United Nations Security Council in conjunction with the other United Nations Organization

⁸⁷ Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* (November/December 2002); available from: <http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect>; accessed on May 2nd, 2009.

components such as the Secretary-General, the General Assembly, etc. The principle requires some precautions such as the “the right intention”, the use of military force only as “last resort”, with “proportional means”, and in consideration of “a reasonable chance of success.”⁸⁸

Even though there is no guarantee that all these guiding criteria of the principle of the responsibility to protect will be actually respected in an operation of protection, this principle seems to create an opportunity for the protection of IDPs who are “trapped within hostile borders.”⁸⁹ Refugees and IDPs are often victims of the state’s system. They usually come from states that have been involved in civil war, or that have failed to establish legitimacy in the eyes of their own citizens. In sum, they come from what one can consider “failed states” or “collapsed states.”⁹⁰ The case of Sudan with the Darfur crisis is one of the most egregious examples of a failed state which still claims its sovereignty to refuse to some NGOs or intergovernmental organizations the access to IDPS on its territory. In the case of Sudan, for example, one can argue from the principle of the responsibility to protect that if the legitimization of the territorial state sovereignty is to provide an authority accountable for the well-being of its citizens, then the failure of individual states to discharge this task creates a responsibility on those who otherwise benefit from the system of states to aid those

⁸⁸ We can recognize here the criteria of Just War Theory.

⁸⁹ See Francis M. Deng, “Trapped With Hostile Borders: The Plight of Internally Displaced Persons,” in *Human Security for All. A Tribute to Sergio Vieira de Mello*, edited by Kevin M. Cahill (New York: Fordham University Press and The Center for International Health and Cooperation, 2004), 28-51.

⁹⁰ For more analysis, see for example, Satvinder Singh Juss, “The Failed States Phenomenon,” *International Migration and Global Justice* (London: Ashgate, 2006), 103-143.

who suffer persecution in the territories in which they are nominally owed a primary duty of care.

Moreover, the principle of the responsibility to protect develops a broad conception of protection for IDPs and refugees. It requires undertaking action to prevent an imminent crisis which can result in the creation of refugees or IDPs, and action to end an ongoing crisis, and finally action to consolidate peace and economic development in post-war countries in order to foster the resettlement of returned refugees and IDPs. As the International Commission on Intervention and State Sovereignty wrote:

The responsibility to protect embraces three specific responsibilities:

A. *The responsibility to prevent*: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

B. *The responsibility to react*: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

C. *The responsibility to rebuild*: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.⁹¹

The principle of the responsibility to protect has not yet become part of customary international law. However, many organizations of the civil society have been urging UN agencies and governments to act on it. It is therefore a sign of hope for the improving of IDPs and refugees protection.

⁹¹ See *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty (December 2001): xi.

2.4- Conclusion

Refugees and IDPs issues contain always a political dimension; and their protection is dependent on the political context of the moment. That is why states play a central role in defining who is a refugee, and in providing legal protection as well as determining actors that are authorized to deal with IDPs on their territory. However, today the old hierarchies of power and influence within the state are being reconfigured by increasing economic globalization and the ascendance of an international human rights regime. This explains why the Westphalian sovereignty paradigm of international relations, with its principles of sovereign immunity, domestic jurisdiction, and nonintervention has *de facto* been displaced by a new principle of civilian inviolability, or individual sovereignty. In other terms, the dignity and integrity of the individual and his “right to protection” has become constitutive of global relations so that state sovereignty is to be understood as responsibility. This is a source of hope for the improving of refugee protection.

Even if state sovereignty within its borders still matters, and even if states still dominate world politics, one should be more and more aware of these new changes where globalization undermines the traditional legal doctrine and moves it toward a kind of legal cosmopolitanism across national borders. Choosing to ignore these changes is a lack of realism. The “reality” is that the contemporary world is in a transitional phase away from Westphalian order to a cosmopolitan world society order. This transitional phase is

confusing in the sense that some “failed states” like Sudan can still claim their sovereignty to hinder the protection of IDPs and asylum-seekers on their territory. But this transitional phase is promising for the protection of refugees and IDPs in the sense that with the growing accountability of states to international human rights laws, refugees, IDPs and non-state actors like NGOs and churches can make claims on states for finding better solutions for the plights of refugees and IDPs. In fact, the principle of the responsibility to protect and other human rights-based guidelines are a kind of “soft law” whose “soft power” can have a great effect on state’s responsibility toward refugees and IDPs.

CHAPTER 3: THE ROMAN CATHOLIC CHURCH'S DISCOURSE ON BORDER CROSSINGS: A CHALLENGE TO THE INTERNATIONAL REFUGEE PROTECTION REGIME

3.0- Introduction

The previous chapter has shown from a secular standpoint how the “Principle of the Responsibility to Protect” and the human-rights-based approach to refugees and IDPs issues challenge the actual international refugee protection regime which is based on states’ sovereignty. This present chapter will show how the Roman Catholic Church’s social discourse can provide a basis for this human rights approach to refugees and IDPs issues. Furthermore, the Catholic Church’s social discourse goes farther than the secular discourse on refugee issues, since the Catholic Church’s discourse on refugees is grounded in the experience of refugees themselves and in the belief that all humans belong to one human family.

Since the Catholic Church’s discourse is drawn from the biblical experience of borders crossings, in this chapter, firstly, I will present how Israel’s experience of exile informed the Old Testament teachings on refugees and the understanding of national borders. The argument is that, because Israel had been a refugee in exile and had been saved by God, therefore Israel is exhorted to take care of the stranger and the refugee. Israel’s relation to

the land is also informed by its experience of having been a refugee. The land is still the land of the Lord, so that Israel is not free within its territorial borders to do everything it wants, especially when lives of foreigners and refugees are at stake. I will also present how Israel's experience of exile is still relevant to the New Testament's teachings. Jesus had crossed many borders, both geographic and non-geographic. He had been a refugee in Egypt. He also came from "Galilee of the nations" which is a model of a cosmopolitan world. So, aliens have been important in the New Testament teaching which can inspire ways of dealing with refugee issues from a Christian standpoint.

Secondly, I will try to rethink the refugee regime from the perspective of Christian universalism through ethical principles such as the membership of all humans in one human family; the universal common good; the universal destination of the world wealth; the demand of solidarity, etc. I will strive to show how Christian universalism is not utopian; rather it also exhibits a realism that integrates state sovereignty within its borders and the principle of subsidiarity to engage the international community's responsibility and individual nation-state's responsibility.

Finally, I will also discuss the relevance of the use of biblical and Christian social discourse in public debate on refugee issues. I will argue that even if the Christian experience of refugees is a particular experience, it is relevant to all humanity in the sense

that it is grounded in the dignity of human persons. This chapter will provide the ethical foundation of this thesis on refugees and IDPs issues from a Roman Catholic standpoint.

3.1-The Biblical Experience of Border Crossings and Refugee Issues

Neither Old nor New Testaments provide a specific policy for borders crossings and for refugees. However, each one records much related to refugees and aliens that can still be relevant nowadays.

3.1.1- The Old Testament and Border Crossings

This section will present how Ancient Israel's experience of having lived abroad as aliens and refugees shaped the Old Testament's discourse on refugees and on the understanding of the function of national borders.

3.1.1.1- Ancient Israel's experience of having lived outside its borders as aliens and refugees

The experience of being forced to cross borders and to leave one's homeland, the experience of being a refugee, an alien, is not unfamiliar to the Old Testament. Above all,

this experience of being an alien or refugee had profoundly shaped Ancient Israel's character and identity as the people of God. As the Pontifical Council for Migrants and Refugees wrote:

Israel traced its origins back to Abraham, who in obedience to God's call left his home and went to a foreign land, taking with him the divine Promise that he would become the father 'of a great nation' (Gn 12:1-2). Jacob, a wandering Aramaean, 'went down into Egypt with a small household and lived there as an alien. But there he became a nation, great, strong and numerous' (Dt 26:5). After its long servitude in Egypt, Israel received its solemn investiture as the 'People of God' during its forty-year 'Exodus' through the desert. The hard test of migration and deportation is therefore fundamental to the story of the chosen people in view of the salvation of all peoples: Israel knew the return from exile (cf. Is 42:6-7; 49:5).⁹²

It is important to acknowledge that the Old Testament offers more accounts of people who are forced to cross borders than it offers accounts of people who migrated because they were pleased to do so.⁹³ This shows the importance that the Old Testament ascribes to forced migrants whose lives are threatened by many dangers. For instance, Abram and his wife Sarai were forced to cross the border to Egypt and to reside there as – what we consider today to be – “economic refugees,” for the famine was severe in the land of Canaan.⁹⁴

⁹² Pontifical Council for the Care of Migrants and Itinerant People, *Erga migrantes caritas Christi*, (The love of Christ towards migrants), Vatican City, 2004, no. 14.

⁹³ Daniel Carroll remarked that “Some might contend that the Bible does not present details of the lives of immigrants but rather of refugees.” (p.71). For more analysis on the Bible preference for refugee accounts, see M. Daniel Carroll, *Christians at the Border: Immigration, the Church, and the Bible* (Grand Rapids, Michigan: Baker Academic, 2008); see chapter 2: “Of Immigrants, Refugees, and Exiles: Guidance from the Old Testament,” pp.63-89.

⁹⁴ Gen 12:10-20. See also Jean-Pierre Ruiz, “Abram and Sarai cross the Border: Reading Genesis 12:10-20 with People on the Move,” in *Border Crossings: Cross-Cultural Hermeneutics*, edited by D.N. Premnath (Maryknoll & New York: Orbis Books, 2007), 15-34.

Likewise, Isaac would also be forced to cross the border to the Philistine land to avoid starvation.⁹⁵

Besides famines, forced exile due to war had driven many Israelites out of their homeland. The Second Book of Kings provides a record of the Israelites' deportation to Assyria: "In the ninth year of Hoshea, the king of Assyria took Samaria, and deported the Israelites to Assyria, settling them in Halah, at the Habor, a river of Gozan, and in the cities of the Medes." (2Kings 17:6). Furthermore, Nebuchadnezzar, king of Babylon deported thousands of Israelites to Babylon:

He deported all Jerusalem: all the officers and men of the army, ten thousand in number, and all the craftsmen and smiths. None were left among the people of the land except the poor. He deported Jehoiachin to Babylon, and also led captive from Jerusalem to Babylon the king's mother and wives, his functionaries, and the chief men of the land. The king of Babylon also led captive to Babylon all seven thousand men of the army, and a thousand craftsmen and smiths, all of them trained soldiers. (2Kings 24:14-16).

This experience of being a forced migrant seems to be so fundamental that many of the leaders of ancient Israel had this experience. This was the case with Abraham⁹⁶ who sojourned in Egypt, in Canaan, in the region of Negeb, etc. Isaac lived as an alien at Mamre,⁹⁷ at Canaan.⁹⁸ Jacob was in the same situation in Mahanaim and in other places.⁹⁹ It

⁹⁵ Gen 26:1.

⁹⁶ Gen. 12:10; 17:8; 20:1; 21:34; 23:4.

⁹⁷ Gen. 35:27.

⁹⁸ Gen. 37:1.

⁹⁹ Gen. 32:3-4.

was also the case with Joseph in Egypt¹⁰⁰ and Daniel in Babylon.¹⁰¹ Moses fled from Egypt and sought refuge in Midian.¹⁰² David fled to the land of the Philistines in order to escape from Saul.¹⁰³ Israelites, therefore, experienced the situation of living as aliens in foreign countries such as Egypt, Assyria, Babylon, etc. They had this experience not only as individuals but also as a people, as a community. This means that this experience characterized their identity as individuals as well as a community. Forced exile, as well as Exodus, is part of Israelites' live stories and history. The Old Testament's approach to borders crossings and to refugee issues is very significant as it is grounded both in refugee experience and in a tradition of welcoming forced migrants. To what extent does this particular situation shape Judaism and Christian discourse on people on the move?

3.1.1.2- Israel's attitude toward forced migrants within its borders

The Old Testament's attitude towards aliens, in general, and forced migrants, in particular, is marked with compassion and justice. The presence of refugees and aliens in the midst of Israelites reminds Israelites of their own sufferings and fragility when they were in the same position. Beyond the capacity to recognize suffering in the first place, Israelites'

¹⁰⁰ Gen. 37:28.36.

¹⁰¹ Dan. 1:1-4.

¹⁰² Exod. 2:11-14.

¹⁰³ 1 Sam. 27.

compassion enabled them to learn to respond to that suffering in a particular way¹⁰⁴. One of the ways to respond to the suffering of forced migrants and aliens was to accord them legal protection. The obligation to protect forced migrants is rooted in the fact that Israel had experienced and had survived forced migration. From this perspective, Israel is asked not to oppress aliens: “You shall not oppress an alien; you well know how it feels to be an alien, since you were once aliens yourselves in the land of Egypt.” (Exo. 23:9).¹⁰⁵ Therefore, because the Israelites had experienced mistreatment and injustice, they were required to make every effort to spare aliens all manners of mistreatments. As Hoffmeier explains,

The oppressive treatment that Israelites experienced as aliens in Egypt is without a doubt the main reason so many of the laws deal with the alien in Israel. After all, Israel knew what it was like to be an alien and to be harshly treated. Consequently, it is not surprising that God gave so many statutes concerning the appropriate treatment of aliens.¹⁰⁶

However, the Israelites’ attitude towards forced migrants within Israel’s borders can also find a justification in the belief that all human beings are created in the image of God.¹⁰⁷ Accordingly, all humans share the same dignity. This is why Israelites are asked not only to provide forced migrants with protection, but also to love them and not to have separate rules

¹⁰⁴ Christopher P. Vogt, “Fostering a Catholic Commitment to the Common Good: An Approach Rooted in Virtue Ethics,” *Theological Studies* 68 (2007): 394-417.

¹⁰⁵ See also Exo 22:21.

¹⁰⁶ James K. Hoffmeier, *The Immigration Crisis. Immigrants, Aliens, and the Bible* (Wheaton, Illinois: Crossway Books, 2009), 72.

¹⁰⁷ Gen. 1:27.

for aliens.¹⁰⁸ Yet, it is important to remark that not all aliens benefit from this legal situation. In fact, the Old Testament distinguishes two categories of aliens.¹⁰⁹ On one hand, there is the transient foreigner designated by the Hebrew words: *nekhar*, *nolchrt*, or *zar*. He does not have the status of a legal alien since he is a passing foreigner. For that reason, his rights are restricted. For instance, he can neither have access to the land by being a landowner, nor have access to the temple. Nevertheless, he has the right to hospitality and protection. On the other hand, there is the resident alien who is a legal alien. He is designated by the Hebrew word: *ger*. We should underscore the fact that “the word *ger* carries with it the conception of a people under attack who have been driven out of their land by famine or war.”¹¹⁰

Usually, the Old Testament speaks more often about the forced migrant (*ger*) who was constrained to leave his homeland than about a wanderer alien (*nekhar*, *zar*). Thus, the refugee and the forced migrant, in general, are entitled to enjoy the same rights and the same protection as native Israelites. However, not all refugees were protected. Those who were guilty of grave wrongdoing were supposed to be punished, and even they might be sent back home in order to be punished for their wrongdoings. Refugees who were found guilty of

¹⁰⁸ Num. 15:15-16: “There is but one rule for you and for the resident alien, a perpetual rule for all your descendants. Before the LORD you and the alien are alike, with the same law and the same application of it for the alien residing among you as for yourselves.” See also the commentary by James K. Hoffmeier, *The Immigration Crisis*, 76.

¹⁰⁹ See James K. Hoffmeier, *The Immigration Crisis*, 150. See also chapters 2-4.

¹¹⁰ Elizabeth G. Ferris, *Beyond Borders*, xxix.

grave wrongdoings were even denied sanctuary protection¹¹¹. According to James Hoffmeier,

The biblical practice of sanctuary, then, was to protect the offender from vigilante justice and to ensure that he received a fair trial. Should a person come to the sanctuary who was guilty of intentionally murdering someone, he would be removed from the protection of the sanctuary and receive his punishment. This practice is clearly spelled out in Exodus 21:14: ‘take him away from my altar and put him to death.’¹¹²

Thus, there is clearly an imperative in the Old Testament to provide refuge to people who have been driven out of their land and who seek protection. One can also argue that the refusal of sanctuary to grave evildoers participates in the imperative of protection in the sense that the Old Testament prohibits anyone from being an accomplice of severe evildoers. To what extent can the church today embody this imperative of protection of refugees and of all forced migrants? Before dealing with this question, let us explore how the Old Testament conceives territorial borders and the sovereignty of the state within its borders.

¹¹¹ Sanctuary protection is a protection that was entrusted to people who found refuge in the temple. When somebody takes refuge in a temple, this gives him a kind of sacred immunity that prevents him to be removed from the temple as long as this person stays in the temple. Nowadays, many churches still practice sanctuary protection by allowing refugees or undocumented people to take refuge in churches in order to avoid their arrest and deportation. About the practice of sanctuary in the United States of America, see James K. Hoffmeier, *The Immigration Crisis*, 80.

¹¹² *Ibid.*, 84.

3.1.1.3- Israel's conception of land and borders

In order to understand Israel's attitude and laws that concern refugees within Israel's borders, it is important to understand how Israel conceives the land on which it dwelt. To begin with, we have to acknowledge that Israel's understanding of the land is very complex and varies from one biblical book to another.¹¹³ It varies also from various theologies that are intertwined in the Old Testament.¹¹⁴ In fact, the theme of the land is central to the Old Testament in general since the land is essential to Israel's existence. The land is the object of one of the most important promises that Yahweh made to Israel; it is also part of the covenantal relationship between Yahweh and Israel.¹¹⁵

Most relevant to this reflection is that the land is a gift to Israel. Even though Israel fought against other nations in order to possess the land, the land remains a gift that Yahweh had promised to their fathers. From this perspective, the land remains the land of Yahweh that has been entrusted to Israel. We can say that from the biblical perspective, Israel's relation to the land is not exactly a relation of ownership; it is more about a relation of stewardship. Therefore, within the borders of the land, Israel is not free to do what it wants without regard to Yahweh. For this reason, the sovereignty of Israel within its territorial

¹¹³ See Patrick D. Miller, "The Gift of God. The Deuteronomic Theology of Land," *Interpretation* 23, no. 40 (1969): 451-465.

¹¹⁴ About the various theologies of the land in the Old Testament see Peter Diepold, *Israel's Land*, BWANT 95 (Stuttgart: Kohlhammer, 1972).

¹¹⁵ See Deut. 1:8, 35; 6:10; etc. For more details, read Gerhard von Rad, "The Promised Land and Yahweh's Land in the Hexateuch," in *The Problem of the Hexateuch and Other Essays*. Trans. by E. W. Trueman Dicken (New York: McGraw-Hill Book Company, 1966), 90f.

borders is to be interpreted as being a responsibility. Israel's political leaders are accountable before Yahweh and before the citizens. They have the responsibility to defend the borders of the land against external invasion. They also have the responsibility to protect all citizens and aliens living within Israel's borders, and also to ensure that they retain the possibility to satisfy their basic needs. This explains Israel's concern for the refugee, the alien, the orphan, and the widow.¹¹⁶

Because the land entrusted to Israel still belongs to Yahweh, it is considered to be a holy land. Accordingly, Israel is asked to act within its borders as Yahweh would have done. Likewise, refugees and aliens are also supposed to respect the laws that Yahweh prescribed to Israel regarding the proper manner of dwelling in the land. As we read in Leviticus,

You, however, whether natives or resident aliens, must keep my statutes and decrees forbidding all such abominations by which the previous inhabitants defiled the land; otherwise the land will vomit you out also for having defiled it, just as it vomited out the nations before you. (Lev. 18:26-27).

This citation from Leviticus shows that borders were important. Territorial borders and national sovereignty were acknowledged by the law in Old Testament.¹¹⁷ That is why permission is needed in order to cross national borders.¹¹⁸ Nevertheless, because of the sanctity both of life and of the land, Israel was asked to open its borders to forced migrants whose lives were at stake. Since Israel was supposed to act within its borders as Yahweh

¹¹⁶ See Mark Sneed, "Israel Concern for the Alien, Orphan, and Widow: Altruism or Ideology?" *Zeitschrift für die Alttestamentliche Wissenschaft* 111, no. 4 (1999): 498-507.

¹¹⁷ See Deut. 27:17: "Cursed be he who moves his neighbor's landmarks! ..."

¹¹⁸ See Num. 20:16-21. See also James K. Hoffmeier, *The Immigration Crisis*, 32-33.

would have done, the practice of sanctuary, hospitality, justice, and compassion towards refugees were, therefore, requirements of the covenantal law in the land given by the Lord. The New Testament teachings on forced migrants will echo the Old Testament experience of forced migration. The New Testament will emphasize the Old Testament's idea of the image of God and the theology of all as creatures of the one God and as brothers and sisters in the same family.

3.1.2- The New Testament Teachings on Border Crossings and Refugees

I will briefly analyze Jesus' attitude toward aliens in the New Testament and I will draw from it some ethical principles for Christian attitude toward refugees. I will also try to understand how the New Testament dealt with national borders and what constitutes the right way for Christians today to relate to the countries of which they are citizens.

3.1.2.1- Jesus' experience of border Crossings and of being a refugee

We do not know much about Jesus' experience of being a refugee. We only know from the Gospel of Matthew that shortly after his birth, the child Jesus' parents had to flee from Bethlehem to Egypt in order to escape from Herod the Great who wanted to kill

Jesus¹¹⁹. Nevertheless, if we do not know much about the asylum of Jesus and his parents in Egypt, we know much more about how Jesus dealt with outsiders. Jesus' attitude toward non-Jews was full of respect and compassion. For instance, Samaritans were considered by Jews to be religious outsiders, and even enemies.¹²⁰ Jesus transcended this hostility and dealt with Samaritans in the same way as he did with Jews. Furthermore, it happened that Jesus presented Samaritans as models. Such is the case in the parable of the Good Samaritan.¹²¹ It is also the case in the parable of the ten lepers who, after they had been cured, only one of them (the one who was a Samaritan) came back to thank Jesus.¹²² As Carroll explains,

Jesus transcends the longstanding enmity between the Jews and Samaritans. He accepted the "other", and they accept him. In all of this, Jesus never ceases to be a Jew. Yet, he is able to integrate his cultural core with other transcendent commitments and gracious attitudes that moves him beyond the closed society of his peers.¹²³

That is why Jesus' attitude toward Samaritans and other outsiders is relevant to refugee issues. Being a refugee implies being an outsider. Cultural, religious, or ethnic differences that define the outsider are less important than the dignity of the outsider. Jesus' teachings appeal to the common humanity of natives and aliens. Saint Paul emphasizes this

¹¹⁹ See Mat. 2:23-15: "When they had departed, behold, the angel of the Lord appeared to Joseph in a dream and said, 'Rise, take the child and his mother, flee to Egypt, and stay there until I tell you. Herod is going to search for the child to destroy him.' Joseph rose and took the child and his mother by night and departed for Egypt. He stayed there until the death of Herod, that what the Lord had said through the prophet might be fulfilled, 'Out of Egypt I called my son'."

¹²⁰ The Gospel gives many accounts of the hostility between Jews and Samaritans. See for example Luke 9:51-56; Mark 3:17; John 4: 1-38. See also M. Daniel Carroll, *Christians at the Border: Immigration, the Church, and the Bible* (Grand Rapids, Michigan: Baker Academic, 2008), 116-123.

¹²¹ See Luke 10:30-37.

¹²² See Luke 17:16.

¹²³ M. Daniel Carroll, *Christians at the Border*, 120.

idea by saying to the Ephesian community that they were no longer foreigners and aliens, but fellow citizens with God's people and members of God's household.¹²⁴ The New Testament therefore claims the dignity of all humans regardless of their status as either aliens or citizens.

Furthermore, Jesus taught his disciples that God is the Father of all and not of Jews only. That is why, since the early Church, Christians promote the belief of a universal fraternity according to which all are brothers and sisters in Christ. For refugees, to be recognized and accepted as brothers and sisters is a very significant way to acknowledge their dignity, and therefore to give them protection since they have been recognized as belonging to the same human family. From this perspective, we can infer that Jesus' teachings and attitude toward aliens suggest that nothing should undermine refugee dignity. The fact of having crossed a border and being outside of one's homeland should not obscure the fundamental value of the refugee as human. This way of thinking challenges any rules and behaviors that threaten refugees in their humanity. In addition, Jesus' compassionate behavior toward the marginalized of any society, and particularly refugees and outsiders, corroborates the fact that nothing should undermine the dignity of anyone. Jesus identified himself with the refugee, the stranger who seeks asylum: "... For I was... a stranger and you welcomed me." (Mat. 25:35). This creates an imperative for Christians and all humankind to respond to refugees and aliens who are in need of protection. Thus, the New Testament

¹²⁴ Eph. 2:19.

deals with refugees in such ways that their dignity as humans is acknowledged and protected. There is also a claim for justice and compassion for refugees. In order to complete this brief survey about the New Testament and refugees, it is important that we answer the key question regarding how the New Testament deals with borders.

3.1.2.2- Borders and Land in the New Testament

The New Testament's conception of land is not obvious.¹²⁵ In fact, the term "land" is rare in the New Testament, a body of diverse literature that uses many other terms which imply land such as "temple", "Jerusalem", "Zion", "Kingdom of God/heaven", etc. The New Testament conceives land as a geo-political territory such as Galilee, Samaria, Judea, etc. It recognizes the authority of these political entities to control their borders. For example, Saint Luke reported that Jesus had to receive permission to cross a Samaritan village. For this reason, Jesus sent his disciples ahead of him, but they were denied permission to cross the village:

When the days for his being taken up were fulfilled, he resolutely determined to journey to Jerusalem, and he sent messengers ahead of him. On the way they entered a Samaritan village to prepare for his reception there, but they would not welcome him because the destination of his journey was Jerusalem. (Luke 9:51-53).

However, the conception of land as a geo-political territory is overwhelmed by spiritual, transcendental, and eschatological conceptions of land. Whereas the Old Testament

¹²⁵ For further analysis, see Bruce Walkte, "The New Testament Doctrine of Land," in *Border Crossings: Explorations of an Interdisciplinary Historian Festschrift for Irving Hexham*, ed., Ulrich van der Heyden and Andreas Feldtkeller (Stuttgart: Franz Steiner, 2008), 379-394.

was focused on the Promised Land and had tried to enact laws for people living within the borders of the Promised Land, the New Testament is focused on the body of Christ and life in Christ. The Promised Land is replaced by the Body of Christ. Likewise, the body of Christ in John's gospel replaces the earthly temple of Jerusalem.¹²⁶ That is why Bruce Waltke argues that "in both the gospel of John and in the apostolic teaching, the land is 'Christified'."¹²⁷ From the same perspective, land has an eschatological meaning in the sense that it can refer to a heavenly country whose foundations and architect is God as the Letter to the Hebrews stated.¹²⁸ Perhaps the doctrine of land in the New Testament is better expressed through the notion of "Kingdom of God" that occurs more than sixty times in the New Testament.¹²⁹ The kingdom of God is both an earthly and heavenly kingdom. Although it does not refer to a geo-political entity, it is a reality that has been inaugurated by Jesus' preaching in Galilee;¹³⁰ it transcends territorial and cultural boundaries. It is also a spiritual space that includes universal space and time because it is a "yet-and-not-yet-kingdom" which will be fully realized in heaven at the end of ages.

This understanding of land influences the Christian way of inhabiting the earth and of relating to borders. Christians live in civic entities called countries and they are supposed to

¹²⁶ John 2:19-21: "Jesus answered and said to them, 'Destroy this temple and in three days I will raise it up.' The Jews said, 'This temple has been under construction for forty-six years, and you will raise it up in three days?' But he was speaking about the temple of his body."

¹²⁷ Bruce Waltke, "The New Testament Doctrine of Land," 388.

¹²⁸ Heb. 11:9-10: "By faith he sojourned in the promised land as in a foreign country, dwelling in tents with Isaac and Jacob, heirs of the same promise; for he was looking forward to the city with foundations, whose architect and maker is God."

¹²⁹ See James K. Hoffmeier, *The Immigration Crisis*, 136-137.

¹³⁰ See Mark 1:14-15.

be fully engaged in the search for the common good of their society. Nevertheless, they believe that they have no earthly homeland because the latter prefigured the final destination that is the heavenly city of God. That is why Christians can consider themselves to be aliens in this world, because their citizenship of the kingdom of God is prior to their citizenship in the countries to which they belong. This changes the way of dealing with territorial and non-geographical borders because borders become relativized, no longer absolute. From now on, what is fundamental is not national citizenship, but membership in the kingdom of God which concerns every human being.

There is no claim here for a world without borders. Borders are still important. However, the claim here is, on one hand, that there are values which are more essential than borders; and, on the other hand, that borders should aim at the protection of all humans. That is why borders should not be considered as barriers that prevent people from encountering each other; borders are frontiers that allow communication between people while preserving their identities. Jesus himself crossed many borders; and Christianity itself is about crossing borders. As Virgilio Elizondo wrote,

From its very inception, Christianity is about crossing apparently impenetrable borders for the sake of a new unity – the unity of a new source of family belonging. The eternal Son of God crossed the border between the eternal and the temporal, between the divine and the human to become Jesus of Nazareth. As the New Testament affirms, he emptied himself of his divinity to take on the form of man (Phil.2:6), or even stronger, the eternal word which was God became flesh and dwelt among us. And the very geographical-historical place where this took place was in Galilee, cross-roads of the peoples were considered impure and

inferior precisely because here the boundaries of identity and belonging were constantly crossed if for no other reason than for basic survival.¹³¹

The important question that emerges from this biblical analysis is this: What ethical insights can we draw from this brief biblical analysis for the international refugee protection regime?

3.2- Christian Universalism and the International Refugee Protection Regime

The ethical insights that emerged from the biblical experience of refugees and borders crossings can be summarized in what we can name “Christian Universalism”. This universalism challenges the current international refugee protection regime for the reason that this universalism implies some ethical principles such as the membership of all humans in one human family; the universal common good; the universal destination of earthly wealth; the demands of solidarity, etc. Let us briefly explain to what extent these principles challenge the current refugee protection regime.

¹³¹ Virgilio Elizondo, “Transformation of Borders. Border Separation or a New Identity ?” In *Negotiating Borders: Theological Explorations in the Global Era. Essays in Honour of Prof. Felix Wilfred*, ed., Patrick Gnanapragasam and Elisabeth Schüssler Florenza (Delhi: ISPCK, 2008), 25.

3.2.1-The international community as one human family and refugee issues

Of great significance here is that the Roman Catholic Church's social teachings deal with refugees always in relation to the entire human family. Accordingly, the way to honor refugee dignity is to locate it always within the human family. Refugees are entirely part of the human family; and they have to be treated as such, since their dignity as humans stands above all things.¹³² The originality of the Catholic Church's teachings on refugees resides in the fact that the starting point of its discourse is not the state and border protection; rather, it is the human person and her dignity. This perspective brings new insight into refugee issues because it regards the international community not as a community of nation-states, but rather as a community of peoples who belong to one human family. From this standpoint, membership in the human family is more important than membership in a specific country as John XXIII stated: "The fact that one is a citizen of a particular State does not detract in any way from his membership in the human family as a whole, nor from his citizenship in the world community."¹³³

Conceiving the international community as based on peoples means that the most important value that nation-states should pursue within and beyond their borders is respect for the dignity of humans. Nation-states-based international community often fails to

¹³² Second Vatican Council, "Gaudium et Spes," no.26.

¹³³ John XXIII, Encyclical Letter *Pacem in Terris*, 1963, no.25.

reconcile national and international interests. That is why persons-based international community is more likely to allow wide agreement in the sense that the dignity of persons is accepted by almost all people in the world. This view of the international community is human rights-based. It is therefore more effective in addressing refugee issues. Thus, this persons-based view of international community places the individual person at the center of world politics. Commenting on the importance of human dignity in Roman Catholic Church social teachings, David Hollenbach argues that:

The worth of human beings, in other words, is the standard by which political and legal institutions are to be evaluated. Politics and law are to serve persons. Persons do not exist to serve the political and legal order. The human person is never simply of functional or utilitarian value. Human beings possess a transcendental worth not hypothetically subordinate to any other end.¹³⁴

Hence, conceiving the international community as one human family offers many opportunities to justify great efforts to protect human beings whose dignity is considered to be the fundamental value in national and international politics. The main purpose of international politics is to recognize and protect human dignity everywhere. This understanding of international politics transforms the international refugee protection regime in the sense that the latter shifts from a state-power-based perspective to a human-rights-based perspective that “softens national borders” when the dignity of persons is at stake, as it is for refugees.

¹³⁴ David Hollenbach, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* (New York: Paulist Press, 1979), 43-44.

However, the problem of boundaries remains. In the actual states-based international refugee protection regime, national territorial boundaries constitute an important issue in protecting refugees and internally displaced people; while in a person-based international refugee protection regime as suggested by the Catholic social teachings, cultural, ethnic or religious boundaries remain an important issue. For instance, the opposition between the Western cultural tradition and the Muslim Arab cultural tradition, which could escalate in the so-called fight against terrorism, corroborates the thesis of Samuel P. Huntington who states that “the great divisions among humankind and the dominating source of conflict will be cultural... The principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will be the battle lines of the future.”¹³⁵ In a way parallel to Huntington, Dominique Moisi suggests a clash of emotions.¹³⁶

The threat against this view of the international community as one human family comes from the fact that people of different religious or cultural traditions do not have the same conception of human beings and their relation to others, or to states. Because of this diversity, even the definition of human rights becomes problematic. Yet, the threat to the

¹³⁵ Samuel P. Huntington, “The Clash of Civilizations?,” in *Foreign Affairs* 72, no. 3 (Summer 1993): 22. For Huntington, a civilization is a cultural entity like villages, regions, ethnic groups, nationalities, religious groups, etc. Entities have distinct cultures at different levels of cultural heterogeneity.

¹³⁶ Dominique Moisi, using an argument different from that of Huntington but which dovetails with it, emphasizes emotions. He states that the world today faces not only a clash of civilizations but a clash of emotions as well. The West displays (and is divided by) a culture of fear, while the Arab and Muslim worlds are trapped in a culture of humiliation, and much of Asia displays a culture of hope. Like Huntington, Moisi considers these different cultures of fear, humiliation, or hope, as a threat to peace and to human rights. See Dominique Moisi, “The Clash of Emotions,” *Foreign Affairs* 86, no. 1 (January/February 2007).

realization of an international community as one family where refugees can feel at home is not related immediately to the diversity of cultures and religions; it is related nonetheless to the boundaries that cultures and religions raise to define and protect their identities. In fact, to define one's identity means to seek what makes one different from others. In other words, to define an identity means to determine what one is not. This establishes boundaries of identity. When these identity-shaping differences are considered to be more fundamental than the dignity of the human person, they become dangerous and destructive for an understanding of the international community as a human family where refugees can expect better treatment. It is an ideal to consider that "beyond differences of language, race, ethnicity, gender, culture, and nation, we are one human family," as claimed the U.S. Bishops.¹³⁷ However, this ideal is a challenge for the actual international refugee protection regime.

The Roman Catholic Church's social teachings regarding universalism are not unique; this universalism echoes secular cosmopolitan views of world community and politics. Cosmopolitans value individuals over sovereign states. As Appiah states: "They believe in human dignity across the nations, and they live their creed."¹³⁸ Cosmopolitanism suggests that we take seriously human differences and that we posit the universality across

¹³⁷ United States National Catholic Conference of Bishops, "Called to Global Solidarity: International Challenges for U.S. Parishes," November 12, 1997; available from: <http://www.usccb.org/sdwp/international/globalsolidarity.shtml>; accessed on 10/24/2009.

¹³⁸ K. A. Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York: W.W. Norton & Company, 2006), 137.

differences. Cosmopolitanism claims that all people are bound together by their humanity and by common values. These common values are not inferred by a positivist deduction, but they emerge from interaction among different people. This interaction makes cosmopolitanism tolerant but not relativist. There are shared values which arise in a consensus at the process of interaction,¹³⁹ or through the process of what John Rawls calls “overlapping consensus”. Moreover, in Appiah’s perspective, cosmopolitanism is a universal trait of humankind in a world of strangers. Cosmopolitanism opens up an opportunity to bridge worlds and to work in the interest of human beings. Cosmopolitans consider themselves to be world citizens.¹⁴⁰ Thus, they refuse to give in to the temptations of the narrow nationalisms of the countries where they were born. Hence, cosmopolitanism¹⁴¹ and the Catholic Church’s social thought give a new perspective on refugee issues by interpreting the world as being one human family, and by developing the idea of world citizenship. Such a world is safer for refugees and IDPs whose dignity can be respected in countries where they are not citizens, but where their dignity as fellow humans is acknowledged. In such a world, territorial borders play a new role.

¹³⁹ Ibid., 66-67.

¹⁴⁰ Ibid., xv.

¹⁴¹ About the relation between Catholic social thought universalism and cosmopolitanism, it is important to note that Appiah quotes Saint Paul on the oneness of humanity: “There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for you are all one in Christ Jesus.” (Gal. 3:28). See also K.A. Appiah, *Cosmopolitanism*, xiv.

3.2.2-Borders transcended: The Universal Common Good and refugee issues

In addition to conceiving the world as one human family, the Roman Catholic Church's discourse on refugees is also grounded on the principle of the common good. According to the Second Vatican Council, "the common good... is the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily."¹⁴² The common good is not only the good for a specific country; rather it is the universal common good that concerns the entire human race¹⁴³. That is why Pope John XXIII exhorted Christians and non-Christians "to take an active part in public life, and to contribute towards the attainment of the common good of the entire human family as well as to that of their own country."¹⁴⁴

From the perspective of the universal common good, refugees and IDPs deserve the benefits associated with the solidarity of the international community; and especially when their lives are at stake. As part of the human family, refugees should be attended to by providing them with asylum and material means so that they may lead a dignified life as human beings. The demand of solidarity toward refugees is also grounded in the principle of "the universal destination of goods" according to which "God destined the earth and all it contains for all men and all peoples so that all created things would be shared fairly by all

¹⁴² Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes*, no.26.

¹⁴³ *Ibid.*, no.26.

¹⁴⁴ John XXIII, Encyclical Letter *Pacem in Terris*, 1963, no.146.

mankind under the guidance of justice tempered by charity.”¹⁴⁵ Since the earth belongs to humanity in common, there is a demand of solidarity for all within and beyond the borders of countries. Thus, the responsibility to protect refugees and other forced migrants is a shared responsibility for all humanity.¹⁴⁶

Therefore, the principle of the universal common good and its implications such as the universal destination of goods transcend borders. That is, national borders are not meaningful by themselves; their meaning should be drawn from moral principles such as the universal common good and the human family. These moral principles that transcend national borders do not obviate the utility of territorial borders. Borders are still important. Nevertheless, they are reconceptualized as an assignment of responsibility in the seeking of the good for a particular citizenry. However, this particular good should not stand in opposition to the universal common good. The duty of governments within state borders consists in promoting both the national common good and the good of all humanity as Pope John XXIII stated in *Pacem in Terris*:

We must remember that, of its very nature, civil authority exists, not to confine its people within the boundaries of their nation, but rather to protect, above all else the common good of that particular civil society, which certainly cannot be divorced from the common good of the entire human family.¹⁴⁷

¹⁴⁵ Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes*, no.69.

¹⁴⁶ See John II, Encyclical Letter *Centesimus Annus*, 1991, no.51.

¹⁴⁷ John XXIII, Encyclical Letter *Pacem in Terris*, 1963, no.98.

It is not an easy task to hold together the universal common good and the particular good of individual nation-states from the perspective of refugees and IDPs protection. In fact, the receiving countries emphasize control of borders while the sending countries, Churches, and other organizations emphasize human rights and the universal common good. Moreover, on one hand the international community elaborates the right to leave one's country, but not the right to enter another country; on the other hand the Roman Catholic Church's social discourse claims the right for forced-migrants to leave their countries; and the receiving country has the duty to protect forced migrants by providing them asylum. Obviously, there are many tensions between Christian universalism and the ways that states handle refugee issues. In a world of states, the social teaching of the Roman Catholic Church will remain merely utopian if we do not find ways to reconcile this universalism with the reality of what is going on regarding the practice of refugees and IDPs protection today. I suggest that the principle of subsidiarity and Christian realism – as an ethical approach – can help to bring about the realization of Christian universalism so that it may appear less utopian.

3.2.3- Christian realism and the principle of subsidiarity in refugee issues

Christian universalism that favors the international refugee protection regime is not utopian. It is a universalism grounded in realism. However, it is not grounded in a desperate realism that merely acknowledges the socio-political realities of the plight of refugees and IDPs; rather, it is an optimistic realism that acknowledges the socio-political situation of

refugees and IDPs and dares to imagine progress. Christian realism, as developed by Reinhold Niebuhr and Eric Patterson,¹⁴⁸ seriously takes into account the presence of sin in the world, but refuses to consider the world evil since God is still present in the world. Christian realism does not presume that the earth will become heaven, but thinks that the earth should have heaven as its horizon, that is to say, that life on earth should aim at the beatific life in heaven.

From the perspective of Christian universalism informed by realism, national borders are transcended; but they still are relevant and they serve to define territories where governments can plan and try to achieve the national common good in tandem with the pursuit of the universal common good. The social teachings of the Roman Catholic Church do not strive for a world without borders; rather, they value borders as an effective space for promoting the common good. That is why the Second Vatican Council¹⁴⁹ recognized the right of governments, in a particular context, to regulate the flow of migration.¹⁵⁰ However, there is an imperative for governments to welcome forced migrants whose lives are threatened. Drew Christiansen argues that:

¹⁴⁸ See Eric Patterson, ed., *Christianity and Power Politics Today: Christian Realism and Contemporary Political Dilemmas* (New York: Palgrave Macmillan, 2008), 180.

¹⁴⁹ Second Vatican Ecumenical Council, *Gaudium et Spes*, no.87. See also the Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Erga migrantes caritas Christi* (The love of Christ towards migrants), (Vatican City: Vatican Editions, 2004), no.21.

¹⁵⁰ On states' rights to control the movement of migrants, see Drew Christiansen, "Sacrament of Unity: Ethical Issues in Pastoral Care of Migrants and Refugees," in Office of Pastoral Care of Migrants and Refugees, Bishops' Committee on Migration, National Conference of Catholic Bishops, *Today's Immigrants and Refugees: A Christian Understanding* (Washington, DC: United States Catholic Conference, Inc., 1988), 88-89.

Where governments either prey on their own people or fail to protect their rights, borders ought not have any moral weight. Where governments are prepared to shoulder their burden for the universal common good through an adequate refugee regime and where borders can help them promote the common good domestically, there the control of borders continues to have some relevance.¹⁵¹

Yet, the notion of common good does not yield obvious conclusions and it is not easily malleable as a norm which should guide decisions on refugee issues.¹⁵² Nevertheless, the notion of common good engages different parties in a useful dialogue and discernment regarding the good for all. This dialogue is worth pursuing in the building up of society, in general, and in finding solution to social issues such as refugee plights.

Informed by realism, the universalism of the social teachings of the Roman Catholic Church does not override the responsibility of local authorities. Even though the plight of refugees and IDPs should be a concern for the entire human family, the Roman Catholic Church states that they first come under the countries where refugees or IDPs originate. According to the principle of subsidiarity, it is the duty of the country of origin of refugees and IDPs to resolve the crisis that drove out the people. The international community ought to compel this country to find solutions to the unmet needs. In case the country of origin of refugees and IDPs is not willing to address the causes that drive people out of their homeland, then the principle of subsidiarity allows the international community to engage in

¹⁵¹ Drew Christiansen, "Movement, Asylum, Borders: Christian Perspectives," *International Migration Review* 30, no. 1 (Special Issue: Ethics, Migration, and Global Stewardship), (Spring 1996): 16.

¹⁵² For more analysis regarding difficulties in applying the norm of common good in migration issues, read Dana W. Wilbanks, "Response to Christiansen and Plaut," *International Migration Review* 30, no. 1 (Special Issue: Ethics, Migration, and Global Stewardship), (Spring 1996): 27-36.

humanitarian intervention¹⁵³ to resolve the crisis and to save lives even against the will of the “failed state”: “Thus, a failure of national governments to protect the rights of persons results in the need and the duty of outside authorities taking action on behalf of victimized population”¹⁵⁴. As John Paul II stated in his 1993 address to the diplomatic corps:

Once the possibilities afforded by diplomatic negotiations and the procedures provided for by international agreements and organizations have been put into effect, and that [sic], nevertheless, populations are succumbing to the attacks of an unjust aggressor, states no longer have a "right to indifference." It seems clear that their duty is to disarm this aggressor, if all other means have proved ineffective. The principles of the sovereignty of states and of non-interference in their internal affairs — which retain all their value — cannot constitute a screen behind which torture and murder may be carried out.¹⁵⁵

Here the Roman Catholic Church’s position on the infringement of national sovereignty in order to protect people against governments is in coherence with the principle of “The Responsibility to Protect” which has been already discussed in the previous chapter¹⁵⁶.

¹⁵³ For the conditions of undertaking a humanitarian intervention from the perspective of the Roman Catholic Church social discourse, read the pastoral letter of the U.S. National Conference of Catholic Bishops, *The Harvest of Justice Is Sown in Peace: Pastoral Reflections on the Tenth Anniversary of the Challenge of Peace* (Washington, DC: USCC, 1993).

¹⁵⁴ See also Drew Christiansen, “Movement, Asylum, Borders: Christian Perspectives,” 11.

¹⁵⁵ John Paul II, “Address to the Diplomatic Corps,” January 16, 1993; see *Origins* 22, no.34 (February 4, 1993).

¹⁵⁶ See Chapter 2 (section 2.3.2-The Responsibility to Protect IDPs). About national sovereignty and subsidiarity in the international community John Paul II states: “But while the ‘rights of the nation’ express the vital requirements of ‘particularity’, it is no less important to emphasize the requirements of universality, expressed through a clear awareness of the duties which nations have vis-a-vis other nations and humanity as a whole. Foremost among these duties is certainly that of living in a spirit of peace, respect and solidarity with other nations. Thus the exercise of the rights of nations, balanced by the acknowledgment and the practice of duties, promotes a fruitful ‘exchange of gifts’, which strengthens the unity of all mankind.” (Pope John Paul II, Address to the Fiftieth General Assembly of the United Nations, 5 October 1995. Available from: <http://www.un.org/News/Papal/speech.txt>. Accessed on 10/12/2009).

3.3- Conclusion

In conclusion, let us state that the biblical experience of being a refugee or of providing forced migrants with asylum shapes the Roman Catholic Church's discourse on refugees and IDPs issues. However, this biblical experience is not universal in the sense that not all the other religions and peoples in the world have had the same experience as the people of Israel that experienced forced migration and that has developed a specific discourse on refugees. That is why the Judaeo-Christian discourse on refugees can contribute more about refugee issues in the international debate on forced migration. This discourse is grounded in refugees' experience, since being a refugee has been a fundamental experience both for Jews and for Christians. However, it is important to realize that the Bible does not provide any specific solution for the plights of refugees and IDPs today. Moreover, the biblical context is different from the contemporary world context where refugee issues have new dimensions. That is why one should be very careful in using examples drawn from the Bible to suggest solutions for forced migration today. Nevertheless, the biblical experience of refugees provides many insights and principles that inspire the social discourse of the Roman Catholic Church on refugees and IDPs issues. I have particularly underscored the following two insights and principles:

- 1) The call for justice toward refugees: Both Old and New Testaments imply a strong demand for justice and compassion for aliens in general, and for refugees in particular.

Therefore, the international refugee protection regime should consider refugee problems as being a matter of justice rather than as being a matter of humanitarian relief. Yet, refugees and IDPs need relief, but the solutions to their plights are beyond charity and strongly involve commitment for justice toward forced migrants.

2) Land and state reconceptualized: From the ethical perspective grounded in the biblical experience, the land is the land of the Lord, that is, the world belongs to God and humans are stewards of the world. This changes the way that Christians are supposed to be related to their country. They are citizens of their country; but they are also citizens of the world. As a result, they are supposed to be ready to share the burden and suffering of people of other countries in the world, and especially the suffering for those whose lives are at stake because of war or other threats.

Thus, because the land is the land of the Lord, the world's wealth has a universal destination. The common good is not only the good of an individual nation-state; rather it is the good of all humanity. Accordingly, solidarity towards refugees and other forced migrants is a shared responsibility for all. This should be the task of advocating for refugees and IDPs from the perspective of the social teachings of the Catholic Church.

CHAPTER 4: ADVOCATING FOR REFUGEES AND IDPS IN A WORLD OF INCREASINGLY CLOSED BORDERS

4.0- Introduction

Contrary to a commonly accepted opinion that assisting refugees is a work of charity, this chapter on advocacy will state that refugees and IDPs issues are more about politics and justice than about charity and humanitarianism. That is why this chapter will focus on the actions of agencies that speak up for refugees to demand justice on their behalf through advocacy activities. In situations of internal displacement and of refugee plight, advocacy is an essential tool to influence decision makers and stakeholders to adopt practices and policies that ensure the protection of people on the move. Advocacy is, therefore, a central building block of most comprehensive protection strategies.

However, beyond the concept of advocacy there is a variety of approaches and goals which differ from one another, and sometime may be in opposition. There is also a diversity of actors engaged in advocating on behalf of forced displaced people. From the perspective of this thesis on “dignity across borders”, I will strive to assess advocacy practices through the analysis of advocacy networks, their identity, the goals that they pursue, and their ways of working. In conclusion, I will propose the recognition of the human dignity of refugees

and of IDPs as an entry point for advocacy in order to ensure for them the most comprehensive protection in light of the Roman Catholic Church's social teaching.

4.1- Advocacy networks for refugees and IDPs

I will below identify some actors involved in advocacy for refugees and IDPs, and the strategies that they bring into play in their advocacy. This section will describe how advocacy networks for refugees and IDPs work, and how they can impact the protection of refugees and IDPs.

4.1.1- Advocacy Activists and their Scope of Action

There are a great many actors involved in advocating for refugees and IDPs. Among them, the UNHCR is doing a fairly good job in advocating for their protection. Since the UNHCR is the UN agency mandated to coordinate the Organization's efforts at protecting displaced people, advocacy is a key element in UNHCR activities. Usually, the main objective of UNHCR's advocacy is to reinforce the responsibility of State actors and relevant non-State actors in their efforts to protect refugees, asylum seekers, internally displaced people and stateless people. In its advocacy, the UNHCR refers to states and non-state actors as "duty-bearers," because of their obligation to respect, protect and fulfill the rights of those whom they see as "right-holders." However, the UNHCR's capability of

advocacy is often undermined by the politicized context in which it operates and by the fact that it relies on states for its funding.¹⁵⁷ The UNHCR advocates in cooperation with other UN agencies,¹⁵⁸ and other partners.

Among advocacy actors for displaced people, there are also many NGOs, international organizations, local social movements, universities and intellectual research organizations, foundations, media, human rights organizations, churches, etc. These actors constitute the global civil society whose role is important in shaping international and domestic politics in matters of migration and foreign policy. Their contribution in advocacy for refugees and IDPs is significantly increasing in this area of contemporary international politics where states are no longer the only actors. Often, these non- state actors are likely to conduct advocacy efforts in more efficient ways than the UNHCR since they have fewer constraints from states in regard to their funding and programs.

Nonetheless, this variety of intergovernmental organizations and non-state actors does not always facilitate advocating for refugees and IDPs. This very diversity can result in

¹⁵⁷ Gil Loescher remarks that “one analyst has noted that the better the High Commissioner performs the agency’s protection function, the more seriously effective oversight of relief is jeopardized, since such action risks alienating the governments on which UNHCR depends for its budget and its permission to operate.” See Gil Loescher, *Beyond Charity. International Cooperation and the Global Refugee Crisis* (New York / Oxford: Oxford University Press, 1993), 138.

¹⁵⁸ Especially the World Food Programme (WFP); the World Health Organization (WHO); the Office for the Coordination of Humanitarian Affairs (OCHA); the United Nations High Commissioner for Human Rights, Office of the (OHCHR); etc.

opposition between advocacy actors. As a lobbyist reported: “You have to figure nearly every issue has an opponent. So, you’re advocating one thing, another person is advocating another thing.”¹⁵⁹ Whereas some organizations advocate for opened-borders for refugees, others are advocating for closed-borders in order to keep refugees out while being willing to provide them with relief on the condition that they stay or return to their country of citizenship. Forced-migration or migrations in general, constitute a delicate question which involves emotions and contradictory ideologies even among people of good will. How do advocacy activists operate?

4.1.2- Advocacy Strategies

Advocacy activists for forced displaced people operate differently in accordance with their scale of values, ideology, or spirituality. They, therefore, bring into play heterogeneity of strategies. Nevertheless, whatever methods of advocacy are applied, activists usually resort to some basic strategies which include networking, information gathering, campaigns, and lobbying. Given that refugee issues arise in very complex sociopolitical situations, networking is, therefore, important, for it is difficult for a single organization or activist to impact the context for a better protection of refugees and IDPs. That is why M. E. Keck and K. Sikkink state that: “To influence discourse, procedures, and

¹⁵⁹ Woodstock Theological Center, Ethics in Public Policy Program, *The Ethics of Lobbying: Organized Interests, Political Power, and the Common Good* (Washington, D.C.: Georgetown University Press, 2002), 23.

policy, activists may engage and become part of larger policy communities that group actors working on an issue from a variety of institutional and value perspectives.”¹⁶⁰

Refugee advocacy networks are communicative structures that help to gather information and in order to put pressure on states or non-state actors which are responsible for the refugee crisis or which can improve the situation of refugees and IDPs. For example, the *Jesuit Refugee Service* engaged in Columbia advocates against the use of child soldiers in conflicts which drive out many people. In order to increase the chance of success of its advocacy, this organization joined a coalition of other organizations which are not always working explicitly on refugee issues but which are in opposition to the use of child soldiers. This coalition, known as *The Spanish Coalition against the Use of Child Soldiers*, urged “the [Spanish] government, in its role as Presidency of the Council of the European Union, to put pressure on the Colombian government and illegally armed groups so as to implement the UN recommendations regarding the involvement of children in armed conflicts.”¹⁶¹ Therefore, advocacy for refugees and IDPs is very much a question of building coalitions on specific issues related to refugees and IDPs. Refugee advocacy networks empower members by gathering and sharing information.

At the core of the relationship [of advocacy network] is information exchange. What is novel in these networks, wrote Keck and Sikkink, is the ability of nontraditional international actors to mobilize information strategically to help create new issues and categories to

¹⁶⁰ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders* (Ithaca and London: Cornell University Press, 1998), 3.

¹⁶¹ See Jesuit Refugee Service, available from <http://www.jrs.net/news/index.php?lang=en&sid=5258>; Internet; accessed on 02/17/2010.

persuade, pressure, and gain leverage over much more powerful organizations and governments. Activists in networks try not only to influence policy outcomes, but to transform the terms and nature of the debate. They are not always successful in their efforts, but they are increasingly relevant players in policy debates.¹⁶²

For instance, most of the information on the crisis of forced displaced people of Darfur in Sudan comes from NGOs and advocacy networks. By creating or influencing public opinion on a particular refugee issue, these advocacy networks develop a “soft power” which can become compelling in policy making or in addressing refugee crises.

Sometimes, it is not enough to broadcast strategic information about forced displaced people. Advocacy network activist have to undertake fierce campaigns which involve legal procedures, denunciation of rights violations, or suggest solutions. Campaigns are organized procedures to promote causes: “Activists identify a problem, specify a cause, and propose a solution, all with an eye toward producing procedural, substantive, and normative change in their area of concern.”¹⁶³ Usually, as a method of advocacy, a campaign includes lobbying¹⁶⁴ to gain the trust of major actors who have the power of decision making on a precise issue. Sometimes, a campaign can be seen as an aggressive way of advocating. That is why some organizations like the UNHCR are reserved in their use of this method of “hard

¹⁶² Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders*, 2.

¹⁶³ *Ibid.*, 8.

¹⁶⁴ About lobbying as a tool of public advocacy and about lobbyists work in the USA, see the study published by Woodstock Theological Center, Ethics in Public Policy Program, *The Ethics of Lobbying: Organized Interests, Political Power, and the Common Good* (Washington, D.C.: Georgetown University Press, 2002).

advocacy.”¹⁶⁵ According to the UNHCR, “*soft* advocacy activities, such as awareness-raising, training activities and quiet diplomacy, are usually the preferred option to persuade stakeholders to introduce change or expand the use of good practices for the protection of IDPs [and refugees].”¹⁶⁶ Whatever strategies are employed, the success of an advocacy effort relies on its capability to put pressure on targeted actors who have the power to end or alleviate a given refugee crisis.

4.2- Advocacy activists should keep in mind that there is no typical response to refugee and IDP issues

Even though the above section showed how advocacy networks contribute to solve forced migration issues, it is important, paradoxically, to acknowledge that there is no typical response to the issues of refugees and IDPs. This is the lesson learned from the ground up by many humanitarian organizations and practitioners who have been forced to

¹⁶⁵ According to the UNHCR, “*Hard* advocacy, consisting of stronger persuasion methods such as public reports, press releases, personal testimonies and denunciation letters, even if confidential, should be used when a stronger approach is required. It can be effective in denouncing corruption, discrimination or harmful treatment of IDPs and the other affected populations. The use of hard advocacy should be determined on a case-by-case basis. It could disrupt dialogue with key stakeholders, prompt a denial of humanitarian access to vital areas, or heighten the risks to the affected populations or humanitarian staff. The decision should thus be carefully weighed against the urgency and seriousness of the protection concerns. If it is determined that hard advocacy should be used, do so in a timely manner, before the situation becomes too grave or the damage done is irreparable.” See UNHCR, *Handbook for the Protection of Internally Displaced Persons: Part IV: Activities and Tools for Protection. Guidance Notes* [book on-line] (Geneva: UNHCR, December 1st, 2007), 105; available from: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4794a3012&query=ACTIVITIES%20AND%20TOOLS%20FOR%20PROTECTION>; Internet; accessed 02/18/2010.

¹⁶⁶ Ibid.

acknowledge the complexity and the uniqueness of each refugee plight and of each refugee as a person. For example, in assessing its commitment with refugees and IDPs, the *Jesuit Refugee Service* (JRS) remarked:

Since JRS was set up, the profile and needs of the world's displaced people have undergone several changes. There is no typical refugee, just as there is no classic, formulated response. JRS workers implement a vast range of services depending on the needs of those they serve and on prevalent circumstances.¹⁶⁷

As a result, there should be no shortcut in dealing with situations such as plights of refugees and IDPs where human dignity is at stake. Although the causes of refugee plights are known, the ways to address them differ from one situation to another. The reason for this is that each refugee or group of refugees is often, if not always, particular and in need of a specific response. That is why, operating in the ever-changing world of forced migration, people and organizations who are involved in advocacies and reliefs are called to be forever flexible and open to new challenges and to new responses. That is why advocacy efforts on behalf of refugees and IDPs should avoid “top-down solutions”. Thus, it is more about doing things *with* refugees and IDPs than doing things *for* them. They should participate in any decision that concerns them. That is to say, any action for refugees and IDPs should be preceded by a dialogue that takes into account their opinion and desire. As Mark Raper, a former Director of JRS, wrote:

Our biggest temptation, on seeing the distress of the refugees in Karagwe or Fungnido Camp or in a city like Johannesburg or Nairobi, is to begin projects, to give material things, to decide *en masse* what the refugees need. They often arrive in exile without shoes, with only

¹⁶⁷ JRS, *God in Exile. Towards a Shared Spirituality with Refugees* (Rome: Jesuit Refugee Service, 2005), 9.

one torn shirt, hungry, without a clear plan. But they did not undergo this experience in order to get a shirt or shoes. Their human experience is to be respected.¹⁶⁸

That is why the task of any advocacy for refugees and IDPs begins by listening carefully to their needs before undertaking any action¹⁶⁹. In other words, advocacy should be undertaken from the interests of refugees and IDPs and not from the perspective of the “experts” of humanitarian organizations. I agree with Peter Van Arsdale who argues that it is the “felt needs”¹⁷⁰ of refugees and IDPs that should determine the hierarchy of problems to be addressed and the assistance protocol to be implemented, and not the expressed need of service personnel, agencies, donors, or policy makers on behalf of the beneficiaries.¹⁷¹

However, acting from the felt needs of refugees does not undermine the importance of experts and humanitarian practitioners. Drawing from my experience of attending to the needs of refugees in Kenya, I can state that refugees don't always have a clear idea of their needs and of what can be objectively done for them. In fact, many refugees are psychologically unstable because of the trauma of war and violence that they have witnessed and suffered. That is why their “felt needs” need to be discussed by experts and

¹⁶⁸ Jesuit Refugee Service, *Everybody's Challenge. Essential Documents of Jesuit Refugee Service. 1980-2000* (Rome: Jesuit Refugee Service, 2000), 87.

¹⁶⁹ See B.S. Chimni, “Reforming the International Refugee Regime: A Dialogic Model,” *Journal of Refugee Studies* 14, no.2 (2001): 151-168. See also Peter Nyers, *Rethinking Refugees: Beyond States of Emergency* (New York, London: Routledge, 2006), 126-131.

¹⁷⁰ According to Van Arsdale, “felt needs are those needs emically derived, which from the beneficiaries' viewpoint are deemed essential to their welfare, and have not been modified by *experts*.” See Peter Van Arsdale, *Forced to Flee: Human Rights and Human Wrongs in Refugee Homelands* (Lanham, Boulder, New York: Lexington Books, 2006), 187.

¹⁷¹ *Ibid.*

practitioners.¹⁷² The point of my argument is that advocacies for forced displaced people should be grounded in a bottom-up approach which emanates from the viewpoint of refugees themselves and not in a top-down approach where refugees' voices are not always heard and taken into account.¹⁷³ Since there is no typical response that works for refugees in any given circumstance, the best way to find a solution for each particular refugee plight is to look for a consensus that takes into account both the opinion of refugees and the opinion of experts and humanitarian practitioners. From this stance, what constitutes the proper aims of advocacies on behalf of refugees and IDPs?

4.3- The aim of Advocating for Refugees and IDPs from the perspective of their human dignity

My argument will be that any advocacy for refugees and IDPs should aim at ensuring their human dignity. What does it mean to ensure human dignity to refugees and IDPs? As I have already explained,¹⁷⁴ human dignity is a broad notion that expresses human worthiness

¹⁷² See JRS, *Everybody's Challenge*, 88.

¹⁷³ The bottom-up approach is implemented by many organizations including UNHCR, JRS, Oxfam. According to Peter Nyers, "Oxfam (GB), for example, has recently made it a priority to listen to the forcibly displaced people to whom they provide aid and development assistance. Accordingly, the organization commissioned a report, entitled 'Listening to the Displaced,' with the aim of developing a methodology of how to listen to displaced people in conflict situations. The ostensible purpose of this exercise is to "empower" people living in crisis situations to have input into formulating the solution to their plight. This would allow Oxfam (GB) to respond to humanitarian emergencies in a way that avoids 'top-down solutions that do not always take the opinion of the displaced refugees into account'." See Peter Nyers, *Forced to Flee*, 127. See also the bottom-up approach implemented by Jesuit Refugee Service, in JRS, *Everybody's Challenge*, 86-88.

¹⁷⁴ See the definition of the notion of "human dignity" in chapter 1 (section 1.3- Research object and main concepts).

as a fundamental value derived from the fact that the human person is created in the image of God and born of human beings. I have also explained how it can be risky to reduce human dignity to a specific quality such as reason, freedom, etc. From this point of view, advocating for refugees and IDPs will consist in undertaking everything that contributes to help them to lead a dignified life. Since there is no typical response to refugee issues, advocacy activists should strive through discernment and listening to forced migrants in order to find what can be the right response and what means lead to a dignified life in a particular refugee plight.

As a result, advocacies should not be limited to providing refugees and IDPs with “minimum standards” which refer to the basic necessities that are required for the survival of a person. These basic necessities of life include physical safety, food, shelter and basic sanitary and health facilities.¹⁷⁵ Yet, ensuring basic needs is very important and it constitutes the principal goal of many humanitarian organizations that work with refugees and IDPs. However, as Judy Mayotte states rightfully: “From the first moment a refugee crosses a border, he or she needs food and shelter – this is relief. But from that moment, each refugee

¹⁷⁵ An official report of the UNHCR acknowledges that “the term ‘minimum standards’ does not have an official UNHCR definition; however, it is usually taken to mean the basic protection and assistance standards laid out in the Handbook for Emergencies. These standards are absolute and, if not met, will seriously affect a person’s health and could lead to death.” See United Nation High Commissioner for Refugees, Evaluation and Policy Analysis Unit, *Minimum standards and essential needs in a protracted refugee situation: A review of the UNHCR programme in Kakuma, Kenya* (Geneva: UNHCR, EPAU/2000/05, November 2000), 3. See also the United Nation High Commissioner for Refugees, *Handbook of Emergencies* (Geneva: UNHCR, 2nd Edition, 2000), 14.

needs much more.”¹⁷⁶ Refugees and IDPs are not only mouths to feed or bodies to shelter. They did not undergo this experience in order to get a shirt, shoes, food, and health facilities, etc.¹⁷⁷ This is why advocacy activists should move quickly beyond the task of providing forced migrants with basic necessities. From this perspective, for example, the UNHCR conducted a study in Kenya according to which providing minimum *standards* should no longer be the goal of a given UNHCR intervention, and the organization should focus on essential *needs*. The difference between minimum standards and essential needs is that the former is static while the latter is dynamic and is well positioned to be responsive and adjustable to the needs of refugees and IDPs. As the study explained:

This report argues that when planning refugee operations, UNHCR should think in terms of essential *needs* rather than minimum *standards*. Essential needs are those elements required to lead a safe and dignified life. They both comprise and go beyond minimum standards, and are time and context elastic. While at the start of an emergency essential needs may be congruent with minimum standards, over time essential needs will grow, as refugee lives become increasingly intolerable unless they are able to enjoy a wider range of human rights, and are enabled to develop their human functions and capabilities. Eventually, a refugee situation becomes incompatible with, and obstructive of, the enjoyment of such rights, and a durable solution is ultimately required in order to enable refugees to aspire to such a state.¹⁷⁸

Whatever the appellation of “essential needs” or another appellation, advocacies which aim at ensuring human dignity to refugees and IDPs should encompass a wide range of activities and should never be static since the world of refugees and IDPs is a changing one. This does not mean that all advocacy activists should be engaged in all the issues related to forced migrants; that would be illusory since they are unlikely to have

¹⁷⁶ Judy A. Mayotte, *Disposable People? The Plight of Refugees* (Maryknoll, New York: Orbis Books, 1992), 5.

¹⁷⁷ See Jesuit Refugee Service, *Everybody’s Challenge*, 87.

¹⁷⁸ United Nation High Commissioner for Refugees, Evaluation and Policy Analysis Unit, *Minimum standards and essential needs in a protracted refugee situation*, 3.

competencies, knowledge, and means to advocate for all the issues. The point of the argument is that advocacy activists should be aware that solutions at a particular moment in the lives of a particular refugee group can later hinder their development. That is why even emergency situations should not only be focused on immediate relief; they should open doors, in the long-term, to durable solutions. The UNHCR is wise to state that:

From the outset of an emergency, UNHCR must bear in mind the ultimate objective of refugee protection: to help refugees to overcome displacement and achieve a solution whereby national protection is re-established and they will no longer be refugees.¹⁷⁹

In sum, whatever the content and the field of any advocacy for refugees and IDPs, the aim should always be to enable them, in the long-term, to no longer be refugees and to enjoy their human dignity. Therefore, before undertaking any action or when assessing policies and actions, any advocacy should critically answer this question: “To what extent does this particular action or policy enable refugees or IDPs, in the long-term, to lead a dignified life?” This question implies a variety of responses and methods of advocacy that I would like to assess in the next section.

¹⁷⁹ United Nation High Commissioner for Refugees, *Handbook of Emergencies*, 22.

4.4- Assessments and Prospects of Practices of Advocacies for Refugees and IDPs from the perspective of human rights

Currently advocacies for refugees and IDPs are grounded on human rights. There is a certain agreement among scholars and human rights activists that “advocacy will be more effective if it is grounded in the fundamental human rights of displaced persons.”¹⁸⁰ However, there is a variety of approaches to advocacy that are all motivated by human rights principles. I will assess only a few of them, namely the welfarist approach, the legalistic approach, the capability-based approach, and the recognition-based approach.

4.4.1- Welfare-based approach advocacy

The welfare-based approach advocacies are usually focused on short-term emergency aid such as the distribution of food and shelter kits, tents, blankets, and hygienic articles, etc. They aim at providing displaced people with means that help them to meet humanitarian standards in relation to nutrition, food security and public health. Welfare-based advocacies make an important contribution in saving lives and in improving the well-being of displaced people. Their actions are concrete and more visible since they are often given publicity in the media. For example, welfare-based advocacies activists are the ones

¹⁸⁰ David Hollenbach, “Human Rights as an Ethical Framework for Advocacy,” in *Refugee Rights: Ethics, Advocacy, and Africa*, ed. David Hollenbach (Washington, D.C.: Georgetown University Press, 2008), 3.

most often pictured among humanitarian activists; and they are often shown distributing relief to forcibly displaced people. From this point of view, welfare-based advocacies embody humanitarian assistance.

This category of activism enjoys the advantage of providing services that are quantitatively measurable by means of statistics that provide indicators of protection gaps, and serve as a measure of the impact of assistance activities. For example, since 2005, the UNHCR has launched an annual report entitled “Measuring Protection by Numbers” which aims “to illustrate, primarily by numbers, the state of international protection measured through the programmes both of UNHCR and its partners.”¹⁸¹ Moreover, since their results are statistically measurable in terms of number of people nourished, or number of shelters distributed, and so forth, welfare-based advocacies are more likely to gain the support of donors who are pleased to receive data which shows what their money has helped to achieve.

Nevertheless, welfare-based advocacies face some limits. Loren Landau warns that “despite its value, there is a danger that such welfarist approaches ultimately treat people as

¹⁸¹ See UNHCR, *Measuring Protection by Numbers*, December 2006 [Journal on-line]; available from: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4579701b2&query=Measuring%20Protection%20by%20Numbers>; Internet; accessed 02/15/2010.

sites of action or as outputs.”¹⁸² In fact, welfarist approaches are more focused on assistance; they are less concerned about protection. That is why Roberta Cohen criticizes such approaches when she remarks that:

Providing food, medicine, and shelter to internally displaced persons, while ignoring violent abuse, has led to the tragic description of the victims as the “well-fed dead.” The expression may have originated in Bosnia in the 1990s, but it also applies to Darfur where there are more than 11,000 humanitarian workers on the ground, but fewer than one hundred with protection responsibilities.¹⁸³

From the perspective of this reflection on “dignity across borders”, welfare-based approaches are to be complemented by other approaches which include the rights of refugees and IDPs, and the recognition of their dignity as human beings and not as “well-fed dead”.

4.4.2- Legalistic approach advocacies

While welfare-based advocacies are focused on humanitarian assistance, legal advocacies encompass both humanitarian assistance and a strong commitment to the rights of refugees and IDPs. The complex nature of refugee plights has highlighted the close relationship between refugee law, human rights and international humanitarian law. Legal

¹⁸² Loren B. Landau, “Protection as Capability Expansion: Practical Ethics for Assisting Urban Refugees,” in *Refugee Rights: Ethics, Advocacy, and Africa*, ed. David Hollenbach, 105.

¹⁸³ Roberta Cohen “Strengthening Protection of IDPs: The UN’s Role,” *Georgetown Journal of International Affairs* (Winter/Spring 2006):107.

advocacy activists refer to this broad body of law.¹⁸⁴ Even though the international legal framework for the protection of IDPs is still embryonic,¹⁸⁵ it is important to acknowledge that, from the human rights perspective, there is an impressive array of universal, regional and domestic human rights instruments and mechanisms which can be employed to enhance the protection of refugees and asylum seekers as well as of IDPs.

Legalistic approach advocacies strive to bring states and non-states actors to implement these legal rights that refugees are entitled to. One of the most frequent actions of legal advocacy activists consists in making refugees and IDPs' rights known. They assume that refugees and IDPs will be better protected if the conditions that impede or promote their rights are better understood through careful social and political analysis.¹⁸⁶ Consequently, they undertake many initiatives at the international, regional and national levels that aim at building up the expertise and resources of national judicial bodies, civic entities and civil society. For instance, they organize workshops; run training programs and other activities to inform forcibly displaced people and stakeholders about rights and duties to which displaced people are entitled.

¹⁸⁴ For a comprehensive presentation of the broad body of law that refers to refugee protection, see UNHCR, *Refugee Protection: A Guide to International Refugee Law. Handbook for Parliamentarians* (Geneva: UNHCR, Legal publications, 1 December 2001).

¹⁸⁵ For the protection of IDPs, there is not yet a legally binding instrument on the model of the Refugee Convention. There are only "international principles" that suggest standards for the treatment of IDPS. See United Nations, Commission on Human Rights, *The Guiding Principles on Internal Displacement*, (UN Doc.E/CN.4/1998/53/Add.2, 1998).

¹⁸⁶ David Hollenbach, "Human Rights as an Ethical Framework for Advocacy," in *Refugee Rights: Ethics, Advocacy, and Africa*, ed. David Hollenbach, 3.

Legalistic approach advocacy activists are also engaged in campaigns against states and non-state actors that violate the rights of refugees and IDPs. Their actions are very important in denouncing violations both in the sending countries that generate plights of refugees and IDPs, and in the host countries that do not implement treaties and conventions related to the protection of refugees. Today, more than ever, legal advocacy activists are involved in a fierce battle to ensure protection to refugees in view of the fact that an increasing number of states are unwilling to offer asylum to them. Brian Gorlick rightly depicted the uneasy legal context that refugees face as follow:

Refugees in the world today, although growing in numbers in recent years, are swiftly losing ground in terms of legal protection provided by a number of states. Many states that have subscribed to the international legal regime of refugee protection by acceding to the international refugee instruments are currently undertaking radical changes through legislative and inter-state arrangements which result in restricting access to asylum and the provision of legal rights to refugees. These restrictions include, notably but not exclusively, limiting access to refugee status determination procedures and employing an increasingly restrictive interpretation of the refugee definition. This trend has been described as ‘a pull back from the legal foundation on which effective protection rests.’¹⁸⁷

In this context, legal advocacies have a significant potential impact on the lives of refugees and IDPs so that even other approaches to advocacy have to integrate legal dimensions of protection for them. From this standpoint, I agree with Bateman who thinks that even though some advocacy can be performed successfully using good negotiation skills, without relying on the law or other rules, it is not advisable. Bateman consistently

¹⁸⁷ Brian Gorlick, “Human rights and refugees: enhancing protection through international human rights law” (Stockholm: UNHCR’s Refugee Law Training Officer, Working Paper No. 30, 2000), 2.

recommends establishing whether there is a legal case before commencing negotiations or any other active advocacy.¹⁸⁸ Unlike welfare-based advocacies that usually appeal to generosity and to charity in order to provide assistance to displaced people, legalistic approach advocacies consider the protection of refugees and IDPs much more as a matter of justice than as a matter of charity. Although accurate as far as it goes, this standpoint of justice and law nevertheless creates conflicts since states and even donors are usually reluctant to be compelled by law to protect refugees.¹⁸⁹ In this context, Gil Loescher warns that,

the better the High Commissioner performs the agency's protection function [which involves legal processes], the more seriously effective oversight of relief is jeopardized, since such action risks alienating the governments on which UNHCR depends for its budget and its permission to operate... No refugee agency can simultaneously be independent for the purpose of protection and dependent for the purpose of relief.¹⁹⁰

In this highly politicized context, legalistic approach advocacies will have to operate with subtlety and diplomacy. Since there is no supranational authority to enforce the rules and laws of the international refugee regime, legal arguments to compel states will not be fully effective. Starting with justice seems not to be realistic in regards to the international regime of refugee protection and the nature of the international community. Legal advocacy for refugees should therefore find diplomatic ways and means to integrate harmoniously

¹⁸⁸ N. Bateman, *Advocacy Skills for Health and Social Care Professionals* (London: Jessica Kingsley, 2000), 138. See also Paul Cambridge and Lucy Williams, "Approaches to Advocacy for Refugees and Asylum Seekers: a Development Case Study for a Local Support and Advice Service," *Journal of Refugee Studies* 17, no.1 (2004): 101.

¹⁸⁹ See also Paul Cambridge and Lucy Williams, "Approaches to Advocacy for Refugees and Asylum Seekers: a Development Case Study for a Local Support and Advice Service," *Journal of Refugee Studies* 17, no.1 (2004): 101.

¹⁹⁰ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York / Oxford: Oxford University Press, 1993), 138.

both a discourse based on justice and law, and a discourse based on charity, compassion, and responsibility.

4.4.3- Capability-based approach advocacies

The capability-based approach is drawn from the work of Amartya Sen and Martha Nussbaum. However, in this reflection, I will limit my analysis to Sen's understanding of capability. Before outlining how the capability approach informs advocacy for refugees and IDPs, it is worthwhile to understand Sen's anthropological thought, which encompasses two main concepts: agency and well-being. Agency designates the freedom to lead the life that one has reason to value. In other words, capability refers to the various alternatives "*beings and doings*" that a person can achieve with his economic, social, and personal characteristics. Well-being is a self-explanatory concept. For Sen, being well or having well-being is not something outside the person and that the person can command. Having well-being is, rather, something in the person and that the person achieves¹⁹¹. Agency and well-being are two related concepts and they should not be dissociated so that each person ought to become the agent of his/her own well-being. To be an agent of one's own well-being means to be "someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of

¹⁹¹ A. Sen, "Well-Being, Agency and Freedom: The Dewey Lectures 1984," *Journal of Philosophy* 84, no. 4 (1985): 195.

some external criteria as well.”¹⁹² From this standpoint, “development consists of the removal of various types of unfreedoms that leave people with little choices and little opportunity of exercising their reasoned agency.”¹⁹³

Sen’s capability approach, when applied to refugees as Loren Landau¹⁹⁴ did, aims at not only ensuring the basic needs of refugees, but also at expanding their agency that consists of their ability to choose different ways of living. In this perspective, advocating for the protection of refugees and IDPs consists in advocating for their development or well-being. In other words, it means taking actions in order to free refugees and IDPs from all obstacles which hinder their capability to choose the type of life that they are eager to lead. Capability-based approach advocacy goes beyond minimum protection standards or beyond basic capabilities,¹⁹⁵ and is aimed at providing forced displaced people with “the bases for the achievement of higher-order capabilities linked to personal fulfillment and the realization of people’s human dignity.”¹⁹⁶ Since capability-based approach advocacy targets the improvement of capabilities and opportunities so that one may become self-agent of one’s own development, this approach is therefore a critique of the so-called dependency syndrome associated with the refugee assistance provided in camps. According to Landau,

¹⁹² A. Sen, *Development as Freedom* (New York: Anchor Books, 1999), 19.

¹⁹³ *Ibid.*, xii

¹⁹⁴ Loren B. Landau, “Protection as Capability Expansion: Practical Ethics for Assisting Urban Refugees,” in *Refugee Rights: Ethics, Advocacy, and Africa*, ed. David Hollenbach, 103-121.

¹⁹⁵ *Ibid.*, 109.

¹⁹⁶ *Ibid.*

The capability approach, by emphasizing the need to ensure refugees have the right to choice and to control their own environments, helps to avoid a kind of commodity fetishism [that is, too much focus on commodities] characteristic of many humanitarian programs and welfarist treatments of assistance.¹⁹⁷

Overall, the capability approach to advocacy is interesting and encompasses almost all the important dimensions of protection that refugees and IDPs need in order to lead a dignified life. This approach develops principles that aim to empower refugees and IDPs. Therefore, the capability approach is based heavily on power and politics. Conversely, I find this lens of power through which the capability approach deals with forced displaced issues is somewhat reductionist, and may not be the best foundation for grounding protection of forced displaced people. I agree with Maureen Junker-Kenny's critique of one approach to the capability approach when she remarked that "if one chooses 'power' as the bottom line, the danger is that every phenomenon gets reduced to it. Politics becomes the fine-tuning of this accepted state of human affairs."¹⁹⁸ Consequently, I would like to suggest the "recognition approach" which encompasses the capability approach. But unlike the capability approach, it is not based on power; rather it is grounded in the principle of human dignity which offers a more fundamental approach from a Christian ethics perspective.

¹⁹⁷ Ibid., 105.

¹⁹⁸ Maureen Junker-Kenny, "Arguing for a humanity of Equals: From Capabilities to Recognition," in *Negotiating Borders. Theological Explorations in the Global Era. Essays in Honour of Prof. Felix Wilfred*, ed. Patrick Gnanapragasam and Elisabeth Schüssler Fiorenza (Delhi: ISPCK, 2008), 244.

4.5- Recognition-based advocacy as a comprehensive approach to advocacy from the perspective of human dignity

The concept of recognition is elastic. Therefore, it opens doors to many interpretations¹⁹⁹. That is why there are many philosophies of recognition.²⁰⁰ However, I will ground this reflection on Paul Ricoeur's philosophy of recognition as exposed in *The Course of Recognition*.²⁰¹ Ricoeur attributes three meanings or functions to the concept of recognition: identifying objects, attesting to one's own capacity for responsible agency, and establishing mutual understanding in social relationships.²⁰² For the purpose of this study, I will only focus my analysis on the latter two meanings since the first one refers to the identification of objects. I will strive to suggest how Ricoeur's understanding of recognition can be an entry point to advocacy.

¹⁹⁹ For more comprehensive and rigorous analysis of the concept of recognition, see Christian Lazzeri and Alain Caillé, "Recognition Today: The Theoretical, Ethical and Political Stakes of the Concept," *Critical Horizon* 7, no 1 (2006): 63-100.

²⁰⁰ For more details about the variety of philosophies of recognition, see for instance: Axel Honneth, *The Struggle of Recognition: The Moral Grammar of Social Conflicts*, trans. Joel Anderson (Cambridge, MA: Polity Press, 1995); Charles Taylor, *Sources of the Self: The Making of the Modern Identity*, (Cambridge, MA: Harvard University Press, 1989); J. Habermas, "The Struggle for Recognition in the Democratic State," in *The Inclusion of the Other: Studies in Political Theory*, ed. C. Cronin and P. De Greif (Cambridge, MA: MIT Press, 1998).

²⁰¹ Paul Ricoeur, *The Course of Recognition*, trans. David Pellauer (Cambridge, MA: Harvard University Press, 2005).

²⁰² Each of these three functions constitutes a chapter of Ricoeur's book: *The Course of Recognition*.

4.5.1- The concept of recognition

According to Ricoeur, recognition as “recognizing oneself”²⁰³ does not mean finding one’s identity. Rather it means recognizing one’s self through the acknowledging of one’s own capacities, and namely the specifically human capacities to act and to suffer.²⁰⁴ For Ricoeur, what one recognizes in oneself is those characteristics which one shares with other people. Recognizing oneself does not refer, therefore, to those characteristics which make one particular, or which define one’s particular identity. In other words, recognition as recognizing oneself means discovering what makes up our common humanity. Or, from the Roman Catholic social teachings perspective, recognizing oneself means recognizing that one belongs to the same human family. This perspective is interesting for advocating for refugees since recognizing oneself is not focused on identity characteristics that divide us such as ethnic identity, citizenship, etc. It is important to underscore that even though recognition as recognizing oneself encompasses self-consciousness, self-knowledge, self-esteem, and self-attestation, it has a fundamental social aspect. According to Ricoeur, “this self-recognition requires, at each step, the help of others.”²⁰⁵ That is why Christian Lazzeri and Alain Caillé contend:

If recognition therefore simultaneously comprises a dimension of social integration and social approval, it can be maintained that self-esteem represents the subjective translation of the act of recognition. We can thus complete the proposition and say that the recognition that

²⁰³ This constitutes the title of the second chapter of Ricoeur’s book: *The Course of Recognition*. See pp.69-149.

²⁰⁴ Ibid., 69. See also the commentary by Julie Connolly, “Charting a Course for Recognition: a Review Essay,” *History of the Human Sciences* 20, no.1 (2007): 137.

²⁰⁵ Paul Ricoeur, *The Course of Recognition*, 69.

others grant the agent, contributes both to the creation of the value of her project, and to the formation of the feeling of confidence in her ability to realize them successfully.²⁰⁶

Thus, recognition as recognizing oneself leads to the other lever of recognition as “mutual recognition.”²⁰⁷ Following Axel Honneth, Paul Ricoeur distinguishes three forms of mutual recognition. The first is based on love and it is “constituted by strong emotional attachments among a small number of people.”²⁰⁸ This first level of mutual recognition is a pre-judicial form of reciprocal recognition where “subjects mutually confirm each other with regard to their concrete needs and thereby recognize each other as needy creatures.”²⁰⁹ This pre-judicial level ensures a kind of mutual approbation and self-confidence. Humiliation is the contrary of such a level of mutual approbation:

Humiliation, experienced as the withdrawal or refusal of such approbation, touches everyone at the pre-judicial level of his or her “being-with” others. The individual feels looked down on from above, even taken as insignificant. Deprived of approbation, the person is as if nonexistent.²¹⁰

The second form of mutual recognition is rights-based recognition.²¹¹ This form of recognition is wider than love-based recognition since it can be generalized at the level of a society. This juridical level of mutual recognition means universal respect; and it is institutionalized in legal recognition of rights that everyone can claim. However, recognition of one’s rights is equivalent to recognition of one’s responsibility toward other people. For,

²⁰⁶ Christian Lazzeri and Alain Caillé, “Recognition Today: The Theoretical, Ethical and Political Stakes of the Concept,” *Critical Horizon* 7, no 1 (2006): 69.

²⁰⁷ This is the title of third chapter of Ricoeur’s *The Course of Recognition*, 150-246.

²⁰⁸ Axel Honneth quoted by P. Ricoeur in *The Course of Recognition*, 188.

²⁰⁹ Axel Honneth quoted by P. Ricoeur in *The Course of Recognition*, 189.

²¹⁰ *Ibid.*, 191.

²¹¹ *Ibid.*, 196-201.

“Juridical recognition can also be characterized in the following terms: ‘We can only come to understand ourselves as the bearers of rights when we know, in turn, what various normative obligations we must keep vis-à-vis others’.”²¹²

The third form of mutual recognition is social esteem²¹³ which “functions to sum up all the modes of mutual recognition that exceed the mere recognition of the equality of rights among free subjects.”²¹⁴ It refers to prestige or social consideration, not in a selfish way, but rather in an altruistic way since social esteem is the recognition by people of “the importance of their individual qualities for the life of others.”²¹⁵ How can Ricoeur’s understanding of recognition be helpful for advocating for refugees and IDPs?

4.5.2- The task of recognition-based advocacy

At the level of recognition as “recognizing oneself”, advocacy will have to develop strategies in order to expand a kind of cosmopolitan view which prioritizes our common humanity across borders over considerations of our national identity. In other words, the leitmotif for a recognition-based advocacy could be this phrase: “Refugees are like us”, or “refugees share the same humanity with us.” This will create a strong sense of common

²¹² Ibid., 197.

²¹³ Ibid., 201-216.

²¹⁴ Ibid., 202.

²¹⁵ Ibid.

humanity between humans across national borders, or across non-geographical borders such as ethnic or religious identities, etc. In fact, I think one of the most important difficulties that refugees face is that they are often categorized and set apart through laws and other particular status so that finally they appear to be different from the citizens of the countries in which they live. For example, the confinements to camps are some of these practices that can lead one to consider refugees as being different from us in humanity.²¹⁶ My point is that, if one should “recognize oneself” through what one shares with all humanity, therefore refugees would have a better chance to receive treatment which would acknowledge their dignity as humans. Refugee crisis would therefore no longer be considered as being only a humanitarian issue, or a security issue, or a political issue. While refugees and IDPs suffer from all these issues, they should not be reduced to them.

At the level of mutual recognition, a recognition-based advocacy will emphasize the fundamental solidarity which links all humans across borders. Either based on love, rights, or social esteem, mutual recognition improves social relationships and creates real international community where people care for one another since they share the same destiny. Mutual recognition improves, therefore, the humanity of all. As Pope John Paul II states, “to be human means to be called to interpersonal communion.”²¹⁷ The more people develop a strong consciousness of their interpersonal communion, the more likely they will

²¹⁶ See David Hollenbach, “Human Rights as an Ethical Framework for Advocacy,” in *Refugee Rights: Ethics, Advocacy, and Africa*, ed. David Hollenbach (Washington, D.C.: Georgetown University Press, 2008), 3.

²¹⁷ John Paul II, Apostolic Letter *Mulieris Dignitatem*, 7: AAS 80 (1988), 1666.

attend the needy among them such as refugees and IDPs. For it is the bonds that unite the human family “which must ultimately inspire our solidarity.”²¹⁸

4.6- Conclusion

Finally, the task of advocating for refugees and IDPs from the perspective of the social teachings of the Roman Catholic Church consists in the recognition of their dignity. However, recognition as a point of entry for advocacy does not suggest a specific task to be undertaken. Above all, from a more fundamental and moral standpoint, it suggests a way of dealing with forced migrants’ issues which prioritizes their humanity. A recognition-based approach suggests spirituality, a way of being with refugees and IDPs which also informs the way of doing things for forced migrants. Before capabilities and rights there is recognition, the desire to be recognized as a human. The recognition of the human dignity of refugees and IDPs clears the ground for their rights and capability-building. For, rights and capabilities result from a process of recognition given that recognition is, at the same time, attestation of responsibility for “the Other”.²¹⁹ That is why the recognition approach goes farther than the other approaches to advocacy, and it is likely to embody Roman Catholic social teachings on human dignity and protection of refugees and IDPs.

²¹⁸ John Paul II, Apostolic Letter *Sollicitudo Rei Socialis*, 40: AAS 80 (1988), 569.

²¹⁹ See the Ethics of responsibility for “the Other” developed by Emmanuel Levinas in *Entre nous: Thinking-Of-The-Other*, translated by Michael B. Smith and Barbara Harshav (New York: Columbia University Press, 2000).

CHAPTER 5: FINAL CONCLUSION: DIGNITY ACROSS BORDERS

The purpose of this reflection – *Dignity across Borders: Rethinking the Protection of Refugees and IDPs from an Ethical Perspective* – has been to challenge contemporary ways of thinking and dealing with issues related to refugees and IDPs. Today, refugees and IDPs are often reduced to their needs. They are often perceived as bodies to shelter, to heal or to clothe; mouths to feed; victims of persecution to protect, etc. In the same perspective, contemporary debates on treatments of refugees and IDPs tend to rotate around the financial costs of processing claims, social security benefits for asylum seekers, and social tensions arising from the presence of large numbers of refugees and IDPs in receiving countries or communities. While acknowledging the importance of all these issues and needs, the stance of this reflection has been to refocus the debate on the concept of human dignity which transcends borders such as nationality, ethnicity, religion, race, etc. From this standpoint, the debate changes and gains more fundamental and moral depths.

This reflection has shown how the international legal concept of refugee is related to state boundaries so that if there were no nation-state system, if we lived in a world without borders, there would be no refugees. States, therefore, play an important role in conferring the status of refugee, and in providing legal protection as well as authorizing actors to deal with refugees and IDPs within national territory. This reflection has also shown how the consideration of the human dignity of refugees and IDPs relativizes the state and its

sovereignty within national borders. The dignity and the integrity of the individual regardless of his/her citizenship are recognized as essential values from which has emerged an international human rights regime. The ascendance of human rights-based principles in international relations and politics tends to re-conceptualize state sovereignty as responsibility toward individuals and peoples within and beyond national borders. Unlike political, social, and civil rights which are predicated on the distinction between national and alien, human rights are not dependant on nationality. That is why I argued that helping states to implement human rights will improve the international refugee protection regime.

Moreover, human rights-based principles and guidelines are not opposed to the nation-state insofar as many of them have been elaborated or approved by nation-states. For that reason, using them to make claims for a new global refugee protection regime does not mean necessarily fighting against governments. There will be no significant improvement of the situation facing refugees and IDPs without the contribution of states as political entities. Even though these human rights-based principles and laws aim at a kind of cosmopolitan world society, national borders will still be important. And one cannot expect host countries to receive all those who are asylum-seekers. However, one of the arguments of this thesis is that states can do better than what has been accomplished so far in finding solutions for the crisis facing refugees and IDPs. Solutions should result from overlapping efforts of states, NGOs, churches, universities, etc., in seeking the good for refugees and IDPs in relation to the common good of the globalizing society.

From the same stance, but grounded in the biblical experience, the Roman Catholic Church's social discourse on refugees and IDPs challenges the actual international refugee protection regime. Because all are created in the image and likeness of God, all humans share the same dignity. Their dignity and their rights as humans are not related to their citizenship, but to the fact that they have been born into a human family. This is the foundation of Christian universalism that challenges the current refugee protection regime that is based on the membership of states. Yet, Christian universalism is also a realism that respects the state sovereignty within its borders. Conversely, the main claim of Catholic social teachings on refugee issues is that the refugee issues should not be perceived only from the standpoint of the state, such as national security concern and borders control. Above all, refugees should be perceived as human beings, as dignities across borders. This should be the task of advocating for refugees and IDPs from the perspective of the social teachings of the Catholic Church.

In sum, the issues surrounding the needs of refugees and IDPs are huge. While acknowledging the importance of numerous programs and actors who strive to provide a variety of responses to the crises of refugees and IDPs, the aim of this study has been to underscore how beyond the needs of refugees and IDPs, there is a demand to recognize them as human beings. I agree with Swiss Federal Councillor Wahlen when he states:

All the State subsidies in the world will never be able to replace the warmth of assistance rendered by one individual, one human being to another. Help given by the State is usually

anonymous and lacking in human compassion. It is man alone by his personal charity who can really bring succour to his neighbour in need.²²⁰

If the demand of recognition is not heard, relief for refugees and IDPs will lack an essential dimension. It is the demand to be recognized as human beings that engenders responsibility for forced migrants such as refugees and IDPs. This responsibility is both individual and institutional. The most obvious ways to evoke a sense of responsibility for guaranteeing refugee rights would be through education and media. As long as refugees and IDPs are not recognized as one of us, as our fellow humans who share the same dignity, there will be little improvement in the treatment of issues related to them. That is why, instead of prescribing a list of things to do or not to do for refugees and IDPs, this reflection has instead suggested a way of being and dealing with refugees and IDPs which is based on the recognition of their human dignity. This stance pulls out beyond the facility of typical responses which are known in advance. Rather it engages in the complex path of discernment in order to honor the dignity of the forcibly displaced. Because human dignity is at stake in refugees and IDPs related issues, there is no shortcut.

²²⁰ Friedrich Traugott Wahlen's address on the occasion of the award of the Nansen medal in 1963 quoted by Dieter B. Scholz, S.J., in *Everybody's Challenge. Essential Documents of Jesuit Refugee Service. 1980-2000*, ed. Jesuit Refugee Service (Rome: Jesuit Refugee Service, 2000), 68.

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