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OSCE and Forced Displacement: An Area for Expansion?

Introduction

Although not one of its central competencies, the OSCE's mandate, activities and commitments cover a range of areas relevant to the problem of forced displacement. Most directly, ODIHR's Migration/Freedom of Movement Unit promotes the human rights of migrants through seminars, training and institutional capacity-building. Moreover, its activities in the field of trafficking in human beings aim to protect victims of trafficking and develop measures to combat trafficking networks. Yet many of the OSCE's wider activities can also be understood as having an impact on forced displacement. Activities and normative commitments in the areas of conflict prevention, democratization, human rights and national minorities can all play a role in the prevention of forced displacement, in protecting the displaced, or in promoting reintegration after their return.

Arguably, it is these broader OSCE activities on prevention, democratization and national minorities - rather than the more specific measures on migrant rights - that constitute the OSCE's most important contribution towards addressing the problem of forced displacement. Indeed, these types of preventive activity are increasingly favoured by OSCE States as the best long-term means of addressing the causes of flight. Over the past decade, there has been a growing recognition of the need to shift the focus of international refugee policy away from reactive protection activities to more holistic and comprehensive approaches to addressing the causes of displacement and finding "durable solutions" to refugee problems. The OSCE seems to be well-placed to develop such comprehensive strategies in three senses. First, its traditional linkage of the human and security dimensions - the so-called "comprehensive security concept" - should provide an excellent analytical base for developing holistic approaches. Second, its range of activities explicitly encompasses many of the components of these new solutions. And third, the scope of OSCE membership makes it a good forum for dialogue between refugee producing and receiving countries.

This article will examine how well-placed the OSCE is to respond to these challenges of forced displacement. It will start by describing the debate on "new solutions" to displacement, and then outline OSCE activities in this area to date. It will suggest that two main institutional factors constrain further progress in this area: the internal organizational structure as well as the mandate and legal basis. The article will conclude by considering how far the Or-

ganization can and should expand its activities in this area in the light of these constraints.

OSCE and "New Solutions" to Displacement

The shift towards prevention and the so-called "new solutions" can be understood as the product of two main changes in attitudes towards displacement over the past two decades. First, from the late 1980s onwards, and especially since the end of the Cold War, there has been growing public hostility in Western Europe and North America to asylum seekers and "illegal" immigrants. To simplify somewhat, European refugees in the 1950s and 1960s were seen by the West as an important symbol of communist oppression.¹ The number of refugees was limited, and Western states and North America were by and large keen to grant extensive rights and permanent residence to these victims of communist persecution. As the numbers fleeing developing countries increased in the 1970s and economic recession generated higher unemployment, European states began to introduce more restrictionist immigration policies. This encouraged substantial numbers of migrants to use the "asylum route", in turn triggering public concern about the "abuse" of asylum systems. The subsequent removal of restrictions on free movement in Eastern and Central Europe since 1989 created additional anxieties about Western Europe being "flooded" with immigrants and refugees arriving from or via Central European countries. These concerns were to some extent given a practical basis in Germany, which received approximately 1.4 million migrants from Central and Eastern Europe from 1988 to 1993, as well as 350,000 displaced persons from the former Yugoslavia, and almost half a million asylum seekers.² However, the restrictionist entry policies, introduced by most Western European states in the late 1980s and early 1990s, failed to reduce influx, instead fostering the exponential growth of illegal movement and trafficking in human beings. Far from being received as victims of ideological oppression, asylum seekers now tend to evoke fears about illegal entry and employment, trafficking and organized crime, and are seen as imposing an unacceptable burden on Western European welfare systems.

The second shift that influenced the debate on refugee policy was linked to changing conceptions of security and intervention in the 1990s. Whereas during the Cold War refugee policy was limited to an essentially palliative protection approach, the emerging pattern of humanitarian intervention after 1990 changed expectations about what could be done to address refugee

1 Cf. Leon Gordenker, *Refugees in International Politics*, New York 1987; Kim Salomon, *Refugees in the Cold War: Toward a New International Refugee Regime in the Early Postwar Era*, Lund 1991.

2 Cf. UNHCR, *The State of the World's Refugees: In Search of Solutions*, Oxford/New York 1995, p. 202.

problems. Furthermore, the nature of conflicts that erupted in the 1990s - in particular the use of "ethnic cleansing" to advance political strategic objectives - was perceived to lend new political significance to displacement.³ As the United Nations High Commissioner for Refugees (UNHCR) pointed out, the involuntary movement of people was not simply a by-product of conflict, but an end in itself.⁴ In some regions (notably the Balkans and Central Africa), displacement also contributed to the spillover of conflict and instability into neighbouring countries.

These domestic and international developments prompted a policy shift away from palliative protection measures to prevention and "solutions". Thus rather than focusing on the protection of refugees once displacement had occurred, multilateral actors became increasingly convinced of the need to target measures towards preventing displacement and addressing the "root causes" of flight through conflict prevention and mediation, human rights monitoring, capacity-building and development.⁵ There has also been growing emphasis on providing protection for refugees and internally displaced persons (IDPs) in their regions of origin, or encouraging the early repatriation of refugees in the context of post-conflict peace-building activities. The characteristically Cold War policy of providing permanent protection to refugees - the so-called "exile bias" - has been replaced by what has been coined the "new paradigm", or "new solutions" to displacement: prevention, protection in regions of origin, and the promotion of refugee repatriation.⁶

These new solutions have not been without critics. A number of commentators have characterized this new focus as an attempt to "contain" displacement in regions of origin, thereby relieving industrialized states of their obligations to assist refugees.⁷ Refugee and human rights groups have expressed concern that such preventive approaches represent a form of "burden-shifting" to poorer countries, and fear that they may increasingly be seen as a sub-

3 In this context, it should be pointed out that this type of ethnic "unmixing" was not a new phenomenon. It had been widespread in the inter-war years, with a series of mass expulsions and population transfers in the Balkans and parts of South-eastern Europe. It had even been the official policy of the League of Nations, which organized population transfers of minority groups between Greece, Turkey and Bulgaria in the 1920s. See Michael Mann, *The Dark Side of Democracy: The Modern Tradition of Ethnic and Political Cleansing*, in: *New Left Review* 235/1999, pp. 18-45; Michael R. Marrus, *The Unwanted: European Refugees in the Twentieth Century*, Oxford/New York 1985.

4 Cf. Sadako Ogata, *Managing and Solving Forced Displacement: Issues and Dilemmas*, remarks at the Carnegie Council on Ethics and International Affairs, 1996.

5 The first major proposal for this kind of approach was Sadruddin Aga Khan's *Study on Human Rights and Massive Exoduses*, UN Commission on Human Rights, Thirty-Eighth Session, E/CN.4/1503, 1981. UNHCR Executive Committee Conclusions from 1989 onwards also demonstrate an increasing trend towards addressing "solutions", including prevention.

6 Cf. UNHCR, cited above (Note 2), pp. 43-44.

7 Cf. James Hathaway, *New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection*, *Journal of Refugee Studies* 3/1995, pp. 436-458; Guy Goodwin-Gill, *Refugee Identity and Protection's Fading Prospect*, in: Frances Nicholson/Patrick Twomey (Eds.), *Refugee Rights and Realities: Evolving International Concepts and Regimes*, Cambridge 1999, pp. 220-249.

stitute for asylum. Others, however, have welcomed this shift in focus as a means of channelling more resources into conflict prevention and humanitarian assistance. Provided prevention is treated as complementary to refugee protection - so the argument runs - increased efforts to alleviate the causes of displacement are in the interests of both affected populations and receiving states.

However the balance is struck between traditional protection and new solutions, it would appear that the OSCE is well-placed to make a contribution to developing the latter. As the Supplementary Human Dimension Meeting in Vienna in September 2000 concluded, the OSCE "is able to bring together security and humanitarian issues and, thus, is in a unique position to tackle the real causes of displacement, and to address situations of protracted displacement".⁸

This unique position stems from three features of the Organization. First, the OSCE's traditional emphasis on the "human dimension" as a central aspect of security provides the Organization with a good framework for analysing different aspects of the problem of displacement and developing appropriate responses. While other agencies dealing with displacement, such as the UNHCR, IOM and ICRC, are bound by relatively narrow mandates, the OSCE can combine individual human rights and protection concerns with considerations of conflict prevention and regional stability. By contrast, the UNHCR was heavily criticized for deviating from its refugee protection function when it attempted to provide in-country protection in Bosnia.⁹ The UNHCR has also been criticized for being too "political" in its focus, especially in situations where it has been guided by concerns about the impact of refugee flows on general stability, rather than focusing exclusively on individual refugee protection concerns.¹⁰ The OSCE has no such constraints linked to its mandate or focus of activities. Indeed, the Organization has stressed the link between the human dimension of displacement and regional security in a number of declarations. Thus the Lisbon Summit Declaration of 1996 states that forced migration is one of "the acute problems within the human dimension", which "continues to endanger stability in the OSCE region".¹¹ The ability to recognize and take into account the different dimen-

8 OSCE Supplementary Human Dimension Meeting. Migration and Internal Displacement, Vienna, 25 September 2000, Final Report, p. 8.

9 Cf. Mikhael Barutciski, *The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina (1992-1994)*, in: *International Journal of Refugee Law* 1-2/1996, pp. 49-110; and S. Alex Cunliffe/Michael Pugh, *UNHCR as Leader in Humanitarian Assistance: A Triumph of Politics over Law*, in: Frances Nicholson/Patrick Twomey (Eds.), cited above (Note 7), pp. 175-199.

10 Cf. S. Chimni, *Solutions to Global Refugee Problems and the Language of Security: A Disturbing Trend*, internal paper, Delhi 1996.

11 Organization for Security and Co-operation in Europe, Lisbon, 1996, Lisbon Document 1996, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), *OSCE Yearbook 1997, Baden-Baden 1998*, pp. 419-446, here: p. 421.

sions and repercussions of forced displacement is a precondition for developing holistic responses.

Secondly, the Organization has a wide array of policy tools for addressing each phase of forced displacement: from preventive activities such as democratization, capacity-building and election monitoring, early warning and conflict prevention, through humanitarian assistance and protection once displacement has occurred, to post-conflict reconstruction and rehabilitation after repatriation. This should present the OSCE with a unique capacity to develop comprehensive strategies for dealing with forced displacement in Europe. Whereas other organizations have traditionally focused on protection and assistance measures once refugee crises have erupted, OSCE activities have since 1992 encompassed a broad range of instruments for prevention.

Finally, unlike the EU, OSCE membership embraces not only major countries of destination for refugees and asylum seekers, but also some of the most significant refugee producing countries. Moreover, the OSCE incorporates most of the countries through which refugees and migrants from other regions transit to reach Western Europe (excluding the Maghreb), as well as a number of countries in which migrant trafficking networks operate. Thus the OSCE offers an inter-governmental forum for addressing all phases of displacement, from the causes of flight in countries of origin, over the organization of trafficking and transit through third countries, to border controls and asylum systems in receiving countries as well as readmission agreements between sending and receiving countries. Again, this places the OSCE in a unique position to develop comprehensive approaches.

The next section will consider how these expectations have been met in practice. It will outline the OSCE's main activities in relation to displacement, and conclude by considering some of the institutional limitations the Organization faces.

OSCE Activities on Forced Displacement

Most OSCE activities in the field of migration and forced displacement come under the responsibility of the ODIHR, including freedom of movement and migration, trafficking in human beings and internal displacement. A number of other OSCE institutions also conduct activities relevant to forced displacement, including the activities of the High Commissioner on National Minorities (HCNM) and of the long-term missions.

ODIHR

Migration/Freedom of Movement

Activities related to migration and freedom of movement were established in the 1975 Helsinki Final Act under the human dimension. Initially, the goal

was to facilitate travel and promote "human contact" in Europe, although specific commitments in this direction remained limited, and a right to leave any country and return to one's own country was not recognized until 1989. During the Cold War period, the then CSCE also adopted various standards on the treatment of migrant workers. From 1989 onwards, the emphasis shifted towards facilitating free movement between countries. The ODIHR Migration/Freedom of Movement Unit is currently involved in projects to promote freedom of movement, in particular through capacity-building of border services and reform of internal freedom of movement rules, *inter alia* in Armenia, Azerbaijan, Kyrgyzstan, Russia and the Ukraine. However, it should be noted that while the OSCE has promoted free movement in some contexts, it has been more reticent about criticizing Western European states' restrictive entry policies. This lack of consistency may become increasingly problematic as EU accession obliges Central European states to introduce more restrictive border controls with their eastern neighbours, thereby limiting free movement and personal contacts between these countries.¹²

One important activity in past years has been participation in the 1996 regional conference on CIS displacement.¹³ The conference was initiated by the UNHCR in close co-operation with the IOM and the OSCE ODIHR, and produced a Programme of Action to develop national migration systems and policies, as well as legislation on displacement in the countries concerned. Partly to enhance its input into the process, the OSCE decided in 1994 to set up the post of an ODIHR Migration Adviser. The CIS conference was in many ways a pioneering initiative, which brought together a range of international and national actors to address displacement problems in a holistic fashion. It was hailed at the time as an excellent example of a preventive approach.¹⁴ The model has not been applied elsewhere, although arguably it might be a useful approach for addressing ongoing problems of displacement in the Balkans.

The OSCE has also dealt with the themes of migration and forced displacement in human dimension seminars and meetings. As early as April 1993, the then CSCE held a "Human Dimension Seminar on Migration, Including Refugees and Displaced Persons", which stressed the need for a comprehensive approach and inter-agency co-operation to deal with displacement problems in the CSCE region. Interestingly, at this stage the CSCE was not yet considered to have a significant role in dealing with these issues, as the UNHCR and IOM were still assumed to be the relevant agencies for developing and

12 Cf. Heather Grabbe, *The Sharp Edges of Europe: Extending Schengen Eastwards*, in: *International Affairs* 3/2000, pp. 519-536.

13 The full title is: *Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and relevant neighbouring States*.

14 Cf. UNHCR Activities in Relation to Prevention, Executive Committee of the High Commissioner's Programme, Standing Committee, EC/46/SC/CRP.33, 28 May 1996, paragraph 21; Kemlin Furley, *Prevention, the CIS Conference, and UNHCR in the CIS Countries*, paper presented at the UNHCR Consultation on Prevention, Geneva, February 1997.

implementing policies.¹⁵ This assumption had significantly changed by the time of the September 2000 "Supplementary Human Dimension Meeting on Migration and Internal Displacement". The meeting produced a number of recommendations on enhancing the OSCE's role in protecting and assisting displaced persons, and especially the internally displaced (see below).

Trafficking in Human Beings

The OSCE has been involved in measures to combat trafficking in human beings since 1991, when it began to address the problem in the context of stopping violence against and exploitation of women, including victims of trafficking. Trafficking was treated as a human dimension issue, with a focus on assisting victims, rather than being defined as a security issue. At the Ministerial Council in Vienna in 2000, however, the approach was expanded to include measures to combat international organized crime.

Since then, this more multi-dimensional approach has been furthered through activities within the Stability Pact for South Eastern Europe. ODIHR chairs the Stability Pact Special Task Force on Trafficking in Human Beings, created in September 2000. The Task Force is seeking to develop a comprehensive approach to the question, focusing on prevention of trafficking, as well as protection of victims and prosecution of traffickers. This is reflected in the fact that measures involve co-operation with two of the Working Tables of the Stability Pact: Security Issues, as well as Democratization and Human Rights. The Task Force launched a strategy for combating trafficking in March 2001, which includes projects to identify the socio-economic causes of trafficking. In April 2001, it held a round table on the problem of trafficking in Belgrade, which dealt with prevention as well as protection and awareness-raising.

Internally Displaced Persons

The OSCE has been promoting UN-defined Guiding Principles on internally displaced persons, mainly through legal capacity-building. In May 2000, the ODIHR and the Brookings Institute jointly hosted a regional workshop on internal displacement in the South Caucasus, held in Tbilisi, which aimed to develop solutions for the problem of IDPs in Armenia, Azerbaijan and Georgia.

Internal displacement was the main topic under discussion at the September 2000 Supplementary Human Dimension Meeting. In their conclusions, the participants stressed that the OSCE had the potential for further development in this field, and the meeting recommended that the Organization's activities be expanded through extending the mandate of the High Commissioner on

15 Cf. Guy Goodwin-Gill, *Towards a Comprehensive Regional Policy Approach: The Case for Closer Inter-Agency Co-operation*, paper prepared for the OSCE Human Dimension Seminar on Migration, Including Refugees and Displaced Persons, Warsaw, 20-23 April 1993.

National Minorities, as well as encouraging a greater role for the ODIHR. Significantly, the meeting report suggests that: "If this does not prove to be effective, it might be necessary to allocate responsibility to a particular body."¹⁶

The OSCE's interest in IDPs should be understood within the context of the ongoing inter-institutional wrangle over which organization should have primary operational responsibility for IDPs. This has been a subject of more or less explicit conflict, in particular between UNHCR and ICRC, for a number of years. It is not clear what comparative advantage the OSCE would have over these other two organizations to justify its assuming a lead role in IDP protection and assistance in Europe. It certainly has less practical experience than the UNHCR in providing protection, care and maintenance for displaced populations, and less experience than the ICRC in assisting war-affected populations. Moreover, it has a less robust legal basis and mandate for protecting the rights of affected populations against states - a problem that will be returned to in the next section. Nonetheless, the OSCE does have missions in many countries affected by IDP problems, and can play an important role in assistance and protection in co-operation with other agencies.

Other ODIHR Activities

In a broad sense, most of the activities of ODIHR in the areas of election monitoring and democratization can be understood as having a generally beneficial impact on the problem of displacement, in the sense that these mitigate the problems that cause flight. Elections are also often a central aspect of peace-building, and can go hand in hand with efforts to promote refugee repatriation and reintegration.

ODIHR also serves as a Contact Point for Roma and Sinti Issues, and in 2000 organized a series of meetings in Skopje, Oslo, Helsinki, Bratislava, Tarnow and Prague on the position of Roma refugees and asylum seekers. These were part of the lead-up to an international consultation on Roma refugees and asylum seekers, held in Warsaw in October 2000, which addressed various protection and assistance problems faced by Roma asylum seekers, including the problems of Roma refugees from Kosovo.

Conflict Prevention through the HCNM and Long-Term Missions

OSCE institutions carry out a variety of activities in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation, all of which are highly relevant to forced displacement. Measures in the fields of early warning and conflict prevention can help to address the causes of forced displacement, and crisis management activities can also include measures to protect and assist refugees and IDPs in the context of humanitarian

16 OSCE Supplementary Human Dimension Meeting, Final Report, cited above (Note 8), p. 5.

emergencies. Equally, OSCE activities in the area of post-conflict rehabilitation can encompass measures to assist the return and reintegration of displaced persons. The OSCE has recognized the importance of addressing the problem of displacement within its conflict-prevention activities. Thus, the Rome Ministerial Council (the then CSCE Council) in 1993 agreed that: "In the context of conflict prevention and crisis management, the issue of mass migration, namely displaced persons and refugees, will be addressed, as appropriate, by the CSO (Council of Senior Officials, today the Senior Council, C.B.) and the Permanent Committee (today the Permanent Council, C.B.) of the CSCE, taking into account the role of other relevant international bodies."¹⁷ The main OSCE institutions dealing with conflict prevention are the High Commissioner on National Minorities and the long-term missions.

National Minorities

The post of the High Commissioner on National Minorities was established in 1992 to prevent the escalation of tensions involving minority groups through early warning and preventive diplomacy. As such, the HCNM aims to contribute towards preventing one of the principle causes of forced displacement in Europe. The High Commissioner's preventive activities usually take the form of advocacy work through discussions and recommendations, as well as capacity-building through training and workshops on minority issues. These activities can clearly have an impact on displacement, through reducing discrimination against and persecution of particular groups, and alleviating inter-ethnic tensions that can lead to violent conflict. Examples of the linkages between the High Commissioner's activities and prevention of displacement include promotion of Albanian minority rights in Macedonia, which could help to avoid ethnic conflict and displacement; and activities to reduce discrimination against Roma and Sinti, which can alleviate pressures to seek asylum elsewhere.

More directly, the High Commissioner frequently addresses issues of forced displacement in his discussions with authorities. Thus he has focused on the problems of Serbian minority returns to Croatia in discussions with the Croatian government in past years.

Missions

The OSCE is active in a number of countries affected by forced displacement, including Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kosovo and recently also the Republic of Yugoslavia (outside Kosovo). It has also been involved in protection activities in several of its missions, particularly in the Balkans. Thus in Kosovo, for example, personnel from the Kosovo Verification Mission were redeployed in Albania and Ma-

17 CSCE, Fourth Meeting of the Council, Rome, 30 November-1 December 1993, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Basic Documents, 1993-1995*, The Hague/London/Boston 1997, pp. 192-214, here: p. 203.

cedonia from April 1999 to help the UNHCR in its protection and assistance activities. OSCE staff helped with logistics, registration, interviews and management of refugee camps.

In Croatia, the OSCE has been involved in monitoring the return and reintegration of refugees and IDPs since 1997. Decision no. 176 of the Permanent Council authorized the Mission to "assist with and to monitor (...)"¹⁸ Croatian government legislation and commitments on the return and on the protection of the rights of returnees. One of the main focuses is addressing the various legal and security problems faced by Serb minority returnees, including the ongoing problem of property repossession. The Mission has been working with the UNHCR to promote co-ordination of international activities on return through local Area Return Facilitation Groups.

Opportunities and Constraints

These various activities related to displacement can be assessed from a number of perspectives: for example, according to how far they meet their stated goals or what their impact is on the welfare of affected populations. What is interesting for the current discussion is how far they contribute to the "new solutions", in the sense of developing a holistic approach to displacement issues. The Final Report of the September 2000 Supplementary Human Dimension Meeting recommended that the OSCE "consider migration within a broader framework dealing with conflict resolution, regional stability, economic progress and the development of civil society", and that it "develop comprehensive, multidisciplinary approaches to migration, including the security aspects".¹⁹ How far has the OSCE managed to bring together activities in these disparate areas and define such comprehensive approaches?

Intra-Organizational Fragmentation

The first apparent problem is that of fragmentation between different divisions, especially in the areas of democratization and human rights, conflict prevention and national minorities. Activities on trafficking, freedom of movement, conflict prevention, and national minorities fall within different OSCE institutions, each of which have their own goals, priorities and decision-making structures. This type of fragmentation can undermine the effectiveness of policies in two ways.

First, given the inter-linkages between displacement, human rights and security, it is important to have a good understanding of how they affect one an-

18 OSCE, Permanent Council, Decision No. 176, PC.DEC/176, in: PC-Journal No. 121 of 26 June 1997.

19 OSCE Supplementary Human Dimension Meeting, Final Report, cited above (Note 8), p. 7.

other in particular country or regional situations. Thus for example, displacement can in some cases spread tensions or conflict to host countries, as witnessed in the case of Kosovo and Macedonia. Displacement of particular ethnic groups can also alter the strategic balance in places of origin, as in Bosnia and Herzegovina or Nagorno-Karabakh. Moreover, large-scale repatriation can destabilize minority relations and affect human rights in areas of return - again South-eastern Europe provides ample examples of this. Equally, repatriation is often critical for effective democratization after conflict, for example in the context of elections. Finally, policies on free movement - especially asylum policy and border control - can influence trends in trafficking, as has been the case with Western European immigration and asylum policy over the past two decades.

Given these inter-linkages between different aspects of displacement and their possible repercussions for human rights and security, it is important to develop a holistic framework for analysing policy on displacement. As mentioned earlier, in principle the OSCE has a good analytical framework for doing this through its concepts of the human and security dimensions. However, it would benefit from developing an in-house analytical capacity which could better define the complex linkages between different aspects of displacement and the OSCE's broader activities.²⁰ This could involve integrating (or "mainstreaming") displacement concerns - whether these be related to prevention, protection or repatriation - into all relevant OSCE activities. It would also imply co-ordinating policies between relevant OSCE institutions dealing with displacement issues. This co-ordinating function could perhaps be assumed by establishing a Focal Point for Migration.

The second reason for integrating policy in these different areas is more pragmatic. One of the advantages of emphasizing the links between human rights, security and displacement is that it provides an additional incentive for refugee receiving states to invest more resources into prevention. Given that industrialized states are highly concerned about the supposed "costs" of asylum seekers, the promotion of "new solutions" - such as prevention or humanitarian assistance - may be seen as a good means of limiting the numbers seeking protection in Western Europe. Indeed, this desire to limit influx was mentioned in part two of the paper as one of the main determinants of the shift towards "new solutions". If this type of concern is effective in generating increased financial and political commitment to addressing the causes of displacement and promoting peace-building, it is not to be scorned. But the linkages need to be more clearly spelled out: The OSCE should clearly define the range of tools and policies necessary to prevent or find solutions to forced displacement.

20 This is certainly a trend in many national policy contexts, as well as within the EU. A good example are the Conclusions of the October 1999 EU Justice and Home Affairs Council at Tampere, which stressed the need for "greater coherence of internal and external policies of the Union".

Mandate and Legal Basis

It was pointed out earlier that there are risks inherent in the shift towards new solutions, notably the concern that these preventive approaches become a substitute for more traditional protection obligations. Here one comes to the second main institutional limitation of the OSCE in the field of forced displacement: the OSCE's lack of legal basis and capacity, and its limited political scope for criticizing state practices or engaging in robust advocacy.

This type of more assertive approach however is often vital for promoting the protection of refugees and IDPs. Displaced persons have by definition lost the protection of their country of origin, and thus require international protection from countries of asylum or international organizations. Where states are reluctant to provide this protection, international organizations and NGOs often need to lobby hard to promote the rights and interests of displaced people. And this requires what a former Director of the UNHCR Division of International Protection has termed an "intrusive mandate", as well as a robust legal basis.²¹ The UNHCR and the ICRC have both of these. They are mandated to protect the interests and rights of war-affected populations or refugees, not to promote the concerns of states or their nationals. Their mandates are given legal weight through the respective Geneva Conventions.²² Thus both organizations can hold states to account for violating international legal standards. This contrasts with OSCE norms, which lack legal force; and its consensus based decision-making procedures, which are premised on the salience of national sovereignty over human rights. In this respect, it is interesting to note that minority issues are dealt with by the High Commissioner *on* rather than *for* National Minorities - a formulation that is far weaker than UNHCR and ICRC roles in protecting specific populations.

Given these institutional constraints, the OSCE's main contribution to policy on forced displacement is likely to remain in the areas where there is minimum conflict with state interests: prevention and peace-building. Its expansion into more intrusive areas of protection would bring it into conflict with the interests of its participating States. In this respect, it is uncertain how suitable the OSCE would be to assume a more central role in IDP protection activities. It may be that core protection activities - including advocacy of the rights of displaced persons to often hostile host authorities and governments - are best undertaken by human rights and refugee protection organizations with more independent mandates and policy-making structures.

21 Comments by Dennis McNamara on the occasion of the UNHCR External Research Advisory Committee, Geneva, October 1997.

22 In the case of the ICRC, the legal basis are the Geneva Conventions on Protection of Civilian Persons in Time of War of 1949 and their Protocols; for UNHCR it is the Convention relating to the status of refugees of 1951, and its 1977 Protocol.

Conclusion

The OSCE has the potential to play a pivotal role in developing new solutions to problems of forced displacement. Its comprehensive security concept and broad range of activities make it well-equipped to define and implement holistic approaches to displacement in the OSCE region. Furthermore, its broad membership should facilitate dialogue and co-operation between countries of origin and transit and those receiving refugees. The Organization should exploit these advantages, and develop organizational structures that facilitate better analysis of the causes and impact of forced displacement, and that allow for more effective co-ordination of the various activities that relate to displacement.

A more serious constraint, however, is the OSCE's lack of legal basis and political scope for criticizing the practices of participating States on refugee and asylum policy. Thus while it is well-placed to incorporate interests in regional stability, conflict prevention and limiting influx (the sort of perspective not available to agencies with mandates more narrowly focused on individual rights issues), it nonetheless lacks the scope to mount a more robust defence of refugee rights where these conflict with the interests of receiving countries. Thus the OSCE can contribute most valuably in areas where there is a convergence of interests between participating States and the goals of prevention or peace-building. In these fields, the OSCE should seek to maximize its comparative advantage by developing its analytical capacity to define the complex linkages between displacement, human rights and security; and, drawing on this analysis, ensure a comprehensive and co-ordinated approach to all of its activities related to forced displacement.