The Global Challenge of Internal Displacement

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It is a great honor and privilege to have been invited to address this auspicious colloquium inaugurating an institute that promises to play a vital role in the development and promotion of global legal studies. I do so with humility and in the realization that my only comparative advantage is to share with you reflections derived from my experience as the Representative of the United Nations Secretary-General on Internally Displaced Persons.

I would like to address the subject of internal displacement from the perspective of four issues: the magnitude of the crisis, my conceptual approach to the mandate, the scope of activities I have undertaken pursuant to the mandate, and the need to address the root causes of internal displacement.

I. THE MAGNITUDE OF THE CRISIS

When Secretary-General Boutros Boutros-Ghali surprised me with a phone call in 1992 offering me the position of Representative of the Secretary-General on Internally Displaced Persons, I told him that while I was honored by his offer, and I would appreciate getting more details on what would be required of me before responding. Boutros-Ghali, whom I had known as Minister of State for Foreign Affairs of Egypt when I was Minister of State for Foreign Affairs of the Sudan, responded with moral authority: “Come on, Francis, I know how concerned you are with this problem. It is not only a global crisis, but one from which our continent of Africa is the most affected and in Africa, your own country, the Sudan is the worst hit, and in the Sudan, your own people in the South are the victims. So, I don’t see how you can say ‘no.’ Let us say that you have accepted
and if later you change your mind, we can discuss further.”

Boutros-Ghali was right. Internal displacement is a global crisis affecting twenty to twenty-five million people in over forty countries, literally in all regions of the world. Africa, with half the world’s displaced populations in some twenty-one countries, is the worst hit. The situation in Africa continues to worsen with every crisis that ensues. Within Africa my own country, the Sudan, is the most affected with four million internally displaced people. The people of the South Sudan, a region that has been ravaged by a civil war that has raged intermittently for over four decades, are the primary victims. Thus, for me this is not only a challenge to humankind the-world-over, it is a humanitarian and human rights tragedy that is close to home.

Further, my experience with the work of the mandate demonstrates to me that the crisis is greater than statistical evidence shows. My country missions around the world reveal that there are real human beings with tragic faces behind those statistics. These people are uprooted and forced to flee from their homes and areas of normal residence as a result of armed conflicts, communal violence, gross violations of human rights, and other manmade or natural disasters. Displacement deprives them of the basic necessities of life such as shelter, food, medicine, education, or employment opportunities. Displaced persons face discrimination and often find their family and communal ties shattered. Worst of all, they are often trapped within the zone of the very conflict which they seek to flee, forcing them to move again and again.

The tendency in the international community is to respond to the crisis with humanitarian relief assistance, with little or no attention given to protection. Internal displacement is indeed a humanitarian issue, but it is also a human rights concern. If we are to avoid the paradox of the “well fed dead,” it is critical that assistance be closely linked to protection.4

While the internally displaced are particularly vulnerable and have distinctive needs, they often represent a sample, or a microcosm, of the wider community affected by the conflict. Under certain circumstances that they may even fair better than the resident communities that have not escaped the looming threat of death and perpetual harassment by the warring parties or factions. The goal, therefore, must be to provide comprehensive protection and assistance, and at the same time address the specific needs of vulnerable groups. Even among the displaced populations, certain categories of people that constitute the overwhelming majority of the displaced, notably children, women, the elderly, and the disabled, are more vulnerable and deserve special attention.

Many of the displaced women become heads of households because their husbands have gone to war, have been killed, have chosen to remain behind to protect their land and other properties, or have moved to areas where they can seek employment, avoid recruitment into armed forces, and avoid arbitrary detention. Displaced populations, as a result, have among them disproportionate numbers of widows with children, as well as unaccompanied minors separated from their guardians, or whose guardians have been killed. Sadly, war itself cripples many fighting men who are then abandoned and left without care.5

II. CONCEPTUAL APPROACH TO THE MANDATE

The international community’s approach to the crisis of internal displacement and the need for providing protection and assistance to

4. MASSES IN FLIGHT, supra note 1, at 10.
the affected populations rests on the fundamental realization that the problem, by definition, is internal and therefore falls under state sovereignty. It was because of the need for sensitivity to the issue of sovereignty that the Commission on Human Rights decided in 1992 to appoint a Representative of the Secretary-General rather than the Rapporteur or Working Group mechanism normally created for such thematic issues.6 Indeed, the first task assigned to me in this role was to prepare a study to advise the Commission whether this was an area in which the United Nations (UN) should be involved and, if so, through what mechanism. Bearing in mind both the sensitivity of the issue and the crosscutting nature of the problem, that should involve humanitarian and development agencies, I recommended continuing with the mechanism of the Representative of the Secretary-General.7

In carrying out my work under the mandate, however, I approach sovereignty not as a negative concept by which states barricade themselves against international scrutiny and involvement, but rather as a positive concept entailing responsibility for the protection and general welfare of the citizens and of those falling under state jurisdiction.8

Under normal circumstances, states are expected to, and do in fact, discharge those responsibilities. If they cannot discharge those responsibilities for lack of capacity or resources, they are expected to seek, or at least welcome, international assistance. If, on the other hand, they fail to meet their obligations or fail to welcome international assistance, and masses of their people suffer humanitarian and human rights tragedies as a result, then they must expect the international community to show concern and perhaps even threaten intervention. Such intervention could range from persuasive diplomatic intercession, to more assertive political and economic measures in the form of sanctions, to coercive military intervention, in extreme cases.9 It is obvious, therefore, that the best way to guarantee state sovereignty is to discharge the responsibilities

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7. Id.
8. MASSES IN FLIGHT, supra note 1, at 275-80.
of sovereignty towards the citizens and those under state jurisdiction.

In my dialogue with governments—one of the requirements of my mandate—the first five minutes with the head of state is crucial to assure them of my recognition of the problem as internal and therefore under state responsibility. Having emphasized my respect for their sovereignty, I quickly move on to present the positive interpretation of sovereignty and the supportive role of international cooperation. Once I establish a cordial climate, candid and constructive dialogue can follow with little or no constraint in the name of sovereignty.

The reality is, of course, less congenial or harmonious than this picture of seeming civility conveys. Internal conflicts, especially those connected with acute ethnic, religious, or cultural contradictions, often are associated with a crisis of national identity and may create severe cleavages between the victim population and their government or other controlling authorities. Instead of being seen as citizens who merit protection and humanitarian assistance, these persons are often perceived as part of the enemy, if not the enemy itself. Therefore, they are neglected, and perhaps even persecuted. The problem is compounded by ineffective government authority and control, limited capacity for economic growth and distribution, and, above all, tensions between centralized political and economic forces and various local and ethnic constituencies seeking greater autonomy and equitable participation in the political and economic life of the country. Dispossessed by their own national authorities, their only source of protection and assistance becomes the international community. The critical issue becomes how the international community can intercede to overcome the obstacles of negative sovereignty and ensure access for the needy population.

III. SCOPE OF ACTIVITIES OF THE MANDATE

When the mandate was created by the Commission on Human Rights with the support and encouragement of nongovernmental organizations and concerned governments, the need was glaring. Yet, it was not clear what the international community could do about it. My mandate was both specific and open-ended, which allowed considerable room for creativity and innovation. Importantly,
however, what we did under the mandate was requested, authorized, or sanctioned by the Commission, the General Assembly, and related organs of the UN Organization.

Over the years, the role of the mandate crystallized into that of advocacy; raising the level of awareness about the displacement crisis worldwide and acting as a catalyst for international response. Specifically, the activities of the mandate focus on four areas: developing an appropriate normative framework for responding to the protection and assistance needs of the internally displaced; fostering effective institutional arrangements at the international and regional levels to these same ends; focusing attention on specific situations through country missions; and undertaking further research to broaden and deepen our understanding of the problem in its various dimensions.

With respect to the first area of work, there was from the start a wide recognition of the fact that, unlike refugees who are governed by the 1951 Convention on Refugees, there is no international legal instrument for protecting and assisting the internally displaced. At the request of the Commission on Human Rights and the General Assembly, I began to work with a team of international legal experts to study the extent to which international law provides adequate protection for internally displaced persons. In a two-part Compilation and Analysis of Legal Norms, they found that while existing law covers many relevant aspects to the situation of internally displaced persons, there nonetheless exist significant gaps and gray areas where the law fails to provide sufficient protection. The team recommended compiling all the legal provisions relevant to internally displaced persons in one document to restate the law and to address the identified gaps and gray areas. The Commission on Human Rights and the General Assembly welcomed the compilation and, on that


basis, requested that I develop an appropriate normative framework for the internally displaced. In response to that request, I continued to work with the legal team and we developed the Guiding Principles on Internal Displacement (Guiding Principles or Principles).¹²

The Guiding Principles were finalized in January, 1998. The process was broad-based, bringing together legal experts from all different parts of the world, including representatives of international and regional organizations, nongovernmental organizations at the international and national level, and research and academic institutions.

Although not a binding instrument, the Guiding Principles restate the existing norms of human rights and humanitarian law, as well as refugee law by analogy, that are relevant to the internally displaced. They set forth the rights of internally displaced persons and the obligations of governments, insurgent groups, and other actors toward these populations in all phases of displacement. In addition, they provide protection against arbitrary displacement, protection and assistance during displacement, and protection during return or resettlement and reintegration. Their aim is to provide practical guidance to all those with a role in addressing the plight of the internally displaced. The idea was that, as a restatement of existing legal norms, the Guiding Principles would provide only guidelines for application with a focus on internal displacement and would not require formal adoption by the relevant UN agencies.

Since their presentation to the Commission on Human Rights in 1998, the Guiding Principles have been acknowledged widely by UN bodies. The UN Secretary-General cited them as a major achievement in the humanitarian area—¹³ and recommended to the Security Council that in cases of massive displacement, it encourage States to be guided by the Guiding Principles.¹⁴ The Council has begun to refer to

them in regard to specific situations. Even earlier, the Inter-Agency Standing Committee (IASC), composed of the heads of the major humanitarian, human rights, and development organizations, welcomed the Guiding Principles and called upon its members to disseminate them and have their staffs apply them, especially in the field. The General Assembly and the Commission on Human Rights requested that I make use of the Principles in my dialogues with Governments and intergovernmental and nongovernmental organizations.

The General Assembly and the Commission also encouraged the wide dissemination and application of the Principles by international, regional and nongovernmental organizations (NGOs). Several regional organizations, among them the Organization of African Unity, the Inter-American Commission on Human Rights of the Organization of American States, and the Organization for Security and Cooperation in Europe have indeed begun to disseminate the Principles, to use them as a basis for measuring conditions on the ground, and to sponsor workshops featuring the Principles. In May, 2000 the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) cosponsored with the Brookings Institution Project on Internal Displacement and the Norwegian Refugee Council, a regional workshop on internal displacement in the South Caucasus, convened in Tbilisi, Georgia. Similar such workshops were held in Africa, Asia and the Americas, and further seminars are planned for next year in Sudan, Indonesia, and Southern Africa.

Dissemination of the Guiding Principles has been facilitated through their translation into different languages. In addition to the official languages of the UN, the Principles have been translated into Azerbaijani, Georgian, Burmese, Karen, the Afghan languages of Dhari and Pashtu, and will soon be available in Armenian.

As a result of all these efforts, the Principles are increasingly used as an advocacy tool by international organizations and NGOs in their


https://openscholarship.wustl.edu/law_journal_law_policy/vol5/iss1/12
work on behalf of the displaced. Governments also have found the Guiding Principles a useful guide for the development of laws on internal displacement and as a yardstick for measuring conditions in their countries. A number of governments publicly praised the development of the Principles and several governments in countries with serious situations of internal displacement have actively supported and participated in seminars on the Principles.

Meanwhile, there are governments which have begun to question the innovative process by which the Guiding Principles were developed. At the July, 2000 session of the UN’s Economic and Social Council (ECOSOC), a number of governments expressed the view that principles not drafted or formally adopted by governments cannot have real standing. More recently, in the Third Committee of the General Assembly, the same group of governments tried to prevent the reference to the Guiding Principles in the “omnibus” resolution on the work of the UNHCR, despite the fact that such reference had been part of the resolution adopted unanimously by the General Assembly for the last two years. In the end, at the insistence of Egypt, the resolution was voted on and adopted by a majority of 118 with none against and thirty abstentions. Ironically, these governments were among those that have voted for the Commission and General Assembly resolutions encouraging the development of the Guiding Principles over the years, recommending their wide dissemination and requesting me to use them as the basis for my dialogue with governments. On a positive note, the outcome of the vote itself testifies to the increasing recognition the Guiding Principles are receiving, which in turn reaffirms that they indeed fill a normative vacuum.

At a colloquy on the Guiding Principles convened in collaboration with the Government of Austria in Vienna last September, national NGOs throughout the world reported on their use of the Principles in their dialogue with local and national authorities. Regional intergovernmental organizations also cited the Principles as an effective protection tool; and in Asia, national human rights...
commissions acknowledged the utility of the Guiding Principles, both in their monitoring activities and in advising Government officials and legislators on the content of draft legislation. Furthermore, the Principles have been cited by UN treaty bodies in their interpretation of the law relevant to internally displaced populations and in Colombia, the Supreme Court has referred to the Guiding Principles in two recent decisions for the protection of the internally displaced. There is little doubt that the Principles have gained standing and authority worldwide.

With respect to institutional arrangements, the gaps in the international system relating to the internally displaced have always been obvious. Again, in contrast with refugees for whom UNHCR has responsibility for their protection and assistance, there is no one specialized agency for the internally displaced. In my first report to the Commission, I suggested a number of remedial options ranging from the creation of a specialized agency for the internally displaced, to the designation of an existing agency to assume full responsibility for them, to a collaborative arrangement that would utilize existing capacities and enhance the effectiveness of the international system.

Regarding the first option, it soon became clear that there was no political will in the international community to create a new agency for the internally displaced. Designating a single agency to assume full responsibility for the internally displaced is an idea that resurfaces periodically, as it did again last year when Ambassador Richard Holbrook of the United States made that proposal while serving as President of the Security Council. However, a broad consensus emerged that the problem is too big for one agency and requires the collaborative capacities of the international system.

Nevertheless, there is a need to strengthen the collaborative approach to overcome the challenging problems of coordination and response gaps that frequently arise under the present arrangement, especially in the realm of protection. The Secretary-General’s reform program drew special attention to the gaps in the international system in responding to the protection and assistance needs of the internally displaced and gave the Emergency Relief Coordinator (ERC) the responsibility for ensuring that these needs are addressed adequately
In an effort to focus greater attention on the protection of internally displaced persons, I consulted the ERC and the UN High Commissioner for Human Rights. We concluded that it would be useful to draft a joint policy paper on what precisely protection means and how protection might be ensured by the international system. The resulting paper, adopted by the IASC in December, 1999, notes the need to give practical effect to the responsibilities of international agencies in regard to protection as a principle of security, physical integrity, and respect for all human rights. The paper sets out a number of strategic areas of activity through which the international community can seek to fulfill those responsibilities. These include: promotion and dissemination of the Guiding Principles; active and assertive advocacy for the rights of the internally displaced; strengthening local and national protection capacities; promoting protection in the design of assistance programs, including those regarding return or resettlement and reintegration; and operational monitoring and reporting.

The IASC also adopted supplementary guidance to UN resident and humanitarian coordinators to facilitate carrying out their protection and assistance responsibilities in relation to internally displaced persons. The resident and humanitarian coordinators are deemed responsible for coordinating the UN’s response to both the protection and assistance needs of the internally displaced in a given country, and for ensuring that response gaps are addressed systematically. More recently, the IASC appointed a special coordinator to lead an interagency network which will examine several situations of internal displacement with a view to ensuring both an effective response to the protection and assistance needs of internally displaced persons and an appropriate coordination mechanism.

While such developments are both welcome and encouraging, we are still at the very early stages of translating the conceptual framework of protection into an operational reality. Some strategies for doing so were outlined in the IASC policy paper. Others were described in the UN’s 1999 *Manual on Field Practice in Internal Displacement*, which provides examples from UN agencies and partner organizations of field-based initiatives supporting internally displaced persons. Additional guidance is contained in the *Handbook for Applying the Guiding Principles on Internal Displacement*, published in 1999 by the UN and the Brookings Institution Project on Internal Displacement.

Parallel to the process of supporting greater collaboration at the international level, and pursuant to the mandate, we are also in the process of developing cooperation with regional organizations. The importance of regional approaches to the problem of internal displacement should be underscored. Indeed, regional organizations are beginning, in varying degrees, to devote attention to issues of conflict prevention and mass displacement. The mandate is forging partnerships with the Council of Europe, the Organization for Security and Cooperation in Europe, the Organization of African Unity and the Organization of American States, as well as with subregional organizations, such as the Economic Community of West African States, and cross-regional organizations, such as the Commonwealth.

In September, 2000 the OSCE’s Office for Democratic Institutions and Human Rights, in conjunction with the Government of Austria in its capacity as Chairman-in-Office of the OSCE, convened a Supplementary Human Dimension Seminar on Migration and Internal Displacement. The seminar sought to elaborate ways in which OSCE institutions, field operations, and participating States could enhance their response to internal displacement, particularly through the practical application of the Guiding Principles.

22. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, MANUAL ON FIELD PRACTICE IN INTERNAL DISPLACEMENT (1999).
Country missions are the most tangible means for assessing both the conditions on the ground and the effectiveness of the national and international response to specific situations. To date, I have undertaken eighteen, including a recent one in Angola. Invitations for missions have recently been received from the Sudan, Indonesia, the Philippines, and Turkey.

These country missions offer the opportunity for dialogue with governments and other concerned actors on ways to improve the conditions of the internally displaced by bridging the gap between principles of protection and assistance and the actual conditions of the internally displaced on the ground. They also help advance understanding of the generic problems of internal displacement and the responses needed to alleviate the dire conditions to which the displaced often are subjected.

Country missions, ironically, also raise the stakes involved in the needed response. Merely undertaking a mission conveys to the displaced populations that the international community cares about their plight. Although one should not promise too much in meetings with them, it is inevitable that one gives them hope for international cooperation with their government to address their needs. Yet, unless these missions in fact result in improved responses to their needs, their hope can turn to despair and leave them worse than they were before the mission. This is why I plead with all concerned, both national and international actors, to do what is within their capacity to respond to the needs of the displaced and prove to them that the world genuinely cares about their plight.

Finally, under the mandate we have been involved in the preparation of studies on internal displacement, the most significant of which is the comprehensive study, composed of two volumes: Masses in Flight: The Global Crisis of Internal Displacement and The Forsaken People: Case Studies of the Internally Displaced, co-authored with Roberta Cohen and published by the Brookings Institution in 1998. The objective of this study was to probe into

25. Masses in Flight, supra note 1; The Forsaken People, supra note 2.
such issues as the numbers and distribution of internally displaced persons globally, their needs, how these needs are being met, what gaps exist in meeting these needs, and how these gaps can be bridged by the international community, including regional organizations and NGOs. In particular, the study identifies the tremendous gap in the area of protection and makes a series of recommendations for increasing attention to the physical security and human rights of displaced populations. It is our hope that this study will contribute to a more in-depth understanding of the global crisis of internal displacement, and of the steps needed to address it. The response we have received indicates that the study has indeed already achieved much of our intended objective.

IV. ADDRESSING THE ROOT CAUSES

An effective response to the crisis of internal displacement should not be limited to addressing it as a symptom. An effective response must go to the deeper, root causes that lie in the structural problems of nation-building: mismanagement of identity conflicts, gross inequities in the shaping and sharing of power, national wealth, opportunities for development, and chronic abuse of power resulting in egregious violations of human rights.

During the Cold War, these internal problems were overshadowed by the larger global confrontation of the superpowers and their proxy conflicts between and within nations. The tendency was to see conflicts largely in terms of this global ideological divide. Internal and regional crises were addressed, contained, or covered up through this bipolar control mechanism of the Cold War global order.

With the end of the Cold War and the strategic withdrawal of the major powers, crises are perceived now in their proper national and regional contexts, instead of being distorted as part of the proxy confrontations of the Cold War era. This is indeed a positive development. However, commensurate to this is the need to re apportion responsibility, with the State concerned assuming the primary role, countries of the region who are affected by the overflow of internal crises coming next. But, the international community is still needed to play a supporting role as the ultimate guarantor of universal human rights and humanitarian standards.
As a symptom of the structural problems that generate conflict, displacement is a national challenge that ultimately calls for creating an environment where all citizens feel a sense of belonging on equal footing: An environment where their human rights and fundamental liberties are respected without discrimination on the grounds of race, national origin, ethnicity, religion, culture, gender, or other grounds; where the state will respond effectively to their needs for protection and humanitarian assistance; and where, in the end, they are guaranteed lasting solutions to return to their homes, or are resettled and assisted to resume self-reliant and integrated development.

Ironically, displacement often exposes the affected rural population to the opportunities which citizens in urban centers enjoy and which they have been denied. It can have the effect of increasing their resentment and hostility. Unless effectively remedied, this may sow the seeds of further conflict in the country. Indeed, the crisis of displacement should be seen as a wake-up call and an opportunity for addressing the deeper, structural ills of the country to forge a national common ground and collective vision for nation-building.
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