

THE PLIGHT OF THE INTERNALLY DISPLACED:
A CHALLENGE TO THE INTERNATIONAL COMMUNITY
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I. The Context

We live in a world in which the principle of national sovereignty is still the cornerstone of international relations, despite significant modifications and moderation in the application of the principle. While international humanitarian and human rights instruments offer legally binding bases for international protection and assistance to needy populations within their national borders, those people are for the most part at the mercy of their national authorities for their security and general welfare. International access to them can be tragically constrained and even blocked by States in the name of sovereignty, by the collapse of states or by rampant insecurity, as was the case in countries like Angola, Colombia, Indonesia, Liberia, and the Sudan, to mention a few. Diplomacy and the art of persuasion can help to tear down the barriers; in extreme circumstances, more assertive intervention may be imperative.

A pragmatic basis for a diplomatic dialogue that moderates the negative implications of a narrowly conceived application of sovereignty is to postulate it positively, not as a barrier against international involvement and cooperation, but as a concept of state responsibility to protect and assist its citizens in need and, where lack or inadequacy of resources and operational capacities necessitate, invite or at least welcome international assistance to complement national efforts. There is an implicit assumption of accountability behind the concept of responsibility. This means that where the needs of sizeable populations are unmet under the exercise of sovereignty, and large numbers suffer extreme deprivation and are threatened with death, the international community, obligated by humanitarian and human rights principles, cannot be expected to watch passively. Humanitarian intervention then becomes imperative, as occurred for instance in Bosnia-Herzegovina, Kosovo, East Timor, and more recently in Sierra Leone, and the Democratic Republic of the Congo. The best guarantee for sovereignty is therefore for states to discharge minimum standards of responsibility, if need be with international cooperation.

This is the challenge for those countries whose populations suffer from the crisis of internal displacement, which by definition falls under state sovereignty.

II. The Problem

Some twenty-five million persons in over fifty countries are uprooted and forced to flee from their homes or areas of habitual residence as a result of internal conflicts, communal violence, or egregious violations of human rights, but have remained within their national borders. While the crisis is truly global and touches all continents, some regions of the world are worse affected than others. With almost thirteen million internally displaced in twenty countries, Africa is the hardest hit while Asia comes second with nearly four million displaced persons in ten countries. The internally displaced number approximately three million in four Latin American states, while Europe is host to three million in twelve countries and the Middle East counts two

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million in five countries. As a consequence of their forced displacement, they typically are denied safety and dignity and deprived of the essentials of life including shelter, food, medicine, education, community and a resource base for self-sustaining livelihood. Although communities where the causes of displacement prevail are generally also affected, those persons who are uprooted from their homes have been shown to be especially vulnerable. The internally displaced are paradoxically assumed to be under the care of their own Government, despite the fact that their displacement is often caused by the same state authorities. What is particularly ominous about the situation of internally displaced persons (IDPs) is that the conflicts, generalized violence, and human rights violations that cause internal displacement are often characterized by acute crises of national identity which are simultaneously a cause and effect of displacement, as well as a factor in official response to resulting humanitarian tragedies. Countries where the ethnic factor is pivotal include Burundi, Sudan, Sri Lanka, and the former Yugoslavia. In Latin American countries, such as Colombia, Guatemala, Mexico and Peru, the problem tends to be viewed largely in economic class terms, with race or ethnicity as correlative factors.

Although the concept of state responsibility to guarantee the protection and general welfare of citizens and all those under state jurisdiction is becoming increasingly accepted in international law, it poses practical problems in countries experiencing cleavages among the various groups with differentiated identities based on race, ethnicity, religion, language or culture. In most cases, the worst affected are minority or marginalized groups who are peripheral to the dominant identity group. Oftentimes, these are situations in which elements of these peripheral or marginalized groups are in conflict with the dominant group. Rather than be protected and assisted as citizens, members of these groups tend to be identified as the enemy, at best neglected, or worse, persecuted. Under these circumstances, citizenship becomes of little more than paper value, disconnected from the enjoyment of the rights normally associated with the dignity of being a citizen. Marginalization becomes tantamount to statelessness.

Where there is an external dimension to the conflict, such as is the case in the conflicts over Nagorno-Karabakh between Azerbaijan and Armenia, or over Abkhazia and South Ossetia in Georgia, Governments tend to identify with the cause of their displaced populations who are members of their ethnic group. But here, the internally displaced tend to be held hostage to the political agendas of the Government and used as a pressure on the international community to resolve the conflicts involved, rather than have their needs addressed effectively. In the case of Azerbaijan, after having been told by all the authorities and the displaced themselves that addressing the needs of the IDPs would undermine the urgent need to resolve the conflict over Nagorno-Karabakh so that the people might return to their original homes, I raised the issue with President Aliiev who surprisingly agreed with me that no one could tell when peace would be achieved and that it was unacceptable to let the IDPs suffer indefinitely. It was agreed that the needs of the IDPs be addressed in cooperation with the international community. This became the basis for the new approach, which Georgia subsequently adopted.

The irony is that if these victims of conflict or persecution had crossed internationally recognized borders, they would be classified as refugees, for whom the international community has a well-established legal and institutional framework for their protection and assistance through the 1951 Refugee Convention and the Office of the High Commissioner for Refugees (UNHCR). By virtue of having fled across international borders, refugees, who number about half the internally displaced population worldwide, are further, if not outside altogether, from the danger zone, they

are the subject of international concern, while IDPs fall into the vacuum of contested or divided sovereignty. I witnessed a dramatic instance of the different responses to these two groups in Burundi where two camps a few miles apart hosted refugees and IDPs. The refugee camp of Hutus was very well taken care of by the UNHCR while the camp of the displaced Tutsis, protected by the army, received no international support. It was obvious that the disparity could only aggravate the ethnic tension between the two groups. On reporting to the Secretary-General, the Inter-Agency Standing Committee and the High Commissioner for Refugees, it was decided to extend the assistance of the UNHCR to the displaced.

This vacuum of responsibility for the internally displaced poses a series of critical and practical questions. What principles of international law provide a basis for their protection and assistance? What institutional arrangements are in place or should be developed to provide them with adequate protection and assistance? What durable solutions are open to them? What standards and strategies should be applied to address the root causes of displacement? More specifically, what principles should govern the management of identity differences based on ethnicity, religion, language, and culture within a state? Should the overriding norm be to assimilate, integrate, co-exist, or forge independent entities where that is feasible? As the arbiter and guarantor of global peace and security, the United Nations is called upon to address these issues, credibly, effectively, and comprehensively.

III. The Response

The post-Cold War era witnessed the proliferation of internal conflicts, which confronted Governments with crises they could hardly manage. At the same time, human rights and humanitarian concerns began to challenge strategic national interest as a driving norm in international politics. Concomitantly, the rigid observances of sovereignty as a barricade against international monitoring and scrutiny began to fall under pressure. The narrow view of sovereignty became increasingly challenged as the media, and non-governmental organizations exposed the plight of millions who fell victim to the new types of wars that were fought internally, with devastating loss of lives, egregious violations of human rights, and dehumanization of the civilian populations. It was under these emerging circumstances that the crisis of internal displacement began to surface on the international scene.

Over the past twelve years of the mandate of the Representative of the UN Secretary-General on Internally Displaced Persons, my role has been to serve as an advocate and a catalyst for international response to the crisis. In collaboration with many individuals, organizations and institutions around the world, we have focused our activities in a number of areas: raising the level of awareness of the crisis of internal displacement; developing an appropriate normative framework for meeting the protection and assistance needs of the internally displaced; fostering effective international and regional institutional arrangements to these same ends; focusing attention on specific situations through country missions which offer the opportunity for advocacy and constructive dialogue with all concerned; reinforcing and building regional, national and local capacities for effective response, and undertaking policy and action-oriented research to broaden and deepen our understanding of the problem in its various dimensions. While all these areas of activity are important to the cause, the development of normative and institutional frameworks and engagement in dialogue with Governments, especially through country missions, are critical to an effective

international response to the challenge. The development of a normative framework has resulted in the form of the Guiding Principles on Internal Displacement, which in the short time since their development in 1998 have gained remarkable recognition internationally, regionally and, most importantly, at the national level, where primary responsibility for the displaced lies. Based on restating existing human rights and humanitarian law, the Guiding Principles cover all phases of internal displacement, from prevention of arbitrary displacement, to protection and assistance during displacement, to finding durable solutions that will lead to return in safety and dignity, alternative resettlement, and reintegration and self-sustaining development. The Principles apply equally to both states and non-state actors with control over displaced persons. Indeed, a number of state Governments, including Angola, Burundi Colombia, Liberia and Sri Lanka have adopted policies and/or laws based at least in part upon the Guiding Principles, and several other states, among them Mexico, Uganda and the Sudan, are currently considering plans for legislation and policies based on the Principles. Even rebel movements, such as the Sudan People's Liberation Movement and Army (SPLM/A), have begun to make active use of the Principles in developing policies and strategies of response to the displacement crisis. The Principles have also been a source of empowerment to the internally displaced, who are entitled to demand protection and assistance from their Governments and others exercising control over them, as a matter of right, rather than humanitarian favor.

While the growing acceptance of the Guiding Principles is vitally significant, the development of effective institutional mechanisms at the international level that assist states in carrying out their responsibilities with regard to the internally displaced is equally important. The international community has been grappling with this task for some time. In my first report to the Commission on Human Rights in 1993, I presented three options for response: creation of a new agency for the internally displaced, the designation of an existing agency, such as UNHCR to assume full responsibility, and collaboration among all the existing agencies. To date, the preferred response has been the "collaborative approach," according to which existing humanitarian and development agencies and organizations agree to work collectively to address the needs of the internally displaced within their respective mandates and with regard to their comparative advantages. Important steps have been taken to solidify this approach, including the designation of Resident and Humanitarian Coordinators as officials charged with ensuring coordination of assistance to, and protection of, the internally displaced at the country level, the designation of the Emergency Relief Coordinator (ERC) as the focal point for issues of internal displacement at the headquarters level, and the creation of the OCHA IDP Unit to assist the ERC in his task.

Nevertheless, coordination remains problematic and challenging; many internally displaced persons continue to fall through institutional cracks, leaving their pressing protection and assistance needs unmet. Important practical questions still need to be answered, including how responsibilities are assigned, what are the most effective ways to address protection, and how to ensure that appropriate accountability mechanisms are in place. This is widely acknowledged within the humanitarian community, and there is a growing willingness from all parts of the system to look for answers. At least for now, the broad consensus is to make the collaborative approach work and to strengthen the leadership and effectiveness of the Emergency Relief Coordinator.

Country missions have proven constructive in assessing national and international responses to the crisis. Through my reports on these missions, I have endeavored to turn statistics into human faces, making visible the deprivation and degradation which

displacement inflicts on the dignity of human beings. For the same reason, country missions are the litmus test for the effectiveness of national and international responses to the crisis. The normative basis of dialogue with Governments is a combination of respect for sovereignty and the stipulation of the responsibilities inherent in sovereignty. All the nearly 30 missions, and related visits to countries which I have undertaken, have involved this approach and I can say without hesitation that it has been enormously successful. No Government official has ever said to me, "I don't care how irresponsible or unresponsive we are, this is a matter of national sovereignty and none of your business."

IV. Stipulating Sovereignty as Responsibility

The critical question now is how the international community can reinforce, strengthen and make effective the application of the principle of sovereignty as responsibility, building on the national, regional and international apportionment of responsibility. To stipulate that sovereignty entails responsibility is to imply accountability for failure to conform. If this test is applied to the international response to internal displacement, the question arises as to who holds Governments accountable for not providing adequate protection to the displaced. There are of course human rights mechanisms, including preparing periodic reports to the Commission on Human Rights and the General Assembly and making recommendations. But, what is the impact and practical effect of these recommendations on the ground? In other words, what are the consequences of lack of implementation? When it comes to the global crisis of internal displacement, the issue is not only one of human rights concerns but it is also humanitarian, developmental and political. Nor are the actors concerned only Governments; United Nations agencies are also called upon to play key roles. And while the ERC is supposed to ensure that they all complement each other in the collaborative approach and according to their comparative advantages, how does s/he ensure the cooperation of the heads of the operational agencies, who carefully guard their turf and autonomy? What about the Secretary-General, in what way should he exercise his leadership to reinforce the collaborative approach? The ultimate authority of the United Nations of course lies with the Security Council, but how can the Council be made more effective in enforcing the principle of sovereignty as responsibility without bias or favor based on particular national interests or concerns of its members, especially the Permanent Five? On a positive note, however, the Security Council has in recent years recognized the need to address the lack of effective protection for IDPs. It has recognized that situations of internal displacement can constitute a threat to international peace and security and specifically requested that such situations where IDPs are under threat of harassment and harm be brought to its attention

I believe that the normative concept of sovereignty as responsibility, though perhaps not new in international jurisprudence, is a powerful one that is gaining significant momentum in international relations. It has indeed been strengthened and mainstreamed by the Canadian-sponsored Committee on "Intervention and State Sovereignty." The report of Commission, "The Responsibility to Protect," has received considerable international attention and has proven to be a constructive and effective basis for dialogue with Governments. But the concept needs to be expounded, sharpened and given teeth for effective application. How that can be done is an open, but challenging question. For the internally displaced, this normative concept has the potential for bridging national, regional and international responses to this global crisis and thereby build an effective and comprehensive system for ensuring their protection.