

SOVEREIGNTY AS RESPONSIBILITY: THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

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My lecture today, entitled "Sovereignty as Responsibility: The Guiding Principles on Internal Displacement," will focus on the first international standards developed for people forcibly displaced *within* their own countries by conflict, internal strife, systematic human rights violations and other such causes. The issue, however, is hardly theoretical or legal. Worldwide there are 25 million persons forcibly uprooted by conflict within their own countries. More than half are in Africa, 4 to 5 million in Asia, the largest numbers being in Burma, Indonesia, Afghanistan, Sri Lanka and India, 3 to 4 million in Europe and more than 2 million in the Americas. In addition, there are millions of persons internally displaced by natural disasters and development projects in all these regions. IDPs are generally in desperate straits. Because they are forcibly separated from their homes, communities and livelihoods, they become more vulnerable to starvation and disease than others in the population and they are easy targets for physical assault, forced recruitment, and sexual abuse. Indeed, the highest malnutrition rates recorded in emergencies in recent years have been in populations of internally displaced persons and the highest mortality rates ever recorded have involved IDPs.

It was not, however, until the last decade of the twentieth century that the forced displacement of persons *within* their own countries came onto the international agenda. Prior to that time, the international community was prepared to deal only with refugees, persons fleeing *across* borders because of persecution and violence. Following the second world war in Europe, an international system was created to protect and assist refugees. A convention and an organization -- the UN High Commissioner for Refugees (UNHCR) -- came into being, followed by a refugee convention in Africa and a declaration on refugees in Latin America. This overall protection system for refugees, however imperfect in its application, was a great step forward since prior to that time, persons who sought asylum on the territory of a foreign state could not count on gaining refuge; it was ad hoc and many were simply pushed back.

The refugee system created, however, did not extend to persons forcibly displaced and in refugee-like conditions *within* their own countries. Displaced persons who were unable to cross the border because of geographic barriers or because the fighting was too fierce or because they were too old, young or infirm to try, or because they wanted to stay in their own countries, were not considered to fall under this international protection umbrella. To be sure, if there were an internal armed conflict, the International

Committee of the Red Cross would help if it were allowed entry. And sometimes the UN would authorize UNHCR to become involved, as in Sri Lanka. But for the most part, internally displaced persons were not considered of concern to the international community. Traditional notions of state sovereignty precluded concern. Governments were considered to have the *exclusive* responsibility to provide for the well-being and security of their citizens. When they neglected to do so, or when they deliberately subjected their own populations to forced displacement, starvation, mass killings and other serious abuses, the international community basically stood by.

Why was there a change in outlook in the last decade of the 20th century toward persons uprooted and at risk in their own countries? A major reason was the upsurge in numbers of internally displaced persons during the 1990s. When first counted in 1982, there were 1.2 million in 11 countries. By 1997, 20 to 25 million were found in more than 40 countries, exceeding those of refugees, mainly the result of the large number of internal conflicts following or emanating from the cold war.

A second reason for the change in outlook was the realization that millions of people caught up in violence and destruction in their own countries constituted not only a humanitarian problem but a political and strategic challenge that could disrupt the stability of countries and also undermine regional and international security. Indeed, United Nations Secretary-General Kofi Annan warned in 1998 that if left unaddressed, conflict and displacement in one country could spill across borders, overwhelm neighboring countries and create political and economic turmoil throughout an entire region. He called for international action to strengthen national efforts in support of displaced populations.

A third reason for the shift in attitude was easier access to displaced populations, reinforced by changing notions of sovereignty. The international human rights movement had long championed the view that the rights of people transcend frontiers and that their human rights should be protected. By the end of the cold war, humanitarian organizations were also insisting that their staff have access to people in need of food, medicine and shelter. With the fear of superpower retaliation gone, these organizations found possibilities opening up for crossing borders and reaching people in need.

The issue of internal displacement also gained prominence because of the realization that in war-torn societies peace and reconstruction could not take place without the effective reintegration of displaced persons. Many of the countries devastated by civil war had large numbers of their population forcibly uprooted – sometimes a third or a half of the country. It thus became impossible to talk about reconstruction and development without taking into account the return and reintegration of both refugees and internally displaced persons.

Finally, it should be noted that some of the international interest in protecting people in their own countries arose out of a desire to curb refugee flows. The political advantage that had motivated many nations to accept refugees during the Cold War gave way – in the early 1990s – to a desire to curb their entry. Throughout the world, barriers began to

be erected to refugee admissions. To discourage people from seeking asylum abroad, more attention was focused on protecting people inside their own countries.

This complex mix of motivations produced what can be called an emerging *international* responsibility toward populations uprooted in their own countries. Reflecting this new responsibility was the appointment in 1992 by the UN Secretary-General of a Representative on Internally Displaced Persons to study the problem. The Representative chosen, Dr. Francis Deng, a Sudanese national, came from a country wracked by civil war with more than 4 million internally displaced persons – more than any other country in the world. I have worked closely with Dr. Deng since his appointment and I can tell you that he was very well aware of the difficulties inherent in trying to help internally displaced people. To begin with, access is often difficult because of fighting, or because governments or insurgent groups deliberately obstruct assistance, fearing that the aid will fortify the other side; or because governments do not always want to acknowledge the problem or accept international involvement. While in cases of natural disasters, governments are generally willing to provide assistance to their displaced populations in cooperation with the international community, when persons are displaced by conflict or political causes, governments often react differently. Indeed, in civil war situations that divide countries along ethnic, religious or linguistic lines, governments are often monopolized by one ethnic group to the exclusion or marginalization of others, so they do not regard the displaced as their citizens to be protected and assisted but rather as the enemy or as inferior. One government official even remarked that “These are not our people,” meaning that national responsibility extended only to those people of the same ethnic group as the government.

Deng put forward the concept of sovereignty as a form of responsibility toward all one’s citizens in order to reconcile national responsibility with international humanitarian action on behalf of displaced populations. Under this doctrine, governments have the principal responsibility to provide life-supporting protection and assistance to their own citizens. But if they are unable to fulfill their responsibilities, they are expected to request and accept outside offers of aid. If they refuse or deliberately obstruct access and put large numbers of people at risk, the international community has a right, even a responsibility, to express its concern. International involvement in such cases can range from diplomatic dialogue, to negotiation of access to bring in food and supplies, to international presence in support of IDPs, to political pressure, to sanctions, or in exceptional cases, to military intervention.

It is interesting to note that no government has ever challenged the concept of sovereignty as responsibility. To be sure some have expressed fears that humanitarian action could be a cover for the interference of powerful countries in the affairs of weaker states. But governments no longer can persuasively argue that sovereignty allows them to deny life-sustaining support to their citizens. More traditional and absolute notions of sovereignty have given way to notions of accountability to one’s domestic constituency and to the international community at large.

Let us now place the Guiding Principles within this context. The conceptual basis of the Guiding Principles is the concept of sovereignty as responsibility. Presented by Deng to the United Nations in 1998, the Principles affirm that primary responsibility for the displaced rests with their governments, but also emphasize the important role the international community has to play when governments fail to discharge these responsibilities.

Why were international standards needed? When Deng began his work, there was not a single piece of paper or document to turn to, or any definition of what an internally displaced person was. Indeed, international organizations and NGOs, trying to help IDPs in the field, called for a compact document on which to base their activities. The governments in the UN Commission on Human Rights and General Assembly also understood that the protection of IDPs had to begin with a legal foundation. They called upon Deng to examine the extent to which international law applies to the internally displaced. Consequently, Deng and the project we set up at the Brookings Institution organized a team of international legal experts to study human rights law, humanitarian law and analogous refugee law and develop a compilation and analysis of legal norms applicable to the internally displaced. After several years of study, the team concluded that IDPs receive a good deal of coverage under existing international law, but that IDPs are not explicitly mentioned in that law and there are significant areas in which the law fails to provide adequate protection. Indeed, the team found 17 areas of what they called inexplicit articulation of the law and 8 areas of clear gaps. Inexplicit articulation means that while a general norm might exist in international law, for example prohibiting cruel and inhuman treatment or punishment, there was no explicit prohibition against the forcible return of IDPs to places of danger within their own country. Or while there is a general norm covering essential medical care, the special needs of internally displaced women in the areas of reproductive and psychological health care would need to be specified. In other words, a more specific articulation of these norms would be required to make them relevant to the needs of the internally displaced. As for clear gaps in the law, the legal team found that in a number of instances, the law was silent. For example, there is no explicit norm on the restitution of property lost as a consequence of displacement during conflict, or on the need of IDPs for personal identification and documentation. In such cases, the team pointed out, rights would have to be inferred from other provisions of law.

Why were Guiding Principles developed instead of a treaty? There were three main reasons. First, there was no support from governments for a legally binding instrument on internally displaced persons. The subject of internal displacement was still far too sensitive. Indeed, the Commission on Human Rights requested Deng to develop an “appropriate” or “comprehensive” framework but generally avoided the term “legal.” Second was a time factor. Treaty making could take decades whereas there was urgent need for a document *now* to address the emergency needs of IDPs. Third, sufficient international law already existed applicable to internally displaced persons. What was needed was to bring together all the provisions dispersed in a large number of instruments and to restate that law so that it responded more effectively to the needs of the internally displaced.

The Principles, thirty in number, are based on human rights law, humanitarian law and refugee law by analogy, uniquely bringing all three branches of the law together. They provide guidance to all actors that deal with the internally displaced, whether governments, insurgent groups, international organizations or NGOs. They apply to all phases of displacement. They offer standards for protection *against* arbitrary displacement, innovatively setting forth a right *not* to be arbitrarily displaced. They set forth standards for protection during displacement, tailoring the full range of civil, political, economic, social and cultural rights to the specific needs of the displaced. Finally, they offer standards for protection during return, resettlement and reintegration. In short, they provide an international minimum standard for the treatment of IDPs.

The Principles balance sovereignty or national responsibility with a supporting role for the international community. For example, when providing humanitarian assistance, the Principles specifically state that offers of aid from international humanitarian organizations “shall not be regarded as an unfriendly act or an interference in a State’s internal affairs.” Consent for international aid is not to be “arbitrarily withheld,” particularly when the authorities concerned are “unable or unwilling” to provide the required assistance.

The Principles contain the first internationally used definition of IDPs. Basically the definition says that IDPs are persons who have been forced to flee or to leave their homes or places of habitual residence, in particular because of armed conflict, generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.

The two crucial features of the definition are coerced movement and remaining within one’s national borders. The definition also includes the major causes of displacement although the qualification, “in particular” makes clear that internal displacement is not limited to these causes alone.

Not all humanitarian or human rights groups wanted to include persons in the definition who were uprooted by natural or human-made disasters – that is floods, droughts, nuclear power accidents. They argued that the definition should focus only on persons who would be refugees if they crossed a border. But the overriding opinion was that persons uprooted by natural and human-made disasters, or by development projects, are also displaced and in need of attention; moreover, such persons can be neglected or discriminated against by their governments on political or ethnic grounds or have their human rights violated in other ways. When it came to persons who migrate because of economic reasons, there was near unanimity that they should not be included because in most cases the element of coercion was not so clear and because their inclusion would make the definition so broad that it could prove operationally unmanageable.

The definition it should be noted is more a description than a definition. It does not, for example, confer legal status on IDPs like the refugee convention does for refugees. That

is because IDPs are in their own countries and are supposed to enjoy the same rights and freedoms as other people in their countries.

Since their issuance in 1998, the Guiding Principles have “caught on like wildfire,” as one non-governmental observer described it. UN agencies, regional organizations, non-governmental groups and a growing number of governments have begun to use the Principles as the basis for their policies, laws and programs for the internally displaced.

From the outset, the UN Secretary-General supported the Principles, calling them one of the “notable achievements” in the humanitarian area and in a report to the Security Council in 1999, called upon that body to encourage states to observe the Principles in situations of mass displacement and also recommended that member states develop national laws and policies consistent with the Guiding Principles. The major international humanitarian, human rights and development organizations endorsed the Principles and began to use them in the field. At the regional level, a growing number of intergovernmental organizations became active in disseminating and applying the Principles – in the Americas, the Inter-American Commission on Human Rights of the Organization of American States; in Africa, the Economic Community of West African States, the Intergovernmental Authority on Development and the African Union; and in Europe, the Council of Europe and the Organization for Security and Cooperation in Europe. We are also making approaches in Asia to SAARC and ASEAN in line with UN resolutions calling upon regional organizations to work with the Representative to promote the Guiding Principles.

Most importantly, an increasing number of governments have accepted the authoritative character of the Guiding Principles by basing their national policies on them and in some cases have incorporated provisions of the Principles into national law. In Colombia, for example, the Constitutional Court cited the Guiding Principles as a basis for two of its judgments on internally displaced persons. In Angola, the government based its law on the resettlement of IDPs on provisions in the Guiding Principles. In Georgia, the government has announced that it will bring its laws into line with the Principles and has begun to do so. Other governments like Burundi, Colombia, the Philippines, Sri Lanka and Uganda have used the Principles as a framework for national policies. In Afghanistan, the Principles are being used to draft a decree for the safe return of IDPs. Even non-state actors have begun to acknowledge the Principles. The Sudan People’s Liberation Movement (SPLM), for example, has drafted a policy on internal displacement based on the Guiding Principles, while the LTTE in Sri Lanka has begun to receive some training in the Guiding Principles.

In the forefront of promoting the use of the Principles around the world have been local NGOs, lawyers groups, women’s associations, academics, and other members of civil society. They have translated the Principles into local languages and have developed power point presentations, handbooks and even comic strips to make the Principles understood locally. They have included the Principles in course work at university programs and have undertaken studies and books. In Georgia, local lawyers who studied the Guiding Principles brought to the attention of their government the need to expand

political participation for IDPs so that they could vote in local elections; and the government subsequently changed its laws. In Sri Lanka, the Consortium of Humanitarian Agencies organized a meeting at an IDP camp at which the IDP representatives used the Principles to make their concerns known to camp commanders about inadequate food rations, lack of clean water and attacks on their personal security. In Colombia, local groups have played an important role in getting their government and the courts to use the Principles as a framework for law and policy.

Why have the Principles been received so positively? First and foremost, they answered an international need for a document to turn to when dealing with IDPs. Second, the Principles, it must be underscored, are based on law already negotiated and accepted by states which has given many governments confidence to use them. Third was the inclusive process by which they were developed. I would note that it was clear to Deng and myself early on that principles developed in a closed room by a team of lawyers would never see the light of day unless there was broad international support for them. We therefore opened up the process and organized a series of meetings to bring together a wide range of experts from regional and international organizations, humanitarian and human rights NGOs, women's and children's advocacy groups, legal associations and research institutions. Thus, by the time the Principles were presented by Deng to the UN Commission on Human Rights in 1998, they had already been endorsed by the main international humanitarian, human rights and development organizations and by leading NGOs who undertook lobbying campaigns on behalf of the Principles.

The role played by individual governments should be noted as well. Austria, joined by various African and Latin American states, and several Nordic countries, took the lead at the United Nations and mobilized more than 50 states in the UN Commission on Human Rights to co-sponsor the resolution to take note of the Guiding Principles.

Of course, initially, both the Commission on Human Rights and the General Assembly were cautious in receiving the Principles. They only went so far as to "take note" of them. But with each passing year, the language in the UN resolutions became stronger as the Principles become better known and begin to be used internationally. By 2003, the Commission and General Assembly expressed "appreciation" of the Guiding Principles, called them "a standard" and an "important tool," welcomed the fact that "an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them," and also welcomed their "dissemination, promotion and application" worldwide.

Perhaps it was the speed with which the Principles made their way through UN bodies, UN reports, and even resolutions of the Security Council, and their growing usage internationally, that can explain the unease that began to be manifested toward them by several states, most notably Egypt, Sudan and to a lesser extent India. While none have taken issue with the content of the Principles, several began to question the process by which they were developed -- the fact that the Principles were not drafted by governments in a traditional inter-governmental process. At base was the concern that state sovereignty would be eroded since international instruments have always been

drawn up by governments. Egypt also expressed concern about the role given the international community with regard to humanitarian assistance and raised the prospect that the whole subject of internal displacement might be used as a cover to trigger humanitarian intervention and override sovereignty.

To discuss these differences, the government of Switzerland hosted a dialogue between governments with reservations about the Principles and the Representative of the Secretary-General and his team. Also invited were other governments, particularly those from the G77 that supported and used the Principles, as well as international and regional organizations. Now several years old, this process has proved quite constructive. Egypt publicly announced that it was “ready to overcome the differences” that stemmed from the development of the Guiding Principles and joined consensus on a resolution adopted by the General Assembly in 2003 that called the Principles an important tool and standard. Sudan in 2003 as chair of the regional organization, the Intergovernmental Authority on Development (IGAD) hosted a regional conference on internal displacement which noted the Guiding Principles as “a useful tool” in building national policies on internal displacement. India, I would note, for quite a number of years has described the Principles as “important” guidelines although it has regularly pointed out that they are “non-binding.” But even the states with reservations have regularly joined consensus resolutions at the UN calling for the wide dissemination and application of the Principles. Most now seem ready to accept the fact that while non-governmental actors did the actual drafting, they did not in fact create new law but rather compiled and restated existing law that had already been negotiated by governments, albeit with some progressive development.

Should governments now draft their own legally binding treaty on IDPs? That remains an open question. Those in favor of a convention argue that a binding instrument would have more authority and international recognition and would hold states accountable if they disregard its provisions. Those opposed argue that despite their non-binding character, the Guiding Principles do have “legal significance” and are being applied internationally. Indeed, a growing number of governments have been showing themselves ready to apply the Guiding Principles in a legal sense. Moreover, the treaty route holds particular dangers. It could take decades and while waiting for a treaty to be drafted, governments might be encouraged to argue that IDP rights are “on hold.” Negotiating a treaty could also become a pretext for watering down accepted provisions of international human rights and humanitarian law upon which the Principles are based. Moreover, ratification of a treaty does not necessarily guarantee compliance with its provisions. Most leading experts at this time favor the more evolutionary approach of the Guiding Principles whose standing and authority, they argue, will continue to increase over time with expanded usage.

Of course if there is sustained usage and acceptance of the Guiding Principles, it is conceivable that a legally binding instrument might follow, but I believe that path should only be pursued at a time of considerable international consensus. For now, the Guiding Principles are proving a powerful tool shaping the political and legal debate on how to assist and protect the millions of internally displaced persons in the world. They are the

very first statement of the rights of IDPs and the responsibilities of governments and other actors toward these populations. They fill a major gap in the international protection system, which until now focused exclusively on refugees. To promote compliance with their provisions, a global movement is developing in which a growing number of governments, UN agencies, regional bodies, international and local NGOs and the displaced themselves are participating. The development of policies and laws based on the Guiding Principles at the national level is a hopeful sign. Another is that civil society in many countries is becoming increasingly vocal in support of international protection for internally displaced persons. Hopefully over time and with sustained use, the consensus developing around the Principles will actually change the way in which these populations are perceived and treated.

In concluding, I would say that the creation of an international system for the internally displaced has begun. The UN Secretary-General and other UN officials are beginning to speak out in support of those uprooted by conflict, regarding this problem no longer as a national problem; donor governments are earmarking funds for the internally displaced; a special office has been set up to better coordinate the UN response. In short, there is movement on both the normative and institutional fronts. However, creating an international system to provide aid and protection to those trapped inside borders will be no easy task; indeed, it remains a formidable challenge for the 21st century. When such a system is created, it will reflect a more responsible notion of sovereignty and will give real meaning to existing concepts of human rights and protection. But the shaping of such an international system should not be left solely to governments. The responsibility rests with all of us.