

1. Mass displacement caused by conflicts and one-sided violence: national and international responses

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I. Introduction

Massive displacement of people within countries and across borders has become a defining feature of the post-cold war world. It is also a major feature of human insecurity in which genocide, terrorism, egregious human rights violations and appalling human degradation wreak havoc on civilians. The need of internally displaced persons (IDPs), people forcibly uprooted in their own countries, for international protection from conflict and one-sided violence was one of the factors that prompted a shift in global policy and security thinking. Over the past two decades, a strictly state-centred system in which sovereignty was absolute has evolved into one in which the behaviour of states towards their own citizens has become a matter of international concern and scrutiny. This evolution largely grew from the efforts of the human rights movement, which had long championed the view that the rights of people transcend frontiers and that the international community must hold governments to account when they fail to meet their obligations. It also arose from the efforts of the humanitarian community to reach people in need. The deployment of large numbers of relief workers and peacekeeping operations in the field to protect civilians reflects this new reality as do preventive and peacebuilding efforts.

Nonetheless, concepts of sovereignty as responsibility and the responsibility to protect remain far ahead of international willingness and capacity to enforce them. The failure of states to protect their citizens has too often met with a weak international response. It is therefore critical that the United Nations, concerned governments, regional bodies and civil society assist states in developing their own capacities to prevent mass atrocities while also pressing for the development of the tools needed to enable the international community to take assertive action when persuasive measures fail and masses of people remain under the threat of violence and humanitarian tragedy.

* The authors thank Kathryn Plummer of Georgetown University for her research assistance.

This chapter examines the challenges posed by mass displacement caused by violence. Section II looks at the scale and nature of displacement, presents examples of states' failure to protect their citizens and discusses the consequences of displacement. Section III focuses on the political, legal and operational steps needed to provide greater protection for displaced populations and other civilians caught up in massive violence. Section IV presents conclusions and recommendations for the way forward.

II. The scale and nature of mass displacement

According to the Uppsala Conflict Data Program (UCDP), the total number of violent conflicts has actually declined since the early 1990s.¹ There has also been a decline in the more severe and intense conflicts.² Yet 'few of the root-cause drivers of warfare and deadly assaults against civilians, from poverty to group inequality, have improved and some have worsened'.³ Rampant violence continues to afflict many countries and endless columns of traumatized people fleeing civil wars, communal violence and interstate conflicts remain an ongoing feature of the contemporary world. Many countries have gross political and economic inequalities combined with a diversity of ethnic groups that do not feel a part of the nation. The conflicts that arise are both manipulated by political leaders and reflect genuine group grievances. How effectively these conflicts are dealt with and whether a framework of democracy and human rights exists can determine the extent to which interrelated crises of national identity and internal displacement can be addressed.

At least 26 million people were estimated to be internally displaced at the end of 2008 by conflict and human rights violations, while the total number of refugees who fled across borders from conflict and persecution had risen to 11.4 million by the end of 2007.⁴ Although the actual number of civil conflicts may have declined, the number of forcibly displaced people has risen.

The dynamics and effects of violence-related mass displacement

Walter Kälin, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, has repeatedly reminded

¹ For more detail see Harbom, L. and Wallensteen, P., 'Armed conflict, 1989–2006', *Journal of Peace Studies*, vol. 44, no. 5 (Sep. 2007). The UCDP data on all armed conflicts is also available in Human Security Report Project, *Human Security Brief 2007* (Simon Fraser University, School for International Studies: Vancouver, 2007).

² On the number of major armed conflicts active in 2008 see appendix 2A in this volume.

³ Human Security Report Project (note 1), p. 7.

⁴ For IDP statistics see Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2008* (IDMC: Geneva, Apr. 2009), p. 13; for refugee statistics see UN High Commissioner for Refugees (UNHCR), *2007 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons* (UNHCR: Geneva, June 2008), p. 2.

the international community that ‘Forced displacement is not a passing event in people’s lives. It is a devastating transformation.’⁵ Families deprived of life’s essentials—in particular shelter, food, medicine, education, community and livelihood—face marginalization within their countries, discrimination by other ethnic and religious groups, and abject poverty.⁶ Entire communities, even entire regions of a country may be depopulated, resulting in damage to farmland, cultivation patterns, basic infrastructure, and community traditions and organization.⁷ In areas to which the displaced flee, damage to the environment can be extensive when forests and grasslands are stripped to satisfy needs for housing and fuel. In urban centres, incoming populations place severe strains on infrastructure and services, while displaced children often have little or no access to education.⁸ Economic development programmes, oil exploration and the exploitation of minerals are often set back because of conflict and displacement. Although displacement is often thought of as a phenomenon affecting only those forced to flee, the impact can undermine the political, economic and social foundations of societies.

Persons uprooted from their homes often suffer higher rates of mortality than the general population, sometimes as much as 50 times greater, and are more vulnerable to physical attack, sexual assault, abduction and disease.⁹ The International Committee of the Red Cross (ICRC) has identified four important protection issues IDPs face that increase their vulnerability: ‘risk of tension between host communities and displaced persons; increased risk of sexual violence; increased risk that families will be split apart and that children, in particular, will be separated from their parents or other relatives; and use of displacement as a tool or even a method of warfare by parties to a conflict’.¹⁰

⁵ Kälén, W., ‘Strengthening the rights of internally displaced persons’, Statement to Conference on Ten Years of Guiding Principles on Internal Displacement, Achievements and Future Challenges’, Oslo, 16 Oct. 2008, available at <<http://www.brookings.edu/idp>>.

⁶ A study of conflict-induced displacement in Europe and Central Asia found that both refugees and IDPs who were displaced for more than 10 years, even though not in camps, were generally poorer and had higher unemployment rates, fewer material assets and less access to land than those who were not displaced. Holtzman, S. B. and Nezam, T., *Living in Limbo: Conflict-induced Displacement in Europe and Central Asia* (World Bank: Washington, DC, 2004).

⁷ Cohen, R. and Deng, F. M., *Masses in Flight: The Global Crisis of Internal Displacement* (Brookings Institution Press: Washington, DC, 1998), pp. 23–26.

⁸ Mooney, E. and French, C., ‘Barriers and bridges: access to education for internally displaced children’, Brookings–Bern Project on Internal Displacement, Jan. 2005, <http://www.brookings.edu/papers/2005/0111humanrights_mooney.aspx>.

⁹ Cohen and Deng (note 7), pp. 23–29; and World Health Organization (WHO), ‘Internally displaced persons, health and WHO’, Paper presented at the humanitarian affairs segment of the substantive session of the UN Economic and Social Council, New York, 19–20 July 2000, p. 5.

¹⁰ International Committee of the Red Cross (ICRC), ‘ICRC position on internally displaced persons (IDPs)’, May 2006, <<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/idp-icrc-position-030706>>, p. 3.

When large numbers of refugees and IDPs remain in camps for long periods serious security problems may arise, most notably the militarization of camps.¹¹ In Pakistan in the 1980s, Afghan refugees were armed by the West to fight against the Soviet occupation of their homeland. In Darfur, Sudan, today, IDP camps are reported to be awash with arms and rebel fighters, making the camps more susceptible to attack.¹² In Jordan and Syria, many have expressed the fear that Iraqi refugees, although not in camps, could over time 'ignite sectarian and ethnic conflict' in their host countries.¹³ The Palestinian refugee situation continues to exemplify the violence and terrorism that can arise when refugee situations remain unresolved.

Between half and three-quarters of all major refugee and IDP situations are protracted, that is, they last 5 years or more, whether in camps or in urban centres.¹⁴ In Darfur, Sudan, more than 2 million IDPs have been in camps since 2003–2004 unable to return home because of the violence and destruction in their home areas. In the Balkans, displaced people, especially the elderly, the disabled and members of minorities, can still be found living in collective centres even though the conflict has been over for more than 10 years.¹⁵ In the 'frozen' conflicts in the South Caucasus, governments have often been reluctant to help IDPs integrate; instead they have held them hostage to the political goal of returning home to reclaim areas lost by conflict. Thus, in Azerbaijan, Kälin found IDPs still living 'in tent camps, railway wagons and mud brick houses after more than a decade', and in urban areas most IDPs were in 'run-down, overcrowded dormitories or public buildings, including former schools'.¹⁶ The displaced in Georgia, sometimes called the 'Palestinians of the South Caucasus',¹⁷ have very

¹¹ Stedman, S. J. and Tanner, F. (eds), *Refugee Manipulation: War, Politics, and the Abuse of Human Suffering* (Brookings Institution Press: Washington, DC, 2003).

¹² Khan, C., *Conflict, Arms, and Militarization: The Dynamics of Darfur's IDP Camps*, HSBA Working Paper no. 15 (Small Arms Survey: Geneva, 2008), pp. 8, 17.

¹³ Harper, A., 'Iraq: growing needs amid continuing displacement', *Forced Migration Review*, Dec. 2007, p. 53; and Byman, D. L., 'The next phase of the Iraq War', *Slate*, 29 Nov. 2007.

¹⁴ Ferris, E., 'Durable solutions for IDPs in protracted situations: a work in progress', 1 June 2007, Background paper prepared for the Expert Seminar on Protracted IDP Situations, UNHCR and Brookings–Bern Project on Internal Displacement, Geneva, 21–22 June 2007, <<http://www3.brookings.edu/fp/projects/idp/conferences/20070622.pdf>>, p. 25.

¹⁵ UN Economic and Social Council, 'Specific groups and individuals: mass exoduses and displaced persons', Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Mission to Bosnia and Herzegovina, E/CN.4/2006/71/Add.4, 29 Dec. 2005, p. 12; and UN Economic and Social Council, 'Specific groups and individuals: mass exoduses and displaced persons', Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Mission to Serbia and Montenegro, E/CN.4/2006/71/Add.5, 9 Jan. 2006, p. 2.

¹⁶ UN General Assembly, 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development', Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Mission to Azerbaijan, A/HRC/8/6/Add.2, 15 Apr. 2008, p. 13.

¹⁷ UNHCR official, Interview, Tbilisi, 8 May 2000.

slowly come around to supporting steps to help them integrate while maintaining their overall right to return, a new approach advocated by Kálin's predecessor, Francis Deng.

So-called 'warehousing'—a situation when refugees and IDPs languish in camps or segregated settlements for more than five years and are dependent on the international community for survival and while their rights to employment, education and movement are restricted or denied—has become an 'all-too-durable solution' for the displaced.¹⁸ Although in protracted situations many of the displaced may no longer face immediate threats to their security, their economic and social needs are often unmet and they are left without employment, land, property restitution or permanent shelter. Unless they are helped to integrate, such situations could sow the seeds for further conflict.

Because ceasefires and peace agreements are often accompanied by the expectation that displacement will end shortly, national and international humanitarian aid often tapers off when conflicts subside, even though areas of return may not be stable or cannot sustain returning IDPs or refugees. A broader look at when displacement ends has therefore become necessary, together with a greater focus on sustainable solutions to support the return or resettlement of IDPs and refugees, their rehabilitation and reconciliation with local communities, and the incorporation of their needs into long-term development and poverty reduction plans.¹⁹

Although the displacement crisis is global in nature, some regions of the world are more affected than others. The worst hit continent is Africa, which has nearly half of the world's IDPs (c. 12 million). Most are located in Sudan, the Democratic Republic of the Congo (DRC) and Somalia.²⁰ In addition, Africa has about 3 million refugees.²¹ Despite its immense riches in natural resources, it is the poorest continent with the most meagre resources to deal with displacement. Yet artificial borders from the colonial period, combined with intense competition for power and scarce economic resources, make the continent a likely source of continued conflict and displacement.

¹⁸ Smith, M., 'Warehousing refugees: a denial of rights, a waste of humanity', *World Refugee Survey 2004* (US Committee for Refugees and Immigrants: Washington, DC, 2004), p. 38.

¹⁹ See Brookings Institution–University of Bern Project on Internal Displacement and Georgetown University, *When Displacement Ends: A Framework for Durable Solutions* (Brookings Institution–University of Bern Project on Internal Displacement: Washington, DC, June 2007); and Ferris (note 14).

²⁰ Internal Displacement Monitoring Centre (note 4), pp. 13–14. See also Deng, F., 'Africa's internally displaced persons', eds J. Akokpari et al., *The African Union and its Institutions* (Jacana Media: Cape Town, 2008).

²¹ US Committee for Refugees and Immigrants (USCRI), *World Refugee Survey 2007* (USCRI: Washington, DC, 2008), pp. 30–31.

The role of one-sided violence in mass displacement

While many of the world's more than 37 million IDPs and refugees have been caught up in the crossfire of battle or have fled because of expected fighting in their home areas, a substantial number have been deliberately targeted on political, ethnic, racial or religious grounds by the armed forces of their governments or by non-state armed groups. Such direct and intentional attacks on unarmed civilians have been described as 'one-sided violence', a UCDP term that moves away from the highly emotive words 'terrorism' and 'genocide'.²² When one-sided violence occurs the victims are not directly involved in the fighting, although the civilian populations in some conflicts become implicated by association with one of the warring parties. Often those fleeing from one-sided violence are difficult to distinguish from other war-affected populations. Civilians caught up in the crossfire of battle and those who are deliberately targeted may flee simultaneously to safer locations. However, people who are the objects of deliberate violence and displacement have a markedly different experience from those trapped in generalized violence and for that reason may be less inclined to return to their homes.

In 21 of 28 countries with new internal displacement in 2007, governments were found to be responsible, directly or indirectly, for forcibly uprooting their people.²³ Most affected are countries torn asunder by racial, ethnic, linguistic or religious divisions where the state is monopolized by or identified with one ethnic group or groups to the exclusion or marginalization of others. Denied the protection and assistance that a state owes its citizens, these excluded or marginalized groups often come into conflict with those in dominant positions. Mass displacement results, with the displaced often viewed as the 'enemy' either through their association with an insurgent group, an opposing political or ideological affiliation, or more generally with an ethnic, cultural, religious or social group considered inferior or threatening.²⁴ When governments become directly involved in uprooting minority populations they often see those they are uprooting not as their citizens but as 'the other'. This process of dehumanization enables authorities to more easily explain away the high number of those killed or uprooted.

²² UCDP defines 1-sided violence against civilians as 'The use of armed force by the government of a state or by a formally organized group against civilians which results in at least 25 deaths in a year'. UCDP, 'UCDP definitions', <<http://www.ucdp.uu.se/>>. For more detail see chapter 2 and appendix 2A in this volume.

²³ Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2007* (IDMC: Geneva, Apr. 2008), p. 15.

²⁴ See Deng, F. M., 'Internal displacement: a challenge of peace, security, and nation building', ed. K. Cahill, *Emergency Relief Operations* (Fordham University Press and Center for International Health and Cooperation: New York, 2003), p. 119.

In internal conflicts where insurgents or warlords are dominant, in particular in failed states, the belligerents often violate the laws of war, both targeting civilians and using them as weapons of war to achieve political and military goals. While some rebel groups may succeed in having their legitimate grievances addressed and go on to assume responsible governmental roles when conflicts end, many more descend into criminal activity, fighting among themselves, seizing the land and possessions of the marginalized, including refugees and IDPs, and engaging in one-sided violence against civilians and thus causing new displacement.²⁵ Some of the worst atrocities against displaced persons have been perpetrated by non-state actors.

Iraq and the Darfur region of Sudan are two cases that illustrate the significant role that one-sided violence can play in mass displacement. In Iraq, following the bombing of the al-Askari Shia shrine in Samarra in 2006, radical Shia and Sunni militias, frequently tied to political parties, police or army units, began to systematically and purposefully persecute, kill and expel Sunnis and Shias, respectively, from their home areas in order to gain control over those areas.²⁶ More than 1.5 million people became uprooted within the country in 2006 and 2007 as a result of the sectarian violence while 2 million fled abroad.²⁷ The brutality used in uprooting people on ethnic and religious grounds was intended to ensure that they would not return to their home areas, and to date it has largely succeeded. According to the International Organization for Migration, at least 40 per cent of those who fled the sectarian violence within the country do not expect to return to their original homes.²⁸ Of those who fled abroad, who are largely Sunni and Christian, only small numbers have indicated a desire to return to Iraq.²⁹ Of those who have been returning, many

²⁵ See e.g. Fagen, P. W. et al., *Internal Displacement in Colombia: National and International Responses*, Danish Institute for International Studies (DIIS), Kongevej Working Paper 03.6, (DIIS: Copenhagen, June 2003), p. 4; and Schomerus, M., *The Lord's Resistance Army in Sudan: A History and Overview*, Sudan Working Paper no. 8 (Small Arms Survey, Graduate Institute of International Studies: Geneva, 2007), p. 12.

²⁶ al-Khalidi, A. and Tanner, V., *Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq*, Brookings-Bern Project on Internal Displacement Occasional Paper (Brookings Institution-University of Bern Project on Internal Displacement: Washington, DC, Oct. 2006), pp. 7-8, 12-14, 27-29, 34-35.

²⁷ For estimates of 2.7 million IDPs (1.5 million since Feb. 2006) see International Organization for Migration (IOM), 'IOM emergency needs assessments', bi-weekly report, 15 Mar. 2008, <<http://www.iom.int/jahia/jsp/>>; for estimates of more than 2 million refugees see UNHCR, 'The Iraq situation', <<http://www.unhcr.org/cgi-bin/texis/vtx/iraq>>.

²⁸ International Organization for Migration, 'Iraq displacement: 2007 year in review', <<http://www.iom-iraq.net/library.html>>, pp. 4, 7. See also International Medical Corps, as cited in Ferris, E. and Hall, M., 'Update on humanitarian issues and politics in Iraq', Brookings-Bern Project on Internal Displacement, 6 July 2007, <http://www.brookings.edu/papers/2007/0706humanrights_ferris.aspx>, p. 2; and al-Khalidi and Tanner (note 26), pp. 14, 35.

²⁹ A UNHCR survey that found that only 4% of the Syrian refugees surveyed plan to return to Iraq. UN Integrated Regional Information Network (IRIN), 'Iraq: UNHCR concerned about funding for refugees, IDPs', 30 Apr. 2008, <<http://www.irinnews.org/report.aspx?ReportID=77990>>. As of

are reported to prefer to stay in areas where they are in the majority rather than return to their original homes.³⁰

The pattern in Iraq might be similar to what happened in Bosnia and Herzegovina after the ethnic cleansing. Substantial numbers eventually returned but the total remains no more than half of Bosnia and Herzegovina's 2.2 million refugees and IDPs. Moreover, most did not go back to their homes of origin but to areas where their ethnic group was in the majority. After settling property claims in their home areas, many sold or exchanged their property and relocated elsewhere. At least 1 million people did not return.³¹ Despite efforts made to recreate multiethnic communities in Bosnia and Herzegovina, in 'only two municipalities . . . Tuzla and Sarajevo Center do minorities make up more than ten percent of the population'.³²

In Sudan, where the government response to ethnic grievances and insurgency has been overwhelmingly military, ethnic minority groups composed of non-Arab Africans have suffered extreme dispossession and abandonment. Scorched-earth campaigns deliberately uprooted massive numbers of the Dinka and Nuer tribes in the south (during the 22-year civil war), the Nuba on the north-south border, and more recently the Fur, Zaghawa and Massalit tribes in the west. Indeed, Sudan has more internally displaced persons than any other country in the world: 4.9 million in 2008.³³ Darfur was just the latest fratricidal chapter in the central government's war with marginalized groups it considers inferior. Thus, when rebels overran government outposts in 2003, military forces allied with Arab Janjaweed militias massacred tens of thousands of unarmed civilians

Apr. 2008, c. 6000 IDP families had returned—2% of those uprooted since 2006, mostly to areas where their communities were in the majority. UNHCR, 'Internal displacement update for Iraq', 1 Apr. 2008, <<http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=briefing&id=47f20efd6>>.

³⁰ See Ferris, E., *The Looming Crisis: Displacement and Security in Iraq*, Policy Paper no. 5 (Brookings Institution: Washington, DC, Aug. 2008), pp. 24–25.

³¹ Less than half of the 2.2 million refugees and IDPs had returned to their pre-war homes and municipalities by May 2006. UNHCR in Bosnia and Herzegovina, 'The state of Annex VII–May 2006', <[http://www.unhcr.ba/press/state of annex7.htm](http://www.unhcr.ba/press/state%20of%20annex7.htm)>. A significant number of those who return to their home areas later relocate. Mooney, E., 'Securing durable solutions for displaced persons in Georgia: the experience in Bosnia and Herzegovina', Paper presented at the Conference on Conflict and Migration: The Georgian–Abkhazian Case in a European Context, Istanbul, 18–19 June 2008. For factors inhibiting returns—such as security problems, discrimination in securing jobs and services, and limited resources for returnees—see International Crisis Group (ICG), *The Continuing Challenge of Refugee Returns in Bosnia and Herzegovina*, Balkans Report no. 137 (ICG: Brussels, 13 Dec. 2002), pp. 14–22; and Internal Displacement Monitoring Centre (IDMC), *Bosnia and Herzegovina: Broader and Improved Support for Durable Solutions Required* (IDMC: Geneva, 28 Aug. 2008), pp. 6–8.

³² See Sert, D., *Property Rights in IDP Return and Resettlement: A Quantitative and Comparative Case Study*, unpublished PhD dissertation, City University of New York, 2008, pp. 116–17, 141; and Internal Displacement Monitoring Centre (IDMC), *Bosnia and Herzegovina: Sectarian Divide Continues to Hamper Residual Return and Reintegration of the Displaced* (IDMC: Geneva, 25 Oct. 2006).

³³ Internal Displacement Monitoring Centre (note 4), p. 13.

from Darfur's tribes (estimates range up to 100 000), raped unknown thousands of women and girls, torched an estimated 2000 villages (75 per cent of all villages), and uprooted more than 2 million people (200 000 more fled to Chad). Anywhere from 300 000 to 450 000 people, especially in IDP camps, are estimated to have died from killings and conflict-related hunger or disease.³⁴

In the DRC over the past decade civilians have been subject to one-sided violence from rebel armies, local militias, foreign armies plundering the country's resources and, most notably, from their own government's undisciplined troops. Since 1998 it is estimated that 5.4 million Congolese civilians have died as a result of conflict and related diseases. Today 1.4 million are uprooted from their homes, mostly in the Kivu provinces where renewed fighting between government and rebel forces uprooted about 250 000 people in the latter part of 2008, in some cases from IDP camps.³⁵ Especially targeted were women and girls, hundreds of thousands of whom were systematically raped and mutilated, their families and communities destroyed as a result.³⁶ Among the ethnic groups in the country at risk are the Tutsis, attacks against whom have been engineered by a rebel army comprised of Rwandan Hutus directly implicated in the 1994 genocide. Another rebel army set up to 'protect' them has used ethnicity as a pretext for taking over large swathes of land and trying to topple the government. What becomes clear is that a portion of the unchecked violence in the DRC was a direct outgrowth of the genocide in Rwanda and the failure of the international community to halt it. What also becomes clear is that the government needs international support to bring non-state actors under control. The Lord's Resistance Army, for example, whose violence has spilled over from Uganda, is led by persons indicted by the International Criminal Court; yet its leaders continue to elude justice.³⁷

III. Responding to violence-related mass displacement

It was not until the early 1990s that attention was first paid to protecting the physical security of internally displaced persons.³⁸ The end of the cold

³⁴ See Amnesty International, 'Sudan: 35 IDPs being held incommunicado', ReliefWeb, 23 Aug. 2007, <<http://www.reliefweb.int/rw/rwb.nsf/db900sid/EMAE-76CPGQ>>; Reeves, E., 'How many deaths in Darfur?' *The Guardian*, 20 Aug. 2007; and Save Darfur Coalition, 'The genocide in Darfur—briefing paper', 6 June 2008, <<http://www.savedarfur.org/pages/background/>>.

³⁵ Internal Displacement Monitoring Centre (IDMC), *Democratic Republic of the Congo: Escalating Displacement in North Kivu Despite Ceasefire Agreement* (IDMC: Geneva, 30 Sep. 2008); and IDMC, *Focus on North Kivu Province: IDPs on the Move Face Grave Human Rights Violations* (IDMC: Geneva, 21 Nov. 2008).

³⁶ See Gettleman, J., 'Rape victims words jolt Congo into change', *New York Times*, 18 Oct. 2008.

³⁷ See Dallman, A., 'Prosecuting sexual violence at the International Criminal Court', SIPRI Insights on Peace and Security no. 2009/1, May 2009, <<http://books.sipri.org/>>.

³⁸ Cohen and Deng (note 7), p. 4.

war brought into view millions of people uprooted by civil wars and internal strife who had been previously inaccessible. Some had been caught up in proxy wars waged by the two superpowers while others became displaced by civil conflicts that erupted as the major powers withdrew their support from client states. The demise of the Soviet Union also brought fierce struggles over political and territorial ascendancy and mass displacement into Central and Eastern Europe and Central Asia.

However, there was no international regime to protect them. While refugees benefited from an established international system of protection, such arrangements did not extend to IDPs, even though both groups shared the trauma of dislocation and the urgent protection and assistance needs accompanying displacement.

International protection regimes for refugees and internally displaced persons

Since refugees are unable to avail themselves of the protection of their own governments, the 1951 Refugee Convention, a binding international treaty, provided them with substitute legal protection and a special international agency, the UN High Commissioner for Refugees (UNHCR), to cater to their needs.³⁹ In contrast, IDPs are in their own country and must look to their governments for protection and assistance. Since these are often lacking because of incapacity or unwillingness, the international community over the past two decades began to recognize that IDPs also need a form of international protection. The Guiding Principles on Internal Displacement were developed for that purpose and presented to the UN in 1998 by the then Representative of the UN Secretary-General on IDPs, Francis M. Deng. The principles are not, however, a legally binding instrument, even though they have acquired considerable authority and are being increasingly incorporated into national legislation.⁴⁰ Nor is there any specific

³⁹ The 1951 Convention Relating to the Status of Refugees was adopted on 28 July 1951 by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly Resolution 429 (V) of 14 December 1950 and entered into force on 22 Apr. 1954. The Statute of the Office of the United Nations High Commissioner for Refugees was adopted by General Assembly Resolution 428 (V) of 14 Dec. 1950.

⁴⁰ For the text of the Guiding Principles on Internal Displacement see Office of the High Commissioner on Human Rights (UNHCHR), 'Guiding Principles on Internal Displacement', <<http://www.unhcr.ch/html/menu2/7/b/principles.htm>>. In 2005 the Guiding Principles were recognized by the World Summit outcome document as 'an important international framework for the protection of internally displaced persons'. UN General Assembly, 2005 World Summit, 14–16 Sep. 2005, '2005 World Summit: outcome', <<http://www.un.org/summit2005/documents.html>>, para. 132. More than 15 countries have incorporated the Guiding Principles into their domestic legislation. Cohen, R., 'The Guiding Principles on Internal Displacement: an innovation in international standard setting', *Global Governance*, vol. 10, no. 4 (Oct.–Dec. 2004), pp. 470–71; and Wyndham, J., *A Developing Trend: Laws and Policies on Internal Displacement*, Brookings–Bern Project on Internal Displacement Human Rights Brief (Brookings–Bern Project on Internal Displacement: Washington, DC, winter 2006), pp. 7–12. The African Union has drafted a binding convention

international agency responsible for IDPs, although in 2005 the UNHCR agreed to be the ‘cluster’ lead for the protection of IDPs under the UN’s collaborative approach.⁴¹

Despite the weakness of the protection regime for IDPs, some refugee advocates continue to challenge the international focus on internally displaced persons as potentially undermining the preservation of the right to asylum across borders.⁴² It is true that the growing international inhospitality towards refugees has gone hand in hand with increasing numbers of IDPs, but the reasons are to be found mainly in changed political attitudes towards receiving refugees after the cold war, growing security concerns especially since the September 2001 terrorist attacks on the United States, high financial costs, and the social and cultural dislocations caused by the entry of large numbers of newcomers.⁴³ It also emanates from the increasing difficulties in establishing who is a refugee given that more and more people who flee their countries are doing so for mixed reasons—extreme deprivation, environmental degradation and climate change as well as conflict and persecution.⁴⁴ What is important is that refugees and IDPs are often inextricably linked in emergencies, making the need for a more comprehensive international protection system for both groups compelling. As Hilary Benn, the United Kingdom’s Secretary of State for International Development, aptly asked in 2004: ‘Is it really sensible that we have different systems for dealing with people fleeing their homes depending on whether they happen to have crossed an international border?’⁴⁵

Sovereignty as responsibility to protect

The desire to protect persons affected by internal conflicts in great measure led to the concept of ‘human security’, which sought to shift discourse away from state-oriented security to person-oriented security, that is, to the protection of human beings, while at the same time acknowledging that state security and human security are connected and should be mutually

on internal displacement on the basis of the Guiding Principles which is expected to be adopted in 2009.

⁴¹ Egeland, J., ‘Towards a stronger humanitarian response system’, *Forced Migration Review*, Supplement, Oct. 2005, pp. 4–5.

⁴² Hathaway, J.C., ‘Forced migration studies: could we agree just to ‘date’?’, *Journal of Refugee Studies*, vol. 20, no. 3 (Sep. 2007), pp. 350–69.

⁴³ Martin, S. F. et al., *The Uprooted: Improving Humanitarian Responses to Forced Migration* (Lexington Books: Lanham, MD, 2006), pp. 121–22; see also Mutahi, P., ‘How the AU fails the continent’s IDPs’, allAfrica.com, 27 Aug. 2008.

⁴⁴ Guterres, A., Opening Statement at the 58th Session of the Executive Committee of the High Commissioner’s Programme, Geneva, 1 Oct. 2007, available at <<http://www.unhcr.org/>>.

⁴⁵ Benn, H., ‘Reform of the international humanitarian system’, Speech delivered at the Overseas Development Institute, London, 15 Dec. 2004, <http://www.odi.org.uk/events/Benn15Dec/Humanitarian_Reform_speech_final.pdf>.

reinforcing.⁴⁶ The concept of human security includes physical safety as well as political, economic, environmental, health and food security.

The changed focus reflects new and evolving concepts of sovereignty. For much of the 20th century traditional notions of sovereignty prohibited attention to protecting people inside their countries. To be sure, from the 1950s the ICRC had a special mandate to protect civilians in armed conflicts, and, since the 1970s, it could explicitly act in intrastate armed conflicts. The UNHCR also began in the 1970s on a selective basis to assist people displaced inside their countries. However, basically throughout most of the 20th century sovereignty and non-interference in internal affairs were strictly applied, as set forth in Article 2(7) of the UN Charter.⁴⁷

By the 1990s a shift was evident and concerted international efforts began to be undertaken to assist and protect people forcibly displaced inside their own countries. Sadako Ogata, the UN High Commissioner for Refugees, expanded the UNHCR's 'operational coverage' to include IDPs in emergencies, especially when they were mixed in with refugee populations. In her memoir, she recalls that she posed the following question to herself: 'Should we follow the legal dictate of not exercising our mandate inside the border and thereby refrain from helping those prevented from crossing or should we stand more on realistic humanitarian grounds and extend whatever support we could?'⁴⁸ She chose the latter option, and the UNHCR undertook to protect displaced Kurds inside Iraq in 1991, and in the former Yugoslavia the UNHCR became the lead agency for refugees, IDPs and other affected populations. Massive internal displacement thus became a leading entry point for international humanitarian action.

When governments obstructed access to populations at risk or deliberately subjected them to starvation and other abuses, humanitarian and human rights advocates insisted that the international community has a right, and even a responsibility, to reach those in need.⁴⁹ A right to humani-

⁴⁶ See Evans, G., *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Brookings Institution Press: Washington, DC, 2008), pp. 34–35.

⁴⁷ See UN Economic and Social Council, Report on refugees, displaced persons and returnees, prepared by Mr Jacques Cuenod, E/109/Add.1, 27 June 1991, para. 122; and Cohen, R., 'Humanitarian imperatives are transforming sovereignty', *ILSA Quarterly*, vol. 16, issue 3 (Feb. 2008), p. 14.

⁴⁸ Ogata, S., *The Turbulent Decade: Confronting the Refugee Crises of the 1990s* (W. W. Norton & Co.: New York, 2005), p. 38.

⁴⁹ See Minear, L., *Humanitarianism Under Siege: A Critical Review of Operation Lifeline Sudan* (Red Sea Press: Washington, DC, 1991); Minear, L. and Weiss, T., 'Do international ethics matter: humanitarian policies in the Sudan', *Ethics and International Affairs*, vol. 5 (1991); Cohen, R., *Human Rights Protection for Internally Displaced Persons* (Refugee Policy Group: Washington, DC, June 1991), pp. 16–19; Refugee Policy Group, Conference on Human Rights Protection for Internally Displaced Persons, 'Conference report', 24–25 June 1991, <http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3024>; Cohen, R. and Cuenod, J., *Improving Institutional Arrangements for the Internally Displaced* (Brookings Institution and Refugee Policy Group Project on Internal Displacement: Washington, DC, Oct. 1995), pp. 6–12, 54–57; and Seybolt, T. B., *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford University Press: Oxford, 2007).

tarian intervention was even proposed to protect war-affected populations, although the term put forward by France—*le droit d'ingérence*—was frequently challenged as violating the principle of non-interference in internal affairs.⁵⁰

A more palatable approach was to emphasize 'sovereignty as responsibility'. As formulated for IDPs by the current authors, this concept effectively recasts sovereignty as a form of state responsibility to its displaced population. It acknowledges that states have the primary responsibility to provide IDPs with life-supporting protection and assistance and, if they are unable to do so, they are expected to request and accept outside offers of aid. If they refuse, responsibility shifts to the international community.⁵¹ In line with this concept, the Guiding Principles on Internal Displacement acknowledge that primary responsibility for IDPs rests with the state, but that the international community has an important role to play when governments are unable or fail to discharge their responsibilities. The Guiding Principles make clear that the international community has the right to offer assistance when states are unable or unwilling to assist their displaced populations, and that states have a duty to provide 'rapid and unimpeded access' to IDPs. Aid organizations are requested to pay attention to 'the protection needs and human rights' of the displaced.⁵² Although the concept of a state's responsibility to its population has begun to be accepted internationally, namely that sovereignty carries with it the responsibility to protect and assist the state's population, access to displaced populations is still often constrained by defensive invocations of national sovereignty that are designed to act as a barricade against outside involvement.

The adoption by the UN General Assembly of the landmark concept 'the responsibility to protect' (R2P) in 2005 has created expectations of greater international action to enhance security for displaced and other persons caught up in genocide, war crimes, ethnic cleansing and crimes against humanity. Based on the concept of sovereignty as responsibility, R2P lays primary responsibility on the state to protect its own population and calls on the international community to support states in discharging their responsibility. Should states fail in that obligation, the concept provides for

⁵⁰ Evans (note 46), pp. 32–33.

⁵¹ See UN Economic and Social Council, Commission on Human Rights, 'Human rights, mass exoduses, and displaced persons', Report by the Representative of the Secretary-General on Internally Displaced Persons, Mr Francis M. Deng, E/CN.4/1995/50, 2 Feb. 1995, para. 38. See also Minear (note 49), pp. 118–23; Cohen (note 49), pp. 16–19; Refugee Policy Group (note 49); Deng, F. M., *Protecting the Dispossessed* (Brookings Institution Press: Washington, DC, 1993), pp. 14–20; Deng, F. M. et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution Press: Washington, DC, 1996), pp. 2–19, 27–33; Cohen and Deng (note 7), pp. 275–80; Deng (note 24); and Weiss, T. and Korn, D. A., *Internal Displacement: Conceptualization and its Consequences* (Routledge: New York, 2006), p. 45.

⁵² UNHCHR (note 40), principles 24–27.

an international responsibility to take 'collective action' to protect threatened populations. It will take time, however, for the concept to gain practical application on the ground.⁵³ Many misunderstandings have arisen about its meaning. States in the Group of 77, for example, have expressed the fear that R2P could facilitate military intervention in their internal affairs by the powerful states of the global north. Others mistakenly assume the R2P concept to be the solution for just about every human rights, health and environmental problem involving massive suffering.

Practical operational responses

For the time being, protection for IDPs remains far less developed than for refugees. When the UNHCR provides protection to refugees, it basically defends their legal right to asylum and *non-refoulement* in accordance with the Refugee Convention. In the case of IDPs, where there is no international treaty or assigned agency, the meaning of protection has had to be clarified by the UN's Inter-Agency Standing Committee (IASC). Composed of the major international humanitarian, human rights and development organizations, the IASC issued an IDP policy in 2000 which defined protection as encompassing 'all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law)'.⁵⁴ On the basis of the Guiding Principles, the definition was interpreted to mean defending the physical security of IDPs, providing them with the basic necessities of life and promoting the enjoyment of their fundamental economic, social, cultural, civil and political rights.⁵⁵

⁵³ The situation in Kenya (post-election violence in late 2007 and 2008) was the first time the R2P 'collective action' clause was applied, and it provided an effective framework for mobilizing international political action to stanch the ethnic violence. At the same time, an estimated 1000 civilians were killed and 500 000 forcibly displaced before action was taken, highlighting the need for preventive steps. Nor has R2P been effectively applied to major cases where protection is urgently needed such as in Darfur, the DRC and Somalia, prompting the UN Secretary-General's Special Adviser on R2P to observe that 'skeptics and public observers alike may well question the utility of R2P principles if they are applied only to the easier cases'. Luck, E. C., *The United Nations and the Responsibility to Protect*, Stanley Foundation Policy Analysis Brief (Stanley Foundation: Muscatine, IA, Aug. 2008), p. 6. On the situation in Kenya see UN Office for the Coordination of Humanitarian Affairs (OCHA), Regional Office for Central and East Africa, 'Displaced populations report', no. 3 (Jan.–June 2008), <<http://www.internal-displacement.org/>>, p. 2; and McKenzie, D., 'Thousands remain displaced months after Kenyan violence', CNN, 16 May 2008, <<http://www.cnn.com/2008/WORLD/africa/05/16/kenya.displaced/>>.

⁵⁴ Inter-Agency Standing Committee (IASC), *Protection of Internally Displaced Persons*, Policy Paper no. 2 (IASC: Geneva, Oct. 2000), p. 4; and IASC, *Supplementary Guidance to Humanitarian/Resident Coordinators on their Responsibilities in Relation to Internally Displaced Persons* (IASC: Geneva, May 2000).

⁵⁵ See UN Economic and Social Council, Commission on Human Rights, 'Specific groups and individuals: mass exoduses and displaced persons', Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, E/CN.4/2005/84, 12 Dec. 2004, para.42.

When translated into operational steps, the UN's IDP policy includes preventive actions to diminish the risk of displacement, measures to assure protection and assistance during displacement, and the integration of protection concerns into return or resettlement programmes. It calls for monitoring and reporting of protection problems, assertive advocacy for the rights of IDPs and strengthening community-based initiatives.⁵⁶

The difficulties in carrying out these steps became clear in a 2004 UN evaluation, which found that the UN's role in protection was 'still largely ad hoc and driven more by the personalities and convictions of individuals on the ground than by an institutional, system-wide agenda'.⁵⁷ Among the serious institutional problems impeding the protection of IDPs were: (a) fear that advocating for IDP rights could interfere with close working relationships with governments on political, humanitarian and development programmes; (b) insufficient support from headquarters for raising protection concerns; (c) lack of training in practical protection methods or in the diplomatic skills needed to advocate for the broad range of rights to which IDPs are entitled; (d) lack of capacity to deploy experienced staff quickly and expand presence; (e) lack of clarity about who is responsible for protection; and (f) concern about the risks involved in undertaking protection activities. Protecting people in countries of origin has proved to be far more dangerous than in host countries, a fact reflected in the increasing number of attacks on aid workers.⁵⁸

To create a more coherent system for protecting IDPs, the UN assigned the UNHCR the lead role in coordinating protection activities in the field in the new 'cluster' approach (in which different agencies under the collaborative system assume lead roles in different sectors).⁵⁹ The agency's

⁵⁶ Additional UN documents helped define protection and the steps to take to enhance security. See UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Brookings Institution Project on Internal Displacement, *Handbook for Applying the Guiding Principles on Internal Displacement* (OCHA and Brookings Institution Project on Internal Displacement: Washington, DC, 1999); UN OCHA, *Manual on Field Practice in Internal Displacement*, Inter-Agency Standing Committee Policy Paper Series no. 1 (OCHA and Brookings Institution Project on Internal Displacement: Washington, DC, 1999); and UN Inter-Agency Standing Committee (IASC), *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action* (IASC: Geneva, 2002). See also the ICRC's summary of its protection activities over the decades. International Committee of the Red Cross, *Enhancing Protection for Civilians in Armed Conflict and Other Situations of Violence* (ICRC: Geneva, Sep. 2008).

⁵⁷ Bagshaw, S. and Paul, D., *Protect or Neglect?: Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons* (UN Office for the Coordination of Humanitarian Affairs/Brookings-SAIS Project on Internal Displacement: Geneva, Nov. 2004), p. 3.

⁵⁸ From 1 July 2007 to 30 June 2008, 25 UN civilian staff were killed by 'malicious acts' (including 21 locally recruited personnel); 63 NGO staff were also killed; and there were 490 attacks on UN personnel (e.g. physical assaults, robberies, harassment and intimidation, hijackings, and detention by non-state actors). In Sudan alone, there were 297 incidents against UN personnel. UN General Assembly, 'Safety and security of humanitarian personnel and protection of United Nations personnel', Report of the United Nations Secretary-General, A/63/305, 18 Aug. 2008, paras 6–18.

⁵⁹ Under the UN's 2005 humanitarian reform programme the UNHCR was assigned the lead role in coordinating protection, emergency shelter and camp management in emergencies, while other

long experience with refugee protection and its involvement in IDP emergencies made it the most appropriate choice. However, the UNHCR faces resource and mandate constraints which have interfered with its ability to assume a robust leading role on IDP protection worldwide. Fearing that too much attention to IDP protection would detract from refugee protection and also undermine the right to asylum, the UNHCR has implemented its lead role to date in only a small number of pilot countries.⁶⁰ On the plus side, evaluations in some of these countries have shown an improvement in coordination when it comes to protection, but the extent to which protection of IDPs on the ground has actually increased has not been effectively measured.⁶¹

The UNHCR has developed IDP policies and needed tools like the IDP Protection Handbook but it has not yet built up adequate in-house capacity to provide IDP protection in the field. Instead it relies on the external protection officers provided by ProCap—a UN and non-governmental organization (NGO) initiative—or on its own refugee protection officers, who may be needed elsewhere.⁶² Nor has the UNHCR created a set of dedicated senior IDP focal points at headquarters, in particular in the Division of International Protection, to oversee the ‘mainstreaming’ of the issue into overall organizational operations.⁶³ Although the agency, to its credit, has expanded the number of IDPs reached by its overall programmes, including in some protracted situations, there remains a continued lack of accountability or responsibility for IDP protection within the UN’s collaborative approach.⁶⁴ Several experts have observed that IDPs in some respects are merely an afterthought in a refugee agency.⁶⁵

Of course, the overriding constraint to greater protection for IDPs lies not with institutional arrangements but with governments and armed non-

agencies were assigned lead roles in water and sanitation, nutrition, early recovery and other ‘clusters.’ See Egeland (note 41).

⁶⁰ The 10 countries where the ‘cluster’ approach was applied in 2007 were the Central African Republic, Chad, Colombia, Côte d’Ivoire, the DRC, Ethiopia, Liberia, Lebanon, Somalia and Uganda. These accounted for 9 million out of a total of 26 million IDPs in 2007. See International Displacement Monitoring Centre (note 23), p. 20.

⁶¹ See UN Inter-Agency Standing Committee, ‘Cluster approach evaluation report’, 21 Nov. 2007, <<http://www.humanitarianreform.org/Default.aspx?tabid=457>>, p. 11; and Crisp, J., Kiragu, E. and Tennant, V., UNHCR, ‘IDPs and humanitarian reform’, *Forced Migration Review*, Dec. 2007, pp. 12–14.

⁶² ‘Providing capacity to do protection: ProCap’, *Forced Migration Review*, special issue, Dec. 2006, p. 14; and the ProCap website, <<http://ocha.unog.ch/ProCapOnline/>>. For the UNHCR Handbook see Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons* (Global Protection Cluster Working Group: Geneva, Dec. 2007).

⁶³ Field and headquarters staff, Interviews, 16–17 Oct. 2008; and UNHCR, Executive Committee of the High Commissioner’s Programme, ‘Progress on mainstreaming IDP issues in UNHCR and global work plan for IDP operations’, EC/59/SC/CRP.16, 2 June 2008.

⁶⁴ Internal Displacement Monitoring Centre (note 23), p. 20.

⁶⁵ Martin et al. (note 43), pp. 112–23.

state actors that deny or obstruct international access to displaced populations and commit violence against them. Consequently, since 1999 the UN Security Council has become actively engaged with the protection of civilians in armed conflict. It has demanded access in a number of countries, deployed Chapter VI and VII peacekeeping operations, and created frameworks to protect civilians under imminent threat, including the accompaniment of aid shipments, the creation of greater security in and around IDP and refugee camps, and the establishment of stable conditions to enable IDP and refugee returns.⁶⁶

One tangible result has been the inclusion in a growing number of UN peacekeeping mandates of the authority to protect displaced and other war-affected populations under imminent threat. This has enhanced security for IDPs and refugees in a number of countries.⁶⁷ In others, peacekeeping missions have been thwarted by host country interference, insufficient troops and equipment and ambiguous mandates. Political divisions in the Security Council have contributed to these problems as have the failure of states, especially among the developed countries, to contribute troops and equipment and the refusal of the afflicted states to accept contributions from all donors.⁶⁸ Moreover, the absence of strategic military reserves that the UN can rely on means that each deployment starts from scratch. Thus, for two years the UN has been trying to deploy 26 000 troops and police plus equipment to Darfur. In the DRC the Security Council took more than a month in 2008 to authorize a 'surge' of 3000 troops to deal with accelerated violence in North Kivu, and it will take many more months to actually deploy that force.⁶⁹ In addition, the mandate of the UN Mission in the Democratic Republic of the Congo (MONUC) has been a complicating factor. It is pledged to assist the government create a secure environment, but its terms of reference overlook the fact that government troops have

⁶⁶ UN Office of the Coordination of Humanitarian Affairs, 'Chronology of protection of civilians in armed conflict in the UN', available at <<http://ochaonline.un.org/>>. See also the reports of the UN Secretary-General—the most recent is UN Security Council, Report of the Secretary-General on the protection of civilians in armed conflict, S/2007/643, 28 Oct. 2007.

⁶⁷ O'Neill, W. G., *A New Challenge for Peacekeepers: The Internally Displaced*, Brookings Institution–Johns Hopkins SAIS Project on Internal Displacement Occasional Paper (Brookings Institution–SAIS Project on Internal Displacement: Washington, DC, Apr. 2004); and O'Neill, W. G. and Cassis, V., *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur*, Brookings–Bern Project on Internal Displacement Occasional Paper (Brookings–Bern Project on Internal Displacement: Washington, DC, Nov. 2005).

⁶⁸ See e.g. African Union/UN Hybrid Mission in Darfur (UNAMID), 'Secretary-General Ban reports to Security Council on UNAMID deployment', ReliefWeb, 28 Aug. 2008, <<http://www.reliefweb.int/rw/rwb.nsf/db900sid/Y SAR-7HXR53>>; UN Integrated Regional Information Network (IRIN), 'Helicopters top list of "shameful" missing equipment', 31 July 2008, <<http://www.irinnews.org/report.aspx?ReportID=79551>>; and Cohen, R., 'Disaster standards needed in Asia', Brookings Northeast Asia Commentary, June 2008, <http://www.brookings.edu/opinions/2008/06_disaster_standards_cohen.aspx>.

⁶⁹ MONUC, 'UN envoy calls for "surge" of peacekeepers in DR Congo in face of new violence', UN News, 4 Oct. 2008, <<http://www.monuc.org/News.aspx?newsId=18325>>.

been responsible for much of the violence towards displaced persons and other civilians.⁷⁰ In fact, those in need of protection have loudly protested at MONUC's failure to protect them from both rebel and government forces.⁷¹

IV. Conclusions: the way forward

The underlying causes of mass displacement are conflicts over power, wealth and resource sharing, primarily in states divided along racial, ethnic, religious or cultural lines. Opportunities therefore exist for both national and international authorities to address the deeper structural divisions in societies when trying to end conflict and displacement through peace processes and forge a collective vision for the future.

Therefore, a first priority should be peace agreements that address root causes and make provision for the better integration of refugee and IDP concerns through upgraded consultation with the displaced. As UN Secretary-General Kofi Annan aptly noted in 2006, the return of refugees and IDPs 'is often a critical factor in sustaining a peace process and in revitalizing economic activity'.⁷² Many of the peace agreements of the past two decades have made some provisions for the return, resettlement and reintegration of those uprooted.⁷³ Even though not wholly successful, the 1995 General Framework for Peace in Bosnia and Herzegovina (Dayton Agreement) sought to reverse ethnic cleansing through IDP and refugee returns and set up enforceable arrangements for property restitution.⁷⁴ Likewise, the 2005 Comprehensive Peace Agreement (CPA) in Sudan sought to provide for more equitable wealth and power-sharing arrangements between the north and south of the country and for the return and resettlement of displaced persons. In both cases, more stringent international monitoring could have produced better implementation.

⁷⁰ See UN Security Council, 'Security Council extends mission in Democratic Republic of Congo until 15 May, unanimously adopting Resolution 1751 (2007)', Press release, SC/8996, 13 Apr. 2007. See also Gambino, A. W., *Congo Securing Peace, Sustaining Progress*, Council on Foreign Relations, Center for Preventive Action, Special Report no. 40 (Council on Foreign Relations Press: Washington, DC, 2008), pp. 4, 7.

⁷¹ MONUC, 'UN attacks rebels to protect civilians in Congo', 28 Oct. 2008, <<http://www.monuc.org/news.aspx?newsID=18513>>. On developments in MONUC and other peace operations during 2008, including questions on the protection of civilians, see chapter 3 in this volume.

⁷² UN Information Service, 'Secretary-General to UNHCR Executive Committee: World Summit made remarkable commitment to humanitarian community', Address to UNHCR Executive Committee, Geneva, 6 Oct. 2006, <<http://www.unis.unvienna.org/unis/pressrels/2005/sgsm10145.html>>.

⁷³ Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building* (Brookings-Bern Project on Internal Displacement: Washington, DC, Sep. 2007), p. 2.

⁷⁴ See Williams, R., 'Post-conflict property restitution and refugee return in Bosnia and Herzegovina: implications for international standard-setting and practice', *New York University Journal of International Law and Politics*, vol. 37, no. 3 (Mar. 2006). On the difficulties encountered in implementing the Dayton Accords see note 31.

However, the 2006 Darfur Peace Agreement (DPA) signed by the Sudanese Government and one rebel faction did not even get that far. It was hastily negotiated, failed to set up acceptable wealth and power-sharing arrangements and did not make adequate security arrangements for the displaced. It was rejected by the main rebel groups and most of the displaced population, leading to more violence in Darfur.⁷⁵

This failure brought to light the importance of consulting with displaced persons and incorporating their needs into peace processes. Had such consultations taken place in Darfur, the government might not have offered as little as \$30 million in compensation to war-affected persons (an estimated \$7.89 per person) and more attention would have been paid to guaranteeing safety for the displaced when returning home.⁷⁶ Consulting with IDPs can avert violence, prevent the continued exploitation and abuse of those uprooted, create an environment of greater trust with the local population and promote the recovery of local economies.⁷⁷ Moreover, given the scale of displacement in many countries, it is unrealistic to plan for a stable and peaceful future without involving IDPs and returning refugees in discussions.⁷⁸

Second, UN agencies must have as a central goal the assumption by governments of their responsibility towards displaced populations. To promote greater national responsibility, Kälén has introduced benchmarks that include: (a) preventive steps, in particular early-warning and rapid response mechanisms to protect populations under threat; (b) national awareness campaigns that build national solidarity around the displaced so as to counteract the ethnic, racial and ideological stigmas to which IDPs are often subject; (c) the adoption of national laws and policies to uphold the rights of the displaced;⁷⁹ (d) the designation of state offices to carry out the laws and policies; (e) the allocation of adequate national resources; (f) the finding of solutions for the displaced that include safe and sustainable returns, integration where they currently reside or their resettlement in another part of the country (the obligation to integrate or resettle IDPs should be considered as important as the right to return);⁸⁰ (g) assistance

⁷⁵ Mukhtar, A., 'What's missing in the Darfur peace process', Statement at the United States Institute of Peace, Washington, DC, 24 July 2006, <http://www.usip.org/fellows/reports/2006/0724_mukhtar.html>; and Integrated Regional Informational Networks (IRIN), 'Sudan: rebel fragmentation hampers Darfur peace', 11 Sep. 2006, <<http://www.irinnews.org/Report.aspx?ReportId=60887>>.

⁷⁶ McDoom, O., 'Sudan pledges \$300 million in Darfur compensation', Reuters, 3 Oct. 2007.

⁷⁷ Brookings-Bern Project on Internal Displacement, 'Consulting IDPs: moving beyond rhetoric', 15-16 Nov. 2007, <http://www.brookings.edu/papers/2008/02_displacement.aspx?p=1>.

⁷⁸ See Brookings-Bern Project on Internal Displacement (note 73).

⁷⁹ A manual to help governments in their preparation has just been published. Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (Brookings-Bern Project on Internal Displacement: Washington, DC, Oct. 2008).

⁸⁰ After interviewing more than 500 IDPs in South Asia, the Calcutta Research Group concluded that 'The obligation to resettle should be considered as equally important as the displaced persons'

with property restitution or compensation and the establishment of mechanisms to settle disputes; and (h) the introduction of reconciliation measures to bring ethnic groups together.⁸¹

Integrating the full set of these benchmarks into the UN Peacebuilding Commission's post-conflict reconstruction efforts should help reduce violence and displacement in countries where 'competition and conflict over scarce resources such as land, food, water, jobs and public services' could bring opposing communities and ethnic rivals into confrontation.⁸² To date, the Commission has not paid sufficient attention to the reintegration of displaced populations and should work more actively with governments to ensure secure and sustainable returns, eliminate the marginalization of different groups and address the root causes of disputes by redressing past injustices, such as unequal access to property and land.⁸³

Third, international organizations need to develop more effective institutional arrangements, in particular a dedicated locus of responsibility in the field for internally displaced persons. The UN's 'cluster' system is too new to be definitively evaluated.⁸⁴ However, every effort must be made to ensure that the different clusters, whether on protection, emergency shelter, camp management or early recovery, are working effectively for IDPs and that agencies are indeed assuming accountability in the field in partnership with national and international NGOs. The Under-Secretary-General for Humanitarian Affairs and his Resident and Humanitarian coordinators should review the shortcomings reported in the protection cluster and assume a more overarching commitment to ensure that protection is provided.⁸⁵

Fourth, as the cluster lead for IDP protection, the UNHCR must assume a far greater leadership role and seek the resources, international support and staff to do so. While mainstreaming the issue, IDP protection must be

right to return.' Similarly in Turkey, the Turkish Economic and Social Studies Foundation (TESEV) called on governments and the international community to lend support not only to IDPs who choose to return but also to those who choose integration or resettlement as solutions. See Cohen, R., *Listening to the Voices of the Displaced: Lessons Learned* (Brookings-Bern Project on Internal Displacement: Washington, DC, Sep. 2008), pp. 39–40. In the case of refugees, integration in neighbouring countries should also be given far greater attention so that their 'human warehousing' in camps, without freedom of movement or the right to seek employment, adequate housing or education, can be addressed. Smith (note 18).

⁸¹ Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility* (Brookings-Bern Project on Internal Displacement: Washington, DC, Apr. 2005).

⁸² Crisp, J., *Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions*, New Issues in Refugee Research, Research Paper no. 126 (UNHCR: Geneva, July 2006), p. 17.

⁸³ Kälén, W., 'Durable solutions for internally displaced persons: an essential dimension of peacebuilding', Statement before the UN Peacebuilding Commission, Working Group on Lessons Learned, 13 Mar. 2008, <http://www.brookings.edu/speeches/2008/0313_internal_displacement_kalin.aspx>.

⁸⁴ See Davies, A., 'Is humanitarian reform improving IDP protection and assistance?', *Forced Migration Review*, Dec. 2007, pp. 15–16.

⁸⁵ See Internal Displacement Monitoring Centre (note 23), p. 20.

maintained as a core activity. This will mean training and assigning dedicated senior staff to IDP protection, creating a rapidly deployable team of IDP protection officers, increasing the UNHCR presence in the field in areas where IDPs are vulnerable, training NGO partners in protection, identifying ways of protecting IDPs in urban areas and protracted situations, and undertaking more proactive advocacy. The need for a more comprehensive institutional arrangement for people uprooted from their homes externally and internally is long overdue. While there is no question that refugees and IDPs should have separate legal systems, and that the UNHCR's mandate relates to refugees, operationally the agency should seek to close the gap between refugee and IDP protection, or else acknowledge that IDPs will need a different and more effective institution to protect and assist them. In such case, a separate UN entity should be considered.

Fifth, given the absence of effective institutional arrangements for IDPs, a dedicated UN official focused exclusively on the plight of IDPs remains essential. Yet the UN Human Rights Council has made it known that in 2010 it plans to replace the position of Representative of the UN Secretary-General on the Human Rights of IDPs with a rapporteur who will have little or no connection to the senior humanitarian or political offices of the UN or bear the authority of the Secretary-General. The declared intent is to make the position equal to all other rapporteurs associated with the Human Rights Council, but the effect will be a downgrading of the position that will leave a vacuum in IDP protection. The plan should be reconsidered from the perspective of its impact on IDPs. If the stature and authority of the position are not maintained, the international community should consider converting it from a voluntary expert post to a full-time paid position in the office of the Secretary-General or another part of the UN Secretariat. The catalytic role played by the Representative should be continued until such time as the UNHCR effectively expands its role to include IDPs or a separate entity is created.

Sixth, for IDPs caught up in conflict situations, dialogue with insurgent groups should be considered a form of protection. Since large numbers of IDPs and other civilians are often under insurgent control, the former UN Under-Secretary-General for Humanitarian Affairs, Jan Egeland, has called dialogue with them 'a humanitarian necessity'.⁸⁶

Governments nonetheless regularly try to limit or prohibit official contact with armed groups on the grounds that this would confer legitimacy on them, recognize their de facto control or be tantamount to working with

⁸⁶ See McHugh, G. and Bessler, M., *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners* (UN Office for the Coordination of Humanitarian Affairs: New York, Jan. 2006); and McHugh, G. and Bessler, M., *Guidelines on Humanitarian Negotiations with Armed Groups* (UN Office for the Coordination of Humanitarian Affairs: New York, Jan. 2006).

'terrorists'. As a result, UN staff are often cautious, fearing strains in their relations with governments or even expulsion if they proactively discuss access or protection issues with insurgents.⁸⁷

Without such relationships, however, the provision of life-sustaining assistance and protection to the displaced and others at risk is 'simply not possible'.⁸⁸ Egeland has found that interaction can bring relief aid to beleaguered communities, lessen abuse of civilians and maintain ceasefires.⁸⁹ The UN and the NGO community must press for dialogue with armed groups while at the same time seeking to reconcile the concerns of governments with such interaction. Dialogue, it should be emphasized, can offer a way of holding non-state armed groups accountable and preventing further abuses. Indeed, the training of non-state actors in humanitarian and human rights standards should be a regular part of humanitarian programmes, especially since some groups will assume responsible governmental positions when conflicts end.⁹⁰

Seventh, the responsibility to protect civilians from mass atrocities must first and foremost begin with robust diplomatic, economic and political steps to prevent conflict and displacement. Prevention, however, is the weakest link in protecting civilians. It is not even a clearly defined concept. The 1948 Genocide Convention, for instance, urges states to take preventive measures but does not specify what those steps might be or provide a relevant normative framework.⁹¹ To fill this gap, a better understanding is needed of the indicators of genocide and mass atrocities and of the practical preventive strategies that should be taken, reinforced by legal norms. The strategies should include building the capacity of states to withstand internal crises and avert displacement as well as engaging UN offices, governments and regional bodies to take concerted action, ranging from diplomacy to preventive deployment.⁹² Although the halting of violence in

⁸⁷ Bagshaw and Paul (note 57), p. 58.

⁸⁸ Bagshaw and Paul (note 57), p. 58.

⁸⁹ Egeland, J., *A Billion Lives: An Eyewitness Report from the Frontlines of Humanity* (Simon & Schuster: New York, 2008), pp. 57–58, 203, 209, 214.

⁹⁰ A Nov. 2002 seminar in Rumbek, Sudan, sought to increase the accountability of non-state actors as regards human rights and humanitarian standards and included representatives from the Sudan People's Liberation Movement (SPLM) and the Sudan Relief and Rehabilitation Association, the relief wing of the SPLM/A. See Brookings–SAIS Project on Internal Displacement, the Representative of the UN Secretary-General on Internally Displaced Persons and the UN Children's Fund, *Seminar on Internal Displacement in Southern Sudan* (Brookings Institution–SAIS Project on Internal Displacement: Washington, DC, 2002).

⁹¹ For a brief summary of the Convention on the Prevention and Punishment of the Crime of Genocide, a link to the text and a list of its parties see annex A in this volume.

⁹² See UN General Assembly, Report of the Secretary-General on the implementation of the Five-Point Action Plan and the activities of the Special Adviser on the Prevention of Genocide, A/HRC/7/37, 19 Mar. 2008, paras 24–25. See also United Nations, 'A more secure world: our shared responsibility', Report of the High-level Panel on Threats, Challenges and Change, UN documents A/59/565, 4 Dec. 2004, and A/59/565/Corr.1, 6 Dec. 2004, <<http://www.un.org/ga/59/docu/mentation/list5.html>>, pp. 37–38; 'What really works in preventing and rebuilding failed states',

Kenya in 2008 has been cited as an effective application of R2P, preventive steps were not taken. Systematic UN monitoring is needed of countries with upcoming elections or where other indicators of violence are apparent so that early alerts can be provided. Given the weakness of the international community in conflict prevention, some have proposed that a group of states with ample resources and professional expertise take the lead in mobilizing a preventive international response.⁹³ Preventive steps should also involve promoting wider support for the International Criminal Court since holding the perpetrators of war crimes and crimes against humanity accountable can at times act as a form of prevention.⁹⁴

Eighth, for the concept of the responsibility to protect to be better understood, especially by the permanent members of the Security Council, and by broad sectors of civil society that can mobilize support for its usage, clarification of its meaning and how it should be applied is essential. It must be one of the goals of the UN Secretary-General, the Special Adviser on R2P and the Special Adviser on the Prevention of Genocide to educate governments and the public on the urgent need for international action in cases where mass atrocities are about to be, or are being, perpetrated against defenceless civilians. Special dialogues should be set up with key developing states and influential states like China, including their think tanks and NGOs, to promote discussion of R2P and its application.

Ninth, the Office of the UN High Commissioner for Human Rights (OHCHR) should become more engaged in the protection of IDPs in emergency situations. Working with the UNHCR, the OHCHR should contribute to the design of strategies for practical protection measures and to reconciling human rights strategies with the security of humanitarian staff on the ground. In Sudan, the International Criminal Court arrest warrant for President Omar al-Bashir led to the expulsion of humanitarian workers from Darfur which in turn has put more than one million IDPs at risk.⁹⁵ At the same time, the presence of relief staff cannot be allowed to become an excuse for international inaction in the face of mass atrocities.

Tenth, a global consensus will be needed to bring into being an international protection capacity that can rapidly deploy well-trained military and police forces with clear and strong mandates, adequate numbers and

Woodrow Wilson International Center for Scholars Occasional Paper series issue 2, Dec. 2006, <<http://www.wilsoncenter.org/topics/pubs/OCpaper.pdf>>, pp. 6–9; Evans (note 46), pp. 79–104; and Hamburg, D., *Preventing Genocide: Practical Steps Toward Early Detection and Effective Action* (Paradigm: Boulder, CO, 2008), pp. 98–262.

⁹³ Smith, G. E., Sullivan, D. and Sweet, A., *The Price of Prevention: Getting Ahead of Global Crises* (Center for American Progress and Enough: Washington, DC, Nov. 2008).

⁹⁴ Concern over possible ICC prosecution put an end to broadcasts of hate speech in Côte d'Ivoire in 2004. Evans (note 46), p. 85.

⁹⁵ Reeves, E., 'Darfur, an ICC arrest warrant, and the humanitarian imperative', *Boston Globe*, 21 Mar. 2009.

sufficient equipment.⁹⁶ While mainly to be applied as a last resort, such a strong international capacity will give teeth to diplomatic initiatives to prevent conflict and more effectively protect civilians if negotiations fail. In the absence of an international protection capacity, ‘blankets and Band-Aids’, as Egeland has warned, too readily take the place of ‘justice and protection’, with civilians left unprotected and displaced.⁹⁷

⁹⁶ Although the World Summit Outcome Document did not go as far as the Secretary-General’s reform report in endorsing ‘strategic reserves’, it did call for the ‘further development of proposals’ to create such capacity, asked regional bodies to consider placing their military capacity under UN standby arrangements and endorsed a standing police capacity. UN General Assembly, ‘In larger freedom: toward development, security and human rights for all’, Report of the Secretary-General, A/59/2005, 21 Mar. 2005, para. 209; and UN General Assembly (note 40), paras 92–93, 170.

⁹⁷ Egeland (note 89), p. 215.