

Testimony of Roberta Cohen
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at the public hearing on
“Internally Displaced Persons in the Caucasus Region and Southeastern Anatolia”
U.S. Commission on Security and Cooperation in Europe
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Distinguished Co-Chairmen,
Commission members,
Ladies and Gentlemen,

In the Caucasus region and Turkey today, there are more than 2 million persons forcibly uprooted from their homes by conflict and human rights violations, many for 10 years or more. Most are caught up in what are called “protracted situations of displacement,” situations that go on indefinitely without effective solution. The Commission is therefore to be commended for shining a spotlight on this longstanding problem, which has not received the attention it should from the governments concerned or the international community.

My testimony today will focus upon the role that the Organization for Security and Cooperation in Europe (OSCE) can play to more effectively deal with the serious problem of internal displacement in the European region, in particular the Caucasus countries and Turkey. It follows from and complements the testimony of Francis M. Deng, Representative of the United Nations Secretary-General on Internally Displaced Persons, who described the conditions of internally displaced persons in the relevant areas and the steps their governments and the international community could take.

Together with Dr. Deng, I co-direct the Project on Internal Displacement of The Brookings Institution and the School of Advanced International Studies (SAIS) of Johns Hopkins University. The Project was set up in 1994 to support the work of the Representative and it seeks to promote more effective policies at the national, regional and international levels to assist and protect persons forcibly displaced within their own countries. It accomplishes this goal through the publication of books and reports; the convening of workshops in countries and regions affected by internal displacement; the promotion and dissemination of the Guiding Principles on Internal Displacement; the integration of internal displacement into the programs and policies of governments, UN agencies, regional bodies and NGOs; the undertaking of collaborative projects with local groups and research institutions in an effort to build local capacities; and the undertaking of research into new and emerging issues.

In the case of Turkey, because of the difficulty of access for many years, our Project initiated and lent support to a mission to that country carried out by the US Committee for Refugees in the fall of 1998, which described and publicized the conditions of internal displacement in that country. It then held a seminar in Washington in 1999 together with the US Committee for Refugees to review the findings of the mission as well as discuss

this and other complex situations of internal displacement where international involvement was limited or non-existent. In 2001, we were most pleased that the Government of Turkey decided to invite the Representative of the Secretary-General to pay a visit to the country.

With regard to the Caucasus countries, our Project has published five reports and more recently a book, in collaboration with local partners, and has convened seminars and workshops in all of the countries concerned. Such meetings have brought together government officials, international organizations and civil society to discuss the problem of internal displacement and explore how more effective responses could be developed at the national, regional and international levels. These seminars have included:

- A Regional Workshop on Internal Displacement in the South Caucasus (Armenia, Azerbaijan, Georgia) held in Georgia (2000), in collaboration with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) and the Norwegian Refugee Council;
- Three Roundtables -- in Armenia (2001), Azerbaijan (2002) and Georgia (2002), convened in collaboration with OSCE/ODIHR and the Georgian Young Lawyers Association (GYLA); and
- A Conference on Internal Displacement in the Russian Federation, held in Moscow (2002), organized in cooperation with the Institute of State and Law of the Russian Academy of Sciences and the Russian NGO, Partnership on Migration (its *Program of Action* is appended).

At all of these seminars, participants expressed strong support for the involvement of the Organization for Security and Cooperation in Europe in dealing with the problem of internal displacement. It should be noted, by way of background, that strong sentiment has also been expressed worldwide for a greater role for regional organizations in responding to the global crisis of internal displacement. As a result, regional organizations in many parts of the world have begun to devote increased attention to the problem. In addition to the OSCE, these organizations include the Council of Europe, the European Union, the Organization of American States, the African Union, and the Economic Community of West African States. Their growing involvement is based on several factors. To begin with, the countries affected by internal displacement do not always have the capacity or the will to deal with the problem. Nor can the United Nations be expected to intercede in each and every case. Yet, in the absence of attention, conflict and displacement can become destabilizing to countries and facilitate their becoming breeding grounds for extremism, especially when large numbers of young people have little hope for the future. Moreover, situations of conflict and displacement rarely remain confined within borders. Too often they spill over into neighboring countries and affect regional stability. Regional action also becomes essential because of the influence regional powers can exert to encourage governments in their regions to assume their responsibilities toward their internally displaced populations.

The efforts of regional organizations have been strongly encouraged by the United Nations. Indeed, resolutions of the General Assembly and the Commission on Human Rights have called upon regional bodies, among them the OSCE, to expand their cooperation with the Representative of the Secretary-General on Internally Displaced Persons and strengthen their activities with regard to internal displacement. In particular, these resolutions have called upon regional organizations and the Representative to convene seminars on the Guiding Principles on Internal Displacement, the first international standards for the internally displaced, and have expressed appreciation to regional bodies for making use of the Principles.

The Organization for Security and Cooperation in Europe, more than most regional organizations, has tremendous potential for dealing with the problem of internal displacement. It also has the responsibility: its participating states have committed themselves to the principle that matters related to human rights are of direct and legitimate concern to all the states, and in particular have undertaken to address the problem of internal displacement (see, for example, the CSCE Helsinki Document 1992, the Document of the Stockholm Meeting of the CSCE Council 1992, the Lisbon Document 1996, and the Charter for European Security 1999). Moreover, because the mandate of the OSCE is broad and flexible, it has been able, since the end of the cold war, to evolve into an institution that directly engages in defusing tensions *within* states, encouraging dialogue and reconciliation among communities, and promoting the development of democratic institutions, human rights and the rule of law.

Indeed, OSCE's engagement with situations of internal displacement has expanded significantly over the past decade. Its conflict prevention machinery, for example, including its High Commissioner for National Minorities, has worked to avert mass displacement. OSCE missions to different countries have begun to make recommendations about internally displaced populations. Its field staff has engaged in monitoring the safety and human rights of displaced persons, especially during returns. Through its election monitoring and technical assistance programs, the OSCE has also promoted attention to internally displaced populations.

It should also be mentioned that in collaboration with the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), the OSCE co-sponsored in 1996 the Geneva Conference on the Problems of Refugees, Displaced Persons, Migration and Asylum Issues in the Commonwealth of Independent States (CIS) whose program of action called for the establishment of national institutions and laws in the region to deal with displacement and called upon international organizations to provide technical cooperation to reinforce national efforts.

OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has been particularly active in working with the Representative of the Secretary-General in disseminating the Guiding Principles on Internal Displacement to member states and staff and has co-sponsored seminars to encourage compliance with their provisions. As earlier noted, OSCE/ODIHR co-hosted the seminar in Tbilisi, Georgia in 2000 that brought

together government officials, international organizations and NGOs from Georgia, Armenia and Azerbaijan to design strategies for dealing with internal displacement, including the wider use of the Guiding Principles.

As a follow up to that meeting, OSCE/ODIHR collaborated with the Brookings Project and the Georgian Young Lawyers Association in organizing reviews of national legislation in Georgia, Armenia and Azerbaijan in light of the Guiding Principles. Teams of lawyers from the three countries undertook analyses of their laws and presented their findings and recommendations to their governments at seminars held in the three countries. Their studies not only made their governments and civil society aware of gaps in the law and obstacles to its implementation but appear also to have had an important impact in stimulating legislative reform (see below).

All of the above steps taken by OSCE to improve the plight of the internally displaced are to be commended and encouraged, but it is also evident that these steps are largely *ad hoc* and often minimal to the situation. Indeed, because of the *ad hoc* nature of the OSCE response and the need to enhance its activities, in September 2000, the OSCE/ODIHR Office took the important step of convening in Vienna a Supplementary Human Dimension Meeting on Migration and Internal Displacement. It was the first OSCE human dimension meeting in which an in-depth discussion of the problem of internal displacement took place, and it produced a number of concrete proposals with regard to the role the OSCE participating states, institutions and field missions could take in meeting the protection and assistance needs of the internally displaced. Most importantly, it called upon the OSCE to systematically integrate the issue of internal displacement into all the activities of the organization and to use the Guiding Principles on Internal Displacement as the framework for so doing.

Two months following this meeting, the OSCE Chair in Office, the Foreign Minister of Austria, at a Ministerial Council meeting in Vienna, issued a closing statement that reinforced the conclusions of the Supplementary Human Dimension Meeting and outlined the areas in which the OSCE could make a contribution to situations of internal displacement. These included the political solution of conflicts; the protection of the rights of internally displaced persons; monitoring and reporting on affected populations; facilitating durable solutions for refugees and internally displaced persons; providing advice to governments on national laws and best practices; and disseminating the Guiding Principles within OSCE and using them in the activities of the organization.

Again in 2001, at the Human Dimension Implementation Meeting in Warsaw, participants made recommendations to integrate the issue of internal displacement into the activities of the OSCE and emphasized that the problem of refugees and internally displaced persons had become one of the most urgent humanitarian issues in the OSCE region, presenting serious risks to stability in the OSCE area. The Consolidated Summary of the Meeting included a list of thirteen recommendations to expand the involvement of the OSCE in situations of internal displacement.

Despite all of these statements and recommendations, the OSCE has still not formally moved to make internal displacement a priority issue of direct concern to the organization and to integrate it systematically into the programs and activities of the organization. Recognizing the sensitivity of certain OSCE governments to the subject of internal displacement, in particular the Russian Federation and Turkey, it is nonetheless timely, given the severity of the problem, for the OSCE to take steps to make the recommendations put forward at its meetings a reality. In short, the OSCE must begin to pay systematic and coherent attention to the problem of internal displacement that affects a total of ten countries in its region.

To accomplish this goal, the Brookings-SAIS Project offers herewith ten recommendations. Most build upon the earlier work of the OSCE. If carried out, they will have a direct and positive impact upon the situation in the Caucasus countries and Turkey, the countries of concern in today's hearing.

First, the OSCE should formally recognize internal displacement as a human dimension issue of direct concern to the organization. This would assure a regular and systematic review of situations of internal displacement at Human Dimension Implementation Meetings. The substandard conditions of internally displaced persons, described by the Representative of the Secretary-General in the Caucasus countries and Turkey, speak to the need for such a regularized review. Special attention in such reviews would need to be paid to member states' policies and programs with regard to their internally displaced populations as well as the OSCE's and the international community's role in such situations. Reviews would be particularly important for countries where there are no OSCE missions, as is currently the case with the Russian Federation and Turkey.

Second, the Permanent Council of the OSCE, should, on a systematic basis, discuss situations of internal displacement and develop specific strategies for addressing the problem. Strategies could include preventive action, diplomatic dialogue with the relevant governments, instructing existing field missions, such as those in the South Caucasus, to regularly assess and report on displacement situations, opening or reinstating missions in countries where they do not now exist, such as Turkey and the Russian Federation, and overall reviewing the situation of displacement in the region with a view to Council action.

The importance of Council involvement is underscored by the case of Turkey. During the 1990s, neither the Permanent Council nor the Chair-in-Office were effectively seized of the issue even though Turkey had the largest number of internally displaced persons in the European region and barred international humanitarian organizations from monitoring the situation or providing assistance. As Francis Deng and I point out in our book, *Masses in Flight: the Global Crisis of Internal Displacement* (Brookings 1998), the OSCE long ignored one of the most pernicious cases of internal displacement in Europe. This could in part be avoided if regular, systematized discussion of situations of internal displacement were part of the Permanent Council's work.

To reinforce the Council's role, the issue of internal displacement should be mainstreamed throughout the organization, in its legal review processes, its election monitoring activities and its gender projects. Field missions should be expected to give increased attention to situations of internal displacement and regularly report on conditions, including the removal of administrative and legal barriers to the return of IDPs, the implementation of property laws, and promoting access to education and pensions for those returning.

In addition, the Representative of the UN Secretary-General on Internally Displaced Persons should be invited on a regular basis to address the Council on internal displacement conditions in countries within the OSCE region. A recommendation to this effect was made at the 2001 OSCE Human Dimension Implementation Meeting in Warsaw.

Third, the Guiding Principles on Internal Displacement should be formally acknowledged by the OSCE, in particular by the Permanent Council and the Ministerial Council, and used as a framework for policies and activities by the organization. The Principles, it should be recalled, constitute a comprehensive normative framework for the internally displaced, bringing together in one document all the international legal provisions relevant to these populations. In setting forth the rights of the displaced and the obligations of governments and non-state actors toward these populations, they address many issues of direct pertinence to the displaced in the OSCE region, for example, the return of property, access to documentation, minority rights in majority areas, an impartial judiciary, the right to meaningful representation, freedom of movement and the right to choose one's residence.

The Principles have been formally acknowledged by other regional organizations; the Inter-American Commission on Human Rights of the Organization of American States, for example, has formally endorsed them while the European Union has acknowledged its appreciation and support for them. Unanimously adopted resolutions of the UN General Assembly and the Commission on Human Rights have also acknowledged the Principles as a useful tool and standard and have called for their wide dissemination and application. All of the OSCE participating states have supported these UN resolutions, including the South Caucasus countries, the Russian Federation and Turkey.

It is noteworthy that the Principles correspond with the OSCE's structure and purposes since they cover all phases of displacement – prevention, protection during displacement and protection during return and reintegration. There are a number of specific ways that the Principles could serve the OSCE: as a benchmark for monitoring and evaluating conditions in different countries, as a source of guidance in drafting laws, constitutions and administrative regulations, as a basis for dialogue, as a tool for training staff, and as a means of raising visibility to the plight of internally displaced persons. OSCE/ODIHR has already incorporated the Principles into its projects that review national legislation in the South Caucasus.

Integrating the Principles into the work of the OSCE would mean that its staff at headquarters and in the field would begin more regularly to monitor and review conditions of displacement in affected countries in terms of the Guiding Principles. It would mean that members of the Permanent Council would use them as a framework for OSCE policies and programs in the areas of prevention, protection and return and reintegration.

Fourth, greater support should be given to OSCE/ODIHR to enable it to expand its projects to help improve the legal situation of IDPs in the OSCE region. As earlier noted, OSCE/ODIHR over the past two years co-sponsored a project with the Brookings-SAIS Project and the Georgian Young Lawyers Association enabling teams of lawyers from Georgia, Armenia and Azerbaijan to analyze the laws and administrative regulations in their respective countries in terms of the Guiding Principles. Their studies found noticeable gaps in the laws, and in some cases, discriminatory provisions. For example, the legal team from Georgia found restrictions in the law with regard to political participation and voting rights; the Armenian team argued that internally displaced persons would fare better with the adoption of a special law on the question of internal displacement; the Azerbaijani lawyers proposed that two separate laws be created for refugees and IDPs and that special legislation be adopted to cover return and property compensation. Overall the studies made governments, international organizations and civil society aware of gaps in the law and obstacles to its implementation and had an important impact in stimulating legislative reform. In at least one of the countries, Georgia, even before the research was completed, changes began to be made in the law to improve the political participation of the internally displaced. The three reports have now been published by the American Society of International Law in a book entitled *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia and Azerbaijan* (2003, see attached announcement).

To ensure that needed legal reform is undertaken in the three South Caucasus countries, follow up will be needed by OSCE/ODIHR. In addition, it should undertake comparable projects in other OSCE countries. For example, in the Russian Federation, the legacy of the “propiska” system continues to restrict internally displaced persons in exercising their right to free choice of place of residence. A lack of clarity also exists in the 1993 Law on Forced Migrants when it comes to internally displaced persons. Indeed, the Program of Action of the Conference on Internal Displacement in the Russian Federation, mentioned earlier, specifically calls upon the Russian Government to address the question of whether dealing with all forced migrants uniformly is the most effective way of managing the problem, or whether internally displaced persons would be better protected if there were special legislation which distinguished them from other groups of forced migrants and in particular separated them out from those comparable to refugees. The OSCE/ODIHR Migration Adviser at the Conference pointed out that it would be far more beneficial for IDPs if the Russian Government were to clarify and amend existing legislation, so as to separate internally displaced persons from other categories of forced migrants.

OSCE/ODIHR technical assistance projects in the legal area should in particular encourage governments to revise discriminatory laws and draft and adopt new legislation and administrative regulations that accord with regional and international standards for the protection of internally displaced persons. For example, laws providing for material assistance, health services, education and employment should be reviewed to ensure that these services are made available on a non-discriminatory basis. Laws on the exercise of political rights, in particular with regard to freedom of movement and voting rights, should be scrutinized, given their importance to IDPs in the OSCE region, as should laws on returns to ensure their voluntary nature and that compensation can be awarded for property lost as a result of displacement.

Fifth, OSCE technical assistance programs should promote the creation of national institutions to address the needs of the internally displaced, including monitoring bodies to assure the implementation of national laws on displacement. To this end, the OSCE, in collaboration with the international organizations that undertook the 1996 CIS migration conference, should consider undertaking a review of the extent to which existing government offices and institutions in countries suffering internal displacement effectively address the needs of the displaced and identify, where appropriate, the gaps and how best to remedy them. It could then work with the governments to help them better assume their national responsibilities.

Sixth, in carrying out its election monitoring functions, the OSCE should ensure that the internally displaced are able to freely exercise their right to vote and do not face discrimination with regard to political participation. A report issued by the Brookings Project in September 2000 on *Internally Displaced Persons and Political Participation: The OSCE Region*, concluded that internally displaced persons “may be unable to vote on a par with their fellow citizens as a result of various obstacles which, to a greater or lesser extent, may reflect not only practical difficulties posed by situations of displacement but also deliberate policy choices by the local or national authorities.” It called upon the OSCE to better ensure that elections held in the OSCE region accord with OSCE commitments and with relevant international standards, such as the Guiding Principles, in the case of internally displaced persons.

Seventh, the scope of action of the OSCE High Commissioner on National Minorities should be expanded to enable more regularized focus on the situation of internally displaced persons who are members of racial, ethnic, or religious minorities and who are often marginalized by systems of inequitable and discriminatory governance. In the case of Turkey, a dialogue between the High Commissioner and the Turkish Government concerning the situation of ethnic Kurds is long overdue. Given the changed political climate in Turkey, such dialogue should be initiated and pursued without delay. The High Commissioner has long avoided involvement in the Kurdish situation because his mandate is supposed to deal with situations in their “earliest possible stage” and because it is precluded from dealing with situations “involving organized acts of terrorism.” However, as the Norwegian Refugee Council told the OSCE Human Dimension Implementation Meeting in 2001, it is time for the High Commissioner to “ensure that his mandate includes all minorities that have been displaced in the region... Reported

terrorist activities by individuals or groups of individuals should not preclude the High Commissioner from being engaged on behalf of entire minority groups.”

Eighth, to promote the integration of the internal displacement issue into the activities of the organization, the OSCE should systematically train its staff, both at headquarters and in the field, in the subject of internal displacement. Training should include basic instruction in how to evaluate and report on situations of displacement, how to monitor situations in terms of the Guiding Principles, how to undertake specific steps to enhance practical protection in the field and how to facilitate returns of displaced persons, including enhancing their protection and assuring their property rights. This would accord with OSCE commitments to facilitate the voluntary return of refugees and internally displaced persons in dignity and safety and their reintegration without discrimination.

Ninth, OSCE/ODIHR’s migration unit should be reinforced so that it will be effectively able to serve as focal point for internal displacement within the OSCE. ODIHR’s current Migration Adviser has been doing an energetic and excellent job of trying to integrate internal displacement into the work of the OSCE, but given the magnitude of the problem, it would be useful to add additional staff to the unit. Additional resources would also make it possible for OSCE/ODIHR to carry out national seminars and workshops on internal displacement issues.

Tenth, the OSCE should develop strategies for promoting greater responsibility and accountability toward displaced populations by non-state actors. The Guiding Principles, it should be emphasized, apply both to states and non-state actors and the Brookings-SAIS Project has been encouraging appropriate non-state actors in different parts of the world to comply with the Principles in dealing with displaced populations under their control. In the case of the South Caucasus, I would note that the Abkhaz government in exile participated in one of the abovementioned seminars the Project organized in Tbilisi, which discussed the laws of Georgia in terms of the Guiding Principles. Moreover, during his mission to Georgia in 2000, the Representative of the Secretary-General visited Abkhazia as well as South Ossetia and met with the de facto authorities, engaging in dialogue on the basis of the Guiding Principles. OSCE field missions, in reporting on the situation of internally displaced persons, could review how the Guiding Principles are implemented by both states and non-state actors.

Finally, it should be underscored that in engaging more fully with the problem of internal displacement, the OSCE should build on its close collaboration with the international organizations and offices already active in this area, including the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the Representative of the UN Secretary-General on Internally Displaced Persons, the IDP Unit in the UN Office for the Coordination of Humanitarian Affairs, the Office of the UN High Commissioner for Human Rights as well as regional bodies such as the European Union and Council of Europe. Such coordination should ensure that OSCE activities effectively reinforce and complement those of the other organizations and offices and are based on areas in which the OSCE has a comparative advantage.

In conclusion, the OSCE's effective integration of internal displacement in its programs and activities will enable it to better contribute to protecting the rights of IDPs in the countries affected in the European region. Most challenging will be securing a commitment from participating states to recognize and treat the issue as a priority one. The voice of the United States, in particular the US Commission on Security and Cooperation in Europe, could be important here. Internal displacement after all is a serious humanitarian and human rights issue affecting the lives of millions of people in the OSCE region; it is also an issue that can affect security and long-term stability in the region. The OSCE should be encouraged to develop a strong and influential voice on the subject with the aim of prompting participating states to fulfill their commitments to internally displaced populations and to avoid policies that directly and deliberately lead to mass displacement. The scale and severity of this problem in the OSCE region make it imperative that more systematic attention be given to the millions of internally displaced persons in Europe in need of support.