

The genesis and the challenges

Roberta Cohen and Francis M Deng

The need for international standards to protect and assist internally displaced persons arose directly from the explosion of civil wars in the last decade of the 20th century that left tens of millions uprooted within the borders of their own countries.

The 1951 Refugee Convention did not apply to internally displaced persons. Principal responsibility for providing for the well-being and security of IDPs rested with their governments but most were unable or unwilling to assume this obligation. Nor did international organisations and NGOs have clear rules of engagement with the rapidly growing numbers of IDPs in need of assistance. Many thus began appealing for an international document that would define the rights of IDPs and the obligations of governments towards them.

Development of a legal framework for IDPs became one of the main tasks taken on by the Representative of the Secretary-General on Internally Displaced Persons, Francis Deng, following his appointment in 1992. This assignment was fraught with daunting challenges:

- dealing with the sensitivities of governments wary of potential intrusions into their sovereignty
- ensuring that international standards were based on a concept that would promote consensus
- reassuring states that while IDPs came under their sovereign responsibility they had to agree that sovereignty carried with it the obligation to protect and assist these vulnerable populations.

The concept of sovereignty as a form of responsibility became the basis for the normative framework that would be created.

There was concern, especially among humanitarian staff, that singling out one group of people could result in discrimination against others. But the legal team that the Representative assembled found that precedents abound in international

law to provide special protections for disadvantaged groups, whether refugees, minorities, persons with disabilities, women or children. Identifying the rights of IDPs and the obligations of governments was not intended to create a privileged status but to ensure that, in a given situation, IDPs – like others – would be protected and assisted.

The legal team had to consider the most appropriate approach to compiling the law. American lawyers argued for a ‘needs-based’ approach – to identify IDP needs and then examine how the law, including customary law and resolutions, would address them. Others, especially Europeans, argued for a more traditional ‘rights-based’ approach – to look exclusively at hard law¹ to decide what rights IDPs have. Walter Kälin² chaired the process, skillfully bringing the two sides together and merging the various texts. The resulting ‘Compilation and Analysis of Legal Norms’ was presented in two parts by the Representative to the Commission on Human Rights in 1996 and 1998.

Whether the rights of IDPs should be set forth in a declaration, convention or principles was a further difficult decision. Principles were decided upon for three reasons. First, there was no support for a legally binding treaty given the sensitivity surrounding the sovereignty issue. Second, treaty making could take decades, whereas a document was needed urgently. Third, sufficient international law already existed to protect IDPs. What was needed was a restatement of the law tailored to the explicit concerns of IDPs.

How to define IDPs was another major issue. For some, IDPs were exclusively those uprooted by conflict and persecution – people

who would be considered refugees if they had crossed a border. For others, those uprooted by natural disasters and development projects were to be included as well. Because it was recognised that such people were also involuntarily displaced and faced human rights and protection problems, the broader definition won out.

Controversy about the Principles arose not so much in regard to their content as to the process by which they were developed. For the first time, international experts outside the traditional intergovernmental process drafted, reviewed and completed a major international legal document. Fifty independent international experts finalised the Guiding Principles at a conference in Vienna hosted by the Austrian government, one of the Principles’ leading sponsors. The Representative then presented the Principles to the UN in 1998.

Not long thereafter, a small but vocal group of governments – led by Egypt, Sudan and India – began to question the standing of the Principles and to ask whether their development by non-governmental actors would create a precedent. To allow their concerns to be addressed, the Swiss government hosted a series of meetings, beginning in 2001, by the end of which the dissenting states abandoned their reservations and expressed support for the Principles. In particular, they were reassured that the experts involved had not created new law but mostly compiled and restated what had already been negotiated and agreed to by governments. They also were influenced by the many governments in the Group of 77 – a coalition of developing nations³ – who quickly found the Principles to be a valuable tool in dealing with internal displacement in their countries.

Sérgio Vieira de Mello, the then Under Secretary-General for Humanitarian Affairs, took the lead in calling upon UN humanitarian and development agencies and NGO

umbrella groups in the Inter-Agency Standing Committee (IASC) – the primary mechanism for inter-agency coordination of humanitarian assistance⁴ – to welcome the Principles. The IASC disseminated them widely and applied them in the field. The Brookings Project on Internal Displacement⁵ worked with international, regional and civil society organisations around the world to gain international acceptance for them. In 2005, more than 190 states adopted the World Summit Outcome document,⁶ which specifically recognised the Guiding Principles as an

important international framework for the protection of IDPs.

From a process initiated barely ten years earlier, the Guiding Principles have come to fill a major gap in the international protection system for uprooted people.

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1. 'Hard law' is a term used by lawyers to describe the legally binding nature of various agreements or provisions which leave little room for discretion or interpretation.

2. Walter Kälin has been the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons since 2004.

3. <http://www.g77.org/>

4. <http://www.humanitarianinfo.org/iasc/>

5. <http://www.brookings.edu/projects/idp.aspx>

6. http://www.un.org/summit2005/presskit/fact_sheet.pdf

Commitments to the protection of IDPs



The Oslo conference on the Guiding Principles included a session on 'Humanitarian actors – commitment to the protection of IDPs'. Panel speakers were UN High Commissioner for Refugees António Guterres, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes and Director General of the Red Cross Angelo Gnaedinger:

In the absence of binding instruments, the Guiding Principles have become an extremely relevant protection instrument. We consider them as more than a simple compilation and restatement of legal rules. For us, the Guiding Principles have played a significant role even in shaping our own operational responsibilities in relation to

displaced persons, namely in all the dimensions of protection.

António Guterres

... the Guiding Principles have indeed provided a useful framework to guide the responses of governments, humanitarians and other actors in natural disasters. However, as in other displacement contexts, more needs to be done by all of us to translate them into consistent policy and practice. I reiterate my commitment, and that of my staff, to support all stakeholders, particularly governments, to ensuring that the standards set by the Guiding Principles are met. If we want to stand true to our commitment to end the suffering of the millions who are, and who will be, displaced by natural disasters, there is no other option.

John Holmes

The acronym 'IDP' gives the merest idea of the grim realities that confront us in many parts of the world today. In August alone [2008], more than half a million people have been driven out of their homes as a result of three renewed conflicts: in Georgia, in areas on the border between Pakistan and Afghanistan, and in the southern Philippines. During recent weeks tens of thousands more have had to flee their homes in Sri Lanka, in Somalia, in eastern Congo and in many other places where hostilities and attacks on civilians have continued unabated for years. We are committed to reaching all these people in profound distress, who are in urgent need of basic goods and services, and in need – most of all – of a sense of security and hope.

Angelo Gnaedinger