three things are needed. First, the right not to be displaced should be more firmly recognised by a competent, authoritative body (such as the UN General Assembly or UN Human Rights Council) in an authoritative international instrument (such as a new convention, a protocol to existing human rights conventions, or a resolution). A working group may be established and mandated by the Human Rights Council to (re-)examine the right not to be displaced and draft an appropriate normative instrument.  

Secondly, efforts must be undertaken to further clarify and make concrete the contents of the right not to be displaced. This includes establishing its personal, substantive, territorial and temporal scope of application, spelling out as precisely as possible the rights attributed to individuals and obligations imposed on states, and detailing the conditions under which the right can be lawfully restricted. Human rights courts, commissions and committees, as well as scholars, can all contribute to the clarification and interpretation of the right not to be displaced.

Thirdly, the right not to be displaced must be more than just a lofty declaration of intent. Both at the international and the domestic level, measures and initiatives must be introduced in order to implement, enforce and effectively realise this right. Such implementation and enforcement measures should aim at the prevention of arbitrary displacement; the halting of ongoing violations of the right not to be displaced; the effective punishment of perpetrators; and the provision of remedies and reparations for victims of arbitrary displacement, including access to justice, restitution and/or compensation and rehabilitation. At the international level, we would propose the establishment of a new Committee on the Protection from Arbitrary Displacement to monitor and enforce the right not to be displaced.

The recognition and effective realisation of the right not to be displaced should not remain a utopian pursuit. Tackling displacement at its roots through a rights-based approach is definitely the way forward.

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2. Principle 2(2)
3. Article 4(1)
4. In this respect, inspiration could be drawn from the legal developments as regards the prohibition of enforced disappearance. See www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule98

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### International Humanitarian Law: a short summary of relevant provisions

The law of armed conflict – also known as international humanitarian law (IHL) – is the body of international law that most clearly codifies binding standards for the prevention of displacement. IHL is not concerned with the lawfulness or otherwise of armed conflicts but governs conduct during conflict, setting humanitarian considerations against military necessity.

Violations of IHL include attacks against and ill-treatment of civilians, destruction of property, sexual violence and restricted access to health care and other essential services. IHL, in particular as codified in the Geneva Conventions of 1949 and their Additional Protocols of 1977, contains important provisions to prevent the displacement of people and for the protection of persons forced to flee.

Many of these provisions are considered to have become international customary law. The Fourth Geneva Convention (GCIV) deals specifically with the protection of civilian persons in times of war, including occupation. Internally Displaced Persons (IDPs) are part of the civilian population and therefore are entitled to receive the same protections as other civilians against the consequences of war. Additional Protocol I (API) supplements these protections in times of international armed conflicts, and Additional Protocol II (APII) in times of non-international armed conflicts. States have the responsibility to implement these protections in their domestic legal framework.

Although not every conflict-related displacement necessarily represents a breach of IHL, international customary humanitarian law as well as the two Protocols prohibit the displacement of civilians – whether within the borders of a country or across international borders – or their forcible deportation or transfer from occupied territories unless the security of the civilians involved or imperative military reasons require it. (GCIV in particular Art. 4 and 27.) Other important provisions are API Art. 51 and 75, and APII Art. 4 and 5, ICHL Rules 1 and 7. Under IHL, displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. (GC IV Art. 49 and 147, API Art. 51(7), 78(1) and 85(4)(a) API II Art. 4(3)(e) and 17, International Customary Humanitarian Law (ICHL) Rules 129 and 132.)

In armed conflict situations, civilian property and possessions shall not be subject to pillage (GC IV Art. 33, ICHL Rule 52) or direct or indiscriminate attacks (API Art. 85, ICHL Rule 11), used as a shield for military operations or objectives (API Art. 51) or destruction or appropriation as reprisal (API Art. 52) or collective punishment (API Art. 75(2)(d)).

Shelter is not specifically provided for in the protection of protected persons under the Geneva Conventions and Additional Protocols; however, the extensive destruction and appropriation of housing is prohibited. (GC IV Art. 147)

The obligation to transfer persons evacuated in or from occupied territories back to their homes as soon as hostilities have ceased there implies the right to recovery of their property. More particularly, the property rights of displaced persons must be respected. (ICHL Rule 133.)