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Protecting the Internally Displaced Under International Humanitarian Law

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Protecting the Internally Displaced Under International Humanitarian Law

by Alain Balmanno

The instability experienced by many countries around the world, due in part to the end of the Cold War stalemate, has led to armed conflicts, ethnic strife, gross violations of civil rights, and other humanitarian emergencies. As a result, the world has not only witnessed a drastic increase in refugee flows across borders, but also an enormous increase of internally displaced persons.

Internally displaced persons, according to the United Nations' working definition, are persons "who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country." It has become evident that internally displaced persons are generally more vulnerable than refugees because of a lack of international protection and assistance. Although their numbers surpass those of refugees, no international regime exists specifically to protect internally displaced persons.

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It is estimated that there are over 25 million internally displaced persons throughout the world. While exact numbers are difficult to calculate, it is estimated that there are 4 million internally displaced persons in the Sudan and 2 million each in Mozambique, Angola and Rwanda, illustrating the magnitude of the problem in Africa alone. Large numbers of internally displaced persons also exist in Sierra Leone, Bosnia, Croatia, Kenya, Cyprus, Iran, Georgia, India, Guatemala, Togo, Djibouti, Cambodia, and Haiti.

Compelled by circumstances to live nomadic existences in makeshift camps and refugee centers, internally displaced persons fall victim to persistent violations of human rights such as physical assault, execution, and deprivation of basic necessities including food, water, medicine, and medical care. Displacement breaks up families, severs community ties, and destroys education and employment opportunities. While they are nationals of the country in which they are located, internally displaced persons are often not accorded civil and political right, or economic and social rights, to which they may be entitled under domestic law.

Existing international human rights law may provide some protection in certain situations. Provisions found in the International Bill of Rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, should apply to internally displaced persons. Many human rights, however, may be derogated from in times of national emergencies. In addition, governments who create situations resulting in internal displacement, or who are not sympathetic to the plight of the displaced for ethnic, religious, or political reasons, generally are unwilling provide displaced persons with rights found in international human rights instruments. Furthermore, human rights law does not directly address specific situations such as forcible displacement and access to humanitarian assistance.

Humanitarian law can provide some protection to persons displaced because of internal armed conflict. Unfortunately most combatants in such conflicts are reluctant to or fail to grant displaced persons the fundamental protections under humanitarian law, and many international humanitarian instruments do not contain effective enforcement mechanisms. In addition, humanitarian law is generally not applicable to situations of internal tensions and disturbances falling short of internal armed conflict.

International refugee law becomes applicable only upon the crossing of an international border. Nevertheless, in the area of refugee law the mandate of the United Nations High Commissioner for Refugees has been extended to include persons displaced, in a manner other than that anticipated by the Convention relating to the Status of Refugees, who are in the same condition as refugees but who have not crossed international boundaries.

International law currently applicable to internally displaced persons is a patchwork of standards, with parts applying to all persons, parts applying only to certain subgroups of displaced persons, such as those displaced as a result of armed conflict, and parts that may be suspended at various times. The lack of protection for the millions of displaced persons has placed their problem high in the international agenda and raises the issue of how traditional notions of sovereignty should be reconciled with international responsibilities. In 1991, then United Nations Secretary-General, Perez de Cuallar, commented that "it is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated without impunity."

This less accommodating view of domestic jurisdiction along with post-Cold War cooperation in the Security Council have led to the revitalization of the theory of "humanitarian intervention." Faced with serious violations by states of their duties under applicable international instruments, the United Nations, acting principally through the Security Council and sometimes through the General Assembly, has taken active measures to curb abuses and provide relief to victims. For example, one of the strongest resolutions authorizing assistance and protection to internally displaced persons was Security Council Resolution 688, adopted on 5 April 1991. This resolution permits the Secretary-General to "pursue humanitarian efforts in Iraq" in order to protect the Kurdish population. Action by the United Nations, however, has been reactive in nature and necessarily subject to political constraints.

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The ad hoc nature of the international community's response to the ever increasing problem of the internally displaced prompted the United Nations Commission on Human Rights to adopt Resolution 1992/73, in which the Secretary-General was urged to appoint a special representative on internally displaced persons. This representative is to seek views and information on human rights issues related to the internally displaced, to examine current human rights law mechanisms and the applicability of humanitarian and refugee law, and to evaluate the standards of protection and provision of relief assistance for the internally displaced. Dr. Francis M. Deng, appointed to the post by the Secretary-General, has set out to fulfill this mandate and has published reports in which he concludes that "there is still no adequate system of protection and assistance for internally displaced persons."

Washington College of Law Professor, Robert K. Goldman, the International Human Rights Law Group, and the American Society of International Law have embarked on a joint project for Dr. Deng to compile international legal norms applicable to internally displaced persons, to identify possible deficiencies and gaps in the law, and to suggest remedies. This study will form an important resource for the United Nations when that organization attempts to develop guiding principles later this year.

The African Approach to Refugees

by Fernando González-Martín

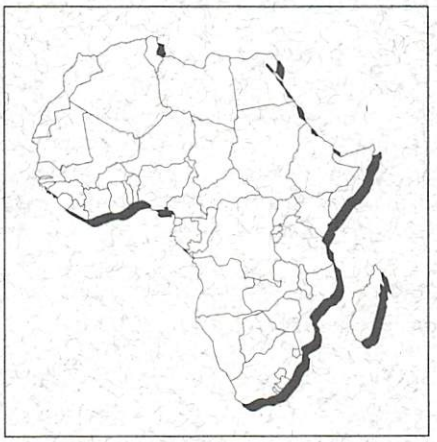
Of the approximately 20 million refugees in the world today, six million are found on the African continent. Not included in these figures are the so-called "internally displaced," which raise the numbers to 15 million in Africa alone and 25 million across the globe. To put the African figures into perspective, in 1969, the number of African refugees rose to a total of 700,000. At the time, even this relatively low figure was considered alarming and prompted action on the part of African nations to address problems resulting from the ever-increasing number of refugees. Since its inception in 1963, the Organization of African Unity (OAU) has sought to lessen the plight of this often ill-defined category of individuals.

The legal regime governing refugee law in Africa is comprised of three main legal instruments: the 1951 UN Geneva Convention (45 States Party in Africa) and its 1967 Protocol (46 States Party in Africa), the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa (42 States Party), and the African Charter on Human and People's Rights (49 States Parties). It is noteworthy that most of the 53 States on the African Continent have ratified these international agreements.

The OAU Convention, in particular, which was adopted in 1969 and entered into force on 20 June 1974, was prepared, in part, to take into account the unique aspects of the refugee situation on the African Continent. The Geneva Convention definition of refugees as "persons fleeing a well-founded fear of persecution" had not considered several problems encountered by African refugees and was too narrow within the African context. As a result, Article One of the OAU Convention's definition adds a second paragraph which reads as follows:

> The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The OAU provisions of *non-refoulement*



further illustrate what is often referred to as "the traditional hospitality of African Societies." These provisions provide more protection to refugees than the provisions contained in the Geneva Convention. For example, Article Two of the OAU Convention provides that:

> (1) Member States of the OAU shall use their best endeavors consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who for well-founded reasons are unable or unwilling to return to their country of origin or nationality.
>
> (2) No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion which would compel him to return to or to remain in a territory where his life, physical integrity or liberty would be threatened.

As with most international and regional laws, problems have been encountered in implementing the OAU Convention at the national level. With few exceptions (i.e. Zimbabwe), most countries have been reluctant to replace their domestic legislation governing immigration, aliens, national security and the like with the Convention. In many instances, this legislation is contrary to the protective regime provided for by the OAU Convention. The lack of human resources needed to implement the regime is yet another serious obstacle to the implementation of the OAU Convention's provisions. Several countries have adopted the necessary implementing legislation but lack adequately trained personnel to see that it is observed. Paradoxically, the government agencies charged with refugee protection are often the police, immigration authorities, and, at times, even the army, the very agencies responsible for the plight of the refugees.

Criticism of the refugee protection regime set up by the OAU Convention goes far beyond the practical nature of the implementation of its provisions. One major legal *lacuna* in the body of the Convention is the specific problem of the "internally displaced," often referred to as *de facto* refugees as opposed to *de*

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