

INTERNATIONAL LAW ASSOCIATION

LONDON CONFERENCE (2000)

COMMITTEE ON INTERNALLY DISPLACED PERSONS

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Report and Draft Declaration for Consideration at the 2000 Conference

INTRODUCTION*

1. In Resolution No. 12/98, adopted in May 1998, the International Law Association (ILA)

CALLS upon the Committee to continue its work, taking into account, *inter alia*, the Revised Draft Declaration, the discussion at the 68th Conference and the Guiding Principles prepared by the Representative of the Secretary-General of the United Nations, with a view to submitting the text of an instrument for adoption at the 69th Conference of the Association to be held in London in 2000.

In compliance with that resolution, the Committee has undertaken the revision of the draft Declaration on Principles of International Law on Internally Displaced Persons (IDPs) in the light of the discussion at the 68th Conference

* As amended at the London Conference

as well as the Guiding Principles on Internal Displacement. It has also sought the advice and comments of international organizations, both governmental and nongovernmental, to strengthen and improve upon the draft Declaration. This report contains the text of the revised draft, herewith submitted for the ILA's consideration and adoption at the 69th Conference in London in July 2000.

The Committee also wishes to make the following observations and comments:

2. The year 1999 witnessed a series of events catapulting IDPs into the forefront of humanitarian crises-Kosovo, East Timor, Chechnya, among others. In all of these crises, the theoretical and practical distinctions between refugees and IDPs have become increasingly blurred. International protection of and assistance to both categories of displaced persons have increasingly been based on needs, rather than legal status. Nevertheless, formidable obstacles have continued to impede IDPs' protection and assistance, not the least of which pertain to the traditional concept of sovereignty and restrictive allocation of resources – whether financial, human or material – flowing from such concept. All of these pose a forceful reminder that the lacunas created by the absence of an international law regime governing IDPs threaten fundamental human rights as well as international peace and security. The traditional treatment of IDPs as simply a subset of citizens for purposes of international protection and assistance has become glaringly inadequate and superficial. These lacunas the proposed Declaration seeks to fill.

3. Since the submission by this Committee of its previous report (ILA, (1998), pp. 460-488), the Guiding Principles on Internal Displacement were presented by the Representative of the Secretary-General on Internally Displaced Persons, Francis M. Deng, to the UN Commission on Human Rights (UN Doc., E/CN.4/1998/53/Add.2, Annex; see also E/CN.4/1999/79 and Add. 1-2) E/CN.4/2000/83 and Add. 1-3; and E/CN.4/2000/L.72). While the Commission was neither asked nor expected to adopt the Guiding Principles, it took note of them, acknowledged the Representative's intention to make use of them in his work, and requested him to report on views expressed to him by governments and intergovernmental organizations. It also noted with interest the decision of the Inter-Agency Standing Committee welcoming the Guiding Principles and encouraging its members to share them with their executive boards. While undoubtedly useful as a guide in providing assistance and protection to IDPs, the Principles must nevertheless be put in their limited perspective. They are by no means meant to create a separate legal status of IDPs as a subset of victims of human rights violations. Nor are they comprehensive in scope. For example, the Principles do not deal with the establishment or status of safe areas, the prevention of reverse ethnic cleansing, institutional arrangements to provide protection and assistance to IDPs, or the essential role of the Security Council in situations of internal displacement amounting to a threat of international peace and security. These topics are, however, all addressed by the ILA's Draft Declaration, which intends to highlight the unique

status of IDPs as *de facto* refugees confined in their national territories, hence justifying a special protection regime. An additional point of distinction is that the Draft Declaration includes substantial commentaries to elaborate upon individual provisions.

4. Since the Draft Declaration in this report focuses on the status of IDPs under international law, human rights and humanitarian law, in the context of refugees, aliens, other nationals and stateless persons, its relationship with the Guiding Principles should be characterized as mutually supportive and reinforcing.

5. The traditional emphasis on refugees to the exclusion of IDPs is reflected in international treaties and instruments, as well as in relief policies, programs and budgets adopted by governments and inter-governmental or nongovernmental organizations. Such bias in favour of refugees has led to the making of *ad hoc*, as opposed to permanent or systematic, arrangements to address IDP crises through interagency coordination, the lead-agency approach, or the appointment of a part-time Representative of the Secretary-General on IDPs with grossly inadequate staff, funding and terms of reference. The depth and magnitude of IDP problems deserve a much more focused, centralized and comprehensive response from the international community.

6. Hence, an international organization, such as UNHCR, could be designated, or a new one established, to assume the responsibility of protecting and assisting all displaced persons – both refugees and IDPs. It should cooperate closely with the United Nations High Commissioner for Human Rights in the areas of prevention, such as early warning, monitoring and identification and solution of the root causes of massive displacement. In other words, a balanced approach to refugees and IDPs is called for. Under such an approach, a fair and equitable allocation of resources to assist and protect both refugees and IDPs must be put in place. Gone are the days when a donor country or a humanitarian agency of the United Nations could, in the name of humanitarianism, allocate its resources only to one category of displaced persons – refugees – to the exclusion of IDPs, who now outnumber refugees and, in many instances, suffer more than refugees. The General Assembly should, under Article 17 of the Charter, ensure that a balanced approach in the allocation of resources for humanitarian purposes be adhered to by members of the UN system through the adoption of a resolution to this effect.

7. Promotion of human rights against forced displacement requires, as a prerequisite, a knowledge and understanding of the interrelationship between human rights and forced displacement. Leading national universities and research institutions in different regions should be encouraged and assisted in the offering of relevant courses, seminars and research programs. Such UN agencies as UNESCO, UNICEF and UNITAR should be encouraged to help develop model textbooks on human rights and forced displacement; convene regional, subregional and interregional symposiums; and publish their proceedings and recommendations for widespread dissemination. Regional organiza-

tions, such as OAU and OAS, have a particularly important role to play. Nongovernmental organizations, such as the ILA and the Hague Academy of International Law, could assist in the recruitment of lecturers and researchers from among their members or alumni.

8. The present Draft has benefited from the comments and suggestions of many members of the Committee, in particular, Ruth Donner, Nils Geissler, Vera Gowlland-Debbas, Bosko Jakovljevic, James Nafziger, Myong-joon Roe, Jerzy Sztucky and Budislav Vukas. As usual, Professor Louis B. Sohn has made himself available for consultation despite his busy schedule. To all of them, the Chairman and Co-Rapporteurs wish to express their deep appreciation.

Respectfully submitted,
Luke T. Lee, Chairman
Rainer Hofmann, Rapporteur
Yukio Shimada, Rapporteur

March 2000

DRAFT DECLARATION OF INTERNATIONAL LAW PRINCIPLES ON INTERNALLY DISPLACED PERSONS

International Committee on Internally Displaced Persons International Law Association

PREAMBLE

THE INTERNATIONAL LAW ASSOCIATION,

CONCERNED that, despite the end of the Cold War, there are still some 11.5 million refugees worldwide, joined by some 20-25 million internally displaced persons, who have been forced to leave or flee their homes for essentially the same reasons;

NOTING that, in contrast to refugees, who are protected and assisted by many global and regional legal instruments and who may thus enjoy comparative safety in the countries of asylum or resettlement, as well as the protection and assistance by many international organisations, both governmental and nongovernmental, internally displaced persons lack such safety, protection and assistance;

RECOGNIZING the need to ensure greater protection of and assistance to internally displaced persons under international law, including human rights, refugee and humanitarian law;

STRESSING the right of any person to freedom of movement, including the right not to be arbitrarily displaced from that persons's home or place of habitual residence;

EMPHASIZING that nothing in the present Declaration shall affect other international agreements in force between States parties to them, and that in situations not covered by such agreements, internally displaced persons are nevertheless protected by the general principles of international law, by the humanitarian practices of international organizations accepted by States, by the principle of humanity, by the rules of basic human rights, and by rights granted under domestic laws;

TAKING INTO ACCOUNT the Guiding Principles on Internal Displacement developed by the Representative of the Secretary-General, Mr. Francis M. Deng (UN Doc.E/CN.4/1998/53/Add. 2, Annex);

URGING all States, *de facto* authorities, the United Nations and other international organizations, both governmental (including regional) and nongovernmental, to systematically review their existing roles vis-à-vis refugees to ensure that the rights and interests of internally displaced persons are properly safeguarded and integrated therein;

DECLARES the following principles of international law as applicable to the legal status of internally displaced persons:

Section I Definitions

Article 1

1. For the purpose of this Declaration, the term “internally displaced persons” refers to “persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border.”

2. This Declaration applies also to persons internally displaced by whatever causes, such as natural or man-made disasters or large-scale developmental projects, whenever the responsible State or *de facto* authority fails, for reasons that violate fundamental human rights, to protect and assist those victims.

3. By “*de facto* authorities” are meant any non-State entities in effective control of part(s) of a State’s territory which are parties to an armed conflict and/or internal strife or have generated or hosted internally displaced persons.

Commentary

(1) In its only Article, this section contains the definitions of “internally displaced persons” (IDPs) and “*de facto* authorities.” By defining the term “internally displaced persons,” the Article delineates the scope of the Declaration with regard to the protected persons. The definition of “*de facto* authorities,” on the other hand, represents an extension of its scope of application to such authorities as well as States.

(2) The Analytical Report of the Secretary-General on Internally Displaced

Persons uses the term “internally displaced persons” to mean:

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.

(UN Doc. E/CN.4/1992/23, p. 5;- see also *Compilation and Analysis of Legal Norms*, UN Doc. E/CN.4/1996/52/Add.2 (hereinafter Deng, *Compilation*), and *Guiding Principles on Internal Displacement*, Principle 1.

At its Helsinki Conference in August 1996, the International Law Association (ILA) provisionally adopted this Committee’s proposals concerning the deletion of the temporal (“suddenly or unexpectedly”) and quantitative (“in large numbers”) qualifications from the definition of IDPs. The omission of the temporal requirement is based on the fact that some of the causes for IDPS could be foreseen or of an on-going nature. The deletion of the quantitative requirement accords with various definitions of “refugees”, which contain no numerical stipulation. It is also supported by Article 49, para. 1, of the Fourth Geneva Convention of 1949, which generally prohibits both individual and mass forcible transfers of civilians.

Although the ILA in Helsinki also provisionally approved the draft definition of IDPs as including those caused by “natural or man-made disasters,” this Committee, upon further reflections, proposed in Taipei in 1998 to delete such disasters from the IDP definition for reasons set forth below. In the first place, people leaving their homes or places of habitual residence as a result of “natural or man-made disasters” face only part of the problems encountered by refugees and persons internally displaced for political-military-human rights reasons. Broadly speaking, the disaster-related problems lie in the field of economic and social rights, rather than civil and political rights. IDPs unencumbered by civil and political problems do not find themselves in a refugee-like situation. Since they can presumably enjoy the full protection and assistance of their own Government, the basis for international concern is greatly diminished. Hence, the UNHCR’s definition of “internally displaced persons” also omits “natural or man-made disasters” as causes of IDPs. (UNHCR, *International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR Staff* (Geneva, 1996), p. 2.)

- (a) Therefore, persons internally displaced as a result of man-made or natural disasters are not included in Article 1 (1) of this Declaration.
- (b) Nevertheless, the Committee is aware of the growing number of persons who are internally displaced by various causes, such as natural or man-made disasters or large-scale developmental projects and who do not receive, for reasons that violate fundamental human rights, such as the prohibition of any discrimination based on race, religion, etc., adequate assistance and protection. Therefore, Article 1 (2) of this Declaration makes this Declaration applicable also to such persons.

The Committee wishes to stress that nothing in the present text should be interpreted as preventing States, *de facto* authorities, the United Nations and other international organizations, both governmental (including regional) and nongovernmental, from extending humanitarian assistance to victims of natural or man-made disasters.

As cases in point may be cited international relief efforts in response to the August 1999 earthquake in Turkey that resulted in the death toll of tens of thousands and rendered an estimated 1.5 million people at least temporarily homeless. More than 30 countries joined in providing relief supplies and services. Similarly, international assistance was rushed to Taiwan in the aftermath of the massive earthquake in September 1999, notwithstanding its nonrecognition by many States and the United Nations. At least 26 countries sent aid to Venezuela in the wake of torrential rains and mud slides that left hundreds of people dead, thousands missing and 150,000 homeless in December 1999. In inundated Mozambique in early 2000, many countries sent helicopters on rescue missions plucking more than 12,000 people out of some million homeless from roofs, trees and utility poles.

(3) Unlike IDPs, who have not been defined in generally accepted international instruments, the term “refugee” has been defined—principally in the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol (189 UNTS 150, Art. 1(A)(2)), the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1001 UNTS 45, Art. 1(2)), and the 1984 Cartagena Declaration (OAS Doc. OAE/Ser.L/V/II.66, Doc. 10, Rev. 1 (1985)). All of these stipulate the crossing of the border of the country of origin as *sine qua non* for the status of “refugee.” It is necessary, however, to place border-crossing in perspective. Using such crossing as the most important criterion for distinguishing between refugees and IDPs, hence their eligibility to international protection and assistance, may be faulted on historical, practical, juridical, natural law and human rights grounds. (For detailed analysis, see L.T. Lee, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis?”, 9 *J. Refugee Stud.* 27, 30-37 (1996).) It suffices to note that the phenomenon of refugees has existed since time immemorial. It was not until 1648 that the Peace of Westphalia set the stage for the modern nation-State system with its emphasis on territorial boundaries (L. Gross, “The Peace of Westphalia, 1648-1949,” 42 *AJIL* (1948), 20, 28-29). Indeed, prior to the 1951 Convention Relating to the Status of Refugees, not a single agreement in force had defined a “refugee” as a person being necessarily “outside the country of his nationality.” Border-crossing—particularly the crossing of the “Iron Curtain”—assumed critical importance only after the deepening of the Cold War, which formed the backdrop for the preparation and adoption of the 1951 Convention—a European regional instrument until its amendment by the 1967 Protocol. With the disappearance of the Soviet Union as a superpower and Communism as a dominant ideology, the “Iron Curtain” has crumbled and, along with it, political “persecution” of individuals by Governments has been largely replaced by human

rights abuses, ethnic conflicts, generalized violence or other deprivations as the root causes of displacement from and within many countries. Indeed, out of some 100 armed conflicts that have occurred since the end of the Cold War, virtually all have been of intra-State nature—involving governmental oppression and persecution of citizens, corruption, incompetence or complete breakdown. (M.T. Matthews, “Power Shift,” 76 *Foreign Affairs*, January/February 1997, 50-51. On the relevance or irrelevance of State boundaries in national and ethnic conflicts, see also G. Gottlieb, “Nations Without States,” in 73 *id.*, May/June 1994, 100-112.)

(4) The participation and cooperation of *de facto* authorities in the implementation of the principles of this Declaration are indispensable to the achievement of its objectives. Since *de facto* authorities invariably aspire to diplomatic recognition as *de jure* members of the international community, there is a strong incentive for their compliance with rules of international law. Their ability or willingness to comply with such rules plays a large role in their admissibility to the international community, including the United Nations.

Section II Rights of Internally Displaced Persons Article 2

1. Internally Displaced persons shall be protected and assisted in accordance with all generally accepted and, where appropriate, regionally agreed upon, human rights, refugee and humanitarian law.*

2. Notwithstanding that preferential treatment shall be accorded to certain internally displaced persons, such as expectant mothers, mothers with young children, unaccompanied minors, persons with disabilities and elderly persons, no discrimination may be made on the basis of race, color, sex, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria.

Commentary

(1) This provision confirms a basic premise of the Draft Declaration: for practical and logical reasons, IDPs are entitled to the normal protections and assistance by international law. The Annex provides a list of particularly relevant instruments. These instruments provide a normative foundation for addressing the many aspects of the IDP's dilemma: especially, post flight equality and non-discrimination; safeguarding of life, personal security and liberty; subsistence, property and movement-related needs; the need for personal identification, documentation and registration; the need to restore family and community cohesion and integrity; the need to build self-reliance; and the need to facilitate relief.

* See Annex: List of International Instruments on Human Rights, Refugees and Humanitarian Law of Particular Relevance to the Protection of and Assistance to Internally Displaced Persons.

Moreover, apart from situations of natural disasters, the strict observation and full realization of all human rights for everyone is often the best method of preventing displacement. Thus, human rights and humanitarian standards play a paramount role when addressing the root causes of displacement.

(Deng, *Compilation*, p. 5.)

(2) It should be emphasized, therefore, that the Draft Declaration is just one step, albeit an important one, in the larger process of implementing basic human rights for *all* persons. This entitlement applies regardless of residential status but does take account of the individual conditions of persons at risk. The second paragraph of Article 2 acknowledges the particular vulnerability of certain classes of persons and hence the acceptability of preferential treatment for them. More broadly, the same provision forbids discrimination against IDPs on the basis of a variety of categories—race, sex, gender, etc.—some of which are identified in Article 1 of the 1951 Convention; others have been generally recognized since 1951.

(3) The need for protecting IDPs is apparent. Theirs is often a dilemma of territorial confinement or even entrapment for whatever reason. Indeed, they may suffer more than other migrants to the extent that they cannot flee the sovereign territory of their crisis. Unlike refugees and other migrants, IDPs often cannot enlist the assistance of any government.

(4) The special reasons for protecting IDPs are clearly stated in Deng, *Compilation*, as follows (p. 5):

Internally displaced persons are entitled to enjoy, in full equality, the same rights and freedoms under domestic and international law as do the rest of the country's citizens. However, experience has shown that such persons, in practice, rarely enjoy rights and freedoms because displacement, by its very nature, generally entails deprivations of multiple rights. Along with its emotional cruelty, displacement often breaks up the nuclear family, cuts off important social and cultural community ties, terminates stable employment relationships, precludes or forecloses formal educational opportunities, and deprives those in need of special protection, such as infants, expectant mothers and the sick, of vital public/private sector services.

Although the displaced are frequently forced to flee their homes for the same reasons as do refugees, the fact that they remain within national territory means that they cannot seek to qualify as bona fide "refugees" entitled to the special protective regime accorded to refugees under international law. Moreover, their presence within national territory means that their own Government bears primary responsibility for meeting their protection and assistance needs. However, because Governments frequently cause or tolerate internal displacement and/or are unwilling or unable to guarantee the basic rights and meet the needs of their internally displaced citizens, intergovernmental organizations, their specialized agencies and nongovernmental organizations have, at times, assumed these roles on an ad hoc basis.

As this document attests, the global community and its institutions already recognize the need for a regime of protection for IDPs. What is required is to establish minimum standards of responsibilities by which States, *de facto* authorities, the United Nations and other organizations, both governmental and nongovernmental, may be expected to implement those aspirations. This is a central purpose of the Draft Declaration.

(5) The Draft Declaration's strategy of providing protection for a discrete group of migratory persons as a subset of international law is similar to the approach taken in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, opened for signature December 18, 1990, Annex to UN Doc. A/45/158 (1991). See James A.R. Nafziger and Barry C. Bartel, "The Migrant Workers Convention: Its Place in Human Rights Law," 25 *Int'l Migration Rev.* 771, 789 (Annex. (1991) (comparison of provisions in the Migrant Workers Convention with provisions in seven basic human rights instruments).

(6) In sum, the Draft Declaration is intended to expand, rather than detract from, the larger framework of international law. Thus, both IDPs and persons who choose to remain in their country of residence or are unable to flee will be protected by a regime of international law tailored to their particular circumstances.

Article 3

1. Internally displaced persons are entitled to all the rights conferred by international human rights law including, whenever applicable, those rights secured for aliens as refugees and stateless persons.

2. Internally displaced persons have the right to seek and to receive, freely and in security, all humanitarian assistance and protection from national and *de facto* authorities, as well as duly authorized international organizations.

Commentary

(1) For an enunciation of the nonderogable rights and freedoms which individuals remain entitled even during states of emergency, see the International Covenant on Civil and Political Rights, Art. 4(2). See also the Paris Minimum Standards of Human Rights Norms in a State of Emergency, adopted by the ILA in *Report of the 61st Conference: Paris, 1984*.

(2) On equal treatment of aliens (including refugees) and nationals (including IDPs) under human rights, see ILA, Declaration of Principles of International Law on Compensation to Refugees, Principle 4, Commentaries (3), (5), (6) and (7), in ILA, *Report of the 65th Conference: Cairo, 1992*.

(3) This article highlights the unique status of IDPs. Their dilemma as *de facto* refugees confined to their national territories requires a special regime of protection under both domestic law (as citizens) and international law (as *de facto* refugees). Thus, this article focuses on a fundamental tenet of the Declaration: that the plight of IDPs is parallel to that of refugees, but for the existence of

national boundaries. After all, the global displacement of many millions of people “inevitably calls in question the soundness of a refugee definition that continues to exclude more than half of them.” L.T. Lee, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis?”, 9 *J. Refugee Stud.* 27 (1996). The Declaration seeks to avoid the artificial line between refugees (who are protected) and IDPs (who are not), so as to extend international protection to all who are forced to flee from their homes and communities as a result of stipulated causes, regardless of whether they have crossed national boundaries. (L.T. Lee, “Legal Status of Internally Displaced Persons,” in 86 *ASIL Proc.* 631 (1992)).

(4) The basic principle is that IDPs have the same rights as other nationals in the country of displacement. Since there might be situations where these rights are not adequate to address their particular needs, they should benefit also from the rights accorded to aliens as refugees and stateless persons in generally accepted international treaties and by customary international law. Cases in point are the rights to “*non-refoulement*” and compensation (Arts. 17 and 9 *infra*, respectively).

(5) The foregoing provisions are supported by Principle 1(1) of the proposed Guiding Principles on Internal Displacement, which provides that IDPs shall be entitled, in full equality, to “the same rights and freedoms under international and domestic law as do other persons in their country. . . .”

Article 4

1. Freedom of movement, including the right not to be arbitrarily displaced, shall be respected to the fullest extent possible in accordance with international law.

2. No one shall be compelled to leave his or her home or place of habitual residence due to persecution or discrimination based on race, color, sex, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria, or subject to such persecution or discrimination subsequent to displacement.

3. Measures aimed at deliberate alteration of the demographic composition of a given region (e.g., “ethnic cleansing”) or at genocide are strictly prohibited.

Commentary

(1) Under paragraph 1 of this article, freedom of movement is the predominant right in the context of internal displacement. It includes the positive aspect of the choice of residence, as well as the negative aspect of not to be displaced. While the positive aspect is recognized in a number of human rights instruments (e.g., the International Covenant on Civil and Political Rights, Art. 12(1), 999 UNTS 171; the American Convention on Human Rights, Art. 2(3) (4), 9 ILM 99 (1970)); the African Charter on Human and People’s Rights, Art. 12(1), ILM,

No. 21, p. 59; and the Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 2(3) and (4), ETS No. 46), the right not to be displaced is only inferred from freedom of movement (see, however the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Art. 16(1), ILO *Official Bulletin*, vol. 72 (1989), p. 59). For further discussions on the right not to be displaced, see Alfred de Zayas, "International Law and Mass Population Transfer," 17 *Harvard Int'l L. J.* (1975), 207, 252-53; Maria Stavropoulou "The Right not to be Displaced," 9 *Am. U.J. Int'l L and Policy* (1994), 689, 726, 737; R. Hofmann, "International Humanitarian Law and the Law of Refugees and Internally Displaced Persons," in European Commission, *Law in Humanitarian Crises*, vol. I (1995), 249, 278; Deng, *Compilation*, p. 58; Jean-Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice* (1995). For the prohibition of forced transfers or movements of people under humanitarian law, see Arts. 49 and 147 of the Fourth Geneva Convention, 1949; Art. 85 of Protocol I and Art. 17 of Protocol II.

(2) The wording "to the fullest extent possible" indicates that the right to freedom of movement may be subject to limitations. This is fully in accordance with such international instruments as the International Covenant on Civil and Political Rights, Art. 12(3), and Protocol II, Art. 17. The reasons for this limitation can be public security, public order, public health or military necessity. As the possible limitations give room for abuse, measures should only be adopted if compelling exigencies so demand. Moreover, the limitation should be restricted to the absolute minimum under the principle of proportionality. It should also be stressed that the burden of proof as regards the necessity of the measures adopted rests with the authorities imposing them.

(3) Paragraph 2 of this article affirms that no one shall be subject to persecution or discrimination on any of the grounds stated. As in Art. 2, para. 2, the grounds stated mirror in part those of Art. 1-A para. (2) of the 1951 Refugee convention and later developments. They reflect the main root causes of internal displacement with regard to political action as well as internal strife or armed conflicts. Persecutions and discriminations on such grounds occur not only prior to internal displacement but also afterwards, when individuals and groups of persons are particularly vulnerable to such violations. Consequently, the Declaration expressly prohibits persecution or discrimination subsequent to displacement.

It is noteworthy that this paragraph reflects an individualistic approach with regard to the definition of IDPs in support of the removal of the quantitative qualification.

(4) Paragraph 3 of this article expressly prohibits some of the most severe measures which lead to internal displacement, such as "ethnic cleansing" and genocide. "Ethnic cleansing," an old crime with a new name (see de Zayas, "The Right to One's Homeland, Ethnic Cleansing and the International Criminal Tribunal for the Former Yugoslavia," 6 *Criminal Law Forum* (1995), 257-314), is prohibited under international human rights and humanitarian law,

since its coercive means include methods such as mass murder, torture, rape, severe physical injury to civilians, mistreatment of civilians, use of civilians as human shields, etc.. (Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674 of 27 May 1994, para. 134; the Commission was appointed to gather information and evidence of “grave breaches of the Geneva Conventions and other violations of humanitarian law committed in the territory of the former Yugoslavia.) The same applies to genocide, which is prohibited *erga omnes* according to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (78 UNTS 277) and under customary international law (See ICJ *Reports*, 1970, 32, para. 33-34 (*Barcelona Traction*)).

(5) It follows logically that prohibition of ethnic cleansing applies equally to prohibition of reverse ethnic cleansing. For a description of the latter type of cleansing, see OSCE, *As Seen, As Told* (Part II, 1999).

Article 5

1. All internally displaced persons have the right to return to their homes or places of habitual residence freely and in security and dignity, as soon as the conditions giving rise to their displacement have ceased.

2. Internally displaced persons shall not be detained or placed in an area which exposes them to the dangers of armed conflict and/or internal strife.

Commentary

(1) The right of IDPs to return to their homes or places of habitual residence as soon as the conditions causing their displacement have ceased is analogous to the right of refugees to voluntary repatriation as a permanent solution to the refugee problem (Statute of the Office of the United Nations High Commissioner for Refugees, GA res. 428(V) of 14 December 1950, Annex, para.1). This right of return has been repeatedly endorsed by the General Assembly (e.g., res. 194(III) of 11 December 1948 (since reaffirmed by the General Assembly every year); 41/70 of 3 December 1986). It is also included in the Dayton Accord (Art. 1, para. 1 of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, 35 ILM 136 (1996)) and the general principles on the political solution to the Kosovo crisis, agreed upon by the foreign ministers of the Group of Seven and Russia in Bonn, May 6, 1999. The latter include specifically: ‘The safe and free return of all refugees and displaced persons.’ As the International Law Association has already included the right of return in its Declaration of principles of International Law on Mass Expulsion (*Report of the 62nd Conference: Seoul*, 1986, Principle 5), there is no need to elaborate on it further in this space.

(2) Since IDPs are often at risk of being exposed to the dangers of armed conflict and/or civil strife if they are located in open camps or settlements, minimum safeguards have to be assured. Although some important safeguards can

be derived from humanitarian law (e.g., Art. 49 of Protocol I or Article 17 of Protocol II), there may be a lacuna in some situations of internal strife where those norms are not applicable, as these protocols bind only a limited number of States. Thus, in respect of the right to life, Dr. Deng concluded that “it would be useful to, include a provision in a future international instrument. . . that military or armed attacks on camps or settlements of such persons are prohibited.” Deng, *Compilation*, p. 26.

Article 6

Identity papers shall be issued by appropriate authorities to enable internally displaced persons to fully enjoy all rights provided for under this Declaration.

Commentary

(1) Internal displacement often results in the loss of personal papers and documentation, as displaced persons are often forced to leave their homes unexpectedly. Yet personal documentation is a prerequisite to exercise one’s rights and to be recognised before the law (see Art. 16 of the International Covenant on Civil and Political Rights: “Everyone shall have the right to recognition everywhere as a person before the law”; see also Art. 7 of the Convention on the Rights of the Child, 28 ILM, 1457 (1989)). Proper registration of events such as births, marriages or deaths becomes more difficult without documentation. The same applies to matters of family reunification or participation in balloting. Freedom of movement is also impeded if a person does not possess the required documents. Article 7 mirrors Article 27 of the 1951 Refugee Convention. Since no provision of international law is directly applicable to IDPs on this matter, this article of the Declaration may be seen as contributing to progressive development of international law.

(2) The word “enable” is used advisedly to stress that identity papers thus issued are not intended to supersede the original documents or invalidate documents subsequently issued by duly constituted authorities.

Article 7

All internally displaced persons, especially children separated from their parents or other family members, are entitled to the right to family reunification.

Commentary

(1) It is a well known fact that displacement regularly leads to the separation of whole families. Often family members are left with no knowledge of the whereabouts of their relatives. International protection of family and marriage would be meaningless without the right to family reunification. Though it is obvious that everyone may suffer from separation, this is particularly the case with displaced children. Thus, priority must be given to their needs.

(2) Given the widely differing laws on citizenship, immigration, family rela-

tions, etc., the right to family reunification has not evolved into a rule of international law in so far as refugees are concerned. Such differences, however, pose no legal bars to family reunification of IDPs. For all IDPs are under the same laws of their country of displacement. Accordingly, their marriages and families, particularly in regard to children, must be protected and their reunification facilitated. A number of international instruments clearly point to the right to family reunification: the International Covenant on Civil and Political Rights, Art. 23; the Fourth Geneva Convention, Arts. 25-27 and 82; Protocol I, Art. 74; the Convention on the Rights of the Child, Art. 10; and the Dayton Accord (the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina), Art 1, para. 4 of Annex 7).

(3) In view of ICRC's involvement and expertise in matters of family reunification, particularly in regard to the tracing of family members, its special role in these matters must be given strong support.

Article 8

In the case of a Federal, non-unitary or divided State, internally displaced persons are entitled to the same treatment as is accorded to local permanent residents, particularly in respect to education, public health, housing, public relief, rationing, access to the courts, employment and social security.

Commentary

(1) As citizens of the country of displacement, IDPs retain all the rights appertaining to the citizens, including local permanent residents, of that State—be it Federal, non-unitary or divided. Since even refugees, as aliens, are entitled to equal treatment as nationals of the receiving State in respect to education, public health, housing, public relief, rationing, access to courts, employment and social security (see Arts. 16-24 of the 1951 Convention/1967 Protocol), it follows *à fortiori* that IDPs in their own country must also be so entitled. On the content of these rights, see J.C. Hathaway and J.A. Dent, *Refugee Rights* (1995).

(2) As the wording in this article indicates, the rights listed here are not exhaustive.

Article 9

Internally displaced persons shall be entitled to restitution or adequate compensation for property losses or damages and for physical and mental suffering resulting from their forced displacement.

Commentary

(1) The right of refugees to compensation was examined both extensively and intensively at the ILA's conferences in Warsaw (1988), Queensland (1990) and Cairo (1992). At the latter conference, the ILA adopted the Declaration of

Principles of International Law on Compensation to Refugees, whose text and commentaries are published in *Report of the 65th Conference: Cairo (1992)*.

(2) Since IDP's are, whenever necessary, entitled to equal rights as aliens, including refugees (see Art. 3(1) above), they benefit from a right to be compensated for property losses or damages and for physical and mental suffering resulting from their forced displacement, even if the national law applicable does not provide for such a right.

(3) For further materials on this subject, see Eibe H. Riedel, "Damages," in Rudolf Bernhardt (ed.), *Encyclopaedia of Public International Law*, vol. I (1992), 930; ICJ *Reports* 1949, 244-250 (*Corfu Channel*); Rainer Hofmann, "International Humanitarian Law and the Law of Refugees and Internally Displaced Persons," in European Commission, *Law in Humanitarian Crises*, vol. I (1995), 249, 297; Luke T. Lee, "The Right to Compensation: Refugees and Countries of Asylum," 80 *AJIL* (1986), 532-67. See also Art. 50 of the European Convention on Human Rights, 213 UNTS 221; Article I, para. 1, of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, 35 *ILM* 136 (1996), 137, which reads: "They (refugees and displaced persons) have the right to have restored their property. . . and to be compensated for any property that cannot be restored to them."

(4) As for the question which body of law is to be applied in order to calculate the compensation to be awarded, some guidance might be drawn from the pertinent works of the Iran-U.S. Claims Tribunal and the UN Compensation Commission for claims against Iraq.

Section III

Rights and Obligations of States and the International Community

Article 10

1. National authorities, whether *de jure* or *de facto*, have the primary responsibility to protect and assist internally displaced persons within their jurisdiction.

2. In the implementation of this Declaration, States and the international community shall respect the territorial sovereignty of all States and the principle of noninterference in their internal affairs, in accordance with the Charter of the United Nations and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States.

3. Humanitarian assistance and/or protection properly provided to internally displaced persons by States, *de facto* authorities or the international community shall not be deemed an interference in the internal affairs of the country of displacement.

Commentary

(1) The primary responsibility of national authorities, whether *de jure* or *de*

facto, to protect and assist their nationals is inherent in the responsibilities of statehood and constitutes the foundation of international law. See ILA's Declaration on Principles of International Law on Mass Expulsion, in ILA, *Report of the 62nd Conference: Seoul*, 1986, Principles 1 and 2. See also Principles 3 and 25(1) of the Guiding Principles on Internal Displacement.

(2) Article 2(7) of the Charter of the United Nations explicitly excludes the application of enforcement measures under Chapter VII from the principle of nonintervention in matters which are essentially within the domestic jurisdiction of a State. This provision provides the key to the question whether protection of and assistance to IDPs is compatible with the traditional concepts of national sovereignty and noninterference in the internal affairs of a State. The United Nations Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees has reaffirmed their compatibility by characterizing massive displacement of people as capable of "endangering international peace and security," the prevention of which is "a matter of serious concern to the international community as a whole" (UN Doc. A/41/324, 13 May 1986; L.T. Lee, "Toward a World Without Refugees: The United Nations Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees," in *57 Brit. Y.B. Int'l L.* (1986), 317, 331). Its report was endorsed unanimously by the General Assembly (Resolution 41/70, 3 December 1986). Thus, if an act generating massive displacement indeed endangers "international peace and security," the Security Council is empowered to act under Chapter VII of the Charter. Accordingly, individual and collective responses thereto would not, under the circumstances, constitute an intervention in the internal affairs of the recalcitrant State. Resolution 688 adopted by the Security Council on April 5, 1991, is a case in point. Under this resolution, the Security Council

1. Condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish population areas, the consequences of which threaten international peace and security in the region;
2. Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately ends this repression...;
3. Insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and... make available all necessary facilities for their operations. . . .

(3) Since the adoption of resolution 688, the Security Council has passed resolutions extending protection of IDPs to countries other than Iraq either explicitly or implicitly. Belonging to the explicit category are, for example, the following resolutions on Bosnia and Herzegovina: 752 (1992), 836 (1993) and 859 (1993); on Rwanda: 912 (1994), 918 (1994), 924 (1994) and 965 (1994); and on Kosovo: 1199 (1998) and 1244 (1999). Resolutions dealing implicitly with IDPs include, for example, those on Somalia (through the expression "affected popu-

lation”): 775 (1992) and 794 (1992); and on Bosnia and Herzegovina (through the expression “ethnic cleansing”): 771 (1992), 820 (1993) and 941 (1994); and on Kosovo (through the protection of OSCE “verifiers”): 1203 (1998).

(4) In addition, the Security Council has passed resolutions calling for the protection of and full respect for safe areas (e.g., 819 (1993), 824 (1993) and 836 (1993)), which invariably harbour IDPs. It has also established international tribunals for the prosecution of persons responsible for violations of international humanitarian law committed in the territories of the former Yugoslavia (827(1993)) and Rwanda (955(1994)). Among the standards specified for the tribunal in Rwanda, for example, are genocide, crime against humanity and violations of Article 3 common to the Geneva Conventions and of Protocol II—all of which are relevant to the treatment of IDPs.

(5) As the authoritative interpretation of the Charter of the United Nations, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations reaffirms the power of the Security Council in dealing with international peace and security notwithstanding the principles of the territorial sovereignty and noninterference.

(6) Humanitarian assistance to IDPs, *stricto sensu*, is justified under Articles 1(3), 13(1)(b), 55(c) and 56 of the Charter of the United Nations. As such, it cannot be considered intervention in the internal affairs of a State. See also the Preamble to the 1967 Declaration on Territorial Asylum (GA resolution 2312 (XXII)) and Article 4 of the 1975 Resolution by the Institut de Droit International relating to “The Principle of Non-Intervention in Civil wars” (56 *Annuaire de l’Institut de Droit International* 544, 548-49 (1975)). At least in so far as an “offer” of humanitarian assistance to a State is concerned, it does not constitute a breach of the sovereignty of that State. See Art. 5 of the 1989 Resolution of the Institut de Droit International relating to “The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States” (63 *Annuaire de l’Institut de Droit International* 338, 344 (1989)).

(7) The question may be raised as to whether humanitarian assistance may be imposed on reluctant States or *de facto* authorities. Security Council Resolution 688 cited above clearly shows that such assistance may be imposed on States as part of a Chapter VII measure. The need to provide humanitarian assistance to *de facto* authorities is a clear evidence of the inability or unwillingness of the *de jure* government or State to discharge its responsibility toward its own citizens. In view of the obligation of the international community to provide humanitarian assistance to IDPs under the Charter of the United Nations (see Commentary (6) above), neither the offer nor the provision of humanitarian assistance to IDPs shall be deemed an interference in the internal affairs of the country of displacement. For a discussion of the legal consequence of a State that persists in failing to meet its obligations toward its own citizens, see Article 16, Commentaries (2) and (3), below.

Article 11

1. States and *de facto* authorities shall promote and respect the rights and interests of internally displaced persons as set forth in this Declaration and in other applicable instruments. Such rights and interests shall be observed by all persons, groups and authorities, irrespective of and without affecting their legal status.

2. They shall also take joint and separate action in cooperation with the United Nations and other international organizations, both governmental (including regional) and nongovernmental, in addressing the root causes of internal displacement with a view to adopting preventive measures and obtaining durable solutions.

Commentary

(1) This article deals with one of the most fundamental obligations incumbent on States and *de facto* authorities: namely, their obligation to address, in cooperation with the United Nations and other international organizations, both governmental (including regional) and nongovernmental, the root causes of internal displacement. It aims at prevention and solution, rather than amelioration; for it is far better to treat the causes of a malady, and not just its symptoms.

(2) Refugees and IDPs share similar root causes—both being coerced or compelled to flee from their homelands in fear for life, liberty and security. Since refugees invariably start as IDPs—one cannot reach or cross his country's border without first traversing some territory between his homeland and the border as an IDP—the solutions for the root causes of IDPs are the same as those of refugees.

(3) In addition to the Security Council (see Article 16 below), the General Assembly, the ECOSOC and major UN agencies (including specialized agencies) have important roles to play in protecting and assisting IDPs. The Representative of the Secretary-General on IDPs and the UN High Commissioner for Human Rights should request the Secretary-General to convene at an early date an interagency conference to define and coordinate the functions of the respective agencies in the field of IDPs.

(4) The word “regional” in parentheses is added to intergovernmental organizations to underscore the critical importance of regional organizations in the protection of and assistance to IDPs. It is self-evident that by virtue of their geographical propinquity, social and cultural affinity and regional solidarity, countries within the same region are in a better position to assist each other's IDPs than those outside the region.

(5) A potentially important instrument of States in protecting and assisting IDPs on a continuing basis is through consular officers whose reporting of IDP conditions within their district would enable their governments to formulate realistic humanitarian assistance policies and programs in the receiving State. They may represent the sending State alone or a group of States, as part of the Consular Corps. Their familiarity with local conditions would also enable them to monitor effectively, in cooperation with the United Nations and its agencies, the delivery of their countries' relief goods and services to IDPs. For illustra-

tions of consular role in humanitarian matters, including assistance to IDPs in the receiving States, see L.T. Lee, *Consular Law and Practice* (2d ed., 1991), pp. 368-72, 599.

(6) Nongovernmental organizations are expressly mentioned in this article to emphasize their important role in the protection of and assistance to IDPs. They are in a unique position to gather and publicize information concerning the human rights situation of IDPs, as well as play a critical role in providing and monitoring assistance. Article 71 of the Charter of the United Nations specifically authorizes ECOSOC to consult with nongovernmental organizations which are concerned with matters within ECOSOC's competence.

Article 12

States, *de facto* authorities, the United Nations and other international organizations, both governmental (including regional) and nongovernmental, shall all cooperate with one another to establish and maintain appropriate institutional arrangements to implement the provisions of this Declaration.

Commentary

(1) In 1990, the UN Commission on Human Rights drew attention to the need for international assistance to IDPs and requested the Secretary-General to prepare an analytical report on the experience and capacity of various organizations to coordinate assistance to refugees, displaced persons and returnees. See the Cuenod Report, UN Doc. E/1991/109/Add.1. The Commission subsequently requested the Secretary-General to specifically take into account the protection of human rights and the needs of IDPs. In 1992, Dr. Francis M. Deng was appointed the Special Representative of the Secretary-General on IDPs. CHR Res. 1992/73. In various reports since 1993, he has contributed considerably to the general awareness of the IDP issue and the possible development of an appropriate normative framework. See Deng, *Comprehensive Study*, UN Doc. E/CN.4/1994/44. His work in developing the Guiding Principle has been described elsewhere in this Declaration.

(2) Several possible institutional arrangements or models for protecting and assisting IDPs have been considered. See Roberta Cohen and Jaques Cuenod, *Improving Institutional Arrangements for the Internally Displaced Persons* (1995); Roberta Cohen and Francis M. Deng, *Masses in Flight* (1998), ch. 4. These include the extension of UNHCR's mandate to cover not only refugees, but also IDPs; the establishment of a separate UN agency for IDPs; the strengthening and expansion of the Office of the Representative of the Secretary-General on IDPs; the creation of an interagency coordinating machinery, e.g., under the Department of Humanitarian Affairs; and the designation of a lead agency by the Secretary-General to deal with each crisis as it arises.

(3) The lack of appropriate institutional arrangements for IDPs has continued to plague the international community. In his Programme for Reform (July

1997), the Secretary-General places on the Emergency Relief Coordinator, who chairs the Inter-Agency Standing Committee, the responsibility of ensuring that all humanitarian issues, including the protection of and assistance to IDPs, are effectively addressed. At the field level, the coordinating role is assigned to a Resident/Humanitarian Coordinator. Depending on the circumstances, an agency may be designated to assume the leading role in inter-agency collaboration. However, no agency has been selected as focal point for IDPs with operational responsibilities. See F. Deng, "Flocks Without Shepherds: International Dilemmas on Internal Displacement," paper presented at the Norwegian Refugee Council Conference on Internally Displaced Persons in Oslo, Norway, November 20-21, 1997.

(4) At the regional level, the Permanent Consultation on Internal Displacement in the Americas (Spanish acronym: CPDIA) merits special mention. Constituted in 1992, it comprises intergovernmental and nongovernmental organizations and independent experts. CPDIA's activities, which included on-site visits to Colombia and Guatemala, could prove a useful model for addressing the needs of IDPs on a regional level. See Robert K. Goldman, "Internally Displaced Persons: Global and Regional Initiatives, Specific Protection Needs and the Importance of an Inter-Agency framework" in IHR/UNHCR (eds.), *10 Años de la Declaración de Cartagena sobre Refugiados*, 281, 293-97.

(5) The risk of the coordination approach, however, is underscored by Ambassador Richard C. Holbrooke, US Permanent Representative to the UN: "All too often, 'coordination' turns out to be a euphemism for ineffectiveness . . . Agencies are supposed to act together as 'co-heads.' In practice, however, 'co-heads' means 'no-heads.'" (USUN Press Release #44(00), March 28, 2000.)

Article 13

1. States, *de facto* authorities and international organizations, both governmental (including regional) and nongovernmental, may offer or be requested to provide humanitarian assistance to alleviate the suffering of internally displaced persons. Such assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Requests for assistance shall be considered by the States, *de facto* authorities and international organizations concerned in the spirit of international cooperation and burden sharing and in good faith, taking into account their resources and the needs of internally displaced persons. Neither the offers or requests nor their acceptances shall be regarded as unfriendly acts.

3. The assistance offered or requested may include, in particular, the provision of essential subsistence needs, such as food and potable water, clothing, housing or other forms of shelter, physical and mental health care, and sanitation.

4. Whenever humanitarian assistance and/or protection is offered, requested, provided or accepted, it shall be done so regardless of the status of governmental entities or authorities concerned.

5. The request for, or offer, provision, or acceptance of, humanitarian assistance and or protection shall not imply diplomatic recognition of or by the States or authorities concerned.

Commentary

(1) Although paragraph 1 of this article does not state expressly who is entitled to seek, offer or provide humanitarian assistance, paragraphs 4 and 5 make clear that both States and *de facto* authorities have such a right. The right of the United Nations to request, offer or provide humanitarian assistance is based on Article 55 of the Charter (see Commentary (2) below). NGOs involved in humanitarian assistance may request, offer or provide such assistance both in their own right and as part of their arrangements for consultation with ECOSOC under Article 71 of the Charter, providing that such arrangements include humanitarian assistance. The right of regional organizations to request, offer or provide assistance would depend, of course, on their respective charters or constitutions. It should be recalled that IDPs themselves may request and receive assistance (Article 3 above).

(2) Paragraph 2 provides that requests for humanitarian assistance must be “considered” by States, *de facto* authorities and international organizations concerned, thus implying that such requests cannot be rejected out of hand without any legitimate reasons. Article 56 of the Charter specifically states: “All Members pledge themselves to take joint and separate action in cooperation with the Organizations for the achievement of the purposes set forth in Article 55.”

The latter article mandates the United Nations to promote, *inter alia*, “solutions of international economic, social, health, and related problems,” which certainly include humanitarian assistance.

(3) Paragraph 3 cites examples of essential subsistence needs that may be requested. The list is not exhaustive and may vary according to the nature of the agency concerned—whether a single-purpose agency like WHO or WFP, or one providing multiple services and materials, such as UNHCR or UNICEF.

(4) Paragraphs 4 and 5 are based on the same rationale as that of the last paragraph of common Article 3 of the 1949 Geneva Conventions (75 UNTS 31, 85, 135, 287), which provides: “The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.” These provisions aim to ensure that essential needs of IDPs are met regardless of the nature of the conflict or the diplomatic or political status of the State or authority concerned. They take into account the experience that in a number of cases humanitarian assistance for IDPs during armed conflict or internal strife has not been requested, offered or accepted for fear that such assistance may imply diplomatic recognition of or by the States or authorities concerned.

Article 14

1. States and *de facto* authorities shall adopt all necessary measures to ensure

that internally displaced persons have free and safe access to international assistance and, wherever appropriate, to protection by duly authorized organizations. Such assistance shall not be diverted for military, political, or other purposes.

2. Personnel of generally recognized relief organizations involved in transporting, safeguarding and distributing relief materials or performing other services shall be given full protection from armed attack in accordance with the principles of humanitarian law and those contained in the Convention on the Safety of United Nations and Associated Personnel, as well as free and safe access to internally displaced persons needing assistance and protection, in conformity with paragraph 1 of the present article.

3. Safe areas may be established where appropriate.

Commentary

(1) The duty of States and *de facto* authorities to ensure that IDPs and relief-workers and organizations providing assistance and protection have free and safe access to each other is self-evident. Without such access, no humanitarian assistance can be rendered, thus negating the obligation of States under Article 13(2) above.

(2) The need for the protection of relief personnel may be seen from the fact that six ICRC personnel were killed in Chechnya in 1996, and numerous UN staff killed during the conflicts in former Yugoslavia. See UN Doc. A/RES/51/137 of 10 February 1997.

(3) The 1994 Convention on the Safety of United Nations and Associated Personnel (UN Doc. A/RES/49/59 of 9 December 1994) ensures safety and security of UN personnel and persons who carry out activities under an agreement with the Secretary-General during the course of UN operations, whether in international or noninternational armed conflicts. (see Evan Bloom, "Protecting the Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel," 89 *AJIL* (1995), 621-31.) Where the Convention does not apply, the protection of relief workers can be based on their status as civilians and the consequential immunity from direct attack. (Deng, *Compilation*, p. 101.)

(4) Relief workers should be protected not only from State actors and *de facto* authorities, but also from guerilla or paramilitary groups. The 1994 Convention could serve as a model concerning the protection of nongovernmental actors who carry out assistance and/or protection services for IDPs.

(5) The establishment of "safe areas"—also called "safety zones," "open relief centers," "save haven zones," "safe corridors," "humanitarian/repatriation corridors"—evidences a change of emphasis in recent years from concern about the treatment of refugees outside their country of origin to that of protecting and assisting IDPs within their own country in times of armed conflict or civil strife. Preconditions for the establishment of such areas may include: (a) the existence of situations which are likely to threaten the lives and freedom of IDPs; (b) a determination by an international organization to establish safe areas; (c) the

consent of the territorial State or a party to a conflict; and (d) an agreement between the international organizations concerned and the territorial State. To ensure neutrality, the operation of safe areas should be conducted by international organizations or NGOs known for their integrity and efficiency.

(6) In consenting to the establishment of safe areas, the territorial States and *de facto* authorities undertake to observe the principles of humanitarian law, to cooperate with the international organizations concerned, and to ensure the safety of their staffs. IDPs within the safe areas are entitled to the same fundamental human rights and freedoms as other nationals of the territorial State concerned.

(7) The establishment of safe areas must never be used as a pretext for forcible displacement of IDPs against their will. Nor should their stay in safe areas imply their waiver of the right to seek asylum abroad.

(8) In view of the unfortunate experiences with many safe areas, including the so-called “UN protected zones” in Bosnia-Herzegovina, the issue of safe areas must be approached with great caution.

Underlying the rationale for safe areas is the existence of a universal, minimum standard of human rights and humanitarian law rules. Violations of these minimum rules or standards, in a grossly violent and persistent manner that shocks the conscience of mankind, cease to be a matter of sole concern to a State even if directed against its own nationals. Accordingly, even intervention in the interest of humanity may be legally permissible. Oppenheim’s *International Law*, 9th ed., by R. Y. Jennings and D. Watts (1992), 442-443.

See also L. Franco, “Safety Zones for Internally Displaced Persons,” in N. Al-Nauimi and R. Meese, eds., *International Legal Issues Arising under the U.N. Decade of International Law* (1995), 871; E. Cotran, “The Establishment of a Safe Haven for the Kurds in Iraq,” in *id.* 855; B. S. Chimni, “The Incarceration of Victims: Deconstructing Safety Zones,” in *id.* 823; Y. Sandoz, “The Establishment of Safety Zones for Persons Displaced within Their Country of Origin,” in *id.* 899; W. D. Clarence, “Open Relief Centers: A Pragmatic Approach to Emergency Relief and Monitoring during a Conflict in a Country of Origin,” 3 *Intl J. Refugee Law* (1991), 320; R. Plender, “The Legal Basis of International Jurisdiction to Act with regard to the Internally Displaced,” in 6 *id.* (1994), 345.

See also Security Council resolutions 688 (1991) concerning Iraq; 819 (1993) and 824 (1993) concerning Sarajevo, Tuzla, Zepa, Gorazde, Bihac, as well as Srebrenica.

Article 15

1. States and *de facto* authorities shall never use starvation or other forms of deprivation as a weapon against internally displaced persons during armed conflicts, whether international or noninternational.

2. All armed forces are prohibited from interfering with the movement of essential subsistence needs—on land, by air or sea—clearly designated for

civilian consumption. Appropriate international agencies may be authorized to monitor such movement.

Commentary

(1) While paragraph 1 of Article 14 lays down the general principle governing free and safe access by IDPs to relief materials and services, the current article focuses on their access to food—the most important life-sustaining element. Prohibition of the use of starvation as a weapon against IDPs reflects the relevant provisions of international humanitarian law, e.g., Protocol I, Art. 54(1); Protocol II, Art. 14.

(2) Paragraph 2 of Article 15 contains two elements. First, it provides for free passage of relief food supplies clearly designated for civilian consumption. International humanitarian law relevant to international armed conflicts does contain specific norms to protect such relief actions, as in the Fourth Geneva Convention, Arts. 23, 59, 60 and 61, and in Protocol I, Arts. 69-71. This paragraph, however, goes further by prohibiting all armed forces to interfere with such passage whether in international or noninternational conflicts. Since a great majority of armed conflicts after the end of the Cold War have been noninternational in nature, this progressive development of international law is to be welcomed.

(3) Second, paragraph 2 states that appropriate international agencies may be authorized to monitor food shipments, but refrains from identifying such agencies. The particular context and exigencies of a conflict will provide some guidance when it comes to nominating an agency, which may well include a regional organization.

(4) Arrangements may be made by Governments concerned to permit daily truck convoys to pass safely into areas of IDP concentration, as well as the air-dropping of relief supplies. Under a convoy arrangement, for example, the Yugoslav Government and NATO reportedly agreed to permit convoys by the Governments of Greece, Russia and Switzerland to pass safely into Kosovo. These Governments would inform NATO about the convoy schedules, and NATO would then try to insure that its bombers do not hit the relief trucks. E Becker. "The U.S. Plans Airdrops to Refugees inside Kosovo," *N.Y. Times*, May 11, 1999, p. A12.

Article 16

If the Security Council decides that the nature and scope of a situation of internal displacement constitute a threat to international peace and security and, in accordance with the Charter of the United Nations, orders that appropriate measures be taken, States, *de facto* authorities and international organizations, both governmental (including regional) and nongovernmental, shall provide protection and assistance to internally displaced persons, as well as address the root causes that gave rise to the situation.

Commentary

(1) Between 1990 and 1996, the Security Council declared a formal threat to international peace and security 61 times—in contrast to only 6 times in the preceding 45 years. J.T. Mathews, “Power Shift,” 76 *Foreign Affairs*, January/February 1997, pp. 50, 59. Many of the Chapter VII resolutions authorizing forceful intervention concerned primarily domestic human rights abuses or generalized violence, as in the cases of Haiti and Somalia, rather than actual threat or danger to peace outside a country’s boundary. As Mathews points out, there is an increasing likelihood of the escalation of the clash between the fixed geography of States and the nonterritorial nature of today’s problems and solutions (*id.* at 65).

(2) There is also the view that the Security Council should be authorized to order measures in favor of IDPs whenever their State is not able to protect their human rights and freedoms—even if no formal threat to international peace and security exists, as in the cases of Somalia and Haiti.

This is in line with the evolving concept of “accountability” of sovereign States, an aspect of which may be described as follows:

. . . any Government that fails to provide the most fundamental rights for major segments of its population can be said to have forfeited sovereignty and the international community can be said to have a duty in those instances to reestablish it.

F.M. Deng, *Protecting the Dispossessed* (1993), at 140, also 14-20; quoted and, discussed by C. Palley, “Legal Issues Arising from Conflicts between U.N. Humanitarian and Political Mandates—A Survey,” in V. Gowland-Debbas, ed., *The Problem of Refugees in the Light of Contemporary International Law Issues* (1996), 145, 162.

(3) In support of Dr. Deng’s statement above may be cited Articles 5 and 6 of the Charter of the United Nations, which empower the Security Council to recommend the suspension or expulsion of States which have persistently violated the principles contained in the Charter. Such violations may be reflected in, among others, the States’ mistreatment of their own citizens who are IDPs. See also statement of L.T. Lee in ICRC, *Internally Displaced Persons: Symposium*, Geneva, 23-25 October 1995 (1996), pp. 121-22.

(4) In the absence of a Security Council decision, is there a limited or conditional right of humanitarian intervention permitting the use of force by a State or multilateral organization to protect IDPs (as in the case of NATO’s 78-day bombing campaign in Yugoslavia in 1999)? While the rationale for such a right may be analogized to that for “safe areas,” discussed in Commentary (8) on Article 14(3) above, its modus operandi remains to be developed. This and other related questions are discussed in Editorial Comments: NATO’S Kosovo Intervention, 93 *AJIL* (1999), 824-62.

See also Commentaries (2) – (5) on Article 10 above for the role of the Security Council in IDP matters.

Section IV
Final Clauses
Article 17

Nothing in the present Declaration may be construed as limiting the right of any persons to seek asylum abroad or to be protected against forcible return to their place of habitual residence where their lives or freedoms would be threatened on account of their race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria.

Commentary

(1) This article expressly applies two important elements of refugee law to IDPs. First, any person may seek asylum abroad, notwithstanding the rights granted according to the Declaration. Obviously, the right to seek asylum abroad does not imply any duty incumbent upon States to actually grant asylum.

(2) The second element is another cornerstone of the Declaration. It protects IDP's from forcible return by analogy to refugee law. The unconditional obligation of States and *de facto* authorities to refrain from *refoulement* is a key element of international refugee law as enshrined in Article 33 of the 1951 Convention, whose substance is adapted to the needs of IDPs.

(3) This provision further underscores the Declaration's intent to supplement and strengthen international refugee law. The language should dispel any interpretation of the Declaration that would have the effect of relieving States of their obligations under refugee law or of offering them an excuse for denying persons the right to seek asylum outside their territories. Indeed, the Declaration is premised on the understanding that States will ensure the right of all persons to seek asylum. It is therefore intended to enhance the range of options to persons at risk, not restrict them. The growing legal and institutional links between refugees and IDP's, particularly within the United Nations and the Office of UNHCR, is clear.

Article 18

1. Nothing in the present Declaration shall affect international agreements in force between States parties to them,

2. Nothing in the present Declaration shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the principles contained herein.

3. Any international agreement dealing with the topics covered by the present Declaration shall be interpreted in accordance with the purpose and spirit of this Declaration.

Commentary

(1) This provision elaborates further on Article 2 and other provisions that ensure to IDPs the normal protection and assistance provided by international law.

(2) Paragraph 2 encourages States to progressively develop a protective regime for IDPs within the larger framework of international agreements. These agreements include, but are not limited to, the instruments of human rights, and of humanitarian and refugee law that are listed in the Annex.

(3) Paragraph 3 establishes that the best interests of IDPs, as the guiding spirit and purpose of the Declaration, will govern pertinent interpretations of international law, including but not limited to the agreements listed in the Annex.

ANNEX

International Instruments on Human Rights, Refugees and Humanitarian Law of Particular Relevance to the Protection of and Assistance to Internally Displaced Persons (Chronologically Arranged)

Charter of the United Nations, 1945;

Convention on the Prevention and Punishment of the Crime of Genocide, 1948;

Universal Declaration of Human Rights, 1948;

The Geneva Conventions of August 12, 1949;

European Convention for the Protection of Human Rights and Fundamental
Freedoms, 1950;

Convention relating to the Status of Refugees, 1951;

Convention on the Political Rights of Women, 1953;

Convention on Territorial Asylum (OAS), 1954;

Convention relating to the Status of Stateless Persons, 1954;

Agreement Relating to Refugee Seamen, 1957;

Convention on the Reduction of Statelessness, 1961;

International Convention on the Elimination of All Forms of Racial
Discrimination, 1965;

European Social Charter, 1961;

- International Covenant on Civil and Political Rights, 1966;
- International Covenant on Economic, Social and Cultural Rights, 1966;
- Protocol relating to the Status of Refugees, 1967;
- Proclamation of Teheran (International Conference on Human Rights), 1968;
- American Convention on Human Rights, 1969;
- Declaration on Social Progress and Development, 1969;
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969;
- Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, 1970;
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972;
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973;
- Protocols Additional to the Geneva Conventions, 1977;
- Declaration on Territorial Asylum, 1977;
- International Convention against the Taking of Hostages, 1979;
- Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious and to Have Indiscriminate Effects, and Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, 1980;
- African Charter on Human and People's Rights, 1981;
- Cartagena Declaration on Refugees, 1984;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985;

Declaration on the Human Rights of the Individuals Who Are not Nationals of the Country in Which They Live, 1985;

Strasbourg Declaration on the Right to Leave and Return, 1986;
Convention on the Rights of the Child, 1989;

Cairo Declaration on Human Rights in Islam, 1990;

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990;

Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab world, 1992;

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992;

Declaration on the Protection of All Persons from Enforced Disappearance, 1992;

Sharjaa Declaration on Uprooted Moslem Women, 1992;

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1993;

Vienna Declaration on Human Rights, 1993;

Arab Convention on the Status of Refugees, 1994;

Convention on the Safety of United Nations and Associated Personnel, 1994,

Inter-American Convention on Forced Disappearance of Persons, 1994;

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”), 1994;

Inter-American Convention to Prevent and Punish Torture, 1995;

General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accord), 1995;

European Framework Convention for the Protection of National Minorities, 1995;

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1997;

European Convention on Nationality, 1997;

Rome Statute of the International Criminal Court, 1998.