

## The Limits of Sovereignty

*Francis Deng*

Displacement in all its manifestations, internal and external, has become a global crisis of grave and escalating magnitude. Since the end of the Cold War, the number of people displaced within the borders of their own countries has soared to an estimated twenty to twenty-five million, and the number of refugees is now estimated at over eleven million. Statistics indicate that although the number of refugees appears to be declining, the internally displaced populations worldwide seem to be increasing, a trend that suggests a correlation: As governments restrict the right of asylum, potential refugees join the ranks of the internally displaced. These are people who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters.<sup>1</sup>

Nearly always, internally displaced persons suffer from conditions of insecurity and destitution, and they are acutely in need of protection and survival services. Whereas refugees have an established system of international protection and assistance, those who are displaced internally fall within the domestic jurisdiction and, therefore, under the sovereignty of the state concerned, without established legal or institutional bases for their protection and assistance.

Displacement is not the disease, but a symptom of a public health epidemic with deep-rooted causes. Treating the symptoms or easing the pain through humanitarian assistance is only a first step toward the challenge of diagnosing the disease and attacking it from its root causes. A comprehensive strategy in response to the crisis of displacement must build on the three phases of the problem—causes, consequences, and solutions. Addressing the causes requires going beyond the mere fact of conflicts, communal violence, or human rights violations to appreciate the even deeper root causes. These are often reflected in the traumas of nation-building, involving crises of identity, historical denial of democratic liberties and fundamental human rights, and the deprivations of poverty and severe underdevelopment. Consequences relate to the humanitarian tragedies that result from violent conflicts, gross violations of human rights, and the sudden and massive displacement they generate. Remedies envisage both a response to the emergency needs of the situation and a search for lasting solutions. In other words, the corresponding themes of response would be prevention, protection and assistance, and a secure process of return or permanent settlement in

another area, rehabilitation, reintegration, and sustainable development. Action at these three phases must aim at balancing sovereignty, responsibility, and international accountability.

Discharging the preventive responsibilities of sovereignty must begin with addressing the root causes of displacement. As Mrs. Sadako Ogata, former UN High Commissioner for Refugees, has correctly observed, “Whether we speak of refugees or of internally displaced persons, it is clear that there will be no end to their plight until the international community has found ways to deal effectively with the root causes of forced displacement, so as to prevent or alleviate conditions before people flee.”<sup>2</sup> Recent years have witnessed a strategic shift in the operational principles of the UNHCR. The new approach “is proactive and preventive, rather than reactive. Instead of focusing purely on countries of asylum, it is equally concerned with conditions in actual and potential refugee-producing states. And as well as providing protection and assistance to refugees, it seeks to reinforce the security and freedom enjoyed by several other groups: internally displaced people; refugees who have returned to their own country; war-affected communities and those who are at risk of being uprooted.”<sup>3</sup>

Once displacement has occurred, priority then shifts to providing the affected population with protection and assistance. These functions should normally fall under the responsibilities of sovereignty, but in conflict situations the state often lacks the political will to discharge those responsibilities. Involving the international community to fill the vacuum of state responsibility means negotiating access against the obstacles of defensive state sovereignty. As Mrs. Ogata remarked in 1992, “How to secure the protection of the internally displaced and ensure their access to humanitarian assistance is one of the most important challenges facing the international community. Meeting this challenge will require the development of institutional and practical mechanisms.”<sup>4</sup> There have since been important developments in both these areas, which will be highlighted in the course of this chapter.

## **Magnitude of the Crisis**

Displacement is generally a consequence of conflict, which, in turn, is a symptom of deeper societal problems. Conflict occurs when two or more parties interact in pursuit of incompatible objectives, which may involve material or immaterial values. Various forms and degrees of conflict are pervasive features of normal life and, for the most part, are negotiated and resolved by the parties or by third-party mediators. Governance is primarily a function of preventing, managing, and resolving conflicts. The kinds of conflicts that generate internal displacement, however, are generally of a

more severe nature, involving deadly violence. As a result of these conflicts, much destruction to life and property is pervasive throughout the world; governments have disintegrated and entire regions have been destabilized, with devastating humanitarian consequences; masses of uprooted populations in the affected countries survive on emergency relief supplies, displaced within their own countries or forced across international borders as refugees.

It is often argued that the internally displaced should be considered and treated like refugees who have not crossed international borders. The analogy is compelling. And yet, the border factor is crucial in legal and institutional terms to qualify one as a refugee who is thereby entitled to receive international protection and assistance. Even more significantly, while the refugee is outside the national framework of conflict and political persecution, the internally displaced, who would be a refugee if he or she had crossed international borders remains trapped within those borders, a potential victim not only of conflict, but also of the persecution emanating from it and alienated from the government that is supposed to be a source of protection and support for citizens.

Overwhelmingly, such persons live in a hostile environment, often deprived of such survival needs as food, shelter, and medicine, frequently subjected to roundups, forced resettlement, arbitrary detentions or arrests, forced conscription, and sexual assaults. Some of the highest mortality rates ever recorded during humanitarian emergencies have come from situations involving internally displaced persons. According to surveys conducted by the U.S. Center for Disease Control, the death rates among internally displaced have been as much as sixty times higher than those of nondisplaced within the same country.<sup>5</sup>

Compounding the crisis is the nature of the conflicts in which the population is often caught up. Internal conflicts are frequently marked by few or no accepted ground rules. These wars, as former UN Secretary-General Boutros Boutros-Ghali observed in his Supplement to an Agenda for Peace, are “often of a religious or ethnic character and often involving unusual violence and cruelty.”<sup>6</sup>

They are usually fought not only by regular armies but also by militias and armed civilians with little discipline and with ill-defined chains of command. They are often guerilla wars without clear front lines. Civilians are the main victims and often the main targets. Humanitarian emergencies are commonplace and the combatant authorities, in so far as they can be called authorities, lack the capacity to cope with them. The number of refugees registered with the Office of the United Nations High Commissioner for Refugees (UNHCR) has increased from 13 million at the end of 1987 to 26 million at the end of 1994. The number of internally displaced persons has increased even more dramatically.<sup>7</sup>

“Today’s belligerents,” a Foreign Policy Association study points out, “are more and more willing to use humanitarian access, life-saving assistance, and even civilians themselves as weapons in their political-military struggles.”<sup>8</sup> The challenge posed by the situation of internally displaced persons and refugees is both to allow them to flee from danger and to ensure their right to remain. As Mrs. Ogata observed, “We must prevent refugee flows, not by building barriers or border controls but by defending the right of people to remain in peace in their own homes and their own countries.”<sup>9</sup> The mere fact that people are forced to leave their homes to escape from conflict or persecution implies the violation of fundamental human rights, among them “the right to life, liberty and security of person, the right not to be subjected to torture or other degrading treatment, the right to privacy and family life, the right to freedom of movement and residence, and the right not to be subjected to arbitrary exile.”<sup>10</sup> Curative prevention, which means securing the right to remain at home in peace, the right to protection and assistance during displacement, and the right to return home safely and reintegrate into a secure life therefore requires ensuring respect for the human rights of every person. This depends on the willingness of states to accept responsibility for their own citizens and the role of the international community “to foster responsibility as well as accountability of states as regards the treatment of their own citizens.”<sup>11</sup>

Much has been written and said about the need for early warning and preventive measures. It is also increasingly acknowledged that most conflicts that have resulted in gruesome humanitarian tragedies have not been the result of lack of early warning, but rather because of lack of the political will on the part of the international community to act in appropriate time. As the former UN Secretary-General Boutros Boutros-Ghali noted in his Supplement to an Agenda for Peace, “Experience has shown that the greatest obstacle to success in these endeavors is not, as is widely supposed, lack of information, analytical capacity or ideas for the United Nations initiative. Success is often blocked at the outset by the reluctance of one or other of the parties to accept United Nations help.”<sup>12</sup>

Early warning and prevention essentially mean understanding the sources of potential conflicts and addressing them in time to abort their explosion into violent confrontation. Once a conflict has actually broken out, there is then the immediate need to address its humanitarian consequences while also seeking an end to the hostilities by addressing the issues that led to the conflict in the first place. The success of the effort means restoring peace and creating conducive conditions for reconstruction and development. These are essentially functions of governance that normally fall within the purview of domestic jurisdiction and therefore national sovereignty.

Although the response of governments to displacement generated by natural causes may sometimes be grossly inadequate, on the whole it is sympathetic and supportive of the victims. Likewise, displacement caused by interstate conflicts generally elicits supportive responses from the government of the affected population. In contrast, response to a displacement caused by internal conflicts, communal violence, and systematic violations of human rights is nearly always complicated by the cleavages involved. These cleavages often take the form of an identity crisis, whether based on race, ethnicity, religion, culture, or class. What this means is that the government or any other controlling authority concerned and the affected population identify themselves in divisive terms that undermine solidarity and support. The government or the controlling authority, rather than view the victim population as citizens for whom there is a moral and legal duty to protect and assist, tend to see them as enemies, or part of the enemy, with whom they are at war. In such a situation, which reflects a national identity crisis, the victim population falls into a vacuum of the moral and legal responsibility normally associated with sovereignty. It is to fill this vacuum that the international community is often called upon to step in and provide the needed protection and assistance.

It must be noted, however, that although this notion of identity crisis is pervasive, the degree varies from country to country. And so does the response of governments and other controlling authorities. There are situations of ethnic conflict in which the government still identifies the victim population as their people to whom they indeed provide food and medical supplies, sometimes in cooperation with rebel forces with whom the affected population is ethnically identified. Unfortunately, this appears to be the exception; the pattern is tragically one of denial of solidarity with the victim population on the basis of exclusive identity symbols.

### **The Challenge of Sovereignty**

There are two aspects to the challenges posed by internal conflicts for sovereignty. One is to establish and apply an effective system of conflict prevention, management and resolution; the other is to provide protection and assistance to those affected by conflict. In both cases, the state may not be capable or willing to provide adequate solutions or remedies, especially because the government is nearly always a party to the conflict. And because it is partisan, the government often acts as a barrier to access by the international community to provide protection and assistance to the needy and to help in the search for peace. Such resistance to outside involvement is justified by the invocation of national sovereignty.

Since its inception, sovereignty has developed through several overlapping phases, which may not be neatly delineated historically, but which nonetheless signify an evolution. The first, represented by the Treaty of Westphalia in 1648, is the initial phase when the sovereign reigned supreme domestically and in relations with the outside world. The second, following World War II, marks the erosion of sovereignty with the development of democratic values and institutions internally and with international accountability on the basis of human rights and humanitarian standards. With the greater promotion of these values following the end of the Cold War, the third phase emerged as a reactive assertion of sovereignty by governments whose domestic performance renders them vulnerable to international scrutiny. The fourth is the current pragmatic attempt at reconciling state sovereignty with responsibility.

## Genesis of Sovereignty

Sovereignty in legal and political theory was initially conceived in Europe as an instrument of authoritative control by the monarch over feudal princes in the construction of modern territorial states. It was believed that instability and disorder, seen as obstacles to a stable society, could only be overcome by viable governments capable of establishing firm and effective control over territory and populations.<sup>13</sup> The sovereign, as the lawmaker, was considered to be above the law. Indeed, law, according to the “command theory” of the leading positivist jurist, John Austin, is “a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.”<sup>14</sup> Law is thus considered the command of the sovereign who is habitually obeyed by his subjects. The power of the sovereign is supposedly not limited by justice or any ideas of good and bad, right or wrong.<sup>15</sup> “For Austin ... any legal limit on the highest lawmaking power was an absurdity and an impossibility.”<sup>16</sup> Even in contemporary literature, it is still argued that “sovereignty is a characteristic of power that relegates its holder to a place above the law. A sovereign is immune from law and only subject to self-imposed restrictions.”<sup>17</sup> Although the form of government might vary from monarchy to aristocracy or democracy, it is considered essential that governments maintain order through an effective exercise of sovereignty.

On the other hand, the basic proposition of international human rights law is that “to qualify for the name of government, a government ... has to meet certain standards, all of which involve restraints on the use of power; no torture; no brutalization; no seizure of property; no state terror; no discrimination on the basis of race, religion, or sex; no prevention of people leaving a particular country, and so on.”<sup>18</sup> The limits of the “tyrannical” concept of sovereignty postulates three major

premises: (a) “‘humanity’—is the *raison d’être* of any legal system”; (b) “the international system ... since the Peace of Westphalia, has not been fulfilling what should be its primary function, namely, the protection and development of the human dignity of the individual”: (c) “any proposed ‘new world order’ should be structured so as to maximize benefits not for States but for individuals living within the States, all the way from freedom of speech and elections, on the one hand, to freedom from hunger and the right to education on the other hand.”<sup>19</sup>

These principles impose on the international community a correlative responsibility for their enforcement. Herein lies the paradox of the international order. That paradox was indeed inherent in the settlement of Westphalia, from which time “sovereignty created both the territorial state and the international system.”<sup>20</sup>

## Erosion of Sovereignty

The post–World War II era represents the second phase of the erosion of sovereignty. The application of the right to self-determination, which provided the basis for the process of decolonization, expanded the process of erosion. One of the effective measures in contravention of the narrow concepts of absolute sovereignty was that of international sanctions against South Africa. It was undoubtedly the combination of internal and external pressures that eventually culminated in the collapse of apartheid. The increasing internalization of the human rights agenda and the wave of democratization that is sweeping the world are among the contemporary challenges to sovereignty.

The demands for democratic values, institutions, and practices have devolved the classic notion of sovereign will and authority to the people who are increasingly intolerant of the dictatorship of unaccountable government. More and more, it is recognized that it is the will of the people, democratically invested in the leaders they elect freely or otherwise accept as their representatives, that entitle authorities to value and uphold the sovereignty of a nation. As Michael Reisman has written,

It should not take a great deal of imagination to grasp what an awful violation of the integrity of the self it is when men with guns evict your government, dismiss your law, kill and destroy wantonly and control you and those you love by intimidation and terror. When that happens, all other human rights that depend on the lawful institutions of government become matters for the discretion of the dictators. And when that happens, those rights cease. Military coups are terrible violations of the political rights of all the members of the collectivity, and they invariably bring in their wake the violation of all other rights. Violations of the right to popular government are not secondary or less important. They are very, very serious human rights violations.<sup>2</sup>

In the context of international intervention in Haiti, Reisman argues that “in modern international law, what counts is the sovereignty of the people and not a metaphysical abstraction called the state. If the de jure government, which was elected by the people, wants military assistance, how is its sovereignty violated? And if the purpose of the coercion is to reinstate a de jure government elected in a free and fair election after it was ousted by a renegade military, whose sovereignty is being violated? The military’s?”<sup>22</sup>

The area of humanitarian intervention has witnessed the greatest erosion of sovereignty, mostly with the consent of the states, but at times through forceful enforcement. Nevertheless, mechanisms and procedures of implementation of the wide array of human rights and humanitarian standards remain undeveloped and grossly inadequate.

### **Reassertion of Sovereignty**

The more the international community has been assertive, the more vulnerably governments have reacted defensively against erosion of state sovereignty. This indeed marks the third phase of the evolution of sovereignty. Governments that are threatened by the erosion of narrow concepts of sovereignty and are defensively trying to reassert it use the argument of cultural relativity and characterize the universality concept as a Western ploy for interfering in the internal affairs of other countries.

Even among the supporters of a more liberal interpretation of sovereignty, its erosion has been viewed with ambivalence. Former United Nations Secretary-General Javier Perez de Cuellar, while acknowledging “what is probably an irresistible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents,” added the questions, “Does intervention not call into question one of the cardinal principles of international law, one diametrically opposed to it, namely, the obligation of non-interference in the internal affairs of the States?”<sup>23</sup> In his 1991 annual report, he wrote, “The case for not impinging on the sovereignty, territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.”<sup>24</sup>

In place of exclusionary notions of sovereignty, de Cuellar called for a “higher degree of cooperation and a combination of common sense and compassion,” arguing that “we need not impale



ourselves on the horns of a dilemma between respect for sovereignty and the protection of human rights. ... What is involved is not the right of intervention but the collective obligation of States to bring relief and redress in human rights emergencies.”<sup>25</sup>

### **Reconciling Sovereignty with Responsibility**

Reconciling sovereignty with responsibility, the fourth phase of the evolution, has become the operative principle. Former Secretary-General Boutros Boutros-Ghali, in *An Agenda for Peace*, wrote that “the time of absolute and exclusive sovereignty ... has passed”; that “its theory was never matched by reality”; and that it is necessary for leaders of states “to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world.”<sup>26</sup>

In another context, Boutros-Ghali elaborated his views on sovereignty by highlighting the need to rethink the concept in contemporary global context, “not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function.” Boutros-Ghali goes on to postulate an intriguing concept of universal sovereignty of individuals and peoples: “Underlying the rights of the individual and the rights of the peoples is a dimension of universal sovereignty that resides in all humanity and provides all peoples with legitimate involvement in issues affecting the world as a whole. It is a sense that increasingly finds expression in the gradual expansion of international law.”<sup>27</sup>

Living up to the responsibilities of sovereignty becomes in effect the best guarantee for sovereignty. As one observer commented, “Governments could best avoid intervention by meeting their obligations not only to other states, but also to their own citizens. If they failed, they might invite intervention.”<sup>28</sup>

This was indeed the point made by the Secretary-General of the Organization of African Unity, Salim Ahmed Salim, in his bold proposals for an OAU mechanism for conflict prevention and resolution. “If the OAU, first through the Secretary-General and then the Bureau of the Summit, is to play the lead role in any African conflict,” he said, “it should be enabled to intervene swiftly, otherwise it cannot be ensured that whoever (apart from African regional organizations) acts will do so in accordance with African interests.”<sup>29</sup>

Criticizing the tendency to respond only to worst-case scenarios, Salim emphasized the need for preemptive intervention: “Preemptive involvement should be permitted even in situations where tensions evolve to such a pitch that it becomes apparent that a conflict is in the making.” He even suggested that the OAU should take the lead in transcending the traditional view of sovereignty,

building on the African values of kinship, solidarity and the notion that “every African is his brother’s keeper.” Considering that “our borders are at best artificial,” Salim argued, “we in Africa need to use our own cultural and social relationships to interpret the principle of non-interference in such a way that we are enabled to apply it to our advantage in conflict prevention and resolution.”<sup>30</sup>

It is most significant that the Security Council, in its continued examination of the Secretary-General’s report, *An Agenda for Peace*, “[noted] with concern the incidents of humanitarian crises, including mass displacements of population becoming or aggravating threats to international peace and security and concluded that under certain circumstances, there may be a close relationship between acute needs for humanitarian assistance and threats to international peace and security, which trigger international involvement.”<sup>31</sup>

The crisis of internal displacement fits into this model in that it combines human rights with humanitarian concerns, and protection with assistance. Internal displacement is also a challenge to sovereignty in that providing the citizens with physical security and their basic survival needs are among the prerequisites for legitimacy and therefore recognizable sovereignty in the framework of international relations. These are among the principles that have guided the implementation of my mandate as Representative of the Secretary-General for Internally Displaced Persons.

The normative principles of my dialogue with governments are built on the premise that national sovereignty carries with it responsibility for the security and welfare of the citizens. When a state lacks the capacity to ensure the protection and welfare of its people, it is expected to call on the international community to supplement its efforts. The essence of the state responsibility, however, is accountability, both domestically and internationally. If states fail to live up to their obligations toward their citizens with the result that large numbers of people fall victim, their physical and social integrity violated or threatened and their very survival endangered, then the international community has the commensurate responsibility to hold the states accountable and obtain access to provide the needed protection and assistance and help in the search for remedies to the conditions that had caused the violent confrontation in order to restore a just and lasting peace.

## **International Responses**

The plight of the internally displaced has begun to receive significant attention from the international community. Because of the magnitude of the crisis, the inadequacy of the response system, and the urgent need for international remedies, a number of nongovernmental organizations, supported by concerned governments, urged the Commission on Human Rights to take action. Concerted action began with the consideration by the Commission of a report prepared by the Secretariat on the

subject of internal displacement.<sup>32</sup> It was then that the Commission requested the Secretary-General to appoint a representative to study the problems. The study was to cover the root causes of internal displacement, the relevant international legal standards, the mechanisms for their enforcement, and any additional measures the United Nations might take to improve the situation of the internally displaced. In preparing the study, I undertook field visits to five countries and engaged in a dialogue with the governments. Since then, in-depth studies of the legal and institutional dimensions of international protection and assistance for the internally displaced, and dialogue with governments have been the core activities of the mandate. As we shall see in the following sections, these have brought about a number of tangible results.

### **Institutional Arrangements**

On the issue of institutional arrangements, it is widely acknowledged that there is a gap in the coverage because there is no one organization, or collection of organizations, mandated to take responsibility for the internally displaced. At the same time, there is no political will to create a new organization with that mandate. Nor is it likely that an existing institution will be mandated to assume full responsibility for the internally displaced. Under the present circumstances, the residual option is that of a collaborative arrangement among a wide variety of agencies and organizations whose mandates and activities are relevant to the problems of internal displacement.<sup>33</sup>

Correlative to the increased involvement of various agencies and organizations is the urgent need for coordination or a central point to assign institutional responsibility in emergency situations. In the last few years some institutional progress has been made in this area. There now exist coordinating mechanisms that promise to bring coherence into the international system. The focal points in these structural arrangements are the Emergency Relief Coordinator (designed as the reference point in the United Nations system for requests for assistance and protection for internally displaced persons), and the Inter-Agency Standing Committee, its working group. A similar coordinating structure is reflected at the field level through the Resident Representatives of UNDP or, in cases of complex emergencies, the Resident Coordinators or Humanitarian Coordinators who chair Disaster Management Teams (DMTs) composed of UN operational agencies and sometimes NGOs and coordinate humanitarian assistance for internally displaced persons.

The High Commissioner for Refugees has observed that the success of international involvement will depend on three key factors: “The first is a well structured division of work, on which coordination must proceed among organizations and institutions with the required expertise and ability to avoid duplication of efforts and fill gaps instead, the second is the ability of the

international effort to mobilize and develop local capacities and responsibilities. The third ... is their firm foundation in common and consistent human rights standards.”<sup>34</sup>

Nor should the institutional challenge be seen merely in the context of the displacement that has already occurred. Human rights violations are a major factor in causing displacement as well as an obstacle to safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical, both for prevention and for the solution of refugee and internally displaced persons problems. If the increasing problem of internal displacement is to be contained and reduced, preventive strategies are critical.

United Nations human rights bodies have an important role to play in this regard. Preventive measures currently relied upon include dialogue with governments, urgent appeals, public statements, emergency meetings, the deployment of human rights field staff, machinery for the protection of minorities, and the extension of technical assistance. Commission reports addressing the root causes of mass exoduses also exemplify efforts at prevention. Human rights treaty bodies, moreover, have been requested to examine measures they might take to prevent human rights violations, and several have adopted emergency procedures and undertaken missions to countries for preventative purposes. The establishment of the post of United Nations High Commissioner for Human Rights has added momentum to the development of preventative strategies. Human rights field staff deployed under her auspices are playing a valuable preventative role. Human rights advisory services and education projects are valuable tools for the promotion of human rights and prevention of violations.

All of these measures, however, are at an early stage of development and human rights bodies should be encouraged to increase their capacities for prevention. Mechanisms for minority protection in particular need to be strengthened, since many displaced persons are members of minority groups who have been subjected to forcible expulsion, resettlement, and other persecution because of their ethnic or other origin. Promising initiatives include the adoption by the United Nations of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the establishment of a working group by the Submission on Prevention of Discrimination and Protection of Minorities to develop strategies for minority protection and to prevent conflict.

At the national level, promotion and protection of human rights through the establishment of effective national institutions to monitor and promote them is the safest guarantee against involuntary displacement. My country mission reports as Representative of the Secretary-General have emphasized the importance of supporting preventative techniques aimed at empowering the

population at the grassroots level. Very often, local communities have built up effective strategies for mitigating the impact of displacement. The coping strategies that displaced populations themselves have developed should be carefully examined by NGOs and international agencies, because such mechanisms are essential elements of prevention and protection.

Irrespective of the level at which preventive strategies are pursued, efforts must be made to ensure that they do not interfere with the freedom of movement. There is a need to reconcile strategies that encourage people to remain within their own countries with those that safeguard the right to leave and seek asylum from persecution. Under no circumstances should the desire to forestall large-scale populations displacements take precedence over assuring the security of displaced populations.

### **The Quest for Strategy**

In virtually all dialogues with the governments and relevant actors, effort is made to link the immediate challenges of protection and assistance with the need to find lasting solutions, which in time draws attention to the causes generating the conflict that triggered displacement. This is, of course, a sensitive area in which reactions from governments are mixed. There are those who claim that it is outside the mandate of the Representative and those who acknowledge the need for peace as the real solution to the humanitarian tragedies of war. Objectively, there is no way the circular link between war, its human tragedies, and the need for solutions that address the root causes can be avoided.

In view of these anomalies and uncertainties, there is still a need for developing a strategy that would address effectively and comprehensively the crisis of internal displacement, both generically and contextually. As argued at the outset of this chapter, such a strategy should approach the displacement problem in its three manifest phases: causes, consequences, and remedies. The corresponding responses would be to develop measures for preempting and preceding displacement, to provide adequate means of protection and relief assistance during displacement, and to seek durable solutions through voluntary and safe return, resettlement, rehabilitation, reconstruction, and self-reliant development.

Ultimately, because conflict is at the core of displacement, emphasis needs to be placed on conflict prevention, management, and resolution in that order of priority. It should also be acknowledged that not only is displacement a consequence and, therefore, a symptom of conflict, but conflict itself is a symptom of deeper societal ills, generally rooted in ethnic, religious, and cultural diversities, disparities, and gross inequities or injustices. It is in the fertile soil of understandable and justified grievances that the virus of violence incubates and eventually explodes. Unless checked in

time, this can turn into a chronic condition in the body politic and, as recent developments have shown, can be even terminal to the survival of nations.

Among the characteristics of the soil in which the virus incubates are poverty, scarcity of resources, maldistribution of the little there is, politics repressive of legitimate demands, gross violations of human rights and fundamental liberties, and a sense of hopelessness and despair. Under those conditions, governments or dominant authorities become perceived as tantamount to foreign bodies, implanted into a resistant body politic that is eventually forced to reject them.

To the extent that conflict represents a symptomatic warning of underlying and potentially more serious problems, it can play a positive role if constructively responded to. Indeed, the upsurge in violent conflicts following the end of the Cold War indicates that many latent conflicts were repressed through the awesome power of the bipolar control mechanisms of the two superpowers, driven not so much by the ideals of right and wrong as by ideological alignments and strategic considerations. Repressive, unrepresentative governments and regimes were backed and supported by the superpowers because of their strategic or ideological stand with little or no regard to their domestic legitimacy. With the withdrawal of this support following the end of the Cold War, governments or regimes with the propensity to repress, oppress, and plunder became exposed to internal and external scrutiny and a more determined opposition that they can no longer contain, because they lack the capacity to exercise effective and decisive control over the situation.

This chaotic and often tragic conflict situation paradoxically offers countries and the international community the opportunity to review the normative and operational principles governing domestic jurisdiction and international relations. Foremost of these should be the stipulation of the normative standards of responsibility associated with sovereignty. Rather than a means of barricading governments and regimes against international scrutiny, sovereignty should be recast in response to its contemporary challenges as embodying the will of the people, represented by those they choose through free and fair elections or otherwise accept as their legitimate representatives. Sovereignty must also be viewed as an instrument for ensuring the protection and welfare of all those under its jurisdiction.

A concept that provides the core for formulating such a normative framework remains the human dignity of the individual and the group within the domestic jurisdiction. This concept is provided for in the charter of the United Nations, the International Bill of Rights, and all the human rights and humanitarian principles enunciated in many legally and morally binding documents, including now the Guiding Principles on Internal Displacement. Rather than a means of barricading governments and regimes against international scrutiny, sovereignty should be normatively postulated as an

embodiment of the democratic will of the people and a tool for ensuring the protection and welfare of all those under domestic jurisdiction. The incorporation and embodiment of these human rights and humanitarian norms into the Guiding Principles on Internal Displacement is both a preventive and curative prescription. Governments and other custodians of national sovereignty should see the standards not only as a guide, but also as a yardstick for evaluating their own performance.

Conflict prevention, management, and resolution clearly pose paradoxical challenges for both change and stability. The gross inequities of the status quo need to be scrutinized and moderated, if not eliminated. But preserving a legal order that is protective of and responsive to reasonable standards of human dignity must be seen as an overriding goal. It is with these normative principles in mind that governments and the international community are called upon to address the mounting crisis of international displacement, to prevent it by addressing its root causes, to respond to its human rights and humanitarian tragedies when they occur, and to strive to end it by creating appropriate conditions for safe return or alternative resettlement and restoring normal life in the community and the nation at large.

In conclusion, it should be reiterated that the international community has made considerable progress in responding to displacement, in particular with the development of the normative framework, in the form of the Guiding Principles, and enhancements of institutional arrangements at both the international and regional levels. However, much more remains to be done to give these legal and institutional developments meaningful impact on the ground, and above all, to make governments more responsive to the responsibilities of sovereignty for protecting and assisting their own citizens or else risk undermining their legitimacy both domestically and internationally. The glass is half-full, but that implies that it is also half-empty.