

UN Vision Project on Global Public Policy Networks

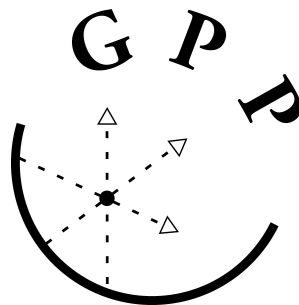
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DEVELOPING THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The Role of a Global Public Policy Network

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Case Study for the UN Vision Project on Global Public Policy Networks



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1. INTRODUCTION

It has been observed that whereas traditionally scholars of international relations defined international cooperation mainly in terms of intergovernmental regimes, we have now entered an era of multi-level governance in which non-state actors come in to play at all levels. The process of globalisation requires new approaches towards governance that go beyond the sum of intergovernmental cooperation. A ‘global public policy’ is required which transcends traditional multilateralism and involves cooperation and partnership between governmental actors/international organisations, non-profits and the for-profit sector in trisectoral networks. In many respects, a ‘global public policy network’ has been a key feature of the development of the ‘Guiding Principles on Internal Displacement’ which constitute the normative response of the international community to the problems and challenges posed by the phenomenon of internal displacement.

Internal displacement of civilian populations and their need for human rights protection is one of the crucial human rights issues of the post-Cold War era. As Kofi Annan, the UN Secretary-General observed in a recent study on the issue, internal displacement has emerged as one of the great human tragedies of our time: ‘The severity of the problem, both in intensity and scope, is obvious from the numbers of the displaced ... and the fact that virtually no region of the world is spared from this epidemic.’² In 1999 the world’s internally displaced population was estimated at some 20-25 million persons in forty countries world-wide.³ The increased significance and magnitude of the phenomenon is linked to the incidence and intensity of internal strife and internal armed conflict over the past decade. Along with human rights violations

² Kofi Annan, in R. Cohen and F.M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (1998) xix.

³ *Internally displaced persons. Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1998/50.* E/CN.4/1999/79 (1999), para.1. The imprecision is inevitable. In some countries where significant displacement exists reliable estimates are unavailable and in countries or areas where there is no UN or other international presence, groups of internally displaced persons can remain hidden or forgotten by the international community.

and natural and human-made disasters, armed conflict and generalised violence are the most prominent causes of internal displacement.⁴

Although those displaced across borders are often in a precarious situation, the internally displaced are particularly vulnerable since they remain within the territory of their country of origin and often within the situation which poses a threat to their human rights, receiving little if any protection and assistance from either the national or controlling authorities or the international community. In addition, because the internally displaced remain within the jurisdiction of their national government, the issue of state sovereignty is particularly acute. As the Government of Sri Lanka pointed out when the Commission on Human Rights first considered the question of human rights protection for the internally displaced: ‘any international initiative ... must be taken subject to the paramount principle of state sovereignty and the related principles of non-interference and non-intervention in the internal affairs of states, established under the Charter of the United Nations’.⁵

In 1992, in response to the growing international concern at the large number of internally displaced persons throughout the world and their need for assistance and protection, the UN Secretary-General, at the request of the Commission on Human Rights, appointed Dr. Francis Deng as the Representative of the Secretary-General on internally displaced persons.⁶ The mandate of the Representative has since been renewed on three occasions, most recently in 1998.⁷ During this time the mandate has focused on three main areas of work: visits to countries affected by internal displacement; promoting an institutional framework at both the international and regional levels; and developing a legal or normative framework. Although each of these areas is of interest in its own right, the present analysis is concerned with the development of a normative framework which demonstrates a new and innovative

⁴ Cohen and Deng, note 1 above, at 3.

⁵ *Analytical report of the Secretary-General on internally displaced persons*. UN doc. E/CN.4/1992/23 (1992), para.95. In particular, Art. 2(7) of the UN Charter provides in part: ‘Nothing contained in the present Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state’.

⁶ CHR res. 1992/73.

⁷ See CHR res. 1993/95, 1995/57 and 1998/50.

approach to human rights standard-setting - an approach which sought to consolidate the relevant provisions of international law and address the gaps and grey areas therein, not through the traditional state-oriented process of drafting a treaty or declaration on internally displaced persons but through a restatement of existing norms by non-state and intergovernmental actors in the form of the Guiding Principles. A fundamental and distinctive feature of this approach has been the role played by non-governmental and intergovernmental actors who have been brought together within the framework of a global public policy network.

2. ORIGIN AND PURPOSE OF THE GLOBAL PUBLIC POLICY NETWORK

While the purpose of the network has been the development of a normative response to the protection and assistance needs of the internally displaced, which began in May 1994, its actual origins go back further. They lie in the efforts of NGOs to place the issue of internal displacement on the agenda of the international community which led to the appointment of the Representative and, subsequently, to recognition of the need to develop a normative framework for the protection of the internally displaced.

During the late 1980s internal displacement was increasingly a subject of international concern. The lack of an appropriate international institution or mechanism to ensure the delivery of assistance to the five million internally displaced persons in Angola and Mozambique was a central issue raised at the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED), held in Oslo in 1988.⁸ In 1989, the General Assembly requested the Secretary-General ‘to consider the need for the establishment, within the United Nations system, of a mechanism or arrangement to ensure the implementation and overall coordination of relief programmes to internally displaced persons’.⁹ In 1990, the UN’s Economic and Social Council requested the Secretary-General to initiate a UN system-wide review to assess the experience and capacity of UN entities in the provision and coordination of relief assistance to and protection of refugees, displaced persons and returnees.¹⁰ Meanwhile, in the Americas, the 1989 International Conference on Central American Refugees (CIREFCA), recognised that conflicts in the region had not only resulted in refugees but also in internally displaced persons

⁸ See para.21 of the Oslo Declaration and Plan of Action on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa. SARRED doc. 88/5 (24 August 1988). Reproduced in UNHCR, *Collection of International Instruments and other Legal Texts Concerning Refugees and Displaced Persons. Volume II. Regional Instruments* (1995) 46.

⁹ GA res. 43/116 (1988). See further, *International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa. Report of the Secretary-General*. UN doc. A/44/520 (1989).

¹⁰ ECOSOC res. 1990/78. The request resulted in the *Report on refugees, displaced persons and returnees, prepared by Mr. Jacques Cuénod, Consultant*. UN doc. E/CN.4/1990/Add.1 (1991).

who needed special assistance, even though they remained subject to the jurisdiction and protection of their national authorities.¹¹

Increased attention to the issue was also motivated by changing attitudes to refugee protection during the 1970s and 1980s. The international refugee protection regime, as provided by the 1951 Convention relating to the Status of Refugees¹² and the 1967 Protocol,¹³ was established in response to the European refugee problem in the aftermath of World War Two, in order to protect persons fleeing their country on account of a 'well-founded fear of persecution'.¹⁴ However, as the system developed and as the number of the world's refugees increased, so attention shifted to the need for the system to take into account the root causes of mass exoduses in an effort to prevent them. Forced displacement was linked to human rights abuses in countries of origin¹⁵ which inevitably led to increased attention to the plight of the internally displaced.¹⁶

¹¹ Para.7, chap. II, part 1, s.A., Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons.

¹² Adopted on 28 July 1951. In United Nations, *A Compilation of International Instruments*, Vol. I, Second Part (1994) 638.

¹³ Taken note of by ECOSOC res. 1186 (XLI) (1966) and GA res. 2198 (XXI) (1966). In *International Instruments*, *ibid.*, at 655.

¹⁴ According to Article 1(A)(2) of the Convention relating to the Status of Refugees and the 1967 Protocol, a refugee is any person who '...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'.

¹⁵ See, for example, A. Zolberg, S. Aguayo and A. Suhrke, *Escape from Violence. Conflict and the Refugee Crisis in the Developing World* (1989) 258-259.

¹⁶ As Roberta Cohen observes: 'Part of the impetus for addressing the problem [of internal displacement] grows out of the international community's interest in averting or preventing mass refugee flows. Effectively dealing with the problems of persons still in their countries of origin is believed to offer the best hope of stemming the growing tide of refugees and asylum seekers'. R. Cohen, *International Protection for Internally Displaced Persons - Next Steps*. RPG Focus, Focus Paper No. 2 (1994).

However, the major impetus behind international recognition of the problem of internal displacement lay with a group of NGOs, mobilised as a result of problems encountered in gaining access in the field to large numbers of ‘internal refugees’ who were in need of assistance and protection. For Martin Macpherson of the Friends World Committee for Consultation (Quakers), Beth Ferris of the World Council of Churches (WCC), and Roberta Cohen of the Refugee Policy Group (RPG) there was an urgent need to raise the issue at the international level. In January 1990, the Quaker UN Office in Geneva brought together diplomats and representatives of intergovernmental and non-governmental organisations to discuss the issue and ways in which to proceed. Although the discussions were productive they were also cautious. The Cold War was winding down and there was uncertainty over the future and the manner in which the UN could proceed with an issue so clearly within the domestic jurisdiction of states. Representatives of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Programme (UNDP) and a number of diplomats questioned whether this was an issue for the UN, that its magnitude and internal nature raised too many potential problems for the UN. Undeterred, Macpherson, Ferris and Cohen continued to discuss possible options for raising the issue. Of these, the then Sub-Commission on Prevention of Discrimination and Protection of Minorities was considered inappropriate as it was not an academic study that was required at this point. UNHCR’s Executive Committee was primarily concerned with refugee issues. Given that the General Assembly was less accessible to NGOs and ostensibly a political body, this effectively left the Commission on Human Rights.

In consultation with WCC, and informally with the International Committee of the Red Cross (ICRC) and UNHCR, Macpherson drafted a written statement for submission to the Commission in 1991 in the form of a draft resolution in order to assist the Commission in taking the issue forward.¹⁷ Macpherson harboured no particular expectations that the issue would be taken up at that session of the Commission. Rather, the statement was intended as a tool for engaging States in dialogue on the issue. However, during the session, Macpherson raised the issue at a

¹⁷ *Written statement submitted by the Commission of the Churches on International Affairs and the Friends World Committee for Consultation (Quakers), non-governmental organisations in consultative status (category II)*. UN doc. E/CN.4/1991/NGO/1 (1991).

meeting convened by the French mission in Geneva between human rights-minded diplomats, present in their personal capacity, and NGOs. The Austrian delegate requested to see the statement and later agreed to take up the issue on the grounds that it was an important issue and something needed to be done. Austria subsequently introduced a draft resolution on internally displaced persons, based for the most part on the Quaker's written statement, which was adopted without a vote.¹⁸

The key feature of the resolution was a request for an analytical report from the Secretary-General on the human rights dimensions of internal displacement. While this was a significant result for the NGO community it was also no time for complacency. It was necessary to ensure firstly, that the analytical report did not get 'lost' within the UN system; and secondly, that NGOs remained firmly in the driving seat. Both these tasks were facilitated in June 1991 at an international conference in Washington DC on human rights protection for internally displaced persons, convened by the RPG. The conference was attended by a broad range of international experts including human rights lawyers, experts from humanitarian organisations, UN and regional organisation officials, and government officials. Addresses were given by Sadako Ogata, UN High Commissioner for Refugees, and James Grant, Executive Director of the UN Children's Fund (UNICEF). Also participating was Georges Mautner-Markhoff, chief of the branch at the UN Centre for Human Rights responsible for drafting the analytical report.

The conference was ostensibly geared towards discussing the international legal framework and the appointment of a UN human rights mechanism on internally displaced persons. With regard to the former, participants emphasised the need to clarify and strengthen the relevant existing international norms. To the extent to which new international standards were necessary, most participants favoured their incremental development through block building resolutions, declarations and codes of conduct leading to customary international law and the adoption of binding treaties.¹⁹ Regarding the establishment of a UN human rights mechanism, it was

¹⁸ In introducing the draft resolution on behalf of the sponsors, Austria expressed its appreciation to the Quakers and the Commission of the Churches for the written statement. *Summary record of the 52nd meeting*. UN doc. E/CN.4/1991/SR.52 (1991), at para.38.

¹⁹ RPG, *Human Rights Protection for Internally Displaced Persons: An International Conference, June 24-25 1991* (1991) 22-23.

recommended that the Commission appoint a working group or rapporteur for internally displaced persons. In this regard, the participants expressed the hope that the UN Secretariat report being prepared on internally displaced persons would ‘support this proposal and urge the establishment of effective machinery to address the problem of internal displacement.’²⁰

Both the legal and institutional aspects of the issue were subsequently addressed in the analytical report.²¹ The report noted that although the problems and needs of the internally displaced can be defined in terms of already recognised rights, the situation in which they find themselves differs significantly from that of the general population.²² Consequently, it suggested the elaboration of more specific principles or guidelines concerning the treatment which should be accorded to the internally displaced in order to ensure effective protection of their human rights.²³ With regard to the appointment of a UN human rights mechanism, the report concluded that if the UN human rights system was to assume the responsibility of participating more actively in the response of the international community to humanitarian crises involving displaced persons, it would be required to appoint a focal point for internal displacement issues.²⁴

The report was submitted to the Commission in 1992. Hungary considered it to contain a fair and comprehensive analysis of the basic situations which could serve as a starting point for further deliberations by a working group of the Commission. A joint statement by the Quakers, WCC, and Caritas Internationalis proposed the establishment of a working group of five independent experts to examine the protection needs of internally displaced persons and submit a report on its findings to

²⁰ Ibid., at 23.

²¹ UN doc. E/CN.4/1992/23 (1992).

²² According to the report: ‘Internally displaced persons typically have suffered from a series of human rights violations which add up to a characteristic and distinctive syndrome. The cumulative effect of these violations, together with the fact of having been forced to flee their home and the difficulties, risks and deprivations invariably associated with their new situation, make their needs qualitatively different from those of other persons.’ Ibid., para.91.

²³ Ibid., para.92.

²⁴ Ibid., para.110.

the Commission's next session.²⁵ The RPG referred to the Washington Conference and its recommendation that the Commission appoint a working group or rapporteur to address the protection needs of the internally displaced.²⁶ Finally, the UN High Commissioner for Refugees hoped the Commission would agree on an appropriate follow-up mechanism to enhance the protection of the internally displaced.²⁷

Consultations between Cohen, Macpherson and Ambassador Christian Strohal of Austria ensured that the draft resolution reflected the significant features of the analytical report, notably, the appointment of a focal point and an examination of the existing legal framework, although when it came to adopting the resolution, the appointment of a focal point was a delicate issue. The initial draft provided for an 'independent expert' (opted for by the Western group on the grounds that a single expert would be more effective and less costly than a working group) gathering all the requisite information and the views of interested Governments, and submitting a complete study on the question to the Commission at its next session. India, however, had reservations as to whether this was the most appropriate way in which to proceed, stating that it would be preferable for the Commission to extend by one year the mandate conferred upon the Secretary-General rather than transferring that mandate to an independent expert.²⁸ In the search for consensus, Austria reintroduced the draft resolution which now requested the Secretary-General to designate a 'representative' to seek views and information from all governments on the human rights issues related to internally displaced persons, including an examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and assistance to internally displaced persons.²⁹ It also encouraged the Secretary-General to seek also views and information from the specialised agencies, relevant UN organs and experts in all regions on these issues and to present a comprehensive study to the Commission at its next session, identifying existing laws

²⁵ Ibid., para.22.

²⁶ *Written statement submitted by the Refugee Policy Group, a non-governmental organisation in consultative status (category II)*. UN doc. E/CN.4/1992/NGO/21 (1992).

²⁷ *Summary record of the 35th meeting*. UN doc. E/CN.4/1992/SR.35 (1992), para.12.

²⁸ *Summary record of the 54th meeting*. UN doc. E/CN.4/1992/SR.54 (1992), para.48.

²⁹ CHR res. 1992/73 (1992).

and mechanisms and alternatives for addressing the protection needs not adequately covered by existing instruments. As such the key elements necessary for taking the issue forward were maintained. The resolution was adopted by consensus by the Commission.

In July 1992, and following intensive consultations with NGOs, Francis Deng of the Sudan was appointed as the representative. Deng, a senior research fellow at the Brookings Institution in Washington DC and a participant in the June 1991 Washington conference, was considered appropriate for the post in several respects. His academic credentials were impressive, having held teaching and research posts in the Sudan and the United States and having written about human rights issues and served in the UN Human Rights Division. Furthermore, as a former diplomat and former Minister of State for Foreign Affairs of the Sudan he was considered to have appropriate diplomatic and governmental experience. Political sensitivities required that the post go to an African and preferably one from a country where internal displacement was an issue. As a descendant of a leading family of the Sudan's Dinka people who have suffered massive displacement from civil war, Deng would, as then Secretary-General Boutros-Ghali put it, 'know what the problem is all about'.³⁰ For the Western Group Deng was seen as a safe pair of hands, given his origins in the Christian South of the Sudan and his academic and political connections with the US. Overall, he was considered non-threatening to states.

Deng embarked upon preparing the comprehensive study, sending a questionnaire to all Governments, organisations and agencies specified in the resolution. In addition, Deng undertook consultations outside the UN framework with a number of NGOs and with experts from the Brookings Institution and the RPG, both of which provided funding for his consultations and organised working groups for further consultations. Deng also requested the Harvard Law School Human Rights Programme and the Yale Law School Schell Centre for Human Rights to jointly draft an analysis of existing legal regimes pertinent to internally displaced persons and proposals for new institutional arrangements.

³⁰ Cited in D.A. Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement* (1998) 6.

The comprehensive study was submitted to the Commission in 1993. On the question of legal standards, it noted a tension between those who felt that existing law provided adequate coverage for the rights of the internally displaced and those who advocated a new regime. According to the report: 'Both are motivated by the same policy considerations. Those who consider the present law adequate want to strengthen its protection by reaffirming it and focusing attention on implementation and enforcement mechanisms.' Those advocating a new regime 'are particularly concerned that the internally displaced often suffer unusual hardships, deprivations and gross violations of human rights which require special attention and remedial measures.' Navigating between the two, the study concluded that it would be useful to prepare a compilation and analysis of relevant international standards which would include a commentary on the implications of these standards, the extent to which they address the problems faced by internally displaced persons, and practical proposals for their implementation. It was considered that such a compilation 'would be of great practical value to Governments and international bodies' and once completed, the question of what additional standards specifically concerning internally displaced persons are needed could then be addressed.³¹

As concerns the institutional aspect of the issue, the study noted the absence of a single organisation within the UN system with specific responsibility for the internally displaced and suggested that the issue be added to the mandate of an existing agency or that an equivalent body be established for the internally displaced.³² Until this issue was resolved, it recommended that those UN agencies whose mandates were relevant to the internally displaced should consider establishing units to focus on the problem. Protection, however, would still need to be addressed by a human rights mechanism appointed by the Commission. As to the form such a mechanism should take - representative of the Secretary-General, rapporteur or working group of the Commission - that of representative of the Secretary-General was considered better suited to the task 'because the needs and challenges associated with the internally displaced cut across so many operational and organisational lines within the United

³¹ *Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73.* UN doc. E/CN.4/1993/35 (1993), paras.55-88.

³² *Ibid.*, para.285.

Nations system ... such a mechanism, to be most effective, would benefit from an institutional association with the office of the Secretary-General'.³³

Russia considered the comprehensive study to be a 'commendable report' containing 'very pertinent recommendations'.³⁴ Norway recommended the continuation of the mandate of the Representative,³⁵ and Austria was 'strongly of the opinion that the Representative's mandate should be extended, to enable him to continue the work he had so competently begun'.³⁶ Others were more cautious. Underlining the tension between international protection for the internally displaced and state sovereignty, the Sudan stated that human rights protection was only part of the problem of the internally displaced. Such cases as Bosnia and Herzegovina or Somalia should not be confused with other situations, where national governments were providing protection and simply required material assistance from the international community - which was, apparently, the case in the Sudan.³⁷ Sri Lanka and India stated that internal displacement has dimensions that go beyond the specific issues of human rights and therefore recommended caution. Both delegations stressed that the causes of displacement had also to be considered in the context of environmental and socio-economic factors. Also, emphasis only on human rights was limited because it did not usually highlight 'terrorist activities' by non-state actors.³⁸ India stated that further work by the Commission on this subject should be based on the 'actual experience of member states that have been suffering from internal displacements for a variety of reasons'.³⁹

Consultations between Deng, Cohen and Austria ensured that the subsequent draft resolution reflected those elements of the report which were necessary for taking the issue forward. Noting that the Representative 'has identified a number of tasks

³³ Ibid., para.128.

³⁴ *Summary record of the 38th meeting*. UN doc. E/CN.4/1993/SR.38 (1993), para.73.

³⁵ See F. Deng, *Protecting the Dispossessed: A Challenge for the International Community* (1993) 142.

³⁶ *Summary record of the 40th meeting*. UN doc. E/CN.4/1993/SR.40 (1993), paras.82-83.

³⁷ Ibid., at para.57.

³⁸ Deng, note 34 above, at 144-145.

³⁹ Ibid., at 145.

requiring further attention and study, including the compilation of existing rules and norms and the question of general guiding principles to govern the treatment of internally displaced persons', the Commission requested the Secretary-General to mandate his representative for a further two years 'to continue his work aimed at a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions, with a view to identifying, where required, ways and means of improving protection for and assistance to internally displaced persons'.⁴⁰

The development of the normative framework commenced during 1994. The Representative assembled a team of experts in international law who embarked upon the preparation of a two-part compilation and analysis of the legal norms. The first part of the compilation examined the relevant provisions of international law once people have been displaced. It concluded that while existing law covers many aspects of relevance to the situation of internally displaced persons, there nonetheless exists significant gaps and grey areas where the law fails to provide sufficient protection. Emphasising the need for better implementation of the relevant norms, the compilation made recommendations for addressing the identified gaps and grey areas with a view to ensuring a more comprehensive normative framework for the protection and assistance of the internally displaced.⁴¹ The second part of the compilation examined the legal aspects relating to protection against arbitrary displacement, finding that although many provisions in international law point to a general rule according to which forced displacement may be undertaken only exceptionally, on a non-discriminatory basis and not arbitrarily imposed, this protection is largely implicit. It concluded, therefore, that the legal basis for providing protection prior to displacement could be strengthened significantly by articulating a right not to be arbitrarily displaced.⁴²

⁴⁰ CHR res. 1993/95.

⁴¹ *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57. Compilation and analysis of legal norms.* UN doc. E/CN.4/1996/52/Add.2 (1996).

⁴² *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Addendum. Compilation and Analysis of Legal*

Following submission of the first part of the compilation to the Commission in 1996, the Representative and the legal team began to develop, on the basis of the compilation and at the request of the Commission,⁴³ a comprehensive normative framework of protection and assistance for the internally displaced. This resulted in the elaboration of a set of guiding principles which were finalised in January 1998 and submitted to the Commission on Human Rights at its fifty-fourth session as the Guiding Principles on Internal Displacement.⁴⁴ A key and distinctive feature of the development of the normative framework has been the collaborative nature of the process, which has brought together an increasingly broad range of intergovernmental and non-governmental actors who have enlisted and obtained government support within a global public policy network.

Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement. UN doc. E/CN.4/1998/53/Add.1 (1998).

⁴³ See CHR res. 1996/52.

⁴⁴ *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Addendum. Guiding Principles on Internal Displacement.* UN doc. E/CN.4/1998/53/Add.2 (1998).

3. ROLES OF DIFFERENT ACTORS

The different non-governmental, intergovernmental and governmental actors in the network contributed to the development of the Guiding Principles in three important respects: the provision of knowledge or expertise; the provision of funds; and eliciting the political support or acquiescence of states.

3.1 Provision of Expertise

Expertise is a fundamental requirement in human rights standard-setting if one is to avoid legal inadequacies in the draft instrument and normative conflict with other instruments. It is, however, a requirement which is not always present to a sufficient degree in the negotiation and drafting of human rights instruments within the UN.⁴⁵ The development of the Guiding Principles within a global public policy network has allowed the Representative to avoid such pit falls and secure the assistance of genuine experts. The Representative has been assisted at all stages in the development of the normative framework by a team of independent legal experts, composed of leading academics as well as legal experts from UNHCR, ICRC and the UN Centre for Human Rights. The Principles have also benefited at various stages from the expert input of individuals in other international agencies, as well as research institutions and NGOs.

3.2 Funding

The development of the normative framework has depended on funding from an extensive range of sources, specifically, grant awarding trusts and foundations, research institutions, governments and intergovernmental and non-governmental organisations. The importance of the input of these actors into the process cannot be understated. The on-going financial crisis at the UN is well known and the budgetary problems of the Organisation as a whole have obvious repercussions for its many

⁴⁵ See, for example, Eide, 'The Sub-Commission on Prevention of Discrimination and Protection of Minorities', in P. Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (1992) 254; and Quinn, 'The General Assembly into the 1990s', in Alston, *ibid.*, at 66.

component parts, not least among them the human rights bodies. However, the development of the Principles outside the UN framework has permitted the mobilisation of a broader range of sources, thereby minimising dependency on the extremely limited resources of the UN.

3.3 Eliciting the Support/Acquiescence of States

The credibility and potential utility of the efforts of the various actors in developing the Guiding Principles has depended on the support, or at the least the acquiescence, of states in both the Commission on Human Rights and the General Assembly. For example, undertaking the compilation was effectively subject to approval from the Commission in 1993. Similarly, the drafting of the Guiding Principles was formally dependent upon a Commission resolution in 1996 calling upon the Representative to develop an appropriate framework for the protection of the internally displaced and a resolution in 1997 acknowledging the drafting of the Guiding Principles.⁴⁶ The potential utility of the Guiding Principles for providing a protection framework for the internally displaced depended upon their acknowledgement by the Commission in 1998. Eliciting the necessary support was undertaken by a number of states, international agencies and NGOs.

⁴⁶ CHR res. 1997/39.

4. STRUCTURE AND PROCESSES IN THE NETWORK

In view of the roles of the different actors in developing the normative framework, it is possible to identify three main processes in the network: a drafting process; a funding process; and a political process.

4.1 Drafting Process

The drafting process is marked by two particularly important features: the high level of participation of experts in the process; and the gradual widening of the drafting process beyond the core legal team involved with drafting the compilation and the principles, to include as broad a range as possible of actors involved in providing protection and assistance to the internally displaced.

In May 1994, prompted by both the very limited resources at his disposal and the importance of ensuring a high quality compilation and analysis of legal norms, the Representative, with the support of RPG, the Brookings Institution and the Government of Austria, requested the assistance of three highly accredited institutions in international law: the Vienna-based Ludwig Boltzmann Institute of Human Rights, and the Washington based American Society of International Law (ASIL) and the International Human Rights Law Group (IHRIG).⁴⁷ Two compilations/commentaries were prepared, one by Professor Manfred Nowak and Otto Linher for the Ludwig Boltzmann Institute and the other by Professor Robert Goldman, Cecile Meijer and Janelle Diller for the ASIL/IHRIG. The Boltzmann paper provided a consolidation of the provisions found in international human rights law and humanitarian law by selecting the rights considered to be most relevant to the protection of the internally displaced (the rights approach). The ASIL/IHRIG paper sought to identify the needs of internally displaced persons and to then describe the relevant human rights and humanitarian law that corresponded to these needs in three situations: situations of internal tensions and disturbances and/or disasters; non-international armed conflicts; and international armed conflict (the needs approach). Both papers arrived at similar

⁴⁷ The Government of Austria brought in the Ludwig Boltzmann Institute, while RPG and the Brookings Institution brought in ASIL/IHRIG.

conclusions as to the need for an elaboration of a body of principles to address areas where there existed legal uncertainty or where clarification of norms was beneficial.

In conjunction with the preparation of the compilations/commentaries, the RPG and the Brookings Institution together with the ASIL and the IHRLG, convened several meetings of legal experts to assist the team, including, Louis Sohn, Tom Farer, Charlotte Ku, Arthur Helton, Antonio Cancado Trindade, Louis Henkin, Luke Lee, David Martin and Thomas Buergenthal, as well as representatives of the ICRC, UNHCR, the Department of Humanitarian Affairs (DHA), the International Organisation for Migration (IOM), the US Committee for Refugees, Human Rights Watch, the then Conference on Security and Cooperation in Europe (CSCE), and the Inter-American Commission on Human Rights.

In October 1994, the Austrian Ministry of Foreign Affairs hosted a legal round table to review the two compilations/commentaries, and the first formal effort to open the process up to include other relevant actors. In addition to the Representative and the legal team, participants included representatives from international agencies and organisations such as the UN Centre for Human Rights, UNHCR, DHA, IOM, ICRC; NGOs, namely, RPG, the Norwegian Refugee Council (NRC), the Quakers; as well as research institutions and academics. The ASIL/IHRLG needs approach was considered helpful in identifying not only the existing legal standards but also the gaps and weaknesses in such protection and it was decided that this would form the basis of the final compilation. The envisaged body of principles on the other hand, would follow a 'rights' approach as contained in the Ludwig Boltzmann paper. To this end it was recommended that the two texts be merged to form the compilation and analysis of legal norms to be submitted to the Commission.

Although the Vienna roundtable took place in a 'congenial, cooperative spirit', there were nevertheless tensions between the European and American experts. While the papers were conceptually different in their approach to the issue, there was an additional difference in terms of the body of 'hard' international law on which they were prepared to draw, stemming from different perceptions as to what constitutes customary international law. Reflecting the rather imprecise nature of customary international law which is traditionally considered to develop from a general practice

accepted by states as law,⁴⁸ the European experts relied upon principles of customary law only when necessary and only in instances where the principle in question had been accepted as customary by a large number of States, such as through its codification in an international treaty. The US experts on the other hand, tended to assert that a specific principle constituted customary international law by virtue of its inclusion and repetition in certain UN resolutions or declarations and other such pronouncements. This approach is common among international lawyers in the US on account of America's low rate of ratification of human rights treaties.⁴⁹ Thus US lawyers have resorted to a more flexible approach to custom which is based more on what states say than what they do. The result has been a rather extensive body of customary law principles which are considered binding on all states and therefore, applicable before US courts. This approach is not without its problems, however, hence the tensions that arose between the European and US teams.

The middle ground between the two approaches was found by Professor Walter Kalin of the University of Bern who participated in the Vienna roundtable and was brought into the legal team at a meeting in Geneva in May 1995. The meeting was convened to discuss possible ways in which to merge the two compilations/commentaries. On the basis of the discussions, Kalin merged the two documents during the summer of 1995. Given that the US approach ensured that all the needs of the internally displaced were covered by the legal analysis, Kalin took the US paper as the basis for the compilation and filled in the hard law as contained in the European paper as and where necessary, placing the emphasis on hard law provisions as contained in treaties and legally binding judgements of regional human rights

⁴⁸ Along with treaties or conventions, customary international law is another of the formal sources of international law as found in Art.38(1)(b) of the Statute of the International Court of Justice according to which the Court shall apply 'international custom as evidence of a general practice accepted as law'. This is generally considered to denote the essence of custom from which it is possible to identify its two basic elements: state practice and *opinio juris* which refers to the belief of states that a particular form of conduct or action is legally obligatory. See further, I. Brownlie, *Principles of Public International Law* (1999) 4-11, and R. Jennings and A. Watts, *Oppenheim's International Law* (1992) 27.

⁴⁹ See, for example, Lillich, 'The Constitution and International Human Rights Law', 83 *Am. J. Int'l. L.* (1989) 856-7. For a trenchant critique of this approach to customary law formation, see Alston and Simma, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles', 12 *Australian Yearbook of Int'l. L.* (1992) 82.

courts, and reinforcing this with soft law provisions contained in documents such as declarations, resolutions, and guidelines. The merged document was reviewed and approved at a small expert meeting in Washington DC in September 1995 and was submitted to the Commission in 1996 as the compilation and analysis of legal norms.

The Commission subsequently ‘called upon’ the Representative to proceed with the development of an appropriate framework,⁵⁰ and in June 1996 a meeting was organised by Cohen and the Representative in Geneva to begin drafting the principles. The meeting was attended by a small, but expanded team of legal experts, including Nowak, Goldman, Meijer, Kalin, as well as Jean-Francois Durieux of UNHCR, Jean-Philippe Lavoyer and Toni Pfanner of ICRC, and Daniel Helle and Maria Stavropoulou from the UN Centre for Human Rights, all of whom had become part of the team following the Vienna roundtable. The participation of staff members from UNHCR and ICRC was particularly important because of the operational role both organisations play with the internally displaced. Secondly, the participation of ICRC was politically crucial given their initial concerns that the process of developing the normative framework should not undermine international humanitarian law. However, by 1996, ICRC expressed the view that they would not have a problem with a set of principles, code of conduct or declaration, which clarified gaps and reaffirmed existing rules and did not replace existing legal instruments or effective implementation of the law.⁵¹

The June meeting also reviewed the second part of the compilation and analysis of legal norms which was being drafted by Stavropoulou and which focused on the legal norms relevant to protection from displacement. Deng considered this an important aspect of the process in order to establish a *comprehensive* legal framework for the internally displaced. Moreover, there had been calls from UNHCR among others that the principles cover not only actual displacement, but the pre-displacement phase as well in order to increase legal protection against displacement.

A second meeting of the legal team was convened in Geneva in October 1996 to further discuss the draft principles. With a view to gaining greater international acceptance for the principles a meeting was also held to obtain the views of a wide

⁵⁰ CHR res. 1996/52.

⁵¹ *Summary record of the 33rd meeting*. E/CN.4/1996/SR.33 (1996), para.58.

group of UN agencies and NGOs, including representatives of DHA, UNHCR, IOM, WHO, UNDP, WFP; and representatives from ICRC, the Quakers, the International Commission of Jurists, and RPG. The draft principles were refined further at a meeting of the legal team in Geneva in April 1997 which also reviewed the second part of the compilation and analysis.

In addition to the various formal drafting meetings, the drafting process was also characterised by less formal aspects. For example, outside the framework of the meetings of the legal team, comments were actively solicited from NGOs and international agencies. Not only did this maintain broad involvement in, and support for the process, it also assisted in improving the quality and relevance of the draft principles. The Women's Commission on Refugee Women and Children, for example, helped to sharpen the provisions on women and children and the ICRC and Human Rights Watch helped to refine articles on protection.

The draft principles were finalised in January 1998 at an expert consultation in Vienna hosted by the Austrian Ministry of Foreign Affairs. Recognising that the normative process could no longer be led by the legal team, that responsibility for taking the Guiding Principles forward from here lay with UN agencies, NGOs, and regional organisations who would be key in the implementation and application of the principles, the meeting opened up the process as broadly as possible. In addition to the legal team it brought together some 40 participants, including human rights and legal experts from Africa, America, Europe, Asia and the Middle East; representatives of UN agencies such as UNDP, the Office of the Emergency Relief Coordinator, UNHCR, UNICEF, IOM, ICRC, UN Centre for International Crime Prevention, WFP; representatives of regional organisations, namely the Organisation of African Unity (OAU), the Organisation of American States (OAS), and the Organisation for Security and Cooperation in Europe (OSCE); and representatives of NGOs such as the Quakers, Women's Commission for Refugee Women and Children, the NRC's Global IDP Survey, the Open Society Institute, RPG, Human Rights Watch, and the International Commission of Jurists.

Rather than being a potentially stale drafting session in which participants systematically go through the draft principles one by one, the legal team decided at its meeting in April 1997 that the expert consultation should be an opportunity for comment on the draft principles and also discussion of important issues covered by the

principles. To this end, the consultation was arranged around certain ‘themes’ such as the quest for a definition, protection from arbitrary displacement, protection of displaced populations, access to humanitarian assistance, women and children, return and reintegration or resettlement, and application of the principles, at the international, regional and national levels. The inclusion of such a broad range of actors was not without its problems however. For example, tensions arose between the legal team and some of the agencies who would have preferred to see more practical or specific measures which they considered necessary to give effect to a particular right but which were considered by the legal team to detract from the legal nature of the principles. Overall though, the participants strongly endorsed the Principles and emphasised their wide dissemination among Governments, UN agencies, international and regional organisations, and NGOs. The meeting concluded with a commitment on the part of the participants to undertake efforts to disseminate, promote and apply the Principles.

4.2 Funding Process

An essential component of the development of the normative framework was, of course, the availability of adequate funds to support the substantial costs incurred in the drafting process such as travel expenses to the various meetings, hotel accommodation and meals, meeting facilities, not to mention costs associated with document production, photocopying, secretarial support, telecommunication costs, postage/courier charges and such like. Moreover, as the process widened to include a broader range of actors, so costs increased accordingly. Meeting the various costs was well-beyond the very limited funds at the disposal of Deng in his capacity as the Representative of the Secretary-General - despite the financial and human support provided to the mandate by the Norwegian Government and, on a shorter-term basis, by Harvard University.⁵² It was, therefore, apparent early on that it would be necessary to go outside the UN system to find the necessary support.

⁵² In 1993 the Norwegian Government contributed US\$200,000 to the Centre for Human Rights to support the work of the mandate and to pay for an associate expert to assist the Representative. In addition, Harvard University funded an intern, Maria Stavropoulou, for six weeks during the summer of 1993 to assist the Representative and who was subsequently kept on at the Centre for Human Rights on short-term assignments.

Initial costs in relation to the two compilations/commentaries were met by a variety of sources. The Austrian Ministry of Foreign Affairs funded the Ludwig Boltzmann contribution while the ASIL/IHRLG contribution received support from the Jacob Blaustein Institute for the Advancement of Human Rights, the Hauser Foundation, the European Human Rights Foundation, the UN Centre for Human Rights and, in its latter stages, the Brookings Institution Project on Internal Displacement. It should be noted, however, that the legal team was not paid for their work. Some of the researchers received ‘honoraria’ and their organisations some funds, but Goldman, Nowak, Kalin, Stavropoulou etc. did not receive personal compensation, but rather worked on the basis of ‘voluntary servitude’ as Goldman once described it.

The Brookings Institution Project was a key actor in the funding process. The Project was established following consultations between Deng and then UN Secretary-General Boutros-Ghali, at which the latter requested Deng, in addition to the normal requirements of his mandate, to conduct, in partnership with independent research institutions, an in-depth study of internal displacement and develop a comprehensive global strategy for providing effective protection, assistance, reintegration and development support to the internally displaced.⁵³ In response to this request, the Brookings Institution established the Project in association with the RPG. Roberta Cohen, senior adviser to RPG, joined the Project as associate and later co-director. The Project developed along the lines of the Representative’s mandate and, as a reflection of the severely limited human and material resources available to the Representative from the UN, has played an instrumental role in raising and providing funds for the development of the normative framework.

Funding for the Project itself has come from a variety of sources such as the Office of the Secretary-General, the Governments of Norway, the Netherlands, and Sweden, as well as the McKnight Foundation. Funds earmarked specifically for the development of the normative framework were provided by the Ford Foundation. The Ford Foundation grant contributed towards expenses arising in connection with the meetings of the legal team in May and September 1995, June and October 1996, and

⁵³ For an overview of the Brookings Institution Project on Internal Displacement, its activities, and publications visit the website at <www.brook.edu/fp/projects/idp/idp.htm>

April 1997. The Project was not always the sole funder of these meetings however. The UN Centre for Human Rights funded the meeting costs, lodging and meals, as well as the travel expenses of the Representative at the May 1995 meeting, while the Project funded the international travel of seven of the participants. The Austrian Ministry of Foreign Affairs, as well as covering many of the costs arising from the October 1994 roundtable, also absorbed the accommodation and conference costs arising from the expert consultation in Vienna in 1998.

In order to meet the travel expenses for the Vienna consultation (which was originally planned for the fall of 1997) it became apparent during the course of 1996 and onwards that it would be necessary to raise extra funds in addition to those provided by the Ford Foundation. The process of developing and refining the Guiding Principles was proving to be a far more complex undertaking than originally envisaged. Consequently, the drafting process was taking more time and meetings than was foreseen in the original proposal to the Ford Foundation. Rather than the three meetings of the drafting group in June and October 1996 and April 1997, the original proposal had envisaged only one. Also, the original proposal had not envisaged the second meeting in October 1996 with UN agencies and NGOs which was considered crucial in order to elicit their views prior to the presentation of the draft principles to the expert consultation in Vienna. In addition, the realisation that the draft principles should also cover the pre-displacement phase as well as actual displacement also served to slow the process down.

During 1996 and 1997 Deng and Cohen approached various intergovernmental and non-governmental sources in an effort to raise additional funds. Funds, however, were not readily forthcoming. The second part of the compilation was completed on a completely voluntary basis by Stavropoulou and Kalin with the Project absorbing the additional costs of the development of the principles. Additional funds were necessary, however, to cover the travel expenses of participants to the expert consultation in Vienna. During August 1997 the Representative sought funds from a variety of sources such as the UN Centre for Human Rights and UNHCR, both of whom provided additional funds. UNHCR for example, covered the travel costs of participants from Africa, Asia and Latin America.

4.3 Political Process

A third and equally important feature of the development of the Guiding Principles has been, of course, the political process. Eliciting the political support of states or at least the acquiescence of potentially recalcitrant states for the development of the normative framework was crucial in order to keep the process moving and to keep it moving in the direction that Deng, Cohen and the legal team saw fit. This was particularly important given the innovative nature of the approach of going outside the UN framework and the extremely limited involvement of States in the drafting process. It was important, therefore, to mobilise the support of States, through the Commission and the General Assembly. This was achieved through a combination of means.

Firstly, the resolutions of the Commission and the General Assembly were drafted so as to reflect and support the conclusions and recommendations contained in the reports of the Representative, i.e., the measures which Deng, Cohen and the legal team saw as the most appropriate course of action for the continued development of the normative framework. Crucial in this regard was the role of the sponsors of the draft resolutions - Austria in the Commission and Norway in the General Assembly - to galvanise states support for the relevant parts of the report in the draft resolution.

Secondly, the language in the resolutions reaffirmed that the development of the normative framework was being pursued in response to requests by the Commission or the General Assembly. For example, in its 1993 resolution the Commission noted that the Representative had identified a number of tasks requiring further attention and study, including the compilation of existing rules and norms and the question of guiding principles and subsequently requested the Secretary-General to mandate the Representative for period of two years to continue his work to identify ways and means of improved protection and assistance for internally displaced persons.⁵⁴

Thirdly, the affirmation that the process was being directed by States was further enhanced through the adoption of General Assembly resolutions which both reflected the concerns of the legal team, and also called for a specific course of action from the Commission. Thus in December 1995 the General Assembly called upon the

⁵⁴ CHR res. 1993/95.

Commission to consider the question of establishing an appropriate legal framework on the basis of the compilation and analysis of legal norms.⁵⁵ Subsequently, the Commission's 1996 resolution referred to the General Assembly's request and accordingly called upon the Representative to continue, on the basis of his compilation, to develop an appropriate framework for the protection of the internally displaced.⁵⁶ Similarly, in 1997, the Commission referred again to the request of the General Assembly and subsequently encouraged the Representative to continue, on the basis of the compilation, to develop a comprehensive framework for the protection of internally displaced persons, taking note of his preparations for guiding principles.⁵⁷

Finally, the reports and statements of the Representative to the Commission and General Assembly reinforced the affirmation that his work was directed by the Commission and the General Assembly. For example, the Representative's report to the Commission in 1995 notes that '[b]oth the Commission on Human Rights and the General Assembly have encouraged the preparation of a compilation and commentary on existing norms.'⁵⁸ Similarly, the Representative's statement to the Commission in 1995 noted that significant progress has been made in the area of legal standards and that a broad consensus had emerged around the Commission's request for a compilation and analysis of legal norms.

These various strategies were not, however, infallible. This was apparent at the Commission's 1998 session to which the Guiding Principles were submitted. Some sort of recognition of the Principles from the Commission was crucial to enhance their standing and potential use, though Deng, Cohen and the legal team were under no illusions that this would be necessarily straightforward. During consultations with Austria immediately after the expert consultation in January, it was noted that the general political climate and the fact that the Representative's mandate was up for renewal would make discussions at the 1998 session more difficult. Consequently, it

⁵⁵ GA res. 50/195 (1995).

⁵⁶ CHR res. 1996/52.

⁵⁷ CHR res. 1997/39.

⁵⁸ *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution resolutions 1993/95 and 1994/68*. UN doc. E/CN.4/1995/50 (1995), para.106.

was felt that strong endorsement of the Principles would be unrealistic, and that perhaps the most that could be expected was that the Commission ‘takes note with appreciation’ of the Principles, and that they would pass the Commission without any major obstacles. To this end, it was considered necessary for the Representative to be present at the Commission for a longer period in order to mobilise support, especially among regional groupings. It was also felt to be important to encourage support for the Guiding Principles among UN agencies.

These concerns were not without foundation. At the Commission, Mexico - rather unsurprisingly, given its traditional sensitivity to encroachment upon its domestic jurisdiction - expressed reservations as to the manner in which the Guiding Principles were to be received by the Commission, the gist of its concerns being that what was happening here was some form of standard-setting by the back-door. In particular, Mexico had a problem with the language of the draft resolution, according to which the Commission ‘takes note’ of the report of the Representative, including the study on the legal aspects relating to protection against arbitrary displacement and the Guiding Principles. Mexico stated its regret that the Representative’s report, including ‘what the Representative understood as the guiding principles’ was distributed so late on in the proceedings of the Commission - they were not available until the day on which the internal displacement issue was itself on the agenda, due to the heavy administrative burden placed on the secretariat. As such Mexico was unable to ‘pronounce any judgement’ on the guiding principles. Mexico alluded further to its concerns regarding standard-setting-by-the-back-door by referring to a General Assembly resolution which lists certain guidelines which Member States and UN bodies should bear in mind in developing international instruments in the field of human rights.⁵⁹ Of these, Mexico referred specifically to the need for consistency with existing international human rights law and broad international i.e., state support.

Mexico, however, declined from objecting to the consensus adoption of the draft resolution. In part this was due to amendments which Austria had introduced to the draft resolution to accommodate the concerns of Mexico as well as a few other states, including India and Russia. In particular, the draft resolution was revised to read that the Commission simply ‘takes note’ of the report of the Representative,

⁵⁹ GA res. 41/120 (1986).

including the study on the legal aspects relating to protection against arbitrary displacement and the guiding principles. Although Mexico still had a problem with this wording, pursuant to the January consultations, the original draft resolution stated that the Commission ‘takes note with appreciation’.

Mexico’s reluctance to push its concerns also lay in the fact that the draft resolution had an impressive number of co-sponsors reflecting a wide geographical distribution, including from Latin America, and a number of states to which the Representative had undertaken missions.⁶⁰ This was another crucial aspect of the political process - forming a coalition of state support, preferably reflecting a wide geographical distribution. The greater the number of co-sponsors and the broader the geographical representation, the politically less feasible it becomes for recalcitrant states to obstruct the process. One way of facilitating this was to maintain language in draft resolutions which had been agreed to by states in previous resolutions on the issue. This allowed the sponsors to approach co-sponsors of previous resolutions on the issue and to seek their support for the draft resolution in question on the grounds that it contained language which they had accepted in the past. Another was lobbying – at various points during the development of the normative framework NGOs and experts at the different meetings took on the task of bringing governments on board. For example, Adama Dieng of the International Commission of Jurists lobbied African Governments; in Latin America, Goldman and Cohen participated in a regional conference on refugees and displaced persons, convened in Costa Rica in 1994 and attended by Latin American Governments, at which they pushed for support for development of the normative framework.⁶¹

⁶⁰ The following 55 countries sponsored the resolution which was adopted without a vote: Afghanistan, Angola, Argentina, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, Chile, Colombia, Congo, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Georgia, Germany, Greece, Guatemala, Guinea, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mozambique, Netherlands, Nicaragua, Norway, Peru, Poland, Portugal, Republic of Korea, Russian Federation, Rwanda, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Uganda, United States of America, Uruguay and Zambia.

⁶¹ See Cohen, ‘Internally Displaced Persons: Global and Regional Initiatives, Specific Protection Needs and the Importance of an Inter-Agency Framework’, in IIDH-ACNUR, *10 Años de la Declaración de Cartagena sobre Refugiados* (1995) 311.

Other political initiatives, undertaken prior to the Commission's session also account for the limited opposition to the Principles. Preceding their presentation to the Commission, the Principles were presented by Deng and Kalin to the UN Inter-Agency Standing Committee (IASC), on the recommendation of Sergio Vieira de Mello, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, with a view to gaining the support of the heads of the various UN agencies and the IASC itself, before their submission to States in the Commission. In March 1998 - and in no small measure facilitated by the inclusion of international agencies in the drafting process - the IASC adopted a decision welcoming the Guiding Principles and encouraging its members to share them with their executive boards and their staff, especially those in the field, and to apply them in their activities on behalf of internally displaced persons. The support of the agencies combined with that of sympathetic States in the Commission effectively made the Commission's acceptance of the Guiding Principles a *fait accompli*. The agencies for their part very much wanted the Guiding Principles to help them with their work. During the Commission's debate on the issue the agencies gave lengthy statements in support of the Guiding Principles and of their value to the agencies' operations. For example, in her statement to the Commission, Sadako Ogata referred to the Guiding Principles as being of considerable importance to the work of UNHCR. WFP described the Guiding Principles as being well-formulated, clear, concise and a useful tool for the humanitarian community. WFP also drew attention to the decision of the IASC which it intended to implement in due course. Similarly, UNICEF welcomed the Guiding Principles as an excellent reference point and programmatic tool to assist field based agencies and stated its commitment to gaining the widest endorsement possible and their dissemination within UNICEF and amongst its partners throughout the world. IOM, as well as welcoming and supporting the Guiding Principles stated that through their dissemination to field offices, it would encourage its field staff to become aware of the Principles and to ensure that programmes conform to the basic norms established. Finally, ICRC considered the Guiding Principles as constituting a useful tool to promote knowledge about relevant standards and stated its intention to promote their awareness both in the field and at headquarters. Governments also spoke in favour of the Principles. In addition to Austria, Switzerland, and Sweden, on behalf of the Nordic countries, the United States (represented by Cohen) went on record for the first time and agreed to sponsor the draft resolution which proved influential.

The reservations of Mexico were, however, not the only potential stumbling block which the political process needed to overcome. Another obstacle arose earlier on in the development of the normative framework and from a source far closer to the heart of the mandate - the Nordic countries - who were initially reluctant to proceed with the Guiding Principles until the Commission had first adopted the draft declaration on minimum humanitarian standards emanating from the Sub-Commission. The draft declaration was transmitted to the Commission in 1994 'with a view to its further elaboration and eventual adoption'.⁶² Given that this initiative continues some five years later to languish in the Commission, for the Nordics to have insisted on such a course could have had disastrous consequences for the development of the normative framework. Even without the benefit of hindsight though, Deng, Cohen and the legal team were acutely aware of the need to separate the development of the normative framework from the draft declaration, not least of all because the latter was not considered to address sufficiently, the protection concerns of the internally displaced.

The situation came to a head in 1996 following submission of the compilation and analysis of legal norms to the Commission. In the Commission's debate on the issue Austria, Cyprus, and Hungary strongly favoured the development of a legal framework. Sweden, however, speaking on behalf of the Nordic countries, recommended that the gaps in existing law identified in the compilation and analysis be addressed by the draft declaration of minimum humanitarian standards, and that a restatement of general principles of protection for internally displaced persons could be accomplished through the development of guidelines such as the UNHCR Guidelines for the Protection of Refugee Women.⁶³ Although the Commission's resolution enabled the Representative to proceed with the development of the normative framework by calling upon him 'to continue on the basis of his compilation and analysis of legal norms, to develop an appropriate framework', the original draft prepared by Austria was stronger. It called for the consolidation 'in one document' of the rights for the protection of the internally displaced, and explicitly called upon the Representative to develop a 'legal framework' for their protection.

⁶² Sub-Comm. res. 1994/26.

⁶³ *Summary record of the 39th meeting*. UN Doc. E/CN.4/1996/SR.39 (1996), para.49.

In order to de-link the process from the minimum humanitarian standards initiative, the legal team sought to cooperate with those involved in the draft declaration so that the two documents were seen and pursued as complimentary to each other which they were. It was felt that agreement between the two groups would persuade the Nordic countries to drop their objections to a separate set of principles. In addition to consulting with the Nordics, Deng also addressed a Nordic-sponsored workshop on the draft declaration, held in Cape Town in September 1996. Emphasising that the internally displaced need and deserve special attention, as demonstrated by the fact that the international community had established a mechanism for addressing their plight, the Representative proceeded to observe that while there is need for common humanitarian standards applicable to all persons in all situations, there is also need to address the specific needs of the internally displaced. For the Representative there was no conflict or competition between the development of the normative framework for the internally displaced and the draft declaration of minimum humanitarian standards. On the contrary he considered them ‘complementary’ and ‘mutually augmentive’.⁶⁴

The experience of the draft declaration was not without its benefits for the development of the normative framework for the internally displaced. Firstly, the ongoing problems in the elaboration and adoption of the draft declaration convinced the legal team that a declaration on internally displaced persons, which would inevitably require state participation in the drafting process, was not the way forward. Instead, it could easily bring the development of the normative framework grinding to a halt. Secondly, it was considered dangerous to provide states with an opportunity to re-draft existing international law which it could then weaken and undermine. This was especially feared by the ICRC. It was decided, therefore, to pursue the guiding principles option over that of a draft declaration. This also had the benefit of overcoming any remaining resistance from the Nordic states.

⁶⁴ ‘Proposed Declaration on Minimum Humanitarian Standards and the Internally Displaced: Remarks by Dr. Francis M. Deng, Representative of the Secretary-General on Internally Displaced Persons.’ On file with the author. See also *Minimum humanitarian standards. Report of the Secretary-General. Annex: Report of the workshop on minimum humanitarian standards.* UN doc. E/CN.4/1997/77/Add.1 (1997), paras.42-45.

4.4 Leadership

In view of the preceding discussions, it would seem pertinent to make some additional observations in regard to the structure and processes of the network, specifically concerning the issues of leadership and the global-local link. With regard to the former, it may be considered that the network has been led by the Representative. The Representative has certainly been the most high-profile actor in the network. To some extent this is a consequence of the formal institutional framework within which the development of the Guiding Principles has taken place. Given that the development of the normative framework has, at least in formal terms, been directed by States in the Commission on Human Rights and the General Assembly, it necessarily follows that the Representative is the key actor in the network. For example, the Commission's 1996 resolution called upon 'the Representative' to continue, on the basis of 'his' compilation, to develop an appropriate framework for the protection of the internally displaced. It did not call upon the Representative and the legal team, or only the legal team, to work to these ends.

Outside of the formal institutional framework, however, the Representative's role should be seen more as that of a catalyst, bringing together the various actors involved in the network with a view to developing the normative framework. It was, for example, the Representative who assembled the legal team in order to draft the compilation. From that point on the development of the normative framework and, ultimately, the Guiding Principles, was a collaborative effort led by the collective wisdom of the Representative, Cohen, the legal team and the various governmental, intergovernmental and non-governmental actors with whom they consulted and who provided financial and political support.

4.5 Local-Global Link

A further feature of the network which should be mentioned is the local-global link. Firstly, it should be noted that the network was not grass-roots based. On the contrary, the development of the normative framework was very much driven at the global level by Deng, Cohen and the legal team, with the support of the Brookings Institution Project, international agencies, international rather than local, grass-roots NGOs, and certain governments. Part of the reason for this lay in the lack of resources and staff;

but also in the difficulties that would have been encountered in trying to mobilise actors at the grass-roots level. Although in Latin America local NGOs and internally displaced communities are often well organised, this is not so much the case with the vast preponderance of the internally displaced, such as in Africa.

That is not to say, however, that the process did not ‘tap into’ the grass roots. The needs based approach of the ASIL/IHRLG was based on UN field reports, NGO fact-finding studies, and policy papers, and on the broad field experience of members of the legal team. In addition, drafts of the compilation/commentary were circulated for comments to a wide circle of field practitioners, UN emergency assistance officials, and academics. In drafting the Guiding Principles, the legal team drew on certain regional initiatives to the extent to which they were relevant to the international level, such as the principles on internal displacement drafted by the Permanent Consultation on Internal Displacement in the Americas. The January 1998 expert consultation, as earlier noted, included representatives from the various geographic areas and regional organisations, as well as representatives of implementing agencies with a view to making the Guiding Principles relevant to the local level.

5. OUTCOME AND PROSPECTS OF THE NETWORK

What then are the outcome and prospects of the network? With regard to the former, it is clear that the network has achieved the intended result of providing a normative response to the protection and assistance needs of the internally displaced. The Principles constitute a broad and progressive restatement of existing international law which seeks to extend the broadest possible range of human rights protection to the internally displaced and to a greater extent than states may have been inclined had the drafting taken place within the confines of the state-centred treaty-making process.

In terms of prospects, certain actors in the network are still very much involved, not so much with the development of the Guiding Principles as with giving them practical meaning in the field. Underlining the rationale for making the process of developing the Guiding Principles as wide and inclusive as possible, the various intergovernmental, regional, and NGO actors who were brought into the network are now playing a crucial role in the dissemination of the Guiding Principles and in encouraging their implementation and application in the field. To refer to a few of many possible examples,⁶⁵ the various international agencies have shared the Principles with their staff. UNHCR's Division of International Protection has disseminated the Principles to all its field offices with a note encouraging all staff, particularly protection officers, to apply, implement and promote them.⁶⁶ UNICEF has also disseminated the Principles to the field and includes them in all its publications on internally displaced persons. The Office of the High Commissioner for Human Rights (OHCHR) has shared the Principles with all of its staff, encouraging their use especially by field staff, relevant country and thematic special rapporteurs, the treaty bodies and in technical cooperation projects. Dissemination of

⁶⁵ For a more comprehensive account see *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1998/50*. UN doc. E/CN.4/1999/79 (1999), paras.5-36, and *Report on internally displaced persons, prepared by the Representative of the Secretary-General*. A/54/409 (1999), paras.3-52.

⁶⁶ Prior to the completion of the Guiding Principles, the Division of International Protection developed a reference manual for its field staff on the international legal standards applicable to the protection of internally displaced based on the first part of the compilation and analysis of legal norms. See UNHCR, *International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR Staff* (1996).

the Principles to the field has also been undertaken by IOM whilst ICRC has referred to the Guiding Principles in its contacts with field delegations and has used them in training courses for field staff.

Active promotion at the regional and country level of the use of the Guiding Principles is being undertaken through a series of workshops that the Representative is co-hosting with the support of regional, intergovernmental and non-governmental partner organisations. In October 1998, the OAU co-sponsored with UNHCR and the Brookings Institution Project a workshop on internal displacement in Africa. A workshop on internal displacement in Colombia was held in Bogota in May 1999. Regional workshops on internal displacement in Asia and the South Caucasus are planned for the year 2000. Efforts have also been undertaken to bring the Guiding Principles to the attention of non-State actors.

NGOs have also begun to use the Principles as a basis for assessing the responses to specific country situations of internal displacement.⁶⁷ Amnesty International has begun to systematically apply the Guiding Principles as a basis for monitoring and making recommendations on the situations of internal displacement throughout the world.⁶⁸ National NGOs also have been active in promoting and applying the Guiding Principles in their country context. In the Philippines, for example, the Ecumenical Commission for Displaced Families and Communities (ECDFC) has reproduced the Principles in booklet form in order to facilitate their dissemination and convened a forum discussion on them in December 1998 for representatives of NGOs, relevant Government offices and international agencies to discuss their implementation.⁶⁹

⁶⁷ See, for instance, Women's Commission for Refugee Women & Children, *A Charade of Concern: The Abandonment of Colombia's Forcibly Displaced* (May 1999); Tamil Centre for Human Rights, "'Internally Displaced People' One Million in the Island of Sri Lanka', press release (20 July 1998); Nancy Beaudoin, 'Colombian Nightmare' On the Record, vol. 2, Issue 3 (7 October 1998) 7, 11; S. Kleine-Ahlbrandt, 'The Kibeho Crisis: Towards a More Effective System of International Protection for IDPs', *Forced Migration Review*, Issue 2 (August 1998) 8-11.

⁶⁸ See, for example, the following reports by Amnesty International: Uganda. Breaking the Circle: Protecting Human Rights in the Northern War Zone, AI Index AFR 59/01/99 (17 March 1999); and East Timor. Seize the Moment, AI Index ASA 21/49/99 (21 June 1999).

⁶⁹ See Ecumenical Commission for Displaced Families and Communities (ECDFC) Monitor, Vol. 13, No. 6 (November-December 1998) 12-17.

Initiatives have also been undertaken in regard to providing practical guidance on the Guiding Principles to further efforts to promote their implementation. An annotated version of the Guiding Principles explaining the legal provisions upon which they are based has been prepared by a member of the legal team, Walter Kalin, and will be published by the ASIL and the Brookings Institution in the winter of 1999. In response to requests by international organisations and NGOs, the Brookings Institution Project commissioned a *Handbook for Applying the Guiding Principles on Internal Displacement* that spells out the meaning of the Guiding Principles in non-technical language with a view to facilitating their practical application. It is to be published by OCHA and will be disseminated as part of a package, that includes a manual on field practice in internal displacement that compiles more than sixty examples provided by IASC members and partner agencies of field program initiatives supporting the application of the Guiding Principles. The purpose is to stimulate practitioners in their own program design for addressing the needs of the internally displaced. In addition, an IASC training package on internally displaced persons is currently being developed by the NRC and is based around the Guiding Principles.

6. OUTLOOK

The key point to arise from the development of the Guiding Principles within a global public policy framework is that the elaboration of an international treaty, giving rise to binding obligations for those states which sign and ratify it, is not necessarily a prerequisite for providing an effective normative framework, especially if the instrument in question is based on sound principles can be successfully implemented in practice. On the contrary, the collaboration of a broad range of governmental, intergovernmental and non-governmental actors within a global public policy network can result in the elaboration of an instrument which may be broader in scope and more progressive in content and, if joined by suitable measures and means of promoting and ensuring implementation, more effective than a treaty in regulating the activities of states in the areas which it addresses. True, promoting and ensuring the effective application of the Principles is the next challenge. However, significant inroads are being made in this regard and to the extent that the Guiding Principles are clearly set to provide the framework within which protection and assistance activities on behalf of the internally displaced are to be conducted.