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## INTERNAL REFUGEES—AN INTERNATIONAL CONCERN

MADELEINE SCHWARZ<sup>†</sup>

*Persons who are displaced within their own state as a result of human rights violations, violations of international humanitarian law, natural disasters, famine, uneven economic growth, armed conflict, and internal disturbances and tensions, are termed internal refugees. Displaced persons who do not cross an international boarder are not recognized at international law as refugees. These persons are ineligible for assistance from the international community while those displaced persons who do cross an international boarder may be eligible for international assistance and may be recognized as refugees. In view of the international causes and international consequences of internal displacement, a definition of refugee that does not exclude persons displaced within their state is argued for.*

*Des personnes qui sont déplacées à l'intérieur de leur propre pays à cause des violations des règles du droit international humanitaire, de la famine, de la croissance économique irrégulière, du conflit armé, et des troubles et de la tension internes sont appelées des réfugiés internes. Le droit international ne reconnaît pas comme réfugiés des personnes qui ne traversent aucune frontière. Ces personnes n'ont pas droit à l'assistance de la communauté internationale tandis que celles qui traversent une frontière y ont droit, et peuvent être reconnues comme des réfugiés. Compte tenu des causes internationales et des conséquences internationales du déplacement des personnes, l'auteure soutient une définition de «réfugié» qui n'exclut pas des personnes déplacées à l'intérieur de leur pays.*

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After a five-hour hike into the mountains of North Cotabato, Mindanao, we arrived in Tambobong, Calinan, a small barangay<sup>1</sup> of approximately 1500 people, mostly members of the Bagobo tribe.<sup>2</sup> As we entered the town we could see in the distance a group of people—children and grandparents, a number of women, a couple of men—all carrying sacks of various sizes on their backs and heads, a few pigs and sheep at their sides, descending the mountain and approaching Tambobong from the other side. They entered Tambobong and were met by members of the local CAFGU<sup>3</sup> who escorted them over to the elementary school. Classes were underway, but one room had been cleared of school children in order to accommodate the villagers of Laling, evacuated from their village 12 kilometres from Tambobong because of the likelihood of fighting between the New Peoples Army (NPA) and the Philippines Armed Forces.

A government relief team arrived to distribute enough rice and sardines to last each family three days and to examine the latest victims of the conflict which has been going on in the Philippines for the last 20 years. The medical officers concentrated on vaccinating the children and distributing medicine to the evacuees. The Barangay Captain and a sergeant from the Army greeted the evacuees in the cramped classroom, but were unable to provide any information as to how long they would have to stay away from their homes, or how long they would be welcome in a village that already has trouble providing for its own inhabitants.

Although not an uncommon sight in a number of areas of the Philippines, this was the first time I had witnessed an evacuation in progress and met with a group of people who potentially would join so many others in the Philippines and around the world and become “displaced persons” or “internal refugees.”<sup>4</sup> Throughout my

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<sup>1</sup> A barangay is the smallest political unit in the Philippines. It is basically a village and is headed by an elected official, called the Barangay Captain.

<sup>2</sup> The Bagobo are one of the tribal groups of Mindanao. Throughout the Philippines there are close to ten million indigenous people from a number of different tribes. Most of the communities live in the uplands as farmers.

<sup>3</sup> See *infra* note 21.

<sup>4</sup> In the Philippines, non-governmental organizations use the term “internal refugees” to refer to the “peculiar state of Filipinos who are affected by displacement.” These displaced individuals, families, and communities, are called internal refugees “for they take on the status of refugees, not in other countries, but in their own land.” See E. Garcia, *A Future Without Refugees* (Manila: Ecumenical

stay in the Philippines, I met with many others. I do not know what happened to the villagers of Laling in the end, whether they were able to return to their homes once the "situation" between the military and the counter-insurgents improved, or whether they joined over 20 million other people<sup>5</sup> currently internally displaced all over the world. Their story, like the stories of others who are forced to flee their homes, yet remain within the boundaries of their own countries, reinforces the need for stronger national and international protection for a new category of refugees, the internally displaced.

In the last few years, the international community has, by degrees, become aware of the problem of internal displacement. The situation of the Kurds in Iraq after the Gulf War, the current war in the former Yugoslavia and reports of tens of thousands fleeing Kigali, make it difficult to ignore the plight of entire populations being forced to flee their homes. Internal displacement is a challenge not only to national governments and non-governmental organizations, but to the entire world community.

This article<sup>6</sup> examines the plight of internally displaced persons. While internal displacement has serious, often tragic consequences for the 20 million people subjected to it, the problem cannot be effectively analysed or solved in merely domestic terms, confined to the concerns of the nations in question. Extra-national forces are often at work in bringing about internal displacement, and invariably the effects of internal displacement, whether direct or indirect, reach beyond the borders of a single nation. The international community must begin to focus on the root causes of the

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Commission for Displaced Families and Communities (ECDFC), 1992) at 37. See also *Refugees in their Own Land, Readings on the Problem of Internal Refugees* (Quezon City: Ecumenical Commission for Displaced Families and Communities (ECDFC), 1990).

<sup>5</sup> It should be noted that it is difficult to arrive at precise figures of internally displaced persons. There are different methods of defining "displacement" and identifying its victims. Therefore there is some disparity in the numbers reached by various organizations working with internal refugees.

<sup>6</sup> This article draws on my experiences as an intern in the Philippines during the summer of 1993. I was interned with a non-governmental organization called *Panlipi*—a group of lawyers who provide legal assistance to indigenous communities throughout the Philippines. Although some may argue that the number of newly displaced persons in the Philippines has diminished in the last year due to attempts at national reconciliation, their numbers remain substantial. Throughout the summer I visited several areas in the Philippines where internal displacement continues to disrupt and destroy the lives of a great many Filipinos.

refugee crisis in both its internal and international aspects. It must come to recognize the international dimension of the situation of many internal refugees and, consequently, assume a greater responsibility in the efforts to solve this crisis.

Part I of this paper focusses on the causes of displacement and demonstrates that the distinction between "internal" and "international" is inadequate in the search for solutions to the refugee crisis. Part II provides a case study of internal refugees in the Philippines. Part III then turns to showing why internal refugees are an international concern. Part IV addresses the ways in which the involvement of the international community in this "domestic" issue can be justified under international law. The paper concludes with a proposal to redefine the concept of "refugee" that takes account of internal displacement.

## I. WHAT IS INTERNAL DISPLACEMENT?

The first step towards solving any problem lies in recognizing its existence. While there is minimal awareness of the plight of a class of people called the internally displaced, there is a need for a more concrete understanding of who these people are and what has caused their displacement.

The classical definition of a refugee is based on the 1951 *United Nations Convention on the Status of Refugees* which defines a refugee as a 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.<sup>7</sup>

The definition fails to provide relief to millions of people who seek refugee status because of civil wars, natural disasters or appalling economic conditions. Given that the main cause of forced migration is not persecution but a combination of basic human rights vio-

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<sup>7</sup> 1954, 189 U.N.T.S. 137 [hereinafter *Convention*].

lations, natural disaster, war, and economic turmoil,<sup>8</sup> the *Convention* definition does little to aid a large number of *de facto* refugees.

Most contemporary refugees have not fled from "classic" refugee situations involving individualized persecution. Rather invasion, social and political upheaval, internal conflicts, and other forms of generalized violence are the more common reasons for people taking flight.<sup>9</sup> In view of this change in context, a single refugee definition no longer suffices.

Over time, the international community has recognized some of the limitations of the traditional definition and has extended refugee protection outside of a strict reading of the 1951 *Convention* by allowing the United Nations High Commission for Refugees (UNHCR)<sup>10</sup> to provide protection and assistance to those seeking asylum who did not meet the 1951 *Convention* definition.<sup>11</sup> For their part, some regional organizations have also acknowledged other groups who require assistance. The 1969 *Organization of African Unity Convention*, for example, expanded the traditional definition by adding "external aggression, occupation, foreign domination, or events seriously disturbing the public order" to the 1951 *Convention* reasons of a well-founded fear of persecution. In 1957, the General Assembly authorized the UNHCR to use its "good offices" to aid refugees suffering from persecution of a character not otherwise enumerated in the 1951 *Convention* definition.<sup>12</sup> By 1975, the General Assembly had authorized the UNHCR to act for victims of man-made events who were in a situation "analogous" to that of *Convention* refugees.<sup>13</sup>

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<sup>8</sup> T. Mendel, "Problems with the International Definition of a Refugee and a Possible Solution" (1992) 1 Dal. J. Leg. Stud. 7 at 17.

<sup>9</sup> B. N. Stein, "The Nature of the Refugee Problem" in A. Nash, ed. *Human Rights and the Protection of Refugees under International Law* (Halifax: The Institute for Research on Public Policy, 1988) 47 at 47.

<sup>10</sup> Once a person has escaped persecution, crossed a border and entered another country, the UNHCR is mandated to assist her, and international instruments are in place in order to ensure her protection. Although the *Convention* does not confer upon refugees a right of entry to any state, once admitted, they are guaranteed protection.

<sup>11</sup> V. Nanda, "International Law and the Refugee Challenge: Mass Expulsion and Internally Displaced People" (1992) 28 Willamette L. Rev. 791 at 802.

<sup>12</sup> *Ibid.* See also Mendel, *supra* note 8 at 17-18.

<sup>13</sup> Report of the UNHCR, GA Res. 3454, 30 UN GAOR Supp. (No. 34) at 92, UN Doc. A/10034 (1975).

Today, violations of human rights and international humanitarian law, natural disasters, famine, uneven economic growth, armed conflict, and internal disturbances and tensions are among the major factors contributing to the number of internationally displaced people.<sup>14</sup> Many countries now incorporate some of these various causes of displacement in their refugee determination systems and have thus begun to grant refugee status to individuals who have fled their countries for reasons other than fear of persecution on the basis of one of the enumerated grounds in the *Convention*.

There remains, however, controversy over the causes of displacement that constitute grounds for refugee status. For example, a continuing area of dispute is the impact of economic forces on the internal or international displacement of peoples. Despite the extension of protection to some who would otherwise fall beyond the scope of the *Convention* definitions, many receiving nations continue to insist on a distinction between "true" refugees on the one hand and on the other hand those migrants who "use the umbrella of refugee status to emigrate to areas of better economic activity."<sup>15</sup> While in principle this distinction may be a valid one, the danger is that in practice its application is oversimplified and results in an undervaluation of the crises that are produced by economic conditions. In reality, it is becoming more difficult to distinguish between bona fide refugees or asylum seekers and economic motivated migrants because in the end, economic oppression is as life-threatening as political oppression.<sup>16</sup>

The same factors and conditions that lead people to flee from their nations and seek asylum across borders in foreign countries force many others to flee from their homes and seek new places to live within their own countries. Civil war and internal strife, fear of persecution, human rights violations, economic hardship, and natural disasters not only lead to international displacement but also to the massive displacement of peoples within their own nations. The people displaced but still within the country of origin, however, are excluded from any of the international protections offered to the

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<sup>14</sup> It is estimated that there are over 17 million international refugees. See Garcia, *supra* note 4.

<sup>15</sup> See J. Rogge in J. Rogge, ed., *Refugees: A Third World Dilemma* (New Jersey: Rowman & Littlefield, 1987) at 2.

<sup>16</sup> See J. Rogge, "The Challenges of Changing Dimension among the South's Refugees: Illustrations from Somalia" (1993) 5 Int'l J. Ref. L. 12 at 21.

contemporary refugee. While both groups have been forced to flee their homes because of similar factors and similar fears, only those who cross an international border are granted international protection.

## II. INTERNAL REFUGEES: A CASE STUDY

In the Philippines, internal armed conflict between the Philippines Armed Forces, paramilitary groups, the NPA, the Moro National Liberation Front (MNLF), private armies, and warring tribal groups has been the leading cause of displacement since the 1970s and the years of the Marcos' regime. The Philippine National Red Cross documented a total of 5,704,914 persons displaced during the Martial Law period (1972–84) of Filipino history.<sup>17</sup> Most of these evacuations were related to “clashes between the military and the rebels” and occurred mainly throughout Northern Luzon, the Visayas and Mindanao—areas that were, and continue to be, identified as “hot-beds” of insurgency, or as “rebel-infested areas.”

From 1986 to 1990, the Ecumenical Commission for Displaced Families and Communities (ECDFC)<sup>18</sup> documented a total of 304 cases of displacement affecting almost one-half million Filipinos.<sup>19</sup> Of these 304 cases, they noted that 212 (70 percent) were due to military-related activities; 11 (3.6 percent) were caused by rebel-related activities; 46 (15 percent) were caused by armed encounters between the government and rebel forces or between rebel forces themselves; and 27 (9 percent) resulted from vigilante-related activities. They found the remaining 30 percent to be related either to infrastructure projects or to conflicts between the private armies of influential politicians. For 1991, they have documented another

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<sup>17</sup> J. Petilla, “Every Filipino a Potential Victim of Displacement” in *Refugees in their Own Land, Readings on the Problem of Internal Refugees* (Quezon City: Ecumenical Commission for Displaced Families and Communities (ECDFC), 1990) 5 at 6. But see also *supra* note 5 regarding the difficulty in arriving at precise numbers.

<sup>18</sup> The ECDFC is the leading non-governmental organization in the Philippines working with internal refugees. It has conducted extensive research on the causes of displacement, the findings of which have been supported by studies by the Philippines Department of Social Welfare and Development (DSWD), and by others who have investigated internal displacement in the Philippines and in other areas of the world.

<sup>19</sup> Petilla, *supra* note 17 at 5.



14,988 displaced communities, again the majority displaced as a result of fighting between the military and the rebels.<sup>20</sup>

The effect of this internal armed conflict on the civilian population is immense. Throughout the government of Corazon Aquino, the military adopted a "total war policy" against the NPA and continued to conduct "counter-insurgency operations" in "rebel-infested areas" similar to the military campaigns during the Marcos regime. The military move into areas where they suspect NPA members to be based, then try to flush out insurgents in the area. At the same time, civilians are prevented from providing material or financial support to the rebels.

One of the main results of these strategies is the displacement of communities. People I met with over the course of the summer, evacuees from villages usually in the hills, spoke often of the fear of being caught in the middle of the crossfire and fear of harassment from the military and CAFGU,<sup>21</sup> or from the rebels if they remained in the villages, as the major reasons why they left their homes.

But it is not only the reality of the fighting which forces people from their homes. "Strategic hamletting," or the forcible relocation of entire communities, also creates much internal displacement.<sup>22</sup> Civilians in villages or barangays are relocated by the military to designated areas called "hamlets" or "population resource centres." While ostensibly the communities are forced to evacuate "for their own safety," the main aim of this strategy is to isolate insurgents from those communities identified as the insurgents' base of operation, and hence from their source of material and political support.

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<sup>20</sup> Garcia, *supra* note 4 at 15.

<sup>21</sup> Citizens' Armed Force Geographical Units (CAFGUs) were established during Corazon Aquino's presidency and replaced the armed citizen volunteer groups, or "vigilante" groups that were used in the government's counter-insurgency strategy under President Marcos. The vigilante groups had received a great deal of criticism for human rights abuses of villagers. CAFGUs have been established in most villages throughout the area and continue to serve as civilian aids to the military in their fight against the NPA. The recruits are usually from the particular area where they are serving, and therefore are part of the community. The government claims that it has improved the screening and supervision of the civilians who are recruited, nevertheless it is not clear how effective this has been in preventing human rights abuses by these units.

<sup>22</sup> Sr. Constance Pacis, "Internal Refugees: The Philippine Experience" in *Refugees in their Own Land*, *supra* note 17, 1 at 2-3.

The apparent objective behind the military's strategy, whether strategic hamletting or total attack, is threefold: first, by attacking a particular area, the military attempts to "isolate the fish from the water." The "fish" being the rebels and the "water" being the surrounding community. The idea is that without a surrounding community the rebels cannot survive. Second, the military then organizes CAFGU within the community in order to prevent the rebels from returning. Finally, there is ostensibly a development component to the relocation of these communities, whereby government agencies sponsor livelihood projects in areas that have been disrupted. The problem with this strategy is that, as is usual in any situation of war, the victims are innocent civilians, caught in the middle of the fighting, harassed by the CAFGU and left to survive on their own with little or no support from the government agencies.

The assistance offered these victims is minimal at best. For those villagers who are evacuated by the military and taken to evacuation centres, for example schools in a neighbouring barangay, the military generally inform the local government officials and the evacuees are given a few days supply of food and shelter. If "operations" continue, they may either remain in cramped classrooms, relying on the goodwill of neighbours or they may move on in search of a safer place to live. It becomes difficult and dangerous to continue to work on their farms, which often end up in ruin. However, the military often fails to inform local agencies of operations it is conducting. As a result villagers end up scattered and dispersed and given no organized assistance in the midst of the turmoil.

Though armed conflict is the major cause of displacement, it is not the only one. Industrialization and development schemes have led to a "plethora of environmental catastrophes for rural and indigenous peoples, often resulting not only in displacement but in repeated displacement."<sup>23</sup> The relocation of people is also often the residual or prearranged consequence of national development projects.<sup>24</sup>

Economic factors are another source of internal displacement in the Philippines. Land grabbing, logging activities, and massive in-

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<sup>23</sup> Laissailly-Jacob cited in B. Kavanagh & S. Lonergan, *Environmental Degradation, Population Displacement and Global Security: An Overview of the Issues* (Victoria: Centre for Sustainable Regional Development, 1992) at 29.

<sup>24</sup> *Ibid.* at 19.

frastructure projects, whether by multinational corporations, government "cronies,"<sup>25</sup> or lowland settlers encroaching on land in the mountains, have dispossessed farmers of the land they had cleared and tilled, and deprived cultural minority groups of their ancestral domains.

In 1953 work was begun on the Ambuklao Dam in Benguet, Cordillera Region and was finally completed in 1985. It displaced thousands of members of the Igorot and Ibaloi tribes. Some were moved off to other islands, such as Palawan, where they remained, removed from their ancestral lands and forced to work land that did not produce. Others were relocated to poor farming land around the dam site itself. At the moment the dam is useless due to the earthquake in July, 1990 and the massive siltation that has built up in the mountains surrounding the dam. Nevertheless, there are plans to raise the spillway of the dam a further 10 miles, which would result in a further displacement for the people of Bokod, the original inhabitants of the area around the dam who have already been displaced once because of it.<sup>26</sup>

While it may always be necessary to relocate communities in order to carry out infrastructure projects for the economic growth of a country, those who are forced to move ought to be compensated. The residents around the Ambuklao Dam were promised decent land, jobs at the dam, and money for their resettlement by the government and the National Power Corporation. They were also promised compensation if the dam destroyed their farms in the area. Thus far they have received very little. Only recently have the residents filed a resolution with the Benguet Provincial Board requesting that President Ramos force the National Power Corporation to pay the compensation and pay for the damage that was caused, and continues to be caused, by the dam.<sup>27</sup>

In Mt. Apo, in Cotabato, Mindanao, the Philippine National Oil Company (PNOC) has begun construction on a geothermal plant aimed at providing the energy for 27.4 percent of the country's

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<sup>25</sup> This term originally applied to "friends" of President Marcos who made a great deal of money throughout his presidency.

<sup>26</sup> Interview with the President of Ambuklao, Bangao, Banao, and Libo-ong Displaced Families in Baguio, Cordillera Region, July 1993.

<sup>27</sup> *Nordis* (Northern Dispatch) Vol. 5, No. 13, April 2, 1993, and interviews with the President of "Ambuklao, Bangao, Banao & Libo-ong Displaced Families Association" and an attorney who is helping them with their claim, Cordillera Region, July 1993.

power needs. It is part of a massive ten-year development program of the Philippines government. The inhabitants of Mt. Apo, mainly people of an indigenous community called Manobo, remain in steadfast opposition to the project and are working with various human rights groups and environmental organizations in order to work out some arrangement with the government. Until now, the project continues with little consultation between the government and the PNOC and the people the project will affect. Adding to this problem, are reports of an intensified military presence in this area, even though there are very few signs of NPA activity.<sup>28</sup>

The Philippines, like many other developing countries, is in need of development projects to provide adequate supplies of power and water and contribute to economic recovery and development. Nevertheless, these projects, if not carried out with some thought for the people they will uproot, can result in destroying the culture or livelihood of a community. Communities forced to move off their land because of large-scale development projects by the government or industry, such as the Ambuklao Dam or the Mt. Apo geo-thermal project, and then given no support or assistance by the government, end up joining the millions of others who are displaced within their own countries.

Whether in the Philippines or in general, whether internal strife, economic factors, human rights violations, or fear of persecution, internal displacement involves the forced transfer of people from their villages or areas of residence due to factors or conditions existing there that make it difficult or dangerous for the people to remain. At times it is easy to pinpoint an entity, be it a government actor or an opposition force, that is "forcing" the transfer. Other times the "force" used is blurred and it becomes difficult to distinguish whether a group of people is voluntarily migrating or being forced to move. In the same way that the distinction between whether one crosses a border or not in the end contributes little to resolving the problem, arguably a focus on "forced" versus "voluntary" displacement is inadequate in most cases.

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<sup>28</sup> *Apo Sandawa*, Vol. III, No. 1, October–December 1992, and an interview with an Italian priest who has been working with tribal communities in this area for 20 years. I have little evidence regarding the intensified military presence in this area, nevertheless, human rights workers are concerned that the military is being used to help clear away any opposition to the project.

These displaced people constitute a new category of refugees and merit international attention. The Secretary-General of the United Nations has used the term internal refugee "to refer to persons who have been forced to flee their homes suddenly or unexpectedly in large numbers as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country."<sup>29</sup> The High Commissioner for Refugees has noted that "persons who do not cross an internationally recognized border should be treated as displaced persons."<sup>30</sup> Thus, acknowledgment by the international community of these new "refugees" has begun.

It may remain necessary, for both the financial and political need to limit the number of persons recognized as refugees, to continue to distinguish the "forced" and "voluntary" movements—even though the examples above undermine such a distinction. However, it is no longer adequate to "limit international action to international borders . . . because it is a matter of chance that some people cross frontiers while others remain displaced within their own country."<sup>31</sup>

### III. INTERNAL DISPLACEMENT—AN INTERNATIONAL CONCERN

Internal displacement is not simply a domestic problem. Its causes neither arise solely from within a state, nor do the effects of displacement remain confined within national boundaries. Moreover, the problems and consequences associated with internal movements of populations frequently have more ramifications than those created by international refugee movements. These movements have considerable social, economic, and demographic effects not only within their own country, but throughout the region involved, and ultimately throughout the world.<sup>32</sup>

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<sup>29</sup> C. Lewis, "Dealing with the Problem of Internally Displaced Persons" (1992) 6 Georgetown Imm. L.J. 693 at 694.

<sup>30</sup> Mendel, *supra* note 8 at 14.

<sup>31</sup> Kavanagh & Lonergan, *supra* note 23 at 16.

<sup>32</sup> G. Hugo, "Forgotten Refugees: Postwar Forced Migration Within Southeast Asian Countries" in J. Rogge, ed., *Refugees: A Third World Dilemma* (New Jersey: Rowman & Littlefield, 1987) 282 at 282.

Developments throughout history, and increasingly since the Second World War, demonstrate that major social problems rarely arise solely from within a specific country and rarely remain contained by a national frontier. In the post-war period, Africa, Latin America, and Asia stand out as regions of conflict, struggling through the processes of nation-building, and caught in the midst of internal and international power struggles, colonial and neo-colonial forces and changing class, cultural, ethnic, and religious relationships. These conflicts are not simply the result of internal issues and they produce distinct forms of displacement of populations both within and between countries.

While the effective causes of displacement—governmental persecution, armed conflict, hunger, etc.—may be essentially domestic, behind such causes of internal displacement often lie forces that are transnational in origin.<sup>33</sup> Few nations operate in a vacuum; an armed conflict may have the appearance of being a civil war when in reality, outside powers, whether neighbouring or halfway across the world, are backing either the current regime or the rebels seeking to overthrow it. External political involvement of this kind often perpetuates conflicts well beyond what the domestic economy could ever sustain and, by extension, increases the margin of displacement of people that can be sustained.

On a more systemic level of analysis, the domestic origin of internal displacement is undermined by the fact of the severe economic disparities that exist between industrialized and developing nations.<sup>34</sup> It is no accident that internal displacement occurs almost exclusively in developing nations. While this fact alone is not sufficient grounds to internationalize the problem of internal refugees, the reality of this difference will nonetheless continue to fuel the social, political, and economic instability of the Third World, and therefore continue to foster the creation of internal refugees.

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<sup>33</sup> Stein, *supra* note 9 at 48. As an example of the transnational roots of mass migration, John Rogge points out that the current situation in Somalia and its displacement crisis is but an extreme manifestation of a crisis which has been building for years. The crisis has been fuelled, as in so many other parts of the South, by a combination of external interventions from the North and internal ethnic rivalries, political power struggles, regional disparities and general economic disintegration. See Rogge, *supra* note 16 at 12.

<sup>34</sup> J. Nafziger, "Refugee Law and the Refugee Challenge: Mass Expulsion and Internally Displaced People" (1992) 28 Willamette L. Rev. 703.

The recognition of international factors contributing to the displacement of peoples is not intended to lay blame on the international community for the internal refugee crisis in many countries. Rather, the point is to show that the crisis is not simply a domestic concern, but is a complex issue and one that the international community also has a responsibility to address.

Recognizing that causes of internal displacement do arise from outside state boundaries might lead the international community to accept some responsibility for the millions of people displaced. Realistically, however, it is through recognizing the transnational effects of displacement that the world community is more likely to take action towards durable solutions.

One need not look beyond the first page of a newspaper to see the far-reaching effects the internal displacement of a population has on the rest of the world. Whether in the Middle East, Eastern Europe, Africa, Latin America, or Asia, mass migration is a destabilizing factor in both national and world politics.<sup>35</sup> While population displacements are often a result of acute conflict within and between nations, they often cause or contribute to conflict within the nation or the region and can represent a threat to global security.<sup>36</sup>

It is in the interest of the international community to address the problem of internal displacement for a number of reasons. The humanitarian will recognize that the internally displaced require assistance because they are the unlucky ones who are unable to flee to other countries, usually because they lack the resources and connections. The pragmatist will recognize that it is in the interest of the donor community to help internally displaced persons, or face the prospect of increasing numbers of asylum seekers and refugees on their doorstep.<sup>37</sup> The globalist will recognize that the increasing number of internally displaced persons throughout the world poses a threat to the social and political stability of a region, which can have serious repercussions throughout the world.

The key to finding durable solutions to this problem lies in acknowledging its effects outside the country of origin. While the shock value of seeing hundreds of thousands of people suffering in the midst of an internal armed conflict in some far-off country may

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<sup>35</sup> Nanda, *supra* note 11 at 792. The transnational effect of internal displacement is further developed in Part IV of this paper.

<sup>36</sup> Kavanagh & Lonergan, *supra* note 23 at 4.

<sup>37</sup> B. Clarence, "UNHCR's Role in Ethnic Conflict" (1993) 93 Refugees 10.

lead to some band-aid assistance, more substantial remedies are called for. The "legal fiction" that the internally displaced are not refugees and thus beyond the scope of responsibility of the international community is no longer sustainable.<sup>38</sup>

#### IV. INTERNAL REFUGEES AND INTERNATIONAL LAW

Internally displaced persons are, by the very fact that they are internal, excluded from international legal protection as they are not "outside the country of [their] nationality." With our system of international law that is premised on the concepts of sovereignty, the independence of the states, and the concomitant right to non-intervention by other states in the domestic affairs of a state, international intervention in the internal affairs of a state presents several difficulties.

International involvement in the domestic affairs of a country is automatically limited by the sovereign equality<sup>39</sup> of all nations: all states are equal and independent, and each state has exclusive jurisdiction over matters within its borders. With this concept as the basic starting point in world affairs, states often resist foreign intervention, even intervention aimed at assisting a portion of the population displaced but provided little or no assistance from their government. In addition, members of the international community resist offering aid on the premise that it is the responsibility of the local government to protect its inhabitants.<sup>40</sup>

While the sovereign equality of states is one of the foundations for international affairs, international law also provides some tools designed to ensure that all people are guaranteed basic human rights. There are a number of instruments of international law that, while not specifically aimed at the problem of internal displace-

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<sup>38</sup> H. Adelman, "Humanitarian Intervention: The Case of the Kurds" (1994) 6 *Int'l. J. Ref. L.* 4 at 10.

<sup>39</sup> *Charter of the United Nations*, 26 June 1945, Can. T.S. 1945 No. 7, 59 Stat. 1031, 145 U.K.F.S. 805, article 2(1).

<sup>40</sup> In many cases, however, it is their own governments that are the source of the problem for displaced people; in other instances, these governments lack the resources to assist them. S. Aga Khan, "Looking into the 1990s: Afghanistan and other Refugee Crises" (1990) (Special Issue, September) *Int'l. J. Ref. L.* 14 at 25-26.



ment, contain provisions applicable to internally displaced peoples. International human rights law and humanitarian law are the primary sources upon which the intervention of the international community in the domestic affairs of a state can, and in some cases, has been, based. A brief review of the relevant articles is in order, both to show how the plight of internal refugees in principle warrants the scrutiny of the international community, and to underscore the way in which these instruments fail to deal *comprehensively* with internal displacement.

In the *Universal Declaration of Human Rights*<sup>41</sup> (UDHR), article 13 stipulates: "Every person has the right to freedom of movement and residence within the borders of each State." At a minimum, this requires a state to permit its nationals to reside within its own territory and implies an obligation not to force residents to relocate.

Article 12(1) of the *International Covenant on Civil and Political Rights*<sup>42</sup> (ICCPR) similarly provides that "[e]veryone lawfully within the territory of a State shall within that authority, have the right to liberty of movement and *freedom to choose his residence*" (emphasis added). This right is not absolute as article 12(3) allows governments to restrict it in order to "protect national security, public order, public health or morals or the rights and freedoms of others."

Displacement caused by force, armed conflict, or persecution can constitute a violation of numerous individual rights and freedoms protected under such instruments as the ICCPR and the UDHR. People caught in the midst of armed conflict, for example, are not uncommonly subjected to brutal violations and abuses. Returning to the example of the Philippines, the internally displaced there have not only been forced to leave their homes, some have also been harassed, tortured, arrested, and killed by the military or CAFGU. The Philippines government, having ratified the ICCPR,<sup>43</sup> is thus in violation of the *Convention* for failing to respect and honour the rights of the internally displaced, including the right to life, the right not to be tortured, the right not to be subject to arbitrary arrest or detention, and the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, or home.

Persons displaced because of internal armed conflict may also be protected by international humanitarian law. These laws provide

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<sup>41</sup> GA Res. 217 A (III), U.N. Doc. A/810 (1948).

<sup>42</sup> (1966) 999 U.N.T.S. 171.

<sup>43</sup> Garcia, *supra* note 4 at 23. This was entered into force on January 23, 1987.

minimum standards of treatment for all persons under all conditions. Common article 3 of the four *Geneva Conventions*<sup>44</sup> provides that, as a minimum, persons who are not taking an active part in a conflict are to be "treated humanely." In accordance with this obligation, the state, as well as the opposing party or parties, are obligated to respect certain fundamental rights of persons not taking part in the conflict. They are prohibited from committing any violence to any person, such as mutilation, cruel treatment, torture, or "any outrages upon personal dignity."<sup>45</sup> The *Additional Protocol to the Geneva Conventions* (Protocol II) prohibits the state and opposing armed forces from using the civilian population as the "object of attack," from committing "[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population," and from starving "civilians as a method of combat."<sup>46</sup>

This review of the key international human rights instruments is by no means exhaustive, but it serves to demonstrate that some elements of the internally displaced are already touched by international law. Nevertheless, without international recognition of the category of internally displaced persons, and an awareness of the causes and effects of displacement, the use of international human rights and humanitarian law will remain limited.<sup>47</sup>

In the past, the doctrine of the sovereignty of states has prevented the international community from seriously addressing ways to prevent refugee movements. Sadruddin Aga Khan and Corrine Lewis both argue that today, states are no longer completely sovereign and that the principle of non-intervention is not absolute.<sup>48</sup> Ms. Lewis argues that, as a result of international law and

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<sup>44</sup> *Geneva Conventions*, 12 August 1949, 75 U.N.T.S. 31; 75 U.N.T.S. 85; 75 U.N.T.S. 135; 75 U.N.T.S. 287. See also Lewis, *supra* note 29 at 700.

<sup>45</sup> *Ibid.*, article 3(1)(a) and (c).

<sup>46</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts* (Protocol II), 8 June 1977, 1125 U.N.T.S. 609 at 615 (arts. 13–14).

<sup>47</sup> Any discussion of international human rights law and humanitarian law requires an investigation into whether these are binding on all states. My focus is more on international law as a persuasive means of encouraging states to act, rather than as binding force.

<sup>48</sup> Lewis, *supra* note 29 at 710. See also the comments by Aga Khan, *supra* note 40 at 25, who does not state this as emphatically as Lewis. He notes that "arguments of sovereignty hold less sway today, but we still have a long way to travel before basic human rights are given priority over national security."

practice in the area of human rights law, both of these concepts have been modified to the extent that a state can no longer claim that the treatment of its citizens is solely a domestic matter.<sup>49</sup>

On one level, actions by international organizations and the international community appear to be creating an exception to the norms of sovereignty and non-intervention for humanitarian assistance to internally displaced persons.<sup>50</sup> Over the past few years, the UNHCR has moved toward a role of providing protection and assistance to internally displaced persons.<sup>51</sup> Although refugees who remain within their country are not designated as eligible for UNHCR assistance, some have received assistance under the "good offices" of the High Commissioner.

Organizations such as the UNHCR and the ICRC have recognized that all refugees, whether internal or international, have the same basic needs: shelter, food, and medical services. Recognizing that it is unacceptable to discriminate in distribution of relief aid between refugees and displaced persons when both are living closely together and experiencing the same hardship,<sup>52</sup> the UNHCR has, in some situations, such as in Lebanon and Cyprus, gone beyond its mandate and provided relief to those displaced by civil war.

It is important to keep in mind, however, that most actions to aid internal refugees have been taken with the displacing state's permission.<sup>53</sup> Therefore, such actions are not an infringement of a state's sovereignty nor, strictly speaking, an intervention in domestic affairs. Further, these assistance programs remain *ad hoc* in nature and it cannot be concluded that they represent accepted practice at international law. Nevertheless, the slight increase in allowing humanitarian assistance to be provided within an area in conflict may suggest that some states no longer see a conflict between their national interests and accepting international aid.<sup>54</sup> It also may suggest that there is a growing awareness within the international

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<sup>49</sup> Lewis, *ibid.* at 711.

<sup>50</sup> *Ibid.* at 714.

<sup>51</sup> B. Clarence, "UNHCR's Role in Ethnic Conflict" (1993) 93 Refugees 10. See also Rogge, *supra* note 15 at 2, where he notes that the UNHCR has gone beyond its mandate in Lebanon and Cyprus and has provided assistance to internally displaced persons. See also Hugo, *supra* note 32 at 297.

<sup>52</sup> Clarence, *ibid.* at 12.

<sup>53</sup> Lewis, *supra* note 29 at 714.

<sup>54</sup> Aga Khan, *supra* note 40 at 25.

community that some governments may not be capable of assisting their internal population.

The notion that internal displacement represents a threat to international peace and security is gaining ground. In the unprecedented Resolution 688 dealing with the displacement of the Kurds following the Gulf War, the United Nations Security Council recognized the disruptive effect that the internal displacement of a population may have on the international stage. Resolution 688 permitted the Secretary-General to "pursue his humanitarian efforts in Iraq" and "to use all the resources at his disposal . . . to address urgently the critical needs of the refugees and displaced Iraqi population."<sup>55</sup>

Resolution 688 establishes a promising precedent concerning assistance and protection to internally displaced persons caught in the midst of an international conflict. Arguably, the Resolution constitutes persuasive evidence of the validity of humanitarian intervention in a state's domestic affairs at international law. It offers some justification for the movement of international troops, a justification which has since been used in other parts of the world.

Humanitarian assistance and humanitarian intervention, with or without the displacing state's permission, are contributing to a rethinking of the concepts of sovereignty and non-intervention. They also lend weight to the argument for involvement of the international community in providing assistance to the internally displaced.

Nevertheless, while a few ad hoc examples in the middle of extreme crises may contribute to an adaptation of the paramountcy of sovereignty in world affairs, without a more concrete framework by which the international community can respond to the internally displaced, international involvement in the plight of internal refugees will remain confined to those situations that have reached a state of extreme crisis. The drawback of this process is that often humanitarian action is not taken until the international community is moved by horror and atrocity.

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<sup>55</sup> UN Doc. S/RES/688 (1991). See also Lewis, *supra* note 29 at 713 and Nanda, *supra* note 11 at 809.

### V. A BROADER REFUGEE FRAMEWORK

Displaced persons who flee their homes and cross international borders are eligible at international law for assistance. The international community has set up a framework whereby all states have a minimum responsibility to attend to those persons who have fled their homes because of fear of persecution in their homeland. In addition, some members of the international community are beginning to create the means by which assistance and protection can be provided to those persons who flee their nations for reasons other than one of the enumerated grounds in the 1951 *Convention*.

Displaced persons who flee their homes but remain within their own countries are provided little assistance from the international community. While they have fled generally for the same reasons as those who flee across international borders, at international law, the notion of sovereignty predominates over the safeguarding of basic human rights. While the international community can justify offering aid on a variety of grounds based on international human rights and humanitarian law, it has not created any mechanism that would provide minimal protection for these victims of war, human rights violations, persecution, and natural and man-made disasters, and only provides assistance in rare situations that have reached crises proportions.

What is needed is a framework by which the international community can recognize the problem of internal displacement and respond to it before the displacement reaches a state of horrific crisis. This framework "must be led by a campaign to adapt the notion of national sovereignty to contemporary humanitarian needs."<sup>56</sup> It must integrate the application of international law with the underlying causes of internal displacement and at the same time be motivated, not only by humanitarian concern, but by a far-reaching appreciation of the global effects that the failure to address this problem will have.

As a starting point, the concept of who is a refugee must not focus on borders. The scope of the factors of this issue is international; differentiating among displaced people on the basis of whether or not they have crossed a border contributes little to recognizing, or preventing, conditions which cause displacement. The focus should be on broadening the interpretation of the legal definition so that

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<sup>56</sup> S. Aga Khan, *supra* note 40 at 27.

“refugee” also incorporates that class of persons who “have been forced to flee their homes suddenly or unexpectedly in large numbers; as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters.”<sup>57</sup>

While this definition may be too broad for some, it has the value of recognizing the varied factors that give rise to displacement while at the same time incorporating a limit on the circumstances covered. Any determination of whether internal displacement exists will still require a case-by-case analysis, but at least the definition provides a flexible basis for a test consisting of three key elements:

- First, some kind of “force” is necessary if the movement of a group of people is to constitute internal displacement. Whether this force must be direct and involve a government actor, or whether it can include those forced to move because of economic hardship is difficult to evaluate, as it is still necessary to distinguish the two in order to encourage international involvement.<sup>58</sup>
- Second, a focus on “suddenly” and “in large numbers” helps to distinguish refugee movements from migration, which involves a relatively permanent move from one location to another and is usually preceded by decision-making on the part of the migrants.<sup>59</sup> Refugees often have no decision-making power in the issue of movement and little choice in their destination.<sup>60</sup>
- Third, the list of the causes takes into account the varied and complex factors creating internal refugee movements and reflects the contemporary reality of the problem.

A framework such as this may act as a threshold for international involvement in assisting and protecting the internally dis-

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<sup>57</sup> This has been the definition that the Secretary-General has used to refer to internal refugees. See Lewis, *supra* note 29 at 694.

<sup>58</sup> While economic disparity is also a leading cause of displacement, encouraging international involvement will be difficult if the definition is too broad. Situations such as rural to urban migration in the Third World, although a pressing problem, is not best resolved in a context of internal displacement.

<sup>59</sup> A. Hanson & A. Oliver-Smith, “Involuntary Migration and Resettlement: Causes and Contexts” in A. Hanson & A. Oliver-Smith, eds. *Involuntary Migration and Resettlement* (Boulder, Colorado: Westview Press, 1982).

<sup>60</sup> Hugo, *supra* note 32 at 297.

placed when the domestic government is unwilling or unable to deal with the situation. Of course, on its own, such a framework will not solve the problem of internal displacement, but it does provide a more concrete starting point than the current ad hoc approach that gives some recognition to internally displaced persons, but is not yet firmly grounded in law.

The international community can no longer escape its responsibility to address the problem of internal displacement. Internal displacement is slowly being recognized as a threat to international peace and security and as a violation of basic human rights and freedoms. Nor should the international community seek to escape from accepting some responsibility. Refugee movements, whether internal or international, affect the international community. International refugee law and solutions to the refugee problem, aimed at countries of first asylum and countries of destination and focussed on "exile as the appropriate solution to the failure of national protection,"<sup>61</sup> are no longer adequate. The refugee crisis must be addressed comprehensively and at its roots if progress is to be made in arriving at a solution.

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<sup>61</sup> J. Hathaway, "A Reconsideration of the Underlying Premise of Refugee Law" (1990) 31 *Harv. Int'l. J.* 129 at 181.