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Response to Deng

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Response*

Tonderai W. Chikuhwa

*If buttercups buzz'd after the bee,
If boats were on land, churches on sea,
If ponies rode men and if grass ate the cows,
And cats should be chased into holes by the mouse,
If the mamas sold their babies
To the gypsies for half a crown;
If summer were spring and the other way round,
Then all the world would be upside down.*

—English Ballad

I. Introduction

In the past two decades we have witnessed fundamental, unprecedented, and deeply disturbing shifts in the trends and nature of armed conflict. These changes have been characterized in particular by the targeting of civilian populations as a deliberate tactic of warfare. Whereas civilians made up fewer than 5 percent of all casualties during World War I, today 75 percent or more of those killed or wounded in wars are noncombatants. The post-Cold War era has been marked by the proliferation of conflicts within states, conflicts in which age-old norms and taboos are being broken. The most vulnerable—children, the elderly, and women—have become the primary targets of state and non-state parties to conflict. Not only are children most often in the direct line of fire, more horrific still is that in many instances around the world, they have also become the instruments of war, forced to give expression to the hatreds of adults and to commit the very worst brutalities against other children, their own families, and their communities. *It is indeed a world turned upside down.*

Against this backdrop and in response, the international community in the past decade has made a concerted effort to elaborate a more coherent protection and assistance framework for civilians in armed conflict. This includes the establishment of several distinct agendas for categories of persons considered especially vulnerable, such as a

*The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

specific regime for the protection of children in wars, as well as a more concerted focus on Internally Displaced Persons (IDPs).

For over a decade, Francis Deng has been a moral voice of conscience on behalf of the internally displaced, pioneering the development of a normative protection framework and advocacy agenda for IDPs. His Roundtable essay, "Divided Nations: The Paradox of National Responsibility," outlines the United Nations agenda for assistance and protection to IDPs, and in particular the advances in this area under the mandate of the Representative of the United Nations Secretary-General for Internally Displaced Persons, an office occupied by Deng from 1992–2004. Deng's essay traces the evolution of the agenda from the earliest conversations leading to the establishment of the mandate and role of the Representative of the Secretary-General, to the development of a normative protection and assistance framework for IDPs and the promotion and dissemination of the subsequent standards.

My essay examines and responds to Deng's work. It identifies the strengths and successes of the mandate of the Representative of the Secretary-General for IDPs, namely, the development of a more coherent normative framework for IDPs, the forging of a stronger political consensus on the internally displaced as well as a broadening of the circle of stakeholders, and deeper analytical treatment of the IDP *problematique*. It examines Deng's conceptual point of departure expressed in the notion of "Sovereignty as Responsibility," an idea that has emerged as the United Nations doctrine known as the "Responsibility to Protect." Sovereignty as responsibility has represented the *leitmotif* of Deng's advocacy as Representative of the Secretary-General.

However, in critique, this analysis argues that while it has improved the assistance response, the IDP agenda as defined under Deng's mandate has not gone far enough to deliver tangible protection for the internally displaced, particularly against direct acts of violence and other overt human rights violations. In spite of the significant contributions made by Deng and the efforts of the international community, the reality on the ground in terms of the numbers and the abuses being committed against IDPs is catastrophic. Furthermore, the situation has deteriorated progressively in the past decade. The essay argues that to redress this imbalance between strong protection standards, on the one hand, and the actual circumstances and plight of the most vulnerable populations in situations of conflict, on the other hand, we must enter what the United Nations Secretary-General has referred to as an "era of application" of international standards. Essentially, the international

community must begin to redirect its energies from the elaboration of standards to ensuring their application on the ground.

This article argues for the need to balance the “carrot,” as exemplified by Deng’s central emphasis on diplomacy, dialogue, collaboration, and assistance to national authorities to meet their protection responsibilities, with the “stick,” which entails the adoption, where necessary and appropriate, of concrete and targeted measures to ensure that governments (and indeed non-state parties) do not shirk their sovereign responsibility to protect those under their jurisdiction. In arguing for and exploring this balance of carrot and stick, the essay outlines schematically the advances of the past decade on a contiguous United Nations agenda for the protection of children affected by armed conflict. It proposes that the experience of the international community may be critical in terms of concretizing and advancing further the IDP protection agenda.

My contribution examines Deng’s keystone concept of sovereignty as responsibility, arguing that positive dialogue and diplomacy must be reinforced by a structured *regime of compliance*, which would engender and enforce international protection standards. This would entail the development of new institutional arrangements and infrastructure as a framework for adoption of concrete and targeted sanction measures against state and non-state parties to conflict for cases in which they systematically commit grave human rights violations.

The essay also contends that a critical liability inherent in Deng’s idea of sovereignty as responsibility is the primacy afforded to dialogue with national authorities, without adequate acknowledgment, consideration, or examination of the roles and responsibility of non-state parties to conflict, which increasingly determine the lives of populations falling under their spheres of power.

This article concludes that the effectiveness of Deng’s work, and ultimately his legacy on the IDP problem, will be viewed in the light of tangible protection for vulnerable populations, that is to say, whether we are able to enter an “era of application” of international protection standards.

II. Displacement

Large-scale internal displacement continues to be one of the principal characteristics of conflict in the post-Cold War era. As defined by the Guiding Principle on Internal Displacement, IDPs are “persons or

groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border.”¹ The assistance and protection of IDPs has been a preoccupation of the United Nations for a number of years. However, the international community has focused more strategically and concertedly on this problem in the past decade through the mandate of the Representative of the Secretary-General on IDPs and most recently in the framework of the Secretary-General’s Protection of Civilians agenda.

While the global refugee population has dropped by 20 percent over the past three years, the number of IDPs only declined by a modest 6 percent in 2005,² this in spite of the resolution of longstanding conflicts and significant return movements. Deng cites some 25 million people in more than 50 countries as having been uprooted from their homes and displaced within the boundaries of their countries as a consequence of violence, grave human rights violations, or environmental disaster. In this global crisis, Africa is the most severely affected, with over half of the world’s IDPs. Perhaps the most dramatic case in point is Sudan, which currently represents the world’s worst crisis of internal displacement. In Sudan, 4.5 million people have been displaced by war in the south of the country and approximately 2 million in the region of Darfur.³

The year 2006 saw a significant increase in IDP numbers with waves of new displacements in many countries, including Sri Lanka, Democratic Republic of the Congo (DRC), and Sudan. Direct and systematic targeting of civilians, rapidly shifting conflicts, and restrictions on humanitarian access have led to repeated cycles of displacement, as witnessed for instance in Batticola district in Sri Lanka and in Darfur, as well as in Colombia, where protracted conflict over several decades has seen over six million people displaced, often several times, from their homes. The United Nations Office for Coordination of Humanitarian Affairs (OCHA) estimates that in at least twelve countries, six million internally displaced people receive no assistance or protection from their governments.

This snapshot of the global IDP crisis belies the concerted focus by the international community in the past several years and makes the most compelling case for my central argument: The present framework

of protection for IDPs has not yet extended far enough toward the application of international protection standards.

III. Elaboration of a Normative Framework for IDPs

The mandate of the Representative of the Secretary-General for IDPs has sought to address the global crisis of internal displacement by raising the level of public awareness, filling some of the critical knowledge gaps by fostering deeper analytical engagement on the *problematique*, and forging a stronger consensus at the political level. These efforts have been an important complement to the central project of developing a normative framework specifically for the assistance and protection of the internally displaced.

Deng initiated work on a normative framework on the basis of an analytical report that the United Nations Secretary-General presented in 1991, which concluded that there was “no clear statement of the human rights of internally displaced persons, or those at risk of becoming displaced.” Therefore, the Secretary-General recommended the elaboration of guidelines that would “[clarify] the implications of existing human rights law for persons who are internally displaced and [fashion] from existing standards one comprehensive, universally applicable body of principles which addressed the main needs and problems of such persons.”⁴ Deng suggests that the issue was in fact not the non-existence of international norms providing for the protection of IDPs, but rather that these norms were broadly dispersed in various instruments, and as such not accessible for effective advocacy in the assistance and protection of the internally displaced. At the same time, there were also gaps in the normative infrastructure that had to be addressed. Accordingly, the initial phase of work of Deng and colleagues consisted of convening a technical process to assess the normative terrain, to take stock of the existing standards for the protection of IDPs, and to propose areas for strengthening and where development of additional norms would be necessary.

Ensuring a broad-based “buy-in” for this technical process would be fundamental to the exercise. There was a need to build consensus among multiple stakeholders, including United Nations agencies, funds, and programs; other prominent intergovernmental arrangements, such as the International Committee of the Red Cross; academia; and NGOs, whose concerted advocacy and pressure over the preceding years had generated the necessary awareness leading to

greater prioritization and more serious treatment of the IDP *problematique* by the international community. It was also critical to maintain the integrity of the exercise by ensuring that it remained “grounded.” In this regard, Deng’s deep and consistent engagement with local civil society in conflict-affected countries, as well as with the internally displaced themselves, was crucial to the process.

As the technical exercise gained momentum, a simultaneous process of political consensus building among U.N. member states was also convened to secure their acceptance of the emerging normative framework. Ultimately, the success of the IDP agenda constructed around the Guiding Principles would depend on the cooperation of governments and fostering a sense of ownership on their part. This becomes more readily apparent upon examination of Deng’s conceptual point of departure for the agenda, namely, the notion that the primary responsibility for ensuring assistance and protection of the internally displaced resides with states as an aspect of their sovereignty.

Deng describes the Guiding Principles as follows:

The resulting Guiding Principles on Internal Displacement restate, interpret and apply standards from the human rights, humanitarian and analogous refugee law. They are divided into four sections addressing the protection against displacement, protection and assistance during displacement, access to humanitarian assistance and return, resettlement, and reintegration. The Guiding Principles apply not only to states, but also to ‘all other authorities, groups and persons in their relations with internally displaced persons.’ This includes non-state actors, inter-governmental and nongovernmental organizations, and internally displaced persons themselves.

The added value, then, of the Guiding Principles on Internal Displacement is that they centralize the existing norms for assistance and protection of IDPs, and also contribute to closing gaps in the normative protection infrastructure for the internally displaced. Combined with stronger political consensus and more rigorous analytical treatment of the IDP issue, it is evident that the initiative has yielded some important practical dividends, such as an improvement in the assistance response for IDPs. We have witnessed amelioration in the level of humanitarian support services for the internally displaced in the provision of basic life necessities, such as food, shelter, and clothing. The international community is expending more resources on assistance for IDPs than ever before, including through the newly established

Central Emergency Relief Fund (CERF), administered by OCHA. The CERF has been critical, especially in terms of more timely response to complex humanitarian emergencies.

However, Deng's agenda for IDPs is not yet an adequate framework for improved protection response, especially in the face of purposive targeting of displaced populations for serious human rights violations, including killing and maiming, rape and other grave sexual violence, and overt denial of humanitarian access for IDPs. Also increasingly evident is that IDP camps have become prime recruiting grounds for child soldiers. Thus, the protection agenda under Deng's mandate has not extended far enough, especially in terms of proposing and developing a structured regime for engendering compliance with international protection standards or fostering institutional arrangements to this end. This dimension—a structured compliance regime—is a critical element for the redirection of emphasis from the elaboration of standards to their application on the ground. Ultimately, the effectiveness of the agenda will be gauged by the ability of the international community to deliver adequate and timely humanitarian assistance to IDPs, but also in terms of tangible protection from systematic acts of violence and other human rights violations.

IV. Liabilities of “Sovereignty as Responsibility”⁵

As noted earlier, Deng's conceptual point of departure in developing the IDP agenda has been to reinforce the notion of national sovereignty as a positive concept of the responsibility of states to protect their citizens or individuals falling under their jurisdiction, particularly under circumstances of internal conflict. This translated into his conception of Sovereignty as Responsibility, articulated as follows:

State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-interference yields to the international responsibility to protect.⁶

Deng's analytical starting point is an understanding of the changing order as a consequence of the end of the Cold War and the global bipolar power arrangement that marked that period. As the prevailing

status quo disintegrated and American and Soviet support for their allies around the globe began to dissipate, the world witnessed the proliferation of conflicts within states. Deng suggests that countries that had been able to suppress or manage conflict with the support of the superpowers were no longer able to do so effectively, or to deal with the serious humanitarian consequences of conflict. Intra-state conflict has resulted in a dramatic rise in the number of internally displaced. As the humanitarian situation around the world deteriorated with the end of the Cold War, Deng suggests that there was greater “pressure” on the notion that sovereignty may be invoked by states as “a barricade against international scrutiny.” Deng asserts that this shift in the global order has resulted in a new consciousness, namely, that “Human rights and humanitarian concerns [have begun] to replace strategic national interest as the driving norm in international politics.” Therefore, the end of the Cold War represented a critical turning point toward a new and more acute consciousness of human rights in general and the plight of the internally displaced in particular, leading to the genesis of the concerted international response to internal displacement.

The central emphasis of Deng’s advocacy has been on “diplomacy and the art of persuasion” as a means to compel national authorities to ensure assistance and protection of IDPs and to overcome humanitarian access restrictions imposed by states in the name of sovereignty. He implies that states have a fundamental sense of responsibility towards their citizens, and as such there is always an inherent receptivity on the part of national authorities to cooperate with the international community to address the plight of IDPs. This receptivity of states represents an entry point for dialogue on assistance and protection. The approach is also based in part on the assumption that for many governments, legitimization by the international community is a powerful incentive for good behavior, and dialogue on relief and protection of IDPs may be viewed as a vehicle to international legitimacy, or at least as valuable political capital. They may perceive the price of negative global public opinion or other international censure as a significant liability for their national interests. This also represents an entry point for dialogue and diplomacy.

To emphasize his point regarding the receptivity of states, Deng notes that in his extensive diplomatic engagements as an advocate for IDPs, “no government authority has ever argued, ‘I don’t care how irresponsible or unresponsive we are, this is an internal matter and none of your business.’” He argues that there exist “vacuums of responsibil-

ity” in which IDPs fall as a consequence of governments distancing themselves from their obligations, but that this is often due to their lack of capacity to deal with overwhelming humanitarian crises. For Deng, these vacuums may be addressed through dialogue, diplomacy, and offers of assistance to governments by the international community, in order to enable national authorities to assume their responsibility.

It is evident that this approach provides critical relief to millions of IDPs around the world. However, specific cases also testify to the fact that there are indeed governments that are “irresponsible” or unresponsive, and situations in which grave human rights violations against IDPs are occurring through deliberate inaction, or with direct complicity, or even under explicit directions from national authorities. Such governments may often couch their dialogue with the international community in “diplomatically/politically correct” human rights language, while at the same time purposefully pursuing domestic policies and practices that violate the most fundamental human rights tenets. For example, in their dialogue with the United Nations, some of the most notorious governments that recruit and use child soldiers stress the fact that they have ratified the Optional Protocol to the Convention on the Rights of the Child. Since this prohibits underage recruitment into the armed forces, it means that they therefore do not condone such activity. Yet in every practical sense they have not met this commitment, including the lack of commensurate reform by their national legislation to criminalize the practice of recruitment or to rigorously investigate and prosecute at the national level individuals in their armed forces who recruit children. They “look the other way” or are directly complicit because it suits what they view as their national interests.

Therefore, even though we are indeed entering an era of greater global consciousness and scrutiny on human rights issues, it overstates the case to suggest that human rights and humanitarian concerns are replacing strategic national interest as the driving norm of international politics, as is argued by Deng. I would propose that states are as single-minded as ever about their national interests, but due to external pressures they have become more adept at making the right human rights noises to cover violations. That is to say, governments have developed an increasingly sophisticated human rights lexicon and rhetoric, and this, combined with invocations of sovereignty, has become a formidable barrier to meaningful international intervention

where cynical policies are being pursued against vulnerable groups including IDPs.

It is important to stress that the critical liability of Deng's approach lies not in sovereignty as responsibility as a conceptual *leitmotif*, but rather in the lack of a strategic approach and framework (beyond advocacy and dissemination of norms, and assistance and protection dialogue) to translate this concept into tangible protection for the most vulnerable in situations of armed conflict. Diplomacy in the spirit of goodwill, responsibility, and constructive dialogue can only achieve positive results when concerned governments are also prepared to deal in this spirit. Where one is faced with irresponsible and unresponsive interlocutors, diplomacy requires a different set of pressure tools and possibilities, essentially to be able to present a credible threat of sanctions against violating parties to compel them to take responsibility and alter behavior and practice.

Building a regime of compliance with international protection standards is precisely about generating the necessary political will. It means devising institutional arrangements and infrastructure to be able to adopt concrete and targeted measures against recalcitrant violators of human rights. In other words, the IDP protection agenda must have "teeth" in order to incentivize responsible behavior. In the absence of a compliance regime, the realities on the ground will continue to belie the high level of commitment of the international community as expressed in the extensive normative protection infrastructure that presently exists. The fact that Deng has not explored this dimension in his work represents a critical liability.

V. Considering Non-State Parties to Conflict

A second liability inherent in sovereignty as responsibility as a conceptual underpinning is that it privileges the state as the interlocutor in assistance and protection dialogue and diplomacy. Deng's disproportionate emphasis on governments is conspicuous and unsustainable because in many intra-state conflicts today non-state parties, including rebel groups and other armed forces, are powerful determinants of the lives of people living under their effective control. Furthermore, these parties often commit the most heinous acts of violence against those civilian populations. For instance, in Sudan, a plethora of non-state armed forces, including nomadic groups often referred to as *Janjaweed*, are committing grave human rights violations, including

systematic rape of girls around IDP camps in Darfur. The Revolutionary United Front rebels in Sierra Leone, infamous for acts of brutality including killing and maiming civilians and systematic recruitment of children, at certain points during ten years of conflict effectively controlled the entire country save for the capital, Freetown. The FARC rebels in Colombia are in control of a vast portion of that country, as are the Tamil Tigers in Sri Lanka, and both groups commit human rights abuses against civilians in their territories of control. The Forces Nouvelle rebel group in Côte d'Ivoire controls the northern half of the country. The list goes on.

The issue of negotiations with non-state armed groups is an emerging discourse within the United Nations, and a vexing one at that. Some voices, particularly on the political side, carry reservations about treating with non-state armed groups because this may be perceived as tacit recognition and the conferral of legitimacy on parties that may be categorized as illegal or terrorist organizations. Others, particularly on the humanitarian side, insist that the assistance and protection imperative should override other considerations and that the United Nations should seek to engage both state and non-state actors in protection dialogue. Realistically and practically, non-state parties must necessarily form part of the calculus of a viable assistance and protection agenda for IDPs.

VI. Issue of Leverage

The question becomes how to deal with actors who are not signatories to international protection treaties and conventions and as such do not carry sovereign responsibility in the same sense as a legitimate national authority. What incentives can be offered to non-state parties? Or what disincentives can be put in place to prevent their abuses? I would suggest that in an emerging order increasingly defined by interconnectedness and globalization, the international community has unprecedented possibilities and opportunities to leverage non-state parties.

The information revolution has made it increasingly difficult for those who commit grave violations to insulate themselves from scrutiny and the court of international public opinion and pressure. For many non-state groups who have political agendas and aspirations (and the vast majority of them do), the public image that they project is of vital importance. The Tamil Tigers, for instance, rely on extensive

diaspora networks in North America and Europe for advocacy and financial support to their cause. Their capacity to operate effectively depends on access to global financial institutions and mechanisms. In the Democratic Republic of the Congo, for example, armed groups depend on global markets for illicitly exploited natural resources such as diamonds, timber, and coltan, in order to convert such resources into weapons and other “inputs” for conflict. They depend on satellite connections and cellular networks to coordinate their military and public relations campaigns. The leaders and spokespeople of these groups often need to travel internationally to sustain their operations. All these aspects represent pressure points that may be targeted through a structured compliance regime.

Today, as never before, it is possible to raise the stakes and risk level for those who commit grave human rights violations because the means exist to institute targeted measures to sanction them. It is now largely a matter of generating the requisite political will within the international community for such action. There are encouraging indications that such will already exists.

VII. Compliance Regime for Children Affected by Armed Conflict⁷

In the past several years remarkable progress has been made in the structuring of a regime of monitoring, reporting, and compliance with international standards in the context of a contiguous agenda for the protection of children affected by armed conflict. This progress is schematically outlined here as a basis for consideration in terms of the extension of the IDP protection agenda.

Strategically and tactically, the objective of the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict has been to locate this issue at the highest discussion table of the United Nations, by inscribing it on the peace and security agenda of the Organization. Within the ten-year existence of the mandate, the Security Council has adopted six resolutions focusing explicitly on the plight of war-affected children. This undertaking and the achievements that have been registered thus far are unprecedented. The initial resolution of the Security Council on children and armed conflict, Resolution 1261, adopted in 1999, represents the very first resolution of the Council on a thematic human rights issue. It opened the door for the engagement of the Security Council on a range of other thematic

concerns, including Women, Peace and Security and the Protection of Civilians in Armed Conflict.

Each of the five subsequent resolutions of the Security Council on children and armed conflict since then—1314 (2000), 1379 (2001), 1460 (2002), 1539 (2004) and 1612 (2005)—have elaborated a framework for the protection of children in situations of armed conflict, and have gradually focused on one specific aspect, namely, the systematic monitoring and reporting of particularly egregious violations against children as well as engendering compliance with international child protection standards to end impunity for these violations. It is important to note that the project has focused on all parties to conflicts who commit violations, both state and non-state actors.

The latest resolution, Resolution 1612, effectively operationalizes the engagement of the Security Council by mandating the implementation of institutional arrangements and an infrastructure for compliance. Resolution 1612 requests the Secretary-General to implement a mechanism to systematically monitor and report to the Council grave violations, including the annual preparation by the Secretary-General of a “naming and shaming” list of specific state and non-state parties to conflict who recruit and use child soldiers. The list also records five other grave violations: killing or maiming of children, rape or other sexual violence, abduction of children, attacks against schools or hospitals, and denial of humanitarian access for children. Resolution 1612 also establishes a dedicated Security Council Working Group on Children and Armed Conflict to continuously review information emanating from the monitoring mechanisms, and on the basis of this information recommend targeted measures that may be undertaken by the Security Council and other policy-level bodies against violators, as well as for programmatic response for war-affected children. Finally, the Resolution also requests that the parties to conflict engage in dialogue with the United Nations to prepare concrete and time-bound action plans to end the recruitment and use of child soldiers and to release to the United Nations and child protection NGOs all children associated with their forces in any capacity.

In effect, the Security Council has now put in place an infrastructure through which child protection actors are able to seize the attention of the Council on issues related to war-affected children on an “as needed basis,” as well as a referral arrangement for action against recalcitrant violators. The annual report of the Secretary-General serves as a gate-

way and framework for the Security Council's engagement on the issue and as a vehicle for the compliance regime that has been instituted.

A year after adoption of Resolution 1612, this institutional arrangement and infrastructure has begun to yield tangible results in terms of protection for children. Parties to conflict perceive that the risk level for committing violations against children has risen appreciably because the Security Council has clearly demonstrated the political will to address impunity, and in a practical sense has organized itself to take concrete action. As a result, a number of parties to conflict have engaged the United Nations in dialogue for the preparation of child protection action plans, including the Forces Nouvelle as well as four pro-government militia groups in Côte d'Ivoire, who signed such plans in November 2005 and December 2006, respectively. This has resulted in the identification and release, so far, of some 1,400 children by the Forces Nouvelle.

The government of Uganda also committed to an action plan to end recruitment and use of children in their forces following a visit of the Special Representative of the Secretary-General for Children and Armed Conflict in July 2006. Other parties, such as the Tamil Tigers in Sri Lanka as well as parties to the conflict in Myanmar, have also signaled their commitment to establish dialogue with the United Nations in the framework of Resolution 1612. Parties in Myanmar recently signed a formal Deed of Commitment on critical child protection concerns.

In February 2006, the Security Council Sanctions Committee for Côte d'Ivoire established, pursuant to Resolution 1572 (2004), an approved list of individuals subject to specific sanctions, including a travel ban and attachment of financial assets. Commandant Martin Kouakou Fofie of Force Nouvelles was listed under the citation that forces under his command had engaged in recruitment of child soldiers, abductions, and sexual abuse and exploitation of children. Since then, the Security Council Working Group on Children and Armed Conflict has recommended to the Council, amongst other specific conclusions, the referral to the existing Security Council Sanctions Committees of cases of continued grave violations against children by parties in the Democratic Republic of Congo and Côte d'Ivoire.

The concerted engagement of the Security Council on the children and armed conflict protection agenda over the past ten years has contributed significantly to a powerful momentum for an "era of application" of international child protection standards and other concrete

actions by entities beyond the Security Council. For example, in March 2006, the Chief Prosecutor of the International Criminal Court issued a statement announcing the first indictment of the Court, of Thomas Lubanga, founder and leader of a militia group in Ithuri in the Democratic Republic of Congo, for commission of war crimes: conscripting and enlisting children under the age of fifteen years, and using children to participate actively in hostilities. In his statement, the Prosecutor sounded a clear message of intent regarding impunity for crimes against children:

This is the first case, not the last. The investigation is ongoing, we will continue to investigate more crimes committed by Thomas Lubanga Dyilo and we will also investigate other crimes committed by other groups. This is important, it's a sequence. We will investigate crimes committed by other militias and other persons—this is the first case, not the last... . We are totally committed to staying in Congo—to make sure justice is done.⁸

Also in March 2006, Major Jean-Pierre Biyoyo became the first person to be convicted in a national judicial process for recruiting child soldiers. He was sentenced to five years imprisonment by a military tribunal in the Democratic Republic of Congo.⁹

The former President of Liberia, Charles Taylor, was transferred into the custody of the Special Court for Sierra Leone on 17 March 2006, and indicted on eleven counts of war crimes and crimes against humanity. These included, “conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities.”¹⁰ He is the first former Head of State to be held explicitly accountable for child recruitment.

The remarkable precedent that has been set on the children and armed conflict agenda represents a valuable “lessons-learned and best practices” experience, and carries distinct possibilities for moving into an era of the application of international standards in the context of the IDP agenda. Continued leadership, commitment, and vision is required to ensure that the international community makes good on the paper promises that have been made to protect vulnerable groups.

VIII. Conclusion

The role of the United Nations as custodian and principal advocate for international norms and standards for the protection of the most vulnerable is one of the most critical responsibilities of the Organization. In the past decade, we have witnessed the elaboration of an unprecedented array of protection standards. As a result, today our normative infrastructure for protection is more extensive, coherent, and robust than ever before. However, in spite of the broad-based commitment to the principles enshrined in international protection standards, parties to conflict have increasingly demonstrated a willful disregard for the most basic tenets of international humanitarian law. For the United Nations to remain relevant into the future it must lead the redirection of the energies and emphasis of the international community from the elaboration of norms to their application on the ground. This will require the political will to develop new institutional arrangements and infrastructures for concrete and targeted measures against those who commit egregious human rights violations.

Under the leadership of Francis Deng, important progress has been made on the specific agenda for assistance and protection of the internally displaced. However, in order to more effectively deliver protection to this particular category of vulnerable people, the agenda must now enter a new territory in which a structured regime to ensure compliance with the applicable normative framework is elaborated. In the end, the work of Dr. Deng in this area will be viewed in the context of how effectively norms and strong political consensus are translated into tangible protection for vulnerable human beings.

Since 1999, the United Nations Secretary-General, together with the Security Council, has pushed the boundaries in terms of engendering compliance with protection standards in the context of his agenda for children affected by armed conflict. He has sought to position this critical issue centrally on the stage of international peace and security. The concerted and purposive engagement of the Security Council has now begun to translate into real improvements in the lives of children. Experience and inspiration may be drawn from this unprecedented advancement.

Specific examples of actions taken by different actors at the international level demonstrate that the necessary political will to address impunity for crimes against the most vulnerable groups can indeed be generated. The efforts of various actors, each in the scope of their

distinct mandates, roles, and jurisdictions, are gradually increasing the pressure on those who commit violations. It is clear that these parties “are sitting up and taking notice.” A distinct window of opportunity exists for the international community to press home the advantage. Advocacy for an era of application of international protection standards is no longer merely a utopian project.

Notes

1. *Guiding Principles on Internal Displacement*, United Nations Document: E/CN/1998/53/Add. 1
2. Human Security Centre, *2005 Human Security Report: War and Peace in the 21st Century* (Oxford: Oxford University Press, 2005).
3. Francis Deng, *Divided Nations: The Paradox of National Responsibility*, essay for the 2006 Macalester International Roundtable. Further quotes of Dr. Deng are also from his Roundtable essay. See also, *The State of the World's Refugees 2006*, published by the United Nations High Commissioner for Refugees, 2006.
4. United Nations Document E/CN.4/1991/23 (1992).
5. It must be acknowledged that in the evolving discourse at the United Nations on the protection of civilians in armed conflict, Deng's conception of “Sovereignty as Responsibility” has been translated into an emerging doctrine known as the “Responsibility to Protect.” The Secretary-General raised this for the first time in the United Nations General Assembly in 1999, when he argued that governments must not be allowed to use sovereignty as a shield behind which to hide and systematically abuse the human rights of their own people and commit crimes against humanity. This may be viewed in the context of the paralysis of the United Nations to intervene in the genocide in Rwanda, where close to one million people died in a period of two months in 1994. There was considerable nervousness regarding the implications of the concept of responsibility to protect, from both large and small countries. Smaller states in particular felt that an acceptance of this concept would be used as an excuse by the powerful to interfere in their internal affairs. Large states were also hesitant about the precedents that may be set and the implications down the road in terms of their own sovereignty. Under the leadership of Canada, a commission was established to examine the issue of active humanitarian intervention, which culminated in a report entitled, “Responsibility to Protect” (ref.). This report later became part of the recommendations of the report of the Secretary-General to the General Assembly entitled, “In Larger Freedom” (ref.), which was accepted by the Assembly in 2005 at the level of Heads of State and Government through the World Summit Outcome Document (ref.). Essentially, this broad-based acceptance means that when governments fail to protect their own people because they lack the capacity to do so or they are actually the ones committing abuses against their own population, the international community, through the United Nations Security Council, has the right and obligation to intervene and, as a last resort, may even recommend the use of force. Acceptance of this concept through adoption of the World Summit Outcome Document at the level of Heads of State is a major breakthrough for the United Nations and the development of international law. Practical implementation of this commitment may still be on the distant horizon, at least as far as its institution as consistent practice and

norm. But it places a significant marker in the ground in terms of addressing impunity for human rights violations. The development of this doctrine and the strong consensus that has been generated around the responsibility to protect must be credited as a legacy of Francis Deng and other colleagues who have contributed to the articulation of the concept of sovereignty as responsibility.

6. Thomas G. Weiss and David A. Korn, *Internal Displacement: Conceptualization and its Consequences* (London and New York, 2006), p. 97 (as quoted by Deng in "Divided Nations").

7. For a more detailed overview of the children and armed conflict agenda, see Tonderai Chikuhwa, "Evolution of the United Nations Protection Agenda for Children Affected by Armed Conflict" (University of Pittsburgh Press), forthcoming essay.

8. Statement by Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court, The Hague, 18 March 2006; and International Criminal Court, Public Document no. ICC-01/04-01/06, "Decision to Unseal the Warrant of Arrest against Mr. Thomas Lubanga Dyilo and Related Documents," 17 March 2006.

9. Source: iafrica.com, Agence France Presse, "DRC recruiter for child soldiers convicted," posted 19 March 2006.

10. Special Court for Sierra Leone, Case No. SCSL-2003-01-I, "The Prosecutor against Charles Ghankay Taylor, Amended Indictment."