

# Protecting Populations at Risk in Divided Nations: Whose Responsibility Is It?

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## I. INTRODUCTORY REMARKS

Having just received the prestigious Trainor Award, I wonder whether I still need to say how honored I am. But I indeed feel truly honored, touched and humbled by the Award, and should say so.

I am also moved by the generous words of introduction by Ambassador Tom Pickering. I am however not surprised, not only because Tom and I go back a long way, as he himself intimated, but also because I know how kind-hearted and generous in spirit he is.

Ambassador Pickering's use of the word "distinguished" brought back to mind a situation I experienced some years ago at the Organization of African Unity, before it became the African Union. Several of us who had held Government positions met with Secretary-General, Salim Ahmed Salim. After the meeting, Salim took us to a meeting of his staff and said to them, "Let me introduce you to our extinguished leaders." He was not joking; it was a slip of the tongue, which made it even more significant.

Coming to the subject of my lecture, as I reflected on what I would talk about, I decided that the premise and over arching theme of my remarks should be the crisis of national identity in acutely

divided societies, and how the gross inequalities, discrimination, marginalization and denial of rights associated with this crisis can be a major trigger to genocidal conflicts and the response of the state to their humanitarian consequences.

Put in other words, the crisis of national identity results in a vacuum of national responsibility to protect and assist populations under the threat of mass violence or in need of humanitarian assistance. The international community becomes the alternative source of protection and assistance to the needy populations.

However, in countries divided between the "in-group" in control of State power and the denigrated and even persecuted "out-group," the State is likely to invoke sovereignty as a barricade against international involvement.

Short of military intervention, which is very costly in both material and human terms, and is therefore generally avoided or undertaken as a last resort, engaging Governments on the basis of "sovereignty as responsibility," now recast as the "responsibility to protect," is the most practical preventive and responsive strategy.

Beyond these introductory comments, my remarks will begin with the elaboration of the premise of divided nations and then build on the areas of work through which I developed, and subsequent-

ly applied, the normative concept of “sovereignty as responsibility.” The sections that follow will therefore include:

Exploring the world of divided nations and the vacuums of responsibility associated with the crisis of national identity behind the divisions;

Establishing and directing the Africa Project at the Brookings Institution;

Participating in the development of the Helsinki process for Africa, leading to the Conference on Security, Stability, Development and Cooperation in Africa; (CSSDCA);

Discharging the responsibilities of my mandate as Representative of the Secretary-General on Internally Displaced Persons (IDPs); and

Conducting the work under my present mandate as Special Adviser of the UNSG on the Prevention of Genocide.

I will end with concluding remarks that will restate the thrust of my argument and correlative policy implications.

## II. THE WORLD OF DIVIDED NATIONS

The vacuum in the political and moral responsibility to protect, associated with the crises of national identity, was impressed upon me in my interaction with displaced populations during my country missions as Representative of the Secretary-General on Internally displaced Persons. My meetings would begin with the national leadership before going to the displaced populations to assess their conditions. At the end of my meetings with IDPs, I always asked them: ‘What message would you want me to take back to your leaders?’ Invariably, the response I got was: ‘We have no leaders there; those are not our leaders.’ In a Latin American country, the spokesman said, “Those people see us as crimi-

nals, not citizens, and our only crime is that we are poor.’ In a Central Asian country, I heard a similar answer, explained in ethnic terms: ‘None of our people is in that government.’ In an African country, the Prime Minister is reported to have said to a senior UN official: ‘The food you give to those people (his own country’s internally displaced populations) is killing my soldiers.’

In most countries torn apart by civil war, particularly in Africa and Asia, the sources and causes of conflict are generally recognized as inherent in the traumatic experience of state-formation and nation-building, associated with colonial intervention and repressive post-colonial regimes. The colonial state brought together diverse groups and paradoxically kept them separate and not integrated. Regional ethnic groups were broken up and affiliated with others within the artificial borders of the new state, and colonial masters imposed a super structure to maintain law and order, relative peace and tranquillity

The independence movement was a collective struggle for self-determination that reinforced the notion of unity within the artificial framework of the newly established state. Initially, independence came as a collective gain that did not differentiate who was to get what from the legacy of the centralized power and wealth. Because colonial institutions had divested the local communities and ethnic groups of much of their indigenous autonomy and sustainable livelihood, replacing them with a degree of centralized authority and dependency on a welfare state system, the struggle for control became unavoidable, once control of these institutions passed on to the nationals at independence. The outcome was often conflict over power, wealth, services and development opportunities. This led to gross violations of human rights, denial of civil liberties, disruption of economic and social life, and the consequential frustration of development.

As the Cold War raged, however, these conflicts were seen not as domestic struggles for power and resources, but as proxy wars in the super power ide-

ological confrontation. Rather than help resolve them peacefully, the super powers often aggravated the conflicts by providing military and economic assistance to their respective allies in conflict.

Although the end of the Cold War removed this external factor, it also removed the moderating role of the Super Powers, both as third parties and as mutually neutralizing allies. The results were unmitigated brutalities and devastating identity conflicts.

The larger the gap in the participation and distribution patterns based on racial, ethnic, or religious identity, the more likely the breakdown of civil order and the conversion of political confrontation into violent conflict. When the conflict turns violent, the issues at stake become transformed into a fundamental contest for state power. The objectives may vary in degree from a modest demand for autonomy to a more radical call for secession or a major restructuring of the national framework, either to be captured by the demand-making group or to be more equitably reshaped. When the conflict escalates into a contest for the 'soul' of the nation, it runs into an intractable zero-sum confrontation. The critical issue then is whether the underlying sense of injustice, real or perceived, can be remedied in a timely manner, to avert the zero-sum level of violence and do save the unity of the nation.

Often times, international actors, intimidated by governments' assertion of sovereignty, compromise the concerns of the vulnerable populations. As adversarial confrontation with governments does not help much, the challenge is to negotiate with governments constructively on the basis of sovereignty as responsibility and, since the adoption of the Outcome Document by the 2005 Summit of Heads of State and Government, the responsibility to protect. Let me now turn to the Brookings Project under which we developed the concept of 'sovereignty as responsibility'.

### III. POST-COLD WAR APPROACH TO CONFLICT MANAGEMENT

In the Africa Project which I initiated at the Woodrow Wilson International Center for Scholars and pursued at the Brookings Institution for twelve years (1988-2002), we began by organizing a conference for an initial assessment of conflict in Africa and the challenges they posed in the post-Cold War era. We then undertook a series of national and regional case studies to deepen our understanding of the issues involved. A synthesis of these case studies led to the main conclusion that as conflicts were now being properly perceived as internal, they also primarily became the responsibility of governments to prevent, manage, and resolve. Governance became perceived primarily as conflict management. Within the framework of regional and international cooperation, state sovereignty was then postulated as entailing the responsibility of conflict management and the protection of vulnerable populations. The essence in other words, was "sovereignty as responsibility."

The envisaged responsibility involved managing diversity, ensuring equitable distribution of wealth, services, and development opportunities, and honouring regional and international arrangements for peace, security, and stability. In subsequent work, we tried to put more flesh on the skeleton of the responsibilities of sovereignty, building largely on international human rights and humanitarian norms.

Since internal conflicts often spill across international borders, their consequences also spill across borders, threatening regional security and stability. In the 're-apportionment' of responsibilities in the post-Cold War era, regional organizations provide the second layer of the needed response. And the international community remains the residual guarantor of universal human rights and humanitarian standards in the quest for global peace and security.

I now turn to the Helsinki process for Africa—The Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA).

#### IV. TOWARD A CONFERENCE ON SECURITY, STABILITY, DEVELOPMENT AND COOPERATION IN AFRICA (CSSDCA)

As noted at the outset, I was also intimately involved in the initiative of the Africa Leadership Forum of former President Essoigne Absentia of Nigeria, which aimed at the development of the Helsinki process for Africa known as the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). This was motivated by the concern that the post-Cold War global order was likely to result in the withdrawal of the major powers and the marginalization of Africa. It was, therefore, imperative for Africa to take charge of its destiny and observe principles that would appeal to the Liberal democracies of the Western world and thereby provide a sound foundation for a mutually agreeable partnership with them. This was found in the Helsinki framework of the Conference on Security and Cooperation in Europe (ESCE), which became the Organization for Security and Cooperation in Europe (OSCE).

A series of meetings culminated in the 1991 Conference in Kampala, Uganda, which was attended by some 500 people from all walks of life, including several heads of state and civil society representatives. I chaired the security working group which debated intensely the need to balance sovereignty with regional solidarity on national security challenges. The conference produced the Kampala Document, which elaborated the four “calabashes,” so termed to distinguish them from the OSCE “baskets,” and give them an African orientation. The calabashes are security, stability, development, and cooperation.

The adoption of the CSSDCA by the Organization of African Unity (OAU) was initially blocked by a few governments that felt threatened by its normative principles. Absentia's imprisonment by the Nigerian dictator Sand Abaca also removed the leverage needed to exert pressure on the OAU. During Abusing's imprisonment, he asked me to assume the role of Acting Chairman of the Africa

Leadership Forum. While our efforts to lobby the OAU did not produce results, we were able to promote CSSDCA with colleagues at Brookings and I. William Smarten and I coauthored the book, *A Strategic Vision for Africa: The Kampala Movement*, for which Absentia, just released from imprisonment, wrote the Preface. When Absentia returned to power as the elected president of Nigeria, he was able to push successfully for the incorporation of CSSDCA into the OAU Mechanism for Conflict Prevention, Management and Resolution.

#### V. THE MANDATE ON INTERNAL DISPLACEMENT

Secretary-General, Buttress Buttress Gaily surprised me one day with a phone call to tell me that my name had been proposed for the position of the Secretary-General's Representative on Internally Displaced Persons and that he was pleased to offer me the position. I said I was honored and flattered, but could he have his staff give me the details of what the position entailed before I gave him my final decision. He responded by saying “Francis, I know you well. And I know how concerned you are about these problems.” Buttress Gaily and I had been State Ministers of Foreign Affairs of our respective countries, Egypt and Sudan, and had worked closely together. “This is a problem which is not only global, but one that affects our continent of Africa the most, and, in Africa, it is your country, the Sudan, that is the worst hit, and, in the Sudan, it is your people in the South that are the primary victims. I cannot see how you can say ‘no’. I will tell them that you have accepted and if later you still are undecided, we can discuss further.”

At the time of my appointment as Representative of the Secretary-General on IDPs, there were some 25 to 30 million people in over 50 countries throughout the world. These are people who have been forced to flee their homes or areas of normal residence by armed conflicts, internal strife, and systematic violations of human rights, but who have remained within their national borders. Had

they crossed international borders, they would be refugees for whom the international system has a legal and institutional framework for their protection and assistance. Because internally displaced persons remain within their own countries, where, unlike refugees who have escaped internal conflicts, they remain within domestic danger zone, they nevertheless have no legal or institutional bases for receiving protection and assistance from the international community.

For the same reason of being internal, internal displacement raises sensitive issues of sovereignty, which is why the establishment of the mandate of the Representative of the Secretary-General on IDPs was highly sensitive and controversial. From the beginning, I had to factor this into my approach to the mandate. If the mandate were seen as a threat to national sovereignty, doors would be closed and I would not have access for dialogue with the national authorities and to displaced populations whose cause I was supposed to advocate. Building on our work at Brookings on post-Cold War approach to conflicts in Africa, sovereignty as responsibility became the normative basis of my dialogue with Government. I also linked human rights with humanitarian concerns, and protection with assistance.

The first five minutes with the president or the minister concerned were crucial to getting the message across that I realized the problem was by definition internal and fell under state sovereignty, that I was respectful of state sovereignty, but that I saw sovereignty positively as a concept of state responsibility for protecting and providing humanitarian assistance to its needy populations, and, if necessary, request assistance from the international community. I then added courteously, but affirmatively, that if the state failed to discharge that responsibility, with the consequence that the population concerned was threatened with suffering and death, the international community would not stand by and do nothing; it would find one way or another to intervene. The best way to safeguard sovereignty was therefore to discharge the responsibility of sover-

eignty.

I later revised my first report to the Commission on Human Rights as a Brookings publication under the title, *Protecting the Dispossessed: A Challenge for the International Community*. Roberta Cozen and I founded and codirector the Brookings Project on Internal Displacement through which we conducted in-depth studies of various aspects of the displacement phenomenon. We also undertook the development of the relevant normative framework that resulted in the *Guiding Principles on Internal Displacement*. Building on human rights law, humanitarian law and analogous refugee law, the *Guiding Principles* were developed through an intensive and broad-based process led by a core team of international legal experts most ably chaired by the eminent Swiss Professor of International Law, Walter Callin, who would later become my successor as the mandate holder.

On the whole, our approach to sovereignty as responsibility was quite successful and made internal displacement a legitimate concern for state cooperation with the international community. In fact, on my missions, representatives of the UN and other international organizations were often so reticent to engage the national authorities on the issue of internal displacement because of its sensitivity, even as I successfully pleaded with the authorities to respond to the needs of the internally displaced. Often, it would be toward the end of the mission that the UN country team would acknowledge the change in government policy and begin to respond positively on the need for follow up action.

## VI. THE MANDATE ON GENOCIDE PREVENTION

My appointment to the genocide prevention mandate came to me in a very similar way to the one on internal displacement; I got a surprising e-mail message saying: "Secretary-General Ban Ki-moon is about to make a decision to appoint a special advisor on the prevention of genocide. Your name is on the list, perhaps on top of the list, and he wants

to know, if he were to offer you the position, whether you would consider accepting it. I said: "This comes to me as a total surprise, but if I were asked, I would take it as a call of duty and a service to humanity, which I cannot take lightly." Two days later I met the Secretary-General, and four days after our meeting my appointment was announced.

Genocide, even more than internal displacement, is a very sensitive phenomenon. Although, it is one of the most heinous crimes that humanity is expected to unite in preventing, stopping and punishing it, for the same reason, it is an issue about which both perpetrators and those called upon to prevent or stop it are usually in denial. That is why we usually recognize genocide after the fact, in historical terms. Indeed, genocide is an issue often seen as too sensitive for comfortable discussion, too difficult to touch, and therefore, the general response is denial.

After the initial feelings of being honored and flattered, I quickly started to wonder what I had got myself into. How would I deal with this very sensitive issue? I decided to conceptualize the problem in a way that would make it manageable, and to look for practical ways that would enable me to do what needed to be done. I thought the best way was first of all to de-mystify the notion of genocide from something that is untouchable, something too difficult to deal with, to a problem that is the result of extreme identity-related conflicts that target specific groups of people, identified either by the factors specified in the 1948 Convention, which include nationality, race, ethnicity and religion, or, for that matter, by some other criteria.

But it is not the mere fact of being different that causes genocidal conflicts; it is the implications of these differences in terms of how much people are differentiated and stratified. Whereas some groups enjoy the dignity and rights of citizenship, others are marginalities, discriminated against, excluded, de-humanized and denied the dignity and the rights that normally should accrue from citizenship. It is the reaction of these extremely denigrated groups that generates a conflict of resistance to the

indignity, a conflict emanating from despair, from having no constructive, peaceful ways of promoting their interest in achieving equality and a sense of belonging to the nation. Their reaction then generates a counter-reaction by the state.

Escalation becomes a zero-sum situation of conflict. It is paradoxical that the existential threat that the more powerful feel from the weaker antagonist, which then motivates them to react with a genocidal onslaught, creates a dynamic that the groups in conflict cannot manage. It usually takes the involvement of a third party to mediate. Of course, the irony of all this is that the subjectivity with which people define themselves, as opposed to the objective realities, often means that what divides people has a lot to do with myth rather than reality. The people at war are often not as different from one another as they think they are.

I have been to Bosnia at the peak of the conflict there, to Central Asia, and to many countries in Africa torn apart by conflict. Usually, when you look at the people in conflict, it's not easy to tell who belongs to which side of the divide. I remember addressing crowds in Burundi, some of whom looked typical Tutsi, in the way we are told Tutsi look, and some of whom looked typical Hutu, but with many in between whom I could not tell whether they were Tutsi or Hutu. I asked the foreign minister of the country after these meetings: "Can you always tell a Tutsi from a Hutu?" His response was: "Yes, but with a margin of error of 35 percent." And that margin of error is common. If you take the challenge as one of how to manage diversity constructively, to promote a sense of equality, a sense of belonging to the nation on an equal footing, a sense of pride in being a citizen who enjoys the dignity and rights associated with citizenship then this is an objective which no self-respecting government can question, far less oppose. This is a challenge which should be a topic of constructive engagement with any government.

To the extent that early structural prevention is a function of good governance, it falls within the normative framework of sovereignty as responsibil-

ity. This concept has been strengthened and mainstreamed by the Canadian-sponsored Commission on Intervention and State Sovereignty and has continued to gain wide support from the international community. The Secretary-General's High Panel on Threats, Challenges, and Changes also endorsed the principle. As the UN prepared for its sixtieth anniversary celebration, the Secretary-General pleaded that 'we must embrace the responsibility to protect'. The World Summit of Heads of State and government, which convened in New York in September 2005, 'stressed the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity'.

Both 'sovereignty as responsibility' and the 'responsibility to protect' have three pillars: The responsibility of the State to protect its own populations; the responsibility of the international community to assist the state to enhance its capacity to discharge its national responsibility; and the responsibility of the international community to take collective action under the UN Charter when a state is manifestly failing to protect its own populations. Measures under this last pillar range from diplomatic intercession to the imposition of sanctions, and, under certain compelling circumstances, military intervention.

Secretary-General Ban Ki-moon has made the operationalization of the responsibility to protect one of the main objectives of his Term of Office, having appointed a Special Advisor on R2P, Professor Edward Luck, and directed us to form a Joint Office on the Prevention of Genocide and the Responsibility to Protect. Under his leadership, and with three reports to the General Assembly on the issue which have been the subjects of interactive dialogue and have been well received, the concept has been mainstreamed within and beyond the United Nations. Despite on-going debates and controversy over elements of the third pillar associated with the use of force as a means of protecting populations within state boundaries, the responsibility

to protect has emerged as a powerful new international norm.

My office has developed a Framework of Analysis based on eight sets of factors that we use in determining the level of risk of genocide, and since the establishment of the Joint Office, of the other R2P crimes as well. These factors raise very practical issues: the existence of identity groups, the history of inter-group relations and a record of discrimination; the extent to which there are circumstances that encourage conflict; the presence of armed groups; the existence of factors that constrain preventive measures; actions that are indicative of genocide; and evidence of the intent to destroy a particular group, in part or in whole, which is an essential element in the definition of genocide. We also consider such other triggering factors as elections, especially if seen in terms of winner takes all. If the winner takes all the power, resources and services that come from victory, the stakes become very high. This is in contrast to the notion of elections being accepted as an element of a wider culture of democracy that gives a position of respect and dignity to the loser who is nonetheless expected to play the constructive role in the opposition. In many third world countries, elections are simplistically viewed out of context, and not ascribed the kind of values associated with democracy in other parts of the world.

Once the Framework of Analysis is finalized and widely accepted, it can become an effective tool for self-scrutiny by governments. They can stand in front of the mirror so to speak and ask themselves some tough questions: How are we performing? Where are we weakest? Where do we need reform? It becomes a way of pursuing the objectives that any self-respecting government should want: by addressing the issues and preventing the kind of atrocities that usually precede genocide. I see this as a constructive way of engaging governments, which from our own experience appears to be gaining ground.

As governments understand this approach, they become more receptive to dialogue on ways to pre-

vent genocide and mass atrocities. Contrary to what people expected, I am increasingly being invited in my official capacity to engage with government and regional organizations. For instance, I was invited by the African Union to address the Peace and Security Council and the Panel of the Wise, which adopted our Framework of Analysis to be incorporated into the AU's early warning mechanism. I have been invited to a number of countries in Africa, and have also engaged in meetings around the world, most recently to several countries in the sub-region of the Association of South-Eastern Nations (ASEAN), carrying this message of constructive management of diversity as a tool for prevention of genocide and other mass atrocities. The delicate balance is between asserting international protection for the vulnerable and engaging governments constructively on the basis of their responsibility toward their populations.

## VII. CONCLUSION

I have often remarked that I consider my mandate on genocide prevention an exceedingly difficult and perhaps impossible one, but one that must be made possible. Although less daunting, the mandate on internal displacement was also difficult and challenging. I believe that the way to make such mandates possible is for the mandate-holder to play the role of a catalyst: to raise awareness, generically and specifically in given situations, and mobilize those with the requisite capacities for effective action. In a sense, what is required is an inclusive collaborative approach. And indeed, if we take genocide prevention in the way I have tried to expound, as constructive management of diversity, to minimize disparities, to promote equality and inclusivity, then there is room for all the agents of the United Nations and other actors to contribute. That, in essence, is what we are trying to do, not only for genocide prevention, but also with the other crimes under the responsibility to protect with which the Joint Office is now concerned.

So, to end with the perspective I presented at the outset, I am trying to bridge the gap between aspirations toward ideals and pragmatic engagement with governments on the basis of sovereignty as responsibility and the responsibility to protect. It is one thing to say to governments that in the name of human rights and humanitarian concerns we will override their sovereignty, to threaten that if they violate human rights, the world will intervene and stop them by whatever means necessary. It is quite another thing to say: "Sovereignty itself means responsibility, and the dignity you enjoy in the international community, the respect you have, your legitimacy at home and abroad, has a lot to do with the degree to which you discharge the positive responsibilities of sovereignty." The notion of sovereignty as responsibility, which has now evolved into the responsibility to protect, entails the three pillars of responsibility outlined earlier as shared between the state and the international community.

There is however a tendency in some quarters to see the responsibility to protect in terms of the extreme end of the third pillar: that is, when all else fails and the world is forced to use coercive means to control the situation. But coercive intervention is a measure of last resort. Even the third pillar has noncoercive measures that can be taken before military intervention can be contemplated. But when the use of force is an imperative to stop genocide and mass atrocities, there can be no justification for the invocation of sovereignty as a barricade against intervention.

Let me conclude by saying that I believe the international community has made considerable progress in laying the foundation for providing protection for vulnerable populations around the world. We must keep pushing for more progress toward the ideals of the United Nations, in protecting the weakest from the strongest. Let us hopefully move the progress forward towards lofty goals that we know we will not achieve soon, but which inspire us to continue to struggle, to press on. In the meantime, let us find some practical ways of working with governments to minimise the negative as-

sersion of sovereignty and to make sovereignty a concept of responsibility, while also preparing ourselves to respond effectively to worse case scenarios.

#### **ABOUT THE SPEAKER**

Francis M. Deng is Special Adviser to the UN Secretary-General on the Prevention of Genocide and Mass Atrocities. A distinguished scholar and diplomat, Dr. Deng was formerly the UNSG Representative on Internally Displaced Persons. Earlier in his career, he served with the United Nations Secretariat, was the Minister of State for Foreign Affairs of the Sudan, and Sudan's Ambassador to several countries, including Canada and the United States.

A distinguished scholar of law, conflict resolution, displacement and human rights, Dr. Deng taught at Johns Hopkins University and the City University of New York, and has been a fellow at the U.S. Institute of Peace, the Woodrow Wilson International Center, and the Brookings Institution. A recipient of the Grawemeyer Award and the Merage Foundation American Dream Leadership Award, Dr. Deng also received the Rome Prize for Peace and Humanitarian Action.

Dr. Deng holds a Bachelor of Laws from Khartoum University and Doctor of the Science of Law from Yale University. He has authored and edited more than thirty scholarly books as well as two novels about the crisis of national identity in the Sudan.