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**SUPPLEMENTARY HUMAN DIMENSION  
MEETING**

**“INTERNALLY DISPLACED PERSONS”**

**FINAL REPORT**

**4-5 November 2004**

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## I. EXECUTIVE SUMMARY

The OSCE third Supplementary Human Dimension Meeting (SHDM) for 2004 was devoted to the issue of internally displaced persons. The meeting took place on 4-5 November 2004 in Vienna, bringing together 141 participants, representing 30 participating States, 7 international organizations and 26 non-governmental organizations.

The main objective of this SHDM was to discuss practical steps the OSCE institutions and participating States can take to alleviate the plight of IDPs in the OSCE area with regard to the various stages of internal displacement and specific vulnerable groups. The meeting included opening and closing plenary sessions as well as three consecutive working sessions. In addition, three side events were organized on the margins of the SHDM by the meeting's participants.

Opening remarks at the plenary session were delivered by Mr. Zahari Radukov, Deputy Chairman of the OSCE Permanent Council, and Mr. Steven Wagenseil, First Deputy Director of the OSCE/ODIHR. In his address, Mr. Radukov recalled the key role of the governments of Austria and the Netherlands in giving the issue of internal displacement an increased priority on the OSCE agenda. Under the Austrian Chairmanship of the OSCE in 2000 the plight of IDPs in the OSCE region was addressed for the first time in an OSCE-wide forum during the SHDM on Migration and Internal Displacement. The meeting produced a number of concrete recommendations for the OSCE participating States and OSCE institutions on how to address the problem in the OSCE region. One of the key recommendations led to a subsequent Ministerial Council decision to integrate the UN Guiding Principles as a reference for OSCE activities. The government of the Netherlands during its Chairmanship played a key role in assuring that this recommendation was formally acknowledged. The Maastricht Ministerial Council's Decision No 4/03 on Tolerance and Non-Discrimination, paragraph 13, states that the UN Guiding Principles on Internal Displacement are to be taken as a *'useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement'*. Mr. Radukov underlined that this SHDM is a unique opportunity 'for ensuring that these Guiding Principles are translated into concrete activities by the OSCE and its participating States' as well as for reviewing 'the work that the OSCE, its participating States and civil society are doing to address the plight of IDPs'.

Mr. Wagenseil gave an overview of the IDP-related activities implemented by the ODIHR, including legal reviews, workshops for government officials and civil society, training programmes and publications. In several situations, the internal freedom of movement of IDPs is greatly limited, despite them being citizens of the country. The ODIHR has been continuously involved in improvement of the situation of IDPs 'through its work on gender issues, through the prism of election observation, through the work on rule of law, access to justice issues' as well as on specific problems of Roma IDPs.

Mr. Wagenseil's remarks were followed by two keynote addresses, by Mr. Dennis McNamara, Special Adviser to the UN Emergency Relief Co-ordinator and Director of the Inter-agency Internal Displacement Division; and by Professor Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons.

In his keynote address, Mr. McNamara noted that while it should be possible to manage human displacement within the broader global context, the sad reality, however, is that the international system lacks adequate mechanisms, resources and particularly will to respond properly to this challenge. Moreover, if the issue of internal displacement is not adequately addressed, it feeds into migration and refugee movements as well as human trafficking. According to Mr. McNamara, 'the international action on displacement remains primarily a reactive one, often led by large-scale humanitarian aid'. However, 'sometimes the humanitarian imperative and focus – essential as it is to save lives – may itself detract from the equal need to address those underlying issues which will allow lives to be re-built and re-started', and despite its vital importance, humanitarian response to the IDP crisis cannot be a substitute for the political action.

The next keynote speaker, Prof. Walter Kälin, briefly introduced the mandate of the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons and then focused on particular challenges and opportunities faced by OSCE States with IDPs, including: (i) protracted cases of internal displacement and the need to secure the full rights of IDPs in the locations where they presently live; (ii) voluntary return in safety and dignity and the need to recognize resettlement as alternate solution; (iii) the use of the Guiding Principles on Internal Displacement as a tool to address situations of displacement effectively and in accordance with the international obligations of States; (iv) the promotion of national laws and policies. According to Prof. Kälin, there are 'two most pressing components of that large issue in the OSCE region: first, the impact of prolonged situations of displacement on the security and well-being of IDPs and, second, the impediments to truly voluntary, safe and dignified solutions to displacement'.

The plenary session was followed by more focused discussions in the framework of three sessions.

**Session I** discussed State responsibility towards internally displaced persons on their territory, as well as fundamental rights and freedoms guaranteed to IDPs, such as protection from forced return to an unsafe or insecure environment. In addition, this session gave an opportunity of an OSCE-wide forum to discuss how participating States could use the framework of the UN Guiding Principles on Internal Displacement in responding to the particular and everyday needs of the displaced. The session was moderated by Ms. Roberta Cohen, Co-Director, the Brookings-Johns Hopkins SAIS Project on Internal Displacement. Introductory remarks were given by Prof. Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons; Ms. Elisabeth Rasmussen, Resident Representative of the Norwegian Refugee

Council (NRC) in Geneva; and Ms. Erin Mooney, Deputy Director, the Brookings-Johns Hopkins SAIS Project on Internal Displacement.

**Sessions II and III** touched upon *durable solutions* for the problem of internal displacement, i.e. solutions necessary for ending situations of internal displacement. In particular, session II dealt with the questions related to residency, protection from forced return or resettlement as well as the reintegration of the internally displaced.

Session II was moderated by Mr. Engelbert Theuermann, Director for Human Rights, Humanitarian Law and Minority Issues, Federal Ministry of Foreign Affairs of Austria. The introductory remarks, featuring the experiences of Croatia and the Russian Federation in dealing with return, resettlement and reintegration of IDPs, were given respectively by Mr. Lovre Pejković, Assistant Minister, Ministry for Maritime Affairs, Tourism, Traffic and Development, Government of Croatia, Head of Department for Displaced Persons, Returnees and Refugees, and by Ms. Natalia Voronina, Director of the non-governmental organization 'Partnership on Migration' from the Russian Federation.

Thereafter Session III discussed the property rights of IDPs, a key element facilitating the voluntary return of displaced population, including the cases of restitution and repossession of property by IDPs. The session was moderated by Dr. Vladimir Shkolnikov, Head of the ODIHR Democratization Section. The introductory remarks, featuring the very valuable experience of OSCE missions in Bosnia and Herzegovina and Croatia and dealing with property restitution, were given respectively by Mr. Rhodri Williams, ODIHR expert, former officer of the Human Rights Department of the OSCE Mission to Bosnia and Herzegovina, and by Mr. Axel Jaenicke, Head of Return and Integration, OSCE Mission to Croatia.

Finally, the closing plenary included reports by moderators of the working sessions as well as concluding remarks by Mr. Zahari Radukov, Deputy Chairman of the OSCE Permanent Council, and by Ambassador Christian Strohal, Director of the OSCE/ODIHR.

## **II. RECOMMENDATIONS**

This report focuses on concrete recommendations arising from the three sessions. These recommendations – from delegations of the OSCE participating States and partners for co-operation, international organizations and NGOs – are wide-ranging and aimed at various actors (OSCE participating States, OSCE institutions and its field operations, as well as other international organizations and NGOs).

It should be emphasized that the OSCE cannot implement all of these recommendations. The recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it reflects the views or policy of the OSCE. Nevertheless, the recommendations are a useful indicator for the OSCE in deciding priorities and possible new initiatives aimed at finding solutions to the problem of internally displaced persons.

While compiling this report, the OSCE/ODIHR relied on the summaries prepared by the moderators of working sessions, as well as notes prepared by the staff of the ODIHR Democratization Section, including Ms. Marta Achler-Szelenbaum, Legal Expert; Ms. Anna Platonova, Migration/Freedom of Movement Assistant Programme Officer; and Ms. Faniya Mussayeva, intern at NGO/Democratic Governance Unit.

### **OUTCOME OF SESSION I:**

#### **State responsibility towards internally displaced persons. Fundamental rights and freedoms of IDPs.**

**Moderator:** **Roberta Cohen**, Co-Director, the Brookings-Johns Hopkins SAIS Project on Internal Displacement

**Introducers:** **Prof. Walter Kälin**, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons

**Ms. Elisabeth Rasmussen**, Resident Representative of the Norwegian Refugee Council (NRC) in Geneva

**Ms. Erin Mooney**, Deputy Director, the Brookings-Johns Hopkins SAIS Project on Internal Displacement

Session I emphasized the primary responsibility of the state in providing for the security and well being of internally displaced persons (IDPs) and explored the meaning of state responsibility for the 3 million IDPs in the OSCE region. To begin with, there was agreement that responsibility meant steps to prevent arbitrary displacement and resolve the root causes of conflicts. Once displacement occurred, state responsibility entailed acknowledging the problem, assessing the size and needs of IDP populations, developing national laws and policies, removing discriminatory laws and practices, establishing

national institutions, training government officials, and safeguarding the full range of civil, political, economic, social and cultural rights of the displaced. The promotion of durable solutions for the displaced was another important benchmark of state responsibility, namely ensuring that IDPs enjoy safe and voluntary returns or resettlement, minority protection, and assistance with property restitution and reintegration.

The Guiding Principles on Internal Displacement were considered an important framework both for OSCE participating states and the OSCE in addressing internal displacement, and recommendations were made for concretely applying the Principles and thereby implementing Maastricht Ministerial Decision 4/03 of 2003.

Attention was called to specific problems in the OSCE region, in particular cases of protracted displacement due to the failure to resolve long-standing conflicts, and inadequate minority protection, undermining returns. Specific situations of internal displacement were also raised. The importance of political dialogue and the establishment of national task forces were emphasized to resolve these and other situations of displacement.

Consultation with civil society and displaced communities was emphasized as critical to the development of effective national response. So too was the role of regional and international organizations in reinforcing national responsibility. Indeed, a more comprehensive and systematic approach by the OSCE in dealing with situations of internal displacement in the OSCE region was called for.

The following recommendations were made:

*Recommendations to the OSCE participating States*

- Protect populations against arbitrary displacement, but when displacement occurs, assume a national responsibility for IDPs, first by protecting their physical security and surveying their needs and then by developing strategies to ensure their rights, in particular to adequate shelter, education, documentation, employment and political participation.
- Safeguard the personal security of IDPs, and in particular pay attention to protecting them from forced returns to unsafe conditions, and to guaranteeing their right to freedom of movement and choice of residence.
- Develop detailed laws and policies to address the needs of displaced populations, using the Guiding Principles on Internal Displacement as a framework, and create national institutions to carry out these laws and policies. Such laws and policies must address assistance and protection as well as the needs of all displaced persons, including those displaced by conflict, natural disasters or development projects.

- Government officials should be trained in international humanitarian law and the Guiding Principles on Internal Displacement.
- Close cooperation should be developed with civil society and displaced communities in developing responses to displacement.
- Adequate national resources should be allocated to deal with internal displacement and partnerships forged with the donor community to enhance national capacity.
- An overarching framework for response must be non-discrimination, encompassing minority protection and promoting reconciliation among ethnic communities as well as seeking political solutions to the root causes of conflict.
- Upon return or resettlement, reintegration support and assistance with property restitution or compensation should be provided.
- Collaboration and access should be given to regional and international organizations to reinforce national efforts at addressing displacement. Such cooperation should be seen as an extension of national responsibility to displaced populations.

*Recommendations to the OSCE, its institutions and field missions*

- Develop a systematic and comprehensive approach to situations of internal displacement in the OSCE region, including by mainstreaming the issue into all relevant activities of the organization.
- Monitor and regularly report on the situation of displacement in the OSCE region and bring pressing situations to the attention of the Permanent Council for discussion and action.
- Undertake a special OSCE Ministerial commitment to emphasize the responsibility of states to protect IDPs against forced return or resettlement to unsafe conditions, in accordance with Guiding Principle 15 (d).
- Ensure special attention to the voting rights of IDPs in OSCE's election observation work, monitoring IDPs' ability to vote and promoting reforms to ensure the full exercise of their right to political participation.
- Promote awareness of the Guiding Principles through training of all relevant OSCE staff and make use of the Guiding Principles in the following ways:
  - as a tool for monitoring conditions of displacement;
  - as a benchmark for evaluating existing laws and administrative regulations; and



- as the basis for helping improve the legal situation of IDPs in participating States.
- Develop technical assistance programs with participating States for the development of national laws, policies and programs on internal displacement, including on issues of property restitution and compensation.
- Lend direct support to civil society programs that protect the rights of the displaced by engaging in capacity building projects and fostering dialogue between NGOs and governments.
- Explore the need to develop an international convention on IDPs and forced migration.
- Facilitate, through workshops and seminars, an exchange of best practices among participating states, international and regional organizations, and NGOs.
- Regularly monitor and report on the conditions of IDPs and on the safety and voluntary nature of return or resettlement in accordance with the Guiding Principles.
- Draw the attention of OSCE headquarters to serious problems concerning IDPs in particular countries.
- Carry out technical assistance programs with participating States to address internal displacement more effectively.

## **OUTCOME OF SESSION II:**

### **Towards durable solutions: residency, voluntary return and resettlement, reintegration.**

**Moderator:** **Mr. Engelbert Theuermann**, Director for Human Rights, Humanitarian Law and Minority Issues, Federal Ministry of Foreign Affairs of Austria

**Introducers:** **Mr. Lovre Pejković**, Assistant Minister, Ministry for Maritime Affairs, Tourism, Traffic and Development, Government of Croatia, Head of Department for Displaced Persons, Returnees and Refugees.

**Ms. Natalia Voronina**, Director, "Partnership on Migration", Russian Federation

The ultimate goal in dealing with the problem of internal displacement is to find durable solutions. Session II addressed some of the key aspects for finding durable solutions, including issues concerning residency; voluntary solutions to displacement, i.e. return and resettlement; and finally, reintegration of IDPs.

Setting the framework for the right to return or resettlement in safety and dignity, reference was made to OSCE Ministerial Council Decision 3/04 acknowledging that the Guiding Principles on Internal Displacement “are a useful tool”, when dealing with internal displacement. In addition, the Lisbon Summit Declaration sets out participating States obligations to facilitate the return or resettlement of IDPs in safety and dignity according to international standards. According to Principle 28 para 1 of the GP this duty requires “to establish conditions, as well as provide the means, to allow internally displaced to return voluntarily, in safety and dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons”. Related to this are also the right of freedom of residency, and freedom of movement as stipulated in Principle 14 of the Guiding Principles.

Discussions centered on the scope of States’ obligations for establishing the conditions conducive for return, by addressing the protection and assistance needs of IDPs, creating a secure and receptive environment, including physical, legal and material safety, as well as access to social services, health care and education. It was stressed that a human rights based approach should guide all endeavors when dealing with internal displacement by providing rights in a non-discriminatory manner. Attention was drawn to the problem of protracted IDP situations in the OSCE region. It was pointed out that addressing the root causes of conflict is necessary to overcome these situations. For return to be sustainable and durable, stress should be put on voluntary return. Voluntary return requires the full participation of IDPs in order to make an informed decision to facilitate their return. Therefore, States should ensure the active involvement of IDPs as citizens of the States concerned and of civil society, in the planning and management of return, resettlement or

reintegration policies. In addition, the importance of prompt and unhindered access for humanitarian assistance was emphasized.

Furthermore, there is a need to establish the necessary legal and administrative framework to enable IDPs to exercise the right to return. In order to facilitate reintegration, appropriate procedures and institutions, as well as the necessary legislation and policies, must be in place. It was also noted in this respect that the restrictions on the right to free choice of place of residence or so-called *propiska* system, that still exist in some participating States, particularly affect IDPs as the most vulnerable group of the population, who cannot exercise their right to work or to vote, or are unable to benefit from social services.

Finally, the session featured a discussion on the Guiding Principles on Internal Displacement. Some participants questioned the applicability of the Guiding Principles, underlining their non-binding nature and the need to develop a legally binding document of the international law. The predominant view was, however, that the Guiding Principles reflect and are consistent with existing international law, in particular international human rights law and international humanitarian law, and the content of some of the principles can be found in national constitutions. The GP were welcomed and referred to in documents of the OSCE and the UN. It was thus recommended that the OSCE participating States should translate them into their legislation and policies.

#### *Recommendations to the OSCE participating States*

- The UN Guiding Principles should be used as an important framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement. A human rights based approach should be at the core of any response to internal displacement.
- Participating States should facilitate the voluntary return in safety and dignity, or if IDPs wish, the resettlement and (re)integration of IDPs, by creating the conditions conducive for durable solutions on the basis of the Guiding Principles.
- Participating States should provide for adequate physical, legal and material safety as key considerations for those returning including access to basic services such as food and shelter, health and education, with a view to finding durable solutions for IDPs.
- Participating States should devise legislation in compliance with the UN Guiding Principles and improve the implementation of existing legislation, as well as elaborate complementary policies and programmes for the return and resettlement of IDPs.
- Participating States should provide for the right to return or resettlement in a non-discriminatory manner.

- Participating States should grant prompt and unimpeded access for humanitarian assistance.
- Participating States should conduct effective registration, census, and documentation of persons who are displaced in order to establish the best tailor-made solutions for return.
- Participating States should involve all relevant actors in the process of comprehensive planning and framing of return and reintegration programs and legislation for IDPs. These actors should include members of non-governmental organizations working with IDPs and IDPs themselves.
- Participating States should amend registration procedures and remove all administrative obstacles that hinder IDPs to access basic rights and services, with a view to enabling them to exert their rights, such as the right to freedom of movement and the right to vote.
- Participating States should provide for the appropriate procedures and institutions to implement and facilitate return programs of IDPs.
- Participating States should provide for a secure and receptive environment conducive for return and reintegration.
- Participating States should promote reconciliation with a view to improving the relationship between returnees and recipient communities.

*Recommendations to the OSCE, its institutions and field missions*

- OSCE institutions should make use of existing review and monitoring mechanisms within the OSCE to address the situation of IDPs in the OSCE region, in particular the Human Dimension Meetings, and monitor the implementation of existing political commitments relevant to the rights and needs of IDPs.
- The OSCE should adopt as an OSCE Commitment Principle 15 d of the Guiding Principles concerning the right of IDPs to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.
- The OSCE should increase its efforts for the resolution of conflicts with a view to ending situations of protracted displacement.
- The OSCE should offer good offices in facilitating national dialogue among all major stakeholders including IDPs themselves on attaining durable solutions.

- The OSCE should increase co-operation with other international organizations and NGOs dealing with IDP issues.
- The OSCE/ODIHR should provide technical assistance and advice to governments in addressing IDP issues, such as assistance in legislative reform and review, planning and implementing complementary policies and programs as well as in establishing special procedures & institutions.
- OSCE field missions should monitor and report on the situation of IDPs in participating States, in particular, the situation of returned or resettled IDPs.
- The OSCE/ODIHR and OSCE field missions should provide training on international and international and national standards relating to IDPs and undertake other measures to mainstream IDP issues into conflict prevention and conflict resolution within the OSCE region.
- The OSCE/ODIHR should facilitate the exchange of best practices and information on legal aspects of addressing internal displacement between participating States, e.g. by developing models for national legislation. This might be built upon the already existing ODIHR online project [www.legislationline.org](http://www.legislationline.org).

*Recommendations to others (NGOs, International Organizations and other actors):*

- Civil society and NGOs need to be involved in the comprehensive planning and implementation of programs for the return, resettlement, and reintegration of IDPs.

### **OUTCOME OF SESSION III:**

#### **Towards durable solutions: property restitution and repossession.**

**Moderator:** Dr. Vladimir Shkolnikov, Head of ODIHR Democratization Section

**Introducers:** Mr. Rhodri Williams, ODIHR expert, former officer of the Human Rights Department of the OSCE Mission to Bosnia and Herzegovina

Mr. Axel Jaenicke, Head of Return and Integration, OSCE Mission to Croatia

Working Session III examined the very complex issue of property restitution and repossession. It was pointed out that there is increasing support under international law for the idea that a right to “post-conflict property restitution” exists. The most significant cases of actual implementation of this right have taken place in the OSCE area, usually with significant monitoring and facilitation by the OSCE field Missions. The emerging right to post-conflict property restitution is based on the international community’s evolving understanding of several legal principles:

- The right of people displaced by conflict to return is now understood to involve return to one’s actual home of origin, necessitating restitution of the property itself.
- Application of the principle that people displaced by conflict should be entitled to a “durable solution” has increasingly evinced a preference for repatriation over asylum; in this context, property restitution can facilitate sustainable repatriation whether or not the beneficiaries choose to actually return.
- Property restitution is increasingly viewed as a required remedy for widespread, arbitrary or discriminatory human rights violations involving forced displacement and taking of properties.

*The Guiding Principles on Internal Displacement* affirm the right of IDPs to protection of their property rights, including through restitution. Increased attention to the issue of IDPs has led to current UN efforts to better define the right to post-conflict property restitution being framed as applicable to displaced persons generally, whether IDPs or refugees.

The OSCE has played an integral part in assisting with implementation of property restitution in the South Eastern Europe where some valuable lessons have been learned, such as:

1. The need for equal treatment of those displaced and dispossessed regardless of their ethnicity.

2. The ultimate need for equal treatment of occupants of others' homes who have already repossessed their housing through the country regardless of their ethnicity.
3. The legal and administrative regimes governing property repossession need to be in line with international and European human rights standards and the national Constitutions. Temporary legal provisions (applicable within a limited time-frame) may be adopted aiming at closing legal gaps and addressing specific needs of post-conflict property repossession not otherwise being covered by 'normal' ownership legislation.

It was pointed out that rapid social and economic transformations in countries with significant IDP populations have a significant impact on issues of restitution and repossession. In light of that the following issues merit particular attention:

- repossession of private residential property (including business premises and agricultural land);
- prevention of looting;
- State provided reconstruction assistance for damaged and destroyed residential properties;

In terms of recommendations, there were a number of calls to develop, possibly by the ODIHR, a compilation of best practices on property restitution as well as possibly hold a separate meeting on post-conflict housing restitution in the OSCE region, the latter also with the view to contribution to the resolution of the "frozen conflicts". More specifically, the following recommendations were made:

*Recommendations to the OSCE participating States:*

- To assist the IDPs with the return of their property or tenancy rights and obtaining a fair compensation.
- To consider a regional approach to issues of Roma IDPs in South Eastern Europe by organizing a regional conference to acknowledge and define the unique position of Roma IDPs and promote inter-state co-operation on this issue.
- To adopt national laws and policies on IDPs in compliance with the UN Guiding Principles on Internal Displacement.
- To adopt a new OSCE commitment based on the UN Principle on Internal Displacement 15d: "Internally displaced people have: ...the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk."

*Recommendations to the OSCE, its institutions and field operations:*

- To provide technical assistance and legal expertise on the new draft law of Georgia on property restitution.
- To consider a regional approach to issues of Roma IDPs in South Eastern Europe by organizing a regional conference to acknowledge and define the unique position of Roma IDPs and promote inter-state co-operation on this issue.
- To organize a separate meeting/discussion on post-conflict housing restitution in the OSCE region.
- To promote the UN Guiding Principles on Internal Displacement.
- To strengthen the ability of the OSCE institutions and field presences to monitor the situation of IDPs.
- To compile and publish a handbook of best practices on property restitution in the OSCE region.



## **ANNEXES**

### **SUPPLEMENTARY HUMAN DIMENSION MEETING**

#### **“INTERNALLY DISPLACED PERSONS”**

**4-5 November 2004**

**HOFBURG NEUER SAAL, VIENNA**

#### **AGENDA**

**Day 1                      4 November 2004**

15.00 - 16.00            OPENING SESSION

##### **Opening remarks**

Mr. Zahari Radukov, Deputy Chairman of the OSCE Permanent Council

Mr. Steven Wagenseil, First Deputy Director, the OSCE/ODIHR

##### **Keynote speeches**

Mr. Dennis McNamara, Director of the Inter-Agency Internal Displacement Division of the UN Office for the Coordination of Humanitarian Affairs, Special Adviser to the UN Emergency Relief Coordinator

Prof. Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons

*Technical information by the OSCE/ODIHR*

16.00 - 18.00

**Session I: State responsibility towards internally displaced persons. Fundamental rights and freedoms of IDPs.**

*Brookings-*

*Moderator: Ms. Roberta Cohen, Co-Director, the  
Johns Hopkins SAIS Project on Internal Displacement*

Introducers:

Prof. Walter Kälin, Representative of the UN Secretary General  
on the Human Rights of Internally Displaced Persons

Ms. Elisabeth Rasmusson, Resident Representative of the  
Norwegian Refugee Council (NRC) in Geneva

Ms. Erin Mooney, Deputy Director, the Brookings-  
Johns Hopkins SAIS Project on Internal Displacement

**Day 2**

**5 November 2004**

09.00 - 12.00

**Session II: Towards durable solutions: residency,  
voluntary return and resettlement, reintegration.**

*Moderator: Mr. Engelbert Theuermann, Director for Human  
Rights, Humanitarian Law and Minority Issues, Federal Ministry  
of Foreign Affairs of Austria*

Introducers:

Mr. Lovre Pejković, Assistant Minister, Ministry for Maritime  
Affaires, Tourism, Traffic and Development, Government of  
Croatia, Head of Department for Displaced Persons,  
Returnees and Refugees.

Ms. Natalia Voronina, Director, "Partnership on Migration"  
Russian Federation

*Discussion*

12.00 - 14.00

Lunch break

14.00 - 16.00	<p><b>Session III: Towards durable solutions: property restitution and repossession.</b></p> <p><i>Moderator: Dr. Vladimir Shkolnikov, Head of ODIHR Democratization Section</i></p> <p><i>Introducers:</i></p> <p>Mr. Rhodri Williams, ODIHR expert, former officer of the Human Rights Department of the OSCE Mission to Bosnia and Herzegovina</p> <p>Mr. Axel Jaenicke Head of Return and Integration, OSCE Mission to Croatia</p> <p>Discussion</p>
16.00 - 16.30	Break
16.30 - 17.30	<p><b>CLOSING PLENARY:</b></p> <p>Reports by the Working Session Moderators</p> <p>Comments from the floor</p>
17:30	Closing remarks

## **SUPPLEMENTARY HUMAN DIMENSION MEETING**

### **“INTERNALLY DISPLACED PERSONS”**

**4-5 November 2004**

**HOFBURG NEUER SAAL, VIENNA**

#### **ANNOTATED AGENDA**

#### **OVERVIEW:**

Internal Displacement has come to the fore in recent years as one of the most pressing humanitarian, human rights and political issues now facing the OSCE region. Unlike refugees who have an internationally established system of protection under the 1951 Convention Relating to the Status of Refugees, and can look to the UN High Commissioner for Refugees for support, the internally displaced people (individuals forced to flee their homes but have not crossed internationally recognized borders) have no comparable protection system to respond to their needs; primary responsibility for the security and well-being of displaced populations lies with national authorities. Hundreds of thousands of individuals remain internally displaced throughout the OSCE region, and of particular concern are the high numbers of IDPs with little hope of returning home or finding durable solutions.

A comprehensive framework for the internally displaced was developed at the UN level by the former Representative of the UN Secretary General on Internally Displaced Persons, Professor Francis Deng, as requested by the UN Commission on Human Rights and the General Assembly. The UN Guiding Principles on Internal Displacement were finalized in 1998 and have since been widely disseminated, including in the OSCE region.

Commitments of CSCE/OSCE participating States dealing explicitly with refugees and displaced persons were first developed in the 1990s, such in the CSCE Helsinki Document 1992 and the Document of the Stockholm Meeting of the CSCE Council of 1992. However, it was not until September 2000 that the OSCE first attempted to address the issue of internal displacement at an OSCE wide-forum.

The 2000 Supplementary Human Dimension Meeting on Migration and Internal Displacement produced a number of recommendations for the OSCE participating States and OSCE institutions on how to address the problem of the internal displacement in the OSCE region. One of the key recommendations was to adopt a Ministerial Council's decision to integrate UN Guiding Principles as a reference for the OSCE activities. On 27 October 2003, the Netherlands Chairmanship with UNHCR organized an Informal Briefing and Information Exchange on the Role of National and International Protection in Internal Displacement. The Maastricht Ministerial Council's Decision No 4/03 on Tolerance and Non-Discrimination, paragraph 13, stated that the UN Guiding Principles on Internal Displacement are to be taken as a *'useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement'*.

The OSCE has a great potential to deal with this issue. Protection of internally displaced persons has become a part of the everyday work of a number of OSCE field missions. The ODIHR is doing its part in promoting more effective solutions to the issue of IDPs in the OSCE region by assisting participating States with the improvement of the legislative framework in this field.

The meeting will provide an opportunity to look for practical solutions the OSCE institutions and participating States can take to alleviate the plight of IDPs in the OSCE area with regard to the various stages of internal displacement and specific vulnerable groups. The discussion of 'best practices', expert presentations and sharing of experience between OSCE participating States, international organizations and NGOs active in the field are expected to significantly contribute to this endeavor.

In addition to the plenary session, the meeting will have three consecutive working sessions.

**Session I** will discuss State responsibility towards internally displaced persons on their territory, as well as fundamental rights and freedoms guaranteed to IDPs, such as protection from forced return to an unsafe or insecure environment. In addition, this session will give a unique opportunity of an OSCE-wide forum to discuss how participating States could use the framework of the UN Guiding Principles on Internal Displacement in responding to the particular and everyday needs of the displaced.

**Sessions II and III** will touch upon key aspects of *durable solutions* for the problem of internal displacement and conditions necessary for ending situations of internal displacement (i.e. movement, education, voting, employment, etc.). The Session III will go further and discuss the property rights, including the cases of restitution and repossession of property by IDPs.

## **Session I**

### **State responsibility towards internally displaced persons. Fundamental rights and freedoms of IDPs**

- a) State responsibility towards IDPs;
- b) UN Guiding Principles as a framework for OSCE participating States, as well as OSCE institutions and field missions;
- c) Equality and non-discrimination of IDPs;
- d) Protection during displacement, including:
  - Right to liberty and security of person;
  - Protection from forcible returns to unsafe or insecure environments;
  - Administrative and judicial access;
  - Equal rights and equal treatment between men and women;
  - Documentation;
  - Access to medical services and alimentation;
  - Voting rights;
  - Access to education and employment; and
  - Special needs of displaced women and children;

The internally displaced persons are, first and foremost, citizens of the State where the displacement takes place. Therefore, the primary responsibility of ensuring that their civil and human rights are fully protected falls to the State. In addition, if needed, international organizations should be given full access to IDP populations to provide relief assistance.

The Document of the Third Meeting of the CSCE Council in Stockholm, 1992 par. 7 reaffirms that the *'increasing problem of (...) displaced persons is an issue of major concern to all participating States, particularly in conflicts where the fulfillment of basic human needs is most at risk'* and that all Governments are *'accountable to each other for their behaviour towards their citizens...'*

According to the Paragraph 13 of the Maastricht Ministerial Council's Decision No 4/03 on Tolerance and Non-Discrimination, the UN Guiding Principles on Internal Displacement are to be taken as a *'useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement'*.

In addition, the principle 15 paragraph d) of the Guiding Principles reaffirms the right of the IDPs *'to be protected against forcible return to or resettlement in any place where their life, safety, liberty or health would be at risk'*.

Topics for discussions in this working group will include:

- How can the UN Guiding Principles on Internal Displacement be included into the practical work of OSCE participating States as well as OSCE institutions and field missions?
- How can States ensure movement is voluntary and that IDPs are not forcibly returned to unsafe or insecure environment?
- How are the fundamental rights and freedoms of IDPs being protected in the OSCE region? What are the issues that need special attention?

- How can the international cooperation of all the relevant actors, such as governmental authorities, civil society and international organizations be improved at the local, regional, national and international level?
- How can the OSCE contribute to a better use of experiences and ‘best practices’ on addressing the plight of IDPs in the OSCE region?
- Is it feasible to translate the Guiding Principles into domestic legislation and policies of the OSCE participating States?

## **Session II**

### **Towards durable solutions: residency, voluntary return and resettlement, reintegration**

International law guarantees to every person the right to freedom of movement and choice of place of residence within the border of a State. According to the principle 14 paragraph 1 of the UN Guiding Principles, *‘every internally displaced person has a right to liberty of movement and freedom to choose his or her residence’*.

The OSCE, in particular the ODIHR, has a long-term experience in working on the issue of free choice of a place of residence in the countries of the Eastern Europe, Caucasus and Central Asia. In several situations, IDPs are kept in situations similar to refugee camps for foreign asylum seekers, with their freedom of movement greatly limited despite being citizens of the country.

Based on the right to choose one’s place of residence, the competent authorities have a duty to allow for the voluntary return of internally displaced persons. In the Declaration of the 1996 OSCE Lisbon Summit the OSCE participating States undertake to *‘facilitate the return, in safety and dignity, of ... internally displaced persons, according to international standards’* and that their *‘reintegration into their places of origin must be pursued without discrimination’*.

According to the Principle 28 paragraph 1 of the Guiding Principles, this duty includes to *‘establish conditions, as well as provide means, to allow internally displaced to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced person’*.

Topics for discussions in this working group will include:

- How should OSCE participating States implement their commitments on the right to free choice of a place of residence with regard to IDPs?
- What administrative and legal procedures should or should not be implemented with regard to voluntary return or resettlement of IDPs?
- How can the international cooperation between governmental authorities, civil society and international organizations be improved at the local, regional, national and international level to address the issues of return, resettlement and reintegration of IDPs?

- How can the OSCE contribute to a better use of experiences and ‘best practices’ on the issues related to the free choice of place of residence, return, resettlement and reintegration of IDPs in the OSCE region?

### **Session III**

#### **Towards durable solutions: property restitution and repossession**

The UN Guiding Principles on Internal Displacement affirm the right of internally displaced persons (IDPs) to recover “*their property and possessions which they left behind or were dispossessed of upon their displacement.*” This principle corresponds to a more general trend in international law and policy toward post-conflict restitution of housing and property in the wake of mass displacement and dispossession. The vital importance of property restitution in facilitating the return of displaced persons, redressing the arbitrary taking of their homes and creating the conditions for political stabilization is reflected in the terms of an increasing number of recent peace agreements.

The progress made thus far in defining the right to post-conflict property restitution is being matched by practice in its implementation. Several States in the OSCE area have provided particularly impressive examples of the realization of this right in mass-claims settings, with OSCE Missions often playing a critical role in monitoring the process. In practice, the right to post-conflict property restitution has been shown to achieve several purposes simultaneously. Property restitution has generally been viewed, first and foremost, as the primary means to facilitate the actual return of IDPs and refugees to their homes of origin. However, for those who do not wish to return, the sale or exchange of repossessed properties may facilitate durable internal resettlement in other parts of the country. Finally, repossession of property lost in the context of ethnic conflict is also an important human rights remedy, serving broader objectives of accountability and redress in transitional societies.

The experience of the OSCE, and particularly its participating States, in realizing the right to postconflict property restitution provides invaluable guidance in the struggle to make this right accessible to IDPs throughout the region. However, the OSCE experience also reflects the difficulties inherent in the implementation of this right, ranging from debates over its primary purpose to differential definitions and modalities of implementation in States within the same region. Conclusions on the causes and consequences of these challenges should prove to be invaluable in ensuring the uniform and effective availability of this right to IDPs in the OSCE area.

- What are the particularly successful experiences of addressing issues of post-conflict property restitution and repression in the OSCE region?
- How can the OSCE contribute to a better use of experiences and ‘best practices’ of OSCE field missions, and particularly its participating States, in realizing the right to post-conflict property restitution and repossession?
- How to ensure the uniform and effective availability of the right to property restitution and repossession by IDPs in the OSCE region?



- How can international cooperation between governmental authorities, civil society and international organizations be improved at the local, regional, national and international level to address the issues of property restitution and repossession by IDPs?

## **SUPPLEMENTARY HUMAN DIMENSION MEETING**

### **“INTERNALLY DISPLACED PERSONS”**

**4-5 November 2004**

**HOFBURG NEUER SAAL, VIENNA**

## **INFORMATION ON SPEAKERS AND MODERATORS**

### **Keynote speakers**

*Mr. Dennis McNamara, Director of the Inter-Agency Internal Displacement Division of the UN Office for the Coordination of Humanitarian Affairs, Special Adviser to the UN Emergency Relief Coordinator*

Having served for 29 years at the Office of the UN High Commissioner for Refugees (UNHCR), Dennis McNamara was appointed Special Adviser to the UN Emergency Relief Co-ordinator on Displacement and Director of the Inter-Agency Division on Displacement in OCHA on 1 July 2004. Prior to this he was Inspector General of UNHCR and from June to August 2003 he also acted as UNHCR's Special Envoy to Iraq. Previously, Mr. McNamara was Deputy Special Representative of the Secretary-General (and Deputy Transitional Administrator) in East Timor from 1 July 2001. Before that, he was UN Special Coordinator on Internal Displacement. From June 1999, he served as Deputy Special Representative of the Secretary-General in Kosovo, heading UNMIK's Humanitarian Component. Mr. McNamara served as UNHCR's Special Envoy to the former Yugoslavia from April 1999 until July 2000. Previously, he had also served as Director of the Human Rights Component of the UN Transitional Authority in Cambodia (UNTAC) in 1992-93.

In UNHCR, he was Director of the agency's Department of International Protection from 1994 to 1999. His years of service with UNHCR also included several assignments in Asia: as Deputy Special Representative of the Secretary-General for Humanitarian Assistance for Kampuchea, in Bangkok (1990-1992); as Regional Legal Adviser in Hong Kong (1981-1982); and as Deputy Regional Representative in Malaysia (1979-1981).

Among other assignments, he served as Deputy Director of the Division of Refugee Law and Doctrine (1987-1990); as Chief of UNHCR's South and South-East Asia Section (1982-1986); and as the agency's Assistant Representative in New York and London (1977-1978). From 1986 to 1987, he was a visiting fellow at the Centre for International Studies at the London School of Economics. The author of a number of articles on humanitarian and peacekeeping issues, Mr. McNamara holds an Honours degree in law from the University of Auckland.

***Prof. Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons***

Mr. Walter Kälin has been recently appointed to act as the Representative of UN Secretary General on the Human Rights of Internally Displaced Persons. Mr. Kälin serves as an independent expert, supported by the Office of the High Commissioner for Human Rights. He works closely with the Emergency Relief Coordinator, the Division on Internal Displacement within the Office for the Coordination of Humanitarian Affairs, and the United Nations High Commissioner for Refugees.

Mr. Kälin is a professor of constitutional and international public law at the University of Bern, Switzerland. A current member of the UN Human Rights Committee, Mr. Kälin is also one of the key drafters of the UN Guiding Principles on Internal Displacement. He has been writing extensively on international refugee and human rights law. On several occasions, he has given expert evidence to the Swiss Parliament and Swiss Federal Administration (on questions related to refugee law, human rights, and foreign policy), to local governments (on questions related to federalism and local self-government) and to the United Nations (on questions of refugee law, human rights and decentralisation). In 1991-1992 he was special Rapporteur of the UN Commission on Human Rights on the Situation of Human Rights in Kuwait under Iraqi Occupation.

**Session I: State responsibility towards internally displaced persons.  
Fundamental rights and freedoms of IDPs.**

***Moderator: Ms. Roberta Cohen, Co-Director, the Brookings-Johns Hopkins SAIS Project on Internal Displacement***

Roberta Cohen is a specialist in human rights, humanitarian and refugee issues and a leading expert on the subject of internally displaced persons – persons forcibly displaced within their own countries as a result of civil wars, ethnic strife and violations of human rights. She is a Senior Fellow at the Brookings Institution, Co-Director of the Brookings Institution-Johns Hopkins SAIS Project on Internal Displacement and serves as Senior Adviser to the Representative of the UN Secretary-General on Internally Displaced Persons.

Together with Dr. Francis M. Deng, she co-authored the first major study on internal displacement, *Masses in Flight: The Global Crisis of Internal Displacement* (Brookings, 1998) and co-edited the second volume, *The Forsaken People: Case Studies of the Internally Displaced* (Brookings, 1998). With Dr. Walter Kalin and Erin Mooney, she co-edited *The Guiding Principles on Internal Displacement and the Law of the South Caucasus* (American Society of International Law/Brookings 2003). She has also written numerous articles on internal displacement, including in the *Bulletin of the Atomic Scientists*, *Foreign Affairs*, *Forced Migration Review*, *Global Governance*, *Harvard*

*International Review*, and the *United Nations Chronicle*, as well as a series of opeds, published in the *NYTimes*, the *International Herald Tribune*, and the *Washington Post*.

In 2003, Ms. Cohen was a public member of the United States Delegation to the Organization for Security and Cooperation in Europe and in 1998 was a public member of the United States Delegation to the UN Commission on Human Rights. She has served as a consultant to UNHCR and the World Bank and as a Senior Adviser to the National Academy of Sciences and the Refugee Policy Group. In the US State Department, she served as Deputy Assistant Secretary of State for Human Rights and as Senior Adviser to the United States Delegation to the UN Commission on Human Rights and General Assembly.

She is a member of the Council on Foreign Relations and serves on the boards and advisory committees of various human rights and humanitarian organizations, including the Women's Commission for Refugee Women and Children, Human Rights Watch/Africa and the Jacob Blaustein Institute for the Advancement of Human Rights. She is a recipient of the United States Information Agency Superior Honour Award (1985) and the DACOR (Diplomatic and Consular Officers, Retired -- State Department) Fiftieth Anniversary Award for Exemplary Writing on Foreign Affairs and Diplomacy (2002). She is a graduate of Barnard College (New York) and the Johns Hopkins School of Advanced International Studies (Washington DC and Bologna, Italy).

#### **Introducers:**

***Prof. Walter Kälin***, *Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons*

See information on keynote speakers.

***Ms. Elisabeth Rasmusson***, *Resident Representative of the Norwegian Refugee Council (NRC) in Geneva*

Elisabeth Rasmusson has substantial experience in management and policy-making in international humanitarian organizations, focusing on refugees and internally displaced persons. Prior to taking her current position at NRC, she was heading a number of OSCE Assessment and Election Observation Missions in 2000-2001. Elisabeth Rasmusson also served as Deputy Head of OSCE Mission to Bosnia and Herzegovina in 1998-2000 and subsequently published a report at the Norwegian Centre for Human Rights analyzing the lessons learned on OSCE democratization activities. She also was NRC Programme Co-ordinator for Latin America in 1993-1995 and served as field adviser and co-ordinator of UN Humanitarian Assistance Co-ordination Unit/Danish Humanitarian Assistance operations in Angola throughout 1995-1997. Rasmusson also worked in Columbia on a number of postings by International Red Cross Committee and United Nations. Together with Jan Borgen she co-authored a report on "*Institutional arrangements for internally displaced persons. The ground level experience*" commissioned by the UN Secretary General's Representative on Internally Displaced Persons (NRC Report No.1, 1995).

***Ms. Erin Mooney, Deputy Director, the Brookings-John Hopkins SAIS Project on Internal Displacement***

Erin D. Mooney has been engaged with the issue of internal displacement both as a scholar and a practitioner for over a decade. Currently based at Johns Hopkins University's School of Advanced International Studies (SAIS) in Washington, DC, she is Deputy Director of the Brookings Institution-Johns Hopkins SAIS Project on Internal Displacement and of the SAIS Center for Displacement Studies. Prior to that she worked for the Office of the UN High Commissioner for Human Rights in Geneva, responsible for issues of forced migration and as special assistant to the Representative of the UN Secretary-General on Internally Displaced Persons, Francis Deng, whom she accompanied on country missions around the world, including several in the OSCE region. In addition, she has served as a consultant on issues of forced migration, especially internal displacement, to a number of international agencies and non-governmental organizations.

She has published widely on issues of forced migration, human rights, and humanitarian action, including developing training manuals on internal displacement for civil society and government officials. Publications focused on national and international responses to internal displacement in the OSCE region include: *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia and Azerbaijan*, Roberta Cohen, Walter Kälin and Erin Mooney (eds.), (American Society of International Law, 2003); "In-Country Protection: Out of Bounds for UNHCR?," in Frances Nicholson and Patrick Twomey (eds.), *Refugee Rights and Realities: Evolving International Concepts and Regimes* (Cambridge University Press, 1999); "CIS Conference on Refugees and Migrants," *International Journal on Minority and Group Rights* (1996-1997); "Internal Displacement and the Conflict in Abkhazia: International Responses and Their Protective Effect," *International Journal on Group Rights* (1996); *Ingush Displacement from North Ossetia: Keeping it on the International Agenda*, *International Journal of Refugee Law* (1995); and "Presence, Ergo Protection?: UNPROFOR, UNHCR and the ICRC in Croatia and Bosnia and Herzegovina," *International Journal of Refugee Law* (1995).

A graduate of the University of Cambridge and the University of Toronto, her Master's and Ph.D. research examined international protection responses to deliberate displacement, with a particular focus on the Balkans and Caucasus. She has held Visiting Fellowships at the European Centre for Minority Issues in Flensburg, Germany and at l'Ecole Normale Supérieure in Paris and has lectured on forced migration and internal displacement at various universities as well as at workshops with civil society and government officials in countries affected by internal displacement.

## **Session II: Towards durable solutions: residency, voluntary return and resettlement, reintegration.**

***Moderator: Mr. Engelbert Theuermann, Director for Human Rights, Humanitarian Law and Minority Issues, Federal Ministry of Foreign Affairs of Austria***

Mr. Engelbert Theuermann has been serving at the Federal Ministry of Foreign Affairs of Austria and UN institutions involved in humanitarian affairs for over a decade. In 1994-2000 he worked as a counsellor at the Austrian Mission at the United Nations in New York. Prior to this, Mr. Theuermann served in Vienna dealing with human rights, public international law and relations with international organizations at the Federal Ministry of Foreign Affairs. In 2000 – 2004 Mr. Theuermann worked at the UN agencies, such as UNICEF Office of Emergency Programs and UN Mission in Sierra Leone. In July 2004 he returned to the Ministry to take the position of director for human rights and international humanitarian law at the Office of the Legal Advisor. Mr. Theuermann has authored a number of articles and papers on the human rights issues.

### **Introducers:**

***Mr. Lovre Pejković, Assistant Minister, Ministry for Maritime Affairs, Tourism, Traffic and Development, Government of Croatia, Head of Department for Displaced Persons, returnees and Refugees***

Since beginning of his career with the Government's Office for Displaced Persons and Refugees and afterward as Assistant Minister in three Governments, Mr. Pejković is dealing with development of government policies and different programs providing durable solutions for IDPs and refugees either in Croatia or refugees from Croatia in other countries.

In the course of past few years Mr. Pejković is mainly dealing with the return of IDPs and refugees to Croatia and BiH, or their local reintegration in Croatia, including issue of minority return. He is involved in the policy-making and preparation of rules and regulations in the domain, as well as managing the implementation of different programs developed so far including housing, property repossession, reconstruction and other matters. Mr. Pejković is very active in representation of Government's policy on refugees and IDPs at domestic and international fora and international organizations such as UNHCR, OSCE, European Commission etc.

***Ms. Natalia Voronina, Director, "Partnership on Migration", Russian Federation***

Renowned legal expert on migration, human rights and related issues, Ms. Natalia Voronina is currently leading the Russian NGO "Partnership on Migration" and serving as a senior researcher at the Human Rights Department at the Institute of State Law of the Russian Academy of Sciences. In 1992-1995 Ms. Voronina served as the Deputy Head of Federal Migration Service of Russia where she was responsible for elaboration of federal programmes and laws on migration issues. Previously Ms. Voronina successfully

combined research activities and her work at the International Labour Organization, both in its Moscow and Geneva offices. She published numerous articles on legal aspects of migration, human rights issues and on civil society development in scientific magazines and monographs. Ms. Voronina is a co-author of the monograph *“Forced Displacement and Human Security in the Former Soviet Union: Law and Policy”* together with Arthur C. Helton (Transnational Publishers, Ardsley, 2000).

**Session III: Towards durable solutions: property restitution and repossession.**

***Moderator: Dr. Vladimir Shkolnikov, Head of ODIHR Democratization Section***

In May 2004 Dr. Vladimir Shkolnikov has been appointed as the Head of ODIHR Democratization Section. ODIHR Democratization Programme is carried out in the following substantive areas: democratic governance and participation of women in public life, rule of law and legislative support, migration and freedom of movement. Dr. Shkolnikov joined the OSCE/ODIHR as adviser on migration issues in 1995 after finishing a Ph.D. in Russian and Eurasian Studies at the RAND Corporation's Graduate School. He previously served as resident research consultant on Soviet/Post-Soviet Affairs at the RAND Corporation's offices in the Netherlands and the USA. He authored several papers on issues of democratization and migration.

***Introducers:***

***Mr. Rhodri Williams, ODIHR expert, former Legal Adviser on Property Issues at the Human Rights Department of the OSCE Mission to Bosnia and Herzegovina***

Rhodri C. Williams is a member of the New York State Bar who has worked in the field of international human rights and refugee law for eight years. He has spent five years working in Bosnia and Herzegovina (BiH) in the Legal Department of the Office of the High Representative and the Human Rights Department of the OSCE Mission to BiH. During his time with the OSCE, Mr. Williams coordinated the field monitoring of a restitution process by which over 200,000 families displaced by the 1992-1995 conflict in BiH recovered possession of their homes. Mr. Williams has also worked on immigration, asylum, and post-conflict protection issues in the United States, BiH, Kosovo and Germany.

***Mr. Axel Jaenicke, Head of Return and Integration, OSCE Mission to Croatia***

Since March 2000, Axel Jaenicke is the Head of the Return and Integration office of the OSCE Mission to Croatia, working with a clear focus on housing issues of refugees and IDPs. In this capacity, from 2001 to 2003 he was the international chairperson of a joint *Legal Working Group* of the Government of Croatia and 6 international institutions dealing with return related legislative and administrative problems. In 2000 he was appointed the OSCE Focal Point within the Stability Pact for SEE Regional Return Initiative. From 1998 to 2000 he was Head of the OSCE Field Office in Petrinja, Central Croatia, a war affected major return area of the Croatian Serb minority. In the 1980ies

Mr. Jaenicke had been working in the diplomatic service of the German Democratic Republic; he was deployed in the SFR Yugoslavia (1985/88) and Albania (1982/85). He holds a Masters degree of the Moscow State University for International Relations/MGIMO (1974/79). The list of publications includes *„Repossession of Private Property- The Key Precondition for Sustainable Return. The Situation in Croatia at the end of 2000 and what should be done in 2001“* in *„Strategies for the Future of Bosnia and Herzegovina and Croatia“*, Torino/Italy, 2001; Mr. Jaenicke is a member of *Verband für Internationale Politik und Völkerrecht e. V. Berlin* and *Deutsch-Albanische Wirtschaftsgesellschaft e. V., Berlin*.



## **KEYNOTE SPEECHES**

**Mr. Dennis McNamara, Director of the Inter-Agency Internal Displacement Division of the UN Office for the Coordination of Humanitarian Affairs, Special Adviser to the UN Emergency Relief Coordinator**

My thanks to the OSCE and particularly to Ambassador Christian Strohal, Director of ODIHR. Jan Egeland, the United Nations Emergency Relief Coordinator and Head of OCHA, regrets that he cannot also be with you here today.

I am very pleased also to share this podium with my friend and colleague, Prof. Walter Kälin, an acknowledged expert in this area whom we are delighted to have as the new Representative of the Secretary-General on the Human Rights of IDPs.

I welcome this chance to address some of the broader issues relating to the global problem of human displacement, especially here in Vienna, where the Austrian Government has been such a steadfast supporter of international efforts in this area, and particularly with the OSCE, which has actively followed up its commitment to the 1992 Helsinki Document with strong backing for the Guiding Principles on IDPs.

I would like to speak to you today as a United Nations humanitarian practitioner with a special concern for practical solutions for displaced populations in the field. That is where the needs are and that is where we should concentrate our efforts. In this context, I have very positive memories of our collaboration as UNHCR/UNMIK with the impressive OSCE human rights team, ably led by Sandra Mitchell in Kosovo in the chaos of 1999, when we jointly struggled to protect to and assist the minority populations in Kosovo who were targeted by the majority population which we had come there to support.

Today OSCE countries host around 3 million internally displaced people in the aftermath particularly of prolonged conflicts in the Balkans, Central Asia and the Caucasus. I have agreed, however, that my colleagues, Walter Kaelin and Elizabeth Rasmusson of NRC, will focus on this aspect, on which they both have much more to offer than I do.

I will – with your permission – rather look at the broader displacement situation globally today, with which UN-OCHA and the IDD Division of OCHA which I head, are directly engaged. Inevitably, much of this focus is – regrettably – on countries in conflict in Africa.

Worldwide, in this new century, cycles of displacement and uprootedness continue unabated. This is both an age of global mobility and of the direct targeting of civilians in conflict. The result is record high population movements; according to IOM, today one person out of every 35 in the world is an international migrant.

Today there are nearly 40 million displaced persons, including 25 million internally displaced by war and violence and an even greater number uprooted by other man-made

or natural disasters. (One recent World Bank estimate suggests that up to 100 million people have been uprooted in the past decade by “infrastructural development projects”!)

But it is those forced, against their will, to leave their homes because of conflict and violence, on which I will focus. These are civilians uprooted by the world’s current 20 wars – mainly internal – which increasingly target civilians, whose displacement is often an intentional war aim (and possibly also a war crime!). The more fortunate ones cross an international border and receive greater assistance and support as refugees. Those less lucky, or without resources, usually stay in dangerous and difficult locations near ongoing conflicts, far away from the glare of any TV cameras. They are, *de facto*, the new neglected internal refugees of our age, and they outnumber traditional refugees by around three times.

Unfortunately, most of them are in Africa. Darfur is only the most recent and dramatic (and best publicised) of these modern humanitarian crises. Sudan itself has millions more civilians displaced by the war in the south of the country over the past 20 years, who live in abject poverty and who receive virtually no international attention and little support. There are nearly one million refugees from Sudan in neighbouring countries, while nearly two million Ugandans are displaced in the north of their country by a vicious and fanatical rebel group which has traditionally received sanctuary in South Sudan. Taken together, these displaced populations total some 8 million people in and around Sudan, most of whom gain little benefit from the saturation political and media coverage which Darfur has received in recent months.

This sharply illustrates two important aspects of the current internal displacement phenomenon: despite international attention to some situations, it remains the least well responded to of all current humanitarian crises. Displacement generally is poorly covered by the media, poorly supported by governments, and inadequately responded to by the humanitarian organizations and agencies. In global humanitarian response terms, IDPs remain towards the bottom of the list.

And secondly, displacement in different countries is frequently a regional or subregional inter-related issue, just as it has been in the Balkans in recent years. Neighbouring states are often directly affected by displacement which impacts border security and which can often become a cause for regional instability and tensions. It should, in such cases, be addressed also on a regional basis. And when they are not adequately addressed, internal displacement problems easily spill over into migratory and refugee movements, as they have in Somalia, for example, where a thousand displaced Somalis still leave Puntland each month by dangerous boats to nearby Gulf States, and where some of those who survive eventually move on to Europe.

There are, therefore, very often valid security and political reasons – as well as pressing humanitarian ones – to effectively address the causes of this displacement. A major problem is that the most common causes are lingering, vicious, unpopular civil conflicts – often funded and armed from outside – but still perceived by many to be too difficult to resolve. Or to be more provocative, where there is no perceived national interest, by key states, in their resolution.

The international failure to adequately address – or try to address – the underlying cause of these conflicts means that we are often compelled to respond to them only when the visible human consequences become too much for the nightly TV coverage. These humanitarian crises require a massive and rapid mobilisation of international support which is usually difficult and costly to mount, and even more difficult to sustain. By not addressing obvious causes earlier we all pay much more both in financial and human terms, in responding only when the humanitarian imperative becomes irresistible. Conflict prevention is, of course, one of the pillar activities of the OSCE and I believe there may be much to learn in other regions from your experience.

Ten years ago the land pressures in Western Sudan with increased desertification were evident and clearly potentially conflictual – especially between traditional agriculturalists and pastoralists – just as they were in Rwanda for many years before the genocide in that poor country in 1994. In both cases these fundamental causes of the eventual conflict were explained post-facto by simplistic ethnic labelling. Not only does this distort the historical genesis of such problems, it also limits and can misdirect any later attempts to effectively respond to them. Here, I believe, the UN and regional organizations could play a much more valuable, pre-emptive role, by taking time to ensure that the real causative factors are actively addressed as an integral part of the international response, whenever it comes.

Without this, many of our discussions about resolving the problems of displacement by conflict – the so-called “durable solutions” for refugees and IDPs – have little concrete basis, or chance of success. Consequently most large-scale displacement of populations today is prolonged, often with limited apparent scope for resolution. Humanitarian aid must, of course, be provided, and the fighting must be stopped, but the long, hard path to finding sustainable solutions and reintegration for the millions of civilians made homeless by such conflicts requires that we more effectively deal with basic causes, if we are to avoid a new cycle of violence and displacement, such as we saw, for example, in Kosovo since 1999.

Generally speaking the international action on displacement remains primarily a reactive one, often led by large-scale humanitarian aid. And as a life-long humanitarian, I must agree with the author, Samantha Power, that sometimes the humanitarian imperative and focus – essential as it is to save lives – may itself detract from the equal need to address those underlying issues which will allow lives to be re-built and re-started. The camps in Darfur and neighbouring Chad, necessary as they are, are also unsustainable, sub-standard and demoralizing, and can only lead to long-term human suffering and despair. What follows after them is, in many way, more important.

Despite the heroic efforts of thousands of aid organizations, NGOs and individuals, in difficult and dangerous environments, and the combined efforts of the UN system under the vigorous leadership of the Emergency Relief Coordinator, Jan Egeland, as well as the very valuable promotion and dissemination of the Guiding Principles on Displacement, for which Francis Deng and Walter Kaelin and the Brookings Institute should all be strongly applauded, despite all of this, our collaborative response to displacement today

leaves much to be desired. Not only in Darfur, but also in Uganda and DRC and Somalia, Liberia and Colombia, to name but a few. We need to be more quickly mobilized, with clearer divisions of labour, better resourced, better managed and more truly collaborative, if we are to avoid further Darfurs in the future.

Effective international action on displacement crucially depends on complementarity of action amongst the main agencies involved. Here we must also give greater attention and support to our front-line partners, the NGOs, both international and national, together with the Red Cross organizations that have always played an invaluable community-based field role, which international organizations cannot address alone.

I would like to pay special tribute to one of our key collaborators in this context, the Norwegian Refugee Council, whose Resident Representative in Geneva, Elisabeth Rasmussen, will be speaking to you later in this conference. Together with Walter Kaelin, the newly appointed Representative of the Secretary-General for the Human Rights of Internally Displaced Peoples, who will shortly address you, the NRC is one of the UN's key partners in trying to strengthen our collaborative response to this burgeoning problem. NRC's Global IDP Project is monitoring internal displacement in the OSCE region, and will present a new special report: "Trapped in displacement" on this at your meeting tomorrow.

Similarly, the role of the ICRC, dealing with the civilian victims of conflict, under the International Humanitarian Law umbrella, while recognizing the special vulnerability of those displaced - provides essential complementarity. Our recent very positive discussions with ICRC President Kellenberger, who has pledged continued ICRC cooperation in this field, is important and encouraging.

It is also clear that the magnitude and dimensions of the global displacement problem today require that other actors, outside the strictly humanitarian field, play their full part. The OSCE in Europe, with its broad membership, is one of the key regional players in this respect. Not only do you have highly effective field missions in some areas, focussing on human rights and protection of minorities, but you also bring to the response a broader perspective involving political, security and regional aspects, which are essential to any holistic and comprehensive international action. We trust that the OSCE will continue to expand its involvement and support for major displacement situations, as was discussed last year in Vienna, and perhaps share some of your valuable regional experience with regional actors in other continents.

To meet its objectives, the humanitarian phase of the wider displacement scenario needs to be preceded by, accompanied and followed by effective political, security and development action, often on a regional basis. Too often, in my view, humanitarian action is isolated, almost as a necessary sideshow, to these more comprehensive aspects which are, by definition, fundamental to actually stabilizing populations, and which - as we have often learned - are a pre-requisite to effective peace-building and recovery from conflict. In Kosovo and Liberia and South Sudan, it is only when the essential groundwork to provide a secure political, social and economic base for the return of

millions of displaced civilians is in place, that we can realistically anticipate lasting solutions to those mass displacement problems.

Human rights considerations are, of course, usually at the centre of these efforts as the internal displacement issue is unavoidably, at heart, a human rights issue. Here we have every interest – and intent – to support actively a vigorous international human rights capacity also in the field to help address the critical protection gap which is often the main omission in the response to displacement. Many of us are very encouraged by the positive and proactive approach of the new United Nations High Commissioner for Human Rights, Louise Arbour, in support of our global efforts to protect those internally displaced. The OSCE too has, of course, a great deal of experience and expertise to offer in this critical area.

In all of this we must never lose sight of the starting point for this difficult undertaking, that of State responsibility, which will be the subject of the first session of your conference. Host States in most of the situations we are asked to address have directly, or indirectly, contributed to the displacement. In some cases they welcome international support in responding to it, in others they may resist it. While sovereignty remains the most sacred of all State pre-requisites, when it has become blatantly apparent that the host authorities cannot, or will not, adequately protect and assist their own uprooted populations, international action generally is both necessary and unavoidable. Often this requires strong political support, possibly even in the Security Council, if claims of sovereignty are not to impede critical humanitarian access. Here, too, the OSCE as an important international entity has an invaluable supporting role to play.

And when we do get access on humanitarian grounds to needy and homeless populations, often a highly expensive operation must be quickly mounted. Despite the rhetoric and sometimes valuable political support by concerned States, regrettably this is still not matched – in most IDP situations today – by the commitment of sufficient resources to provide a comprehensive response. Even in Darfur, which as Jan Egeland has pointed out has been visited in recent months by more high-level officials than any recent crisis, we still have only just over half the funds we need for an effective humanitarian action. In some cases – like South Sudan – it is one tenth or less of what is required. This inadequate response by donor governments limits what agencies can deliver, how they plan and who they can put in the field. And it means that too many of us spend too much time looking for funding support, rather than ensuring that the job is properly done. Surely there must be a better and more predictable way to mobilize this support, which all agree is so desperately needed.

If this all sounds too gloomy, I think we also must acknowledge that the displacement issue is, today, much higher on the international agenda than previously. Unfortunately in many developed States it is often through the national prism of unwanted migration. The challenge we face is to widen the understanding that migration is just one end of a much bigger humanitarian – and economic – global issue. It cannot be addressed in isolation, but it can be addressed much more effectively at its source, which is usually conflict or economic induced population upheaval.

The UN too is struggling to better address this major global phenomenon and the newly established Inter-Agency Internal Displacement Division of OCHA is a reflection of this effort. We have some way to go in this, not least in obtaining real and non-competitive collaboration amongst the key United Nations operational agencies. We also need to strengthen our leadership and management of the collaborative response to displacement, which may require some fundamental changes which I hope the UN will contemplate in the not-too-distant future.

In the meantime, we need all the help we can get. I thank the OSCE and other partners for what you have done so far, and am sure that we can equally count on your support in facing the challenges that undoubtedly remain ahead of us in addressing – more effectively, more comprehensively and more permanently - one of the major human crises of our time.

**Prof. Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons**

Mr. Chairman of the OSCE Permanent Council,  
Excellencies,  
Ladies and Gentlemen,

Let me begin by expressing my appreciation for the invitation to address this important gathering. It is a particular honour for me to make my first public appearance as the Secretary-General's newly-appointed Representative on the Human Rights of Internally Displaced Persons here at the OSCE, which has had such a crucial role in fostering peace, democratic development and respect for human rights in this region and inspiring similar progress abroad.

Many of you are familiar with my predecessor Dr. Francis Deng, and the great strides he made over the past twelve years in bringing the suffering of internally displaced persons out of the shadows and firmly onto the agenda of the international community. Perhaps his most important achievement was changing the way this problem is conceived, from a supposed dichotomy between expressions of international concern and state sovereignty, to a discussion of the responsibilities that sovereignty entails for states vis-à-vis their own internally displaced populations. Reflecting this approach of "sovereignty as responsibility" are the Guiding Principles on Internal Displacement, which have become the primary framework for discussion of the rights of IDPs around the world.

It is a privilege and a real challenge to succeed someone who has achieved so much for the protection of IDPs and it is my hope to build upon his work during my tenure and ensure a continuity of approach and activity. With this in mind, and turning to our purpose here today, I would like to recall some of the recommendations and observations that Dr. Deng made before this body in the recent past which still resonate today.

At the 2000 Supplementary Human Dimension Meeting on Migration and Internal Displacement, Dr. Deng stressed the key role the OSCE can play as an advocate for the rights of internally displaced persons, as an advisor to governments on best practices for dealing with IDP issues, and as a mediator in conflict situations. He pointed out the Guiding Principles on Internal Displacement as a comprehensive framework for the achievement of these goals, and remarked that governments and other regional organizations around the world had found them a valuable tool with which to meet the challenge posed by internal displacement. He expressed his hope that the OSCE and its participating States would also be able to bring the rights and norms of the Principles to their full potential in the region.

Last year, Dr. Deng addressed the OSCE on the occasion of an informal briefing on national and international protection in internal displacement. He pointed out that, in some OSCE states, attention to the internally displaced as a distinct category of persons with particular needs was still lacking and he again expressed his hope that the OSCE

would take up the Guiding Principles as a framework for action as the United Nations had already done.

His hope was not in vain. In December 2003, the OSCE Ministerial Council issued Decision No. 4/03 on Tolerance and Non-Discrimination which emphasizes that the Guiding Principles are a “useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement”. This is a significant and very welcome statement which also is reflective of the steps the OSCE Office for Democratic Institutions and Human Rights and several participating States have already made in this direction. The task now is to determine how to fully implement this framework in the OSCE. It is my hope that today’s meeting will make a substantial contribution toward completing this task.

The urgency for progress in this area could not be greater, as internal displacement remains one of the most pressing human rights, humanitarian and political problems facing the OSCE region. While their numbers have decreased, due mainly to large-scale returns in countries such as Bosnia-Herzegovina and Croatia, approximately 3 million persons remain internally displaced in this region as a result of armed conflict and systematic violations of human rights. IDPs can be found in 13 OSCE participating States, with the largest concentrations in Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, the Russian Federation, Serbia and Montenegro, and Turkey.

To put these numbers in perspective, the IDP population here in Europe remains higher than the IDP population in the Middle East and on a par with those of Asia and the Americas. In other words, with the exception of Africa, whose peoples bear a truly staggering and disproportionate toll of global displacement, Europeans still suffer as much internal displacement as peoples from every other region of the world.

But numbers alone do not bring us to the heart of the issue, which is the gap between IDPs’ needs for protection, assistance and appropriate solutions and what is actually available to them today. For the remainder of my comments, I would like to focus on what I see as the two most pressing components of that larger issue in the OSCE region: first, the impact of prolonged situations of displacement on the security and well-being of IDPs and, second, the impediments to truly voluntary, safe and dignified solutions to displacement. I will then conclude with some suggestions as to how the OSCE and its participating States might address these issues.

On the first point, I note with concern that situations of internal displacement in the OSCE region are frequently protracted. Most IDPs in countries such as Azerbaijan, Bosnia-Herzegovina, Cyprus, Georgia or Moldova have been displaced for more than a decade, meaning that a second generation born far away from the homes of their parents is growing up in a state of displacement and all the deprivations this entails. Though desperately needed, political solutions to these “frozen” conflicts are difficult to achieve. Return is usually the solution most desired by those affected and by many of their governments, however some IDPs find themselves veritable hostages to this dream. In the meantime, they live in a state of despair and destitution that is not only troubling in humanitarian terms but also raises important human rights questions.



In some OSCE states, serious security problems, usually linked to ethnic tensions, persist, plaguing both those who have fled and those who dare to attempt return. Fortunately, however, in most affected OSCE countries, IDP populations do not face threats to their lives in their places of refuge.

Problems can rather be mainly found in less lethal forms of ethnic discrimination and in the non-implementation or even violation of economic, social and cultural rights. The right to shelter and adequate housing as enshrined in international human rights law and laid down in the Guiding Principles (Principle 18) is not secured in several countries where, 10 or more years after displacement, IDPs still stay in sub-standard shelters, collective centers not providing sufficient space, water, heating or sanitation, tented camps, dilapidated buildings or even railway wagons. These standards are also flouted when, despite safe conditions, IDPs cannot return because no assistance is available to repair or rebuild their houses. More could and must be done to safeguard housing that is adequate for a life in human dignity.

In countries affected by protracted situations of displacement, levels of poverty and unemployment are often much higher for IDPs than the rest of the population, either because they are victims of discrimination on the labour market or because their living conditions are so inhuman that they cannot obtain and hold a normal job. It is important to emphasize that the abject poverty of IDPs is not just a matter of humanitarian concern but, at least in some cases, an issue of insufficient protection of human rights.

Other problems faced by IDPs in these situations are difficulties in accessing educational, health and similar services due to ethnic discrimination or lack of proper documentation or simply because laws or administrative practices are not responsive to the particular needs of IDPs. For similar reasons, IDPs may face problems in exercising their voting rights during displacement.

Finally, one has to underline that those who suffer most under such conditions are the most vulnerable persons: women, children, the elderly and sick or handicapped persons. Women and girls are often affected by multiple discrimination, being disadvantaged not only for being displaced but also because of their gender.

Despite these problems, it is encouraging to see that improvements have been achieved in recent years. In several states, national and local governments or non-governmental organizations have collaborated with the international community to implement positive responses to internal displacement. In other places, laws or policies detrimental to the rights of IDPs have been abolished and better regulations put in place.

Still, problems persist. In some cases, authorities or politicians seem to keep IDPs in miserable living conditions so as to encourage their return once the conflict that displaced them is resolved. Experience shows, however, that human beings forced to leave their homes behind for long periods without any prospect for a better life can lose their energy, self-reliance and entrepreneurial spirit and frequently find it very difficult to rebuild their lives even if return becomes possible. For this reason, programs that help to build IDPs'

self-reliance are not only usually welcomed by IDPs themselves but represent sound policy.

This leads me to the second and related issue I wish to raise -- the question of what is an appropriate solution to internal displacement. As the Guiding Principles reflect, international humanitarian and human rights law provides that IDPs are entitled to a voluntary, safe and dignified solution to their plight. The prohibition of forcible return applies not only to refugees who have fled abroad, but also to IDPs under well-accepted human rights and humanitarian law. This prohibition of forced return is one of the cornerstones of IDP protection and one of the most basic rights of IDPs.

It is noteworthy that most states in the OSCE honour this obligation. However, there have been serious exceptions where IDPs have been pressured to return in unsafe circumstances, exposing them to risks of death, abduction, ill-treatment or arbitrary detention. This practice must be addressed in the OSCE region as a matter of priority.

Even when grave threats to personal security are not at issue, IDPs are entitled, under human rights, to enjoy freedom of movement and choice of residence. IDPs should thus be permitted to choose between return to their areas of origin or to settle elsewhere in a country and should receive needed assistance in either case. This right has not always been fulfilled in OSCE states.

Where return is possible and desired, IDPs in OSCE participating States still face many problems. The primary of these, in many states, remains physical insecurity in their home areas, usually due to lingering ethnic hostility and unresolved conflict. Other serious obstacles include lack of provision for property restitution and inadequate reconstruction of infrastructure and dwellings.

Without the removal of administrative and legal barriers, implementation of appropriate property laws, and mechanisms promoting access to education and pensions for returning IDPs, attempts at return will not succeed over the long term, even in situations of complete security. Despite certain success in this area, more must be done to safeguard the rights of IDPs in this phase of displacement. I am pleased to see that an entire session of this meeting will be devoted to the issue of return, resettlement and reintegration to address these questions.

How then may we address these challenges? As acknowledged by last year's ministerial decision, the Guiding Principles are a good place to start. The Guiding Principles identify rights and guarantees relevant to the prevention of displacement, protection and assistance during displacement as well as during return or resettlement and reintegration. Although not a legally binding document, they are a highly authoritative reflection of existing international law on these topics, as recognized by numerous UN and regional organs and by a growing number of states which are using them to develop national laws and policy.

However, the Guiding Principles must be implemented in order to be truly effective. It is not enough to simply enact them verbatim into domestic law or policy. To turn the

abstract promises of these principles into reality, it is necessary to create specific institutions and procedures at the national level and to translate the general norms of the Guiding Principles into detailed laws and policies that facilitate their application on the ground. Opening a national dialogue on internal displacement and the use of the Guiding Principles can be valuable first step toward achieving this in many affected states.

At the same time, monitoring of national progress is required by international and regional bodies as well as cooperation between national authorities and organizations like the OSCE. To ensure this, the OSCE as well as humanitarian agencies must have full access to displaced populations in the region.

In this way, the OSCE can do a great deal to close the gap between the promise of the Guiding Principles and the reality on the ground. Among the many regional organizations that have considered such a role, the OSCE is particularly qualified, in light of the explicit commitment of its participating States to human rights principles and their pledges to address internal displacement in a regional context.

The OSCE's engagement with situations of internal displacement has expanded significantly over the past decade. Its conflict prevention machinery, for example, including its High Commissioner for National Minorities, has worked to avert mass displacement. OSCE missions to different countries have begun to make recommendations about internally displaced populations. Its field staff has engaged in monitoring the safety and human rights of displaced persons, especially during returns. Through its election monitoring and technical assistance programs, the OSCE has also promoted attention to internally displaced populations. However, an even stronger and more systematic focus on IDPs is necessary to find solutions to their problems or at least to improve their situations. A well-coordinated organization-wide effort to identify best practices and common strategies could lead to a more comprehensive and predictable approach.

It is my hope that this meeting will be successful in strengthening the OSCE's role in monitoring situations of internal displacement and assisting governments to find appropriate solutions that reflect and fulfill the rights of IDPs. The opportunity is before all of us to make strong and practical recommendations to this end, both to the OSCE as an organization and to its participating states. I look forward to the deliberations and to our efforts to transform the full range of IDP rights into reality in the OSCE region.

## OUTLINES OF INTRODUCTORY REMARKS TO WORKING SESSIONS

### **Session I: State responsibility towards internally displaced persons. Fundamental rights and freedoms of IDPs.**

#### **Introducers:**

***Prof. Walter Kälin**, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons*

States bear primary responsibility to protect IDPs and to provide them with food, shelter and basic health or educational services where needed. This is, *inter alia*, a consequence of the fact that IDPs in need of protection and assistance have rights and are entitled to invoke these rights vis-à-vis their governments. The Guiding Principles on Internal Displacement are, as has been recognized by the Maastricht Ministerial Council's Decision No 4/03, a “useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement”. The presentation will introduce the Guiding Principles, show how they have been received at different levels, and discuss how they could become operational at the national level.

***Ms. Elisabeth Rasmussen**, Resident Representative of the Norwegian Refugee Council (NRC) in Geneva*

Many years after they were forced to flee their homes, some three million IDPs are still unable to return across the OSCE area. Most of them are forced to live at the margins of society with little or no access to adequate housing, employment, health care, education, and faced with restrictions on the exercise of other fundamental rights and freedoms. The presentation will focus on the key state responsibility to ensure the return of IDPs in safety and dignity or, where this is not possible or not wished by the displaced, their full integration elsewhere in the country. It will look at some concrete ways of how governments can make tangible progress in this respect, and will outline what role international organizations, including the OSCE, and civil society can play to support them in these efforts.

***Ms. Erin Mooney**, Deputy Director, the Brookings-John Hopkins SAIS Project on Internal Displacement*

Because internally displaced persons remain within their own country, the primary responsibility for their welfare and security rests with their governments. Indeed, OSCE participating States have underscored the importance of national responsibility for addressing situations of internal displacement and urged one another to take steps to effectively discharge this responsibility. This presentation will explore what, concretely, state responsibility towards internally displaced persons should mean. Specifically, it will identify a number of indicators of national responsibility in situations of internal displacement, which could assist the OSCE in its efforts to further implementation of the

commitments made by participating States to address the needs of internally displaced persons.

## **Session II: Towards durable solutions: residency, voluntary return and resettlement, reintegration.**

### **Introducers:**

*Mr. Lovre Pejković, Assistant Minister, Ministry for Maritime Affairs, Tourism, Traffic and Development, Government of Croatia, Head of Department for Displaced Persons, Returnees and Refugees*

As a direct consequence of the war and aggression in the 90's of the last century, Croatia was faced with the massive exodus of Croatian citizens within its own state territory – 350,000 displaced Croats, expelled from approximately one fourth of the occupied Croatian territory exposed to long-term war activities, as well as 25,000 displaced Serbs who fled that territory in 1995 and were temporary accommodated in the part of Croatia known as the Croatian Danube Region.

A return has become a feasible solution since 1995 when security conditions were created for the return of a great part of displaced Croats to their homes in the major part of territories reintegrated into Croatian constitutional and legal system. Return of displaced Serbs and Croats to and from the Croatian Danube region began in 1997, during the process of its peaceful reintegration into Croatian legal system with the assistance of the UN transitional administration.

Return as a form of final solution of refugee crisis regardless whether it was a majority or minority population, has been the basic determination of the Croatian policy since 1995. All displaced persons were given the possibility to choose between the return and local integration in the places of their exile. Croatian Government has never encouraged the resettlement of its citizens to other countries. Quite the opposite, it has encouraged from the beginning, even in wartime, their return and housing in Croatia.

The policy of return of refugees and displaced persons which has been actively promoted and implemented by the Croatian Government has two basic goals:

- 1) Democratic stabilization of the war-engulfed regions, i.e. regions of return of the pre-war majority and minority population, with an emphasis put to the return of minorities and issues of tolerance and post-war reconciliation, as well as
- 2) Creation of material and social preconditions for sustainable return and reintegration, above all providing all returnees with inhabitable housing - to be achieved through reconstruction program, repossession of property, and provision of housing care for those without their own property. Croatian Government established the program of organized reconstruction of housing stock almost completely destroyed in wartime, that is funded by the Croatian State Budget and statutory guaranteed to all returnees. Since 2001 considerable investments were made in acceleration of the process of economic revitalization of areas of return and reconstruction of public utilities. A significant

measure is the system of social protection of returnees immediately after their return, as transitional solution of limited duration to ensure their subsistence level at least.

All these measures resulted in return of the majority of displaced population: 215,000 displaced Croats and 24,000 displaced Serbs. Quite a small number of them decided to be locally integrated into places of their refuge and even a smaller number of people resettled in third countries who decided to stay there. A small number of remaining displaced – 8,000 persons are mostly returning to the places of their origin and are provided with housing as they are without their own property.

The decision whether to return or not is up to each displaced person or a refugee and their families, whereas the task of the State and those entrusted with their welfare is to provide them either with possibilities and sustainable conditions for return or local integration.

*Ms. Natalia Voronina, Director, “Partnership on Migration”, Russian Federation*

The introducer will shortly describe the situation with the IDPs in Russia in general with special bearing on returning Chechen population. The presentation will acquaint with the legal frame and the policy of federal and local authorities towards internally displaced persons from the point of view of the compliance to the human rights principles. Special attention will be given to the problem of voluntariness of the return. The presentation will also deal with problems of state responsibility towards IDPs; evaluation of priorities at the stage of return and resettlement; involvement of NGOs in the solution of IDPs problems and ways to make the Guiding Principles more operational.

### **Session III: Towards durable solutions: property restitution and repossession.**

#### **Introducers:**

*Mr. Rhodri Williams, ODIHR expert, former Legal Adviser on Property Issues at the Human Rights Department of the OSCE Mission to Bosnia and Herzegovina*

Since the end of the Cold War, there is increasing support under international law for the idea that a right to “post-conflict property restitution” exists. The most significant cases of actual implementation of this right have taken place in the OSCE area, usually with significant monitoring and facilitation by the OSCE itself. The emerging right to post-conflict property restitution is based on the international community’s evolving understanding of several legal principles:

- The right of people displaced by conflict to return is now understood to involve return to one’s actual home of origin, necessitating restitution of the property itself.
- Application of the principle that people displaced by conflict should be entitled to a “durable solution” has increasingly evinced a preference for repatriation over asylum; in this context, property restitution can facilitate sustainable repatriation whether or not the beneficiaries choose to actually return.

- Property restitution is increasingly viewed as a required remedy for widespread, arbitrary or discriminatory human rights violations involving forced displacement and taking of properties.

The 1998 *Guiding Principles on Internal Displacement* affirm the right of IDPs to protection of their property rights, including through restitution. Increased attention to the issue of IDPs has led to current UN efforts to better define the right to post-conflict property restitution being framed as applicable to displaced persons generally, whether IDPs or refugees. Thus, one of the fundamental questions to be answered in defining the current scope and strength of the right to post-conflict property restitution is whether one's status as an IDP vis-à-vis refugee can and should affect one's recourse to post-conflict property restitution programs. Evidence from the OSCE region give rise to significant questions in this regard.

IDPs are often seen as more likely to return to their homes of origin than refugees, due to both physical proximity and the often provisional nature of their accommodation and stay elsewhere in their country. IDPs are also rightly seen as in greater need of assistance in seeking a durable solution than refugees, who have by definition acquired the protection of another country. These considerations may encourage limitations on the right to restitution of relatively weak or contingent property rights that, ironically, favor IDPs over refugees. In the OSCE area, and particularly the former Yugoslavia, urban apartments were often held in contingent tenure forms short of outright ownership prior to political transition and privatization. The ambiguous nature of these rights has led to inconsistent restitution schemes as between former Yugoslav republics, as well as limitations within such republics that disadvantage persons displaced beyond their borders. While such differential treatment may be justified with a view to the right to return itself, as well as the imperative of durable solutions for IDPs, it is harder to square with the third ground for restitution -- that all property related human rights violations should have a remedy.

Seen in this light, the issue of whether the right to post-conflict property restitution should be applied differently to refugees as opposed to IDPs reflects the manner in which such restitution is justified. Problems arising from the unresolved nature of this question have been observed in other property restitution settings outside the OSCE region. However, based on its field experience and established working relationships with other international and domestic actors, the OSCE is well-placed to consider such problems and seek solutions that could shape the future application of this right throughout the OSCE region and beyond.

*Mr. Axel Jaenicke, Head of Return and Integration, OSCE Mission to Croatia*

The international community in Croatia (UNHCR, EC Delegation and OSCE Mission) provides to the Croatian Government legal and practical advice and recommendations based on international and European human rights standards and the Croatian Constitution, inter alia, aiming at resolving of housing issues affecting IDPs and refugees. In that light, the Heads of three OSCE Missions in BiH, Croatia and SaM have presented to the OSCE PC in October 2001 *Common Principles* on return and respect of acquired rights and meanwhile have been working on the basis of a *Joint Action Plan/J. A. P.* aiming at assisting the host Governments in implementing the mentioned *Principles*. In addition the heads of UNHCR, the EC Delegations and OSCE missions in the three countries in a letter sent on 5 October 2004 to the prime ministers in BiH and Croatia as well as the President of SaM have proposed to develop a *Road Map* with an aim to set precise benchmarks for the eventual closing of the so-called refugee file as a political issue in the region within the foreseeable future.

In Croatia as regards the resolution of the IDP and refugee related housing issues, the following three sub-categories are being addressed by the Government with the assistance of the international community:

- repossession of private residential property (including business premises and agricultural land); prevention of looting (interaction of relevant State bodies and institutions and provision of *housing care* in form of building material to owners of looted properties in accordance with existing Law);
- State provided reconstruction assistance for damaged and destroyed residential properties;
- implementation of the Governments' housing programs for former holders of so-called occupancy/tenancy rights (*stanarsko pravo*) over former socially owned apartments who want to return, have already returned or never left the country; affects potentially almost 24 000 households in urban areas and more than 5,000 household in war affected areas;

Some lessons learned from the Croatian experience:

4. The ultimate need for equal treatment of those displaced and dispossessed regardless of their ethnicity what can be quite difficult due to political connotations but should be respected to the greatest possible extent.
5. The ultimate need for equal treatment of occupants of other's homes who have already repossessed their housing through the country regardless of their ethnicity.
6. The legal and administrative regime governing the property repossession needs to be in line with international and European human rights standards and the national Constitution. Provisory, temporary legal provisions (applicable within a limited time-frame) may be adopted aiming at closing legal gaps and addressing specific needs of post-conflict property repossession not being covered by 'normal' ownership legislation.



Return and property repossession related issues of IDPs and refugees should first and foremost be addressed at the national level by national legislative and executive authorities and the civil society. In the case of IDPs the ultimate need to non-discrimination and consistency of solutions throughout the country can be achieved just through political will in one country. However; in cases where cross-border movements of refugees/returnees are involved, sustainability of the process can only be achieved in the regional context through consistency of the solutions applied throughout the region and close bi- and multilateral co-operation.

## **Opening Remarks of Mr. Zahari Radukov, Deputy Chairman of the OSCE Permanent Council**

### Opening remarks

Ladies and Gentlemen,

The issue on our agenda today is one of most pressing humanitarian problems in the OSCE region where an estimated three million people have been displaced. Thirteen out of our 55 participating States are affected by the problem of internal displacement. Unlike refugees who cross international borders, those who stay within their own territories must rely upon their own governments to protect their security, well-being and uphold their political and civil rights. There is, however, a growing recognition that the protection of millions of IDPs poses a unique challenge to the countries concerned and beyond. Of particular concern is the situation of displaced women and children, who constitute the majority of IDPs in many areas and at the same time carry a disproportionate share of the burden resulting from displacement. On a more positive note, however, recent years have witnessed a further decrease in the number of internally displaced people in OSCE region as many were able to return. However, many IDPs, continue to live in long-term displacement with no solution in sight to the conflicts that forced them to flee. Against the background of waning international attention, finding durable solutions for these long-term IDPs remains a major challenge. While recognizing the right of internally displaced persons to return to their home areas, there is a need for the governments concerned to assist the internally displaced to rebuild their lives with dignity and in accordance with the full range of their rights as citizens in the places where they now reside.

The issue of internal displacement is relatively new on the OSCE agenda: most of the commitments explicitly addressing refugees and displaced persons were developed in the 1990s. In the first of these, the CSCE Helsinki Document 1992, participating States stressed the need to identify and address the root causes of displacement and involuntary migration as well as the need for international co-operation in dealing with mass flows of displaced persons. Furthermore, in the Document of the Third Meeting of the CSCE Council in Stockholm, CSCE participating States reaffirmed that the *‘increasing problem of (...) displaced persons is an issue of major concern to all participating States, particularly in conflicts where the fulfillment of basic human needs is most at risk’* and that all Governments are *‘accountable to each other for their behaviour towards their citizens...’*

Here in Vienna I am particularly pleased to remind you all that it was mainly thanks to the efforts of our host government, the government of Austria, that the issue of the internal displacement was given increased priority on the OSCE agenda. Under the Austrian Chairmanship of the OSCE in 2000 the IDPs in the OSCE region was addressed in an OSCE-wide forum during the Supplementary Human Dimension Meeting on Migration and Internal Displacement. The meeting produced a number of concrete recommendations for the OSCE participating States and OSCE institutions on how to address the problem in the OSCE region. One of the key recommendations led to a

subsequent Ministerial Council decision to integrate the UN Guiding Principles as a reference for OSCE activities.

The government of the Netherlands during its Chairmanship played a key role in assuring that this recommendation was formally acknowledged. The Maastricht Ministerial Council's Decision No 4/03 on Tolerance and Non-Discrimination, paragraph 13, states that the UN Guiding Principles on Internal Displacement are to be taken as a *'useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement'*. We see this meeting as a unique opportunity for ensuring that these Guiding Principles are translated into concrete activities by the OSCE and its participating States.

Wishing success to the forum, I would like to thank you for your attention.

Before giving the floor to the next speaker may I on behalf of all participants extend our appreciation and gratitude to the ODIHR and especially to its Democratization Section for their assistance to the Chairmanship in Office in organizing this Meeting.

## **Opening Remarks of Mr. Steven Wagenseil, First Deputy Director of the OSCE/ODIHR**

Mr. Chairman, Distinguished Delegates, Friends,

The issue of IDPs came to the ODIHR's attention a few years ago when we were asked by the Austrian Chairmanship of the OSCE to assist with preparing an SHDM on Migration and Internal Displacement to be held in September 2000.

Prior to that SHDM, the ODIHR held a number of IDP-related activities. In particular, in May 2000 a workshop for high-level government officials from Armenia, Azerbaijan and Georgia was organized in Tbilisi, Georgia, jointly with the Brookings Institution Project on Internal Displacement and the Norwegian Refugee Council. Participants of the workshop reviewed internal displacement in Armenia, Azerbaijan and Georgia and the role that various stakeholders can play in addressing these concerns.

As a follow-up to the meeting in Tbilisi, the ODIHR has been working very closely with local and international NGOs on reviewing compliance of domestic legislation in the Southern Caucasus with the UN Guiding Principles on Internal Displacement and developing recommendations on how to improve the normative frameworks for the protection of IDPs.

This project was headed by our distinguished keynote speaker, Professor Walter Kaelin, Representative of the UN Secretary General on Human Rights of Internally Displaced Persons.

The legal reviews elaborated as a result of the project have since been serving as a basis for discussions on improvement of legislation among governmental agencies, NGOs, and the international community, including OSCE field presences in the Southern Caucasus.

A compilation of the reviews has been co-published by the American Society for International Law and the Brookings Institution-SAIS Project on Internal Displacement and is available for the participants of this SHDM, among other materials kindly provided by the Brookings Institution.

We are pleased to have here with us Ms. Roberta Cohen, Co-Director of the Brookings Institution Project on Internal Displacement, who put a great deal of effort in getting this book out.

But while focusing on projects, we should not forget the bigger picture.

There are 3 million internally displaced persons in the OSCE region – and that is 3 million too many.

As Principle 6 paragraph 1 of the Guiding Principles on Internal Displacement states, “every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”, and throughout the debate

this afternoon and tomorrow, we should remember that what we should be aiming for is an OSCE region free from forced displacement, where people are free to move, not forced to move.

However, if people have been forced to move, as citizens of the State concerned they should be guaranteed the full range of rights and freedoms – including the freedom of peaceful assembly and association, freedom of expression, freedom of movement.

In this regard, it is our strong belief that the UN Guiding Principles should serve an ultimate reference for participating States on how to protect the fundamental rights and freedoms of IDPs relevant during all phases of displacement.

The Principles provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration.

Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law.

We are looking forward to the discussion of fundamental rights and freedoms of IDPs as well as the importance of Guiding Principles, in the framework of session 1 of today's forum.

In addition, one of the side meetings tomorrow, convened by the Norwegian Refugee Council and the Brookings Institution will focus on the important issues of voting rights of IDPs.

And while international organizations – about whose work we will hear a lot during these one and a half days – can assist, it is the responsibility of the States concerned to ensure that these rights are fully protected.

In particular, the OSCE Missions have played a critical role in dealing with IDP issues, especially in South Eastern Europe.

Durable solutions to displacement involve a lot of hard, and seemingly technical, work. In tomorrow's sessions we will deal with these seeming technical issues – voluntary return and resettlement, reintegration, residency and property rights.

The reason that these issues are raised here is that this work, and those working to assist and protect the IDPs, deserve your political support and your attention.

A step was made at last year's Ministerial Meeting in Maastricht to manifest this support, by formally taking note of the Guiding Principles.

But a reinforcement of that message would be welcome by both the displaced and by those who are working to end the displacement.

The ODIHR has looked at the IDP issues from several different angles.

One, directly working on the IDP issues, such as the project I mentioned in the beginning of my remarks.

The problems of IDPs are also tackled by activities within the ODIHR programme on Internal Migration implemented since 1998, aimed at implementation of international human rights standards on freedom of movement and the right to a free choice of place of residence. According to principle 14 paragraph 1 of the UN Guiding Principles, *‘every internally displaced person has a right to liberty of movement and freedom to choose his or her residence’*.

The ODIHR has a unique long-term experience in working on the issue of free choice of a place of residence in the countries of Eastern Europe, the Southern Caucasus and Central Asia.

In several situations, the freedom of movement of IDPs is greatly limited, despite their being citizens of the country.

In a number of the participating States, there are still remnants of the Soviet-era population registration system (*propiska*) that pose serious barriers to the freedom of movement of the population within the country’s borders. In particular, it puts obstacles to finding durable solutions for the problems of IDPs, it creates barriers for their participation in elections, it often leads to denial of social services, and it impedes access to employment.

ODIHR has been continuously involved in improvement of the situation of IDPs by providing assistance to developing a conceptual and legal basis for the reform of such population registration systems across the former Soviet Union.

It is also done through the ODIHR work on gender issues, through the prism of election observation, through the work on rule of law and access to justice issues. An important component of this work is our Roma and Sinti Contact Point. You had a chance to get a greater insight into the Roma IDP issues at a side meeting earlier today.

Finally, we should mention a vital role that NGOs could play in passing on information about the needs of IDPs and cases of violations of their human rights to enable the international community – states and organizations – to provide adequate reaction and assistance.

Moreover, we look at civil society to provide legal and other assistance to the displaced as well as to ensure that the voice of the IDP population is heard, and that they are adequately represented in public life.

It is our hope that this SHDM will produce useful recommendations that support the continuous work of the international community, relevant NGOs, and the States concerned to address the plight of IDPs throughout the OSCE region, with the goal of ensuring that the OSCE region becomes free of forced displacement.

### **Closing Remarks of Ambassador Christian Strohal, OSCE/ODIHR Director**

This meeting is another manifestation that the issues of internally displaced persons has gained acceptance as the core business of the organization. Indeed, the plight of IDPs is a challenge to human security. We have heard from the distinguished speakers and from many participants about various situations of forced displacement in the OSCE region.

And, as already mentioned a number of times in the last two days, 3 million IDPs in the OSCE region is 3 million too many. Persistence of unsolved situations of forced and often protracted displacement has terrible costs in human terms, but also constitutes a threat to the stability and security in our region.

Last year at Maastricht Ministerial Council, the OSCE participating States agreed to take the UN Guiding Principles as a ‘useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement’. In the last day and a half we heard a number of useful and practical recommendations on how to build on the Maastricht language in terms of concrete measures that the OSCE participating States, OSCE institutions, OSCE field missions can take to contribute to protection of human rights of IDPs. We also hope that the participating States as well as the representatives of the civil society across the OSCE region will take the recommendations very seriously and contribute to the concrete follow-up of this SHDM. A call for increased co-operation between the governments and NGOs in protection of and assistance to IDPs is in itself a key recommendation of this meeting.

We are pleased that this meeting has provided a platform to many practitioners and experts in the field. We have to look at ways to preserve the institutional memory of what has already been done in the OSCE on protection of human rights of IDPs and to take stock of best practices, a number of which were highlighted in last day and a half. I am particularly thinking of experiences of in some parts of South-Eastern Europe.

We were particularly pleased that this was the first official meeting which the new representative of the UN Secretary General on Human Rights of Internally Displaced Persons Prof. Walter Kälin has addressed and I am confident that the OSCE and the ODIHR will continue enjoying the good co-operation we have developed with Prof. Kälin in the context of a project on implementation of the Guiding Principles in the Southern Caucasus, and build on co-operation we had with Prof. Kälin’s predecessor, Dr. Francis Deng, who also deserves a lot of credit by advancing the issue of IDP plight on the international agenda.

The challenge before us is to keep the issue of IDPs on the agenda of OSCE. Let me assure that the ODIHR will study this meeting’s recommendations to see how we can

mainstream the issue of IDPs in our work in the fields of migration, Roma and Sinti, gender, rule of law and elections. We can also provide our expertise in the legislative field by reviewing and commenting on legislation that affects IDPs. We also have to look at addressing issues of discrimination of IDPs within our new Programme on Tolerance and Non-discrimination.

Let me remind you that we will have an opportunity to review the follow-up to this meeting in the framework of the OSCE Human Dimension Implementation Meeting next year.





## **SUPPLEMENTARY HUMAN DIMENSION MEETING**

### **“INTERNALLY DISPLACED PERSONS”**

**4-5 November 2004**

**HOFBURG NEUER SAAL, VIENNA**

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