

TALK BACK

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EDITORIAL:

LUBBERS' PROTECTION AGENDA

As Sadako Ogata prepares to leave UNHCR, the former Dutch Prime Minister Ruud Lubbers will be taking over the helm of an agency facing serious challenges. The most important way to meet those challenges is to urgently refocus UNHCR on its core mandate: protection. Not only has the refugee agency lost its sense of mission, it is also faced with serious disrespect for the fundamental principles of refugee law primarily from European and other Western governments. It is essential that Lubbers give out early signals as to where he stands in the protection debate by defining a clear protection agenda.

Lubbers will have to compensate for his lack of expertise and experience in refugee policy and practice with his profile as a statesman. Lubbers is expected to exercise leadership in the global consultations, which are due to commence shortly in the new

year, to revitalise the protection regime and re-instil respect for the 1951 Refugee Convention (see related article in this issue of “Talk Back”). It will be interesting to see if, and how, Lubbers, as a European, will attempt to counter the efforts of European governments to institutionalise their present, increasingly restrictive, practices. Given his past political affiliation, which is rather conservative, Lubbers may well find himself in direct opposition with his former partymen if he takes a strong position in favour of protection, i.e. a position against the present practices of many European (and other) countries.

Ogata’s main legacy is the neglect of the protection mandate in favour of large-scale relief operations during the last decade. At a recent conference in Washington, Ogata stated that the alleged dichotomy between protection and assistance is false. She pointed out that assistance is an inherent part of protection and that many of UNHCR’s assistance programmes help to further protection.

Ogata has always maintained that UNHCR needs assistance programmes in order to have a presence to enable it to carry out its protection mandate. Whereas this argument is true for humanitarian NGOs, many of which show an increased interest in protection, it in fact erodes UNHCR’s mandate. Nowhere does UNHCR’s statute indicate that it must carry out relief work in order to be present. UNHCR’s protection mandate is its entry. Lubbers should re-establish a balance between protection and assistance.

During Ogata’s term in office, UNHCR has seen a significant internal restructuring under the codename “Delphi” during the mid-1990s. Extensive discussions took place as to where protection should be placed in the organisation. Efforts to put protection at the highest levels of the organisation were resisted. In taking protection seriously, Lubbers may consider earlier proposals under the Delphi project and appoint an Assistant High Commissioner (AHC) for Protection, in addition to the existing AHC who deals mostly with operations.

African countries are said to have launched a campaign to get an African into the seat of the ‘operational AHC’ as soon as it becomes vacant. The legitimacy of their claim may be indisputable, but at the same time, it also appears to be an effort to counterbalance the protection priority. In their minds, emphasising protection in Africa is part of the increasingly interventionist approach of the West, as also demonstrated by the priority of the North to find an institutional solution for the response to IDPs. By keeping the refugees in Africa, European governments need to worry less about their own doorsteps. This North-South divide appears to be emerging increasingly in the UN’s refugee and other humanitarian fora. Lubbers has a protection agenda carved out for him: the question is, will he pursue it?

(Ed Schenkenberg van Mierop)

IN THE NEWS:

THREE TRACK CONSULTATIONS RISK RUNNING AROUND IN CIRCLES

An organisational meeting of UNHCR's Executive Committee to discuss the upcoming global consultations on refugee protection made clear the possibility that the consultations could turn into an expensive and pointless talk shop. The meeting failed to address the crucial issue of how topics that have not been adequately addressed by the 1951 Refugee Convention will be prioritised and how the consultations will be kept from collapsing under the weight of the agenda.

The meeting, held in Geneva on 12 December 2000, was a follow-up to the endorsement of UNHCR's EXCOM in October 2000 of a proposal from UNHCR's Department of International Protection (DIP) to launch a series of consultations on the meaning and content of the international protection of refugees. DIP had made it explicit that UNHCR's hand had been forced by the continuing erosion of support for the international refugee protection regime. Originally called the "three circles consultations," the circles concept has been replaced by three "parallel tracks," each being of equal importance to UNHCR (see "Talk Back" 2-4).

The first track is to be an event where states reaffirm their commitment to the 1951 Convention and take stock. The Swiss delegation offered to host an inter-governmental meeting in late 2001 to achieve this aim, but noted that implementation must also be on the meeting's agenda.

The second track will be a series of roundtables of experts that will discuss various subjects with the aim of providing supplementary guidance on interpretations for states.

The meeting adopted an ambitious work programme for the third track of the consultations, reflecting the lack of consensus among states about which issues are most important. It also suggests that each delegation wants the issues of interest to them on the agenda, irrespective of their significance globally. There is a definite risk that the consultations are hijacked by groups of states with their own agendas. Unsurprisingly, a divide between Southern and Northern delegations was apparent, with Northern delegations preferring issues relating to asylum and migration and those from the South preferring burden-sharing and the impact of large refugee populations on host states.

UNHCR made clear several times that it will not, and indeed cannot, prepare background papers to guide discussions on each theme and sub-theme under track three. They will provide a bibliography and a synthesis of current analysis, but the rest is up to the Executive Committee. While this laissez-faire approach is understandable from the standpoint of resources, there is the risk that the discussions will be shapeless and not reach any conclusions.

The Irish delegate was the only one to ask what was the intended outcome of the third-track consultations, but received no answer. With no clear end in sight for the third track consultations and the discussion to take place in an EXCOM format within a very short timeframe, the possibility of failure is brought into sharp focus. The consultations may

turn into an embarrassing mess instead of providing a true debate on the meaning and content of international refugee protection.

Although the meeting was supposed to focus more on the third track than the other areas, many governments appeared to be afraid of missing the boat in the roundtable discussions of the second track on interpretative issues. A number of Western governments felt that they should be allowed to participate in the roundtables in their capacity as states, instead of as experts. The idea that all states party to the Convention, or even all EXCOM members, should take part in the second track roundtables where they would represent their state interests, would be detrimental to the desired politically disinterested analysis.

As many delegations stated during the organisational meeting, a key component in the success of the consultations is the involvement of NGOs. From the NGO perspective, the global consultations should aim for two things: the setting of high standards and standards which can be implemented.

Given the constraints of the EXCOM format for the consultations, there is a very real fear that issues will not be afforded substantial discussion. Informal preparatory meetings will likely be organised between NGOs and interested governments, with an invitation extended to UNHCR. These meetings, which would take place approximately two weeks prior to each consultation session, would allow for an in-depth discussion and debate on one or two issues coming up in the consultations. The hope is that by preparing in advance, an outcome might be achieved that will actually move the debate forward on at least a few issues.

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IDPs IN BURUNDI: THE UN IS STILL NOT GETTING IT RIGHT

The coordinated approach to IDPs is the best one, according to the UN. The reality is that the UN does not always coordinate its approach to IDPs particularly well. Burundi is yet another case in point.

The international outcry that led to the closure of regroupement camps in Burundi earlier this year has not been properly followed up, with the result that very little information is currently available on the dispersed and displaced populations. Combined with a lack of adequate coordination for the assistance and protection of the internally displaced persons in the country, “the UN is still floundering” in relation to IDPs, as one international agency told a recent delegation from the Women's Commission for Refugee Women and Children visiting Burundi.

A five-day mission of the UN's Inter-Agency Senior Network on IDPs is currently in Burundi assessing the UN's response in terms of protection and assistance. While it is questionable what kind of effect the mission will have on the lives of the displaced, the intent is to improve the UN's response to IDPs based on the network's recommendations.

The situation of internally displaced persons in Burundi is one of the most serious in the world. In September 1999, the Burundian government once again instituted a policy of “regroupement,” citing security grounds, forcing thousands of people into so-called “regroupement camps”. Conditions in the camps were appalling, with little humanitarian access.

Under international pressure, the regroupement camps, where women had been at particular risk of attack and sexual abuse, were dismantled at the end of July this year. However, the closures took place without adequate preparation or follow-up and were conducted hastily and with little protection for those trying to return home. The exact location and condition of many of those who left the camps remains uncertain. There are an estimated 500,000 Burundians who have been displaced by the civil war. Some are living in camps, where, according to UNFPA, up to 40% of households are headed by women. Approximately 170,000 have no fixed home, and remain constantly on the move or relying on friends or family.

The UN system, in an effort to better understand the overall IDP problem, is undertaking a national survey of IDPs, targeting about 500,000 individuals both within and outside IDP sites. The survey will not, however, reach the most insecure areas. Despite progress at formal peace negotiations, which ultimately included limited input from civil society women, security on the ground remains precarious, hampering effective humanitarian assistance planning and delivery.

Yet, despite the serious humanitarian needs, the response by the UN to the situation has continued to be inadequate. The UN Inter-Agency Senior Network on IDPs faces the challenge of trying to ensure that the UN creates opportunities for greater humanitarian access to the displaced populations. If the Network can convince the UN agencies in Burundi of the need to designate a lead agency for IDPs, then perhaps the protection and assistance needs of the IDPs will be better met. If not, the UN will likely continue to flounder in its response to IDPs.

*With information from Rachel Watson, Member of the Women’s Commission for Refugee Women and Children delegation to Burundi, October 2000 e-mail: rachelw@intrescom.org; website: www.womenscommission.org

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REFORMING UN PEACEKEEPING AT THE EXPENSE OF THE HUMANITARIAN

There is little hope for humanitarian organisations having any impact on the process of reforming UN peacekeeping. The widely welcomed Report of the Panel of United Nations Peace Operations, also known as the Brahimi report, largely ignores the fact that actors involved in peacekeeping operations work side by side with humanitarian organisations, which, in most instances, are on the ground before the peacekeepers arrive and are still there when they leave. The UN humanitarian agencies have been largely

silenced by the UN Secretariat, preventing them from being an integral part in the implementation of the Report's recommendations.

NGOs have been asked in meetings of the Inter-Agency Standing Committee, the UN body for humanitarian coordination, to provide their views on the Brahimi report – named after the chair of the panel, Lakdhar Brahimi, a former Algerian foreign minister. The main lesson of the report, which was presented in August, is that peacekeeping commitments should not outrun the political will to back deployments.

In the past, peacekeeping and humanitarian missions have often been confused and roles have been blurred, not least because peacekeepers decided to deliver humanitarian aid or because aid organisations accepted armed escorts from Blue Helmets.

Following the line of the report, the space for peacebuilding that peacekeepers will have to create is bound to overlap with the humanitarian space, which is critical to ensure an impartial humanitarian response. The report envisages a monolithic structure where the head of the UN mission has at his or her disposal all manners of tools and assets – military, political, diplomatic, developmental, and humanitarian. This thinking confirms the views of many NGOs that criticise the UN for making humanitarian action subject to its political agenda.

The report uses a definition of impartiality, which differs greatly from the definition used by humanitarians, which is remarkable given the composition of the panel that prepared the report. Two of the panellists, Brian Atwood and Cornelio Sommaruga, have extensive experience in humanitarian affairs. The report argues that impartiality may involve taking sides if one party appears to be in breach of the UN Charter. For humanitarians, remaining impartial may mean, in fact, keeping their distance from the UN if, for example, the Security Council has adopted sanctions.

While peacekeeping missions have become more frequent, the UN, military forces, and humanitarian organisations have failed to agree on an appropriate division of labour based on a complementarity of mandates. Various UN agencies are named to lead humanitarian assistance missions and peacekeeping and other military forces are asked to “support humanitarian assistance” with no clear explanation of what support that should – and should not – entail.

In this respect, it is also unfortunate that the report explores little common ground. Peacekeepers and relief workers may have mutual interests in providing security in volatile refugee areas, moving refugee camps further away from international borders (see article on West Africa in this issue of “Talk Back”), demobilising former combatants, and reintegrating them in their home areas.

As Guy Tousignant, Secretary-General of CARE International and Chair of the Steering Committee for Humanitarian Response noted, what often happens in the course of reforming operations in large bureaucracies is that different actors use different elevators to the Executives' floors to promote their own proposals and suggestions. The problem is

not so much of these elevators going up and down, side by side, but the fact that there is no communication between them.

* See also: "Some NGO Views on the Humanitarian Implications of Implementing the Brahimi Report," www.icva.ch

ISSUE OF THE MONTH

REFUGEE CAMPS ON THE BORDER: A RECIPE FOR DISASTER IN WEST AFRICA

The overall response by the international community to the deteriorating situation in Guinea since September has been disappointing, to say the least. Hundreds of thousands of refugees have been left without adequate protection or assistance in camps along Guinea's frontiers. Many have been forced to flee further inland or back to Sierra Leone in search of refuge following repeated attacks on the camps since September. West African states recently announced the deployment of troops to Guinea's borders, but ECOWAS troops, in the past, have not always been entirely effective or reliable.

The announcement by the Economic Community of West African States (ECOWAS) to send troops to the borders of Guinea may be a step in the right direction, but it will not be enough to improve security in an area that has seen thousands flee and hundreds killed in recent months.

The decision by ECOWAS, made this past weekend, comes with no time frame, few details, and alongside the admission by UN Secretary-General Kofi Annan that the UN peacekeepers in Sierra Leone will not be able to reach their targeted numbers over the next few months. The United Nations Mission in Sierra Leone (UNAMSIL), which has no presence along Sierra Leone's borders with Guinea, has been ineffective in preventing or minimising the spill-over effect into Guinea, where refugee camps along the frontier have been repeatedly attacked in recent months. Unless immediate steps are taken, there is the risk that Guinea will be further pulled into the cycle of violence that has afflicted its neighbours for so long.

- The Situation in Guinea

In early September, cross-border attacks resulted in the emptying of several refugee camps and villages located near the border and the pulling out of international organisations from affected areas. Guinea, which at the time had over 460,000 refugees (some 330,000 from Sierra Leone and 130,000 from Liberia), has been hosting refugees for over 10 years. The attacks saw several hundreds of deaths and injuries of both civilians (both Guineans and refugees) and military personnel. Many Sierra Leoneans fled back across the border into Sierra Leone, saying they would rather die there than in Guinea.

The attacks that took place in the Forecariah prefecture, south of Conakry, saw the Daghabé and Farmoreya refugee camps (located approximately three and 12 km from the border, respectively) and villages abandoned as refugees and locals fled the attacks and moved further north towards the town of Forecariah (some 20 km from the border) and camps further away from the border. Other attacks also took place in the border area of the neighbouring prefecture of Kindia. The southern prefectures of Gueckedou and Macenta, where there are tens of refugee camps scattered along the border, many within kilometres of the border or even less than a kilometre from the border, also saw several reoccurring attacks in September and into October. Refugees and Guineans left the area fearing further attacks. An attack in late September resulted in the death of a UNHCR staff and the kidnapping of another from Macenta in late September.

As humanitarian workers pulled out of the border areas in September because of the insecurity from attacks, retaliations had begun to take place against Sierra Leoneans in the form of threats, harassment, detention, and attacks. Statements made by the President in September further fuelled the xenophobia that started to set in following the first attacks. Local vigilante groups started to be formed. In the Forecariah area, hundreds of volunteers had stepped forward in response to calls from authorities to protect the territorial integrity of the country. Armed and uniformed by the prefecture, these local militia have further contributed to the insecurity in the frontier areas.

Refugees were left without adequate assistance or protection and citing insecurity, refugee camps were surrounded by military, turning the camps into virtual detainment camps for a period. But, ironically, keeping refugees in camps was, also partly, for their own safety as those outside of camps were suspected of being rebels by Guineans, placing them in danger.

- Being Forced to Return to Sierra Leone

The targeting of Sierra Leoneans that began in September following the attacks was not limited to refugees, but affected other Sierra Leoneans that had been living in Guinea under other circumstances: many of whom had been in the country for more than ten years. Many of these Sierra Leoneans who had been living in Conakry left Guinea out of fear. Hundreds started arriving at the Sierra Leone embassy in Conakry requesting assistance to return. The embassy took to chartering ferries to return people to Freetown.

The first waves of Sierra Leoneans were mostly those who had been living in Conakry with a few refugees who had made their way from the camps to Conakry. But, by early November, up to 80% of those arriving at the embassy had come from camps in the Forecariah area about 100 km southeast of Conakry and some were arriving from camps in the southern prefecture of Gueckedou. The result has been that an estimated 22,000 Sierra Leoneans, both refugees and others, have fled Guinea to return to Sierra Leone since early September

This forced return to Sierra Leone because of the insecurity in Guinea and the inability of refugees to find refuge anymore in Guinea has not been easy. Leaving the camps, especially those in the Forecariah area, has proven to be quite difficult. Refugees were forced to pay exorbitant amounts to bribe their way out of camps guarded by military. But getting out of the camps was not the end of the ordeal. For those leaving Forecariah, more bribes were required to get past the numerous checkpoints erected on the road between Forecariah and Conakry. Most of the checkpoints were manned by young men in civilian clothes: the language difference between Guineans and Sierra Leoneans makes Sierra Leoneans easily identifiable to those at the checkpoints. The lack of identification cards for refugees in Guinea further complicates their travel in the country.

- Camps Once Again Located Too Close to the Border

The security threat constituted by refugee camps located too close to a border (a lesson that the international community seems not to be able to learn) has again proven to be a recipe for disaster in the case of Guinea. While there are no international standards on the exact distance away from a border that a camp should be located, UNHCR's Handbook for Emergencies notes that "to ensure the security and protection of refugees, it is recommended that they be settled at a reasonable distance from international borders as well as other potentially sensitive areas such as military installations" (Chapter 12, Para. 31). The OAU Convention also states that "For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin," (Article II, Para. 6), but that seems not to have happened in the case of Guinea, a signatory to the OAU Convention.

At UNHCR's Executive Committee meetings in Geneva in October, the Guinean government had called on international support to undertake the relocation of camps further inland. But since then, there has been little support or pressure from the international community to move the refugees further inland. The Guinean government has been stalling for months for political and economic reasons. Moving the camps would mean not only the relocation of refugees, but also the relocation of numerous international organisations, which have a huge impact on the local economy.

- The International Community's Poor Response

Last year, the international community was quick to respond to the needs of the hundreds of thousands of Kosovars stranded on the border with the former Yugoslav Republic of Macedonia with the Humanitarian Evacuation Programme. This year, no similar efforts have been made to help the refugees in Guinea: another indication of the double standard affecting international support of refugees.

-UNHCR's Minimal Response

In the meantime, further attacks have occurred in recent weeks and more refugees have been fleeing camps out of fear. As UNHCR spokesman Kris Janowski said earlier this

week, "We have bits and pieces of information, but not really a very good picture of what is happening."

Evidently, this lack of a clear picture results from the fact that UNHCR has not had a permanent presence in any of the refugee camps since September. While assistance had been resumed to a certain extent following a lull in attacks in October, UNHCR's ability to carry out its protection mandate has been extremely restricted. Yet, disappointingly, UNHCR has not been vociferous enough to gain adequate attention or support from the international community. The fact that thousands of refugees have been without adequate protection or assistance for months is a signal that something must be done urgently.

While refugees have been leaving camps since September at great expense and risking their lives in many cases, UNHCR had decided not to facilitate or be present for returns to Sierra Leone, saying that Sierra Leone is not considered a safe country for return. At the same time, the refugee agency had closed its eyes to the fact that refugees were often paying to be smuggled to Conakry.

Now that sites have been identified to which some refugees can be moved away from the borders, UNHCR has announced that it will facilitate the movement of refugees either to the new camps or to return to Sierra Leone. But many will not be able to return to their homes in Sierra Leone, as two-thirds of the country are still under rebel control and not considered to be safe. One must question UNHCR's decision to start facilitating repatriation: it is a pragmatic approach to the situation, but it risks drawing attention away from the real issue: that refugees can no longer be afforded protection in the country of asylum.

Understandably, UNHCR has been traumatised by the attacks and deaths of its workers. However, it seems that UNHCR has been affected to the point where it is no longer sure of how to move forward with regards to the situation in West Africa. UNHCR's protection mandate has been seriously compromised for more than three months, affecting more than 400,000 refugees. Yet UNHCR's response has been inexplicably and unacceptably minimal in comparison to what it should have been considering the gravity of the situation and the numbers of refugees that have been affected.

- The Situation in Sierra Leone

For the thousands of Sierra Leoneans that have already returned to Sierra Leone, return to the country does not necessarily mean being able to return home. Several thousand have returned to the Lungi area near Freetown where many are hosted with families, which receive assistance. Others have been moved to IDP camps, while others have been placed in transit camps from where they will be returned to safe areas.

Only those who were refugees in Guinea are considered to be "of concern" to UNHCR. The result is a differentiation in the level of protection and assistance between returnees (whom UNHCR have been calling "forced spontaneous returnees") and internally displaced persons who never fled the country. Those who are not of concern to UNHCR

(of which there are many that have fled Guinea out of fear, but who were not refugees in Guinea) will not necessarily be afforded adequate protection.

The IDPs in Sierra Leone are technically under the purview of the government's National Commission on Reconstruction, Resettlement, and Rehabilitation (NCRRR), but its coordination of the response to IDPs is not ideal. As in many other situations, the UN's coordinated approach to internally displaced persons in Sierra Leone is also not ideal, especially in the area of protection. IDPs currently fall under the UN Resident Coordinator (UNDP) and their needs are addressed on a sectoral basis. While there are sectoral meetings on human rights, there is no one body looking at the overall protection needs of IDPs.

However, the IDP situation in Sierra Leone is one in which UNHCR could get involved with IDPs, given its IDP criteria. There are returnees and IDPs in the same area facing similar situations "in terms of the causes and consequences of their displacement and their humanitarian needs," as described in UNHCR's March 2000 policy on IDPs. But, there is little evidence that UNHCR has taken any initiatives to become formally involved with the response to IDPs in Sierra Leone. This fact may be motivated by the difficulties in working in Sierra Leone or it may be the worry that adequate resources are not available to extend its work to IDPs. Whatever the case, there is a definite risk that with thousands returning before there is stability in Sierra Leone, many will fall between the cracks in terms of assistance and protection unless the UN takes some definitive steps, such as designating a lead agency for IDPs. The Sierra Leonean case is yet another example of UNHCR applying its criteria for becoming involved with IDPs on a selective basis.

- The Need for a Regional Approach

Given the regional character of the violence in West Africa, any response must also take a regional approach. The deployment of ECOWAS troops to Guinea's borders should not be done in isolation from the UN Mission in Sierra Leone. It would be more effective if any force had the flexibility to move across frontiers instead of being limited to one country since the attacks and violence are no longer isolated to individual countries. Attempts to address the root causes of the insecurity require a regional approach at the political level: an issue that has received inadequate attention to date.

The need for a regional approach should also extend to protection and human rights monitoring. A current limitation, for example, is that UNAMSIL's human rights mandate only covers Sierra Leone and does not extend to Guinea where several refugees have faced human rights abuses.

The challenges in West Africa further provide a perfect first opportunity for the next High Commissioner Ruud Lubbers to define his protection agenda. The combination of protection challenges for UNHCR, the need for humanitarian assistance, camps that are located too close to the border, the resulting insecurity, fleeing refugees, and returnees to

an unstable situation, along with complex political factors certainly leave Lubbers with some work at the beginning of his mandate next year.

* With information from a joint ICVA/OFADEC visit to Guinea and Sierra Leone in November.

OPINION:

POLITICAL BACKROOM DEALS CONTINUE TO BE STATUS QUO FOR THE UNSG

The recent nominations of the next UN High Commissioner for Refugees and the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (ERC) seem to indicate that political backroom deals continue to be the modus operandi for the UN Secretary-General Kofi Annan in choosing heads of UN agencies. Calls by NGOs to open up the selection process to other stakeholders to ensure increased transparency, accountability, and credibility for the position have gone unheeded by the UNSG and his office.

In late October, Annan's announcement of his "nomination" of former Dutch Prime Minister Ruud Lubbers to the post of UNHCR came as a surprise to many, including the Dutch government, which had been backing its own candidate, Minister Jan Pronk. Lubbers will replace Sadako Ogata when she leaves the refugee agency at the end of the year.

Lubbers was nominated by the UNSG despite the fact that several other candidates had stepped forward over recent months, several of which were backed by their own governments, as well as others. Although many of these candidates have relevant experience in working with refugees and humanitarian action, Annan found his candidate of choice through his own means and based on unspecified criteria.

The nomination of an undeclared candidate once again underlines the political manoeuvring that takes place in private for the most powerful positions in the UN system. While Annan may have undertaken a "broad range of consultations," it is questionable whether he took the concerns raised by many NGOs into account. There have been repeated calls over the last six months for the criteria and qualifications for the position to be made publicly known. There have also been attempts to ensure that the person chosen is committed to refocusing the agency on its core mandate of refugee protection (see "Talk Back" 2-3, 2-5, 2-6).

While Lubbers has all the necessary, and desirable, qualities of a statesman, having served as Prime Minister of The Netherlands for 12 years, his positions on refugee protection and partnerships with NGOs remain to be seen. His visions and plans for the refugee agency will have to be carefully defined in the first few months in office given

the increasing pressure on refugee protection from states (see editorial in this issue of "Talk Back")

UNSG Kofi Annan's announcement of Lubbers' nomination "for the appointment as the next UNHCR" seems to indicate a lack of distinction or differentiation on his part between nomination and appointment. In referring to the other candidates, Annan also said, "I have not found it possible to appoint you for this post."

As professor of refugee law Guy Goodwin-Gill recently noted at a meeting of the Lawyers' Committee for Human Rights, historically, it is not the role of the UNSG to appoint the High Commissioner. The UNSG is instead to provide a nomination to the General Assembly for election. The UNHCR statute, in paragraph 13, states that, "The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General." As explained in an article in the "International Journal of Refugee Law" (Vol. 3, 1991), this process of nomination and election was instituted to balance the preferences of different states during the drafting process of the UNHCR Statute. Some countries, including the United States, preferred that the High Commissioner be appointed by the Secretary-General in order to ensure that the HCR's work fell under the UNSG and was integrated with the work of other UN agencies. Other states, such as France, felt that an election would be the only way "to obtain the necessary prestige and confidence" required to carry out the necessary duties of the UNHCR. Having the support of governments would be of "immeasurable value" in negotiations with governments.

The compromise was a procedure in which the Secretary-General nominates candidates and the General Assembly then elects the person to fill the position. As the same article in the "International Journal of Refugee Law" (Vol. 3, 1991) notes, "The Secretary-General's competence was not intended to imply an unlimited discretion... If it is not exercised responsibly... and the Secretary-General offers only one candidate, then a curious combination of organisational inertia and organisational momentum may ensure that nomination will amount to appointment in all but name."

Despite the nominating role that the UNSG plays, the High Commissioner has an independent mandate from the General Assembly and, thus, does not need to report to the UNSG. However, in cases where the High Commissioner accepts activities at the request of the UNSG outside the mandate, the independence of the office may be compromised: a point that the new High Commissioner may want to keep in mind.

Annan's words and nomination of a single candidate for the post of UNHCR seem to imply that it is left entirely up to him to decide who should lead the refugee agency, not to mention other UN agencies. The appointment last week of Kenzo Oshima from Japan to the post of Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator provides another example of the UNSG negotiating with governments to decide which top UN posts are given to which nationals based on political interests and, most likely, financial contributions.

The criteria upon which Oshima was chosen are not clear. Considering that Oshima will be heading the UN's most important humanitarian coordination body, the Inter-Agency Standing Committee (IASC), it would seem logical for Annan to have carried out consultations with the members of the IASC. Yet no such consultations took place: at least not formally. If informal consultations were held, then they certainly did not extend to all members of the IASC (NGOs which sit on the IASC were not consulted). A point that NGOs will have to watch closely will be Oshima's commitment to working with NGOs. So far, there is little indication of what his plans are or what his position is vis-a-vis NGOs.

Both nominations of the Secretary-General, which are de facto appointments, belie an approach and process that can hardly be described as democratic. If the UN is to truly live up to its language of accountability and transparency, as well as that of involving civil society, the process by which top UN posts are chosen requires a thorough re-evaluation and overhaul. The challenge for the UNSG and the General Assembly is to ensure that by the time the next such position opens up, a more open process has been instituted.

*For a more detailed account of the nomination and election process of the UNHCR, see Volume 3 (1991) of the "International Journal of Refugee Law."

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