

talk back

The Newsletter of ICVA

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RESPONDING TO THE AFGHAN CRISIS: MAKING THE SAME MISTAKES?

Massive refugee crises seem to occur in three year intervals: the Kurds in 1991, the Rwandans in 1994 and 1997, and the Kosovars in 1999. In the response to each crisis, many important lessons concerning humanitarian coordination, the protection of refugees, the need to separate armed elements from refugees, and the relationship with the military, seem to be forgotten. Why are the old mistakes made again? Is the system averse to institutional learning and change? And/Or, do policy makers and practitioners not meet when operations are planned? *Talk Back* flags several

issues that are likely to be part of the probable international evaluation looking at the response to Afghanistan in twelve months' time.

OCHA vs. UNHCR: Their Turf Battle

The UN's infamous turf battles over who takes charge in humanitarian coordination have once again surfaced in the last 10 days. A meeting of UN heads of agencies

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DOWNGRADING REFUGEE RIGHTS DOWN UNDER

The twisted irony of the current refugee protection regime is that when States are hypocritical, at least the hope of keeping them in line with their responsibilities exists. But when a country explicitly changes legislation to retreat from its obligations under the Refugee Convention, even that hope is lost: there is currently no body or mechanism that is willing, or perhaps even able, to pull such States back in line with their obligations.

Australia's declarations of its latest measures to keep asylum seekers away from its shores at the Global Consultations on International Protection last week were met with practically no opposition or condemnation from other States. Even UNHCR did not stand up and tell Australia that its recent measures have been in direct violation of the spirit of the Refugee Convention, not to mention human rights instruments.

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THE RIGHT AGENDA FOR REFUGEES

The timing could not be better suited to opening up the search for a more effective mechanism to ensure the rights of refugees. Never before have States so openly violated the Refugee Convention. And, never before has the debate on the status of refugees been such a global political issue. It is probably the most difficult moment in modern history to improve refugee protection, but it is needed more than ever before.

It has been said that the Refugee Convention, the 50th anniversary of which will be commemorated this December, is the most violated international human rights instrument. Paradoxically, it is not easy to verify this statement. While UNHCR and many human rights and refugee NGOs have produced countless reports, there is no central mechanism that has kept a consistent record of the violations committed. The absence of such a mechanism, in fact, provides the first argument for claiming that the present system needs to be improved.

In order to identify an appropriate solution that rectifies the failures of the present system, an assessment needs to be made that analyses the existing problems. Proposals as to how to rectify these problems are required. Subsequently, the value-added of any specific proposal has to be proven. What will ensure that any proposed mechanism(s) will not encounter the same problems as those that exist already in other human rights fora?

There is widespread opposition from States to the hard option: the creation of a new treaty body under the Refugee Convention. They point to their overburdened reporting obliga-

tions under other human rights treaty bodies and the ineffectiveness of these bodies. Moreover, it would require the negotiation of a new protocol at a time when the trend among States is the adoption of lower protection standards.

However, what States are afraid of, in fact, is that they will actually be held accountable. The reason why States do not want to make the human rights bodies more efficient is for obvious reasons of self-interest. The question of whether or not it is worth taking the risk to negotiate a new instrument is open for debate. The real issue is what has more impact on the situation on the ground: confrontation, or the softer option of helping States to improve their refugee and asylum policies through technical cooperation and dialogue.

NGOs have a lot to offer in terms of reflecting on whether the accountability of States can be improved through the creation of a new monitoring mechanism or improving existing ones (see Issue of the Month in this *Talk Back*).

Broadly speaking, there are two streams of thought at the moment: the first one believes that we should maintain the unique role of UNHCR in supervising the implementation of the Convention and look at how this role can be strengthened. The second school of thought believes that the Convention needs an external entity to monitor compliance. Maybe one could even think of a system that includes or merges both options. What NGOs definitely want is a mechanism that can address violations and difficult questions in real-time. Was Australia right in keeping away Afghan boat

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IN THE NEWS

**REFUGEES AND MIGRANTS AT THE
WORLD CONFERENCE AGAINST RACISM**

By Rachael Reilly

The third World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance (WCAR), held in Durban from August 31 to September 8, has received largely negative press. To read media coverage one would think that the WCAR was dominated by the debate over the Middle East and reparations for slavery and colonialism; that it was characterised by dissent, confusion, and walk-outs; that the NGO Forum was a shambles; and that little was achieved in concrete terms. But for those of us present in Durban, this was not the whole picture.

It brought to the table a myriad of past and contemporary grievances and drew together a vast variety of NGO and pressure groups. The voices of thousands of victims of racism and xenophobia were heard and the achievements in many areas were far-reaching. Not least amongst these, were gains made in the defence of refugee and migrants' rights for which NGOs, in particular, should be especially proud.

Migrant and Refugee NGO Caucus

Most NGO action throughout the preparatory process and at the Conference itself was organised through over 30 caucuses [groups with shared concerns]. For the first time in an international forum, migrant and refugee rights groups worked together to further the protection of these groups. The caucus was originally established over a year ago as a migration caucus, primarily by migrants' rights organisations. The inclusion of dozens of paragraphs on migrants' rights in the final conference documents, as compared to relatively few on refugee rights, was testament to the efforts of the migrants' rights groups since the Santiago regional conference in 2000. Refugee groups were in contrast slow to get involved in the WCAR, and even at the final Conference were conspicuously under-represented.

However, at the Durban meeting migration and refugee NGOs worked collaboratively and collectively together, and were seen by many at the NGO Forum as one of the "model" caucuses.

The NGO Forum

The number of refugees and migrants themselves at the NGO Forum, which took place in advance of the Conference, was encouraging. Some groups had gone out of their way to make sure that refugees and immigrants were represented on their delegations. Bhutanese refugees from camps in Nepal had scraped together the funds to bring a small delegation to Durban. Hundreds of NGOs set up stands in the exhibition tents, organised workshops, and staged protests and demonstrations. While the NGO Forum was vast, diverse, and at times seemed disorganised, it undoubtedly provided a forum for people to meet, share ideas, build networks, and forge alliances.

The Governmental Process

The paragraphs on refugees in the draft documents were contentious, as illustrated by the "inadvertent" dropping of a paragraph early in the negotiations that called on States to ensure that all measures relating to refugees and asylum are fully in accordance with the 1951 Refugee Convention. The irony of dropping a paragraph that ensured that States' actions were fully in compliance with the Refugee Convention in the very year that the same States are marking the Convention's 50th anniversary and planning to meet later in the year to reaffirm their commitment to the Convention, was not lost on NGOs.

One of the NGOs' primary objectives was to lobby for re-insertion of language on compliance with the 1951 Convention into the document. An objective that was achieved, with the help of the Norwegian delegation.

Dissent over the refugee paragraphs centred around four main issues.

1. Local Integration

Governments hosting large refugee populations, such as Pakistan and Iran, joined later by Tanzania,

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wanted no reference to permanent or long-term local integration in the final conference documents. The EU, on the other hand, was keen to have language on integration in the text of the final documents.

2. Right to Return and the Middle East Question

Syria and Palestine, backed by the Middle East and Asia blocs, wanted strong language on the right to return in the final conference documents. Wherever reference to the three durable solutions (voluntary repatriation, local integration, and third country resettlement) was made, these countries wanted to give special emphasis to the right to return including language on the right to return to “homes and properties.” The US and Israel — before their ignoble walk-out — were particularly opposed to this.

3. Burden-sharing

Led by Iran, several host countries wanted the Conference documents to reflect the heavy burden on host States of large refugee populations and the need for sufficient and equitable financial assistance from the international community. While there was general sympathy for the plight of host countries like Iran and Pakistan, there was also a strong feeling amongst other governments and NGOs that the WCAR should keep its focus on the “victims” of racism — the refugees themselves, rather than the needs of States.

4. The 1951 Convention

Several governments, most notably Asian states such as Pakistan, India, Malaysia, and Singapore — all non-signatories to the Refugee Convention — were opposed to inclusion of the Refugee Convention in the WCAR documents. Their reasoning: the Convention did not have universal accession and, thus, was not applicable or relevant to many States, including their own. Ironically, although only 17 States have ratified the 1990 Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, reference to this Convention was approved without dissent by the drafting committees. Instead some 140 have ratified the 1951 Refugee Convention, but its inclusion in the text proved to be highly controversial.

In the end, the declaration and programme of action contain unequivocal language on the 1951 Convention. There is no reference to local integration in the programme of action and a compromise was reached on the right to return. The final text does not make specific reference to the right to return for Palestinians and refers to the right to return to “countries of origin” rather than “homes and properties.” An original paragraph on detention and the situation in refugee camps was also dropped.

Internally Displaced Persons

One of the most rewarding and surprising achievements of the WCAR was the inclusion of a paragraph on the Guiding Principles on Internal Displacement. When the paragraph was first discussed, it was met with immediate and unanimous opposition from countries such as Pakistan, Sudan, China, Egypt, and the Russian Federation, all of whom opposed inclusion of any mention of the Guiding Principles in the conference documents. “The Guiding Principles are legally non-binding,” “have not been endorsed by the UN system,” “were drafted by one individual,” and “were not universally applicable,” they argued.

In the days that followed, several Colombian NGOs worked closely with the Colombian government — Colombia is one of the few countries with a large IDP population willing to support the Guiding Principles — to garner sufficient support to pass the paragraph. The paragraph was finally passed towards the end of the Conference. A major victory for the Guiding Principles and those involved in drafting and promoting them, but also an important recognition of the plight of internally displaced persons, which had been largely ignored throughout the Conference.

The Role of NGOs

NGO involvement throughout the preparatory process, at the regional meetings and the preparatory meetings, and the technical meetings proved to be very important. For each of the preparatory meetings, detailed lobby documents were prepared, critiquing the draft documents and providing alternative language where appropriate. Much of the NGOs’ language made its way into the final conference documents.

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For many NGOs it was an intense learning experience. But the level of effective and efficient cooperation among NGOs was remarkable. The key lessons learnt were: the need for meticulous advance preparation, in-depth knowledge of the documents, the willingness to be proactive and jump to the floor whenever needed, resoluteness, the ability to survive for days on end with little or no sleep, and ingenuity to prevent being locked out of the conference room.

On the other hand, the absence of refugee advocacy groups during the preparatory process and at the Conference itself was disappointing. It was surprising that given the level of racism and xenophobia against refugees and asylum seekers worldwide, refugee advocates did not participate more actively in the WCAR. An exception to this, was the active involvement of many of the South African NGOs working on refugee rights and the “Roll-Back Xenophobia Campaign” in South Africa.

The Role of UNHCR

Unfortunately, collaboration between NGOs and UNHCR was less than optimal. UNHCR and NGOs had not met prior to the Conference in order to strategise on advocacy objectives. UNHCR and NGOs should have worked together as allies to promote the protection of refugee rights through the WCAR. Instead, we often found ourselves working at cross-purposes. Our advocacy strategies were quite different and our objectives varied considerably.

UNHCR took a damage-control approach to the WCAR. Concerned that it could result in a weakening of refugee protection standards and an over-politicisation of the issues, UNHCR determined that it was better to have no language on refugees in the final documents, than poor language. The WCAR was not the forum to promote refugee rights, according to UNHCR, and its advocacy strategy was developed in line with this rationale.

At the same time, on several occasions, NGOs were lobbying governments to improve texts. The divergence in UNHCR's and NGOs' positions did not go unnoticed by government delegations.

Overall Impressions

In the end, the outcome of the Conference with regards to the rights of refugees, migrants, and internally displaced persons was positive. Although not legally binding, there is now a comprehensive document to which NGOs can hold governments accountable. The NGO coalition-building as a result of the Conference will bear long-term benefits, not least for refugee and migrants' rights advocates.

As opposed to the first two world conferences against racism, the Durban Conference Programme of Action includes provisions for a follow-up mechanism. It includes a call on States to elaborate national action plans; the appointment of a five-expert body to follow the implementation of the Declaration and Programme of Action; the creation of an anti-discrimination unit within the Office of the High Commissioner for Human Rights and the setting up of a comprehensive database on issues of racism, racial discrimination, xenophobia, and related intolerance, accessible to those in authority and the public at large. NGOs are actively committed to participating and monitoring follow-up to the Conference.

The lukewarm involvement of UNHCR and the near absence of refugee NGOs sends the strong message that both UNHCR and NGOs need to look beyond the confines of UNHCR's EXCOM and other elite refugee gatherings to promote refugee protection principles. We need to work together to tackle racism and xenophobia against refugees and asylum seekers and we should not be afraid to take our issues to wider human rights fora, even if this entails political risks. ♦

** The final edited versions of the WCAR Declaration and Programme of Action are soon to be posted on the Office of the High Commissioner for Human Rights' website: www.unhchr.ch.*

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and other actors participating in the UN's Inter-Agency Standing Committee planned for Friday 21 September in New York, which was announced just two days earlier, was cancelled at the last minute. No reason was given, but rumour has it that the UNHCR, Ruud Lubbers, and the Emergency Relief Coordinator and OCHA Chief, Kenzo Oshima, did not have an agreement over who should lead the response.

On Monday 24 September, at the NGO-UNHCR pre-Executive Committee Consultations with NGOs in Geneva, Lubbers pointed out that OCHA has the tendency to build a prefabricated coordination architecture "by sending a number of D2s to the field" [D2 is a senior rank in the UN system]. Lubbers also mentioned that were he to advise the Secretary-General, he would go for the deployment of a humanitarian envoy. The name of a senior UNHCR official was mentioned in the UN Palais corridors, but apparently not officially put forward.

On Wednesday, Oshima announced that the Humanitarian Coordinator for Afghanistan, Mike Sackett, had been appointed as Regional Humanitarian Coordinator. Whether this means that OCHA won the battle remains to be seen.

A donor alert, issued on Thursday 28 September, presents the situation as follows: "the Regional Humanitarian Coordinator in his capacity as UN Coordinator for Afghanistan will continue to assume the prime responsibility for coordination of activities supporting humanitarian assistance to Afghans inside Afghanistan. Given its mandate, UNHCR will continue to assume responsibility for international protection of, and the coordination of assistance to, refugees in countries in the region." The potential for future turf battles is omnipresent. Whether or not they materialise will depend to a large extent on the synergy of the personalities of individuals in the field.

While not expressing an immediate preference for who should coordinate, NGOs pointed out that they were aware of inter-agency tensions in the discus-

sion about the regional coordination arrangements. They added that previous experiences showed that inter-agency turf battles have not only severely hampered a coherent humanitarian response, but also attracted attention away from the task at hand: alleviating the suffering of those affected by calamity and violence. "It would be our wish that such a state of affairs be averted in our collective response to the Afghanistan tragedy," an NGO letter to Oshima said on Thursday 28 September.

Meanwhile, it has come to the attention of *Talk Back* that a structure of four coordination pillars, similar to that invoked in Kosovo last year, is being put in place. However, indicative of the lack of transparency of the UN, these plans have been developed internally by the UN and have not yet been shared with NGOs. Apparently, the *ad hoc* meeting of the Afghan Support Group on Thursday 28 September in Berlin, where there were no NGOs present, discussed the pillars further.

Managing the Plethora of Actors

While admitting that large numbers of refugees are not yet arriving in Pakistan and Iran, on Wednesday 26 September, UNHCR launched an appeal for six months for almost \$270 million — between a quarter and one-third of its entire budget. Given the recent dramatic budget cuts, it should come as no surprise that High Commissioner Lubbers is seizing the impending massive refugee crisis in Afghanistan's surrounding countries as a strategic opportunity to rebuild UNHCR's empire. Generally, UNHCR has to react as an accordion: its size and capacity increase with the emergency and the organisation shrinks in the interval between large emergencies.

The \$270 million is part of a wider UN appeal for the staggering amount of more than \$580 million for the next six months. As several donors have announced that they are opening their chequebooks, UN agencies, international organisations, and NGOs will all rush for the money. While only a relatively small number of them have a direct relevance when

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it comes to emergency response, it is clear that the large majority is trying to get their share. The UN's Population Fund and UNESCO are already trying to push themselves to be part of the response.

The large refugee crises of the last decade saw the numbers of NGOs in the hundreds. Many of them were later accused of following the money rather than being needs-driven. Donors, however, should realise that in choosing to work through 'their' NGOs, as they did in Kosovo, they will be equally to blame if NGOs flood the disaster areas again.

Probably the best thing OCHA and UNHCR could do is at this stage is to identify lead-agencies for the different sectors of the response in specific locations. From experience, UNHCR should know that when it comes to mounting a mammoth response, not more than twenty or so NGOs have the capacity to do so effectively.

Interestingly, the donor alert contains a section on resources to revise and strengthen NGO coordination. The document says that NGO coordination has suffered since the collapse of the Peshawar-based ACBAR and the limited capacity of other NGO coordinating bodies. "Given the important role that many NGOs are expected to play in future operations, effective NGO coordination mechanisms are regarded as indispensable," the alert reads.

However, while NGOs have been carrying out the majority of activities inside Afghanistan and have been involved in UN coordination structures, NGOs have been left out of the UN's planning in Islamabad taking place over the last ten days. Reports from NGOs in Peshawar, Pakistan confirm that no serious efforts were made by the UN to consult NGOs in developing coordination structures. If an all-inclusive mechanism for coordination is not ensured, we may again see the same level of bilateralism emerging as was seen in the case of Kosovo.

In order to improve the quality of the response, one instrument that agencies may want to apply are the

Sphere Standards in assessing needs and planning and monitoring (and evaluating) operations.

Urgent Refugee Protection Questions

The looming refugee crisis will present urgent questions relating to refugee protection. Several States, including politicians in some Western countries, have already expressed strong fears about the security risks posed by Afghan refugees and asylum seekers. Australia went as far as to say that it was right in sending away the Afghan boat refugees (see related article in this issue of *Talk Back*). In a recent press release, Human Rights Watch pointed out that the closure of borders by the neighbouring countries was in fact at the request of the United States, in order to prevent alleged terrorists from claiming asylum.

At the same time, some of Afghanistan's neighbouring countries are known for their desire to return Afghans as soon as possible. Before 11 September, UNHCR had started a screening programme with the Government of Pakistan for some 180,000 Afghans who had arrived mainly in Jalozai since June 2000, in order to separate those in need of protection from those not considered genuine refugees. The refugee agency suspended this programme for two days in late August in protest over the forced deportation of 30 families by the Pakistani authorities.

Refugee protection in situations of mass influx has been the subject of recent debate. Concepts such as responsibility- or burden-sharing and temporary protection regimes have been invoked in order to cater to large numbers of refugees. In light of the possible extent of the exodus from Afghanistan — UNHCR is calculating an outflow in the magnitude of about 1.5 million people — a humanitarian evacuation programme may become necessary to help Afghanistan's neighbours, Iran and Pakistan, which are already hosting 3.5 million Afghans. Such an evacuation programme was developed in the case of the Kosovar refugees in the former Yugoslav Republic of Macedonia. If it were to be launched,

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the question is whether States will demonstrate the same level of commitment to taking evacuees, as was witnessed in the case of Kosovo.

On the practical level, if evacuation takes place, there is the difficult question of whether evacuation will be available to all, old and new refugees, or only to those who have left the country since 11 September.

In learning the lessons from the Kosovo experience, humanitarian evacuation should only take place with the consent of the individuals to be moved and should respect the principle of family unity. Even more important for the Afghan case is to follow the agreed conclusion of UNHCR's Global Consultations: the status of evacuees should be *prima facie* determined to be that of a refugee.

UNHCR should also ensure that it is able to monitor the application of the status in all countries that will host evacuees, so as to avoid the discrimination that prevailed in the Kosovo situation.

Protection: Part of the Emergency Response?

UN Security Council Resolution 1373, which was adopted late on Friday 28 September, contains two paragraphs on the issue of excluding from refugee status those who have been involved in terrorism, which are in accordance with the provisions in international refugee law.

Subsequently, it is clear that screening, separation, and exclusion will be crucial in protecting refugee rights: it should be part of the emergency response. But who has the capacity to do so?

Traditional emergency response focuses on logistics, supplies, and human resources. Protection is often treated as an add-on element as if the rights of refugees and internally displaced persons apply only after they have been helped to survive. The point that protection is not a priority

in mounting the massive response cannot be made more explicit than by looking at the figures of the \$580 million appeal. In this appeal, UNICEF has asked for \$1.1 million, OCHA for \$1 million, and NGOs for \$410,000 just for protection. UNHCR's request for \$268 million for refugees and returnee assistance "covers protection and multi-sectoral assistance to communities in areas of return." However, the protection line amounts to \$2.5 million out of a total appeal for \$580 million.

While responsible for protection, UNHCR does not have a large roster of protection officers available for emergency situations and often cannot do more than shifting around protection staff from other crises, which then obviously are without these staff: a problem that arose during the Kosovo crisis. Ironically, the International Rescue Committee, an US-based NGO (and ICVA member), has agreed to develop a roster of protection staff, which can be made available to the refugee agency.

Over the weekend of 29 September, plans were disclosed about the intention to establish camps in the Tribal areas of the North-West Frontier and, in the South, in the province of Baluchistan, between the Chaman border area and the city of Quetta. It is unknown if site planners and authorities have asked themselves whether these sites are located too close to the border with Afghanistan. Experiences in Eastern Zaire in the mid-nineties and recently in Guinea illustrate the vulnerability of camps to cross-border attacks (see for example, *Talk Back* 2-7, "Refugee Camps on the Border: A Recipe for Disaster in West Africa").

Equally important is the fact that the acts of separation of armed elements and exclusion of those who do not qualify for refugee status are likely to involve serious security risks and may require the deployment of police and military forces. Yet, a military deployment will raise further complications, including the risk of sacrificing the civilian character of refugee camps

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and refugee-hosting areas (see *Talk Back* 3-4, “New Rules for Wargaming”).

The Role of the Military: Leave the Humanitarian Response to Humanitarians

Following the Kosovo refugee crisis, many humanitarian organisations agreed that NATO’s relief-implementing role had resulted in an unacceptable blurring of the humanitarian and political mandates (see *Talk Back* 2-1). One can only imagine the implications of a visible US military involvement in the aid effort in this case.

The reason for the heavy military involvement in Kosovo was the fact that humanitarian organisations did not have the adequate capacity for such large numbers of refugees. As pointed out in *Talk Back* 2-1, the claim that in this case only the military could do the job became a self-fulfilling prophecy. NATO member States had deliberately decided to allow NATO’s military forces to do contingency planning. The leading role of the military in the aid effort, which was good for the public image, helped the NATO forces to counterbalance the air campaign. It seems that the US may already be heading down a similarly worrying path with the US military planning to get involved in the humanitarian response.

An obvious priority for OCHA and UNHCR in coordinating the response is to ensure that the respect for fundamental humanitarian principles is promoted. While again certain political forces may be simply too strong for the UN, it must do its utmost in ensuring that the military do take not over the humanitarian response. Otherwise, this crisis is likely to be the ultimate step towards the corruption of humanitarian principles and the political manipulation of impartial relief. ♦

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refugees from its shores? Are Afghanistan’s neighbouring countries legitimately keeping their borders closed presently?

In addition, there are two immediate issues that also need to be included in the debate that has begun. UNHCR’s application of refugee law and guidelines (many produced by the agency itself) must be monitored more rigorously. Some have proposed the idea of the establishment of an inspection panel in UNHCR, similar to the model applied by the World Bank.

What NGOs definitely want is a mechanism that can address violations and difficult questions in real-time.

The other issue concerns monitoring of the Convention and other instruments of refugee law by NGOs. Next to the traditional advocates of refugee law, human rights NGOs, and refugee councils, many humanitarian NGOs have extended their mandates and missions to include advocacy on basic human rights, including refugee law. Together these NGOs collect a wealth of information on violations of refugee rights, which could perhaps form the basis for a system for comprehensive monitoring and a central database that registers this information.

All these issues will be discussed in-depth at a meeting that will take place on 11 December in Geneva, on the eve of the Ministerial Conference to commemorate the 50th anniversary of the Refugee Convention. ICVA is pleased to facilitate, and to contribute to, this meeting so as to identify a better mechanism, which obliges States to comply with their obligations under international refugee law. ♦

Ed Schenkenberg van Mierop

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Downgrading Refugee Rights Down Under

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At a time when the need to protect refugees is probably at its greatest, or will be in the coming months as the “war on terrorism” is stepped up, Australia has taken a major step backwards in its commitment to refugee protection and human rights. Legislation adopted last week sets Australia on the path of retreating from its obligations under the Refugee Convention and under various human rights treaties, as well as reducing its migration territory. But what recourse is there to ensure that States will be called to task when they blatantly retreat from their obligations as Australia is doing?

Australia’s hypocrisy has been slowly giving way to the awful truth that it is intent on limiting the numbers of asylum seekers who reach its shores. The incident in August with the Norwegian ship, “the Tampa,” which had picked up more than 430, mainly Afghans, off a sinking ship, but was then denied landing rights on Australian territory, has set off a chain of ever worsening events (see Editorial, *Talk Back* 3-4).

Offer up your services to take asylum seekers off Australia’s hands and the rewards will be great. The world’s smallest republic, Nauru, is the first example of that. Not only is Nauru getting US\$12 million to take those who were aboard the Tampa, but it is also taking 217 others picked up along the way by the Australians. Now Nauru is also getting US\$2 million to fend off bankruptcy. And the island nation of Kiribati, also heavily dependent on Australian aid, may be the next place to house asylum seekers refused entry to Australia. There are currently some 300 boat people stranded on the Cocos Islands and Ashmore Reef.

But paying off its neighbours to take those arriving on its territory is only the tip of the iceberg in the range of events in Australia in

the wake of the Tampa incident last month.

The Australian Minister of Defence, Peter Reith, made the crude generalisation of saying that in light of the attacks on the US on 11 September, his government had been right to send away the Afghan boat refugees in view of the “security risk posed by asylum seekers.” Sweden was one of the few governments that publicly condemned this statement as an assault on the Refugee Convention.

But the Australians seem to have taken little heed of the Swedish concern and dismay. The gross parallels drawn by Reith are witnessed by his comment, “If you’ve got people with strange identities walking around, that enhances your security concerns.” Several boatloads of asylum seekers have been intercepted in the past two weeks, Reith has noted.

Last week, new legislation was passed in Australia, some of it retroactive, which, according to the Chair of the Refugee Council of Australia, Dr. William Maley, weakens “the rights of vulnerable people. It attempts to displace Australia’s responsibilities to those in need onto others.”

Among the outcomes of the legislation passed is a narrowing of the commonly accepted and judicially interpreted definition of a refugee, which, according to Amnesty International, is “inconsistent with the original intent and the purpose of the Refugee Convention.”

Certain territories are excised from Australia’s migration zone so that those landing on Cocos Island (retroactive to 17 September 2001), Christmas Island, Ashmore Reef, and Cartier Reef (retroactive to 8 September 2001), will no longer have the right to seek refugee status in Australia. Ironically, while asylum

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seekers will no longer be able to seek refugee status if they land on one of the excised territories, a detention facility for asylum seekers is currently being built on Christmas Island.

“It is a disappointing departure from established Australian legislative tradition that changes to fundamental human rights guarantees could be made in such haste without extensive consultation and public debate.”

People entering an “excised offshore place” can be removed to “declared countries.” Those characterised as “offshore entry persons” are prevented from initiating legal proceedings against the State.

Different visa categories have been introduced, which discriminate on the basis of how, and where, an asylum seeker or refugee arrives on Australian territory: some will be granted permanent visas right away, others will get them after some time, and still others will never be eligible for permanent visas.

Professor Alice Tay, the President of Australia’s Human Rights and Equal Opportunity Commission said that three migration bills “...introduce inconsistency into the refugee determination system and mark a retreat from human rights protection in Australia.” Tay noted that the parliamentary committee system allows for proper consideration of proposed legislation where there is the potential to seriously affect human rights. “It is a disappointing departure from established Australian legislative tradition that changes to fundamental human rights guarantees could be made in such haste without extensive consultation and public debate.”

Countries, such as Pakistan and Iran, host to millions of Afghan refugees, and other countries in Africa, must find Australia’s latest moves a slap in the face when it comes to the concept of burden- or responsibility-sharing. However, there may be other countries that have similar ideas in mind when it comes to designing their asylum and immigration policies. Just because Australia is an island, it has the luxury of trying to prevent people from entering its territory. And so, Australia has been building up its naval presence along its northern borders and adopting restrictive legislation to ensure that it limits the number of asylum seekers arriving on its territory.

Australia’s political leadership is pandering to the lowest common denominator in public opinion in an attempt to gain votes in the upcoming election. Australia must not be allowed to set the new standard for refugee protection and the reception of asylum seekers. Instead, it must be strongly condemned for its attempts to retreat from its obligations. Anything less from the international community will only lead the way to a weakening of the Refugee Convention at a time when protection may be more important than ever in the current political context. But without a body that is willing to do so, the result is that Australia is getting away with such measures with little outside condemnation. ♦

Australia’s political leadership is pandering to the lowest common denominator in public opinion in an attempt to gain votes in the upcoming election.

With information from the Refugee Council of Australia, e-mail: rcoa@cia.com.au, website: www.refugeecouncil.org.au; Amnesty International, Australia, website: www.amnesty.org.au; and Refugee and Immigration Legal Centre Inc., e-mail: [rilc@rilc.org.au](mailto:riloc@rilc.org.au).

ISSUE OF THE MONTH: THE 1951 CONVENTION: A NEW SUPERVISORY MECHANISM

WHY SUPERVISE THE CONVENTION?

*James C. Hathaway**

Editor's Note: This Issue of the Month on a new supervisory mechanism for the 1951 Convention brings together five contributions on various aspects to be taken into consideration for such a mechanism. The first examines why supervision of the Refugee Convention is necessary. The second summarises possible options for supervising the Convention. The third raises questions of accountability, with the fourth taking that argument further. The final piece provides a suggested mechanism that could readily be implemented by UNHCR to improve supervision of the Convention. It is hoped that many of these views will feed into the 11 December pre-Ministerial meeting, as well as the Ministerial meeting commemorating the 50th anniversary of the Convention on 12 and 13 December 2001, in Geneva, Switzerland.

The Refugee Convention is the only major human rights treaty that is not externally supervised. Under all of the other key UN human rights accords — on the rights of women and children, against torture and racial discrimination, and to promote civil and political, as well as economic, social, and cultural rights — there is at least some effort made to ensure that States are held accountable for what they have signed onto.

All of these treaties require governments to file periodic reports setting out their cases for having complied with international law and to submit to a face-to-face review of their assertions. These reviews are conducted by independent experts, usually armed with strong NGO background information and sometimes assisted by direct NGO interventions. Beyond periodic reporting, UN human rights treaties may allow one State Party to file a formal complaint against another State Party for breach of the treaty (though no government has ever elected to do so); and some permit individuals whose rights have been breached and who have not been able to remedy their situation domestically to file complaints directly with a UN human rights supervisory body.

Under the Refugee Convention, in contrast, no external body has been set up to receive and comment on periodic reports, much less to adjudicate inter-State or individuated complaints. Instead, under Article 35 of the Convention, State

Parties agree to cooperate with UNHCR's efforts to ensure that the Refugee Convention is respected by, for example, reporting to UNHCR on legislative and practical steps taken to ensure refugee rights.

UNHCR protection officers in the field do provide confidential reports to headquarters staff, but States are not required to submit to public, or even collegial, scrutiny of their records. As a result, there is no forum within which to require governments to engage in the kind of dialogue of justification that is a standard feature of the other human rights systems. Nor has there been any effort by UNHCR, formally, to involve refugees or their advocates in the supervision of refugee rights. The tenor of Article 35 aside, supervision of refugee rights by UNHCR remains very much a matter of private representations to States.

The tenor of Article 35 aside, supervision of refugee rights by UNHCR remains very much a matter of private representations to States.

UNHCR's public supervisory role has instead focused on the issuance by its Executive Committee (EXCOM) of Conclusions on International Protection of Refugees. While not formally binding, the moral force of these consensus

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recommendations adopted by representatives of major governments has often influenced the conduct of States. The EXCOM has, however, become increasingly reluctant to grapple with critical contemporary protection issues, recently refusing even to affirm the legal significance of its own work. There is, therefore, some doubt about the continuing viability of even this minimally intrusive approach to the external supervision of refugee rights.

[UNHCR's] EXCOM has...become increasingly reluctant to grapple with critical contemporary protection issues, recently refusing even to affirm the legal significance of its own work.

To respond to this void, UNHCR commissioned a study of the possibility of enhanced supervision of refugee law, submitted last July by highly regarded expert Walter Kälin (available on UNHCR's website: www.unhcr.ch). Kälin rejects a periodic reporting system for the Refugee Convention on the grounds that such mechanisms impose too high a burden on States, are plagued by delays, and result in supervision of questionable quality. He also recommends against allowing individual complaints to an expert body, arguing that a disproportionate share of such complaints would originate in the developed world, and that the volume of applications would soon overwhelm any expert body.

Instead, Kälin opts for a three-part approach to supervision of the Refugee Convention. First, selective country-specific protection reviews of State Party compliance would be conducted by EXCOM-approved experts. They would review a government-prepared memo and (with consent) conduct an on-site visit and consultations in the country concerned, leading to a discussion within an EXCOM sub-committee and a public report. Second, an effort should be made to gain support for the establishment of an international judicial body with power to issue advisory opinions on

refugee law at the request of States, domestic courts, or UNHCR. Third, the EXCOM would be asked to appoint expert rapporteurs to review specific concerns across States (whether parties to the Convention or not) — for example on the protection of refugee women and children or on access to asylum. The rapporteurs would report to EXCOM, hopefully generating public discussion and possible recommendations. (For more detail on Kälin's paper, see "Some Options for Supervising the 1951 Convention" in this issue of *Talk Back*.)

There is no doubt that both the decision to open a debate on a supervisory mechanism and the specifics of the Kälin proposal mark a significant advance on the status quo, but important questions remain to be addressed. The time is right for refugees and their advocates to consider, for example:

- Does the EXCOM-based structure proposed meet Kälin's own insistence that the mechanism be not only feasible, but also independent, objective, transparent, and open to the voices of all?
- Is there really no value in considering ways by which to revitalise periodic reporting and/or the use of individuated complaints to advance the protection of refugee rights?
- Can the same mechanism proposed meaningfully oversee not only respect for refugee rights, but also the (highly legalised) interpretation of the refugee definition?
- And perhaps most fundamentally, is it appropriate for the supervisory mechanism to be directed only to oversight of State actions, or should those of inter-governmental and non-governmental entities involved in refugee protection be scrutinised as well? ♦

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ISSUE OF THE MONTH: THE 1951 CONVENTION: A NEW SUPERVISORY MECHANISM
SOME OPTIONS FOR SUPERVISING THE 1951 CONVENTION

The debate on improving and strengthening the implementation of the 1951 Refugee Convention and 1967 Protocol has so far largely been held among refugee law experts. A meeting in Cambridge, UK in July this year saw experts discussing a paper submitted by Professor of International Law at the University of Berne, Switzerland, Walter Kälin, who is known for his work on the IDP Guiding Principles. In his paper, Kälin presents several options for monitoring refugee law.

Given that many humanitarian staff working with refugees are interested in the question of halting the trend of the violation of refugees' rights, it is high time that the debate be enlarged to other stakeholders in refugee protection. Kälin's paper provides a good starting point for such a debate.

Kälin asserts that the goal of strengthening the protection of refugees is best achieved by monitoring the applicable international refugee instruments, in order to facilitate taking the necessary steps to convince or pressure concerned States to honour their obligations. He submits that the monitoring mechanism should promote a harmonised interpretation of the refugee instruments, so as to achieve more uniform practice. By learning from the experiences of State Parties, it should be possible to identify obstacles to full and effective implementation, appropriate solutions, and best practices, according to Kälin.

A new monitoring mechanism should meet the requirements of independence and expertise, objectivity and transparency, inclusiveness, and operability. Further, the job of providing international protection, which requires presence and access, should be institutionally separated from the "highly visible task" of monitoring State behaviour from a universal perspective. Kälin

believes, therefore, that UNHCR should not play an active role in any new monitoring mechanism.

As a first model, Kälin proposes the establishment of a Sub-Committee on Review and Monitoring, which could be established within the framework of UNHCR's Executive Committee. However, EXCOM members that are not party to the Convention and/or Protocol must be excluded from this Sub-Committee. Legally speaking, one advantage of this model is that no amendments to the 1951 Convention and Protocol are foreseen.

The Sub-Committee would be responsible for carrying out Refugee Protection Reviews. The situations or countries to be reviewed would be identified on the basis of transparent and objective criteria, taking into account, for example, an equitable geographical distribution, the existence of particular problems or obstacles to full implementation, or the number of refugees and asylum-seekers involved.

The reviews would be carried out by a team of reviewers selected from a pool of independent experts nominated by each of the State Parties to the 1951 Convention and 1967 Protocol and who would be appointed by the Chair of the Sub-Committee. The States that are subject to review should prepare a memorandum in order to explain the main features of their refugee policy. Subsequently, the review team studies the situation on the ground and holds talks with all the actors concerned: governmental bodies and agencies, members of parliament, representatives of civil society and NGOs, and refugees. The expert team submits its review to the Sub-Committee, which discusses it during a public meeting in the presence of representatives

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Some Options for Supervising the 1951 Convention

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of the countries concerned. NGOs may participate in these discussions and the Sub-Committee may adopt observations. Finally, a report of the expert team and the Sub-Committee's observations would be transmitted to the State Parties as a public document.

A second option is the creation of a judicial body entrusted with making preliminary rulings on the interpretation of international refugee law upon request by domestic authorities or courts, or by UNHCR. While this option is worth pursuing, it would require a new Protocol to the 1951 Convention and, therefore, be more long-term.

As a third option, Kälin suggests the appointment of Special Rapporteurs, with thematic mandates, by EXCOM's Standing Committee. This option would make it possible to address protection issues in countries that are not party to the 1951 Convention and to deal with issues of international protection beyond the provisions of the Convention. However, care should be taken to

...the job of providing international protection, which requires presence and access, should be institutionally separated from the "highly visible task" of monitoring State behaviour from a universal perspective.

minimise overlap of mandates/ areas of focus of the Sub-Committee's reviews, as well as with mandates of the Special Rapporteurs of the UN Human Rights Commission. The reports of the Special

Rapporteurs would be discussed by the Standing Committee in the presence of countries concerned and NGOs would be invited to participate.

Kälin's proposals do not provide for extensive NGO participation. However, a stronger involvement of NGOs would be desirable and in line with the recommendations made at some of the regional meetings of the Global Consultations.

In fact, the participation of NGOs might include being consulted on the election of the team of experts. Alternatively, the Sub-Committee could appoint NGOs to review specific refugee protection problems. In addition, NGOs might be given a role in identifying specific situations or countries to be reviewed.

It is high time for a public debate on the options to improve the monitoring of the rights of refugees.

Kälin's proposal for an EXCOM

Sub-Committee also seems to ignore the fact that EXCOM is a highly political body. It, therefore, may not be the ideal trigger for the identification of issues and geographic focus that warrant review.

But there are more open-ended questions. Should the Sub-Committee's mandate include the authority to order the review of UNHCR's mandate and protection work with regard to certain refugee situations or countries, which may go beyond the scope of the 1951 Refugee Convention and its 1967 Protocol? For example, in certain situations, UNHCR has become involved with IDPs. And, finally and ultimately, what about the issue of the enforcement of reports' findings? Besides possible observations made by the Sub-Committee, what might be the legal and practical consequences of a report's findings? And, which body ensures follow-up and compliance? It is high time for a public debate on the options to improve the monitoring of the rights of refugees. ♦

Background Paper for the Expert Roundtable in Cambridge on Supervisory Responsibility (9-10 July 2001): "Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond," Professor Walter Kälin, on the UNHCR website: www.unhcr.ch.

With information from Deirdre Clancy, Lawyers Committee for Human Rights, e-mail: clancyd@lchr.org.

ISSUE OF THE MONTH: THE 1951 CONVENTION: A NEW SUPERVISORY MECHANISM

REFLECTIONS ON ACCOUNTABILITY AND REFUGEE PROTECTION

Deirdre Clancy

On 12 and 13 December the 50th Anniversary of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol will be commemorated in Geneva. The draft Ministerial Declaration to be adopted contains the first clear signal that States may be ready to examine the possibility of creating a mechanism to improve the implementation of the Refugee Convention. It urges, "all States to consider ways that may be required to strengthen the implementation of the Convention and/or Protocol and to ensure closer cooperation between State Parties and UNHCR to facilitate UNHCR's duty of supervising the application of the provisions of these instruments."

This process invited by the Declaration presents a unique opportunity for NGOs, refugees, and refugee advocates to come together to devise imaginative solutions to create a more effective refugee protection regime.

The Current System

The Refugee Convention was one of the very first binding human rights treaties agreed by the international community, setting out a detailed set of rights for those individuals in need of international protection. But in contrast to the enforcement mechanisms that were subsequently established under other human rights treaties, no independent body was set up under the Refugee Convention to monitor and scrutinise its implementation.

Although UNHCR has been entrusted with a supervisory responsibility for the Convention, its effectiveness in this role continues to be limited by its forced dependence on the willingness of States to provide the agency access and sufficient funding for its operations (see also *Talk Back* 3-3, "Global Consultations: Wanted: New Implementation Mechanism for Refugee Convention").

The monitoring procedures established under UN and regional human rights treaties play an important role in the protection and reinforcement of the

basic rights of refugees.¹ The work of the Human Rights Commission (HRC) and the Committee Against Torture (CAT) have been, in particular, of increasing significance. Most of the cases pending today under CAT are expulsion or asylum related. HRC has paid, over the last few years, more consistent attention to refugee protection issues during its examination of States' reports. But while these instruments (and others at the international and regional level) can be highly effective in closing some protection gaps, shortcomings remain. These relate both to the inherent enforcement weaknesses of the human rights system itself, and the fact that the protection concerns of refugees can have quite a specific character.

Refugee protection concerns often arise in emergency and conflict situations that require immediate action. Although some human rights bodies have occasionally made inter-sessional calls for urgent

reports (Iraq and the former Yugoslavia), the present system is inadequate to address emergency situations on a regular basis, let alone in real-time. Individual complaints also require time before being considered and complainants must have exhausted all domestic remedies before approaching the international forum.

Refugees experience threats to their rights both as individuals and as members of particular groups. In many situations whole groups of persons who share common characteristics are exposed to serious threats to their lives, freedom, and physical well-being. In general, the current complaints procedures established

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Reflections on Accountability and Refugee Protection

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under the human rights treaty system only serve as remedies for individuals. (Human rights protection concerns with regard to entire refugee groups can, of course, be addressed in a more holistic manner, on a periodic basis, within the reporting framework).

The lack of an effective system of accountability is becoming even more acute as States continue to interpret their refugee protection obligations restrictively or, in certain cases, deny them entirely. As the UN High Commissioner for Refugees told the UN Human Rights Commission in 1999, “My office has witnessed over recent years . . . a noticeable decline in the level of protection and assistance to refugees and asylum seekers in countries of asylum” (24 March 1999).

Towards Greater Accountability?

In looking for ways to fill the refugee protection monitoring and enforcement gap, a number of questions should be taken into consideration. Should a mandate be created not only to examine the conduct of State Parties to the Refugee Convention, but also that of inter-governmental agencies (particularly UNHCR) and NGOs? How can refugee protection be ensured in States not party to the Convention?

UNHCR’s protection mandate has extended over recent years to include stateless persons, returnee, and in some cases internally displaced persons and persons threatened with displacement or otherwise at risk. How far should any new mechanism take account of the conduct of those actors responsible for the protection of these categories of person?

NGOs have an increasingly fundamental role to play in the protection of refugees. Might a coalition of NGOs — either on their own initiative or mandated by UNHCR’s Executive Committee — come together to monitor States’ compliance with accepted international principles and protection standards? Strong involvement of NGOs in the operation of a new mechanism would be in line with the recommen-

dations made at the Global Consultations regional experts meeting in Costa Rica earlier this year.

How far should a new mechanism take into account the collective nature of both the responsibility of States to protect refugees and the task of searching for practical solutions to their plight?

Refugees should be among the first beneficiaries of an enforcement mechanism backed by the collective commitment of States to protection. Human rights treaties generally operate on the basis of delegation of responsibilities to the State level — an assumption of the benevolent link between a citizen and his/her State. Where that bond is damaged, the international forum steps in to mediate and order reparation. For the refugee, however, it is the complete breakage of that link that has rendered him/her “in need of international protection.” Although the granting of asylum assures protection from a second State, the refugee continues to have a particular call on the international community at large. If protection fails in that second State, safety may be sought elsewhere.

As Hathaway points out in his contribution to this issue “is there really no value in considering ways by which to revitalise . . . the use of individuated complaints to advance the protection of refugee rights?” One of the many problems facing refugees is precisely that they are perceived as members of a refugee ‘group,’ ‘crisis,’ or ‘situation,’ and not as individuals. In devising any new system of accountability can we be innovative in ensuring that the individual refugee’s voice is heard and permitted to assert an individual right to protection? ♦

NOTES

1. The human rights bodies most relevant to refugee protection include the Human Rights Committee (UN Covenant on Civil and Political Rights), the Committee Against Torture (UN Convention against Torture), the European Court of Human Rights (European Convention on Human Rights), and the Inter-American Court and Commission of Human Rights (American Convention on Human Rights).

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A QUESTION OF ACCOUNTABILITY TO REFUGEES
Agnès Callamard and Koenraad van Brabant

The international system of refugee protection and welfare was created and, has functioned, very much on two assumptions. The first was that the primary duty-bearers, i.e. governments, would respect their international commitments and obligations. The second was that the duty-holder, UNHCR, would be in a position to supervise the implementation of the Refugee Convention. These assumptions have proven to be wrong. Instances of States' non-compliance with the Convention have multiplied and the role of UNHCR, and to a lesser extent of its implementing partners, has been increasingly criticised.

Faced with increasing instances of violations and/or non-implementation of the Refugee Convention, many are wondering which monitoring mechanisms could be implemented that would ensure that those responsible for the welfare and protection of refugees meet their obligations and duties (see *Talk Back* 3-3).

Ultimately, however, monitoring or supervision may do little to change the situation, unless it is seen and functions as part of a commitment to ensure and strengthen accountability towards those fleeing persecution and human rights violations.

Current proposals regarding the enhanced supervision of the Refugee Convention, emanating from the Global Consultations and legal expert Kälin, have very much focussed on the creation of independent supervisory mechanisms located at an international level (in particular through the EXCOM) and concerned with the primary duty-bearer, the State of asylum.

But an integrated approach to strengthening accountability would be more effective in enhancing supervision of the Refugee Convention. Such an approach would include both (stronger) self-regulation and independent mechanisms and would recognise the inter-play between activities at various levels (i.e. "field," national, organisational, sector-wide, and international). While States (and armed groups) constitute the primary duty-bearers

in humanitarian crises, accountability to disaster-affected populations requires considering the role and responsibilities of other actors, namely UN agencies and non-governmental organisations.

It should be highlighted that many operational humanitarian agencies are primarily concerned with enhancing implementation of the Refugee Convention in situations of mass movements. While international attention has focused, for good reasons, on specific individual protection problems, including the recent ordeal of asylum seekers stranded off the coast of Australia, the huge majority of refugees linger in camps in the developing world and face day-to-day problems of survival with dignity. It is with these issues in mind that the following proposals are made.

The primary objective of any supervision of the Refugee Convention should be to ensure greater accountability to those fleeing persecution. In other words, refugees, and refugee rights should be at the centre of any provisions setting up supervisory mechanisms.

Supervisory instruments should be located at field/national, organisational, and international levels. While the mandate of these instruments may differ, it is crucial that a supervision system includes, at one or all levels, the following tasks: listening and responding to refugees; informing them about their rights and the activities undertaken on their behalf and for them; reporting to them on the outcome of these activities; and handling individual complaints or concerns.

While these specific activities are already part of the mandate of a number of agencies, particularly UNHCR, evidence indicates that they are too often insufficiently performed, if at all. Hence the necessity to strengthen accountability within agencies: organisational practices and cultures need to be refocused towards accountability to the primary stakeholders, i.e. refugees. Such a refocusing requires

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full commitment from the leadership of an organisation and requires building on experiences. It would come from the enhancement and/or reform of performance assessments and internal supervisory mechanisms, for example. Organisations should be required to report (possibly to the bodies identified by the Global Consultations or Kälín) on the progress made towards strengthening organisational self-regulation.

But there is also a need for enhanced accountability at the operational level, which includes all organisations involved in a specific refugee assistance programme. Responses to mass refugee movements could include the creation of a committee responsible for monitoring operational activities related to refugee protection and assistance. Constituted of representatives from the various organisations (national, inter-governmental, and non-governmental) involved in the protection and assistance programme, donors, and refugees, the committee's responsibilities could include the formulation of codes of conduct and handling individual (including refugee) or organisational complaints. This body would have the mandate, or authority, to monitor and enforce agreed rules regarding the day-to-day protection operations.

Where and when such a committee would be unable to perform its task (for political reasons or operational disagreement), it should have recourse to a regional or international mediation or trouble-shooter team. These international teams would investigate the situation; make recommendations; seek to build consensus around those recommendations; and report to, and call upon, the UN Secretary-General and/or the UN Security Council to intervene when necessary. These teams could be part of the supervision mechanisms already proposed (i.e. at UNHCR's Executive Committee level or a panel of experts), but they would have an immediate operational and political supervisory mandate.

It should be stressed here that one fundamental source of protection problems in situations of mass movements resides in the insufficient level of resources attributed to agencies and the country of asylum. Clearly, one fundamental function of such mediation or trouble-shooter teams (and of their possible "headquarters" at EXCOM or other levels) should be addressing the question of burden-sharing.

Finally, can supervision and accountability, more generally, function without sanctions? The answer is, with difficulty. Hence there is a need to seek solutions that will bring about sufficient consensus and redress. At an international level, sanctioning violations of the Refugee Convention remains an elusive quest (unless they meet the criteria of war

crimes, crimes against humanity, or genocide). Kälín's suggestion for the establishment of an international judicial body with advisory powers certainly constitutes a way forward and one that could assist in preventing future violations (albeit not in providing redress).

Ultimately, the most effective supervisory and sanctioning instruments remain national. The recent case of refugees stranded off the coast of Australia has shown the relative strength of national watchdogs and domestic courts over international outcry in terms of taking measures to try to pressure the Australian government to meet its international obligations. The result is the necessity for any international, operational, or regional supervisory bodies to work with, and encourage, national human rights institutions and offices of ombudspersons to address State non-compliance with the Refugee Convention through national watchdogs, coalitions, and domestic courts of law. ♦

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AN INDEPENDENT ADVISORY GROUP TO
SUPERVISE THE CONVENTION?

The Global Consultations on International Protection are proving invaluable in bringing forward unclear or controversial subjects related to refugee protection and providing a forum for discussion. However, time and again, the Consultations reveal that the real problem with refugee protection is with the implementation of existing provisions. Critical to the implementation of the Refugee Convention is the bolstering of UNHCR's duty to supervise implementation, in accordance with Article 35 of the Convention. Article 35 requires Contracting States "to cooperate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions and, in particular, to facilitate its duty of supervising the application of the provisions of this Convention".

In recognition of the problems with which it is increasingly confronted in this regard, UNHCR tabled the question of its supervisory duty during the Global Consultations in a regional experts meeting, a global expert round-table, and at the Ministerial Conference on 12 and 13 December. The draft declaration, to be adopted by the Ministerial Conference, commits States to a process of examining ways to strengthen UNHCR's supervisory duty. One of the recommendations of the regional experts meeting in San Jose, Costa Rica was for the High Commissioner to establish a panel of experts or advisory group, to examine how the Convention is being implemented by State Parties. Indeed, one basic objective expressed at this regional meeting was to ensure that the UNHCR's core protection mandate and its supervisory authority are not diluted or weakened

by transferring part of this responsibility and authority to a State mechanism. This recommendation has attracted little wider attention so far, but appears to have growing support within UNHCR itself.

Critical to the implementation of the Refugee Convention is the bolstering of UNHCR's duty to supervise implementation, in accordance with Article 35 of the Convention.

As an answer to the difficulties currently faced by UNHCR in fulfilling its supervisory duty, the idea of an independent Advisory Group is worth exploring.

As an answer to the difficulties currently faced by UNHCR in fulfilling its supervisory duty, the idea of an independent Advisory Group is worth exploring. However, if it is to fulfil a valuable role, there are a number of

issues that require careful consideration. The first question is how the members of this Group would be selected and appointed. The obvious option would be for its members to be appointed by the High Commissioner for Refugees himself, on the basis of the authority and responsibility entrusted to UNHCR by Article 35, which does not require prior approval by States. These members would evidently have to meet certain criteria both as individuals and as a group. In order to help identify suitable persons, the High Commissioner should encourage suggestions from civil society (including NGOs) and institutions representing different cultures and regions of the world.

The profile of an Advisory Group and its members would be critical to its success. It should be impartial, transparent, and independent of everyone, including the office of the High Commissioner for Refugees, the High Commissioner himself, and States. It should be international and composed of eminent legal persons of high standing (but not necessarily high public profile), known for their integrity and experience

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An Independent Advisory Group to Supervise the Convention?

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so that they would not be swayed by political or national considerations or by their own political or future work ambitions. Examples of appropriate persons could be former members of the International Court of Justice or of national Supreme Courts.

In principle, and on the basis of his authority deriving from Article 35, the High Commissioner could establish such an Advisory Group tomorrow.

The mandate of an Advisory Group would have to encompass the examination of questions and problems

related both to Article 1 of the Refugee Convention and the remaining provisions, as well as other relevant international standards, without being an individual complaints mechanism. It would then provide advice based on the outcomes of its examinations. The High Commissioner would have to be able to refer matters to the Group, but the Group itself should also be able to consider an issue on its own initiative. It should be able to seek and receive information from any source. Given the “profile” of the Group, it should be entrusted to decide for itself what information, opinions, etc., it takes into account. When the Group is considering a question, it should be made public in order to encourage information and opinions to be submitted to the Group.

All of the Group’s reports, but not necessarily the deliberations or the information provided, should be submitted to the High Commissioner and made public. The High Commissioner may then decide to send it to the concerned State for its comments/action, but also to a body of States — this might be a reconstituted Sub-Committee on International Protection of the Executive Committee meeting in public session. If the subject of the report refers to a State party to the Convention that is not a member of the Executive Committee, the concerned State should be

invited to fully participate in the debate of the Sub-Committee. NGOs should also have access to the governmental body receiving or considering the reports of the Advisory Group. This body should be “solutions-oriented,” proposing ways and means of addressing the issues and problems identified by the Group and working to increase State compliance with the Convention and/or Protocol.

The Group will need to work closely and cooperatively with UNHCR’s Department of International Protection, but independently from it and in a complementary way. It should have direct and unhindered access to all other departments and units within UNHCR, whether at headquarters or in the field. It will need its own secretariat and it should be able to operate on voluntary contributions or donations provided by private and public institutions. Some of its staff could be seconded from UNHCR and, in particular, from the DIP. The staff of the Advisory Group should have the same status as UNHCR staff (either as regular UNHCR staff members or as UNHCR consultants), so as to be able to operate at headquarters or in the field under the protection of UN rules and regulations. A number of questions remain to be addressed, including the question of how to facilitate the ability and capacity of the Group or its secretariat to undertake field missions.

In principle, and on the basis of his authority deriving from Article 35, the High Commissioner could establish such an Advisory Group tomorrow.

Given the growing support for the strengthening of UNHCR’s supervisory duty it seems that this is the right time for the High Commissioner to move.

Given the growing support for the strengthening of UNHCR’s supervisory duty it seems that this is the right time for the High Commissioner to move. The need for an improved monitoring mechanism is critical if the Convention is not to continue to be honoured more in breach than in observance. ♦

OPINION

MIGRATION AND ASYLUM: NO EASY SOLUTIONS

Jeff Crisp

The interface or nexus between asylum and migration has become a major concern to UNHCR in recent times. Indeed, one of Mrs Ogata's last initiatives as High Commissioner for Refugees was to establish an internal working group to examine this issue. The importance of this topic is also demonstrated by its inclusion in the Global Consultations on International Protection, and by the recent establishment of a joint UNHCR-IOM Action Group on Asylum and Migration.

While such initiatives are evidently welcome, it is not easy to see what they will achieve. For while it is evident that the world's asylum and migration management systems are in a state of impending crisis, it is very difficult to think of creative and feasible ways in which this issue might be addressed more effectively.

During the past few years, it has become increasingly evident that current asylum and migration management practices are dysfunctional, and that they fail to meet the needs or address the concerns of the key stakeholders concerned.

First, they are dysfunctional in the sense that they do not necessarily provide protection to those in greatest need of it. For every Afghan, Iraqi, or Sri Lankan who manages to make their way to Europe or North America, there are many thousands more back home who face just as great a threat to their life and liberty, but who are unable to escape from the danger they experience.

Second, the current system is a discriminatory one. With the introduction of restrictive asylum and migration practices by governments, and with the concomitant growth of human smuggling, only those people with access to considerable resources can hope to move from less stable and poorer countries to seek asylum in more prosperous and secure States.

Third, current asylum and migration practices entail a degree — many people would argue a high degree — of hypocrisy. Government officials are quite happy to appear at the UNHCR Executive Committee or the Global Consultations and express their support for the 1951 Convention and the protection mandate of UNHCR. But once they walk out of the conference room, they resume their practice of doing everything possible to obstruct or deter the arrival of asylum seekers.

Fourth, the current asylum and migration management system can be described as dysfunctional because of the massive amounts of money (no one knows exactly how much) that are spent on responding to the relatively small movement of asylum seekers into the industrialised States. Meanwhile, refugees in other parts of the world, most notably in Africa, are receiving progressively lower levels of protection and assistance.

Finally, the way that States and the international community deal with the issue of asylum and migration has failed to retain public confidence and support. And this public disaffection cannot be blamed entirely on unscrupulous politicians or xenophobic newspapers. For there are some fundamental flaws in current practices, not least the apparent inability of many States to ensure the return of people who are not in need of international protection.

How, then, do we address the dysfunctionalities of the current system — and address them in a way that is consistent with refugee protection and human rights principles. It is not easy to think of many bright ideas.

Let us look very briefly at some of the approaches that have been proposed in recent years.

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Migration and Asylum: No Easy Solutions

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According to some commentators, the problem essentially lies with the industrialised States. If they were to live up to their obligations and were to remove the panoply of visa restrictions, carrier sanctions, and other restrictive measures that they have introduced over the past two decades, then protection standards could be restored. But does anyone really believe that this will happen? Even if those States need to import additional labour and replace their ageing population, they seem highly unlikely to relax the current restrictions on so-called 'spontaneous arrivals.'

Some people have quite rightly suggested that action must be taken in countries of origin so as to remove the causes of flight and migration, namely persecution, conflict, and poverty. Others have suggested that if asylum seekers and refugees could find adequate protection and assistance in their own region, then they would be less prone to move to the industrialised States and to use the services of professional smugglers.

What such arguments tend to ignore is that the instability, violence, and poverty that is to be found in countries and regions of origin have deep structural roots. The desire and ability of people to escape such conditions is unlikely to be reduced by a few development projects or conflict resolution initiatives.

A third school of thought — to which UNHCR has subscribed — suggests that irregular movements of people could be averted, and the refugee protection system reinforced, if regular channels of migration were to be opened up. This argument is not a wholly convincing one. The people who currently migrate to, and seek asylum in, the industrialised States seem unlikely to be those that governments want to import by means of organised migration programmes. And even if such programmes are established, they will evidently not be able to satisfy the migration demand that exists in Africa, Asia, and other less-developed regions.

The people who currently migrate to, and seek asylum in, the industrialised States seem unlikely to be those that governments want to import by means of organised migration programmes.

Finally, and at a more technical level, a number of mechanisms have been proposed as a means of addressing the issues of asylum and migration: the introduction of in-country processing systems and so-called humanitarian visas; the establishment of regional asylum processing centres; the expansion of resettlement quotas as a compensation for the maintenance of strict controls on spontaneous arrivals; various forms of temporary protection and humanitarian evacuation, as practised in the Balkans; and the introduction of more systematic migration information programmes, providing an antidote to the rosy images of life abroad that are disseminated by the mass communications industry and by human smugglers.

It is not possible to examine the merits of such proposals in this brief article. Suffice it to say that while they all have some potential, they also have some evident constraints and limitations. We must, therefore, conclude that there is no magic formula that will address current concerns in relation to asylum and migration.

In this situation, the options are relatively few and unoriginal. We must continue to hold States accountable for their actions, urging them to respect the laws, principles, and standards that they themselves originally formulated. We must be prepared to examine new approaches and techniques to asylum and determine whether they can function in a fair and effective manner. We must continue to point out that people will always seek to move when there are such vast discrepancies in the level of human security to be found from one country and region to another. And we must seek to create a social and political climate in which the rights of all people who are on the move, whether they be refugees, asylum seekers, or other international migrants, are held in equal respect. ♦

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OPINION

PARTNERS IN PROTECTION?

“UNHCR is protection,” stressed High Commissioner Ruud Lubbers to NGOs, “but HCR is shrinking and so we have to rely on others to ensure that the protection needed, is delivered.” Speaking with NGOs during the annual NGO-UNHCR Pre-Executive Committee consultations last week, Lubbers said he was very happy with the earlier decision taken in UNHCR to be clear on the value of NGOs in protection. But, at the same time, he noted that not enough is being done yet in terms of working together to ensure protection.

There have been several steps taken, especially at the international level, to ensure greater partnership between UNHCR and NGOs to ensure refugee protection. But the weakness in the partnership is not as apparent at the international level as it is on the ground where protection is most important for refugees. If the spirit of partnership that was visible at pre-EXCOM, and which is reflected in various processes at the international level, was consistently translated to the ground, better refugee protection could be ensured. The problem, however, is that this translation does not always take place, with the result that a valuable opportunity to improve implementation of the Refugee Convention is often lost.

The systematic and intentional violation of the most basic principles of refugee protection by States has been the norm rather than the exception for too many years. This unacceptable trend has prompted UNHCR to initiate a number of global initiatives to address these concerns. In the early 1990s, the first major undertaking to discuss refugee protection and assistance issues with NGOs was launched with the NGO-UNHCR Partnership in Action process: PARinAC. Recommendations for future action were adopted at the 1994 Oslo meeting, which officially launched PARinAC. Central to these recommendations is the engagement of NGOs as co-equals in the development of policy. While several NGOs questioned the health of PARinAC, Lubbers responded at pre-EXCOM that the process was indeed alive, but in need of a medical check-up.

In late 1997, UNHCR initiated a “Reach Out” process intended to reinvigorate support for the essential principles and institutions of refugee

protection. The process began with bilateral consultations with member States, with NGOs being brought into the process at the international level in early 1999. The Reach Out process has been continued by NGOs (after UNHCR announced its end), with the creation of a project to train those delivering humanitarian assistance in basic refugee protection knowledge and to improve operational cooperation between UNHCR and the NGO community (Reach Out Project: www.reachout.ch).

Throughout this year, in celebration of the 50th anniversary of the 1951 Refugee Convention, UNHCR has been holding a series of Global Consultations with its partners on International Protection. The Consultations aim to reassert commitment to the Refugee Convention and stimulate discussion on areas where new problems have emerged outside of the current legal framework.

But are all these processes actually making a difference on the ground or are they just talk shops? Despite UNHCR’s attention to protection concerns and the willingness to engage partners — member States, NGOs, and others — in addressing them through such global initiatives, little improvement is seen by NGOs on the ground. A large part of the problem is that there seems to be little reflection on how to improve the situation at the local level where a change in attitude by UNHCR towards its partners and greater transparency could go a long way to improving the situation for refugees.

Guinea is a case in point. Since September last year, there has been a markedly sharp deterioration in the protection of refugees from Liberia and Sierra Leone in Guinea. Those in the Parrot’s Beak (an area in Guinea bordering Sierra Leone and Liberia) were at greatest risk as they were subject to attacks by rebel groups, accused of being rebels themselves by the Guinean military, and subject to harassment and attack by Guinean civilians who believed the refugees were bringing war to their country. The result was a mass exodus of refugees back to Sierra Leone fleeing the threat to their lives, dignity, and future.

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Partners in Protection?

There was relatively little public outrage expressed either by the Sierra Leonean government, whose citizens were subject to these abuses, or by the UNHCR, which was present on the ground and has the mandate to assure protection in these situations. Humanitarian and human rights organisations spoke out on the situation and the poor treatment of the refugees. But few initiatives were taken to improve the protection of the refugees.

The relocation to “safer areas” inside Guinea has not solved the problem. The sites of these relocation camps are not suitable to allow the refugees to become self-sufficient, and it is difficult for humanitarian agencies to monitor the situation there. Armed Guinean soldiers are present in the camps and strip-searching of refugees in the camps has been reported. Requests from Sierra Leoneans to be repatriated to Sierra Leone continue despite the recognition that return to Sierra Leone is unsuitable at this time. As a result, the question can be raised: are refugees making the decision to return voluntarily or is their decision based upon a feeling of being pushed out for security reasons? Human rights and humanitarian organisations doubt the “truly” voluntary nature of repatriation.

In early 2001, when the large-scale targeting of refugees accused of being rebels by Guinea was at its height, the UNHCR office in Kissidougou failed to recognise this as a large-scale problem, despite numerous reports being given to them by refugees and staff of aid agencies. Humanitarian organisations reported numerous cases of detainment, harassment, and torture. UNHCR’s approach of dealing with it on a case-by-case basis was clearly inadequate for the high numbers affected and the patterned nature of the abuse.

What is most unfortunate, from the perspective of partnership, is that throughout this period (from September 2000 onwards), there has been little discussion and/or collaboration between UNHCR and humanitarian agencies on the ground with regard to protection issues. Much that could have been done to minimise the harassment of refugees on the ground was not done. Even as recently as this summer, with relatively fewer refugees to be concerned about, and a great part of the crisis over, humanitarian aid agencies are still complaining about a lack of protection for refugees in the camps. The complaints range from armed elements in camps to hostility by Guinean civilians

and overall harassment: issues that could be better addressed if UNHCR worked in close partnership with NGOs to ensure better protection of the refugees.

Earlier this year, UNHCR spent months wrangling with the Government of Pakistan over the status of the newest refugees to arrive from Afghanistan. Pakistan maintained that most of the new arrivals were economic migrants and, consequently, did not qualify for refugee status. Screening criteria and processes were discussed by UNHCR and the Pakistani government, with the agreement that “voluntary repatriation” would take place simultaneously.

The situations in Guinea and Pakistan are examples of situations when UNHCR was presented with overwhelming protection challenges. Yet, initiatives could have been taken on the ground to improve the situation to the greatest extent possible. Increased transparency of UNHCR and dialogue with NGOs about the protection challenges the agency faces could lead to a much more powerful strategy.

In Guinea, for example, if UNHCR had dealt with and admitted the large scale and patterned nature of the unethical “screening process” by the Guinean military it may have resulted in a more realistic and sustainable solution. Additionally, had UNHCR been more transparent with NGOs about the need for assistance in dealing with the Guinean government, perhaps this would have led to greater accountability by the government and an overall better treatment of the refugees. With regard to the “voluntary” repatriation of refugees back to Afghanistan earlier this year, UNHCR could have involved NGOs to help think through this very serious dilemma rather than carrying the full burden itself.

Involving NGOs in frank and open discussions about protection dilemmas and problems can only lead to NGOs working on the ground playing a greater role in implementation and advocacy at the local level. But that is something that can only happen if UNHCR views, and treats, NGOs as true partners in the protection of refugees. Given the constraints that exist at the international political level, a focus at the local level could lead to small, but significant steps in the protection of refugees and better implementation of the Refugee Convention. ♦

“TALK BACK”

THE IDP MISSION TO COLOMBIA

Jenifer Otsea

Editor's Note: UNHCR Desk Officer for Colombia, Jenifer Otsea, responds to "IDP Missions: One More Down" (Talk Back 3-4), which reported on the IDP mission to Colombia. These comments are provided from a personal and non-official perspective.

The UN Senior Inter-Agency Network mission to Colombia, which took place from 16-24 August, provided a valuable opportunity to highlight the serious IDP crisis in the country and re-orient national/international responses thereto. However, using this most recent report on Colombia as an example, there is a need to enhance the effectiveness of the Senior Inter-Agency Network country missions.

Firstly, the mission reports should comply with the stated Terms of Reference (ToR). According to the ToR for Colombia, the mission would: assess the scope of the IDP problem; assess the operational capacity of the UN and other agencies; identify gaps in the response; review

...are the activities of the three main international protection agencies in Colombia — ICRC, OHCHR, and UNHCR — mutually reinforcing or not?

institutional arrangements within and between UN agencies; and assess the implementation of the standards/norms of the Guiding Principles.

Although the Network mission to Colombia identifies highly relevant priority concerns, in general, the report leaves one with more questions than answers. For example, the analysis of likely conflict scenarios and the causes and patterns of forced displacement are scanty. There is little reflection on the complex dynamics and/or different types of violence (political, economic, social) generating forced displacement and distinctive socio-demographic and regional trends within a vast and highly diverse country. Such elements are crucial for subsequent recommendations on both

national and external aid responses. Patterns of IDP flight require in-depth analysis, in this case, both within and between rural and urban areas. Broad IDP dispersion in a vast country, amongst equally disadvantaged poor communities, and absence of camp-like settings also has important implications for external aid strategies, including the inherent limitations of “projects for IDPs” as a programmatic approach.

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In addition cross border refugee movements to Ecuador,

Panama, Venezuela, and Peru — a definite new trend compared with past years — receive only passing mention, despite the overriding importance of the “right to seek asylum” (principle number 2 in the Guiding Principles) and its implications for UNHCR, in particular, as the main international refugee protection agency. Here, the Government of Colombia’s initiatives to establish Tripartite Commissions, with the participation of the country of asylum and UNHCR, to identify viable solutions for Colombian refugees, including voluntary repatriation, is a standard setting example of best practice in itself, worthy of international recognition and support.

Secondly, key operational concepts should be clearly defined to provide a common frame of reference. Repeatedly, the report urges enhancement of protection and durable solutions for IDPs, which is, of course, fully understandable. However, the meaning of “protection” for IDPs, as citizens within their own country, must be clearly defined with respect to applicable sources of law (international/national) in Colombia and institutional mandates and capacity. For example, are the activities of the three main international protection agencies in Colombia — ICRC,

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OHCHR, and UNHCR — mutually reinforcing or not? Since the report states, with regard to national protection institutions, that the “coercive force put on the civilian population

After all, it is not simply by being there that we do good.

renders any legally available remedy to the violation of basic rights totally ineffective,” the issue of smooth interface and common standards

between international protection agencies would seem a vital issue. Likewise, the emphasis in the report on durable solutions in a situation of worsening conflict requires some explanation. How durable can solutions be in such a conflict? If the essence of solutions, as opposed to relief, is the shift from saving lives to saving livelihoods, then national/international aid strategies must be adjusted to creating conditions by addressing the causes of displacement, i.e. prevention and solutions are interrelated.

Recommendations should be based on an accurate analysis of what has been done to date by national/international actors, in order to be operationally useful. When identifying recommendations for action in favour of IDPs, the starting point should surely be an accurate analysis of what has been done to date — by the government, the UN, ICRC, NGOs, etc. — in the various phases of displacement (prevention, emergency response, solutions) in order to realistically strategize over how to build on efforts made to date and cover unmet needs. Identification of “best practices” (what has worked and why?) would also have been useful. One example worth mentioning is the “Magdalena Medio Peace and Development Project,” co-financed by the World Bank and executed by the Church, which aims to reduce social violence, through integral community development and consensus-building amongst all social groups, including the armed actors. This pilot project, which includes several IDP communities, has won an international human rights prize and is recognised

as a prototype for “smart” aid interventions in conflict conditions.

This mission report could have also been critical in placing priority IDP issues on the “agenda” of the incoming government which will replace the Pastrana administration in August 2002. Whatever the weaknesses and shortcomings are in national efforts in favour of IDPs — and there are certainly many — there is no question that a very significant evolution has occurred during the current administration in the creation of a national system for responding to IDP needs, especially if compared with the past. Therefore, we have an important foundation from which to place the IDP issue firmly on the agenda of the incoming government and to ensure that gains made are not lost in the electoral process. However, it is of course necessary to be a little more explicit than merely saying we need more of everything, especially in a domestic context where human needs are endless and exceed the scope of both national and international resources. Thus, when the report urges the government, for example, to “provide electricity, running water and sanitation” for IDPs — over a million of them — it is also necessary, in a country with some 25% of the population below the poverty line, to show that IDPs are disadvantaged compared with the national average in similar conditions.

Thirdly, in light of global financial constraints, proposed increases in financial aid to IDPs

Coordination arrangements within the UN should also be more critically evaluated.

should take into account current donor policy, national development priorities, and an analysis of the possible negative impact of aid in conflict situations. A central message of the report is that donors should give more money to both the government and aid agencies for IDPs. But is this realistic? A central issue influencing donor aid policy — especially grant aid (i.e. from non-reimbursable sources) — is macro-economic

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performance, including GDP, human development indicators, etc, and the government's own development priorities. For example, are conflict/displacement areas included as a national priority? If not, why should international donors consider them a priority? Despite the conflict, Colombia still qualifies as a rich country and thus access to non-reimbursable financial sources of aid (e.g. humanitarian aid) will likely remain limited, compared with other more needy countries, in Africa for example. It is thus

Aid is simply never neutral in conflict conditions.

potentially available to addressing the displacement phenomena in its various dimensions.

Likewise, a case should be presented which shows the added value and comparative advantage of different agencies (UN, ICRC, and NGOs, for example) in different sectors of assistance. Coordination arrangements within the UN should also be more critically evaluated. Are current coordination modalities in Colombia conducive to ensuring non-duplication, common standards between agencies, and maximising the impact of limited aid resources on IDPs? After all, it is not simply by being there that we do good. In addition, more aid is not necessarily good aid — some emphasis could have been placed on possible negative consequences of aid in conflict conditions, risks of which have been very well documented in other conflict situations. The Development Assistance Committee (of the OECD) Guidelines on Conflict, Peace, and Development, applicable to all aid agencies, provide excellent guidance on the dual challenge of reducing vulnerability through aid interventions, while at the same time building local capacity to avoid dependency on aid. Strategies to avoid aid actually inciting societal tensions or indirectly strengthening different armed groups

are also of fundamental importance. Aid is simply never neutral in conflict conditions.

Of course the question of a more effective response to IDP needs by both States and the international community greatly exceeds the scope of the Senior Inter-Agency Network. But the fact that the Network is the expression of a collaborative effort on behalf of IDPs — at least at the international level — gives both UN agencies and NGOs a special responsibility, as stakeholders, to work to this end. ♦

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