



International Council of Voluntary Agencies
Conseil International des Agences Bénévoles
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talk back

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SCHILY SCHILY BANG BANG

In the 1968 musical film *Chitty Chitty Bang Bang*, children are banned in the fictional kingdom of Vulgaria. Based on the book written by Ian Fleming (of James Bond fame and who worked in British Naval Intelligence during World War II), it is the Child Catcher who enforces the law imposed by Baron Bomburst by tounding up any children and locking them in a dungeon.

If German Interior Minister Otto Schily had his way, he would probably do something similar with asylum-seekers and migrants before they could arrive in Europe. Instead of putting them in a dungeon beneath Baron Bomburst's castle (which was actually Neuschwanstein Castle in Bavaria, Germany), as was done with the children, Schily would have asylum-seekers and migrants kept in holding/processing centres (camps) – in North Africa and,

particularly, in Libya – where they could apply for asylum to EU offices.

Last year when the UK had similar plans to set up refugee processing centres on Europe's borders, there was rejection of the plans by many EU countries. Germany, at the time, was also opposed to the idea of setting up such camps outside of Europe. Since then, at least publicly, the UK has stepped back. Yet Schily has taken the rescue at sea on 20 June this year of 37 African asylum-seekers by the German-registered ship *Cap Anamur* on the Mediterranean and said that the case "has revived the debate."

When the *Cap Anamur* ship tried to dock in Italy, it was refused and was at sea for 11 days before being allowed to finally dock when the captain issued a

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IOM, DARFUR, AND THE MEANING OF UNDERMINING (MoU)

Less than five months after humanitarian agencies adopted clear procedures that should be followed in a situation of internal displacement, the process of collaborating has once again been forsaken. This time, the situation is Darfur, Sudan and the flagrant disregard for the collaborative approach has come in the form of a Memorandum of Understanding (MoU) between the Government of the Republic of the Sudan (GoS) and the International Organization for Migration (IOM); the MoU also carries the signature of the UN's Resident and Humanitarian Coordinator (RC/HC). The MoU, signed on 21 August 2004, has IOM overseeing the

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voluntary return of internally displaced persons (IDPs) to the Darfur region, as well as determining the "voluntariness and appropriateness of the return of internally displaced persons."

Responsibility does not Equal the Right to Arbitrary Delegation

While a government is primarily responsible for protecting its citizens, this responsibility does not translate into the right of a state to dictate how – or which – (a) humanitarian organisation(s) should respond to its citizens' protection and assistance needs. The Government of Sudan requested that IOM oversee the return of IDPs; therefore, the UN went ahead with it and IOM's role was explicitly put in the Plan of Action of 5 August 2004.

According to IOM, it did not know that it had been put forward by the GoS to lead returns. Many humanitarian agencies would have had strong objections to being told what it was doing, as such a delegation of tasks would seemingly fly in the face of independent and impartial humanitarian action. IOM, however, seemed to have no quandaries with doing as it was told by one of its member states and so duly went to negotiate the MoU as dictated by the Plan of Action. Responding to the desires of one (or perhaps a few) of its member states illustrates the perception that many NGOs (and others) have of IOM as an agency that will do anything as long as there is money with which to do it.

The Only Response?

As a result of the Plan of Action, the moves by IOM, and the threat of involuntary returns taking place, the Humanitarian Coordinator (also the Deputy Special Representative of the Secretary-General – DSRSG) was forced to enter into the negotiations within a limited time frame to ensure that a monitoring mechanism would be included. With this constellation of events, the HC's response to take part in the negotiations may

have been the only available option. At the same time, however, could something have been done differently to pull this runaway train back on track?

What would have been a preferable response to the GoS' suggestion to have IOM oversee voluntary returns, would have been for the Special Representative of the Secretary-General (SRSG), Jan Pronk, to have recalled to the GoS the procedures put in place, and agreed, by the Inter-Agency Standing Committee (IASC) in spring this year. Perhaps in the case of Darfur, political considerations took precedence over procedures that had been developed by humanitarians.

If this political urgency, indeed, prevented a means of finding a way to allow the humanitarian community to function as agreed, then IOM (in this case) – as a party to the IASC agreement – should have insisted that the procedures had to be followed. As IOM wrote in its paper, *IOM Position on IDPs for the Senior Network Annual Meeting, 15/16 March 2004*, "IOM has committed to working through a collaborative approach structure on IDP issues in the protection of IDPs through its assistance programmes worldwide." The MoU on returns should have only been agreed upon by the broader humanitarian community, not just by a select few.

Trying to Make the System More Predictable

For years, the humanitarian community has struggled with its inability to adequately respond to the protection and assistance needs of IDPs when a government is unwilling or unable to fulfil its responsibilities to its citizens. The efforts to put into place a predictable response to IDPs – rather than the whimsical one so often seen – has had various incarnations in the past few years.

The Senior Network on Internal Displacement was created of IASC members in 2000 and headed by a Special Coordinator who, after a series of missions, recommended the creation of an inter-agency IDP Unit (see *Talk Back* 3-3, *UN Creates Harmless IDP Unit, Fear NGOs*, 28 June 2001). Following an external evaluation last year of the Unit, a number of recommendations were made to improve the IDP Unit, with the suggestion that it should be given a limited number of years to make a change. The result is the

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distress call. The tactic employed by the Italians looked like they had been taking careful notes during Australia's standoff with the Norwegian ship, *The Tampa* (see *Talk Back* 3-4, *In the Spirit of Nansen*, 12 September 2001). The Cap Anamur captain and first officer were arrested and threatened with being charged with smuggling. Legal assistance was not provided to the asylum-seekers who went through express procedures.

While Schily's plans may not come as a surprise (a group of refugee organisations in Germany that have organised a "Stop Schily" campaign (www.stop-schily.de) say that he has been trying to push asylum-seekers out of Germany for years), what is particularly worrying is that Schily is not alone in reviving the debate of how to "burden shift". The Italian Interior Minister, Giuseppe Pisanu, is said to be strongly supportive of Schily's plans. The removal of hundreds of persons, who arrived on the Italian island of Lampedusa on 2 October, by plane to Libya is indicative of Italy's support and pursuit of the idea of moving people arriving on Europe's southern borders to North Africa – regardless of from where they actually came.

But there are more loose plans circulating. The Austrians have approached Ukraine and asked if camps could be set up to process Chechens outside of the EU's borders (the answer seems to have been a "no"). The incoming EU Justice Commissioner, Rocco Buttiglione (from Italy) added his voice of support and, going even further, suggested that EU states pay for the camps that would be set up in North Africa, but that the host governments control them. More recently, however, Buttiglione seems to have softened his support. All these attempts work counter to the concepts of "responsibility sharing" and "burden sharing" and try and move the "burden" of asylum-seekers to other countries.

The most destructive aspect of these kinds of calls by politicians is that they oversimplify the issue of the asylum-migration nexus. By focusing on the need to save lives (which, indeed, is a worthy cause although with a disturbing methodology behind it in this case), the debate around the issue gets overly

narrowed to the detriment of the refugee protection regime. The commitments that these governments have made in other forums to protecting refugees and the right to seek asylum seem to ring hollow every time such proposals are made.

While "lives must be saved," as there are an unknown number of asylum-seekers and migrants dying on the Mediterranean each year, sealing off the Mediterranean border of Europe is not the best way to go about achieving this goal. The real problem is that asylum-seekers and migrants are being seen as one and the same – people arriving on Europe's borders that need to be sent back to their "regions of origin," even if they never transited the country to which they would be returned. Sending asylum-seekers to camps in countries (such as Libya) with a poor record of respecting rights – particularly the rights of refugees and asylum-seekers – will hardly provide them with the protection being sought.

With the launch of such plans, the rhetoric and spin attached to them works to erode and undermine the refugee protection system. Nothing of these plans is yet on paper – at least not in the public domain – so the plans remain nothing more than sound-bites reported in newspapers making it difficult for organisations to adequately respond to the plans. Once efforts are made to put the plans on paper, there may be the realisation that the concepts are fraught with complexities that make them impossible to pursue. One can only hope that this will be the case.

The plans leave UNHCR in a difficult dilemma as to whether to counter these most recent proposals from a more principled or a more pragmatic perspective. While indeed, UNHCR should be upholding the highest standards of refugee protection, there is the risk in this current environment that too principled an approach will find UNHCR left entirely outside of any plans and will leave asylum-seekers with little recourse to protection. However, a pragmatic approach of accepting the notion of such camps or processing centres would leave little room for negotiation towards the principled side that would see people being allowed to seek asylum in the country where they feel they are most likely to find quality protection. The aim of ensuring

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improved asylum systems in North African countries is one that UNHCR is rightfully pursuing in the midst of the various plans being discussed. Following a meeting on Friday 1 October, the BBC reported that the EU Commission will fund UN programmes to assist five North African countries with their asylum and migration responses.

The same dilemma applies to NGOs. If NGOs buy into these plans without pushing harder for a more principled approach to the protection of refugees and asylum-seekers, the bar will be lowered. Yet, all it will take is a few NGOs to agree to the notion of camps and agree to work in the camps to contribute to the further undermining of the refugee protection regime.

This risk also applies to other agencies. In the past, NGOs have criticised IOM for its role in helping the Australian government implement its "Pacific Solution." What would be IOM's position if it were to be asked to help (some) European governments process refugee claims off-shore? Will IOM – and its member states – take into account the impact of IOM's potential involvement on human rights and refugee rights?

Countering proposals such as Schily's and Buttiglione's must be done in a concerted manner by States that are opposed, UNHCR, NGOs, and other rights-upholding institutions. The notion must not be allowed to divide those that are committed to the highest standards of refugee protection. Nor must these attempts to "burden shift" go unchallenged at a time when "responsibility sharing" should be the real goal. ♦

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latest of these attempts to bring order to the chaos of the IDP response: the Inter-Agency Internal Displacement Division (IDD), which came into existence on 1 July 2004.

The IDD - Our Collective IDP Conscience

Yet what impact are these efforts having when it comes to actual agreements being made on the ground? The IDD – which could be seen as our collective IDP conscience – should have a stronger role to play in such situations. At the very least, the IDD should be consulted for advice before any such agreement is drawn up. In the case of the MoU, there was no call for expert advice from the IDD by the SRSG or the HC/RC. Is there a lack of knowledge at the field level that such an entity exists and can be called upon for advice? What should we be doing differently to ensure that agencies – and SRSGs and HC/RCs – know that there are procedures to be followed in all IDP situations?

How Quickly We Forgot

There is acceptance by the UN that the procedures (developed after extensive consultation) were not followed in this case. But the Darfur situation is not the first time that existing policy has been ignored. A similar one had occurred only last year when IOM was assigned responsibility for camp management in Iraq – again, with the knowledge of only a limited number of the IASC family. What will ensure that such an exception does not happen again? Again in the Darfur situation, there are serious concerns about IOM's expertise and capacity to oversee voluntary returns, which entails considerable protection elements.

"What is an IDP?"

That was the question from an IOM staff member at a recent training in Darfur. While there must always be a margin granted for learning, especially in a context like Darfur when staff have to be quickly hired, for the agency that has just been tasked with overseeing

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INTEGRATED MISSIONS: HOW TO STOP A STEAMROLLER?

Since the launch of the Brahimi report on the reform of UN peacekeeping in 2000, integrated missions seem to have become the rule for new UN peace operations. These missions, seen in countries such as Afghanistan, Burundi, Sierra Leone, and Liberia, merge political, military, reconstruction, and humanitarian objectives. Under the leadership of one person, the Special Representative of the Secretary-General, every UN agency is expected to operate within the mission's single structure and work towards the shared goal of restoring peace and security and establishing the conditions for sustainable development and good governance.

In discharging its responsibility to plan, prepare, manage, and direct UN peacekeeping operations, recent experiences see a steamroller approach by the UN Department for Peacekeeping Operations (DPKO) in setting up new integrated missions. The UN Mission in Liberia (UNMIL), for example, was established with little, if any, consultation with (UN) agencies on the ground, many of which had a longstanding presence in the country. UNMIL largely developed new coordination structures, setting aside existing mechanisms.

UNMIL's latest acquisition came in early July this year when the OCHA office was taken over and OCHA essentially ceased to exist as a separate entity. The move was a result of a premeditated integration plan, but was helped along by some views within UN circles that the OCHA office had too much autonomy and was not working in support of the Humanitarian Coordinator (HC). Dissenting voices and opposition in, and outside of, the UN were largely ignored and/or overruled.

The critical voices coming from non-UN humanitarian agencies pointed to the risks that the concept of integration brings with it. A first significant risk relates to the (further) blurring of the humanitarian identity with those involved in peacekeeping. This blurring is generally cited as one of the main reasons for the increased attacks on humanitarian agencies globally.

The reason is straightforward: in any armed conflict, parties will tend to reject humanitarian actors that they suspect of having ulterior political motives. Or, seen from the humanitarian side, how can a humanitarian agency maintain that it is neutral, impartial, and independent, if the

agency is co-opted into a political-military operation?

Next to the security concern, NGOs also point to the potential wedge that integrated missions may drive between the UN and non-UN humanitarian agencies, if integration is here to stay. If NGOs perceive these integrated missions as a threat to their identity and security, they can simply walk away, disengage, and try to go on their own. OCHA and other UN humanitarian agencies, however, cannot do the same, as they are part of the UN system. A rupture and reduction, or even cessation, of a working relationship and coordination process between the UN and its partners could become a reality. In Liberia, one humanitarian NGO demonstrated its desire to disassociate itself from the UN by handing back an ambulance that had a sign on the side of the car: "on loan from Unicef." It decided to keep the car after the Unicef logo was removed.

Supporters of integrated missions maintain that integration has three critical advantages: it facilitates a common strategic vision, harnessing collective system-wide action; it ensures the capacity to rationalise resources and systems; and it allows for overall direct management of UN system resources. They also refer to the different integration models, ranging from lighter forms of integration, in which the mission's mandate includes some responsibility for overseeing the humanitarian operation, to a maximalist approach in which the strategic direction and objectives for the entire humanitarian operation are set by the SRSG and his "humanitarian" deputy.

In the latter case, again witnessed in Liberia, NGOs have criticised the embedding of the Humanitarian Coordinator in UNMIL. They strongly feel the need for a Humanitarian Coordinator who does not need to bow to the greater drive of the political mission.

Generally speaking, while the HC is expected to represent the entire humanitarian community, not just the UN, s/he is first and foremost, the SRSG's deputy (DSRSG), a UN-only function, which is part of the integrated mission.

The recent Sudan IDP coordination debacle illustrates which of the multiple hats, DSRSG or HC (or Resident
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the return of IDPs in Darfur, such a question casts serious doubts on the ability of the agency's staff to carry out the duties for which it has just signed up.

Putting the Cart before the Horse

Since the Iraq deal, a number of efforts were undertaken to put in place procedures to ensure that there is a clear system to follow in IDP situations. The consultation process that took place in Darfur, however, is exactly opposite to what should have happened. An MoU was signed and now attempts are underway to get everyone involved. Instead, there should have been broad agreement about the steps to take first before an MoU was signed. The effort to be collaborative now comes after the fact of signing. It questions the real commitment to the collaborative approach – an approach that has been designed specifically to develop a response mechanism and/or assign responsibilities.

A framework has been drafted to oversee the returns, but the consultation on this initiative was limited. With regards to the current collaborative effort, several actors have reservations about IOM's capacity to oversee the challenge of ensuring voluntary returns take place in safety and dignity. It is good news to hear that there have already been improvements made in the framework, but there is still much work to be done to better the proposed system.

Independence?

A particularly contradictory aspect to the current plan is that, according to IOM, it is going to be providing "an independent determination." While normally an agency with protection expertise, like UNHCR should be carrying out such a determination, this situation is made all the more strange by the fact that this "independent" Verification and Monitoring Unit will be looking at situations and populations that will have gone through the Management and Coordination Mechanism (MCM), of which IOM is a part. The "independence" that IOM will have can be seriously questioned, particularly when there is a government representative on the MCM.

Helping to Promote Premature Returns?

While IOM denies that the signing of the MoU will contribute to forced or involuntary returns, the very fact of signing an agreement on returns before discussing the possibilities of returns with IDPs is another backward element to this process. Once the MoU was signed, it was translated and broadly publicised. While, indeed, the MoU provides for some (though inadequate) safeguards for return, the perception that IDPs from Darfur have of the MoU must be taken into consideration, especially at a time when attacks and human rights violations were ongoing.

Lack of Expertise in Protection

IOM seems to have been handed the lead role for IDPs in the context of Darfur, but with little understanding of how to operationalise protection. Thinking that NGOs can handle the job of verification and monitoring is to underestimate the level of expertise required in such a determination. UNHCR for years has been working on proper determination systems to ensure voluntary returns take place in safety and dignity. That expertise must be used. It is not enough to assume that some NGOs can take on the task at hand under the guidance of IOM.

What Now?

Are we to hope that the situation in Darfur is another anomaly or is this pattern of decisions about IDPs being taken behind closed doors with a select list of invitees to be the way forward? The Iraq situation and now this one beg the question of what is the point of putting in place policies if they are only going to be bypassed, ignored, and given lip service.

Unless the international humanitarian community as a whole – and that includes IOM – is able to accept that they need to do things according to policies that have been carefully drafted, IDPs the world over can expect nothing more than an inadequate response to their needs. That is a situation that none of us in the humanitarian community should be willing to accept. While steps are now being undertaken to rectify the situation, there must be some lessons learned from this case so that they will not be repeated in the future. ♦

Manisha Thomas and Ed Schenkenberg van Mierop

DOES ALL THE WORK ADD UP TO ZERO TOLERANCE?

Since the reports of abuse and exploitation of refugees by aid workers in West Africa in 2002, there have been numerous efforts to try and improve the sector. Codes of conduct have been developed, tools created, and mechanisms put into place within various organisations. An area that has been weak (although currently being tackled through an inter-agency project) is the ability of organisations to carry out investigations into allegations of abuse and exploitation. But does the sum of all those efforts add up to the zero tolerance policy so often touted?

Since the West Africa scandal, High Commissioner for Refugees, Ruud Lubbers, has repeatedly stated that there is a zero tolerance policy and has added that, "There is absolutely no place in the humanitarian world for those who would prey on the most innocent and vulnerable of the world's refugees – the children." At the UN General Assembly Special Session on Children, he noted his commitment, as well as that from the highest level of the UN, "Together with the Secretary-General, I am committed to a zero tolerance policy against sexual exploitation, abuse, and violence."

What is "Zero Tolerance"?

The phrase "zero tolerance" is oft used, but perhaps less often dissected to understand what it actually means, to whom it applies, or how and when it is applied. Many NGOs also talk of a zero tolerance policy, but is there consistency in the definition? Where does zero tolerance start and end?

Codes of Conduct are a Starting Point

The codes of conduct that have been developed or put into place by many organisations take into account the principles developed by the Inter-Agency Standing Committee's (IASC) Task Force on Protection from Sexual Abuse and Exploitation in Humanitarian Crises. Those principles are generally focused on the relationship between humanitarian workers and those with, and for, whom we work ("beneficiaries"), but the principles and codes also need to be applicable within organisations. The compliance to those codes also needs to be monitored and enforced – with a zero tolerance approach. Signing a piece of paper saying one is committed to a code has little value if the principles in the code are then not put into practice.

Complaints' Mechanisms are One Part of the Equation

In the response to West Africa, there has been much work done around putting in place complaints' mechanisms where beneficiaries can file complaints. Just as it is a difficult move for a beneficiary to file a complaint, it is also difficult for a staff member to file a complaint against someone within his or her own organisation. There are a number of potential repercussions that undoubtedly will be weighed before the decision is made to file a complaint. Humanitarian organisations have a responsibility to ensure that the process through which complaints are lodged is confidential and that proper procedures are in place. Without instituting such mechanisms, we will not be able to achieve our goal of zero tolerance.

Investigating those Complaints is the Next Part of the Equation

But putting in place proper processes and procedures for complaints to be received is just one step. Being able to respond to those complaints in a confidential and sensitive manner is an area where many agencies still lack capacity. Having an investigations' process in place that has certain guarantees, including integrity of the process, is a challenge that still faces many organisations – and not just humanitarian agencies. The issue is one that needs to be tackled across the spectrum of agencies, and particularly in peacekeeping operations.

The question does arise as to whether "zero tolerance" is actually applied during the investigations element of the response to allegations of abuse and exploitation. There are certain standards and procedures that must be respected throughout an investigation and, therefore, clarity on the scope of "zero tolerance" is perhaps required with respect to the application of these investigations' procedures. If there is agreement that the scope of "zero tolerance" also applies during the investigations' procedures, the issue then is how do we ensure application of this policy?

Moving Forward

Building on the work done to date by the IASC Task Force and by other agencies, an inter-agency
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Coordinator), comes first. The Humanitarian Coordinator, although in charge on paper to lead the inter-agency collaborative process to develop an appropriate IDP coordination and response mechanism, was expected to follow marching orders, after SRSG Jan Pronk had signed the Darfur Plan of Action with the Sudanese government in early August (*see elsewhere in this issue for further details*).

In Liberia, recent reports with regards to the return of IDPs indicate a process that is politically driven. A committee that is led by UNMIL and a government representative declares areas safe for return, without giving due consideration for the humanitarian conditions prevailing in those areas.

Responding to criticism on the implications of integration for humanitarian action and the principles of impartiality and independence, the "integrationists" are quick to point to the increased influence that humanitarians can now have within an integrated mission if the HC is fully part of it. Reportedly, however, with regards to UNMIL, fierce battles took place within the UN Secretariat in New York over whether or not the DSRSG/HC would be allowed to maintain two reporting lines: one to the SRSG and one to the Emergency Relief Coordinator. But the decisions on the final configuration of UNMIL's humanitarian wing were made in the UN Secretariat in New York, not at the field level where the impact was to be felt.

The question remains whether the adaptation of certain structures and/or the installation of firewalls will ensure a sufficient distinction between the political-military parts of the mission on the one hand, and the humanitarian part on the other hand. Several models of integration have been tried out in different countries. Which of these "laboratories" can be seen as most successful has yet to be determined.

Within the NGO community, there are diverging views on what position to take vis-à-vis integration. There will be those that will (continue to) reject integration as it cannot be reconciled with humanitarian principles, as well as those that will be more willing to accept integration as a reality and that will try to advocate for

mitigating changes. In any case, there needs to be a much more vigorous and open debate within the NGO community on the issue. NGOs in Liberia are preparing themselves for such a debate by undertaking a study to look at the successes and failures of integration in Liberia to date. This study, hopefully, can feed into an OCHA/DPKO study, starting shortly, that will have a similar, but broader objective.

NGOs are not the only actors that need to make up their minds. Donor governments also need to be clearer in their views on integration. If they agree that humanitarian agencies need to maintain their impartiality and independence, what position do they then take on integration? At the very least, they have some work cut out for them in terms of influencing the positions of their political colleagues working next door in ministries of foreign affairs, who are likely to be among the supporters of integration.

The immediate issue for NGOs (and donor governments) should be the question of how to stop, or at least influence, DPKO's current steamroller approach. Many of the discussions on integration take place within structures of the UN Secretariat, in particular the core group of the Executive Committee on Humanitarian Affairs (ECHA), to which NGOs do not have access. OCHA has not been too forthcoming with regards to sharing its views and information on integration, to say the least. NGOs in the Inter-Agency Standing Committee (IASC) had to remind OCHA of its commitment to sharing the draft Terms of Reference of its study with DPKO on mapping the integration experiences. The study's outcome will now also be discussed within the IASC.

Following an NGO paper tabled at the recent IASC Working Group session in New York, the importance of using the IASC as the most suitable inter-agency forum for discussing the implications of integrated missions on humanitarian action has been recognised. For the time being, however, there is not much hope that DPKO will be influenced greatly by the IASC discussions. If, however, there are concerted efforts within the humanitarian community to engage in the discussion around integrated missions with more concrete facts, evidence, and stronger advocacy, there is possibly hope of slowing the steamroller down in the future. ♦

THE POLITICS OF SECURITY

Few in the humanitarian world and beyond will question the interdependence between UN and non-UN humanitarian agencies when it comes to staff security. Yet, the collaboration between UN and non-UN agencies on security-related matters has been far from easy for institutional and political reasons.

In his summary at the High-Level Humanitarian Forum held at the end of March this year in Geneva, the Chair, Emergency Relief Coordinator Jan Egeland, noted "the strong argument that the UN could never have a decentralised system for security decision-making, for instance like some non-UN agencies."

A report of a recent study undertaken by former UNHCR Inspector-General Nicholas Morris for OCHA on the question of maintaining a UN humanitarian presence in periods of high insecurity, however, takes quite a different view. Looking at the security arrangements of the UN's humanitarian partners and learning from them, it recommends that in order to "...appropriately decentralise related responsibility, decision making should be delegated to those best positioned to make unified considerations of risk and humanitarian need."

In non-UNese, this sentence means that the UN's central security management system with an office in New York (UNSECOORD), taking security decisions about operations thousands of miles away, needs reform. This recommendation is likely to receive broad support from the UN's humanitarian partners. The non-UN humanitarian approach to security is directed towards risk management, not the risk aversion as generally pursued by the UN. In the eyes of NGOs, a decentralised security management system with security issues mainstreamed in the organisation and decision-making as close to the ground as possible is not a luxury, but a necessity.

The issue is how to reconcile the UN's top-down approach and the decentralised NGO approach to staff security. Knowing the UNSECOORD approach, it is not likely that they will easily accept Nicolas Morris' recommendations, which could add to the tensions between the UN and NGOs on security.

The difficulties in the UNSECOORD-NGO relation-

ship date back to the mid-nineties. At that time, UNSECOORD introduced a Memorandum of Understanding for NGOs that would bring them under the UN security umbrella. If signed, it would provide the NGOs with the opportunity to make use of the UN's scheme for the evacuation of staff. The MoU, however, was based on a top-down approach to security telling the NGOs that they should follow the security instructions from the UN's designated official (DO), i.e. the highest UN official in charge of security on the ground. As a result, no NGO signed the document at the headquarters level.

To circumvent this MoU, the NGOs and the UN humanitarian agencies worked together in a Task Force on Staff Security to look at security collaboration within the framework of the Inter-Agency Standing Committee (IASC) for nearly two years. This Task Force, which completed its work in January 2002, produced a "menu of options" for collaboration on security in the field between UN and non-UN humanitarian agencies (see also *Talk Back* 3-3, *Staff Security Recommendations Held Hostage*, 28 June 2001). Proposing far from dramatic changes, the non-binding menu contains, among others, suggestions for agencies to enhance the collaboration in the UN Security Management Team, include staff security concerns in the consolidated appeals, and/or share security-related resources.

Unfortunately, not much is known of the follow-up action to make the menu widely known among the UN and NGO field staff. It would be particularly interesting to review whether and how UNSECOORD incorporated the menu of options into all its work, policies, and training for the UN's DOs. Work will be started shortly to obtain a better picture of the awareness of the menu's existence and its use on the ground through an active IASC Task Force on Security.

Meanwhile, UNSECOORD's present policy in working with NGOs seems to have gained flexibility. In Sudan, the Special Representative of the Secretary-General is keen to work with international NGOs on security matters. UNSECOORD's formal approach still says that these NGOs need to sign a MoU, which, *inter alia*, binds them to follow the DO's advice. At

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IN THE NEWS

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the same time, however, UNSECOORD is also encouraging informal approaches to security, including the promotion of a number of options put forward by the IASC's menu of options. In this respect, Sudan might provide an interesting test case of whether, and how, the formal (the UN's top-down) approach and the decentralised approach can be reconciled.

Within this process, however, there is one issue that needs urgent attention, as it is likely to remain a source of tension. The recent UNSECOORD proposals for Sudan focus exclusively on the collaboration with international NGOs. This focus comes as no surprise as national NGOs and national staff are generally left out of the security debate. At best, their role with regards to security relates to being sources of (crucial) information on the local situation.

In his summary at the High-Level Humanitarian Forum, the ERC noted "the strong recognition that staff security was a matter for national staff and national NGOs as much as it was for international personnel. This needs increased emphasis as national staff and national NGOs are frequently under greater threat and face more difficulties. National NGOs have to be included in security discussions, consulted, and seen as true partners."

In this respect, there is further work to be done in terms of educating UNSECOORD and others within the UN bureaucracy. The interdependence and concomitant collaboration on staff security within the humanitarian sector, involving UN and non-UN agencies, can only be successful if the full spectrum of issues is taken into account. When it comes to improving humanitarian security, institutional obstacles and politics should be of the least importance in this process. ♦

IN THE NEWS

Does All the Work Add up to Zero Tolerance?

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effort is now under way to help ensure that such safeguards are in place for complaints' mechanisms and that will help develop the investigative capacities of agencies. The inter-agency project, being housed by ICVA, and supported by InterAction, will develop training materials, deliver trainings, and develop a handbook to support these efforts. The creation of a network of investigators that can provide peer support to other agencies carrying out investigations will be a crucial aspect that will ensure the longer-term sustainability of the investigations' capacities to be developed. Equally important, the project will not only focus on sexual abuse and exploitation, but will also look at other forms of abuse and exploitation and how to address them.

The project is a joint effort that involves both NGOs and UN agencies and will build on efforts done to date in both communities. Moving our response to

abuse and exploitation forward is crucial and putting in place better systems and procedures is one way to ensure progress. The peer review being undertaken by the Steering Committee for Humanitarian Response (SCHR – a network of nine large humanitarian agencies) is one way of ensuring that the proper steps are being put into place.

Yet, one of the keys to getting our response correct will be to resolve the scope of zero tolerance. Otherwise, the term "zero tolerance" rings hollow. The trainings and handbook to be developed by the project will hopefully help to lay out a clearer set of procedures than currently exist. How those investigations are then followed through with sanctions, however, remains another outstanding issue to be tackled. ♦

** For more information on the project, visit ICVA's website: www.icva.ch and look for "Investigations Handbook" on the "Information Resources" page.*

ISSUE OF THE MONTH: RED CROSS/NGO CODE OF CONDUCT

THE 10TH ANNIVERSARY OF THE RED CROSS/NGO CODE OF CONDUCT: SIGN ON THE DOTTED LINE?

The Red Cross/NGO Code of Conduct celebrates its 10th anniversary this year. This document, which has more than 300 signatories, is often quoted when it comes to defining humanitarianism, referring to humanitarian principles, or delineating the humanitarian community. In March this year, the Emergency Relief Coordinator noted that the Code can be helpful in addressing the blurring of humanitarian identity "by being clearer to our adherence to the humanitarian principles expressed in the Code." Several activities taking place this autumn mark the Code's tenth anniversary to demonstrate that the Code is alive and well. But is it really?

The Code's history stems from a desire among a group of leading humanitarian agencies to find a common language at a time that saw rapid changes in humanitarian assistance. If there was ever a "belle époque" for humanitarian aid, it was the early nineties: an enormous increase in donors' aid budgets; new coordination mechanisms in the UN and in Europe; military engagement in humanitarian operations for the Kurdish population, for the Somalis, and in the Balkans; and, perhaps most important of all, a huge spike in the number of agencies involved in delivering humanitarian assistance. These dramatic changes required institutional answers and new policies, such as a Code of Conduct.

At the end of the drafting process of the Code in 1993, the idea emerged of providing agencies wishing to register their support for the Code with the option of signing the document. The International Federation of Red Cross and Red Crescent Societies (IFRC) was to act as a depository of the signatures.

Looking at the list of signatories ten years later, the question is whether or not the Code has been successful in delineating the humanitarian community.

A closer look at the list of signatories, available on IFRC's website, points to a rather mixed bag of agen-

cies and entities that have put their name under the document. Clearly, the list shows the names of a significant number of well-known humanitarian NGOs, such as CARE, Médecins sans Frontières, Oxfam, World Vision, and others.

But there are also other, less well-known agencies. A Google Internet search on listings such as Benoit Frankel Estate, Btisin Agencies Ltd, JACANA, SAMS, and Tulara Pty. Ltd, produces no significant matches other than a reference to the Code on the IFRC website.

There are even more curious listings, such as Progressive Interventions or The Blue Sky Group Foundation. Both claim to be not-for-profit outfits but, judging from their websites, they seem to engage in activities that must be described as quite different from, if not incompatible with, "mainstream" humanitarian assistance. Other signatories, such as Pax Christi Germany, the Greek Committee for International Democratic Solidarity, or the Human Rights Congress for Bangladesh Minorities, are agencies that are clearly politically engaged and/or see themselves as part of peace and solidarity movements; not as part of the humanitarian community.

The question needs to be asked how, and why, these (and other) agencies and entities appear on the list. From an individual agency's perspective, the desire to identify oneself publicly with a set of principles that reaffirms the agency's mission statement, albeit in a more general way, and that aligns the agency with a larger community, is perfectly understandable and legitimate. For them, signing the Code implied demonstrating a commitment to applying the Code.

The problem in terms of the mixed bag of signatories, a number of which do not qualify as non-governmental humanitarian agencies, probably has more to do with the funding requirements of several governments. A significant number of donor

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governments' policies include signing of the Code as a prerequisite for an NGO to be eligible for funding. There is no question that a number of signatures appear on the dotted line solely because of this requirement.

With a Code that did not have a clear signing procedure and/or a management system for signatures, governmental donors should have known that by introducing the requirement, they would make the signing process dysfunctional, or, at least, that they would undermine it. The Code was never intended as an accreditation instrument – a function that donors apparently wanted to assign to the Code.

Being the depository of the Code without clear instructions or an agreement on what that function would entail, put IFRC in a difficult position from the start. Why IFRC decided to make the list of signatories public, only in 2002, when it knew that the list was hopelessly messy and useless, is a question to be asked.

The main issue now is what to do with the list and the signing function. Two obvious options emerge: abandon the function or strengthen it. Both options are, however, terribly complicated.

Strengthening the signing procedure and/or putting in place conditions for signing will undoubtedly raise all the issues that come with the unresolved debates on accountability, monitoring, compliance, and accreditation.

Who will decide, and on what basis, whether or not agencies act in accordance with the ten principles, as set forth in the Code? A recent Conference on the Code, organised by a group of Dutch NGOs in The Hague on 20 September 2004, looked at the ten principles. One of the issues noted at the Conference brought up the difference between the first four principles, which can be qualified as the "classic" humanitarian principles and the next six principles, which come from a more developmental perspective.

In other words, the Code, being an amalgamation of humanitarian and development principles, leaves significant space in terms of the range of agencies that can express their adherence. This variety of agencies clearly has diverging views on how to weigh the different principles and/or how to interpret them. In this light, monitoring and/or verifying whether signing agencies act in accordance with the Code is a near to impossible task.

The other option of abandoning the signing function may not be very attractive either. Donor governments are likely to react that this confirms their view that the NGOs cannot get their house in order and, therefore, donors will do it for them. It may also reduce the credibility of the Code: why have such an instrument at all if it does not entail any further commitments or obligations for subscription and implementation?

While the issue of signing needs resolution, signing is but one of a number of mechanisms for the Code's application. For the time being, it might be better to focus on other ways to improve the implementation of the Code. The general feeling at the Dutch Conference was that the language of the ten principles, in particular the definitions and explanations that follow the principles, needs improvement and/or a modernisation of the interpretation.

At the beginning of this year, ICVA, together with the Steering Committee for Humanitarian Response (SCHR – the body in which the Code was originally drafted) decided to produce a Commentary on the Code. Through field studies, data is being gathered that will provide evidence of the Code's practical application on the ground. This information will be used to outline the debates that surround the principles. The idea is to provide a practical reference tool that explains the complexity of the Code in rather simple terms and that will help to inform operational decisions of humanitarian organisations.

First results from the field studies indicate that the Code is far from dead in its 11th year. There is a
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great need felt among many staff to discuss humanitarian principles within the context of regular coordination meetings. In a number of countries, local codes that are often similar to the "generic" Code have been developed and mechanisms for implementation have been established.

It would be helpful for donors to support such initiatives, instead of just requiring agencies to add their names to an inaccurate list of signatories and/or to further push for a mechanism that monitors and

reviews this list. The IFRC at the same time should add a note to the existing list that no indications about the humanitarian character of the agencies can be derived from the list. ♦

** For more information on the ICVA/SCHR project to develop a Commentary on the Red Cross/NGO Code of Conduct, please visit the ICVA website: <<http://www.icva.ch/cgi-bin/browse.pl?doc=doc00001245>>. The list of signatories to the Code can be found on IFRC's website at: <http://www.ifrc.org/cgi/pdf_disasters.pl?codeconduct_signatories.pdf>.*

OPINION

International Justice: An Obstacle to Peace in Northern Uganda

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The Amnesty Act, which was adopted in 2000 with the full support and collaboration of local communities, builds on this culture of forgiveness. The Act provides a blanket amnesty to all insurgents and waives any further legal steps against those who have benefited from it. Recent months have witnessed large numbers of insurgents, including some commanders, returning and successfully applying for amnesty. This implies that the Amnesty has a possible effect on eventual peace. While the Ugandan government is currently proposing an amendment to the Act to exclude rebel leaders, this amendment has not yet been passed.

The ICC, however, is not bound by any local laws, and could overrule decisions made by the Amnesty Commission. Such a decision, in turn, could lead to more hesitation among those still in LRA ranks, and thus on the prospects of peace. Potential peace negotiations with the top LRA command will suffer if arrest warrants and possible extraditions to The Hague are pending.

The fears that the LRA might step up its activities in revenge to the ICC investigation are not without base, as in the past the group has shown that it is capable of

retaliating against communities for their support of the government. The thousands of children still in the rebel ranks, most of them held against their will, could become the first casualties of this retaliation. The protection of victims and witnesses is paramount to try to negate these possibilities.

Finally, the government army (UPDF) is also accused of committing human rights violations with impunity. While the scale is in no comparison to crimes allegedly committed by the LRA, there is a feeling in northern Uganda that the ICC should also investigate serious violations by the UPDF.

There is an acknowledgement by northern Ugandan civil society that the investigation that has formally begun is likely to continue. However, civil society organisations will continue to stress the need for peace and remain doubtful whether the ICC can bring an end to the war, or if it will only further delay a much anticipated end. A delay in the timing for the investigation until peace had arrived would have been preferred. ♦

** Caroline Ort, Norwegian Refugee Council, Gulu, (northern) Uganda, <caroline@afrikaonline.co.ug>*

OPINION

INTERNATIONAL JUSTICE: A POSSIBLE OBSTACLE TO PEACE IN NORTHERN UGANDA

By Caroline Ort

Since the announcement in January 2004 by the Prosecutor of the International Criminal Court (ICC) of his intention to investigate a first case – the crimes against humanity and war crimes committed in northern Uganda – local civil society groups have become increasingly doubtful about the intervention by the ICC. The Government of Uganda had referred the case against the Lord's Resistance Army (LRA) to the ICC – initially with the strong support of human rights and civil society groups outside the country. Since January, however, different NGOs, religious groups, and traditional leaders have come out with public statements questioning whether or not the current investigation might do more harm than good at this juncture.

A permanent ICC was finally established in 1998, more than 50 years after the Nuremberg trials and is investigating its first cases. Compared to the ad hoc tribunals for the former Yugoslavia and Rwanda, the ICC is a permanent structure, no longer dependent on political will to carry out prosecutions and trials of those allegedly responsible for committing genocide, war crimes, or crimes against humanity. Human rights activists have advocated for many years to establish this ICC as a mechanism to combat the impunity of perpetrators of gross human rights violations. After the adoption of the Statute of Rome in 1998, and the entry into force of the ICC in July 2002, the case of northern Uganda has become the first case under investigation.

The 18-year internal conflict between the national government and the insurgents of the Lord's Resistance Army (LRA) has forced over 1.6 million people into displacement, led to the abduction of over 20,000 children into the rebel ranks, and the deaths of thousands of civilians. Massacres in IDP (internally displaced persons) camps, ambushes on civilian (including, on several occasions, humanitarian) vehicles, and abductions of innocent children to transform them into child soldiers or sex slaves are all methods of war strictly prohibited by international humanitarian law and constitute war crimes and crimes against humanity as stipulated in the Rome Statute.

Despite the fact that northern Ugandan civil society remains very supportive of the ICC as an institution to fight impunity, there are a number of questions related to the timing of the intervention, the links with the Amnesty Act, the complementarity with local traditional methods of dispute settlement and reconciliation, and the impact on the abducted children.

Reconciliation and forgiveness are among the main features of traditional northern Ugandan conflict resolution methods, which is reflected in the willingness with which even the victims of atrocities are accepting returned insurgents back into their communities. Through cleansing ceremonies, which involve the traditional leadership, past misdeeds are forgiven and people are reintegrated into their communities.

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