FORCED MIGRATION

13

June 2002

review

September 11th:
has anything changed?

Forthcoming features in 2002
Older refugees/IDPs
Children

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from the FMR editors

Welcome to this special issue of FMR which has been produced in collaboration with the Migration Policy Institute, Washington DC. We felt that the implications for refugees and IDPs of the terrorist attacks of 11 September 2001 and the events which followed were so significant that they warranted changing our publishing schedule to accommodate this additional issue.

Corinne Owen

Many thanks to our MPI colleagues for their work on commissioning and reviewing articles and liaison with authors. Their Introduction (pages 4-7) highlights the context and theses of this issue and presents policy recommendations.

Two additional commentaries, which FMR commissioned for its Arabic language edition, have been included, following the MPI special section. These look at the implications of 11 September for the Middle East and are included for the purpose of further reflection.

We are extremely grateful to the UK Department for International Development (DFID) for generously funding the bulk of the cost of producing and distributing the English and Arabic language edition of this issue.

Are you receiving Forced Migration Review for the first time*? To receive future issues, you will need to take out a paid subscription (see the form in the middle of this magazine).* ***If you are a regular reader*** *but have not renewed your subscription for 2002, please use the subscription form in the magazine to do so – or email us at fmr@qeh.ox.ac.uk. This year we will be producing* ***four issues of FMR:*** *feature themes of the next two issues are listed opposite.*

with best wishes

Marion Couldrey & Tim Morris

Letter from the Migration Policy Institute Special Issue Guest Editors

We are privileged to have had the opportunity to work with the FMR editors on the Special Section contained in this special issue. Working on migration and humanitarian affairs, and based as we are in Washington DC, we have been concerned to collect our thoughts on the impact of the events of 11 September on forced migration and protection issues.

We are particularly grateful to the Andrew W Mellon Foundation for their generous support of MPI's work on forced migration, including the establishment of a policy dialogue among researchers, practitioners and policy makers in this field.

Our thanks go most of all to our contributors, many of whom are actively involved in dealing with the consequences of 11 September and the war in Afghanistan, for finding the time to commit their thoughts and observations to paper. We hope you find the result as stimulating to read as we found it to work on.

Kathleen Newland, Joanne van Selm, Monette Zard and Erin Patrick

Front cover photos: *World Trade Centre: Panos/HH/Rene Clement • Northern Alliance soldiers on road to Taloqan frontline, October 2001: Panos/Martin Adler • Assistance to Afghan refugees in Pakistan: Panos/Clive Shirley.*

contents

Introduction

by Kathleen Newland, Erin Patrick, Joanne van Selm and Monette Zard
Migration Policy Institute, Washington DC

Certain events divide moments in time into 'before' and 'after'. Hiroshima ushered in the age of the nuclear threat; the fall of the Berlin Wall marked the end of the Cold War.

It is perhaps too soon to define the broad historical significance of 11 September 2001. It may eventually be seen as the start of a new period of transition from the post-Cold War era to a 'Grey War'. However, for refugees and internally displaced persons, as for those who work with them or who study forced migration, it is already clear that the terrorists' strikes on the United States on 11 September hit hard at certain fundamentals. There is a new sense of vulnerability in the West, and the ensuing 'war on terrorism' has caused new obstacles to be put in place for people seeking asylum outside their own countries, tempting governments into labelling any forceful opposition as 'terrorism'.

In the first instance, attention has been focused on the initial phase of the international war against terrorism: the US-led attack on the al-Qa'ida and Taliban forces in Afghanistan. No matter how the war against 'terrorists with global reach' unfolds, individuals in many countries will almost certainly be displaced as a result of this 21st century war. In some cases these will be displacements from countries that have produced hundreds and thousands, even millions, of refugees and IDPs in the last decades, as has been the case of Afghanistan. In other cases there might be brand new displacements from more unexpected places. For all of the newly displaced, however, the political environment surrounding their reception as seekers of refuge and the protection and assistance offered to them are likely to be at the very least tinged by the seemingly new political realities. Those realities make this a James Bond-like world in which nationality alone is no longer a tool to define 'enemies' but in which an array of factors could cause almost everyone to be a possible suspect in the new 'with us or against us' world.

Old issues: new dimensions

However realities have changed and will continue to change, the debates about various features of protection will be set in the context of policy programmes and legal discussions of the post-Cold War era. In the 1990s, many people were discussing the movement of people in 'security' terms. We can expect to see this framing of the forced migration debate to be intensified, with two key features:

i. a focus on the potential arrival of individuals who abuse the asylum system and may pose security threats to the country in which they seek asylum

ii. an increased preoccupation with the security dimensions of mass exoduses and influxes, and the international management of such refugee flows

With an increased fear of 'terrorists with global reach' there will be increased focus on the need for careful screening and perhaps the exclusion of certain individual asylum seekers from refugee status due to suspected involvement in terrorist activities. Mass exoduses of refugees and influxes into neighbouring states become likely when the response to terrorist acts on a global scale involves (more or less) conventional interstate warfare. Mass displacements bring with them significant security challenges linked to screening. The individual and group dimensions of this problem become linked: where recent crises such as those in Bosnia and Kosovo gave rise to prima facie-based temporary protection systems, the experience of the Great Lakes in particular indicated that among the displaced, alongside those victims of conflict and unrest we would call refugees, are also fighters and criminals who may seek to use the country of asylum as a platform from which to continue their fight.

The imperative to screen adds impetus to the need to ensure that equitable and adequate systems are established for burden sharing in various ways with countries of asylum. It is essential when considering both burden sharing and screening that states ensure that civilian populations displaced within their country of origin are adequately assisted and protected. This must be carried out in such a way that the principle of asylum is not compromised – the so-called IDP/refugee tension.

Afghanistan: a crisis in context

A wide range of issues will need to be drawn out in order to start to understand the implications of the post 11 September context for responses to forced migration. We can start to understand those implications by assessing, for example, the plight of Afghans displaced by decades of fighting and by Operation Enduring Freedom and the situation of people detained or suspected of potential involvement with terrorism when simply filing immigration documents or asylum claims. Such an assessment should be made within the context of developments in refugee protection that were already underway prior to September 2001, and most particularly by analysing whether the tools with which states and international organisations are already equipped are sufficient to allow them, albeit in some cases with altered means of implementation, to deal with the seemingly new situation. This special issue of *Forced Migration Review* will therefore focus specifically on the responsibilities of a range of actors who respond to displacements, the existing tools available to those actors and the usefulness of these tools in an increasingly security-conscious world.

Where were we on September 10?

It is important, in considering the impact of 11 September on issues of

forced migration, that we recall the international political climate with regard to refugees and asylum seekers that was already in place. UNHCR's Global Consultations to mark the 50th anniversary of the 1951 Convention relating to the Status of Refugees were in full swing and building up to the defining moment when, on 12 December, the signatories would come together and reaffirm their commitment to the Convention. These activities were taking place in a climate that, for more than a decade, had been marked by increasing scepticism, most notably in Europe and Australia, about the inappropriateness of the Convention in the current times.

The subjects of discussion in tracks two and three of the Global Consultations indicate those areas of concern to governments and activists: cessation; exclusion clauses; supervision of application of the Convention; *non-refoulement;* internal flight alternatives; gender; family unity; detention; responsibility and burden sharing; registration; mass influxes; access to procedures; safe third countries and safe countries of origin; reception modalities; capacity building and complementary forms of protection. All of these issues have remained subjects of concern during and since the US campaign in Afghanistan. The papers written for the meetings of the Global Consultations may have been able to draw on another case study but the issues they raised may not have been much altered by the 'new world' of a superpower awakened to the challenge of terrorism. As such, the question raised in the title of this special issue is pertinent: has anything changed?

Organisation of this Special Section

This special section is split into three parts. This first part involves some setting of the scene. Following this introduction, two articles will set out the history of war and conflict in Afghanistan – which has led to the uprooting of millions of victims in more than two decades of international and civil fighting – and the situation on the ground in that country in early 2002. Hiram Ruiz, who has followed developments in the Afghanistan region for many years, examines the decades of conflict that

left the country vulnerable to abuse by both the Taliban regime and the al-Qa'ida fighters harboured by that regime. The role of UNHCR in protecting returning refugees and IDPs is thoroughly examined in a field report by the organisation's representative in Afghanistan, Filippo Grandi.

The two subsequent parts will shed light on issues of 'responsibility sharing' and on the existing tools of protection and the usefulness of these tools in scenarios that bring new security dimensions to displacement situations. The articles variously touch on a number of different layers of policy response, namely the field; regional; linked regional-global and global levels. This separation has the goal of structuring the discussion towards policy options available to states and humanitarian agencies. Recurring themes will include the relations between states, inter-agency cooperation and the relations among UN agencies, NGOs and states. The thinking in commissioning these articles is as follows.

Responsibility sharing

In this context, responsibility sharing is not linked directly to the discussions about burden sharing and solidarity in the sense of apportioning refugees, which have been a major feature of all massive displacement crises (Indo-China, the Balkans and others). Rather, we examine different ways in which different actors partake in a collective responsibility for the whole chain of management in forced migration situations, and how those actors (states, NGOs, international organisations, the military, etc) relate to one another.

At the field level, agency coordination and the sharing of tasks and responsibilities between NGOs and international organisations are the subject of the first paper. Civil-military relations have been a major problem on the ground during this crisis. Both NGOs and the military have responsibilities during such a conflict situation; the content of those responsibilities is distinct. One responsibility of both could be said to be to maintain clarity in the distinctions between their operations, for their own sakes as well as for the population's sake. Taking the issue of responsibility sharing to an interna-

tional level, it is important to assess the role of foreign policy and diplomacy in a crisis in which all states have multiple interests. As well as multiple interests, states have different, and perhaps competing, responsibilities within a single crisis, for example both to conduct meaningful and appropriate foreign policy, and to live up to international protection obligations. What is more, states behave differently on the same issues in different crises. Our second article in this section contrasts the closures of the Pakistan border with that of the Kosovo-Macedonia border in 1999.

Finally, we look beyond Afghanistan to the countries that have received Afghan asylum seekers during the last decades, and their reactions to those asylum seekers in the changed situation in Afghanistan. Two articles consider the means of arrival of Afghan refugees in destination countries, the reception these asylum seekers receive, their frequent rejection, and the impetus towards their return. The first of these papers looks at Australia's response to the Tampa incident in late August 2001 and other such smuggling incidents after that date. It draws attention to the formal rejection of a high percentage of Afghan asylum claims in the last decades. This same situation pertains in the EU, where attention is now turning to the removal of Afghans to a so-called safe new situation in their country of origin.

The issue of internal displacement is one that cuts across our two themes of responsibility sharing and the existing tools of protection. A number of institutions are attempting to provide assistance to the world's IDPs but clear means of coordination, of sharing the responsibility, have not yet been satisfactorily developed. In Afghanistan in autumn 2001, IDPs became the focus of intense international attention, not least because, as referred to in the context of foreign policy above, states did not envisage that these IDPs would become refugees as they had in many high-profile cases of large internal displacement in the past (even if UNHCR was preparing for them). In addition, while legal tools for protecting refugees had been developed, no such strong instruments exist for the protection of IDPs. The question in the case of IDPs is thus whether the

lack of an (accepted) international mechanism for IDP protection is satisfactory for a changing world where the nature of sovereignty is ever shifting.

Existing tools: new dimensions

The existing tools of protection for refugees and displaced persons are thought by many to be sufficient to deal with any new refugee crises, and indeed to deal already with many of the circumstances (eg terrorists seeking asylum 'under cover') which might be thought of as somehow 'new'. Most of the existing tools are indeed sufficient; their application and use by states, however, might not be sufficient – hence we suggest that new dimensions may need to be brought to those tools.

The US, Australia and Canada are among those states that seek to manage their refugee immigration through resettlement programmes. The European states have limited such organised resettlement in general terms but employed a humanitarian evacuation programme during the Kosovo crisis, effectively creating a precedent of short-term 'resettlement'. Whilst such an approach was never a consideration during the Afghan crisis, the first article in this section explores the potential use of resettlement as a policy tool to allow states to deal with mass exoduses in an effective way. The reality remains, however, that in the aftermath of 11 September, traditional countries of resettlement such as the US suspended and/or re-assessed their resettlement programmes. The human cost of this policy decision is explored in an additional case study.

An existing tool likely to take on increased significance in the post 11 September era is Article 1F of the 1951 Refugee Convention; these so-called exclusion clauses are an important means by which to ensure that the system of refugee protection is not abused by terrorists and those who may have committed war crimes or crimes against humanity. Nevertheless, as states turn their attention to these clauses it is important to ensure that they are applied in a fair and rights respecting manner. Guidance is needed as to the scope of crimes envisaged by Article 1F and the procedural safeguards that need

to be present in any application of the exclusion clauses. Screening in refugee camps, in an effort to apply the exclusion clauses at the field level in situations of mass influx, takes the challenges to another level. In a situation where combatants, declared and undeclared, may be mixed in with bona fide refugees, as well as those who may have committed serious international crimes, there are added difficulties. Drawing on comparative experiences, an article on screening reflects on the legal and practical dilemmas, including the division of inter-agency responsibility in this area, which would probably be faced in any such exercise in the Pakistan context.

While there is no single model for an 'existing tool' to use in reconstruction, there are experiences and lessons to be drawn upon. These may help in trying to ensure not only that reconstruction is successful in Afghanistan and the return of the displaced is truly a durable solution but also in ensuring that the country ends its cycles of civil war and ceases to be a place where terrorists can train and plot at leisure. Precedents have been set for international involvement in post-conflict reconstruction, most recently in Kosovo and East Timor. At the same time, concerns have emerged from past experiences that international involvement can hamper the development of local capacity for political, societal and economic development beyond a conflict situation. The discussion surrounding the post-conflict potential for Afghanistan began even before the US and its allies began their military action.

Finally, our thoughts turn to the normative framework within which asylum and security are related. Again, there are no clearly definable ethical 'tools' as such but there is a body of thought, literature, work and experience on which we can draw to analyse both how refugee protection has arrived at its current state and what the future might hold, and should hold.

Policy directions

Many of the articles commissioned by MPI point to policy conclusions. The conclusions that follow are stimulated by, but do not draw directly on, the articles and are not indicative of any

agreement among the authors. Among important points are:

1. The coalition of states engaged in a war on terrorism have taken upon themselves additional, implicit and explicit responsibilities through this act. Primary among these is that the international community cannot again leave any state isolated simply because other states do not have the political will to be involved. Every state that produces massive flows of refugees or displaced persons, and every state that shoulders a significant refugee burden, is now understood to represent a foreign policy interest to any government with a lively sense of rational self-interest in a highly integrated world.

2. In sharing responsibilities within a displacement-inducing conflict situation, participating states and non-state bodies need clearly defined mandates, areas of operation, and understanding of where their duties and obligations overlap. Coordination often seems an elusive goal – though an obvious goal of all. The issue of coordination, which is most often problematic within the humanitarian assistance community, is even more complex when the military becomes involved, both in conflict and in assistance operations. When military involvement is essential, governments need to distinguish clearly between military operations and civilian operations (eg supported through the UN or NGOs) and realise the benefits coordination can bring to all involved.

3. In dealing with population exoduses, states need to weigh many concerns: the protection capacity in neighbouring states; the security consequences of both an exodus and an influx in the place to which the population moves; alliances with states neighbouring a conflict situation. However, the primary factor must be to balance those concerns with humanitarian obligations, including guaranteeing that those who need protection can achieve their right to seek that protection outside their country of origin, and that they are not returned to a situation of danger.

4. Short-term domestic political goals should not be the cause of governments reneging on long-term international obligations and responsibilities. In particular, in entering the debate on the subject of refugees and asylum, governments should be aware that their rhetoric is heard not only by the voting public but also by refugees and asylum seekers themselves. Derogatory public statements that discriminate against asylum seekers and refugees can cause unrest among refugee communities, as well as appearing to condone discrimination. This is counterproductive for all concerned and is at odds with the actions of those governments that do live up to their international protection obligations.

5. European governments, in particular, should guard against seeing every conflict successfully resolved as a situation to which those who have been refugees can return. The security of the country in which intervention has taken place cannot be maximised in the short term by forcing or over-stimulating immediate return by exiles. Rather, for the sake of the country of origin, the refugees and the host country, attention must be paid to individual circumstances, including the length of the period of refuge, and to allowing and facilitating short-term visits with an eye to ultimate return, without insisting that the latter take place. Giving people the personal security that comes with the right to remain in or return to the country of refuge can often be a factor in stimulating a willingness to return, at least on a trial basis.

6. The provision of assistance alone is not sufficient to live up to international obligations. For both refugees and IDPs, alongside the provision of aid, it is essential that governments explore and develop means to guarantee security and protection where such means are not yet established, and that they live up to their protective obligations where such already exist.

7. In providing protection and security, states need to maximise their development of useful tools of management in both the migration and displacement scenarios. Registration, for example, needs to be improved on the ground. And tools – such as resettlement programmes – that permit optimal, durable protection need to be positively re-considered.

8. In assessing protection needs, for the security of genuine refugees as well as for the security of states, authorities should make appropriate use of the existing tools at their disposal to exclude certain people from refugee status, and to screen camp dwelling populations in situations of mass influx, where individual application of the exclusion clauses may not be appropriate.

9. In learning from past mistakes, the international community needs to ensure that the reconstruction of Afghanistan is a project for and by Afghans. However, recalling the first conclusion listed here, that does not mean ignoring the process of reconstruction or withdrawing from it quickly. Rather it means a process of partnership, of state and society building for a state that needs to be strong and secure for itself and its people but that also needs to be strong for and within the international community of states.

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think-tank in Washington, D.C. dedicated to the study of the movement of people worldwide. MPI provides analysis, development and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world. MPI's work is organised around four research pillars:

- Migration Management
- Refugee Protection and International Humanitarian Response
- North American Borders and Migration Agenda
- Immigrant Settlement and Integration

Founded in 2001 by Kathleen Newland and Demetrios G Papademetriou, MPI grew out of the International Migration Policy Program at the Carnegie Endowment for International Peace. The think-tank's policy analysts seek to bridge the worlds of migration research and policymaking, by translating research findings into policy recommendations for politicians, business leaders and journalists around the world.

A central focus of MPI's refugee protection work in 2002 is the issue of internal displacement. MPI is collaborating with the newly established IDP unit within the UN Office of the Coordinator for Humanitarian Affairs (OCHA) to explore some of the continued challenges of providing effective protection and assistance to the internally displaced. The results of this study will be published in September 2002. A second collaborative effort, with the Brookings Institution-CUNY Project on Internal Displacement, analyses the complex relationship between the international refugee protection system and evolving IDP protection mechanisms, with a view to progressing towards the development of a comprehensive protection regime for these two groups.

In late Spring 2002, MPI is launching the Migration Information Source (www.migrationinformation.org), a new website that offers current and authoritative data on international migration, as well as analysis from migration experts and dispatches from foreign correspondents around the world.

For more information on the Migration Policy Institute, visit our website at www.migrationpolicy.org.

Afghanistan: conflict and displacement 1978 to 2001

by Hiram A Ruiz

Jalozai refugee camp, near Peshawar, Pakistan, 2001

The tragic events of 11 September 2001 and the subsequent US-led military action against Afghanistan's Taliban regime and al-Qa'ida thrust Afghanistan into the international spotlight and finally placed it on the agenda of senior policy makers worldwide. What the media and policy makers discovered was a country ravaged by conflict and already in the grip of one of the worst humanitarian crises in the world.

In fact, Afghanistan has experienced one of the world's largest refugee crises for more than two decades. Between the Soviet invasion of Afghanistan in 1979 and the present day, one in four Afghans has been a refugee. At the peak of the crisis in the late 1980s, there were more than six million Afghan refugees. When American bombardment began in October 2001, 3.6 million Afghans remained refugees, mostly in Pakistan and Iran, while at least 700,000 more were internally displaced.[1] Decades of ongoing conflict, human rights abuses by both the Taliban and the opposition forces and severe drought have

all taken a grave toll on the Afghan people.

The conflict's early days

The coup that brought a communist government to power in Afghanistan in April 1978 ignited the first of a series of conflicts that have crippled Afghanistan and left an estimated 1.5 million Afghans dead.[2] Afghanistan's largely uneducated, traditional, rural population deeply resented and resisted the new communist regime. Faced with widespread opposition, the regime turned to force. Its violent tactics left tens of thousands of Afghans

dead, prompted the exodus of thousands of refugees and gave rise to an armed resistance movement.

Concerned that the communist government in Kabul was losing ground, in December 1979 the Soviet Union invaded Afghanistan. The civilian population once again faced violence and intimidation and hundreds of thousands more refugees fled Afghanistan.

During the 1980s, new Afghan opposition forces – the *mujahideen* or holy warriors – grew rapidly, increasing the intensity of the conflict. In 1981, some 1.5 million Afghans were refugees;[3] by 1986, this number had increased to nearly five million, mostly in Pakistan and Iran.[4] Most of the Afghan refugees in Pakistan were ethnic Pashtuns, housed in refugee camps established by UNHCR throughout Pakistan's two western-most provinces, the North-West Frontier Province and Baluchistan.

Over the years, the camps evolved into villages that began to appear much like other villages in Pakistan. Many of the refugees carved out reasonable and predictable lives, at least

compared to what they could expect in Afghanistan. Most found at least subsistence work in the local economy or rented land to cultivate. Some maintained a foothold in both countries by living in Pakistan while hiring tenant farmers to work their land in Afghanistan.

Afghan refugees in Iran did not benefit from similar assistance, however. In 1979, a revolution put an Islamic fundamentalist regime in power in Iran and radical students seized the US embassy, taking dozens of US citizens hostage.[5] The US and its allies were reluctant to fund programmes in Iran, even for refugees, and Teheran did not want Western agencies – including UNHCR – in Iran. Left largely to fend for themselves, most Afghan refugees in Iran settled in urban centres, with little protection, forced to compete with local people for limited employment opportunities.

The Soviet occupation of Afghanistan proved costly in both lives and expenditure and sparked political opposition within the flagging Soviet Union. In February 1989, Moscow withdrew its troops from Afghanistan and left in power a puppet regime headed by Mohammed Najibullah. The UN tried to broker a peace agreement between Najibullah and the mujahideen but failed to achieve any result. In April 1992, the mujahideen captured Kabul and killed Najibullah.

Civil war

The mujahideen's victory triggered an immediate and massive repatriation. Between April and December 1992, an estimated 900,000 Afghans returned home.[6] UNHCR said it was the "largest and fastest repatriation programme [ever] assisted by UNHCR." The UN established two programmes to assist returning refugees. In Pakistan, UNHCR offered refugees who turned in their refugee ration cards a set sum of money to use for their transportation home and for initial survival needs in Afghanistan. In Afghanistan, the UN created Operation Salam to assist returnees through mine clearance, health programmes, rehabilitation of the water supply, and basic education. UNHCR also assisted Afghan refugees repatriating from Iran but on a much smaller scale.

Since the Soviet pull-out from Afghanistan, however, the West's interest in the country had faded. Funding for reconstruction and repatriation, as well as for assistance to the large number of refugees who remained in Pakistan and Iran, dried up. Operation Salam soon collapsed. Although repatriation continued at a brisk pace in 1993, it subsequently levelled off.

Two factors contributed to the slow-down in repatriation: inadequate repatriation assistance and the infighting that erupted between the various mujahideen factions that had worked together to oust the Soviets and Najibullah. Unable to agree on a political power-sharing arrangement, the mujahideen turned against each other "as each sought to achieve its objectives by military means".[7] Afghanistan became what Afghan expert Robert Kaplan described as "a writhing nest of petty warlords who fought and negotiated with one another for small chunks of territory".[8] Fighting for control of Kabul left an estimated 50,000 people dead and much of the city in ruins. In Kandahar, the largest city in southern Afghanistan, civilians "had little security from murder, rape, looting, or extortion".[9]

The emergence of the Taliban

During the 1980s and early 1990s, religious schools called *madrassas* became popular with Afghan refugee populations, as they were in many cases the only form of education and discipline for refugee boys. The schools were funded largely by ultra-conservative groups in Saudi Arabia and conservative Pashtun religious leaders in Pakistan and southern Afghanistan. They taught Koranic study and sacrifice rather than, for example, mathematics or literature. The *madrassas* proved to be ripe breeding grounds for the Taliban movement. Students were taught that the cure for the factional fighting and lawlessness that had taken over the country lay in the creation of a strict Islamic state. The Taliban began what was to be a quick takeover of most of the region of Kandahar in 1994.

Most Afghans were at first receptive to the Taliban, as they initially brought relative peace and stability to the war-torn nation. By mid-1995, the

Taliban had grown to more than 25,000 fighters and controlled most of southern and western Afghanistan. However, the movement's strict reading of an ancient tribal social code called *Pushtunwali* was resented by the vast majority of Afghans who had never before been subject to such restrictions. As the movement headed north, it was met with increasing resistance from many of the former mujahideen groups which eventually banded together to form the anti-Taliban Northern Alliance. The Taliban captured Jalalabad and Kabul in late 1996 and Mazar-e-Sharif – the Northern Alliance's *de facto* capital – in 1998.

a writhing nest of petty warlords

The fighting for control of northern Afghanistan triggered a new refugee exodus. Many of Kabul's educated élite, including government workers, medical professionals and teachers, fled to Pakistan. They opposed the Taliban's anti-western, fundamentalist Islamic stance and the many restrictions that the Taliban imposed on the population. Many members of ethnic minorities such as the Hazara, fearing discrimination by the Pashtun-led Taliban, also fled. Additionally, hundreds of thousands of civilians within the region were displaced internally.

The post-Cold War period

In Pakistan, UNHCR and WFP, faced with huge funding shortfalls for their relief activities for Afghan refugees as well as robbery and threats from local warlords, ended food aid to most refugees living in camps in late 1995. They based their decision – which was to have a significant long-term impact both on refugees in Pakistan and the government of Pakistan's attitude towards their presence – on the results of a survey that indicated that a majority of the refugees were self-sufficient or could become self-sufficient if necessary. A year after the cut-off, however, a subsequent study found that, far from being self-sufficient, many camp refugees "were living at a marginal level of existence, dependent on intermittent daily labouring work."[10]

The termination of food aid to camp residents prompted the exodus of tens (perhaps hundreds) of thousands

of refugees from the camps to Pakistani cities. The Pakistani authorities blamed the increased number of refugees in the cities for Pakistan's growing social and economic ills. According to one senior government official, the refugees caused "an increase in crime, drug addiction and drug trafficking, and illegal trade. Local people say that the Afghans take their jobs and drive up real estate prices."[11]

UN agencies and international NGOs sought to help the displaced population within Afghanistan but their efforts were often thwarted by widespread fighting and the Taliban's distrust of them. That distrust escalated when the UN imposed sanctions on the regime in 1999. A year later, an

the border closure … signalled Pakistan's hardening stance

assessment of the sanctions' impact by the UN's Office of the Coordinator for Humanitarian Affairs found that the sanctions "had a tangible negative effect … on the ability of humanitarian agencies to render assistance to people in the country." The report added that many individual Afghans felt victimised by the sanctions, believing that the UN had "set out to harm rather than help Afghans".

Nevertheless, in December 2000, even as the UN, donor governments and NGOs struggled to provide humanitarian assistance to vulnerable Afghan civilians, the UN Security Council, spurred on by the US and Russia, voted to impose additional sanctions on the Taliban. NGOs and UN agencies providing humanitarian relief in Afghanistan said that additional sanctions would further strain relations between the Taliban and UN agencies and NGOs, and could put the lives of UN and NGO staff at risk or cause their withdrawal from Afghanistan, crippling relief efforts. UN agencies temporarily withdrew their staff from Afghanistan when the Security Council approved the sanctions.[12]

Pakistan: an end to the welcome

In 1999, Pakistan's growing frustration with the seemingly endless conflict in Afghanistan and with its growing Afghan refugee population

led to increased harassment of Afghan refugees. Police in Pakistan's major cities stopped undocumented Afghans and deported many who did not pay bribes. In June 1999, police demolished the stalls of a number of Afghan traders at a market in Peshawar and assaulted the traders and their Afghan customers. Later that year, local authorities in Baluchistan pushed back across the border 300 Afghan asylum seekers and forced thousands of Afghan refugees who had been living in Quetta to move to camps.[13]

Another refugee influx, the largest in four years, began in mid-2000. It followed heavy fighting in northern Afghanistan and the widening effects of the worst drought to hit Afghanistan in 30 years. UNHCR estimated that more than 172,000 Afghans entered Pakistan in 2000.

In response to this influx and as a result of frustration with the international community, Pakistan closed its border with Afghanistan in November 2000. Though the border closure was largely ineffective in practical terms (the border is porous and border guards easily bribed), it signalled Pakistan's hardening stance. Pakistani authorities resented what they saw as the international community's abandonment of the region after the Soviet withdrawal and its saddling of Pakistan with more than two million refugees with few prospects for a speedy return home. With hindsight, many in the international community recognise that Pakistan's increasingly harsh treatment of Afghan refugees in recent years can be traced to that abandonment.

Pakistan's hardened stance toward Afghan refugees continued throughout the displacement crisis that followed the start of US military action in Afghanistan in October 2001. Like all of Afghanistan's neighbours, Pakistan kept its border officially sealed, trapping tens of thousands of Afghans in places of danger within Afghanistan. Although UNHCR and donor governments promised to meet the cost of assisting new refugees, Pakistan continued to fear that the international community would again soon lose interest and leave Pakistan struggling to cope with even more refugees.

Conclusion

The crisis that existed before 11 September was 24 years in the making. The US intervention initially compounded the situation, displacing hundreds of thousands more civilians and disrupting relief efforts. However, the ousting of the Taliban, the inauguration of a new government and the promise of substantial, long-term international aid have given the Afghan people their first spark of hope in many years.

It is now up to the international community to ensure that it does not repeat past mistakes that led to the suffering of Afghan civilians and contributed to a political climate that facilitated the work of terrorists.

Hiram A Ruiz is Director of Communications for the US Committee for Refugees. He is author of Pakistan: Afghan Refugees Shunned and Scorned (USCR, September 2001), Afghans in Crisis (USCR, February 2001) and Left Out in the Cold: The Perilous Homecoming of Afghan Refugees: (USCR, December 1992). Email: hruiz@irsa-uscr.org

For statistics on Afghan refugee movements, see www.refugees.org.

1 Statistics compiled by UN UNOCHA, Internal Displacement in Afghanistan, June 2001.

2 Human Rights Watch (HRW) 'Crisis of Impunity: The Role of Pakistan, Russia, and Iran in Fueling the Civil War', New York, July 2001, p3.

3 *World Refugee Survey 1981*, US Committee for Refugees (USCR), Washington.

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Hope on the brink

by Filippo Grandi

As a rainy spring – the first after years of drought – brings out the blossoms in Afghanistan's orchards, many questions remain unanswered about the future of this battered country.

Four months after the establishment of the Interim Administration,[1] the central authority and regional power holders are still finding a balance and a modus vivendi. The most striking feature of the situation is perhaps this contrast – between the warlords who have been fighting since the Soviet occupation, bringing to the country first freedom, and later fragmentation; and a newly emerging – but still fledgling – political leadership, keen to rush Afghanistan rapidly through the difficult road from 'failed state' to 'normal' country after 23 years of war.

Yet despite this apparent fragility, no one should discount the enormous progress made since the Bonn Accord:[2] the establishment of the Interim Administration, the timely formation of the Loya Jirga Commission, the return of the diplomatic community to Kabul, the re-opening of crucial road axes, the possibility for aid agencies to have access to increasingly wider areas of the country, the presence of the International Security Assistance Force (ISAF), albeit only in Kabul, and the proliferation (at least in urban areas) of businesses and shops.

Even the most cynical Afghanistan observers – and there are many - must admit that the country, in spite of all its daunting problems, is opening up to the outside world. We should not forget that for the first time in decades, and despite the dangerous flare-ups, Afghanistan is not at war with itself. The absence of a generalised civil war is perhaps the most significant change of all.

Fragility and determination

Two contradictory impulses – political/ethnic rivalries and a palpable desire for peace – are both evident on the ground in Afghanistan. A series of 'fragility factors' cloud the prospects for stability and for the sustainable return of refugees and displaced people, including:

■ tensions and frequent clashes in several areas between the regional political factions; these are confined outbreaks of fighting, which however can bring a sense of profound insecurity in a given area: in Nimroz province in South-Western Afghanistan, for example, clashes erupted recently between different local groups, which prevented UNHCR from going ahead with its first repatriation convoys from Iran in that remote area.

■ unwillingness of the international community to expand the presence of the multinational force (ISAF) beyond Kabul

■ harassment of minority Pashtun communities identified (or threatened) as "Taliban" in the North and the West, often in the vicinity of camps hosting internally displaced people; and consequent fresh displacement of these communities, sometimes all the way to Pakistan; this situation has improved, especially in the West, after central and local authorities took decisive action, but it needs continued vigilance and monitoring.

■ tenuous Interim Administration's control on many parts of the country, and an almost complete lack of resources on the part of the central government (only 20% of the national budget for recurrent costs can be funded by national revenues – the rest, for this year, will depend on foreign aid)

■ in spite of continued international attention and commitment to peace, slow translation of pledges made at the January reconstruction conference in Tokyo into concrete financial contribution; and very limited recovery activities, especially outside Kabul and the main cities

The Interim Administration is undoubtedly trying – under these difficult circumstances, and with very limited means – to assert its authority and to promote the principles of the Bonn Accord: national unity and reconciliation, peaceful solution of conflicts, and the rule of law. With or without the support of the UN, it has attempted mediation efforts in various places. Chairman Karzai's trips to provincial centres have been very successful. UNHCR staff in Herat, for example, witnessed a spontaneous popular welcome when he visited that western city in February, that went far beyond any organised display. It spoke volumes about the Afghans' wish to recognise themselves in a credible leadership, and about their distrust of old divisions.

Against this background, and within the emerging framework of the United Nations Assistance Mission in Afghanistan, UNHCR continues to

Hamid Karzai at ceremony to celebrate reopening of Kabul schools, 23 March 2002

make preparations, in partnership with the Ministry of Repatriation of the Interim Administration, for what may be a massive return of Afghans from abroad and from inside the country. Since the Ministry of Repatriation and UNHCR started facilitating voluntary repatriation from Pakistan on 1 March, some 353,000 people have availed themselves of organised assistance. Refugee return is now facilitated also from Iran. Internally displaced people have expressed their wish to return in many parts of Afghanistan.

The 'fragility factors' described above, however; the experience of previous repatriation movements, which could not be sustained because fighting erupted again; and the uncertainty regarding the real effect of winter snows and rains – on which precise data are still missing – have a deterrent effect on many people who would otherwise return home this year. Although we at UNHCR are optimistic that repatriation will continue – and repatriation is, after all, a vote of confidence in the future of Afghanistan – many factors can still slow down or interrupt the return flow.

A population still on the move

Given the situation on the ground, it is perhaps not so surprising to hear of so many Afghans preparing for an early return – some of them after years in exile. At this early stage, it is possible that some returnees come back to assess the viability of bringing their families home but have not yet committed themselves to repatriation. However, a large percentage of returns from Pakistan – and, to a lesser extent, from Iran - are made up of families, and can be presumed to be intending to stay.

The situation of the internally displaced is more fluid, with conflict-related IDPs throughout the country (especially in the North, in the Central Region, and perhaps soon in the East and South) indicating however that they want to return home soon. Although some IDP situations will not be resolved in the immediate future, IDP programmes must be reoriented towards return, wherever possible. Lingering and sometimes obsolete IDP situations may become an obstacle to refugee return. Returning refugees could be attracted

to IDP camps, and become IDPs in turn. In many parts of the country, the Afghan authorities are promoting IDP returns, and it is crucial that its international partners, and particularly UNHCR – the main UN agency for Afghan displacement – take on the role of 'facilitators' of such return.

It has been UNHCR's position in the last few months to look at displacement in a holistic manner. The causes of flight are similar, whatever the nature of displacement. To shift assistance towards return requires breaking a vicious cycle of which refugees, IDPs, trafficked people and illegal migrants have been one of the most visible and dramatic manifestations.

Upholding human rights – especially in the context of displacement – is also important for peace and security, not only at national but also at regional level, given the cross-border ethnic links. Earlier this year, UNHCR for example detected a clear connection between the harassment of Pashtun people in Northern Afghanistan and of non-Pashtun refugees in some areas of Pakistan. The ensuing tension in both areas was a clear danger signal. Refugee and returnee protection should be projected as a tool for stability as well as an end in itself.

The security imperative

Security and stability are the cornerstones of any return-and-reconstruction process – but, as High Commissioner Lubbers said during his recent visit to Afghanistan, the successful reintegration of returnees is also, in turn, a cornerstone of security and stability. This is of course well understood by everybody, and none better than by the ordinary Afghans, who have great expectations in this area.

The ISAF was created as a part of the Bonn Accord and entered into force in January 2002. It calls for a multinational peacekeeping unit of up to 4,500 soldiers to be deployed in Kabul, currently led by the British. Although the United States is playing an 'observer' role and has of course a separate military presence in the country – which continues the war on the remnants of the Taliban and al-Qa'ida groups – it will not commit troops to the multinational force.

Afghan public opinion continues to demand, sometimes vocally, that the

multinational force be expanded, both geographically and in numbers. Sometimes – with some notable exceptions – even conflicting factions request the deployment of international forces. With this appeal being clearly articulated by Chairman Karzai, and echoed by the Special Representative of the UN Secretary General, it is becoming difficult for Afghans to understand why the ISAF continues to be limited to Kabul. None of the reasons invoked for its limited deployment appears convincing to Afghans.

The absence of a broader ISAF hampers efforts to conduct relief and reconstruction activities outside Kabul, especially by bilateral actors – thus strengthening the 'pull factor' provided by the capital on the population, and especially on returnees, half of whom have so far chosen to return to Kabul. In this context, it is crucial that UNHCR and other actors encourage more systematic efforts (not just by agencies but by governments with power and means) towards the disarmament and reintegration of combatants – a Herculean task in Afghanistan but one which at some point will be necessary, and towards which very, very little has been done in reality so far.

Another challenge, one which is intimately related to the security of returns, is that of demining. Afghanistan is one of the most mined countries in the world. Thousands of Afghans working for the UN and for NGOs are patiently trying to free the country from this scourge. The Special Representative of the Secretary-General has termed them the true, untold heroes of Afghanistan. Their work needs to be supported.

Looking ahead

All this begs the question of how the UN, and UNHCR in particular, can help the process of stabilisation pick up speed and become irreversible. This is the pre-condition not only for the return of refugees but also for the return of wealth – of the skilled Afghans who have been in exile for years, and of the financial and material resources that diaspora Afghans could be encouraged to invest in the reconstruction of the country.

For the time being, UNHCR enjoys some relative advantages in the

Afghan reconstruction process. It has a well-organised presence in all major cities and is branching off to a number of field locations. This will give it access to better information about areas of return, something that is crucial to help refugees and IDPs make decisions about their future. Regional presence will also give UNHCR more credibility in speaking about the needs of Afghans. Finally, so far at least, UNHCR enjoys support from the authorities, which have recognised the importance and the urgency of its task: the return and reintegration of refugees and IDPs are a clear priority in the Interim Administration's National Development Plan.

These comparative advantages allow UNHCR to try and look beyond day-to-day operations to the key features of the environment to which it is taking the heavy responsibility of helping people return.

Despite whatever pragmatic deals and compromises the international agencies and other external actors may have to continue to make with local power holders in order to deliver much-needed assistance, all must learn to think in terms of support to a central authority, and to its suitably decentralised, but nevertheless structured, provincial branches. This is made psychologically difficult, particularly for aid agencies, by years of tension with the Taliban and of *ad hoc*, war-time compromises with Mujahedin forces. Yet, it is crucial that all follow the Interim Administration's firm invitation to use aid to enhance the credibility of the legitimate authorities, and not to promote the visibility of respective countries or agencies.

It is particularly important that a mental shift takes place. Humanitarian assistance for example, especially food, is still necessary in Afghanistan; but it needs to be thoroughly re-examined, and better targeted to areas of acute need, or to areas where it can constitute a pull factor towards return and stabilisation, rather than the opposite. There must be a decisive move towards real recovery. Free distributions in or near large cities and in IDP camps have become a factor of displacement in themselves as desperate city-dwellers try to access assistance meant for the displaced; in contrast, development assistance provided in rural areas and

systematic interventions for urban or urbanised populations are still very limited.

This may have another, unwanted effect: thousands of returnees, both refugees and IDPs, are already opting for going back to urban centres even if they originate from the countryside; clearly, especially in the case of refugees, this is linked to the fact that they have spent many years working in the cities of Iran and Pakistan, and have become urbanised. But in many other cases, it is simply the opportunities provided by the Afghan cities – which are totally lacking in the rural areas – that lure people to Kabul, Herat and other major centres. IDP camps in the vicinity of cities risk becoming urban slums. The links among displacement, return and urbanisation will have huge implications for the repatriation programme; UNHCR needs to examine them thoroughly, together with its partners and the Interim Administration.

The reintegration process is a huge task even for a relatively small actor like UNHCR. But because UNHCR is – somehow – at the forefront of international efforts in Afghanistan; and because its government counterpart, the Ministry of Repatriation, is something of an 'emergency ministry', they have a significant responsibility in creating good precedents. This concerns the agencies' way of doing business in Afghanistan but also – and much more importantly – the need to help the Interim Administration create a culture for its officials of working with Afghan communities, rather than simply for and within their bureaucracy.

And finally, whichever way one looks at the situation, it is essential that everyone involved in Afghan efforts – including agencies like UNHCR – take more seriously the imperative that Afghans must become owners of the reconstruction process, and ultimately of Afghanistan itself. A huge amount of rhetoric is currently being piled upon Afghans on this subject but too little is happening yet. UNHCR, and other agencies as they establish their operations in

Afghanistan, will need to be very creative and 'think out of the box' – for example, in terms of recruitment, secondments and training.

One thing should be clear, and should be made clear. The international community is in Afghanistan for the long haul, even in terms of repatriation and return. Obviously, in a country so rife with arms – in a country where war, as an old Afghan told me, "has changed our way of talking to each other" – improvements will take years to be felt by ordinary people. But this has to begin at some point. Now is the time.

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The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

1. According to the Bonn Accord, the Afghanistan Interim Authority "shall consist of an Interim Administration presided over by a Chairman, a Special Independent Commission for the convening of an Emergency Loya Jirga, and a Supreme Court of Afghanistan as well as such other courts as may be established by the Interim Administration."

2. The full title is the 'Agreement on Provisional Arrangements in Afghanistan pending the re-establishment of permanent government institutions' and it is commonly known as the Bonn Accord.

Civil-military relations in Afghanistan

compiled by Tim Morris

There is a considerable degree of confusion both among the humanitarian community and the Afghan population over the various military forces present in Afghanistan, particularly with regard to their respective mandates and humanitarian support/ liaison operations.

Unlike recent peacekeeping experiences in the Balkans, the civil-military relationship in Afghanistan is complicated by the fact that there are two distinct foreign military forces operating in the country.

The British-led, multinational International Security Assistance Force (ISAF) works under UN mandate in the Kabul area. Its troops operate in uniform. ISAF has a large CIMIC – civil and military co-operation – component and is undertaking relatively small-scale humanitarian support projects in and around Kabul.

The US-led coalition force has a presence in several regions of the country, is conducting offensive military operations in pursuit of various wanted individuals and is not operating under a UN mandate. It has a large civil-military element (the Combined Joint Civil Military Operations Task Force – CJCMOTF) that is currently implementing a $5m humanitarian support programme throughout the country. Many coalition forces, including both those engaged in military operations and those engaged in humanitarian support activities, operate in civilian attire and carry weapons. The CJCMOTF has established Coalition Humanitarian Liaison Centres (CHLCs) in several major urban areas around the country. CHLC staff do not wear uniform and carry concealed and/or unconcealed weapons. CJCMOTF works closely with the Afghan Interim Administration (IA) and USAID (whose staff occasionally use US military forces for logistical support).

The current situation in Afghanistan continues a trend towards growing military involvement in humanitarian provision since the start of the 1990s. Military operations with humanitarian components have taken place in Somalia, Bosnia, Kosovo, East Timor and elsewhere. This trend has been watched with concern by NGOs since it raises fundamental questions about differences in approach by humanitarian actors and military actors.

The NGO Coordination Meeting convened by the Agency Coordinating Body for Afghan Relief (ACBAR) in March 2002 expressed concern about the mixed military-humanitarian mandate of coalition forces and the use of civilian clothing and concealed weapons by both combatant and humanitarian support personnel. NGOs operating in Afghanistan are alarmed about the potential confusion created in the minds of Afghans by armed coalition soldiers taking part in civil affairs operations while dressing and operating similarly to NGO staff. Civilian-clad personnel not employed by the humanitarian community include not only US and coalition special operations forces but also personnel from the FBI, CIA and the US Drug Enforcement Administration. There is a real fear that humanitarian action may be seen as a front for intelligence gathering by coalition forces. The presence of non-uniformed, non-humanitarian personnel has led NGOs to review security procedures and undertake visibility campaigns. Staff, vehicles and facilities have had to be marked in an effort to ensure that local populations

do not mistake humanitarian agency staff and assets for those of similarly dressed non-humanitarian personnel using similar vehicles. The US military, which sets great value on the hearts-and-minds benefits of being seen to deliver humanitarian assistance, appears unconcerned about possible threats to the security of NGO personnel.

The UN's Humanitarian Coordinator is sympathetic to the NGOs' concerns and is attempting to maintain a clear separation between the UN humanitarian system and both ISAF and coalition forces. Unfortunately, UN input to CJCMOTF (and ISAF) humanitarian planning appears to be weak. CJCMOTF's only regular contact with the UN system is with the UN Joint Logistics Centre which is staffed primarily by logisticians and is not actively engaged in humanitarian assessment or programming activities.

It is far from certain that the current 'honeymoon' period for coalition and ISAF forces will continue. The US military itself recognises that its mission in Afghanistan is unlike any other. The fact that coalition forces are engaged in on-going offensive military operations will undoubtedly complicate its relationship with local populations, irrespective of how the 'carrot' component of its approach fares. If the coalition's relations with local communities take a turn for the worse, NGOs' association with those forces (whether real or perceived) may well have significant consequences for their ability to safely and effectively provide humanitarian and reconstruction assistance in the months and years ahead.

For the majority of NGOs in Afghanistan, the principles of humanity, independence and impartiality are cornerstones of their programmes. Application of these principles ensures acceptance and access to populations most at risk in circumstances that would prevent assistance and

support by other actors. In the past, NGOs have frequently been able to negotiate access to civilians on all sides of the conflict in Afghanistan and carry out vital humanitarian and lifesaving work. To support their independence and impartiality, NGOs endeavour not to act as instruments of government foreign policy and believe that assistance should not be driven by the political interest of any particular donor. It is important to reaffirm the principles of *The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief* which seek to guard the standards of behaviour of NGOs, maintain independence and maximise the effectiveness and impact to which NGOs aspire.

International and national relief and development organisations have long experience and established networks in Afghanistan and are generally better placed to deliver effective assistance. Usually it is less appropriate for the military to directly implement humanitarian activities when humanitarian agencies are present and capable of delivering services.

The NGO Coordination Meeting recommended that:

- The military should focus on those activities in which they have specific competency: maintaining a secure environment in which humanitarian aid can be delivered; providing a reassuring security presence for both the local population and nascent government; training a new multi-ethnic and non-political national army; assisting and monitoring local forces in their efforts to maintain security and assisting in the disposal of unexploded ordnance, landmines and other armaments.

- If international military forces in Afghanistan do go beyond their security remit they should focus on projects where military engineering expertise could be usefully applied in repairing key infrastructure.

- International military forces should act at all times in such a way that a clear distinction is maintained between military and civilian actors.

- Military personnel involved in conducting civil affairs operations should be in uniform and clearly identifiable as soldiers at all times.

- Staff at the highest levels of political and military authorities should understand and acknowledge the potential risk to aid workers (arising from confusion between military and NGO actors) and communicate this understanding down the chain of command.

- Transparency must be maintained in any military involvement in civil affairs operations. Soldiers (and intelligence officers) should in no case claim to be in Afghanistan as 'humanitarian workers'.

The US military has partially accommodated the concerns of the NGO community relating to uniforms. Civil military troops in Kabul and Mazar (but not elsewhere in Afghanistan) are now wearing uniforms.

Tim Morris is one of the Editors of Forced Migration Review.

The British Army's Parachute Regiment on patrol in Kabul, 2002.

Foreign policy considerations in dealing with Afghanistan's refugees: when security and protection collide

by Joanne van Selm

The values of democracy, justice and freedom are stated goals of the foreign policies of Western states. These are the same values that the terrorist attacks of 11 September challenged. They are also the values that should inform refugee protection policies.

In this article I will examine the ways in which foreign policy considerations played a role for Western states and Pakistan in their handling of the potential refugee crisis resulting from the US bombing of Afghanistan and the simultaneous spread of insecurity and unrest within an already war-ravaged country. Defence and security concerns will be seen to have overridden the obligation of refugee protection and to have driven the foreign policies of all the states involved.

Background

After decades of war, millions of Afghans were already refugees in Iran and Pakistan in September 2001. For over a decade (except briefly at the height of the Balkan conflicts) Afghans have topped the list of asylum applicants in Europe. In Pakistan and Iran, the world's largest recipients of refugees each with some 2 million Afghans, the majority of refugees have remained in camps. Many of those who have fled have used smugglers in exhausting journeys to Europe or Australia.

On 20 September 2001, as part of its initial institutional reaction to the terrorist attacks, the European Union's Council of Ministers (Justice and Home Affairs) requested the European Commission to "examine the scope for provisional application of the Council Directive on temporary protection in case special protection arrangements are required within the European Union." The Temporary Protection directive is one of the few agreed since the entry into force of the Amsterdam Treaty and should be triggered if the Member States consider there to be a significant influx into the EU. Clearly, there was little likelihood of such a mass influx of Afghans even if more people started to turn to smugglers. The statement that the EU was ready to receive Afghans was a symbolic foreign policy statement. Realities on the ground ensured that the suggested use of Temporary Protection would not clash either with the general tendency to reject Afghan asylum claims or with domestic security fears attached to the arrival of new Afghan refugees.

Preparations

As UNHCR made plans to house an anticipated 300,000 new refugee arrivals in Pakistan, it became embroiled in difficult negotiations with the Pakistani government. Camp sites offered by the Pakistanis had many disadvantages: proximity to the Afghan border, unsuitable terrain, lack of fresh water and the strong anti-US sentiments of the local population. The actual number of people crossing the border, even in the earliest weeks of US bombardment, was much lower than expected: fewer than 2,000 refugees a day, according to NGO reports. Many slipped across remote, unmanned border crossings. After initial policy fluctuations, Pakistan remained resolute in officially closing border crossings, leading refugees to resort to the use of smugglers to find their way to relative safety in Pakistan. Refugees were reportedly paying $50 a head to smugglers – a significant amount of money for Afghans who have lost everything in years of conflict. Iran similarly acted to limit border crossings, going so far as to deport some 2,000 Afghans during the last months of 2001.

The efforts of UNHCR and others to persuade Afghanistan's neighbours to open their borders were unsuccessful. President Musharraf claimed to fear the arrival of two million new refugees. Pakistan refused to admit the reported 50,000 Afghans gathered on the Afghan side of the border in the eastern province of Paktia. In the days immediately following 11 September the US requested that Pakistan keep the borders closed as a security measure. Not letting anyone out confined not just refugees but also al-Qa'ida to Afghanistan. While the stance had some military and security logic, it flew in the face of human rights concerns. While the terrorists used covert means to cross the borders and regroup, Afghans were refused the right to seek asylum abroad and *refoulement* was implicitly condoned. Many of the men attempting to cross – while Pakistani guards shot wildly into the air above them – were fleeing conscription by the Taliban, yet were deported straight back to Afghanistan.

Myriad questions arise: Why did the security concerns seemingly trump the protection obligations, even in a situation in which the US and its allies knew that al-Qa'ida members could easily cross the frontiers without mingling in refugee flows? Why did British Prime Minister Tony Blair pledge to build "a humanitarian coalition" to match the "political and military coalition" but did not respond to the needs of refugees attempting to flee to Pakistan and Iran? Why did the US and its allies expect Pakistan to shoulder the refugee burden alone? Why did the countries leading the military and political alliance that depended on Pakistani membership and Iranian acquiescence for its viability run the risk of losing support from those states by not stepping in to accept refugees?

Images from the field

These questions become particularly pertinent when contrasted with the different reaction of the same actors when 10,000 Kosovan refugees were prevented from entering Macedonia in April 1999. As images of people trapped in no-man's land and seeking safety on railway tracks were beamed around the world, governments leapt into action. Two programmes were established: the Humanitarian Evacuation Programme which ulti-

mately took more than 90,000 Kosovans to safety abroad and the Humanitarian Transfer Programme which took some 100,000 Kosovans from initial refuge in Macedonia to (slightly) longer-term refuge in Albania before their return to Kosovo. Efforts to restore calm to Macedonia's political landscape were driven by the need to maintain good relations with a nation with NATO bases which would become key staging points for post-intervention peacekeeping missions in Kosovo.

In the case of Afghans trapped on the Pakistan border, the few images that were televised did not make the refugees 'look just like us' in the way the Kosovan Albanians had. Rather than thinking about evacuation programmes, those states already operating regular resettlement programmes in fact cut their programmes significantly in the wake of 11 September (in the US) and public concern at the rate of increased spontaneous arrivals of Afghans (in Australia). For years European governments have portrayed Afghan asylum seekers as invalid claimants of refugee status. Of the 150,000 Afghans who have sought asylum in Europe, only 36,000 have been recognised as refugees. Denials of refugee status have largely been based on the understanding that the Afghans were not fleeing individual persecution on

the grounds contained in the 1951 Convention, or that they were fleeing a non-state actor (the Taliban). Following 11 September, some worried that terrorists might be among the Afghan asylum seekers. In fact, however, none of the 19 hijackers nor any of their suspected accomplices appear to have applied for asylum at any point in Europe or North America.

Was the UN prepared?

In the case of Kosovo, UNHCR was stung by criticism that it had only prepared for 100,000 displaced persons, whereas a million people crossed the borders of Kosovo in just a matter of weeks. In the case of Afghanistan after 11 September, UNHCR had established contingency plans for 300-400,000 arrivals. In fact, from 11 September to 29 October only some 80,000 people crossed the borders into Pakistan, very few of them registering at UNHCR's 15 new staging camps to receive international aid. Most blended into existing camps or simply disappeared into the existing Afghan society in Pakistan. Some reports suggested that UNHCR was confused about which refugees were where, indicating that recommendations on registration and management highlighted in the independent Kosovo evaluation might not have been acted upon.

Refugees from Kosovo, 1999.

By 6 November, 135,000 had crossed the frontiers, still less than half UNHCR's contingency figure. Many tens of thousands more had been displaced within Afghanistan, leaving the local workers of international agencies scrambling to use those supplies which were on hand and which survived US bombing.

Where are the refugees?

In the absence of photogenic images, public pressure for moves to protect refugees in Pakistan was lacking. Seemingly UNHCR was prepared and more or less coping. Whereas Macedonia had been urged to open its borders in order to prevent human suffering, Pakistan was permitted to keep its border closed. While the West maintained a diplomatic silence on the issue of the closed borders, there was probably private relief among political leaders well aware that in the eyes of their own public fear of terrorists far outweighed sympathy for refugees.

An unnamed UNHCR worker was cited in a Dutch newspaper as saying: "Why are all these politicians visiting Pakistan now? It doesn't help anything. We are still the only ones who are screaming that the border between Afghanistan and Pakistan must be opened, and opened now." While visiting leaders such as Dutch Prime Minister Wim Kok claimed that the refugees would cross the border regardless of its closure if they really needed to, the reality was that few people were crossing. They clearly feared the consequences of trying to do so: the uncertainty of their reception and the bleak prospect of returning to refugee camps which

many had left earlier in order to return to Afghanistan.

Who risks what?

In 1999 NATO risked losing the support of Macedonia for its military intervention in order to assist refugees. In the case of Pakistan, however, the loss of a strategic military ally was a risk the West was not prepared to take. Had the humanitarian suffering been so great that Pakistan asked for help, the allies might have had to respond. Islamabad, however, seemed embarrassed at the prospect of requesting help, fearing that acknowledgement of a crisis could add to domestic instability. General Musharraf's regime was caught in a dilemma. It could not handle a massive refugee flow nor the added opposition to its controversial alliance with the US that an enhanced refugee presence would bring. Neither did it want to be blamed for a humanitarian disaster. The solution was to minimally release the tension on the border by allowing through a few people without ever advertising the fact and thus opening the floodgates. The government knew that it was not in its interests to let the Pakistani people know just how many people UNHCR could not account for as they had disappeared into existing camps or gone to live with relatives.

The US and its allies needed Pakistan, Iran and other states bordering Afghanistan in the initial stages of their fight against global terrorism. Driven by geo-political and strategic concerns, they could not afford to see any friendly or willing ally turn against them. It would have been

foolish to lose the support of such states because they were feeling over-burdened by the presence of massive refugee populations and saw the West shirking its responsibility of refugee protection. The US and its allies were not concerned enough to protest at the border closures, nor to advertise the consequences to the general public in the West.

In his address to a Joint Session of Congress on 20 September 2001 President Bush starkly stated: "Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists." It seems that some states have understood being with the US as implying that they must avoid being even passively involved in humanitarian crises which could be a source of political embarrassment at a sensitive moment. This misunderstanding can even lead states (such as Pakistan) to avoid making requests for assistance in meeting their international obligations to protect refugees. We should be wary of accepting the creation of a world in which free, democratic and humanitarian states turn their back on their principles and reject like-minded people from their societies. While strategy and defence might require sacrifices, the principles of access to asylum and *non-refoulement* are surely too high a price to pay – and lead us away from the democratic, free and just world the war on terror claims to be protecting.

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1 Conclusions adopted by the Council (Justice and Home Affairs) Brussels, 20 September 2001, SN 3926/6/01 REV 6, paragraph 30

2 Human Rights Watch *Closed Door Policy: Afghan Refugees in Pakistan and Iran*, Vol 14 No 2 (G), February 2002, http://hrw.org/reports/2002/pakistan/index.htm p23.

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4 Matthew J Gibney 'Kosovo and beyond: popular and unpopular refugees', *Forced Migration Review,* issue 5, pp28-30.

5 'The Kosovo refugee crisis: an independent evaluation of UNHCR's emergency preparedness and response', UNHCR, February 2000.

6 Frank Poorthuis 'Wel even slikken, de mensen willen de grans over' (Hard to swallow, the people want to cross the border), *De Volkskrant*, 29 October 2001 [author's translation].

Border crossing near Quetta, 2002.

Andes Press Agency/Carlos Reyes

Receiving Afghanistan's asylum seekers: Australia, the Tampa 'Crisis' and refugee protection

by William Maley

On 22 January 2002, the Chairman of the government-appointed Council for Multicultural Australia, Neville Roach, resigned his position. In a newspaper article three days later, this prominent and highly-respected businessman explained why he had taken such a dramatic step, which made headlines right around the country. "If an adviser", he wrote, "is faced with a government that has locked itself into a position that is completely inflexible, the opportunity to add value disappears". The asylum seeker controversy, he went on, "has unquestionably done serious damage to Australia's multicultural fabric". He appeared particularly distressed at the perverse operation of Australia's new 'Temporary Protection Visa' regime for refugees who had arrived without documentation, and argued that "compassion seems to have been thrown out the door".
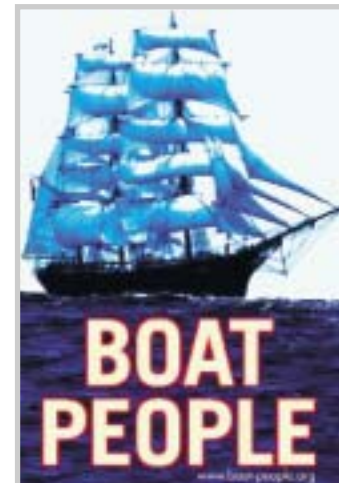
The context of this blast was the furore which resulted from the so-called 'Tampa Affair', an episode which exposed a range of important tensions in the international refugee protection regime. In August 2001 the Norwegian freighter *MV Tampa* rescued a large group of refugees, the bulk of them of Afghan Hazara origin, from a sinking vessel in the waters between Indonesia and Australia. With an eye to the opinion polls, the Australian government under Prime Minister John Howard had sought to deny the *Tampa* permission to enter Australian territorial waters, a move hauntingly reminiscent of the June 1939 rejection by Cuba of Jewish refugees on the St Louis, a vessel subsequently forced to return to Europe – the so-called 'Voyage of the Damned'. Fearing for the well-being of the 434 rescued persons aboard, the *Tampa's* captain sailed into Australian waters around Christmas Island only to have his vessel boarded by Australian commandos. After a standoff, it was

announced that the government of the tiny Pacific nation of Nauru, a state not party to the 1951 Convention, had agreed to the processing of asylum claims on its soil. Nauru's agreement was secured with a large aid package, including payment of the unpaid Australian hospital bills of certain Nauruan citizens.

Buoyed by the outcome of the Tampa Affair and trumpeting the merits of its 'Pacific solution' to the problem of uninvited asylum seekers, the Howard government was returned to office in a general election in November 2001. The government's nationalistic election campaign was dominated by denunciations of 'people smuggling', assertions that it alone would determine who could enter Australia, uncorroborated insinuations that 'terrorists' might be seeking to enter Australia by boat in the guise of refugees, and ministerial allegations (grudgingly retracted after the election) that certain 'boat people' had sought to throw their children into the sea as a way of engaging Australia's protection obligations under international law. Seeking to link itself to the US 'War on Terrorism' in the wake of the 11 September attacks, the government even committed Australian ground troops to support the campaign in Afghanistan against Osama Bin Laden's al-Qa'ida and the Taliban. The irony of its joining an attack on the Taliban while anathematising refugees fleeing from Taliban-dominated territories was largely lost on the Australian public, although not on all observers.

The difficulties of the situation in Afghanistan and the dire circumstances which may have prompted asylum seekers to have recourse to the services offered by people smugglers received scant attention from Australia's mainstream political parties – the Liberal Party and the

National Party, which made up the country's ruling coalition, and the opposition Australian Labor Party – and it was left to minor parties, such as the Australian Democrats and the Greens, to proffer a more nuanced account of the factors underpinning forced migration to Australia. Nonetheless, there are a number of implications of these events which

Logo of refugee information organisation reminding all non-indigenous Australians that they too are boat people.

deserve to be highlighted as part of the ongoing debates over refugee protection, durable solutions to refugee problems and the nature and content of state sovereignty.

Domestic politics

One danger is that developed countries may seek to use refugee resettlement as a means of evading their specific refugee protection responsibilities. Australia ratified the 1951 Convention in 1954 and its 1967 Protocol in 1973. The key obligations under these instruments relate to refugees who arrive in the territory of a party to the Convention, irrespective of their means of arrival. The resettlement of refugees from other territories is a voluntary measure which states **may** undertake but is not an obligation of parties to the Convention itself. Yet the Australian government repeatedly sought to

justify its actions by describing those who arrived with the help of smugglers as 'queue jumpers' who by their actions had compromised Australia's ability to help the 'neediest' refugees. The claim was spurious on three grounds.

First, the government was able to commit itself to making available the same number of notional places to UNHCR for refugee resettlement, namely 4,000, as in previous years; cuts in the numbers of humanitarian resettlement visas – cuts driven by budgetary priorities but ultimately of a discretionary character – were not made in **refugee** places. This was scant comfort to Afghans, since an ordinary Afghan's chance of even securing an interview with one of UNHCR's overworked protection officers in Pakistan was extremely slim, but it showed that the claim that 'boat people' were hurting 'needier' people was hollow. Cuts came in the so-called Special Humanitarian Programme, for which applicants require sponsors in Australia but need not be Convention refugees.

Second, because the Hazaras (a Shiite minority which had long experienced discrimination and was viciously persecuted by the Taliban) were under-represented in Australia's Afghan community, they were particularly poorly placed to secure sponsorships and were thus effectively denied access to the Special Humanitarian Programme. It is no wonder that they made up the majority of Afghan boat arrivals and that the vast majority were found to be 'Convention' refugees.

the resettlement programme offered not "a place in a queue but a ticket in a lottery"

Finally, Australia's 'offshore' resettlement programme was skewed to match Australia's interests rather than those of needy refugees (even using medical screening to exclude disabled refugees whose conditions would be expensive to manage). A Refugee Council of Australia study concluded that the resettlement programme offered not "a place in a queue but a ticket in a lottery". It is hardly surprising that people smuggling flourished and actually drove the proportion of 'Convention' refugees within Australia's overall 'Humanitarian' Programme to an all-time high.

Domestic political considerations can all too easily overwhelm international obligations when the two appear to conflict sharply, and the prospects of short-term gains are likely to prove alluring, even when long-term costs may be considerable. The UN High Commissioner for Refugees, Ruud Lubbers, warned against this: "Asylum seekers have become a campaign issue in various recent and upcoming election battles, with governments and opposition parties vying to appear toughest on the 'bogus' asylum seekers 'flooding' into their countries ... Genuine refugees should not become victims yet again. Surely, there are other ways to win elections." Discussing Australia's attempts to exclude 'boat people', he pointedly observed that we need to "go for the law and not the law of the jungle".

Sovereignty and paranoia

Claims of sovereignty can all too easily be used as a rhetorical device to minimise the force of international obligations. Here, there are two broad observations which are of some pertinence.

Committing one's state to observe certain norms of international law is itself a manifestation of sovereign capacity. For this reason, Australia's responsibilities under the 1951 Convention (and indeed those of any state under any treaty or convention which it voluntarily accepts) are not a limitation of its sovereign capacities but rather a reflection of sovereign capacity in action. Nor is it a valid claim that the Convention is not working as it was intended in 1951; the claim which this argument masks is actually that more people now fall within the definition of refugee in the 1951 Convention than expected by those states which drafted it. But if this is a problem, it is not the fault of the Convention and still less of refugees: it reflects rather the limitations which states, for political reasons, would like to be able to set on the ambit of their compassion. "Four or five thousand people a year, many of them women and children, offer no threat to the sovereignty of Australia", wrote former Liberal Prime Minister Malcolm Fraser in February 2002.

The second observation is that the claim that the ability to control population movements is an essential, sovereign state capacity is ahistorical, especially if one traces the origins of the modern state system to the Peace of Westphalia of 1648. Passports and visas are markedly more recent in provenance and cannot claim the sanctification of use since time immemorial. Just as visa controls were used in the 1930s in an attempt to block movements of European Jews from Germany and other states threatened by Nazism, so visa controls in more recent years have been used to block Afghans from making asylum applications in Western countries, forcing them to use the services of people smugglers.

Furthermore, paranoia over 'people smuggling', whether at mass or élite level, can prompt countermeasures which are arguably more degrading for a liberal democracy than any steps which smugglers might take. They also involve a high degree of hypocrisy for, as Sir Michael Dummett has recently argued, the "combination of harsh laws to restrict immigration and the drastic measures to prevent refugees from arriving frequently means that people fleeing terrifying or intolerable conditions have no other way of escaping: the blame for the existence of these reviled traffickers in human beings lies largely with the governments that have erected the barriers the traffickers are helping frightened people to circumvent." Australia's policy of mandatory detention for undocumented arrivals has seen refugees from Afghanistan held in stressful conditions in remote camps (such as the notorious Woomera detention centre, in which most Afghans are held) where the temperatures of the surrounding desert match the explosive power of the mood of despair which dehumanisation and uncertainty can produce.

To deter other refugees from approaching Australia, the government has been prepared to add to the pre-existing traumas of those who do. It is not the least surprising that the result has been suicide attempts, hunger strikes, and rampaging by those who feel that they are deliberately being treated as the scum of the earth. "What is happening in Woomera today", argued UNHCR spokesman Kris Janowski in January 2002 as another spate of disturbances made world headlines, "is a very graphic

illustration of how detention can go wrong."

Delusions

Governments may be ludicrously – and in some cases almost criminally – sanguine about the prospect that refugees will be able to return safely to their homelands after only a brief period of temporary protection. In certain strictly circumscribed cases, where a short-term threat to refugees' well-being can be rapidly crushed, temporary protection may be appropriate. Can Afghan Hazaras safely return to Afghanistan? The Australian government suggested just that in January 2002 but to informed observers the claim was as insensitive as would have been a suggestion in May 1945 that the time was ripe for German Jews to be returned to Germany. There is no doubt that, with the fall of the Taliban and the installation on 22 December of Afghanistan's new Interim Authority, the country has turned an important corner. Its prospects are brighter now than for almost two decades. There is, however, a world of difference between the commencement of a transition process and the final institutionalisation of new political structures, a

process which takes years rather than months. The assurances given by the Interim Authority as to the safety of returnees are little more than statements of goodwill: the Authority is in no position to guarantee their security. And at the moment there is no international security force in the Hazarajat region from which the bulk of Hazara refugees originate, and little likelihood that one will be deployed there soon.

What all these problems reflect is a rigid way of viewing the world and an inability to recognise that human affairs are irreducibly complex. And it stands in stark contrast to the perspective of Sir Robert Menzies, founder of the Liberal Party and Australia's longest serving Prime Minister. In 1949, Menzies led the opposition in Parliament to the removal of a wartime refugee. Policy in this area, Menzies argued, "must be applied by a sensible administration, neither rigid nor peremptory but wise, exercising judgment on individual cases, always remembering the basic principle but always understanding that harsh administration never yet improved any law but only impaired it, and that notoriously harsh administration raises up to any law hostilities that may some

day destroy it." His successors have forgotten these wise words, if indeed they ever bothered to read them.

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1 Neville Roach 'Leadership minus compassion is tearing us apart', *The Sydney Morning Herald*, 25 January 2002.

2 Refugee Council of Australia *The Size and Composition of the 2000-2001 Humanitarian Program: Views from the Community Sector*, Refugee Council of Australia, 2000, p53.

3 See Ruud Lubbers 'Don't kick refugees just to score points: Politicians who demonise asylum seekers are playing with people's lives', *The Australian,* 20 June 2001; Refugees, vol 4, no 125, p31.

4 Malcolm Fraser 'Inhumane mood betrays the golden rule', *The Sydney Morning Herald*, 5 February 2002.

5 Michael Dummett *On Immigration and Refugees*, Routlege, 2001, p44.

6 BBC *World Television News,* 29 January 2002.

7 *Commonwealth of Australia House of Representatives Hansard*, 9 February 1949, p68.

Afghan refugees in Europe

by A-R Faquiri

The tragedy of 11 September became a turning point in the history of a country thousands of kilometres away from New York, a nation with no direct involvement in what had happened to the Twin Towers.

Afghanistan deserved recognition for its role in the fall of the repressive Soviet empire. Instead, it became the biggest producer of drugs in the world and the centre of command and training for Islamic fundamentalist terrorists. The Taliban acted more as the Afghan branch of al-Qa'ida than the government of Afghanistan. The reluctance of the Taliban leadership to hand over Bin Laden and his lieutenants to the US government reflected the subordinate position of the Taliban to al-Qa'ida. The first victim of this state of affairs was the population of Afghanistan.

there is only peace in daylight

The defeat of the Taliban and the dismantling of al-Qa'ida have been achieved, more or less, in Afghanistan. However, another kind of Islamic fundamentalism has returned to power. The so-called Mujahed groups, driven from power by the Taliban, have come back to try to re-establish their ideal Islamic state. The experience of the period between 1992 and 1996 shows that this Islamic state would offer the Afghan people only anarchy, corruption and repression. Unfortunately Jehadi groups surround the Interim Authority installed by the UN in Kabul. Their presence leaves little space for independent technocrats to do their jobs properly. Even in the capital, Kabul, there is only peace in daylight. At night, when the foreign peacekeeping troops go back to their bases, misuse of power, repression and criminality rule in the city.

Such fundamentalist parties as Jamiat-I-Islami of ex-president Rabani and the Etehad-I-Islami of Professor Saiaf are preparing themselves for a gradual cleansing of the liberal members of the Karzai administration. This cleansing has already started with the killing of Abdul Rahman, Minister for Aviation, at Kabul airport in February 2002.

Many Afghans who have travelled to Afghanistan since the fall of the Taliban have already returned once more to Europe, demotivated after searching for an opportunity to take part in their country's reconstruction. Some returnees have been killed or abducted. Despite the still uncertain situation, immigration authorities in various European countries have started to talk about voluntary and even forced return of Afghan refugees to Afghanistan. The British Home Secretary has called on Afghan refugees in the UK to return to take part in reconstruction. Other countries have already taken measures to contain the growth of the number of Afghan refugees.

The Dutch authorities appear keen to remove the 30,000 Afghan refugees and asylum seekers in the Netherlands. In October 2001 the Dutch Immigration Service stopped making decisions on Afghan asylum applications in order to prevent the issuance of residence documents to Afghans who, some weeks later, might be considered eligible for deportation. In late December, when the Taliban regime had lost power, the immigration authorities asked the Dutch cabinet and parliament to approve the cessation of normal adjudication procedures relating to Afghan asylum claims. It was agreed to freeze decisions on new and existing claims and allow the Immigration Service a period of up to a year to make decisions.

According to the new Dutch Law on Foreigners, an asylum seeker's claim should be assessed within six months of the application being lodged. If, after acceptance, they have been legally in the Netherlands for three years, and if their country of origin is not safe for their return at the end of that three-year period, they should be granted permanent residence. Afghans who would have become eligible for this kind of permanent residence if their claims had been handled and accepted during the period since October 2001 are now being asked to wait an unspecified period of time for the granting of their legal rights.

The Dutch Ministry of Justice seems to hope that at the end of this period the situation in Afghanistan will be sufficiently safe to enable Afghans' asylum applications to be rejected. It is hard to believe, however, that the security problems of Afghanistan will be solved so speedily. The lives of thousands of Afghan refugees might be at risk if they were sent back. The Secretary of State for Justice, Ella Kalsbeek, has said that she is developing policy on the return of Afghans and hinted that later forced returns might take place. Mrs Kalsbeek's words have greatly alarmed Afghan refugees.

In the Netherlands, as elsewhere in Europe, Afghan refugees and asylum seekers fear for their prospects. It is hard to say whether there will be a future for those returning from exile. Let us hope that European leaders will carefully study the situation on the ground in Afghanistan before judging whether it is safe for Afghan asylum seekers to return.

A-R Faquiri is Vice-Chairman of the Federation of Afghan Refugees in Europe (FAROE).

US Committee for Refugees

Afghanistan and the challenges of humanitarian action in time of war

by Roberta Cohen

ICRC/Franco Pagetti

In Afghanistan, unlike in most other humanitarian emergencies, the international community's focus, in the wake of the events of 11 September, was on those at risk inside the country.

This was a welcome change, sharply contrasting with the international response in Kosovo or Rwanda where the lion's share of international aid and attention went to those fleeing the country, while those left inside basically remained unaided and unprotected until the war was over.

Three major reasons accounted for this shift. To begin with, there was an enormous humanitarian crisis looming inside the country that could not be overlooked – up to 6 million people were at risk of starvation. Although the threat of famine predated 11 September, the departure of international humanitarian staff prior to the US bombing made the situation more urgent. Second, the massive refugee flows that had been predicted in response to the US bombing campaign did not materialise. With the sealing of the Pakistani and Iranian borders, and Taliban restrictions on

departure, no more than 200,000 people were able to flee the country from 7 October until the end of the year. This closing of the refugee steam valve had the effect of shifting attention to the people inside. Third and most decisive, the US and its Western allies made humanitarian aid to those inside the country a substantial component of their military-political strategy, in an effort to demonstrate that the war on terrorism was not a war against Islam or against the people of Afghanistan.

But protecting and assisting people inside Afghanistan was to be no easy task. The political will was not always there, international mechanisms were not in place, and there were clashes among the actors, which resulted in uneasy compromises that at times undermined the overall result. A brief look at some of the challenges should prove instructive.

Tensions between refugee and IDP protection

ICRC depot near Kabul airport.

When the US military campaign began, UN agencies predicted that between one to two million Afghans would flee the country and become refugees. It did not happen. Neighbouring countries closed their borders and the Taliban blocked mass movements, especially of young men. Only people with the physical strength and resources to hire trucks or donkeys, cross difficult mountain passes and bribe border guards managed to get out – a total of 200,000, mostly to Pakistan. The result was that the number of IDPs within Afghanistan soared from 1.15 million prior to 11 September to up to 2 million. Large numbers of these IDPs risked starvation in camps and settlements where there was little or no food or medicine, where conditions were unsanitary, and where people had to dig holes in the ground for shelter. Armed elements, too, entered IDP camps, where young men were forcibly conscripted and violence was reported, especially against women. As one international aid official observed: "People who can't leave the country are ... much worse off than

those at refugee camps outside Afghanistan ... The number of internally displaced persons, or IDPs, who are facing death must have already reached 1.1 million." [1]

While UNHCR attended to the needs of refugees, there was no operational locus of activity for the IDPs. A range of international organisations, the World Food Programme (WFP), the International Committee of the Red Cross (ICRC), UNICEF, the International Organisation for Migration (IOM) and a number of NGOs, did their utmost from outside the country to bring food and medicines to those inside Afghanistan despite the bombing campaign and the war on the ground. Local staff and NGOs valiantly worked with them, distributing relief supplies when they could to those at risk of starvation and disease. But overall, as in so

the internally displaced had no champion on the ground.

many other humanitarian crises, there was no centralised or comprehensive monitoring of IDP conditions, assessment of their needs, or development of strategies for protecting and assisting them. In short, the internally displaced had no champion on the ground, especially in the area of protection.

The explanation lies at UN headquarters. Following debilitating turf battles among humanitarian agencies in 2001, the UN Secretary-General reaffirmed, at the behest of donor governments and many agencies, that no one agency would be in charge of IDPs. Although UNHCR had been proposed as a suitable candidate to assume this global responsibility, it was decided instead that the Office for the Coordination of Humanitarian Affairs (OCHA), the UN's officially designated coordinator of relief, would remain the UN's focal point on IDPs. To help it perform more effectively, the Secretary-General approved the creation of a special IDP Unit. But this new Unit was not to come into being until January 2002, well after the Afghan emergency began. Given the vacuum of responsibility and the fact that neither OCHA nor its Unit was operational, UNHCR requested authorisation to assume a 'lead' operational role in Afghanistan for refugees, IDPs and other war-affected populations. But the request was not

considered until after the war was over, UNHCR being encouraged instead to 'go back to basics' and focus primarily on refugee protection.

Accordingly, throughout the entire period of the war, UNHCR stuck close to its mandate and provided protection and assistance mainly to refugees. To its credit, UNHCR did authorise the trucking of some needed supplies into the overcrowded and desperate IDP camps near the Pakistan and Iranian borders but it declined to work directly in these camps or set up new ones. It cited both security concerns and the fear that such involvement could impede refugee flows. Nor did it assume a strong advocacy role for these or other IDPs despite the protection problems reported in the camps. Stung by criticism of too much overall involvement with IDPs, faulted for being ill-prepared during the Kosovo emergency (when refugees needed attention), and influenced by those at headquarters who supported a more narrow focus, UNHCR staff insisted that the best protection for those at risk inside Afghanistan was 'open borders'.

But 'open borders' was hardly a practical solution at a time when all six neighbouring governments were adamantly keeping their borders closed on security grounds and the US largely supported the closure. To be sure, Pakistan at times acceded to pressure and allowed in 'vulnerable' cases but basically it made quite clear that it could not absorb more Afghan refugees. Both it and Iran already housed nearly four million Afghans from earlier times and feared the international community would pack up, as it did when the Soviets withdrew, and once again leave them with enormous refugee populations to care for on their own.

Pressing for open borders against all odds, as most refugee and human rights advocates did, also had the effect of diminishing the energy that should have been directed toward developing strategies to try to protect the physical safety of the millions trapped inside. Remarkably little attention, for example, was paid to the possibility of creating safe areas in different parts of the country to protect IDPs and other affected populations, as the Taliban withdrew.

Either the Srebrenica trauma was raised to discourage this idea or it was pointed out that malnourished people would be in danger if they moved into unsanitary camps and contracted disease. But hundreds of thousands did just that, moving into camps in different parts of the country even though they were largely unaided and unprotected there. What, after all, did anyone expect Afghans to do when food supplies ran out at home, bombs began falling and fighting intensified? According to one military specialist, each safe area would have required 1,000 to 3,000 troops to assure adequate protection, and a number of countries might have helped.[2] But neither safe areas nor other comparable ideas were given serious consideration. Had the war not ended so quickly, this peremptory dismissal of safe havens could well have condemned many Afghans to death.

Now more than ever, comprehensive strategies are needed to protect and assist both the refugees and IDPs who are beginning to return home. Given the inter-ethnic conflicts in the country, possible reprisal acts and overall insecurity, UNHCR because of its protection mandate should be encouraged to play the central role in the return process both for refugees and IDPs. In neighbouring Tajikistan, from 1993 to 1995, UNHCR played the lead role in accompanying returning IDPs and refugees to their home areas, monitoring conditions in these areas, advocating with local authorities and groups on their behalf where there was harassment or other human rights abuse, even helping them go to court in property dispute cases. Such engagement should take place in Afghanistan as well. Unfortunately (as of time of writing – mid March), the UN has not yet decided to assign UNHCR overall responsibility for the return of refugees and IDPs. The returnees, moreover, are being provided with food, clothing and building materials but the protection of their physical safety and human rights is not being given the attention it warrants.

What is needed is the deployment of UNHCR protection staff in areas of return supported by field staff of the Office of the UN High Commissioner for Human Rights, and the formation of 'protection working groups' so that different international organisations, NGOs, civil society, and the new government can be brought together on a

regular basis to examine protection problems and design strategies to try to address them.

The uneasy military/humanitarian relationship

Many in the humanitarian world argue that a clear separation of roles should be maintained in emergencies between humanitarian actors and military forces, especially when the forces are belligerents in the conflict. But for the United States, in its war in Afghanistan, military and humanitarian goals basically converged. To make more palatable its military campaign against al-Qa'ida and its Taliban supporters, the US sought to win the 'hearts and minds' of the people of Afghanistan and of the Islamic world initially by airlifting food packets into the country to stave off impending starvation. It was a public relations ploy but it resulted in 2.5 million readymade meals being dropped into remote areas of the country over a two-month period.

For much of the humanitarian community, however, this 'dropping of food and dropping of bombs at the same time' constituted heresy. Major aid agencies countered that humanitarian action must be neutral, impartial and non-political, and 'led by civilians for civilians'. Unless sharply delineated from military operations, the independence and credibility of the aid would be compromised. Of course, the dropping of food packets from 20,000 feet without monitoring their distribution to the needy was hardly a strategy that humanitarians could be expected to sign onto. It was risky – it could attract people to a site where they would be unprotected or where the food could be diverted. And it only provided one meal, or less than 1% of the estimated overall food needs. But at a time when all international relief workers had to leave Afghanistan, when local staff were being harassed, and most overland convoys could not get through, the airdrop constituted one of the few alternatives available to reach isolated areas. To a hungry person in Afghanistan, moreover, it could have hardly mattered whether the meal came from a civilian or military source. The humanitarian community's orthodox insistence upon the civilian character of aid had the effect of putting it into the unseemly position of begrudging food to people in areas of widespread malnutrition.

*Humanitarian and security interests…
in many instances converge.*

The same reservations about the military's role surfaced in the Kosovo crisis. By its own admission, the humanitarian community was unprepared to provide adequate shelter for the hundreds of thousands of refugees streaming into Macedonia and Albania. Yet it experienced great discomfort when NATO stepped in to build the refugee camps, set up the needed tents and provide camp security. The relief community argued that NATO's action would undermine UNHCR's claim to impartiality and neutrality, make the camps into military targets and jeopardise relationships with the Belgrade authorities.

These are legitimate concerns but maintaining the complete independence of humanitarian action in all circumstances is probably not possible and in some cases could prove perilous to the populations the international community is trying to protect. A more realistic approach would be to create at the outset of each emergency a framework to foster better communication between humanitarian and military actors. A post-conflict evaluation commissioned by UNHCR acknowledges that the agency might have been better prepared had it engaged in joint contingency planning with NATO.[3] Humanitarian and security interests, after all, in many instances converge. Joint planning and strategising could go a long way toward ensuring that the humanitarian consequences of military strategy are more easily anticipated and better dealt with by both parties; and in particular, that there is coordination between air strikes and food deliveries so that

supply convoys and routes can be protected and the military alerted to famine areas where food must get through.

In Afghanistan, such collaboration did take place, especially when the Taliban began to be routed. Joint airlifts of food were planned, although in the end they were not needed. Relief agencies, led by WFP, with Western military and political support, aggressively managed to position millions of metric tons of food in the countries surrounding Afghanistan and then to truck it into the country and thereby largely avert the widespread famine predicted.

But the Afghanistan crisis also revealed the dangers of too much cooperation between humanitarian and military actors. The joint pronouncement in January by WFP and the US government that they had averted famine in the country seemed largely designed to prove that the US bombing campaign had not brought on starvation; rather the US and its partner, WFP, had saved the Afghan people.[4] To be sure, WFP's work deserves commendation but the assessment was overly optimistic and pointed up the danger when governments conducting military operations are the main funders of the relief operation. At the time of the announcement, serious food security and protection problems still plagued the country: about 100 internally displaced children and elderly people were reported to be dying each day from starvation and exposure outside Herat;[5] little or no food was reaching the people in and around Kandahar; in Jalalabad and Mazar-e-Sharif, local warlords were stealing the food destined for the hungry; and in other areas pockets of the country remained inaccessible to aid agencies and malnutrition was reported on the rise. For the US Committee for Refugees, Save the Children and other aid agencies, the humanitarian crisis remained quite 'acute'. If famine had been averted, they countered, it was for "two months – no more".[6]

Another area of controversy between the humanitarian community and the military was the bombing campaign itself. Although most accepted the fact that the US had to respond with force to the attack on the World Trade Centre and the Pentagon, some non-

Andes Press Agency/Carlos Reyes

governmental groups and UN officials expressed opposition to the daily bombing and called for a 'pause' to enable food to be delivered. Others drew attention to the number of civilian casualties. The US of course had a serious interest in avoiding civilian casualties and tried hard to confine its attacks to military targets. But the casualties nonetheless mounted. Whereas some put the total in the hundreds, others claimed it to be in the thousands. Public and private protests, however, diminished substantially when victory was rapid and it became clear that so many Afghans welcomed the overthrow of the Taliban regime. Nonetheless, subsequent erroneous bombing and land attacks by US forces against innocent civilians pointed up the need for continued monitoring by human rights and humanitarian groups of military actions with a view to pressing the military to investigate the incidents and take greater precautions. The mil-

itary's dropping of cluster bombs, many of which reportedly remain unexploded and pose a threat to the civilian Afghan population, is another sore point being examined by human rights organisations, which consider such weapons to be an illegitimate use of force.

Debate over an International Security Force

The need for a multinational security force to protect relief supplies, relief workers and civilians became apparent when Taliban rule collapsed and large parts of Afghanistan succumbed to banditry and lawlessness. In the absence of a government, army, police force or judicial system, armed groups, sometimes aligned with Northern Alliance warlords or retreating Taliban, took over critical supply routes, attacked aid convoys, sacked and occupied aid offices and warehouses, harassed and beat up relief

Camp for IDPs near Mazar-e-Sharif, 2002.

workers and engaged in inter-factional fighting. Indeed, in mid-December, international relief agencies could not safely distribute much of the food they had positioned in Afghanistan and neighbouring countries to feed millions of hungry people.

Security and protection of civilians remain the most critical problems confronting post-war Afghanistan.

If the military and humanitarian goals of the US converged at different times during the Afghan campaign, when it came to creating an international security force to facilitate food deliveries and protect Afghan civilians this convergence came to an end. The Pentagon actively blocked the creation of an effective international force on the grounds that it would distract from its overall military purpose of defeating Osama bin Laden and al-Qa'ida. Paralysed by the trauma of Somalia, the US also argued that international troops would become targets of attack with US forces compelled to come to their rescue, resulting in casualties.

This fear of becoming bogged down in 'nation building' led Defence Secretary Donald Rumsfeld to downplay the deteriorating humanitarian and security situation in the country, likening the "fighting and lawlessness" in Afghanistan to the situation "in some American cities as well".[7] Because the US relied heavily on the Northern Alliance to do most of the fighting, it further minimised the fact that much of the looting and threats to aid workers took place in areas controlled by Alliance forces. For their part, members of the Northern Alliance opposed the stationing of large numbers of foreign troops in Afghanistan, fearing their authority would be undercut. They proposed instead an all-Afghan security force but clearly it could not be assembled in time; nor could the inter-factional rivalries obstructing its formation be overcome quickly enough.

The UN-authorised international force that did come into being in January (the International Security Assistance Force) was neither large enough nor with a broad enough mandate to be effective. Confined to Kabul, the capital, to protect the newly formed government, consideration of any expansion into other areas was postponed and no more than 4,500 troops could be deployed. The result was continued lack of security throughout large parts of the country, including the roads leading into Kabul. Food and supplies could not reach many areas, refugees and internally displaced persons were hesitating to return home, and large-scale reconstruction and development could be planned but not carried out.

The deployment of a more effective international force would lend authority to the new central government by enabling it to rule the entire country while a national army and police are created, deter criminal elements now emboldened by the absence of military presence, and show the seriousness of the international community in bringing stability to Afghanistan. Such a force clearly is needed to guard key roads, bridges and warehouses throughout the country; accompany and protect relief convoys and humanitarian workers; defend civilians in major cities from indiscriminate and unwarranted attacks; deter inter-factional fighting; and create the environment necessary for the return of millions of internally displaced persons and refugees.

At the end of January, Afghanistan's new President publicly appealed to the UN for an expanded international security force and indicated that the government and a lot of Afghan people supported the expansion. UN officials and aid agencies expressed similar sentiments. So far, however, the political will does not appear to exist to meet this call, largely because of opposition by senior US Defence Department officials.

Conclusion

Security and protection of civilians remain the most critical problems confronting post-war Afghanistan. No amount of food or supplies can substitute for addressing this basic need. To be sure, during the emergency, international agencies, non-governmental groups and local staff displayed remarkable energy and courage in their efforts to ensure that starvation and disease did not overcome large numbers of people inside the country. The US military joined in this effort, having a distinct interest in showing that its campaign was not against the Afghan people. But the international focus on providing food, medicine and shelter was not matched by any comparable initiative to provide security and safety to those trapped inside. Even as the war came to an end, the long delay in setting up an international security force and the limited mandate given to it demonstrated once again that the now accepted international responsibility to avert starvation still does not extend to protecting the physical safety and human rights of people inside their national borders. Yet the future direction of Afghanistan will be determined largely by how the international community deals with this protection gap. It remains one of the most serious shortfalls in international efforts to address humanitarian crises.

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Reinvigorating resettlement: changing realities demand changed approaches

by John Fredriksson

The events of 11 September 2001 had unexpected repercussions for refugees in far away places. Most dramatic of all was the refocusing of international attention on the plight of the Afghan people.

With a new interim government in place, over 3.5 million Afghan refugees in Iran and Pakistan now have hope that they may be able to return and rebuild their homes and communities.

Other refugees, however, have once again had their lives put on hold. The lucky few who had secured a place on the limited resettlement programmes of Western states saw their futures endangered as airline flights on and after 11 September were cancelled and diverted. The US shut down its programme (by far the world's largest) soon after 11 September, stranding over 22,000 refugees who had already been approved for entry. The US resettlement programme has come under intense scrutiny, just as increased security measures and border enforcement efforts have also further restricted access to asylum. This was in fact the only US migration programme completely shut down for months as visas for business travellers, tourists, students and other legal immigrants continued to be issued. By the end of December 2001, fewer than 800 refugees had arrived in the US, out of a projected 14,000 for the quarter of the 'resettlement year' starting in October. In 2002 resettlement to the US will probably fall below 45,000 admissions, the lowest in more than 23 years.

Resettlement had fallen during the 1990s out of favour in many states. In the aftermath of the tragic events of 11 September, it may prove to be one of the most useful tools in the protection kit.

What is resettlement?

Resettlement means many different things to different people. To some, it is a narrow and limited activity reserved for the most dramatic cases of human rights violations and severely traumatised persons. To others, resettlement is an inherent right of individuals who seek protection (ie you are a refugee, *ergo* you should be resettled).

Resettlement is part of the protection mandate of UNHCR. UNHCR is mandated to provide international protection to refugees when governments fail and individuals and families are at risk. UNHCR is charged to seek durable solutions to the plight of refugees, either through voluntary return when conditions permit, local integration in the host country, or resettlement in a third country. But unlike the prohibition against *refoulement* in the 1951 Refugee Convention, or the right to seek and enjoy asylum enumerated in the 1948 Universal Declaration of Human Rights, resettlement is a discretionary and voluntary activity on the part of states, despite being a core protection activity for UNHCR. Herein lies the central conundrum. How do you harmonise the desirability of protecting refugees through resettlement with the desire of states to manage migration through programmes to admit certain categories of migrants such as skilled labourers and family immigrants?

Operationally, resettlement is defined by several sequential stages which mirror other state-run migration programmes: case identification, needs assessment, identity validation, eligibility determination and processing, transportation and passage, and eventual integration in the country of reception.

The policy of resettlement, however, has three core functions, all linked to UNHCR's protection mandate and the obligations of states in this area:

- to provide international protection and meet the needs of refugees whose life, liberty, health, safety or other fundamental human rights are at risk
- to be a durable solution to the plight of refugees
- to be an instrument of international responsibility sharing

Thus, while resettlement is part of the global migration phenomena, its distinct features and characteristics are anchored in the international refugee regime and human rights law, setting it apart from all other facets of international migration.

In terms of the refugee regime broadly viewed, the dichotomy between the **refugee as an individual** – with specific personal and legal issues that need to be adjudicated by competent national authorities – and **groups of refugees** – who may collectively exhibit characteristics requiring action by the international community to ensure their protection and long-term survival – is central to the debate over the role of resettlement as a response to refugee crises and its usefulness as a durable solution tool.

Background to resettlement

Resettlement cannot be understood today without reference to UNHCR's role in relocating close to two million refugees from Vietnam, Laos and Cambodia to the US, Canada,

UNHCR/A Hollmann

Repatriation to Burma in the late 1990s.

Australia, New Zealand, Sweden, France and other European countries. In 1979, at the peak of refugee outflows in the region, resettlement was the only viable option for 1 in 20 of the world's five million refugees. By 1992, the end of large-scale resettlement from South East Asia offered an opportunity for the international community to redefine resettlement policy and practice.

the 'solution' pendulum swung from resettlement to repatriation.

From the perspective of resettlement countries, two parallel trends emerged. Some countries substantially decreased their resettlement quotas, citing 'compassion fatigue' and budgetary constraints. Others returned to the previous practice of focusing on specific ethnic groups, religious minorities and other categories of persons of specific concern to special interest groups within the country of resettlement.

For UNHCR, the post-South East Asia refocusing has had both positive and negative effects. While resettlement policy became closely linked to the refugee protection mandate, the programme shrank considerably and narrowed its global reach.

Resettlement was articulated by the organisation as a tool in international protection, particularly for specific cases such as those involving security concerns, special health needs, victims of torture and severe forms of trauma, and at-risk-women.

This narrow focus resulted in fewer refugees being identified as in need for resettlement, with resettlement countries conversely focusing their efforts on other groups independent of UNHCR. At the same time, the 'solution' pendulum swung from resettlement to repatriation, to the extent that policy documents began to refer to repatriation as the "happiest" of durable solutions while resettlement was the "least desirable". The question remains: in whose eyes was it the "happiest" solution – refugees, individual states or the international-community, including UNHCR?[1]

Resettlement in the wider migration context

In the absence of durable solutions such as widespread managed resettlement programmes, refugees, facing ever more secure borders and restricted access to asylum, often resort to smugglers and traffickers. As a result,

asylum systems in the developed world are perceived to be under attack by smuggling and trafficking networks, and abused by economic migrants posing as refugees. Since many refugees have few options but to join in the irregular and often dangerous underside of international migration streams, they are often doubly victimised and tarred as 'illegal immigrants'. Ruud Lubbers has reinvigorated the international debate about protection and durable solutions in this wider context of international migration.

The inherent order in the resettlement process could be attractive to states concerned about the often unpredictable character of refugee movements. Resettlement is by definition an orderly mechanism of processing and moving refugees from a chaotic and hazardous situation to a place of safety and security in the country of resettlement. With increased emphasis on security, identity checks and screening for fraud since the events of 11 September, resettlement could become an effective tool for states who want to participate in an international protection response and help refugees attain a solution.

However, there is a danger that resettlement could be used as a *quid pro quo* to condone states' efforts to further restrict access to asylum. In other words, the international refugee protection regime could become totally dependent on states' discretion to decide who should be resettled, and the right to seek and enjoy asylum could be eviscerated. Asylum and resettlement need to be seen as fundamentally part and parcel of the same international refugee protection regime administered and overseen by the UNHCR. While resettlement is a discretionary response on the part of states, asylum, as a corollary to the principle of *non-refoulement*, is a right under human rights law. Asylum, like resettlement, addresses the individual need of the refugee for protection. Unlike resettlement, however, asylum is not discretionary and should not be subject to the vagaries of each state and their selection criteria beyond those enumerated in the Convention (ie exclusion clauses).

Does resettlement have something to offer in a brave new world of managed migration? The answer is a

qualified yes, as long as there is agreement about what managed migration means.[2] Managed migration is not reduced migration but rather a process by which a state may seek to control as well as regulate the orderly admission of immigrants. There is nothing inherently wrong with states viewing resettlement within this larger context, as long as resettlement is equally framed within the international system of refugee protection. Resettlement can also serve to alleviate refugee suffering by functioning as an instrument of international responsibility sharing, through UNHCR's commonly agreed policies, criteria and procedures.

New dimensions to existing tools

Just as the end of the South East Asian refugee programme gave UNHCR an opportunity to anchor resettlement in the protection mandate so today, in the aftermath of 11 September, there is a window of opportunity to redefine resettlement as a mechanism to achieve durable solutions for many more refugees.

The time is ripe to discard the notion that there is a hierarchy of durable solutions.

The task ahead is threefold. First, a policy should be developed on the role of resettlement as a vehicle to help refugees attain a durable solution. Second, international resettlement procedures need to be revised, enhanced and resourced. Finally, a strong political initiative should be launched to increase substantially the number of resettlement quotas offered by states, particularly members of the European Union and other developed nations.

UNHCR and its key partners in resettlement should define clearly what it means to do resettlement, not only for the relatively few in need of legal protection but also for the refugees who have languished for years in refugee camps or lived in limbo in many of the world's urban centres. The time is ripe to discard the notion that there is a hierarchy of durable solutions, ie dubbing some as 'preferred' and others as 'undesirable'. Developing a clear policy on the intrinsic link between resettlement and the need for durable solutions will result in operational guidelines

and criteria for this type of resettlement activity, which are now virtually absent from the UNHCR Resettlement Handbook. A reinvigorated debate about the role of resettlement for durable solution purposes is also timely in many states. The challenge laid out in early 2001 by then British Home Minister Jack Straw to substantially increase resettlement capacity in Europe needs to be taken up by policy makers.

Two models

In answering the policy question of when resettlement becomes appropriate as a durable solution (as distinct from a short-term need to rescue refugees for emergency protection reasons), there are two potential models.

One model could be based on the length of time a refugee spends in limbo awaiting a more definite future, though care should be taken not to arbitrarily set pre-determined time frames, as each refugee situation is unique. However, a formula-based approach can be designed, factoring in both the length of time and the likelihood and feasibility of a repatriation agreement. This formula could, for example, be weighted so that if a refugee has been in a situation of uncertainty for only a short time, the decision on turning to resettlement can be deferred even if a repatriation programme seems relatively unlikely at that point. Conversely, the longer a refugee has been in limbo, the more resettlement should be the presumed solution unless a repatriation programme is imminent.

Another policy model could articulate the process by which, while respecting the principle of an individualised refugee status determination, the resettlement need would be defined on a group basis. Identifying a predetermined refugee group, based on political, protection, ethnic make-up or other demographic characteristics, would in turn facilitate the identification of needs as well as the operational requirements at field level.

A renewed architecture

Since the days of the South East Asian programme, resettlement has been a low priority activity for many organi-

sations and bureaucracies. This lack of attention has had unfortunate outcomes. UNHCR itself has been rocked by a scandal of fraud and corruption in the Nairobi branch office, involving UNHCR staff extorting bribes from refugees seeking to be put on the resettlement list. UNHCR has proactively addressed the deficiencies in the resettlement operation in Kenya, beginning long before the release of a UN investigative report. Measures undertaken include strengthening staff resources, designing new oversight mechanisms and instituting case management and quality assurance procedures. Could similar measures be taken on a global basis, to ensure that resettlement processing in other sites is not vulnerable to this type of corruption? Particularly in light of new and heightened security concerns, resettlement processing must be done to the highest standards and professionalism in order to ensure integrity in the process and not undermine the will to use resettlement as a protection measure.

It is often said that resettlement is very staff intensive. It is true that any process that entails assessment of need, case identification, validation of identity and adjudication of status requires an adequate level of staff and operational resources. At the same time, many of the activities commonly linked to resettlement, such as needs assessment, refugee registration, case management and individual counselling, are necessary and helpful for all other facets of refugee assistance and protection activities at the field level. Most importantly, they are essential elements in the design of strategies for repatriation and local integration, helping refugees make informed decisions When refugee registration and assessments are done in the exclusive context of resettlement, they become onerous, difficult to implement and, in some cases, subject to fraud and corruption.

For UNHCR, the role and function of resettlement within the organisation needs to be examined and strengthened. If resettlement is to become more important and involve many more states as partners, more staff and resources will be required. Furthermore, the way resettlement is managed should be reviewed, in order to strengthen management accountability, focusing on outcomes and results. A review and reform of management practices (including

recruitment of specialised staff, training and career development, and centralisation of oversight on policy and practice) is necessary, both for UNHCR and concerned states. Harmonising policies and practices between UNHCR and states is needed to create a coherent global system and, most importantly, set in motion a transparent programme that would facilitate resettlement operations at the field level. When resettlement is global and applied consistently, and criteria for eligibility are transparent, the 'magnet' effect of resettlement that many fear would be lessened. In other words, for refugees, if your chances to be resettled are the same – assuming the same level of need – whether you are in Bangkok, Dadaab or Moscow, there would be no reason to shop around for the best processing site.

A renewed commitment

If resettlement is to become a realistic solution for refugees, the number of participating countries and the quotas offered have to increase significantly. Developed states will need to contribute more financial resources to enable UNHCR to fulfill its mission. High Commissioner Lubbers has also challenged developed nations to increase efforts at burden sharing through larger resettlement quotas,

suggesting a ratio of 1 refugee per 1,000 inhabitants. So far, the response by many governments has been muted or silent. Using this formula, the US would have a target of about 271,000 refugees per year: a 387% increase on their 2002 target. For Germany, it would mean a resettlement programme of 83,000.

Realistically, the European Union states could commit themselves to increase resettlement quotas over time to 100,000 per year. Canada and Australia could each return to their annual levels of 20,000 of the early 1990s, and the US to similar historic levels of 130,000 per year. Though much smaller in absolute numbers, there has already been good progress in increasing the number of countries interested in offering resettlement, including Chile, Brazil, Benin, Burkina Faso and Iceland.[3]

More important than numbers and quotas, however, is the need for states to support the resettlement option as part of a broader commitment to achieve durable solutions for refugees. The infrastructure of resettlement does not stand alone. Renewed attention is needed on refugee registration, caseload identification and durable solutions for refugees in protracted situations. Warehousing refugees for years and

years in miserable camps and untenable situations breeds discontent, victimises the vulnerable and opens the door for criminal elements to abuse and take advantage of refugees, further eroding public support. Investments in self-reliance projects, micro-enterprise, refugee education and vocational training all rely on good registration and case management systems. Resettlement then truly becomes a do-able option, an important but not exclusive item in the menu of solutions that refugees need in order to regain hope for the future.

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The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

1 See for example *General Conclusion on International Protection* (No. 79 (XLVII)-1996), The Executive Committee, UNHCR Geneva, and the *Resettlement Handbook*; April 1998, Division of International Protection, UNHCR, Geneva.
2 Rt Hon Jack Straw MP 'An Effective Protection Regime for the Twenty-first Century', speech before the Institute for Public Policy Research, London, 6 February 2001. Available from *The Guardian* Newspaper Limited, 2001 website.
3 Progress was made in this regard at the 25-27 April 2001 International Conference on the Reception and Integration of Resettled Refugees: Norrköping, Sweden. See *ICRIRR: Principles,* www.unhcr.ch/cgi-bin/texis/vtx/home?page=search.

Resettlement: the only chance for long-term security?
by Marta Bivand and Ceri Oeppen

UNHCR supports a variety of durable solutions for the Afghan refugees in India. For all the Afghan families we met in New Delhi, however, resettlement was their preferred option. For many, the lack of legal and economic security in India combined with the continuing instability in Afghanistan leaves them no other viable solution. Farishta, for example, worries about her children's future: "In Afghanistan there are no human rights and children cannot go to school. Life is dangerous in Afghanistan. But life is dangerous in India too, and my children cannot go to school here either because we haven't got money for the fees. I would like my family to resettle in Canada." For others, their desire to resettle overseas is reinforced by the fact that they already have family members living in North America, Europe and Australia. Masood's family told us that to their knowledge they have no remaining family in Afghanistan but that they are in contact with family members in the US and Canada.

Ibrahim's family came to New Delhi from Kabul in 1990. Originally he thought they would only be in India for a couple of months until things calmed down in Afghanistan. It did not take long before they too started thinking of resettlement. On the 6 August 2001 the family received a letter from the US embassy in New Delhi granting them resettlement in Richmond in the US. After eleven years of uncertainty, they started planning for their future. Ibrahim's four teenage daughters were particularly excited, and looked forward to pursuing their education and developing careers. But they also admitted they would be sad to leave India, and especially sad to leave friends they had made there. On the morning of 11 September Ibrahim and his family boarded their flight to Washington DC. While they were in the air, events in New York unfolded and their flight was re-routed to Canada.

Ibrahim and his family were among the last Afghans to be resettled in the US. Yet many Afghans in New Delhi still see resettlement as their only realistic opportunity for long-term security. Staying in India remains only a temporary solution, while many are unconvinced that they will be able to return to Afghanistan. What remains unclear is whether there will be any further opportunities for resettlement.

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* All names have been changed.

CICR/Til Mayer

Exclusion, terrorism and the Refugee Convention

by Monette Zard

In the aftermath of 11 September, governments around the world have turned their attention to combating the threat of global terrorism.

The feeling of vulnerability engendered by the attacks and the perception that the hijackers exploited open and liberal societies to commit their heinous acts have intensified an already restrictive climate for refugees and asylum seekers, justified in the name of security. Although no refugees or asylum seekers were among the 19 hijackers, the attacks have fuelled public perceptions of refugees as criminals and undesirable elements in society. The irony, as Ruud Lubbers has pointed out, is that it is the refugee who is often the first victim of persecution and terror. A difficult challenge lies ahead for both governments and the advocates who monitor them – preserving the rights and values that lie at the heart of democratic societies (of which the principle of asylum is a cornerstone) while at the same time

taking measures which are necessary to protect citizens and institutions.

Recent months have seen an increasing tendency to link refugees and asylum seekers with acts of terrorism. UN Security Council Resolution 1373 (adopted on 28 September 2001), the foundation of the international community's response to the terrorism threat in the aftermath of 11 September, twice makes explicit reference to the need to safeguard the system of international refugee protection from abuse by terrorists.[1] While its inclusion of the need to abide by international standards of human rights law is welcome, it nevertheless reinforces the perception that the institution of asylum is somehow a terrorist's refuge. It has in turn generated a wave of new and restrictive laws and regulations at a national

level (including, in countries such as the UK and the US, the prospect of indefinite detention of non nationals suspected of terrorist activity which potentially pose a number of problems for refugees and asylum seekers).

The Exclusion Clauses

Far from being a cloak behind which the perpetrators of terror can hide, international refugee law explicitly excludes from protection those who have violated the human rights of others or committed other serious crimes. Nazi genocide and war crimes were fresh in the minds of those governments that drafted the new framework of human rights and refugee law in the immediate post-war years, including the 1951 Convention Relating to the Status of Refugees, and they felt that such 'undeserving' cases should be prevented from claiming refugee status. The Convention thus contains the so-called exclusion clauses – Article 1F – which placed anyone who had com-

mitted such crimes outside the protection of the international refugee regime. The exclusion clauses note that the provisions of the 1951 Refugee Convention "shall not apply to any person with respect to whom there are serious reasons for considering that:

    a)   he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

    b)   he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

    c)   he has been guilty of acts contrary to the purposes and principles of the United Nations."

Ignored for many years,[2] the exclusion clauses were catapulted to the forefront of the international agenda when the 1994 Great Lakes crisis illustrated the dire consequences of failing to pay due regard to the application of the exclusion clauses. The perception that international protection was being provided to *genocidaires* and that humanitarian assistance was being manipulated to sustain the war machine of the *interahamwe* (Hutu militia) called into question the integrity of the entire system of refugee protection.

Governments and UNHCR are legitimately concerned to ensure that the international refugee system is not abused by terrorists, a concern which is in the long-term interest of bona fide refugees and asylum seekers. It is important, however, that the exclusion clauses do not become another avenue by which states deny access to international protection by widening the grounds on which refugees may be excluded and narrowing their procedural rights. Exclusion is the most extreme sanction of international refugee law and entails the removal of protection against *refoulement* to a country of persecution.[3] It is thus vital that the exclusion clauses are restrictively interpreted and resorted to only where there is clear and compelling evidence of **individual** responsibility for a serious crime specified under the exclusion clauses. Both the process by which a decision

to exclude is taken and the substantive grounds on which refugees may be excluded from international protection need to be addressed in such a way that the rights of refugees are respected.

'one man's terrorist is another man's freedom fighter'.

Expanding the grounds for exclusion: the definition of terrorism

As has often been stated, 'one man's terrorist is another man's freedom fighter'. While the international community was united in its condemnation of the events of 11 September as the worst form of terrorism, its aftermath has seen the re-ignition of the debate as to what precisely constitutes terrorism. There is no internationally accepted definition of this term and it is, not surprisingly, a central sticking point in negotiations on a Comprehensive Convention on International Terrorism. The UN currently has twelve Conventions which address such different forms of terrorist threat as airline and maritime safety, the use of plastic explosives, the safety of diplomatic personnel and the taking of hostages. This international lacuna means that legislation that has been adopted at the national level, particularly in the aftermath of 11 September, has tended to employ broad and far-reaching definitions of terrorism. Such measures create the potential for bona fide refugees to find themselves unable to access international refugee protection.

The UK Anti-Terrorism, Crime and Security Act of 2001 for instance, extends the definition of terrorist to all those who have "links" with an international terrorist group (section 21(2)(c)). Links are defined as existing if such a person "supports or assists" such a group (s 21(4)). The ambiguity of such terminology holds open the possibility that asylum seekers may find themselves labelled as terrorist on account of their political, ethnic or religious affiliations or ties. As one commentator has noted, "... the contemporary definition of terrorism or threat to national security can mean everything or nothing... it may mean that a Kurd is sympathetic to the PKK in Turkey: many if not most Kurds

are, similarly Tamils and the LTTE, Kashmiris and the struggle against Indian Occupation, etc."[4]

In the US, the Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (otherwise known at the USA-PATRIOT Act) (H.R. 3162) similarly expands the scope of terrorism-related activity and includes material support for humanitarian projects of groups that are listed on the Secretary of State's list of designated terrorist organisations. More troubling still, the USA-PATRIOT Act also allows for the detention and deportation of non citizens who provide lawful assistance to groups that are not officially designated as terrorist organisations. The onus is then rather perversely placed on the immigrant to prove that he did not know and should not have known that his assistance would further terrorist activity. The latter is particularly problematic given the breadth of the definition of terrorist activity that is employed by the Act. As advocates have cautioned, such activity can now include the use of a weapon, or "other dangerous device", to cause "substantial damage to property",[5] thus potentially including acts of civil disobedience which are a hallmark of activist organisations such as Greenpeace and anti-globalisation protestors.

Terrorism within the Refugee Convention

Terrorism as such is also not explicitly mentioned in the Refugee Convention. Nevertheless, under article 1F(a), terrorists could find themselves excluded because there are serious reasons to consider that a "crime against humanity" has been committed (certainly the acts of 11 September rise to that level). They may also fall foul of article 1F(c) which excludes the granting of international protection to those who may have committed acts contrary to the purposes and principles of the UN. Given the potential breadth of this provision (which mentions "acts" and not "crimes"), UNHCR has consistently advised that it be restrictively interpreted. The adoption in November 2002 of Security Council Resolution 1377, which notes that acts of international terrorism are contrary to the purposes and principles of the UN Charter, is likely to lead to a

significant expansion in the use of this clause to exclude refugees accused of terrorism.

The exclusion clause which has traditionally been of most relevance in the battle against terrorism is Article 1F(b) which bars from the protection of international refugee law those who have committed serious non-political crimes outside the country of asylum. This provision mirrors one in Article 14 (2) of the Universal Declaration of Human Rights and is intended to ensure that extraditable criminals do not escape prosecution by claiming refugee status. Interpreting and applying this provision is one of the most complex challenges facing decision makers today. A central objective of the Refugee Convention after all is to provide protection to those persecuted on account of their political activities and terrorists frequently assert a political motivation for their crimes. In determining whether an offence is 'political' and therefore exempt from exclusion, or a crime which renders its author undeserving of protection as a refugee, decision makers are asked to walk a fine – but critical – line. Central to their ability to do so fairly and effectively is that they consider all the elements of a case – including the grounds for inclusion as well the grounds for exclusion. A comprehensive examination of all the circumstances of an asylum claim allows the decision maker to place any allegations of criminal conduct and accusations of terrorism in full context. This approach was most recently reaffirmed by the Global Consultations process, which asserted the need for a holistic approach to the application of the exclusion clauses.[6]

Short-circuiting refugee law

Nevertheless, even prior to 11 September, UNHCR found itself having to warn states looking for a fast track to curtail the consideration of asylum claims against the practice of "employing exclusion as a test of admissibility". It noted that this was inconsistent with the exceptional nature of exclusion clauses and risked "prejudicing the careful weighing of all relevant factors which should be integral to any exclusion decision". In the aftermath of 11 September, this trend (bypassing status determination once exclusion is alleged) is likely to intensify. Recent legislation in the UK precludes substantive consideration of asylum claims where the Secretary of State certifies that the removal of the appellant would be conducive to the 'public good' and that either Article 1F or Article 33(2) (the expulsion provisions of the 1951 Convention) are applicable. The removal of someone without ever having considered their asylum claim is contrary to both the letter and the spirit of the 1951 Convention. In the US, there are similar concerns regarding the practice of utilising statutory bars to prevent persons suspected of membership in organisations designated as terrorist organisations from even applying for protection as a refugee. The process of designating groups as terrorist organisations is more often driven by political and foreign policy considerations than by concern with the humanitarian issues that should underpin any asylum claim.

Such measures come dangerously close to attributing guilt purely on the basis of association and are clearly at odds with the necessarily individual character of the exclusion procedure. A proper application of the exclusion clauses calls for an examination of an asylum seeker's activities within an organisation and his/her objective role in the commission of excludable acts. As the UK House of Lords stated, a person may not be excluded from the Convention merely because s/he or his or her acts, have been labelled "terrorist"; it is required that there be serious reasons for considering that he or she has committed an excludable crime under Article 1F.

In conclusion, while it is important to acknowledge that States have a legitimate security interest in ensuring that terrorists and other criminals do not take advantage of the system of international protection, it is vital that any measures taken do not undermine the very system itself. The 1951 Convention provides States with the tools through which to ensure that their security interests are reconciled with the interests of those fleeing persecution and terror. Fifty years of refugee law and a proud tradition of providing asylum to those in need should not be bypassed or short circuited by responses to the events of 11 September.

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> *Fifty years of refugee law and a proud tradition of providing asylum to those in need should not be bypassed.*

1 This follows a line of earlier resolutions, most notably a 1996 Resolution by the General Assembly on Measures to Eliminate International Terrorism and its annex, a Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism A/Res/51/210 of 17 December 1996 found at www.un.org/documents/ga/res/51/a51r210.htm.

2 UNHCR first issued public guidelines on the application of the exclusion clauses in 1996 (*The Exclusion Clauses: Guidelines on their Application*, UNHCR, Geneva, December 1996).

3 It is important to note, however, that the prohibition on *refoulement* contained in the Convention Against Torture applies without exception.

4 Memorandum Submitted by Nicholas Blake QC to the Select Committee on Home Affairs of the House of Commons, 15 November 2001 at para 13. www.parliament.the-stationary-office.co.uk/pa/cm/200102/cmselect/cmh../351ap04.ht

5 Of particular relevance in this discussion is Section 411 of USA-PATRIOT Act, amending section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3))

6 See Summary Conclusions of Lisbon Expert Roundtable of 3-4 May 2001, 30 May 2001 EC/GC/01/2track/1.

7 Report on Article 1F Exclusion Clauses, Standing Committee of the UNHCR Executive Committee, June 1998, Section C, para 15(i).

8 The Anti-Terrorism, Crime and Security Act 2001, 14 December 2001 - Article 33(1) www.hmso.gov.uk/acts/acts2001/10024--e.htm.

9 T v SSDH, (1996) 2 All ER 865, (1996) 2 WLR 766, House of Lords, 22 May 1996.

10 Interpretations of the Article 1F by UNHCR, commentators and the practice of most States indicate that mere membership of a group or organisation will not be sufficient basis on which to exclude a person except in exceptional circumstances. However UNHCR does hold open the possibility that in a small number of cases where "the purposes, activities and methods of some groups or terrorist organisations are of a particularly violent and notorious nature," membership – where it is voluntary – may be sufficient. UNHCR *Guidelines* (December 1996), at para 47.

Screening in mass influxes: the challenge of exclusion and separation

by Bonaventure Rutinwa

It is now beyond contention that, in situations of composite population flows, persons not deserving international protection should be excluded from refugee status and those likely to jeopardise protection must be separated from ordinary refugees.[1] Some suggest that a consensus is emerging in refugee jurisprudence as to which persons should be liable to separation.[2]

Afghanistan, however, has highlighted a host of legal and practical difficulties. The number of Afghans who attempted to cross borders during Operation Enduring Freedom may not have reached the proportions which many expected. Nevertheless, the prospect of a mass influx once again raised the question of how to separate ordinary civilians from persons who, under refugee law, do not deserve international protection. In the context of Afghanistan, these included members of al-Qa'ida who masterminded or executed the terrorist activities that triggered the war and their Taliban hosts and facilitators. Now that many Taliban and al-Qa'ida combatants have fled Afghanistan, several countries may have to judge what kind of involvement in Taliban administration or al-Qa'ida activities might warrant exclusion from refugee status.

While the need to separate has not been a prominent feature of reports from the region, certain pertinent questions need to be raised, as relevant to future discussion on this subject as to the current situation. What conduct or attributes would warrant separation or exclusion? Is membership, past or present, of al-Qa'ida sufficient to warrant exclusion or separation? How is separation or exclusion to be carried out in situations of mass influx? What is to be done with those asylum seekers who have been excluded/separated? Whose mandate or responsibility is it to look after separated persons?

Drawing on comparative experience from Africa, this article highlights how the above issues have previously been dealt with and proposes suggestions on how to resolve dilemmas of separation and exclusion in situations of mass influx.

Legal and factual circumstances for exclusion/separation

The provisions of refugee instruments applicable in Africa are fairly clear as to which persons are excluded from refugee status.[3] Nevertheless, actual cases of individuals who have been excluded, particularly those who are alleged combatants, have aroused controversy and highlighted conceptual difficulties.

The arrest in November 2000 in Tanzania of two Burundian refugees, found in possession of weapons and allegedly engaged in military activities in Burundi, is a case in point. UNHCR pondered the legal implications in order to determine whether they were refugees or even persons of concern to the agency. One view was that combatants cannot be refugees, that an individual who actively and willingly participates in armed conflict does

weeding out the undeserving armed elements from civilian refugees has proved to be extremely risky

not fall within the scope of the obligations under which refugees are protected. When this individual is found on the territory of a non-belligerent, neutral state, s/he should not be treated according to refugee law standards. The other view was that the mere fact that refugees returned to fight in their country of origin does not make them lose refugee status

because refugee status could only be lost under the five Convention grounds which do not include covert return home. Thus refugees who return to their country of origin and then come back (even if they went as combatants) remain of concern to UNHCR as refugees.

Exclusion and separation procedures

In situations of mass influx, the usual procedure for determination of refugee status is group determination on a *prima facie* basis. Effectively, a state recognises refugee status on the basis of the readily apparent, objective circumstances in the country of origin giving rise to exodus. Its purpose is to ensure admission to safety and to enable timely delivery of assistance to asylum seekers.

However, group recognition of refugee status has a number of disadvantages. It is difficult to exclude criminal and other elements who do not deserve international protection. Drastic government actions to avoid hosting criminal elements among refugees have had serious consequences for asylum seekers. An example is provided by the decision in 1997 of the Central African Republic to bar entry to all Rwandese asylum seekers in order to prevent the entry of alleged *genocidaires*. In-country UNHCR staff members and Geneva colleagues debated how to distinguish and separate bona fide refugees from those meriting exclusion. The CAR authorities only relented after UNHCR undertook to provide sufficient human and material resources to screen genuine refugees from criminal elements.

Mechanics of separation/exclusion

The application of a prima facie approach to admission of asylum seekers has meant that where separation and exclusion are deemed necessary they have had to take place after the targeted elements were already intermingled with genuine refugees in settlements. At this stage, weeding out the undeserving armed elements from civilian refugees has proved to be extremely risky. A case in point was the attempt to exclude armed elements from the large Rwandan refugee population in Eastern Zaire in 1994. Although it was noted that the presence of armed militia represented the greatest threat for the refugees, it was also acknowledged that separating them from other refugees would be a complex task and require the use of force. Various military options proposed by the UN Secretary General were rejected by the Security Council and those countries who had been asked to provide troops. This compelled the Secretary General to request UNHCR to provide security. It was on this basis that the Zairean Camp Security Contingent was established in February 1995 to provide security to refugees without separating them from undeserving elements.

The possibility of resistance to separation is likely to occur, even where the specific factors that obtained in eastern Zaire (collusion by local authorities and negation of protection principles) do not exist. This became evident in 1996 when the Tanzanian government attempted to transport alleged criminals to the Rwandan border. Special riot police and the army had to be brought in to quell refugee riots. When the government wanted to take to Dar es Salaam a refugee leader for whom resettlement in another country had been arranged, refugees suspected he was about to be imprisoned or sent to Rwanda. They threatened violence until the government allowed witnesses to accompany him to Dar es Salaam to see him onto a plane bound for the country of resettlement. These incidents show that separation of refugees, even where legitimate, is a sensitive exercise requiring careful handling.

Rwandan refugees, DRC, 1997

What follows after exclusion/separation?

Those excluded from refugee status and of no concern to UNHCR can in theory be required to leave the territory of the host state. Often, however, this is impossible due to the risk of persecution and torture which face them in their home countries. The fact of their exclusion denies them any chance of being accepted for resettlement by any third state. In these circumstances, what can host governments do?

One option is to expel separated and excluded refugees under article 32 of the 1951 Convention if the activities for which they were separated constitute a threat to national security or public order. However, even when the activities of separated persons meet the threshold of threat to national security, they cannot, under human rights law, be sent back to their countries of origin if they still face the possibility of persecution or torture. Unless a third country is prepared to accept them – which is highly unlikely – then the host country has no choice but to allow them to remain on its territory.

A second alternative for the separatees is to intern them, a path chosen by Tanzania in 1996 when it established a detention facility at Mwisa, in Kagera region. Mwisa was intended to

UNHCR/C Bowers

host those guilty of intimidation: Rwandan refugees who were coercing or otherwise dissuading their fellow refugees from returning to Rwanda. After the mass repatriation of December 1996, the facility was used to host those Rwandans who said that

the detention of separated persons raises a number of issues

they feared for their lives if they returned to Rwanda. Since the passage of the Refugees Act in 1998, Mwisa has become the place for detention of combatants in addition to asylum seekers and refugees.

In Tanzania the detention of separated persons raises a number of issues. As separation effectively results in restriction of movement and residence, is it compatible with principles of international law requiring that such restrictions should be imposed only when necessary and that the conditions imposed should be proportionate to the problem being addressed? Should mere possession of arms be sufficient reason to warrant detention without trial? How long should the detention be? Section 27 of the Refugees Act provides that the detention period should be three months but allows renewal of detention under the provisions of the Preventive Detention Act of 1963. How many times can detention be extended?

Who is responsible for the separated?

Where separation has occurred, questions about mandate and responsibility arise. Authorities can disagree over the status of the persons separated. This happened in 1997 when a group of Mai Mai fighters from Zaire arrived in Tanzania. Instead of asking for asylum, the soldiers wanted to retain their combatant status. The International Committee of the Red Cross concluded that they were not combatants for the purposes of international humanitarian law of armed conflict and therefore they were not persons of concern to the Red Cross. UNHCR would not deal with them as long as they claimed combatant status and expressed a desire to go back and fight. As a result, the government of Tanzania had to keep them in a football stadium for almost a year after

which they accepted refugee status and were transferred to a refugee settlement.

Whenever external agencies such as ICRC and UNHCR wash their hands of any category of asylum seekers, the burden naturally falls on the host country to take care of them. Such, however, is the unfair burden facing countries such as Pakistan should they arrest and detain Taliban and al-Qa'ida militants.

Conclusion and recommendations

While exclusion and separation are appropriate tools for addressing problems of mixed flows of asylum seekers, there are added difficulties when states of asylum attempt to screen in order to apply the exclusion clauses. Despite the apparently clear-cut provisions of relevant international instruments, liability to exclusion in individual cases is not always obvious.

We need to address difficulties in a way which recognises the concerns of host countries and is compatible with principles of asylum. Regarding ex-Taliban and al-Qa'ida militants, I would argue that the mere fact of former membership should not be a sufficient reason for immediate exclusion or even separation, provided that the asylum seeker is prepared to renounce terrorism and war, lay down any arms and become a 'normal' refugee. We need to endorse recommendations which emerged from a UNHCR-convened seminar in February 2001:

> Persons who previously were members of military organisations are not excluded from seeking asylum and protection as refuges. [But] before considering the asylum applications of such persons/groups, a reasonable period of time should be allowed to elapse, the purpose of which would be to establish that the persons have completely renounced military activities and have no intention of resuming the war.[4]

In situations of mass influx all persons who arrive at borders and seek asylum should be admitted as prima facie refugees. Thereafter individuals

can be screened and, if they are found not to be refugees, they can be excluded. In exceptional cases, such as previous indictment by an international tribunal, exclusion could be considered immediately.

The internment of separated persons must be consistent with principles of refugee and human rights law. In particular, the restrictions imposed on the separatees, including those related to freedom of movement, must be proportionate to the preservation of the humanitarian character of asylum as a peaceful and friendly act, the prevention of subversion and demilitarisation of refugee camps, and the safe location of refugees.[5]

The international community should provide military and financial assistance to countries like Pakistan which need to carry out separation exercises. The burden of looking after separated persons should not be left solely to host countries. If it is accepted that it is necessary to separate *non-bona fide* refugees, responsibility for looking after the separated should be shared by all those with responsibility for refugee protection. This is not simply a question of mandate or even morality. It is one of functional necessity.

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1 For various recommendations to this effect see B Rutinwa 'Refugee Protection and Security in East Africa', *Refugee Participation Network*, September 1996, pp11-14.

2 See C Beyani 'International Legal Criteria for the Separation of Members of Armed Forces, Armed Bands and Militia from Refugees in the Territories of Host States', *International Journal of Refugee Law,* Vol 12, Special Supplementary Issue 2000, pp251-271.

3 See the 1951 Convention Relating to the Status of Refugees, Article 1F and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, Article I(5).

4 Overview of Key Conclusions/Recommendations of the UNHCR Regional Symposium on Maintaining the Civilian and Humanitarian Character of Asylum, Refugee Status, Camps and other Locations, 26-27 February 2001, Pretoria, South Africa, para 14(b).

5 C Beyani *Op. Cit.*, p265.

What does it take to rebuild a state?

by Paula R Newberg

This question, raised countless times in the post-World War II, post-colonial and post-cold war periods, is taking new shape in Afghanistan today especially among donor states and international organisations concerned about Afghanistan.

The US, among others, has argued strenuously – both before forming a global coalition to fight terrorism and now, while maintaining a military presence in Afghanistan but resisting a major role in what it derisorily calls nation-building – that it is possible to distinguish between establishing security and building political stability, and between physical rehabilitation and the process of democratic reconstruction. But rebuilding the Afghan state must mean reviving political life in the Afghan nation. If it does not, Afghanistan's recovery will be compromised and regional stability will be hard to assure.

In 1989, the last time war in Afghanistan might have ended in something resembling peace, the US and its allies tried to manipulate local loyalties to decide who would rule after the communist government fell. They failed, and the corrupt, ineffective governance that followed prevented Afghan citizens from rebuilding or running their country. Their actions also led, in part, to the rise of the Taliban, whose puritanism – proclaimed if not always practised – found support among those who felt abandoned by those aid providers who used commanders as middlemen in the provision of humanitarian assistance. The gravity of this error cannot be underestimated. Although saving lives is always paramount in times of crisis, the essence of a complex political emergency is the intricate nexus between politics and economics: if the process of providing assistance does not take account of the political consequences of aid, recovery will not occur.

Effective and enduring reconstruction always strikes a balance between local initiatives to build political trust within and among communities and national ones to create public goods for the entire country. Afghans are familiar with the former: in the absence of a state, the UN and its partners have worked with thousands of villagers and townspeople to salvage resources for farming and irrigation, urban renewal and, critically, removing landmines from populated areas.

Critical as these efforts are, they cannot rebuild and sustain an economy to keep Afghanistan intact. This is where nation-building and state-building intersect: by creating physical infrastructure, social services and an environment that addresses Afghan needs under the governance of Afghan citizens. To complement the bottom-up strategies of community development, Afghanistan requires top-down strategies to help rebuild its state. It also needs arbiters to keep competing interests at bay and to help Afghans reacquire political voice after long years of deprivation. By default, and occasionally by demand, this is the role that the international community today plays in war-torn states like Afghanistan.

Establishing, or re-establishing, the moral authority of a state is exceptionally difficult and Afghanistan faces enormous challenges. The 2001 Bonn Accord orchestrated under the auspices of the UN, which remains the custodian of its implementation, sets out a process for enfranchising a future government while establishing an authority to manage the initial process of reconstruction. But Afghanistan is still seized with an American-led campaign that is premised on cooperation with motley military commanders and leftover politicians, people whose stake in retaining power contrasts sharply with the vision of a democratic, representative government that drives the Bonn Accord.

The choices that confront the Afghan Interim Authority, the transitional authority that is intended to replace it in mid-2002, the UN and a host of donor states are vast indeed. UN models for reconstruction and development elsewhere, however unevenly executed, offer some lessons for Afghanistan.

Learning from the past

When the UN has stood in for a state in the absence of a functioning government, it has learned the critical importance of resolving social and political conflicts before they balloon out of control. In Kosovo, some security and stability have been achieved for some Kosovars and Serbs as rehabilitation proceeds to non-urban areas. At the same time, however, the indeterminate status of Kosovo – a political grey area reflecting the indecision of UN member states and Belgrade rather than solely the difficulties of achieving harmony among Kosovo's residents – has limited the reach of recovery. The lesson: politics – international and domestic – and reconstruction – short and long-term – travel hand in glove.

In the West Bank and Gaza, the UN has tried over many decades to respond to crisis while also staving off potentially dangerous regional instabilities – in part by simply sustaining its presence while others have been more fickle. Its mixed bag of responsibilities has often been pursued without clear priorities. The lesson here is also one about the indelible imprint of politics on recovery: if political goals cannot be achieved – whether short or long-term – then recovery is unlikely to succeed.

In Cambodia, Bosnia and East Timor, the international community has fostered recovery by creating an authority to oversee political transition. State bodies and non-governmental organisations have moved from peace accords to rebuilding states and, ultimately, holding elections. In each case, rights protections have been put in place, along with significant investments in rights education, in order to forestall renewed conflict. There is no doubt that the international presence has seemed very large – thousands of white relief vehicles indelibly mark the landscape. But in each instance, the duration was extensive, and the human cost and physical devastation caused by conflict and indifference were enormous. These are additional reasons why local governance over reconstruction, undertaken with care, sensitivity, balance and judgement is extremely important: to ensure that, once begun, recovery can be sustained.

Challenges in Afghanistan

Each of these undertakings has encountered significant obstacles; each has succeeded only to the degree that it has created an intersection between recovery and political change. All have required big money. Afghanistan will require even more. It has almost no fiscal reserves – except for $4.5 billion in pledges (a fraction of the per capita investment in Kosovo and Bosnia) – and its population remains scattered in the wake of internal displacement and long-term exile.

Building trust between the international community and Afghanistan is therefore a prerequisite for building trust among Afghans: to enable Afghans to build a credible and

durable state and to forestall local disappointments caused by misguided development policies which could readily fragment the country again. This is where the decisions taken by the international donor community during the early transition phase of reconstruction are extremely important, in two related ways.

First, if donor states persist in old practices by refusing to cooperate in shared funding for basic recovery, then the capacity of the central state will be constrained to the point where it cannot fulfill its essential functions. When donors – whether bilateral, multilateral, governmental or non-governmental – insist on controlling resource allocation by resisting coordination and, even more, cooperation, they compromise not only the physical tasks of reconstruction but also the political and security prerequisites for recovery.

Second, when donors cling to equally old habits by negotiating separately with individual power holders across the country – and in the case of Afghanistan this means warlords who have arms, militia and past records of repression – the central state is again jeopardised. The fallacious equation, between localised or decentralised development, on the one hand, and, on the other, empowering local commanders whose existence is predicated on foreign backing rather than popular support is dangerous for all parties. Respecting the basic principle of popular sovereignty is a practical prerequisite for ensuring respect for individuals and communities. Without it, it will not be possible for refugees to return and for all citizens to participate in the process of recovery.

The international community will not sustain the early impetus of recovery planning unless it respects the state institutions it has helped to create. In the case of Afghanistan that means underscoring (and underwriting) the Afghan Interim Authority created under the Bonn Agreeement so that the writ of the state can extend beyond the limited confines of the capital city. Supporting the processes that empower a transitional authority will make it possible for government to work in, and with, the entire country. International organisations must therefore change their long-ingrained

habit of acting as if the state did not exist, and take specific steps to strengthen Kabul's hand in determining the pace and structure of refugee return and the broad contours of the humanitarian response. This is an essential element of state-building and should define the political environment in Afghanistan.

Conclusion

A viable central state, supported materially and politically by the international community, can help keep outsiders at bay. Over the course of the past 25 years, Afghanistan's domestic divisions have allowed its neighbours (now frontline states in the global war against terrorism) and occasional patrons to take advantage of its political vacuum to further their own ambitions. Whether on behalf of the Taliban movement, the old United Front, the newly empowered Northern Alliance or displaced political leaders, this accumulated interference has emboldened regional leaders to think of Afghanistan as their own. If civil strife is not ended judiciously under neutral international auspices – and if recovery is not organised with similar impartial support – then Afghanistan will be the puppet of foreign powers or a vulnerable, war-divided territory ripe for illicit pickings. Either consequence would be a recipe for inevitable regional conflict.

After the Romans routed the Germanic tribes at the end of the first century, the historian Tacitus observed: "They made a desert and called it peace." Modern Afghanistan has long suffered the impositions of outsiders but, this time, recovery is simply too important to be left to foreigners. If Afghanistan is to survive its latest fate and if central, west and south Asia are to survive with it, then the international community needs to ensure that Afghans have the right and opportunity to make their deserts bloom.

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Afghan girls back in school in Kabul

Security and the ethics of asylum after 11 September

by Matthew J Gibney

"Security", the philosopher John Stuart Mill wrote in 1861, "is the most vital of all interests."

"On it", he argued, "we depend for all our immunity from evil, and for the whole value of all and every good, beyond the passing moment".[1] On 11 September, the citizens of Western countries had the truth of Mill's words brought spectacularly home to them. This lesson unleashed some lamentable consequences. The attacks of that fateful day led to war; war created refugees; refugees fled in search of asylum. The first two months of the war against the Taliban resulted in the movement of some 130,000 refugees, most of whom found a kind of rough asylum in neighbouring Pakistan. Pakistan's borders had remained relatively open to refugees in part because of pressure by UNHCR for the country to serve as a humanitarian refuge for the course of the crisis. Yet while Pakistan was expected to offer more asylum during the course of the 'war on terror', all signs were that Western states would be offering less.

Operating almost in unison, these states implemented a number of policy and legislative changes that are likely to have a profound effect on the provision of protection for refugees. In the US, the government temporarily suspended the resettlement of some 20,000 refugees who had been told that they would be able to enter the US. Under the new USA-PATRIOT Act, aliens suspected of terrorism can be detained without charge for seven days. In addition, members of terrorist organisations prescribed by the Justice Department can now be deported or barred from entering the US without judicial review. In the UK, the new Anti-Terrorism Crime and Security Act was quickly passed. The Act allows the Secretary of State to reject asylum claims for persons deemed a threat to national security. It also broadens the state's authority to detain individuals considered a ter-

rorist threat, while curtailing appeals for some asylum seekers. In Canada, the government's new Anti-Terrorism Plan creates new detention places for foreigners suspected of terrorist activities, provides for a tightening of screening systems to ensure that those involved with terrorist groups do not enter asylum systems and allocates more money for deportation.

Legitimate asylum seekers, state officials have been quick to claim, have little to fear from well-targeted security measures. But the question is whether such measures are indeed well-targeted. My aim in this article, however, is not to analyse the adequacy of individual pieces of legislation but to make some observations on the broader social context in which these laws and policies have flourished. Asylum is increasingly viewed as a vehicle through which terrorists and other undesirables might enter Western states. In the aftermath of 11 September, these concerns are not hard to understand. Yet the terrorist attacks also provide an opportunity to remind ourselves of the central value and continuing importance of asylum for refugees.

Asylum as a threat to security

The view that asylum policy might have implications for security was established long before the events of 11 September. The latest incarnation of asylum as a security threat is rooted in the mid-1980s and can be traced to four major developments. The first was the ratification of the Single European Act in 1987, which began the move towards the abolition of border controls between European Community member states. Negotiations about the implications of a frontier-free Europe prompted new concerns about the security implica-

tions of mutual interdependence. From the start, discussions welded matters of asylum and immigration with more nefarious issues of organised crime, illegal migration and terrorism. Linkages between these concerns, moreover, became institutionalised in the Amsterdam Treaty. Fittingly, asylum was placed under the category of matters leading to a common area of 'Freedom, Security and Justice'.

The end of the Cold War also played a key role in joining refugee and security concerns. The defusing of the major security threat of the post-War period – the threat of nuclear annihilation – provided academics, government and military officials with a strong incentive to concentrate their energies on a range of new (and hitherto distinctly second-rate) security concerns. The 'threats' posed by asylum seekers and refugees were simply one of a number of new non-state threats to be formulated in this period.

A third important factor has been the Security Council's increasing prominence since the early 1990s as a vehicle for sanctioning military intervention by states. Interventions in Iraq, Somalia, Haiti and the Former Yugoslavia were, as Adam Roberts has observed, in part legitimated by the desires of the dominant powers to stem refugee movement.[2] Under Chapter 7 of the UN Charter these interventions could be deemed legitimate only if they were in response to threats to "international peace and security". Thus actions by the Security Council provided another link in the chain of the refugee/security association.

Finally, the increased linking of refugee issues with security reflects the spread of democratisation since 1989. The rise of multiparty democracy in Africa, in particular, has arguably diminished the autonomy of state élites in determining the security agenda. Widespread social concerns

about the economic, cultural and social threats posed by refugees and other immigrants have, accordingly, tended to make their way into the defence considerations of states such as South Africa and Tanzania. Even in the more established democracies, the end of Cold War hostility and uncertainties created by economic globalisation have created the space and the appetite for a new range of public fears.

These developments are significant in their own right but the movement towards a new security perspective on forced migration really picked up pace in the wake of actual terrorist activity. The bombing of the World Trade Centre in 1993 in New York by Islamic extremists, one of who had an asylum decision pending, and, of course, the attacks of 11 September 2001 by foreigners on visitor and student visas demonstrated that security talk actually corresponded to an empirically verifiable threat. These attacks spawned a range of new restrictive laws and policies across Western states and particularly in the US. There is now an unprecedented consensus among states on the following issues: that refugees generally constitute more of a threat than an asset; that the dangers posed by asylum seekers are arguably more diverse than ever before; and that there is a need for international cooperation to deal with these new security risks.[3]

The refugee as a victim of insecurity

The connection between refugees and security runs deeper than just the last two decades, however. When the English political philosopher, Thomas Hobbes, set out to justify obeying the modern state to a conflict-ridden and deeply divided seventeenth-century English audience, he placed the state's role in delivering security at the centre of his argument. The sovereign, according to Hobbes, shall do "whatsoever he shall think necessary to be done...for the preserving of Peace and Security, by preventing discord at home and Hostility from abroad."[4] In the contemporary age, characterised by judicially-specified limits on state authority, few would grant the state the prerogative to do "whatsoever [it] shall think necessary" to ensure peace at home. Yet, when the treatment of foreigners – "Hostility

from abroad" - is concerned, almost anything goes. Expanded detention, new deportation procedures for foreigners and the Bush Administration's suggestion that military trials may be used for some of the Taliban fighters held at Guantanamo are cases in point.

Widespread public indifference to such discretionary treatment is closely linked to the view of the foreigner as threat. How can we be sure that those claiming asylum come in search of help rather than to harm us? Might they not be hostile to our values and institutions? Do not their true loyalties lie with the state they have left? What is in short supply in our relations with foreigners is trust. This lack of trust is simply exacerbated when a history of racist assumptions has been left to fill the void between what we do and do not know about particular groups of people. Moreover, at a time of widespread fear and insecurity, the grounds for worrying about the motives of foreigners are stronger than ever.

Yet the refugee is no ordinary foreigner. There is something deeply ironic in seeing her as a threat. For the refugee is, by definition, a person who is a victim of insecurity. Her very search for protection vindicates the importance of security. But this is only one side of the coin of refugeehood. By virtue of being escapees from violent conflict and human rights violations, refugees are also (albeit unwilling) representatives of these phenomena. They are human examples of how states can sink into violence, torture and oppression. As representatives of these undesirable features of social life, it is not surprising that refugees are often construed as carriers of the instability and insecurity that led to their initial departure. As in the case of those fleeing plague, reactions to them typically involve a mixture of sympathy for their plight and concern that they might be the carriers of the disease that wracked their own societies. There is, then, something discomfiting in the very idea of the refugee.

An ethically defensible response to 11 September

What, then, might be an ethically defensible response to security concerns for asylum raised by 11 September? We need to begin by

ensuring that this general feeling of discomfit is disentangled from more legitimate concerns over security that states might have. This process of disentangling requires that states subject their own security concerns to the

What is in short supply in our relations with foreigners is trust.

same kind of scrutiny that they currently apply to the claims of asylum seekers. However, let me work towards this conclusion by saying a little more about security.

Security is, for the most part, an instrumental value. That is, we want it because it enables us to realise other values, such as freedom, peace of mind and justice. However, its instrumental role suggests that the value of any gain in security is not absolute; it needs to be weighed against the costs it might have to the other important values. This has important implications. For example, we could ensure that the type of terrorist attacks that occurred on 11 September could not happen again, if we were prepared to ground all planes permanently. Few of us, however, would be willing to tolerate the consequences of this move. The cost in terms of our freedom to move would alone far outweigh the added security this measure would bring.

But the trade-offs associated with increased security are not only shared out among citizens. Importantly, as we have seen, the security of foreigners, like refugees in search of a secure place of residence, is sometimes traded off against the interests of citizens. At times of high national drama, the consequences for foreigners of these trade-offs are rarely a matter of great public debate. Yet, from an ethical perspective, the interests of outsiders must count for something. In the aftermath of 11 September, many officials and public figures have called for new restrictions on asylum with barely a passing mention of the effect of these measures on the lives of refugees. Yet the unspoken truth is that, as shocking as the recent terrorist attacks in New York, Pennsylvania and Virginia were, the number of people killed by them is dwarfed by the number of people whose lives are saved from death and torture annually as a result of the asylum policies of the US, Canada and

other Western countries. Even if, as some ethical theories argue, there are good moral reasons for prioritising the needs of one's compatriots, the value of these lives saved cannot be completely written off.

One reason why we can be sure that the costs of making asylum more restrictive would be more death and suffering is because the claims of refugees are subjected to rigorous scrutiny. Rather than taking their claims at face value, Western states put refugees through an elaborate set of procedures to prove that their security would really be under threat if they were returned. The aim is to sort out those who really need protection from those who would use asylum to serve other, less urgent or less morally compelling ends. A refugee must establish that their fear is 'well-founded' and that this fear applies to them as an individual. This process of establishing the credibility and applicability of a claim to refugee status is both expensive and resource intensive. Yet, officials argue, it is necessary if the integrity of the provision of protection is to be ensured.

Here we have a powerful model for how states should deal with their own security concerns in the wake of 11 September. Just as Western states do not take at face value an asylum seeker's claim to be threatened, so they should not take the act of exclusion on security grounds as self-justifying. Especially at the current time, when terrorist attacks have made our governments more prone to exclusion, we need to apply some rigorous criteria for determining the validity of security threats.

There are three questions that we can draw from current asylum practices that are helpful in this regard. First, are we applying a clearly stated standard for what constitutes a security threat (an analogue to Article 1F of the Refugee Convention)? Second, is there a procedure for investigation as to whether claims to exclude on security grounds are 'well-founded' (an analogue to current refugee determination systems)? Three, has a personal link between the individual seeking entry and the supposed security threat been established (an analogue to the reluctance of states to give blanket protection to asylum seekers from particular countries)? These questions may not provide a blueprint for dealing with all the thorny issues raised by security in entrance but they indicate clearly enough a general principle: that the standards states use for evaluating security threats to their own societies should be at least as stringent as those demanded of individual asylum seekers wishing to be admitted.

Conclusion

A shiver ran down the spine of many people in the West on 11 September. The world they looked out upon now seemed a much less secure and much more uncertain place. This changed world provided the rationale for new measures of exclusion and control on refugees, asylum seekers and, in some cases, foreign residents generally. No one with a modicum of historical memory could be surprised that these measures have flourished. At times of high anxiety, political communities tend to become less tolerant, more insular places.

Yet if this was the exclusionary moment spawned by 11 September, another moment is still possible. The insecurity and uncertainty generated by the terrorist attacks brought many people in stable, rights-respecting countries closer to the insecurity that blights the lives of many of the world's refugees. In so doing, they showed why the institution of asylum – with its promise to swap vulnerability for protection – is so supremely important and why it should not be bartered away for a marginal increase in security. For most of us, this moment of connection lasted for only a few short minutes. But it is a moment we would do well to replay in our minds. If we let this feeling of connection with refugees inform current measures to protect our societies, the events of 11 September might well cement, rather than erode, the values that security promises to preserve.
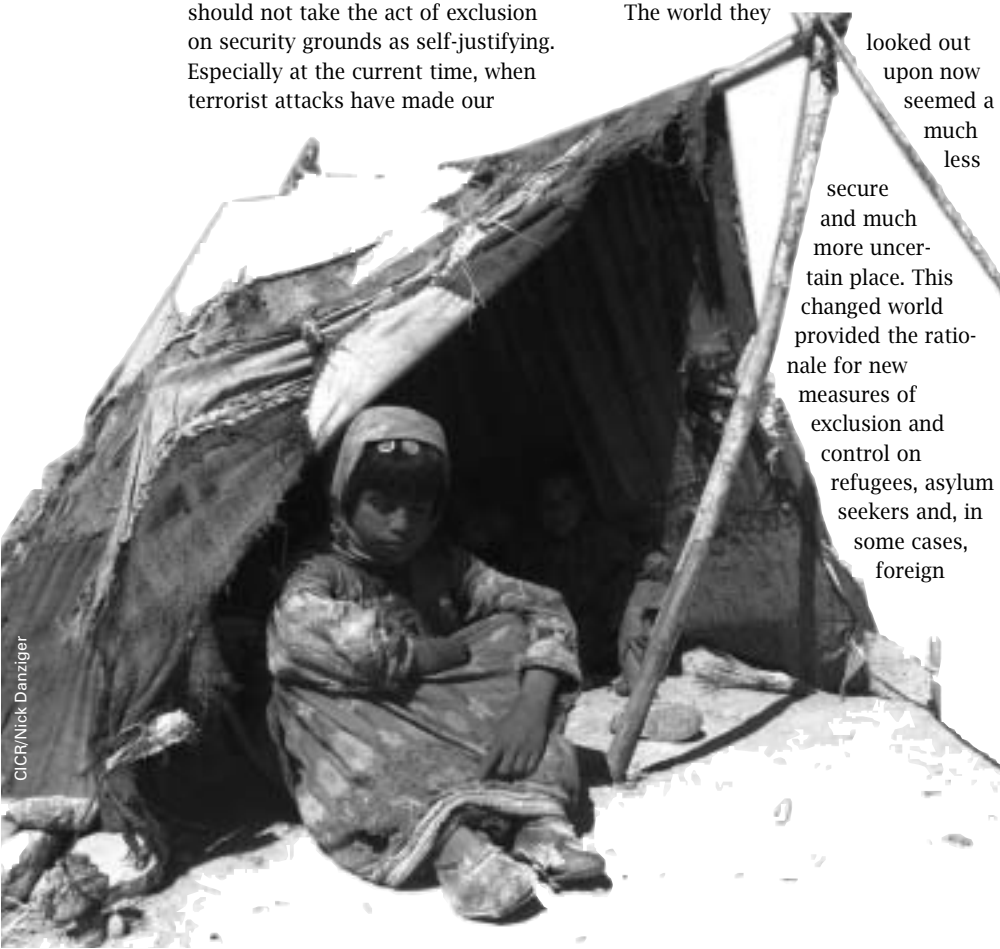
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1 John Stuart Mill *Utilitarianism, On Liberty, Considerations on Representative Government*, edited by H B Acton, J M Dent, London, 1992, p56.

2 Adam Roberts 'More Refugees, Less Asylum: A Regime in Transformation', *Journal of Refugee Studies*, Vol 11, No 4, 1998.

3 For detailed discussions of the implications of transforming migration into a security concern, see Jef Huysmans 'Migrants as a Security Problem: Dangers of 'Securitizing' Societal Issues' in Robert Miles & Dietrich Thranhardt, eds, *Migration and European Security: The Dynamics of Inclusion and Exclusion*, Pinter, London, 1995; and Ole Waever et al *Identity, Migration and the New Security Agenda in Europe*, Pinter, London, 1993.

4 Thomas Hobbes *Leviathan*, edited by C B Macpherson, Penguin, Harmondsworth, 1968, pp 232-233.
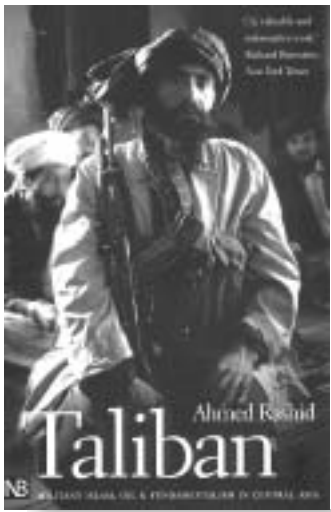
Resources

Key internet resources with frequently updated information on Afghanistan include:

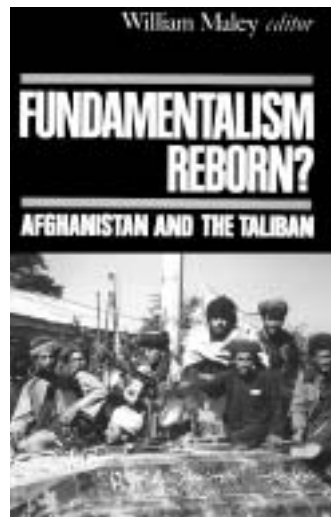**Human Rights Watch:** www.hrw.org/asia/afghanistan.php

Institute for War and Peace Reporting: www.iwpr.net/index.pl?afghan_index.html

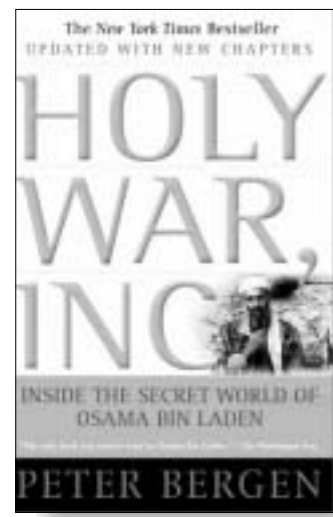**Revolutionary Association of the Women of Afghanistan (RAWA)** www.rawa.org

Relief Web www.reliefweb.int/w/rwb.nsf/vCD/Afghanistan

Taliban: Militant Islam, Oil and Fundamentalism in Central Asia, *by Ahmed Rashid, Yale University Press, March 2001, ISBN: 0300089023, 294pp, $14.95. Contact www.yale.edu/yup*

Fundamentalism Reborn: Afghanistan and the Taliban, *edited by William Maley, New York University Press, ISBN: 0814755860; March 1998, 256pp, $19.50 via www.amazon.com.*

Holy War: Inside The Secret World of Osama Bin Laden *by Peter Bergen. Touchstone Books, June 2002, ISBN: 0743234952, 304pp, $11.20 via www.amazon.com.*

Palestinians in the aftermath of 11 September:
wishing refugees out of existence?

by Abbas Shiblak

While the international community expects that the population of Afghan refugees will eventually return home, the equally numerous Palestinian refugees see no prospect of return.

Israel, more than any other country, has jumped on the American bandwagon of 'anti-terrorism's global war' in the aftermath of the tragic events of 11 September. As Israel invades Palestinian self-governing areas and dismantles and destroys the institutions of the nascent Palestinian political entity agreed upon in the 1993 Oslo peace accords, Palestinian refugees find themselves, once again, at the receiving end of a simplistic and dangerous discourse that sweeps away their aspirations for justice, freedom and peace.

There is an international consensus that the cornerstone of a political settlement and resolution of the Palestinian refugee question is the establishment of a viable Palestinian state. Israel's refusal to withdraw from occupied territories and its continuing annexation of land and expansion of settlements have led to the current impasse in the peace process and a circle of violence that has led to innocent people being killed and needless suffering for both peoples.

Despite the Palestinians having agreed to a historical compromise based on a two state solution, the peace process, with its promise of statehood, is deadlocked. The national liberation struggle of the Palestinians against occupation is being portrayed by Israel as a form of terrorism which ought to be crushed. Refugee camps have become the main targets for the Israeli army, subjected to unprecedented levels of brutality, demolition and destruction while the services of

UNRWA (the UN agency charged with aiding Palestinian refugees), the Red Cross/Red Crescent and other humanitarian agencies have been severely disrupted and blocked.

For Palestinians in the diaspora communities hopes of return to their homeland have been shattered. Like other immigrant communities they live in worry and fear in the midst of a less tolerant climate in the host countries, brought about by measures taken following 11 September.

Israel's establishment in British-mandated Palestine in 1948 and the annexation by Jordan of the West Bank led to Palestinians not only losing their homeland but also, for the majority, any claim to citizenship. Three legal instruments enacted by Israel in the early 1950s (the Absentee Property Law, the Law of Return and the Citizenship Law) classify dispossessed Palestinian refugees as 'absentees' (thus nullifying rights to property restitution, residence and citizenship) while stipulating the right of any Jew anywhere in the world to unrestricted immigration, settlement and automatic citizenship.

Israel regarded those Palestinians who remained within its 1948 borders as residents but not citizens. Only in the early 1980s did they all gain citizenship. When Jordan annexed the West Bank in the early 1950s it adopted similar policies. As a result, the remainder of the Palestinian population of former Palestine were doomed to live as stateless refugee holders of Travel Documents issued by the Arab

host countries: Jordan, Lebanon, Syria, Egypt and Iraq. This is the situation of those resident in the West Bank and Gaza. Today more than half of the estimated total population of eight million Palestinians are refugees and stateless.

Since Israel occupied the rest of Palestine in 1967, it has pursued a policy of administrative ethnic cleans-

hopes of return to their homeland have been shattered

ing, especially in occupied East Jerusalem.[1] It is estimated that over 250,000 of the population of the West Bank and Gaza who were outside the territories at the time of the occupation were not allowed back and so became refugees, some for the second time. The rest of the population in the occupied territories were again considered by Israel as residents and not citizens. Israeli laws applied to foreign residents were applied to Palestinians in these territories. Yet more Palestinians, estimated to be around 150,000, lost their ID cards and their residency rights because of further Israeli imposed measures.

Since Oslo, more Palestinians have left because of oppressive measures and the hard economic conditions caused by restriction on movement of people (and goods) other than those who have been permitted to return to reside in areas controlled by the Palestinian Authority. Successive Israeli governments have encouraged massive immigration to strengthen its grip on the occupied territories. In contradiction of the spirit of Oslo, the annual growth rate in the settler population in the last decade has been over 8%.[2]

Palestinians are excluded from the international protection regime for

refugees and stateless persons because their displacement predates the creation of UNHCR. Article 1D of the 1951 Convention on the Status of Refugees and Paragraph 7(c) of the statutes of UNHCR stipulate that persons already in receipt of assistance from other UN agencies do not fall under the mandate of UNHCR. Unlike UNHCR, UNRWA offers only relief and assistance, and not protection. Its mandate is restricted to Palestinian refugees in Jordan, Gaza, the West Bank, Syria, Lebanon and Egypt, not to those who live in other Arab countries or in communities outside the Arab world.

statelessness is at the heart of the Palestinian refugee problem.

Arab states have argued, and most continue to argue, that Palestinians should not be included within the international refugee regime lest this mute the voicing of their national rights. Although Arab states have agreed in principle to grant full citizenship rights equivalent to those of their citizens, they have stopped short of agreeing to naturalisation. Agreements and commitments made by Arab states have not been honoured. Full residency and social and

economic rights for Palestinians are denied in most host Arab states, most particularly for the 400,000 Palestinian refugees in Lebanon.[3]

Takkenberg has noted that it is statelessness, the absence of the option of returning to their country, the denial of even the right to have rights, which is at the heart of the Palestinian refugee problem.[4] Changing the status of Palestinians from refugees to citizens is key to the cessation of the Arab-Israeli conflict. The right of return and the right to compensation and full citizenship in the countries in which they reside are not only basic human rights but are also complementary rights which should not be seen to cancel out one another in any way.

The Palestinian refugee question could be resolved if and when a fully-fledged sovereign Palestinian state is established within the framework of a comprehensive regional peace settlement. Any settlement has to widen rather than limit the options for refugees. A settlement package must include either the right of repatriation in accordance with UN resolutions or compensation and full citizenship rights in host countries for those who choose not to return or who are not

allowed to return to homes of origin in pre-1948 Palestine.

Until this happens, Palestinian refugees should no longer be excluded from the general international legal regime created for the protection of refugees and stateless persons. Recent events have shown that the 'passive protection' introduced by a restricted number of international observers is not the answer. They cannot offer the level of protection which is needed and, indeed, their presence obscures the need to go beyond the limited nature of UNRWA's mandate.

Abbas Shiblak, a writer and journalist, is one of the founders of SHAML – the Palestinian Refugee and Diaspora Centre – www.shaml.org. Email: shiblak@lineone.net

1 See 'Population displacement in Jerusalem', *Forced Migration Review* issue 5, p39.

2 For settlement statistics visit the database of the Foundation for Middle East Peace www.fmep.org/database and Americans for Peace Now www.peacenow.org.

3 See 'Grim prospects for Palestinian refugees in Lebanon', *Forced Migration Review* issue 11, p40.

4 Lex Takkenberg *The Status of Palestinian Refugees in International Law*, Clarendon Press, 1998.

Palestinians and Israelis join together to take food to people in Jenin refugee camp, April 2002.

Rapprochement Centre

Post 11 September jitters for Iraqi Kurds

by Maggy Zanger

Since the Gulf war, Iraq has been effectively divided in two. Two Kurdish administrations control an area the size of Switzerland. Despite constant interference from the regime in Baghdad and from Iran and Turkey (fearful that the example in Iraq will embolden their own large Kurdish populations), Iraqi Kurds today enjoy unprecedented social and political freedom and a fairly stable economy. UN Resolution 986, the oil-for-food programme, has pumped some $3 billion into the Kurdish enclaves, providing not only food but also funding for projects in agriculture, education, health, de-mining and housing.

As talk increases of making Iraq the target of 'phase two' of the 'war on terrorism', Kurds, together with members of other non-Arab minorities resident in the Kurdish enclaves, experience both hope and fear. While they desperately hope that a US-led attack may result in a regime change in Baghdad, they also fear Saddam Hussein's reaction to any military action. Recent press reports indicate that Baghdad has installed infantry brigades, artillery units, tanks, anti-aircraft guns and missiles along the ceasefire line which is only a few kilometres from the main population centres in the enclaves. There is no guarantee that the US or any other power can protect those in the Kurdish area, or, indeed, that they will choose to, if their attention is solely focused on the 'war on terror'. If there is another mass exodus of Iraqi Kurds it is likely that both Turkey and Iran will try to use the rhetoric of the global war on terror to refuse entry in order to 'protect' themselves from 'terrorism'. It should be noted, however, that the Iraqi Kurds have a remarkable history of not using terrorist tactics.

Almost all Kurds (and for that matter Assyrians, Turkomans, Chaldeans, Armenians and Yezidis) over the age of ten have been refugees or IDPs at some point in their life. According to UN Habitat, 23% of the population of the Kurdish area are victims of displacement as a result of genocide, ethnic cleansing and conflict in recent decades.

In the waning days of the Iran-Iraq war in the late 1980s, the *Anfal* ('spoils' in Arabic) campaign by the Iraqi government included mass killing, displacement and disappearance. As many as 4,500 Kurdish villages were destroyed and 500,000 people were forced to collective towns. Chemical weapons were used in at least 40 separate attacks. Some 50,000 to 200,000 people were killed and another 182,000 disappeared and are presumed dead. The large numbers of '*anfal* widows' – many denied the solace of confirmation that their husbands are dead – give the collective towns of northern Iraq today one of the most gender-unbalanced populations in the world.

'Arabisation' of the oil-rich region around the main Kurdish city of Kirkuk (which remained in Iraqi government hands at the end of the Gulf War) began in the early 1960s when the Baath party first came to power. Ethnic cleansing and government-controlled in-movement of Arabs from central and southern Iraq have dramatically altered the demographic composition of the region.

Since 1991 the Arabisation campaign has been reinvigorated. While the US Committee for Refugees states that 100,000 people have been expelled since the Gulf War, Kurdish sources speak of 200,000. Kurds, Turkmen and Assyrians are pressured to sign a form 'correcting' their nationality. Any non-Arab who needs to have any official dealings with the Iraqi government – whether to do with ration cards, property, vehicle ownership or school registration – has to fill in a form that says: "I wish to correct my ethnic origin into Arabic". Those who comply may then be told that since they are 'Arab' they should m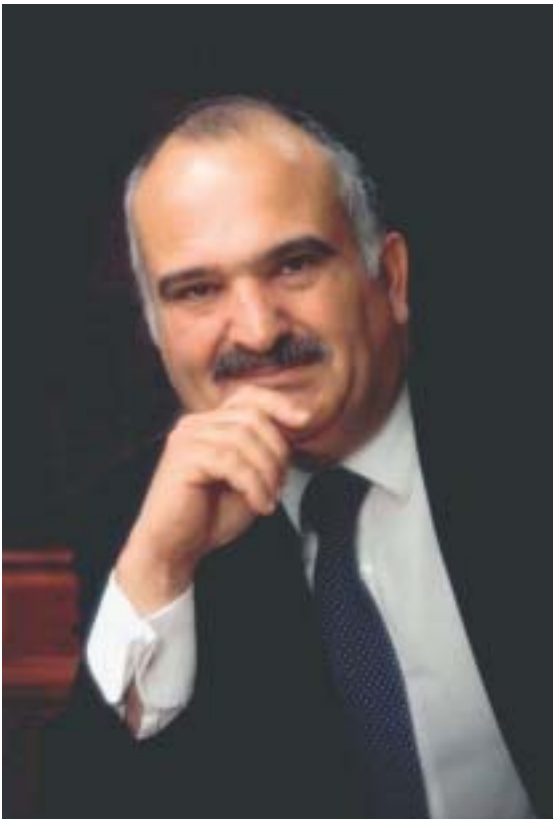ove to the south of Iraq. Those who refuse are subjected to intimidation, arrest and, eventually, expulsion to one of the Kurdish enclaves. In recent months, as attention has focused on Afghanistan, there are reports that the rate of ethnic cleansing in the city and governorate of Kirkuk has speeded up. A 'law' decreed by the Baathist Revolutionary Council in September 2001 allows for the nationality of all non-Arab Iraqis to be 'corrected'. Confiscated residential and agricultural land belonging to non-Arab citizens is given to officers of the military and security forces. Arab settlers are given land, cash and weapons as 'personal gifts' from Saddam Hussein.

In the Kurdish autonomous areas, officials and UN and NGO workers struggle to accommodate the steady stream of expellees. The lucky ones can join families who had been forced from the Kirkuk area in earlier waves of expulsion. Other crowd into the collective towns and makeshift camps nearby.

Uncertainty drives all inhabitants of the Kurdish enclaves, whether resident or IDP, to seek opportunities to migrate. For many, voluntary departure now is preferable to future expulsion by Saddam. Well-founded fears and traumatic memories impel Kurds to risk astronomical amounts of money (up to $10,000 per person) to embark on perilous journeys through Syria, Turkey and Iran and to crowd onto derelict ships bound for Italy or Australia. The threat of a US attack – and the Iraqi regime's possible response to it – has made that uncertainty all the greater.

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Royal Institute for Inter-Faith Studies

Lessening Tensions in a Tumultuous World: The Royal Institute for Inter-Faith Studies

by HRH Prince El Hassan bin Talal, Patron, Refugee Studies Centre

Established in 1994, the Royal Institute for Inter-Faith Studies (RIIFS) emerged from a process of consultation with educational, cultural and interfaith institutions in the Middle East and the West started a decade earlier. RIIFS was originally intended to serve as a centre for the study of Christian and Jewish traditions in the Arab/Islamic world and for the enhancement of understanding of regional diversity with a view to lessening Middle Eastern tensions. Initially focusing on religion, religious diversity and the Middle East, the Institute has broadened its scope to encompass the interdisciplinary study of cultural interaction worldwide.

From the Institute's inception, its work has involved research, publication of reference works and periodicals, and organisation of workshops, conferences and lectures. In addition to publishing academic works pertaining to Christianity and Muslim/Christian relations in the Arab World, RIIFS produces a quarterly magazine *Al-Nashra* which serves as a forum in which Muslims and Christians may discuss contemporary interfaith issues, particularly as they relate to Arab and Islamic societies. *Al-Nashra* also strives to shed light upon the historical relationship between the three Abrahamic religions (Judaism, Christianity and Islam) in the interests of deepening mutual understanding at a time when tolerance often seems to be captive to newspaper headlines. The magazine is freely and widely distributed to leading political and religious figures in the region, both Christian and Muslim, as well as to others interested in the continuation of fruitful relations among the adherents of different faiths.

Since 1999 the RIIFS has published the semi-annual *Bulletin of the Royal Institute for Inter-Faith Studies (BRIIFS),* a peer-reviewed academic journal that publishes research articles, essays and book reviews contributed by recognised scholars working in all fields of the humanities and social sciences.

The Royal Institute works to promote dialogue between Muslim and Christian Arabs and to assess their mutual relations, as Arabs, with the Western world. At meetings convened by RIIFS scholars, researchers, religious leaders and journalists have asked such questions as: What is the role of Christian Arabs in Arab/Islamic society and how may it be enhanced? What are the responsibilities of Christian Arabs to Arab/Islamic society? Can Christian Arab identity be instrumental in cultivating positive relations between Muslim Arabs and the West? What is the impact of the migration of Arab Christians to the West upon the strength and sustainability of the region's Christian communities?

RIIFS has long been concerned with the Arab image in the West. A 1998 meeting focused on the apparent European and American identification of the Middle East with such threats to global peace and democratic order as terrorism, resurgent Islam, totalitarian governments and weapons of mass destruction. This negative perception of the region and its peoples has been repeatedly invoked in recent memory, particularly by the United States, to justify the severing of diplomatic relations, the application of economic sanctions and even the use of military force.

Since the events of 11 September the Royal Institute has given renewed thought to how it may further contribute to the lessening of tensions between the Arab/Islamic and Western worlds by designing programmes targetted at policy makers and educators. Genuine progress will take time. There is always the possibility that a new outrage – real or perceived – will harden prejudices and feed sterile conflict. No matter what the future holds, the Institute will continue to work to foster understanding and deepen tolerance on both sides of the divide.

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In Afghanistan people live by, and explain events by, proverbs:

on ethnic diversity:
When God had finished creating the world, there were bits and pieces left over.
He decided to put them all together ... and the result is Afghanistan.

on resilience:
If there are only bread and onions, still have a happy face.

on making peace:
Blood cannot be washed out with blood.

on hope for the future:
In a ditch where water has flowed, it will flow again.