

Maintaining the Civilian and Humanitarian Character of Asylum

Geneva, 9-11 June 2004

Conclusions and Preliminary Issues Raised

Taking into account the breadth of the discussion and the recognized preliminary character of the inquiry, this document presents only the main conclusions and key issues raised.

A. General Themes

1. The host State is primarily responsible for the protection of refugees and ensuring the civilian and humanitarian nature of asylum, which includes the disarmament of armed elements and the identification, separation and internment of combatants.
2. The international community has a responsibility to ensure the political will, and where necessary and warranted, support the capacity of the host State to fulfill its responsibilities in this regard.
3. The disarmament of armed elements and the identification, separation and internment of combatants is a vital component of a comprehensive approach to ensuring refugee security within camps, settlements and the surrounding communities.
4. Defining the possible roles (within existing mandates) of UN agencies, including DPKO, OCHA, OHCHR, WFP, WHO, UNICEF, UNHCR and others, along with international organizations such as ICRC and any other relevant actors, is required. These roles may vary according to the operational context and may helpfully be coordinated by a designated lead agency within an interagency framework. Regional bodies also have a role to play given the frequent regional security dimensions at stake.
5. UNHCR and other humanitarian actors should make use of, when necessary, Security Council Resolutions 1208 and 1296, which stress the importance of humanitarian agencies bringing to the attention of the Security Council situations of refugee insecurity that can threaten the maintenance of international peace and security.
6. Adequate and more predictable funding is critical for ensuring the effectiveness and sustainability of the disarmament of armed elements and the identification, separation and internment of combatants, as well as other activities related to maintaining the civilian and humanitarian character of asylum.

7. There is a need to highlight gender issues in order to, *inter alia*, address the inequality of treatment between male and female ex-combatants; to recognize and respond to the gender differentiated impact of armed conflict on ex-combatants and other affected persons; as well as to respond to the specific needs of abducted girls and women, ex-combatants' families, and women and girls in host communities. Support is required for the role of women in peace-building at the family and community levels to tackle social fragmentation and accelerate post-conflict recovery.
8. Operational guidelines should highlight gender issues, in particular the needs of girl and women soldiers, and those otherwise associated with military groups (i.e. as fighters, cooks, porters, wives, sexual slaves).
9. The early involvement of local authorities in disarmament, identification, separation and internment is critical. The host State should take ownership of the process.
10. Factors that affect how soon identification and separation may occur include the willingness of the host State to act; the willingness of the international community to assist when required to do so; the importance and ability to involve the refugee and local, traditional and community leaders; and willingness of armed elements and combatants to self-identify, disarm and separate.
11. Operational guidelines are necessary, but they need to be implementable and flexible enough to respond to varied situational environments and to comply with relevant laws. There is not one procedural model that is applicable to disarmament, identification, separation and internment; it will depend on the specificities of the context.
12. Most issues addressed at this Roundtable need further exploration. Therefore, this Roundtable is viewed as a key part on an ongoing process to develop guidelines and to report back to the Executive Committee. Smaller expert group discussions will assist UNHCR facilitate this process.

B. Definitions and Legal Framework

1. The legal framework pertaining to maintaining the civilian and humanitarian character of asylum lies at the interface of refugee law, the law of neutrality, human rights law and international humanitarian law. Human rights law is relevant, *inter alia*, in setting standards of treatment during internment. Under the 1951 Convention Relating to the Status of Refugees, Art. 9 and Art. 31 are of particular relevance.
2. The law of neutrality as laid down in the Fifth Hague Convention of 1907 requires neutral states to separate and intern foreign combatants involved in an international armed conflict who enter their territory. It is the view of the ICRC that the obligations of neutral states under the law of neutrality have

attained the status of customary law, and by analogy are also applicable in relation to foreign fighters involved in internal armed conflicts.

3. While international humanitarian law does not apply in neutral states, it nonetheless provides useful guidance for determining who is a combatant that should be separated and interned. In addition to members of states' armed forces, persons who take a direct part in hostilities can also be targeted during armed conflict.
4. In the context of maintaining the civilian and humanitarian character of asylum and security of refugee camps, there was general agreement to use the terms "armed element" and "combatant" as defined in ExCom 94.
5. Discussions also centered on whether the terms "combatant" were sufficient to include all categories of persons which may pose a threat to refugee security and the civilian and humanitarian character of asylum. In this context, questions were asked if "political agitators", "persons with a hidden military agenda", and persons who were unarmed but "associated with armed groups" could be included for separation and internment. It was suggested that the terms "persons who have not given up the armed struggle" or "foreigners with military agenda" could be employed to more accurately describe the persons to be separated and also to avoid possible confusion with the notion of "combatants" under international humanitarian law. Issues were also raised in relation to the proper ambit of "armed elements".
6. A view was expressed that while the rationale for interning "combatants" under the law of neutrality is to preserve the neutral position of the host state, this does not necessarily coincide with what is necessary to preserve refugee security, and there may be justification to intern other categories of persons apart from combatants. Other categories discussed included mercenaries and deserters.
7. In general, the participants felt that there was a need for clarity of definitions and clear distinction between the terms "combatant" and "armed element" so that guidance could be provided as to who should be identified, separated and interned. It was highlighted that these two terms need to be used accurately and precisely in the different contexts.

C. Disarmament and Identification

1. Disarmament, identification and separation methods and procedures should, to the extent possible, be transparent. There are many benefits to transparency, including increasing the possibility that combatants will self-identify, reducing security risks and increasing the good will in the refugee camp or settlement.
2. There must be clear, consistent and easily accessible communication to all, including refugees and arrivals, of the existence of special measures for combatants.

3. Generally, identification regimes should only be established when there is credible information (from various sources including military intelligence) or evident circumstances that movements of populations across the border are of a mixed character, with a significant number of combatants.
4. Identification and separation always entail security concerns which should be fully considered before deciding to embark upon the exercise and effectively addressed prior to and during the implementation of the process.
5. Different models of identification and the actors involved in these models were discussed, including those used in Zambia, Tanzania and Sierra Leone.
6. There are various methods of identification, such as self-identification and denunciation. Information could be derived from different sources. Some thought that reports from other refugees in identifying combatants and armed elements were valuable, but others expressed concerns about security repercussions and the possibility of personal motives for the identification. Interview and assessment by persons with military expertise would be extremely helpful. Given the number of factors around such a sensitive issue, the actual methodology can be determined through an analysis of the operational situation and may be composed of a combination of methods.
7. In situations of sudden and/or mass influx of mixed populations, the identification process may not be feasible or may have to be rudimentary in nature, which could result in incorrect internments. This raised the need for a review process.
8. If possible, identification should be done immediately or as soon as possible after entry into the host country. However, mechanisms should be in place at other stages of the refugee operation to enable identification and separation. For example, host-State structures that already exist could be used for this purpose (i.e. the District Joint Operations Committee in Zambia, a permanent administrative unit comprised of various government security forces that conducts screening of new arrivals, and which exists even when there is no influx of refugees). Views were also expressed that, in some situations, there can be benefit to doing the identification at a later stage, since if there is transparency in the process, there may be more self-identification. However, it is critical to disarm as soon as possible after entry into the host country; the actual screening process can be done at a later date, depending on the circumstances.
9. Child soldiers should be promptly identified in order that they may benefit from appropriate rehabilitation programmes.
10. The failure to identify and for female soldier to self-identify was highlighted; there needs to be a more proactive approach to deal with this. Women and girls are not getting the necessary information regarding their rights and available assistance.

11. The military expertise of DPKO can be helpful in assessing the situation; DPKO may also have a role to play in training the military in the host States to conduct the identification and separation processes.
12. In order not to violate the principle of *non-refoulement*, the host State must not, *inter alia*, refuse entry to anyone at the borders who seeks asylum.

D. Separation

1. All armed elements must be disarmed but may not need to be separated or interned. The general consensus was that all combatants must be disarmed, separated and interned; however, there was some discussion that there may be situations where separation of combatants may not be possible without an unacceptable risk to the security of a refugee camp or settlement. Thus, issues of security need to be balanced with the destabilization effect a separation exercise may have on the surrounding environment.
2. While as a matter of principle, separation should be undertaken as early and as quickly as possible; this may not always be feasible as a matter of reality, in particular, where there is a mass influx situation. In some situations, it would be more appropriate to conduct separation at a later stage of the influx.
3. Through the use of early warning mechanisms and contingency planning, there is a need to obtain information on the background and profile of the refugee influx as part of the planning of the separation operation.
4. The challenges of identification, disarmament and separation are particularly complicated in situations where state authorities are absent (e.g. no functioning government, presence of non-state actors). This may require that the UN, and, where appropriate, regional and sub-regional organizations, adopt a more active role.
5. Separation is considered primarily a security related exercise and therefore approached with all security arrangements in place. In this context, the possible role of DPKO and peace-keepers was highlighted, although there may be restrictions as to their mandates. There are particularly serious security risks relating to conducting separation activities inside refugee camps and settlements. This requires careful risk management.

E. Internment

1. The Sierra Leone experience is a good case study, with a comprehensive approach and a successful coordination mechanism in the form of an interagency Task Force on Internment comprised of officials from concerned government bodies, as well as international agencies, including UNHCR. The team from Sierra Leone agreed to provide a written report which could be used as a case study.

2. There are different approaches to dealing with military hierarchies in the internment facilities, which vary from using the hierarchies to maintain camp discipline to dismantling them. There are advantages and disadvantages to each approach depending, in part, on the circumstances of the population profile.
3. The importance of family unity was discussed; different views were expressed about having families in the internment camp, having a separate nearby facility, or their remaining within the main refugee camp.
4. In principle, child soldiers should not be interned.
5. While the length of internment was not examined in detail, there was some discussion that the length of internment should be determined on an individual basis and be flexible, depending on relevant factors (such as the individual's rank and position, length of service and nature of the activities, if the recruitment was voluntary or forced).
6. Conditions of internment, at a minimum, must comply with the treatment of prisoners of war in the Third Geneva Convention of 1949. The national law of the host State and human rights law may offer additional protections. Another aspect of the human rights dimension of an internment regime is the issue of a review process to challenge the designation of combatant.
7. Internees should not be quartered in the same facility as ordinary criminals and vice versa.
8. It is important to consider and deal with the tensions that can arise with the host community and the refugee community. If internees are treated better (i.e. the nature of the services provided) than those in the host community or refugee community, the resulting friction will need to be addressed.
9. Since internment may create female-headed households in the refugee camp, there should be increased monitoring and other measures to address their security and possible vulnerability.
10. Durable solutions for ex-combatants determined to be refugees should constitute part of the internment strategy given the particular difficulties of identifying such solutions in view of their background.

F. Assessment of Genuineness of Renunciation of Military Activities

1. The standard of proof regarding the assessment of genuineness needs to be resolved, whether it is a reasonable degree of likelihood or balance of probabilities, or another standard.

2. The evidence used should include information gathered throughout the period of identification, separation and internment. Monitoring the activities of the individual concerned during internment would facilitate assessing the genuineness. In this context, registering the movements of the internee in and out of internment facilities and eliciting his/her intention for leaving the internment facility would contribute to understanding the real motives of the internee concerned.
3. The timing of the assessment of genuineness needs to be flexible; in the past, some host States (i.e. Sierra Leone) have used a one year benchmark as the time period for the observation and verification process while in other operations the period was considerably shorter.
4. There was a suggestion that there are four different categories of internees for the verification process. The categories are: those who should never have been interned; those who had been militarily active and have genuinely and permanently given up the armed struggle; those who were militarily active, present themselves as having renounced but are not credible; and those who have not renounced military activity. The main challenge of the verification process is to assess the sincerity of the renunciation for the internees in the second and third category. It was suggested that some indications of sincerity are expressions of regret for the victims of the conflict; some form of regret for past activities; signs of exhaustion or weariness and general feeling of homesickness; and clear signs of dissatisfaction with their military or political organization.
5. Renunciation is more likely to be genuine if there are real alternatives for a civilian livelihood in reach, perhaps through DDDR programs.
6. There needs to be a mechanism to identify incorrectly interned individuals and provide a remedy for those incorrectly interned; such mechanisms and remedies need to be based on domestic, refugee and human rights law.

G. Refugee Status Determination and Exclusion

1. Asylum applications by former combatants determined to be civilians should be examined in individual refugee status determination procedures. Such procedures should include a thorough assessment of the applicability of the exclusion clauses set out in Article 1F of the 1951 Convention.
2. For exclusion to be justified, it must be established, on the basis of an individualized assessment, that there are serious reasons for considering that the applicant has committed acts within the scope of Article 1F. Moreover, the exclusion procedure must offer adequate safeguards, including, in particular, an opportunity for the individual concerned to comment on the information which links him/her with excludable acts, and a right to appeal a decision to exclude.

3. Not all former combatants are excludable. The fact of having participated in armed conflict does not as such give rise to exclusion, nor does it of itself establish a presumption of individual responsibility for excludable acts. Such a presumption may, however, arise for members of particularly violent groups or military units; procedural fairness requires that the individual concerned be given an opportunity to rebut the presumption.
4. It should be noted that the exclusion clauses are not primarily concerned with safeguarding the civilian and humanitarian character of asylum, but rather with preventing the abuse of asylum by individuals considered not to be deserving of international refugee protection. Moreover, in view of the arrangements which need to be in place to permit the conduct of proper exclusion procedures, the application of Article 1F cannot form part of the immediate emergency response to a mixed influx.

H. Child Soldiers

1. Child soldiers should be promptly identified in order that they may benefit from appropriate rehabilitation programmes.
2. The Sierra Leone practice of considering all ex-child soldiers as *prima facie* refugees was noted. This allowed ex-child soldiers to be protected as refugees and to benefit from appropriate refugee assistance and programmes.
3. The approach for the rehabilitation of children should be community based and should focus on activities, such as education, skills training, reconciliation and psycho-social counseling.
4. The reintegration of child soldiers into the community should be as quick as possible.
5. Child soldiers' acceptance is facilitated by providing them with meaningful roles and skills which they can bring to receiving communities. Symbolic reconciliation or healing ceremonies or rituals may also be helpful in some cultures.
6. It was suggested that where there are large numbers of child soldiers, they should not all be placed in the same refugee camp but instead should be accommodated amongst the refugee camps in the host State for security reasons and to increase the likelihood of acceptance by the refugee community.

I. Security Measures

1. While the primary responsibility for ensuring refugee security lies with the State, the refugees also have duties, including under the laws of the host State, the 1951 Refugee Convention and the 1969 OAU Convention.

2. Some of the activities that help maintain law and order in a refugee camp include use of early warning systems; suiting the camp particulars to the operational environment (i.e. the size, layout, and the location away from the border and conflict areas); rapid deployment of humanitarian and government personnel to establish an early presence in camps and points of entry; a dedicated police presence in and around the camps; empowerment of refugees; and an appropriate and adequate gender distribution in camp management, representation and security mechanisms.
3. Different complaint mechanisms for the refugees were explored. It was generally agreed that they should be situation-specific but should include a designation of a particular person to address grievances of the refugees. Such measures are part of good governance of camp administration. It was also emphasized that the mechanisms should fit into the host environment and that the redress for the complaints should accord with international, to the extent they do not conflict, national standards.
4. Other security measures include monitoring the movement of refugees in and out of the camp through the use of gate passes, information provided by implementing partners and vigorous maintenance of police presence in refugee areas.
5. The importance of access to domestic justice systems was stressed.
6. There was discussion about traditional justice systems, which often might not be in accord with human rights standards. Other elements stressed were the recording of crimes and the empowerment of refugees through rights awareness.
7. Relocation of refugee camps far from the border was offered as an alternative to separation in the case where the camp has been infiltrated by combatants and/or as an ongoing deterrence, such as in the case of Guinea.

J. UN Initiatives on Protection of Civilians as They Relate to Safeguarding the Civilian and Humanitarian Nature of Asylum

1. In terms of policy statements, it is important to bear in mind that while the civilian character of asylum is a critical international refugee protection standard, failure to address breaches may also develop into threats to international peace and security. It follows that the involvement of the UN "political organs" on the issue is fully justified.
2. The attention provided this issue by various UN bodies can be used as a basis for advocacy with States. The adverse impact of armed elements and combatants amongst refugee populations has become, since 1999, a recurrent theme in the UN Secretary General's reports to the Security Council on the "Protection of Civilians in Armed Conflict." Further, the

Security Council, in its Resolution 1296 (OP 14), has also tasked the Secretary-General to bring to the attention of the Security Council those situations where the presence of armed elements in refugee/IDP settings may pose threats to regional peace and security.

3. The revised "Aide-Memoire" adopted by the Security Council in December 2003 provides a further basis for the Security Council to review situations where support is required to obtain disarmament of armed elements as well as disarmament, identification, separation and internment of combatants.
4. In situations where there is a UN peacekeeping operation on the ground, it is important that it maintains a strong relationship with the SRSG.
5. While there were concerns expressed that DPKO seems reluctant to accept a broader role in the protection of individuals, it was noted that newly established peacekeeping operations have been given a clear mandate to protect UN facilities and civilians under imminent threat, albeit mostly with the caveat "within its capabilities and areas of deployment." Furthermore, peacekeeping operations have a mandate to operate within the area of responsibility (i.e. the host country and usually not beyond the borders).
6. For the military planning process and related force generation issues, it is important for DPKO to be aware of expected refugee or returnee flows, possible locations and expected requests for assistance from the humanitarian community.
7. To be able to plan and include capacity to deal with refugee and returnee security issues, information available to UNHCR on expected locations, numbers, composition or anticipated security issues should be shared at an early stage with DPKO. It is equally important to agree well in advance on the proper response to various issues including the following: security; disarmament of armed elements amongst the refugees inside or outside the camps; use of force, if required.
8. The discussion also highlighted the potential operational role of other UN entities in mechanisms related to disarmament, identification, separation and internment, such as OHCHR, WFP and UNICEF.
9. A proposal was also tabled for consideration of a subsequent meeting in New York to further consolidate a UN inclusive process with respect to the issues addressed at this Roundtable and the broader issues of conflict resolution.
10. Third countries are encouraged to accept for resettlement former combatants who have been determined to be refugees and for whom no other appropriate durable solutions are available.

K. International Support and Cooperation

1. International support and cooperation can come not only in the form of financial support but also through the use of political influence.
2. International support and cooperation was focused on four areas: advocacy, standard setting and political support; resources; technical support and capacity building; and durable solutions.
 - a. In relation to advocacy, security issues in the refugee camps need to be identified as a key concern at the outset of operations. There should be regular regional and sub-regional workshops to share best practices and identify the possibilities of cooperation. Staff training and pooling of resources is also important, as is coordination with NGOs and within country teams. There is a need to examine closely how to provide useful guidelines to various actors in the field to support their advocacy role. Additionally, academics have a very useful part to play in advocacy through their writings and analysis of issues which could feed into thinking at the governmental policy level. The role of international agencies was also emphasized, as was the need for States to intercede to apply political pressure when the host State is unwilling or unable to create conditions which minimize insecurity in refugee camps.
 - b. With regard to donor finance, resources were needed in a number of areas, including in implementing security packages and overcoming bureaucratic obstacles. Security is a core element of refugee protection in camps and therefore should be a critical element of any budget. Donors can provide funds for security packages that could include tools for the local police, both in and around camps.
 - c. Technical and capacity building could take various forms. Developing the role of the international police and the military, along the models of the Ottawa Workshop (“Workshop on the Potential Role of International Police in Refugee Camp Security,” Ottawa, Ontario on March 22-23, 2000) and the United Kingdom Workshop (“Exploring the Role of the Military in Refugee Camp Security: International Seminar—Summary Report,” Eynsham Hall, UK on July 10-12, 2001) could be one important area, as is support to the local police, rather than replacing them. Technical and capacity building in relation to stand-by arrangements, as well as deployment of HSOs, should also be examined. Other areas for technical and capacity building include refugee status determination, correction of wrongful internment, and developing judicial processes to end impunity for crimes committed in refugee camps and settlements.

- d. In relation to durable solutions, political and diplomatic efforts and resources should support all three durable solutions--local integration, voluntary repatriation and resettlement. The difficulties of resettling ex-combatants and ex-child soldiers was noted and a suggestion was made that the resettlement of these difficult cases could be viewed as part of addressing the issue of residual caseloads as a component of a comprehensive approach to durable solutions; it will remain a difficult issue to resolve. An issue in relation to child soldiers is whether resettlement is in their best interest, given that they have already undergone a great deal of trauma. Similarly, the issue of resettlement of women associated with combatants also remains problematic. These matters should also be addressed in the resettlement working group.
3. The use of private security firms in armed conflicts to provide security is problematic. Most participants thought they should only be used as a last resort, if at all. Reference was made to existing reports and recommendations about their use.