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‘Prisons of the Stateless’: a response to New Left Review

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Editorial note

The November-December 2006 edition of the journal *New Left Review* (No. 42) contained an article by Jacob Stevens titled 'Prisons of the Stateless: The Derelictions of UNHCR' which was, as its title suggests, highly critical of the UN's refugee organization, and of the book published in 2005 by former High Commissioner for Refugees Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s* (Norton, 2005). As the *New Left Review* does not, in the words of its editor, "publish responses to review essays," and in view of the seriousness of the charges in the original article, *New Issues in Refugee Research* is pleased to place the following paper, which was first submitted to the *New Left Review*, in the public domain.

Introduction

In 'Prisons of the Stateless', Jacob Stevens examines the failures of the international community to find just solutions to the plight of refugees. These failures are largely attributed to the Office of the United Nations High Commissioner for Refugees. Indeed, the article's sub-title is 'The Derelictions of UNHCR'.

The author argues that rather than force states to respect their obligations with regard to the rights of refugees, and confront states where necessary, UNHCR has become an accomplice of states, accepting the "militarization" of its operations by the US and NATO, and promoting "containment", refugee camps and repatriation to insecure environments. His conclusion is that UNHCR "has condemned an uncountable number of refugees to death and misery in the camps and 'safe havens'."

His arguments in support of this grave charge are based on serious factual errors that may not be evident to those unfamiliar with the context, or who have not read the book by former High Commissioner Sadako Ogata, of which the article is an extended review.

Stevens states that, like many of the UN's specialized agencies, UNHCR functions independently of the General Assembly, and that "UNHCR has successfully encroached on the territory of the development organizations."¹ He provides no evidence for this assertion and in fact the reverse is true. UNHCR has consistently sought to have refugees and returnees included in the programmes of development agencies. Sadako Ogata addressed this issue in her final briefing to the Security Council, on 10 November 2000, quoted in her book (page 358):

Our problem, as I have said many times, is that we do not have the resources, nor indeed the expertise, to run development programmes, and yet development agencies are slow to come in once emergencies have ended. There is a gap between emergency, short-term humanitarian activities and the implementation of medium to long-term development and reconstruction programs. During this gap, societies can unravel again very easily and conflicts restart.²

Northern Iraq

Under a sub-heading 'Militarization of UNHCR', Stevens reviews UNHCR's response to the flight of over 450,000 Iraqi Kurds to Turkey after the 1991 Gulf war. He describes the Turkish refusal to grant them asylum, a position supported by the US, but makes no reference to UNHCR's efforts to reverse this position. Later in the article he writes that in "both the Gulf and the Balkans, UNHCR felt unable to protest

¹ UNHCR is not a specialized agency, and reports to the General Assembly as well to an Executive Committee of member states. The High Commissioner is appointed by the General Assembly on the recommendation of the Secretary-General.

² So frequently did Ogata raise this with her UN development colleagues that the problem became known as 'Ogata's gap'.

the closure of borders by countries that hosted key US bases.” In her book, Ogata writes (page 28):

Along the Turkish border the fate of the refugees turned catastrophic because the Turkish government, which itself faced a significant Kurdish insurrection, attempted to block their entry at the border.

Stevens presents this as "Ogata notes understandingly that Turkey faced a Kurdish insurrection within its own borders."

Ogata summarizes the request made in her 3 April 1991 letter to President Ozal of Turkey "that the government allow these asylum seekers to cross the border so that they could be afforded safety and shelter" (page 33), and recalls reminding President Ozal in a meeting two weeks later "that my main request had been to allow the entry of Kurdish asylum seekers, as I'd conveyed to him in my earlier letter" (page 35). UNHCR's protests elicited strong negative reactions from both the Turkish and US governments.

On the repatriation of these refugees, Stevens writes, "UNHCR, ostensibly doubting the capacity of the camps [being established near the border in northern Iraq by the coalition] ... argued for full repatriation of the Kurds back to their homes. ... The UNHCR attempted to maintain the façade of a 'voluntary repatriation' by assuring refugees that conditions were untenable in the mountains and that coalition forces would remain in northern Iraq to protect them. This last was little more than a lie."

Better than any outsider, the refugees understood that conditions were untenable. Stevens has earlier described the refugees as "trapped on high mountain passes, without food and water in freezing weather." Their plight had dominated the western media, with pictures of children dying in the snow leading the coverage: media attention was a major factor in the coalition's intervention.³

Despite UNHCR's efforts, asylum in Turkey continued to be denied. The refugees would have to come down off the mountains into Iraq, and the US forces leading the coalition were organizing swift and large-scale return. UNHCR did not doubt the capacity of the camps but argued that it would be much better for returnees to go straight home. Ogata writes (page 41):

What worried them [the refugees] the most was the assurance of security. They were leaving the mountains because the conditions were untenable but also because they knew that the coalition forces would be present in northern Iraq. Many refugees assumed there would be a prolonged coalition presence in northern Iraq. They were told that the coalition forces would not abandon them. UNHCR tried to establish a voluntary repatriation procedure that would provide the refugees correct and

³ For a first-hand account of the coalition's operations, including its differences with UNHCR over the camps, see Tom Clancy with General Tony Zini and Tony Koltz, *Battle Ready*, New York, 2004, pp. 200-221. For an examination of UNHCR's role in this and other repatriations, see Marjoleine Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, The Hague, 1997.

realistic information on which they could make their choice. The Turkish government interpreted UNHCR's attempt to verify the voluntary character of returns as an impediment, if not even a delaying tactic.

It was clear to UNHCR from the start that the coalition's ground presence in northern Iraq would be short-lived. UNHCR never assured the refugees otherwise. To do so would have been "little more than a lie," but the reverse was true. UNHCR sought to ensure that the refugees knew that coalition forces would not provide security indefinitely, and knew the limitations of the deployment of a UN guard contingent, which both the coalition and the political arm of the UN tried to present as helping provide security for the returnees, a task that was never its mandate and for which it had no capacity. For so doing, UNHCR was criticized by the Turkish government and members of the coalition.

The Balkans

Turning to the Balkans, Stevens writes that as UNHCR's operations during the break-up of the former Yugoslavia expanded, "the agency gradually lost the will or means to distinguish between aid work or military action. Its operations were, according to Ogata, 'political in objective and military in context'."

Had Ogata indeed written that, it would support his contention. But she did not. She in fact wrote (page 52) that "UNHCR played the lead role for all humanitarian agencies in confronting the crises, which were political in objective and military in context." Throughout the section of her book dealing with the Balkans, she describes how UNHCR sought to maintain the independence of humanitarian action.⁴

Returning to the militarization of UNHCR, Stevens writes that from "this point [the 1995 Dayton peace agreement], NATO generals felt able to march into UNHCR headquarters and give orders." The basis for this statement is Ogata's description (pages 106-7) of the "unexpected" visit on 4 November 1995 of General Joulwan, the Supreme Allied Commander, Europe, and his staff.

Ogata describes this visit in some detail, explaining the context: a major NATO-led military force was to be deployed to help stabilize post-conflict Bosnia. UNHCR was already leading a vast humanitarian operation there and close cooperation was essential. Joulwan gave details of military planning while Ogata "emphasized how important it was for the military to understand the norms and practices of refugee protection."

What was unexpected about this meeting was its timing: the Dayton agreement was over two weeks away.⁵ As Ogata goes on to explain, this early contact gave UNHCR

⁴ For examinations of the context of and pressures on this action, see Nicholas Morris, *Humanitarian Intervention in the Balkans* in Jennifer M. Welsh, ed., *Humanitarian Intervention and International Relations*, Oxford, 2004, and Nicholas Morris, *The Balkans: The limits of humanitarian action* in Larry Minear and Hazel Smith, eds., *Humanitarian Diplomacy: Practitioners and Their Craft*, Tokyo, 2007. The former focuses on the political context and the latter on the humanitarian response.

⁵ Security Council Resolution 1031 (1995), which authorized the NATO-led deployment and confirmed UNHCR's continuing lead humanitarian role, was passed on 15 December 1995, after the formal conclusion on 14 December of the peace agreement reached at Dayton on 21 November.

and other civilian organizations valuable time to prepare for a major change in their operations.

On the forced exodus from Kosovo in early 1999, Stevens writes, “Macedonia objected to the numbers arriving, and - as with Turkey during the Gulf war - the alliance would not tolerate UNHCR criticism of a country that hosted vital NATO bases. Ogata meekly complied, even asking KFOR to help build refugee camps on the border.” In her book, Ogata writes (page 147):

the UNHCR staff made clear statements against the government’s reluctance to grant asylum and the treatment of those stuck at the border. We became subject to strong criticism by officials from U.S. and alliance member states, whose primary concern was to prop up the government and to ensure the maintenance of the NATO presence in Macedonia.

Ogata explains the issues with regard to NATO construction of refugee camps as follows (page 147):

The Macedonian government pressed for quick action but was not ready to provide campsites away from border areas. I was hesitant to ask NATO because UNHCR’s preference was for civilians to be in charge of camp construction. We could have built the camps together with the NGOs and the Red Cross if we could have obtained the right political support. We relented because asking NATO’s help with the refugees was clearly the key to unblocking Blace.

Blace was the border crossing point where in early April 1999 some 70,000 Kosovo asylum seekers had been denied entry and were stranded in no man’s land. Without UNHCR’s request to NATO, they would have remained there longer, at high and increasing risk. Their plight attracted massive media attention, which included coverage of UNHCR’s protests.

Commenting on the interaction between NATO and UNHCR after the end of NATO military action over Kosovo, Stevens writes, “NATO demanded a quick return of refugees after the Russian-brokered peace deal, because the ‘fast return of refugees was seen to crown the success of its mission’; and despite claiming to worry about remaining landmines, UNHCR apparently ‘had no choice’ but to go along with this.” Ogata explains why in the next sentence after ‘had no choice’: “Large numbers were returning on their own anyway.”

Within a week of NATO forces entering Kosovo, some 100,000 refugees had streamed back to the province from Albania and Macedonia. Ogata quotes (page 160) a UNHCR eyewitness description of “old couples walking back to Pristina; tractors carrying young children, smiling and waving good-bye; a young man looking up at the sky, lifting his arms and screaming of happiness as he crossed the border.”

UNHCR's concerns over the extensive destruction and dangers from mines were real, but these problems did not dissuade the refugees: within a month over 500,000 had returned, the great majority without UNHCR assistance.

The Great Lakes region of Africa

Stevens then examines UNHCR's response to the crisis in the Great Lakes Region. The challenges facing UNHCR were daunting. The 1.8 million Rwandans who fled to Tanzania and Zaire after the genocide in 1994 comprised three broad but not mutually exclusive groups: those fleeing conflict; those primarily responsible for the genocide, fleeing for fear of retribution and whose leaders were seeking to overthrow the new Rwandan government; and those who were pressured to leave and then to remain outside Rwanda by these leaders, without being able to exercise a free choice on return.

The intense efforts of Ogata and the UN Secretary-General to mobilize the means to separate out those who were not refugees (the second group) failed. Ogata explains why: of the 39 potential troop-contributing countries approached by the Secretary-General, only one responded positively.

UNHCR therefore faced the choice between continuing to assist and to attempt to protect the genuine refugees, which unavoidably meant also assisting those responsible for the genocide, or withdrawing, as some NGOs did. Ogata writes (page 201), "I shared their [those NGOs'] analysis, but my mandate would not allow us to leave the refugees."

Until the camps in Zaire were dispersed by Rwandan-backed rebel forces in 1996, the violent physical and virulent propaganda opposition of the camp leaderships (those responsible for the genocide) was a major barrier to repatriation. The attacks on the camps forced hundreds of thousands to flee. Stevens writes, "Staggeringly, given that many of them were escaping from Rwandan troops, Ogata broadcast radio messages telling the refugees 'to consider returning to Rwanda'."

UNHCR well understood that return was a bad option for some, but the only alternative was still worse: being hunted down across Zaire. This was the context in which Ogata confirmed to the US Permanent Representative to the UN, Ambassador Albright, that she was in favour of return to Rwanda.

The only reference to Albright in the Great Lakes section of Ogata's book is an account of this exchange, yet later in his article Stevens writes, "UNHCR cooperated in the forced return of Rwandan refugees, mainly because Albright ordered it". Ogata explains (page 225) that in her radio broadcasts:

I asked them [the refugees] to "consider where you will be safer - in Zaire or in Rwanda." Though making it clear that "that is a decision for you to make," I tried to persuade them to return home, reminding them that "eighty thousand refugees have recently returned home to Rwanda from Burundi" and were now busy resuming normal lives.

Stevens subsequently notes that during 1996-7, 200,000 refugees were estimated to have been killed in Zaire. This toll would have been significantly higher without the repatriation that UNHCR promoted and organized.⁶

The context for the large-scale forced repatriation of Rwandan refugees by Tanzania in December 1996 was different, but the failure to remove those who did not qualify for international protection, and their violent opposition to a free and individual choice on repatriation for those who did, was again a key factor. The Tanzanian government had assured UNHCR that those refugees who feared return would be allowed to remain while their claim to refugee status was examined individually. As Ogata writes (page 254):

However, the government also made it known that if UNHCR refused to be associated with the operation, it would carry it out as a bilateral exercise with Rwanda. After objections from UNHCR, we were assured that repatriation would be voluntary and orderly, and flexibility would be exercised with respect to the deadline.

Stevens quotes Ogata's assessment of the options facing UNHCR: disassociation from the operation or "compromise, to save what little there was to save." The decision to do the latter was hotly debated within UNHCR and the subject of severe criticism from outside. Ogata writes (page 255):

I recognized that UNHCR had failed to ensure a voluntary and orderly repatriation of refugees from Tanzania to Rwanda. I should have done more in expressing my initial doubts.

Whatever the merits of UNHCR's decision to compromise, it was reached on the basis of an assessment of the situation facing the refugees, not in response to outside pressure.

Conclusion

Under a final sub-heading 'Imprisonment or integration?' Stevens writes, "Those fleeing war and persecution would usually prefer to return to their family home, if order could be restored, houses rebuilt, adequate protection provided and the economy rejuvenated. But now that the right to permanent settlement in a safe country has largely been dismantled, the horrendous conditions engineered by host countries, the military and the UN in 'safe areas' and refugee camps have become a lever which the West uses to lower the standards for that repatriation."

There has never been a right to permanent settlement in a safe country. While the Universal Declaration of Human Rights includes a right to seek asylum, there is no

⁶ For first-hand accounts of the efforts of UNHCR to save tens of thousands of refugees from probable death in the forests south of Kisangani, see UNHCR, 'Crisis in the Great Lakes: Anatomy of a tragedy' *Refugees* No. 110, Winter 1997, available at www.unhcr.org/publ.html. Its cover story records that "despite this living horror [the manhunt], and despite claims from some governments that there were no more refugees left, more than 185,000 Rwandans were plucked from the forests in 1997".

corresponding obligation on states to grant it. Stevens suggests that one reason for what he sees as UNHCR's focus on building camps is that the "process of attracting donor money relies upon the visibility of the refugees, and the possibility of counting them; both are easier when they are held in a confined space."

These charges are unsubstantiated. UNHCR seeks to avoid camps where possible, and strives to secure for refugees freedom of movement and access to employment in a safe country of asylum.⁷ As Stevens accepts, the overwhelming majority long to be able to go home. UNHCR seeks to promote the conditions that would allow this, and ensure that a decision on return is free and informed and that repatriation takes place in conditions of safety and dignity.

The problems the refugees faced in the situations outlined above were not the result of UNHCR abandoning these core objectives in response to outside pressure or for short-term advantage for the organization, as Stevens claims. They were the result of circumstances over which UNHCR had little control. How UNHCR exercised what control it did have may be open to criticism, but even if its actions were irreproachable, the choice would often remain between bad and still worse options.

Stevens is right to highlight the political and military context of refugee crises. This context and the resulting pressures on UNHCR constitute the reality in which the organization operates. In his closing paragraph, he writes, "should the UNHCR dissociate itself from military operations, refusing to provide cover in situations where refugees' rights are being undermined? The answer has to be yes".

In the situations cited by Stevens in his article, UNHCR decided otherwise: that the best interests of the refugees would be served by remaining engaged. In so deciding, UNHCR had to take account of the positions of states but these were not determining.

In his conclusion, Jacob Stevens claims that UNHCR "lacks the political determination to enforce the [1951 Refugee] Convention's provisions upon its signatories," and suggests that UNHCR should "defy the wishes of border guards and donor countries". If only protecting refugees and finding solutions to their plight were that simple.

⁷ A policy of avoiding camps where possible was well established before it was codified in the first edition of the UNHCR *Handbook for Emergencies*, Geneva 1982.