

**THE ROLE OF THE MILITARY IN REFUGEE CAMP SECURITY -
SOME REFLECTIONS FROM A HUMAN RIGHTS PERSPECTIVE**

**Notes for a contribution to the ‘Seminar to Examine the Role of the Military in
Refugee Camp Security’, Enysham Hall, Oxford, 10 –12 July.**

Introduction

The Lawyers Committee for Human Rights is a human rights advocacy organization and our International Refugee Program reflects that. We do not have a permanent presence in the field but keep connected to the operational issues around refugee protection through the work of our local NGO partners (particularly in Africa). Our engagement in this workshop is driven by our desire to find new ways to make human rights protection practical and effective for refugees.

I have been to introduce the international law framework within which decisions surrounding refugee security can be assessed from the point of view of refugee rights.

In today’s short presentation there is insufficient time to attempt to present a comprehensive overview. What I will try to do, therefore, is to highlight a number of legal issues which might be of particular relevance when discussing the potential role of military elements in this field.

In doing so I will be drawing primarily on the work we at the Lawyers Committee have undertaken over the last few years on the question of exclusion from refugee status and protection of refugees in situations of armed conflict.

Safeguarding the Rights of Refugees under the Exclusion Clauses

In 1995 the Lawyers Committee published a report on refugee protection in Africa. Among our conclusions was that the international community had been totally unprepared during the Great Lakes crisis - either to deal with those who had committed serious crime and provoked the flight of others from their own countries, *or* to assist in providing effective security in the countries to which the refugees fled. The result of this failure of was widespread violence and exploitation in the camps, fear and instability in the host countries, and dangerous compromise of the humanitarian mission.

A mechanism did already exist within refugee law, however, which could have provided a foundation for effective action in identifying and removing the perpetrators of the genocide from the general population. This was the refugee law concept of ‘exclusion’.

The concept of exclusion is set out in the exclusion clauses of the 1951 Refugee Convention and the OAU Refugee Convention. Further to these provisions individuals who have committed serious international crimes (such as genocide and war crimes) are excluded from the mantle of protection. Although such individuals may meet the

objective requirements for refugee status (a fear of return to persecution for a stipulated reason), they are considered to be “undeserving” because of their past behavior.

We found that during the Rwandan crisis, however, it had been extremely difficult in practice to apply these clauses. We launched a three-year research project to explore the question.

Could we devise a rights respecting approach to exclusion which would be legally sound and operationally effective?

An extensive program of field and academic research followed, directed by an international advisory group and benefiting from collaboration with UNHCR. The conclusions of phase I of the research stage of the project, and a description of the field studies, can be found in a Special Issue of the IJRL which was published earlier this year.

The advocacy and implementation stage for the Project is now commencing – where perhaps the most difficult challenges lie.

Exclusion and Security

As the research on exclusion progressed, we found that it was impossible to develop a framework for applying exclusion without looking beyond the question of legal procedures to the question of refugee security more broadly. This was not only because of the politics and pragmatics surrounding the implementation of refugee law. But also because attempting to apply exclusion in a rigorous and comprehensive manner *itself* created additional human rights challenges. Not least among them were those thrown up by how to separate armed elements and others out from the main population of refugees.

We began thus to look more broadly at the legal framework which governed a whole range of responses and actors which might be effective in enhancing the security of refugees.

I’m going to summarize this framework briefly.

Refugee Security and the Legal Framework

Primary responsibility for the protection of refugee rights and refugee security lies with the host State. But the UN (including organs such as UNHCR), regional organizations, NGOs and other bodies may also assume varying degrees of obligation depending on the capacity and willingness of the host state to respond to refugee security needs. The importance of the involvement of these latter actors is particularly driven by the recognition that refugees are by definition persons ‘in need of international protection’. Security Council Resolutions 1208, 1265, 1296, 1325 and ExComm Conclusion No. 72 reflect how the international community primarily views its collective responsibilities in the field of refugee security.

The question of using force in order to secure enjoyment of human rights has been a topic much debated in the human rights community. But if there is little consensus about *when* it can be justified, there is much greater consensus around the framework which should govern such action *once* action has in fact been triggered – and this is where I understand today’s operational discussion must be focussed.

Our starting point is that the imperatives of state security should not be seen as necessarily in conflict with those of the rights of refugees. In fact when the chief refugee protection instruments were first agreed they were not just formulated with the goal of protecting refugees in mind. States in 1951 were in fact driven by the recognition that unless the refugee issue was managed carefully and consistently the presence of refugees could have a debilitating effect on State security. In 2001 the human security approach to international relations also points to the importance of making the human rights of refugees a policy consideration. The international human rights legal framework can in fact be seen in this way as a vehicle for de-politicizing decisions made around refugee security.

The international legal framework within which a decision to take a particular security measure can be assessed is not simple. A complex weave of human rights law, refugee law, the law of armed conflict, humanitarian law, international criminal law and UN Charter obligations must be explored in order to divine the parameters of permissible action.

For example,

- *UN Charter obligations* require States to prevent refugees from taking up arms and threatening the integrity of another State
- The *law of armed conflict* obliges States to intern combatants engaged in international conflict (perhaps presenting as refugees) who are found on the territory of the host state.
- *Refugee and human rights law* guide an assessment of how much freedom of expression a refugee may be permitted where a state of emergency is in force. The extent by which the movement and place of residence of a refugee can be restricted is also governed by this framework.
- *International criminal law* helps to clarify who should be excluded from the protection of refugee status.

Some general guiding principles underlie the framework

- The principle of the humanitarian and non-political nature of asylum
- The principle of non refoulement (the right not to be returned to persecution)
- The principle of non-discrimination
- The principle of the civilian nature of camps
- The principle of safe location of refugees

- The requirement to intern armed elements

Implementing the Framework

It is not for an organization such as ours to suggest which actors should be involved in each of the range of activities that have the potential to enhance camp security as part of implementing this protective framework. That is an operational question best answered by the technical experts here at this workshop.

But does the legal framework just described help in any way to guide how the role of the military in refugee security might be envisaged?

I would suggest a number of starting points.

As a general rule, security measures which involve the minimum of coercion, and thus the minimum restriction of refugee human rights, should always be the first to be considered. Military rules of assessment and engagement, in addition to training and accountability structures, tend to harbor different implications for the human rights of refugees. Secondly, it is important to bear in mind that the mere presence of, or engagement with, the military will directly diminish the civilian nature of a refugee settlement – a crucial principle of refugee protection. It is clear also that depending on whether national or multilateral military forces are involved, very different mandates and styles of action will have to be taken into consideration.

A quick survey of the literature shows that there appears to be (*rare!*) NGO consensus about where involvement of the military is seen as appropriate and effective: (a) bringing war criminals to justice and (b) separating combatants from refugees. The ability of the military to contribute to the process of bringing war criminals to justice under international humanitarian law has been broadly welcomed even by humanitarian NGOs.

It is interesting also that in discussions of scenarios that might trigger action (although not necessarily direct military intervention) by the Security Council under SC Res 1296 a similar approach has been indicated by UNHCR. UNHCR has identified two such situations: those in which a bona fide refugee population is at risk of falling under the control of elements who are suspected of genocide, crimes against humanity or serious violations of international law – (excludable elements) - and those in which refugee populated areas have become militarized (separation of combatants)

Separation

It is with this latter issue – separation – that the role of the military is most often associated. There is much confusion, however, about exactly what kind of activities are envisaged by the notion of ‘separation’.

In his recent report on ‘The Protection of Civilians in Armed Conflict’ the SG declared that, *“failure to separate armed elements from civilians has led to devastating situations in and around camps”*. *“[T]he movement of peoplealongside armed elements [can] undermine the security of entire sub regions or regions, and thereby internationalize an initially local conflict”* (paragraph 28).

Preservation of the civilian and humanitarian character of refugee camps and settlements is a vital prerequisite, not only for providing refugee protection and enhancing the security of host states, but also for safeguarding the institution of asylum itself. A refugee protection policy will be hard pressed to garner support in a host State if it is not viewed as being a neutral and humanitarian act. This is especially so where a host population fears a re-enactment of the violence which caused the refugees to flee.

In fact as indicated in the framework discussed above, States and the international community have an obligation to ensure that a distinction is made between refugees, armed elements and others not in need of international protection. Physical separation is one way to maintain that distinction.

During our study, however, we found that effecting separation raises complex questions regarding (a) the applicable legal framework and (b) how to operationalize that framework in difficult situations on the ground.

Separation is not a legal concept; it connotes a set of acts and processes which have as their object the identification, removal and maintenance of selected individuals apart from the general population of refugees. The legal implications of such activities depend on a variety of acts, including

- The procedure which is taken to identify and separate
- The voluntariness or otherwise of the separation
- The nature of the confining regime subsequently imposed on those separated

Generally when separation is discussed focus is on the separation of ‘armed elements’ - most particularly where military involvement in a separation operation is being contemplated. It is of course the type of separation most immediately identifiable as required by international law.

But various separation/confinement measures have also been proposed in relation to other groups where military involvement in the separation operation may also be implicated eg.

- the separation of refugee political activists or ‘intimidators’ (in Tanzania in 1996 Mwiswa camp in Kagera was set up, for example, with the express purpose of housing alleged intimidators further to Article III of the 1969 OAU Convention)
- the separation of those awaiting screening for exclusion from protection
- the separation of ex-combatants who have laid down their arms and been declared refugees (In Zambia – I understand that it is planned to separate

- exCongolese/Rwandan soldiers into a camp for ex combatants at Ukwimo even if they are granted asylum)
- the separation of voluntary separatees – In Ndota camp in Tanzania for example, armed and self proclaimed combatants actually sought separation. In Guinea, we found that separation primarily operated as a protection measure for Sierra Leoneans suspected of being rebels by compatriots
 - the separation of those who have been excluded from refugee protection

Refugee law, humanitarian law, human rights law (derogation clauses) and the law of armed conflict may permit a strictly circumscribed ‘separation’ of some of such categories of individuals. But this framework has not been yet clearly elaborated. The Secretary General has in particular called for work to be done on articulating the perimeters for action.

But it is not only from a legal perspective that the object and scope of any proposals to separate require the most careful scrutiny. It is worth recalling that separation activities can often lead to the stigmatizing of those separated, placing them at greater risk of target. Separation can also reinforce command structures, complicate repatriation efforts and be accompanied by extensive restriction of basic rights.

During our study we found that there was a particular need for guidelines to be drawn up to govern

- the legal basis for lawful ‘separation’ activities
- the folder of rights enjoyed by the various categories of separated persons
- the procedural safeguards attaching to each type of separation exercise
- identification of the actors responsible for carrying out and monitoring such activities, and
- the conditions for termination of the state of separation (tied clearly to the particular purpose for which the separation was effected)
- ensuring special protection and assistance measures for children

In addition to the legal dilemmas presented by consideration of a separation operation, the indicators which permit, for example, the identification of an ‘armed element’ may be extremely difficult in practice. This is where military intelligence and experience may be important - even prior to deciding to effect a separation operation. This will also be the case where it is alleged that former fighters have ‘genuinely and permanently laid down their arms’ and therefore wish to be considered as refugees. Ongoing monitoring of the situation may also be required.

Our study also found that identification of armed elements should occur ideally at the earliest possible moment eg., at the border, usually where military elements are more likely to be present. It is crucial however that such activities do not interfere with the operation of the principle of non refoulement. We found that on the Guinea border in 1998/1999 suspected militia members were being summarily detained and returned by the military without a clear determination of their status or need for protection. In

identifying the lack of capacity of host states as one of the stumbling blocks to the successful separation of combatants and displaced persons the SG has noted that one of the results is that *“potential host countries increasingly deny asylum by closing their borders, thereby further exacerbating the situation of displaced persons within the conflict area”* (para 32,).

Finally, actually effecting the separation may sometimes require the use of force. In certain environments it has been suggested that police may be sufficient (particularly with respect to controlling weapons and movements in camp). But other commentators have are of the view that *“the only effective way to remove unwilling armed combatants and keep them out is by means of an armed force, and this is something even seasoned and equipped militaries often refuse to take on, as evinced in the Goma camps”*¹

It is interesting in this regard to read the recent UNHCR evaluation of the Tanzanian security package which focused on augmenting local police capacity to deal with refugee security challenges. There it was noted that *“one element [of the package] which is generally acknowledged to have met with relatively little success s[was] the separation of armed elements and other exiles who can be excluded from refugee status by virtue of their present or past activities”*². According to the assessment the package had some success in *“limiting the overt politicization and militarization of the refugee camps”* although *“covert militarizations and military activities in other parts of the border area”* continued to be conducted.

On the other hand, it may be that other methods of maintaining the civilian nature of refugee camps, that do not amount to formal separation operations, may be just as effective. .

A conversation with a official from the International Rescue Committee recently provides some basis for the suggestion that the relocation of camps in Guinea away from the borders with Liberia and Sierra Leone may have contributed to reducing tensions in Guinea camps – the very move itself effecting a de facto separation of those elements bent on cross border operations. As the Tanzanian security package gets replicated in Guinea over the coming months it will be interesting to how enhanced policing capacity alters the security situation for refugees on the ground. It will also be interesting to observe how such a development might force a shift in the type of operations currently being carried out by the Guinean military. Fueled by a perception that refugee and rebel populations are fused, these operations amount to informal and violent ‘separation’ activities, resulting in assault, arbitrary detention, and death, which have been severely criticized by rights groups.

I would like to end by raising a final area where the role of the military might be also appropriately considered – that of information sharing and intelligence. The availability

¹ page 8, A framework for Exploring the Political and Security Context of Refugee Populated Areas, RSQ, Vol 19., No., 1 2000

² (para 2, Lessons learned from the implementation of the Tanzania security package, UNCHR Evaluation Unit, EPAU/2001/05)

of solid intelligence is crucial to the task of preserving the civilian and humanitarian character of refugee camps and operations. I know that during the March 2000 workshop information sharing was acknowledged as vital. I have already adverted to such activities during this presentation with respect to making an assessment to carry out particular types of separation operations.

The military may also be helpful in assessing whether or not application of the exclusion clauses needs to be raised during refugee status determination procedures. This may be particularly vital where the presence of excludable elements has the potential to create serious refugee security problems (not always the case) – as was the case in Goma. In this regard, what might the implications be for how information is then shared between military, UNHCR and NGO actors? Does the evolution of international criminal law, especially the International Criminal Court process harbor any additional implications for how such information must be dealt with in the future?

I look forward to a provocative and interesting discussion.