

NGO Policy Dialogue
The Protection Challenge in the Kosovo Crisis
May 7, 1999

The fifth in a series of policy dialogues facilitated by the Humanitarianism & War Project was hosted by the International Rescue Committee in New York City on May 7, 1999. There were 20 senior officials from 16 NGOs in attendance. 13 of the agencies were relief organizations, 3 were human rights advocacy organizations. Also present were officials from the Ford, Gilman, and Mellon foundations and 6 members of the H & W Project. The session focused on the protection challenge in the Kosovo crisis.

Agencies were asked to recount their experience in Kosovo prior to the bombing and after the bombing. In particular they were asked to highlight protection issues and if they were applying lessons-learned in this area from earlier crises.

Relief agencies noted various concerns and actions they had taken surrounding the issues of the protection of Kosovars prior to the current military crisis. This included advocacy work with gov't officials dating back nearly a year. A few agencies expressed the sense that they were more aware of protection issues following experiences in the Great Lakes region. Others expressed concern about the recruitment of child soldiers, the role of the KLA in camps, and protection of vulnerable groups in the camps. One discussant noted that their presence in Kosovo prior to the bombing did not provide protection and questioned if presence itself helped or hindered the overall situation. In general, however many of the responses did not focus on the thorny questions of protection, but on the delivery of relief.

Human rights advocacy groups noted their own efforts in monitoring and documenting events in Kosovo dating back into the early 1990s, as well work on the question of refoulement.

James Ron, H&W Project Post-doctoral fellow in Human Rights, noted six issues that he believed should be of concern to agencies:

1. Documentation of atrocities by Serbs
2. KLA mixing with civilians
3. The proximity of camps to the border
4. The role of the KLA in Kukes
5. The diversion of relief by the KLA
6. Protection of refugees from Albanian citizens

Following the round of agency responses, many of which did not address protection issues as such, Larry Minear noted that protection has not yet come completely into its own.

H&W Project consultant Diane Paul presented the following definition of protection and asked for reactions and feedback. "A methodology which seeks to improve, through analysis and

strategic intervention, the physical security and the practical realization of the rights of persons under threat of violations of international humanitarian/human rights and refugee law, and to prevent violations whenever possible."

One participant encouraged the definition not to be limited to physical protection issues but that it be broadened to include the concept of dignity.

Diane then laid out a scenario for agencies to think about when developing protection strategies. What follows here is the more detailed version of the same scenario which was originally developed on the basis of discussions with several experts on Kosovo. It was acknowledged that the situation could change dramatically over the next several months, presenting a different set of problems. Thus, the scenario represents a "best guess." An attempt was made to err toward a "worst case" or in fact the second worst case scenario (the worst case being one in which the international community failed to intervene at all with a peacekeeping force in Kosovo and the area remained under the control of Serbian security forces).

Current scenario:

The bombing has continued with mounting civilian casualties, creating cracks in the international alliance. Expulsions continue but have slowed somewhat as there is talk of a settlement. The government claims it is withdrawing its security forces but has in fact continued military operations. The rebel army, in the meantime, is training and re-arming outside the country along the border areas. The UN has organized an assessment mission to the region, which plans to evaluate the situation on the ground in Kosovo and assumably, begin planning a UN mission.

Future scenario and protection challenges:

Given the reluctance of the international alliance to send in ground troops to stop the ongoing violence, it appears that President Slobodan Milosevic, who many claim should be indicted for war crimes and crimes against humanity, will be allowed to retain power over the central government. U.S. President Bill Clinton has as much stated that the international community does not have an interest in toppling the regime and that an "enforceable agreement" is possible without a change in leadership.

It is anticipated that the regime will allow only a weak international peacekeeping force to deploy in the province (possibly a UN force with a NATO core). The PKF may be lightly armed with only defensive weapons (unless the international community stands strong on this point). The deployment of the peacekeeping force is unlikely to take place immediately given disagreement on the structure of the force by members of the U.N. Security Council.

Further delays mean serious problems in organizing the return of the refugees in a timely manner, especially if the delays mean that the force is not in place until mid or late summer. If the weather gets ahead of the implementation of a peace agreement, which is likely to be the case, it may be

next to impossible to press for full-scale reconstruction efforts for another year (spring of 2000). The onset of winter will bring new problems for humanitarian NGOs seeking to assist the large refugee population. Many refugees are currently sheltered in tents.

It is likely that significant numbers of Serbian security (police and military) forces will remain in Kosovo despite demands by some members of the international community for complete withdrawal. President Milosevic, backed by the Russians and Chinese, will try to limit the number of peacekeeping troops and will press for a lightly armed force (one with light defensive capability only). Previous experience with PK forces in the region has demonstrated that troop protection is going to be of paramount concern in any case, but this will be particularly acute if there are American troops on the ground.

In the Kosovo scenario, attacks against PK contingents by both government and rebel forces cannot be ruled out, especially if the troops are lightly armed. Serb civilians living in Kosovo are likely to participate in attacks against remaining or returning persons from the majority ethnic group. The KLA will continue hit and run operations, and it will be difficult to distinguish civilians from combatants. If the PK force deploys under the UN flag and is armed with only defensive weapons, the likelihood of attacks is higher than it was in Bosnia with a heavily armed and protected NATO force.

The PK force is unlikely to have a protection mandate outside defense of its own troops (is not likely to have a mandate to act to defend civilians from attack, arrest, etc.) If the force is spread out and lightly armed, protective activity automatically becomes more difficult and PK forces will be even less willing to engage in activities outside "normal" peacekeeping activities due to troop protection issues. In other words, few commanders will be willing to act "outside the box" to extend protection to civilians under threat. Some PK contingents, politically sympathetic toward Serbia, are not likely to act decisively to stop government abuses even if they occur right in front of them. Other peacekeepers may be aligned to some extent with the rebel forces. There is discussion about international troops accompanying refugees back "home" (since so many villages have been destroyed, it is not clear what "home" will be). Accompaniment implies physical protection, but it is not clear if troops will be willing to shield returnees throughout the reconstruction process.

Because most villages in Kosovo have been destroyed, the remaining population and those who wish to return despite the insecure situation will be forced to reside at least temporarily in the towns. This makes the population easier to control (this may have been the government strategy all along). "Sweeps" of the ethnic Albanian returnee/local population by Serbian police are likely to continue (see below). It is also likely that the government forces will obstruct return and reconstruction activities through a variety of methods both bureaucratic and through intimidation and harassment. These actions will be difficult to pin down as the identities of the perpetrators may be obscured (will be blamed on "uncontrolled elements").

There are plans for the vetting and reconfiguration of the police forces within the province. However, this is not likely to be successful for some years for several reasons: the Serbian

police will not share power willingly; a number of police officers have committed abuses and are not likely to be held accountable under the current legal system (which does not function according to international standards and will take years to reform if the current regime remains in power). There will be a need to collect information on abusive police officers and then to ensure their dismissal, which is likely to be resisted; no small task. Ethnic Albanians are unlikely to want to work as police alongside persons who committed serious human rights violations.

The Serb authorities will attempt to continue to exert control over the majority population through the police and legal system. Arrests, detention, and torture as well as flawed legal proceedings and long prison sentences are likely to occur. Certain individuals especially human rights activists, journalists, political leaders and members of certain political parties, members of the humanitarian and medical community, teachers and others will remain under threat as has been the case in the past. It must be noted that there are hundreds, if not thousands, of detained persons whose health and whereabouts are not known. The ICRC will continue to work to gain information about these persons and to gain access, but it is unlikely they will fully succeed, given the government's lack of cooperation in the past.

The rebel army is unlikely to disarm. In fact, the opposite is true. It is likely that there will be a steady increase in arms to the rebel forces and that the international community will do little to stop the flow. The rebels are likely to continue recruiting fighters from the refugee population, and recruitment may include minors. There will be frequent incursions into the province from Albania, where the KLA has set up base camps. Refugee camps are likely to be used as staging areas for cross-border operations. Humanitarian aid may well be diverted for military purposes. Given the lawlessness of the border areas of Albania, refugees, especially refugee women, are at increased risk. There are scattered, as yet unconfirmed reports of the trafficking of refugee women. This situation will present serious challenges for relief NGOs.

Inside the province, there will be many pockets of insecurity due to the activities of both government and rebel forces. The lack of security will be of great concern to local and international NGOs, but it is also likely that security will be used as a pretext to deny access to humanitarian aid workers, human rights observers and others. Land mines and other security issues will also present problems. Local staff of western NGOs may be at increased risk due simply to their association.

It is not clear what kind of human rights monitoring mechanisms will be put into place. The most likely possibility is a regional institutional arrangement (OSCE). It is doubtful that the leadership will be as strong as in the past. Milosevic is likely to protest the involvement of William Walker—a US citizen, the previous chief of the previous mission who spoke out forcefully against the behavior of government troops. The OSCE may not place priority on human rights and protection over other issues such as police restructuring and elections. (This is conjecture, based upon experiences and observations in Bosnia and Hercegovina and Croatia).

UNHCR is likely to be present, but has come under some criticism for its failure to anticipate and prepare for the latest crisis in the region. Its role in protection for returnees and IDPs

remains unclear. It seems unlikely that it will have a strong protection division in-country, although this could change with pressure from human rights groups and others.

The Office of the UN High Commissioner for Human Rights may field a mission, but will face serious operational challenges and has never fielded a significant number of staff in the region. The UNHCHR may limit its activities to the legal system rather than having a strong field presence.

There is a question as to who will take lead role in protection. Who will facilitate inter-relationships--bring to bear the varied resources which may be available on protection problems? This role could be played by a member of the Office for the Coordination of Humanitarian Affairs (OCHA) should the PK operation be UN-led, or perhaps there should be an independent effort. The creation of field level "protection working groups" which could include a variety of organizations, may prove a vehicle for developing strategies, reaching memoranda of understanding (MOUs), etc. These working groups should seek, however, to move beyond monitoring and reporting to field level intervention strategies, depending upon the expertise, mandate and mission of the participants.

After presenting the above scenario in a more abbreviated form, Diane Paul emphasized the importance of the following in developing practical protection strategies:

1. presence
2. full access to all IDPs and refugees
3. leadership (absent a strong role by UNHCR)
4. having mechanisms in place for monitoring and reporting
5. dealing with the question of impunity (this point was echoed)
6. thinking of a protection and responses along a continuum

A strong feeling was expressed by several participants about developing strategic coordination among agencies on political and operational issues. Throughout the second portion of the meeting this theme was reiterated several times by a variety of agencies. There was general agreement that a letter should be sent to OCHA's Sergio Vieira de Mello emphasizing that the issues of protection should be a priority element for examination and planning in his humanitarian assessment mission.

There was a suggestion that there should be a working group on this issue, both at the field level and the policy level. Some suggested the importance and value of a structured analysis of the situation and that this effort should be undertaken on site. This item was revisited during the meeting and after.

Concerns expressed about a possible post-NATO-bombing-campaign environment led to various issues and suggestions.

1. There was a concern that Serb civilians in Kosovo would be under threat.
2. There was a concern about separating/identifying combatants and refugees.

3. One participant mentioned the need to have an independent voice vis-à-vis a protection role for NATO or the whatever the armed force might be
4. That the current role of UNHCR is willing to play in protection needed to be explored
5. That there needed to be a focus within operational agencies on the issues surrounding protection as opposed to counting on others to deal with these questions
6. There was the suggestion that a “protection office” be established that formalized a coordinated agency response on protection and political issues. This could house a protection coordinator and a protection working group.
7. There was a sense that protection and gender issues had not been woven together.

Project Consultant Julie Mertus emphasized this point several times during the discussion, noting that there were various Albanian women’s groups with good US NGO contacts as well as experience and knowledge in dealing with relief aid.