

FORMER YUGOSLAV REPUBLIC OF MACEDONIA: The protection of Kosovo Albanian refugees

1. Introduction

Large numbers of ethnic Albanian refugees from Kosovo, a province of the Federal Republic of Yugoslavia (FRY), have fled to the neighbouring state of the Former Yugoslav Republic of Macedonia (FYROM). As of 10 May 1999, the number of refugees in Macedonia was estimated by the United Nations High Commissioner for Refugees (UNHCR) to be 241,000¹; however, there are new refugees arriving every day, often thousands. This report will focus on a number of policy issues raised by the response (of the Macedonian authorities and the international community) to this refugee flow. This response proved unique in a number of ways.

First, the troops of the North Atlantic Treaty Organization (NATO), a party to the conflict in FRY, played a large and distinct role in the response to the mass displacement. NATO troops established and administered refugee camps, which is unprecedented in the history of UNHCR and of modern refugee protection. The “humanitarian evacuation programme” established and coordinated by UNHCR, whereby refugees in Macedonia are to be evacuated temporarily to other countries, is also without precedent; as is the “humanitarian transfer programme”, under which refugees are to be transported to Albania. While the challenge to refugee protection posed by developments in Kosovo are undeniable, the response to it raises a number of concerns for Amnesty International, which are outlined in this paper.

Amnesty International has for many years been concerned with human rights violations in Kosovo. The organisation has made its concerns known through numerous external documents, and has consistently urged both the government of the Federal republic of Yugoslavia (FRY), and the international community, to take concrete action to improve the human rights situation. Since the early stages of the refugee crisis, Amnesty International has had researchers in Macedonia and Albania, gathering information from refugees and representatives of local and international agencies. This report is based largely on the findings from research conducted in the region, and from Amnesty International national sections. As this paper shall show, Amnesty International continues to have concerns regarding the *refoulement* of refugees, the status evacuated refugees are afforded in host countries, and the sharing of responsibility by the international community.

2. Macedonia: not fulfilling its international obligations

¹ UNHCR Kosovo Emergency Update, 10 May 1999.

In the evening of 5 May, the Macedonian authorities closed all border crossing points with Kosovo, and subjected approximately a thousand refugees to *refoulement*, forcing them back over the frontier to the Yugoslav exit point. The Macedonian authorities stated at this time that “the border will remain open, but governments which want to take part of the burden will have to take the refugees directly from the border. If the international community does not show the minimum understanding and does not speed up the transport of refugees, the government will take new measures to protect the country from further destabilisation.”² On 6 May the authorities assured UNHCR that the border would remain open, and UNHCR “welcomed the verbal assurances from the government and hoped they would quickly translate into action on the ground.”³ On 10 May, UNHCR reported that new arrivals into Macedonia were “down to a trickle, despite assurances by the [Macedonian] government that the borders will be open to refugees.”⁴

The 5 May incident was certainly not the first time that Macedonia had failed to fulfill its obligations under international refugee law (see below). Like all states, Macedonia is bound by the principle of *non refoulement*, a principle of customary international law. This principle forbids states from forcibly returning, in any manner whatsoever, a person to a country where they might face serious human rights violations. The principle prohibits rejection at the frontier, and countries must keep their borders open, and afford refugees protection. This protection need not be permanent, or even long term; refugee protection lasts only as long as the human rights situation in the refugees’ country of origin necessitates. In a situation where a large number of refugees enter a state in a short period of time, that state is clearly obliged to offer protection at least pending a durable solution of the refugees’ plight. Efforts to seek durable solutions are to be made by the international community, the three traditional durable solutions being voluntary repatriation, integration into the host country, and resettlement in a third country.⁵ As state party to the 1951 Convention relating to the Status of Refugees (Refugee Convention)⁶, Macedonia is bound by other obligations as well, including the obligation to cooperate with the office of the United Nations High Commissioner for Refugees (UNHCR), the international agency charged with ensuring the protection of refugees.

² Dnevnik, 6 May.

³ UNHCR press release, 6 May.

⁴ UNHCR Kosovo Emergency Update, 10 May.

⁵ Conclusion 22 of the UNHCR Executive Committee (Excom) states that “In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection ... In all cases the fundamental principle of *non refoulement* -- including non-rejection at the frontier -- must be scrupulously observed.” While Excom Conclusions are not binding as such, they represent an international consensus and carry persuasive authority.

⁶ Article 33 of the Refugee Convention enshrines the principle of *non refoulement*.

However, Macedonia has proven reluctant to carry out fully its obligations under international refugee law. Macedonia has closed its border on numerous occasions, subjecting refugees to *refoulement*. It has announced repeatedly that refugees must all be relocated as soon as possible to other countries. Armed police officers have abused refugees in the camps.⁷

As the primary justification for this reluctance, the Macedonian authorities have consistently advanced the need to preserve their own country's stability. It is not for Amnesty International to attempt an assessment as to whether or not the Macedonian concerns are justified. Certainly, relations between the majority Slav Macedonians and the minority Albanians in Macedonia remain a sensitive issue in the country, and the preservation of security in the Balkan region as a whole is an important concern of many of the countries which have answered the call to evacuate refugees.

As in all situations of large scale influx, Amnesty International has consistently called for adequate international sharing of the responsibility to host refugees. No country, including Macedonia, should be shouldered with a disproportionate share of their responsibility to host refugees, merely because of their geographical location. However, it should be stressed that Macedonia is not being called upon to provide a permanent haven for refugees from Kosovo. Rather, Macedonia has the obligation merely to provide protection pending a durable solution of the refugees' plight. It is not the role of Amnesty International to speculate as to which durable solution is the most feasible or appropriate in the current situation; however, should the international community engage in a large scale resettlement operation, this should be done in a manner which respects refugees' rights at every stage of the process. As shall be shown, the humanitarian evacuation programme is not a resettlement operation, and there remain serious questions as to how it is being conducted.

⁷ See incident reported below, page six.

A significant proportion of the refugees in Macedonia are not staying in the refugee camps in the country, but are staying in the community with host families, usually ethnic Albanians. Citizens of FRY are normally able to enter Macedonia and reside there for a period of 60 days. Under a decision of the Macedonian government on 2 March 1999, refugees from Kosovo who obtain the agreement of a family to host them, and subsequently register with the local police, are entitled to “humanitarian assisted status”⁸, which provides them with protection against *refoulement*. Refugees are issued an identity document, which also entitles them to food and other humanitarian assistance from the Macedonian Red Cross. According to the Macedonian Red Cross, as of 10 May, 114,900 refugees were registered with this status, and living with host families⁹. UNHCR estimates roughly 91,400 refugees were living in camps as of 10 May.¹⁰

There are protection issues which must be examined regarding this status. In particular, all the identity documents which Amnesty International has seen state that “humanitarian assisted status” will expire on 28 June 1999, and no refugee with whom Amnesty International has spoken with has received any sort of information regarding their status in Macedonia beyond this date. It is also unclear why some refugees are able to enter the country, obtain this status, and live in the community, whereas some refugees are stopped at the border and prevented from entering until transport is arranged to take them to one of the camps. Refugees who have this status are able to act as a host for other refugees, and are able to arrange for the release into the community of particular refugees in the camps. Refugees in the community were not, at least initially, planned to be sent to a third country under the “humanitarian evacuation” programme; though a number of countries have arranged for people who had been living in the community to be evacuated.

The terms of any extended stay for refugees with this status will need to be monitored; especially regarding any future decision as to when their return to Kosovo would be possible. However, this report will focus on the situation in the camps, in particular the camps built, and subsequently run, by NATO, and on the humanitarian evacuation programme coordinated by UNHCR. In Amnesty International’s view these pose the most pressing refugee protection policy issues.

2.1 The border and the relocation of refugees

On 30 March 1999, faced with tens of thousands of refugees seeking to enter their country, the Macedonian authorities in effect closed the border with Kosovo, in a flagrant violation of their obligations under the principle of *non refoulement*. Many observers have indicated that

⁸ *Humanitarno zgri_eno lice*; literally “person of humanitarian concern” in Macedonian.

⁹ UNHCR Kosovo Emergency Update, 10 May.

¹⁰ *Ibid.* It should be noted that accurate census data is difficult to obtain this early in a refugee crisis.

the border was never actually closed *per se*, but rather that the processing of refugees entering the country was slowed down drastically, with Macedonian border officials searching all bags and conducting extended searches of vehicles.

In countries facing a large influx of refugees, it is normally the case that appropriate emergency measures would be taken to assist refugees to safety, such as an increased number of officials (or international agency staff) to assist in processing refugees at the border, and the host government should allow access to international agencies so that this may happen. However, despite it being obvious that such measures were necessary, the Macedonian government failed to take them.

At Blace, the main border crossing point between Macedonia and Kosovo, the Macedonian authorities closed the border, and were preventing refugees, who had already passed the FRY border crossing, from entering Macedonian territory. Police officers in riot gear prevented refugees from entering Macedonian territory, often, so it is reported, with an excessive use of force. As many as 65 000 refugees¹¹ were stranded in what was commonly called “no man’s land”, a small patch of muddy land around the Macedonian border crossing.

The Macedonian authorities seemed to believe that, by preventing refugees from physically crossing the Macedonian border point, they could evade responsibility for providing protection for them, as they had not, technically, entered the country. However, it must be stressed that this is no more than a legal fiction, similar in nature to the “international zones” some Western European governments have claimed exist in their airports. Whether a refugee has crossed a border point and has received a stamp in their passport announcing that they have entered Macedonia is not relevant. Once a refugee has arrived at the border and has made their intention to seek asylum clear, then the international obligations of the Macedonian government are engaged. The Macedonian authorities were exercising effective control over the refugees; something clearly displayed by the fact that they were, physically, preventing them from crossing the border point. The Macedonian government cannot exercise such control and, at the same time, argue that the refugees are out of their jurisdiction, and not their responsibility.

UNHCR and most humanitarian organizations were refused access to these refugees, and by all accounts, the humanitarian situation in the area between the border crossings was horrific; the small area was over crowded, and refugees had no access to shelter, to sanitation facilities, or even to clean water. For most of this period, the only organizations permitted access to the area where the refugees were stranded were the Macedonian Red Cross and the El-Hilal, a local humanitarian organization, whose staff literally hurled foodstuffs at refugees from tractors.¹² An accurate tally of how many refugees died during this week may never be feasible, although most aid organizations estimate the number at roughly 30 to 40.

¹¹ UNHCR Kosovo Emergency Update, 5 April 1999.

¹² The International Medical Corps, an international humanitarian organization, were authorised to set up a small medical tent overlooking the border crossing, and gave emergency medical aid to some

refugees.

Despite mounting international pressure on the Macedonian authorities, the Macedonian government remained adamant that refugees could not be admitted into the country, and must be relocated elsewhere. On 2 April, NATO, which had over 10,000 troops stationed in Macedonia at the time, offered its support in assisting UNHCR.¹³ This offer was immediately accepted by UNHCR and the Macedonian authorities, and within about a day, three camps were built by NATO troops; Brazda (later redesignated Stenkovec 1), Stenkovec (later



redesignated Stenkovec 2), and Neprošteno. The sites of the camps were reportedly designated by the Macedonian government. On 3 April, after again closing the border briefly, the Macedonian government stated that it was prepared to accept further refugees only if they would be relocated to other countries.

In the late night of 3 April, the Macedonian authorities started transporting people by bus from the area around the border crossing. It seems that UNHCR had not even been informed of this operation, and many refugees were subsequently transported (often under extreme duress or even by force) to Turkey and Albania. No attempt seemed to have been made to conduct any registration of these refugees, or to ensure that families were not separated; indeed, for several days, roughly 10,000 refugees remained unaccounted for, until UNHCR discovered that they had been transported to Albania. On 4 April UNHCR issued a statement urging states to “offer a safe haven” for refugees from Kosovo. The area between the border

¹³ NATO’s letter, as well as the High Commissioner for Refugees’ response, is reproduced in S/1999/391.

points was eventually cleared late in the night of 5 April, with most of the refugees transported to the camps built by NATO.

By this time, a number of countries had announced their willingness to provide protection for a fixed number of refugees, and the "humanitarian evacuation programme" started shortly thereafter. It should be noted that the two large NATO camps are "transit camps", established only for the purpose of housing refugees pending evacuation. On the basis of the research conducted by Amnesty International, the organization, Amnesty International is of the understanding that there was an early understanding between the Macedonian authorities and UNHCR that all refugees in the two large NATO camps are to be evacuated, and the establishment of the camps seems to have been permitted by the Macedonian authorities on the basis of this understanding.¹⁴ In fact, it is not that the refugees who had been stranded in legal limbo for days were permitted to leave the area between the border crossings and enter the country, but rather that the legal limbo was simply moved to a different location; an indication of the insistence of the Macedonian authorities that the border would be opened only if refugees were relocated to another country as speedily as possible.

The situation regarding the border remains extremely problematic at the time of writing of this report, with frequent instances of the Macedonian authorities refusing to admit groups of refugees without assurances that the evacuation will be accelerated and all refugees in the camps will eventually leave the country. Indeed, the entire rationale behind the recent establishment of the reception camp at the border point in Blace seems to be that refugees stranded around the border crossing, prevented by the Macedonian authorities from entering the territory and in legal limbo, are able at least to stay in better conditions.

3. Security in the camps

The camps in Macedonia are closed camps. They are contained within high wire fences and barbed wire, and Macedonian police officers, who usually wear camouflage uniforms, guard the gates and check the identity documents of all who attempt to enter.¹⁵ Brazda, for example, has a metal gate, and a police station inside the camp, and armed police officers patrol the camps.

From the initial establishment of the camps, it was agreed between UNHCR, NATO, and the Macedonian authorities that the ensuring of security within the camps (as well as around them) would be the responsibility of the Macedonian government. While the Macedonian

¹⁴ There have recently been small numbers of evacuations from other camps as well, though Brazda and Stenkovec reportedly remain the priority for evacuation. The criteria as to why some refugees are transported to some camps and not others likewise remain unclear.

¹⁵ At the time of writing of this report, _egrane, the camp established most recently, does not yet have a fence around the perimeter, though there are reportedly plans to erect one soon.



authorities have a duty to ensure security in the camps, this must be done in a manner which is not intimidating of refugees and is sensitive to their vulnerable situation. However, besides patrolling the perimeter, Macedonian police also conduct patrols within the camps. They were initially equipped with body armour and assault rifles. UNHCR and NATO expressed concern to the authorities regarding such a heavily armed presence, and the police now carry only pistols and truncheons.

Almost every refugee Amnesty International spoke with reported that they felt intimidated by the police presence. Amnesty International has received several reports of harassment and abuse, both verbal and physical. Most of these reports are unconfirmed; however, the mere fact that they are so common does, in Amnesty International's view, indicate a general feeling of intimidation among the refugee population.

Amnesty International has interviewed victims of alleged abuse in Brazda. One 41 year old refugee, Mr A, reported that he witnessed a police officer (in a group of three) roughly pushing aside a small child, at about 10:30 pm one night in early April. Mr A confronted the officer and told him not to be so rude, after which he was subjected to verbal abuse and hit on the back of the head with what he believes to have been the butt of a gun. Mr A fell to the ground and lost consciousness. He was subsequently found by his brother and taken to a field hospital operated by the Israeli military, where he was treated for two days and was given a total of 15 stiches. When interviewed by Amnesty International, about two weeks after the incident, Mr A indicated that since the beating, he had been afraid to leave his tent, and did so very rarely and only when absolutely necessary. Mr A also seemed to be unaware of the possibility of lodging a complaint with a UNHCR protection officer. He and his family were subsequently evacuated to another European country.

Many refugees report being stopped by the Macedonian police in the camps and being questioned in an intimidating manner, about where they came from and why they left Kosovo.

One refugee reports being told “you lived in Serbia, you should speak Serbian”. Yet another refugee reports that when he was being questioned by police officers, international staff of a humanitarian organization approached the scene. As the police officers left, one of them pointed their finger at the refugee and said, in a threatening manner, “we won’t forget you”.

One refugee, who works as staff for an international humanitarian organization, reported being harassed by the police when driving into the camp, despite driving a vehicle clearly marked as belonging to a humanitarian organization, and which had UNHCR number plates. He reports that he was stopped at the gate of the camp by police officers, and was told that both his UNHCR access card and the identity card issued to him by the humanitarian organization (both of which have photographs) meant “nothing”. Upon presentation of his Yugoslav passport, the police officers asserted that he must be hiding something, and subjected his vehicle to a extensive search.

Amnesty International is concerned that these incidents are indicative of the attitude of the Macedonian authorities towards refugees from Kosovo. The security issue reportedly became part of the discussions surrounding the handover of administration of the camps from NATO to UNHCR. NATO was requested by UNHCR to leave behind some troops in each camp, reportedly to provide “reassurance” to the refugees, and has obliged by leaving behind a small contingent of about 30 troops per camp. NATO troops therefore continue to conduct patrols in the camps. Most NATO countries have instructed their troops not to carry arms in the camps, at least in the daytime.

4. Refugee Camps and the role of UNHCR

There were until recently six camps housing refugees in Macedonia. As noted above, three



were built by NATO troops during the night of 2 April, and were initially run by NATO brigades.¹⁶ The NATO camps, as they are often referred to, include the two biggest camps; Brazda (initial capacity 27 000, recently renamed Stenkovec 1), and Stenkovec (initial capacity 12 000, recently renamed Stenkovec 2). The third NATO camp is Neprošteno, which has a capacity of 3000. The other camps, Bojane, Raduša, and Senokos, with respective capacities of 3000, 1000, and 700, were initially run by the Macedonian authorities. Administration of all the camps was handed over to UNHCR in mid April. Recently, a new camp was established at _egrane, with the assistance of NATO troops, as well as a reception camp at the border crossing at Blace, which is intended for the housing of refugees for one or two nights at the border.

The initial plan was that the completed NATO camps would be administered by UNHCR, with NATO providing only logistical support as requested. Indeed, in response to NATO's offer of help, the High Commissioner for Refugees defined on 3 April four distinct areas in which UNHCR required assistance: "management of the airlift operation, offloading and immediate storage of aid at airports and ports, logistics support in setting up camps, and air evacuation of refugees".¹⁷ However, by all accounts, the NATO camps were run completely by individual NATO brigades, and their role was not limited to the four areas where UNHCR requested assistance. NATO troops not only built the camps, they administered them and managed the distribution of aid. Indeed, many humanitarian organizations report that in order to establish operations in the NATO camps, they negotiated with the relevant NATO brigade, and not with UNHCR.

Many observers have stated that UNHCR was ill-prepared for the refugee influx, and that they did not have the capacity at the time to administer the camps. Indeed, there were only two international staff stationed in Macedonia at the outset of the crisis, a clearly inadequate number. The indications are that NATO saw an urgent and vital job, and went ahead and accomplished it. It is certainly the case that the logistical assistance of NATO troops was invaluable, at a time of dire need. However, NATO's role in the protection of refugees from Kosovo raises significant questions about the civilian character and non-political nature of the camps; and indeed, of refugee protection itself.

¹⁶ The individual brigades in the NATO force come under the direction of NATO only when the troops are in a situation of "force protection". Outside of such situations, they are under the command of their individual governments. Consequently, each camp was run in a slightly different manner, according to the instructions of the respective governments commanding that particular brigade. The lead countries administering Brazda were the United Kingdom and Italy, with France administering Stenkovec, and Germany administering Neprošteno.

¹⁷ High Commissioner's briefing to the UN Security Council, 05 May.



Though NATO insists that the role of their troops in Macedonia is to implement any future peace agreement in Kosovo, and not to take part in the bombing campaign against FRY, the fact remains that NATO is a party to the conflict. The presence of NATO troops and encampments could, under certain circumstances, make a refugee camp a military target for FRY attack.¹⁸ Furthermore, the involvement of NATO is in principle problematic. Refugee protection is a non-political and humanitarian act, and, UNHCR's assurances that "the fundamental principle of non-militarisation of refugee activities has been and will be upheld"¹⁹ notwithstanding, NATO is not a neutral party in the situation. The UN Declaration on Territorial Asylum reaffirms clearly in its preamble the principle that the protection of refugees is a "peaceful and humanitarian act [which] cannot be regarded as unfriendly by any other State." The involvement of a party to the conflict in refugee protection could, potentially, conflict with this principle.

Equally problematic have been the many obstacles laid in UNHCR's path by the Macedonian authorities. As noted above, the Macedonian authorities refused UNHCR access to refugees

¹⁸ In her response to NATO's offer of assistance, the High Commissioner stressed "the importance of retaining the civilian and humanitarian nature of the aid operation in order not to unnecessarily expose the front-line States, the relief workers on the ground and the refugees themselves." S/1999/391, 7 April.

¹⁹ High Commissioner's Briefing *supra*.

stranded at Blace, and entered into bilateral agreements with other countries regarding the forced evacuation of refugees, without UNHCR involvement. Even now, the Macedonian authorities engage in closure of the border, despite repeated UNHCR protests. Problems exist within the camps as well; UNHCR was not even allowed access to Raduša until 10 April.²⁰ Such actions do not only violate the rights of refugees; they also undermine UNHCR's role as a specialist agency charged by the countries of the world with the protection of refugees. As state party to the Refugee Convention, Macedonia is obliged to co-operate with UNHCR "in the exercise of its functions", in particular its supervisory role of application of the Convention.²¹

In her statement to the emergency meeting of the Humanitarian Issues Working Group, on 6 April 1999, the High Commissioner for Refugees stated that "although the extraordinary character of the Kosovo emergency means that for specific activities we need the type of support that only the military can provide, I wish to stress that the humanitarian operation must preserve its civilian character. ... I would therefore like to appeal to *all* governments and agencies involved in humanitarian activities, to recognise that UNHCR's coordinating role is an important guarantee of the civilian and humanitarian character of the operation, and to respect this role." However, it seems clear that UNHCR has been unable to play this coordinating role, perhaps partly because of the lack of resources, but also because of the political circumstances surrounding the refugee situation.

5. Humanitarian Evacuation - a new solution?

²⁰ UNHCR Kosovo Emergency Update, 13 April.

²¹ Article 35.1.

Over the past few decades the world has seen a number of large-scale influxes of refugees forced to flee their countries. The internationally agreed response to these mass movements has been articulated in Conclusion 22 of the UNHCR Executive Committee (Excom),²² which generally requires that asylum-seekers should be admitted to the State in which they first seek refuge, and if that State is not able to admit them on a long term basis, then it should always admit them at least on a temporary basis. States have agreed that access to the country where refugees first seek refuge is primary, even in situations of large-scale influx, and support this requirement by providing that the international community should provide assistance to those countries which might be unduly burdened due to a mass influx.²³ Therefore, the obligations of countries of “first asylum” are balanced with duties that are to be fulfilled by the international community. Providing protection for refugees, and searching for a durable solution for their plight, is not the responsibility of the asylum country alone; but the responsibility of the entire international community.

In the current response to the forced mass displacement from Kosovo a new “solution” has been created - that is - “humanitarian evacuation” from Macedonia to other countries.

The Macedonian authorities have since the early stages of the crisis stated that they would not be able to allow more than a certain number of refugees from Kosovo to stay in the country. On 23 February, a day before the NATO bombing of FRY started, the Macedonian authorities closed the border with Kosovo. The border was reopened the next day, subsequent to reported international intervention. According to the information available to Amnesty International, the Macedonian authorities subsequently contacted the United States of America, the UN, NATO, and the European Union, stating that they were desperate for assistance, and that 20 000 refugees was the absolute limit which Macedonia could host.

Humanitarian evacuation has been promoted by UNHCR (initially on a regional basis) as an emergency measure in response to the mass movement of refugees from Kosovo and in response to the concerns expressed by the Macedonian authorities that the large number of refugees have the potential to destabilize Macedonia. The evacuation programme is very much based on an understanding that international solidarity and responsibility sharing includes the duty of States to admit refugees to their countries, and to provide at least temporary refuge, pending a durable solution.

The humanitarian evacuation programme was likely a required response, given that at the initial stages of the crisis, when the border area at Blace was being cleared and refugees were

²² The UNHCR Excom is the main intergovernmental body which discusses refugee protection issues, and its Conclusions, while not legally binding as such, are authoritative standards of refugee protection.

²³ Amnesty International would argue that such assistance should be not only financial and logistical, but should also include the implementation of adequate resettlement programmes.

being forcibly loaded on planes, relocations seem to have been conducted on the basis of individual, bilateral agreements between Macedonia and the country concerned. UNHCR was not coordinating the operation, and, indeed, was apparently not even informed that it was to take place. UNHCR protested against these operations, insisting that evacuation should be voluntary, and that care should be taken so that families were not separated. There is now some level of UNHCR coordination of the evacuation operations and an articulation of the standards to be followed. On 30 April, a few weeks after the influx started, limiting the evacuation to countries in the region was abandoned, and UNHCR called upon countries outside of the region to take a quota of refugees under the humanitarian evacuation programme. In addition, some countries stated concerns that other countries had not agreed to evacuate a quota. For example, Germany halted evacuations at the level of approximately 10,000 refugees, despite having agreed to a quota of 20,000. The German government expressed concern that other countries were not taking their share of the responsibility for hosting evacuated refugees.

The humanitarian evacuation programme is premised on the basis that any evacuation must be on a strictly voluntary basis; the decision must be an informed one in the sense that those volunteering to be evacuated must know which is the destination country, the planned condition of stay there (right to family reunification, work, education, social assistance) and must not be subjected to pressure to accept evacuation. Evacuation must only be done after registration has occurred and the informed willingness of the participant to go to the offered evacuation site. Finally, in no circumstances should families be separated and refugees must be medically fit to travel.

As the numbers of refugees in Macedonia steadily increases, the basis for Macedonia keeping its borders open has become what might be characterized as an “intake out-take” calculation, with the Macedonian authorities clearly connecting the numbers of those refugees who will be allowed past the border points to the progress of the evacuation. Frequent closures of the border by the Macedonian authorities seem to be used to prompt quicker action in evacuating refugees. It is difficult to measure whether states and international agencies are moving as quickly as possible to evacuate refugees. However, it is clear that the actions of the Macedonian government in effectively holding to ransom those waiting on the borders to enter Macedonia violates agreed international standards. In addition, from a practical perspective, it sets a condition that is difficult to meet and encourages further trampling on the rights of refugees as set out in the conditions for the humanitarian evacuation program. It must be stated that registering refugees, informing them of their options, allowing them to make a voluntary choice, giving them time to prepare to move again, all takes time. The actions of the Macedonian authorities in so frequently closing their borders raise serious doubts about their willingness to allow for the implementation of the humanitarian evacuation programme in a manner respecting refugee rights; let alone allowing for the pursuit of any of the three durable solutions.

In response to pleas for the international community to share responsibility for assisting and protecting those refugees in the region, many countries have provided not only substantial sums of financial aid, but to date, some 39 countries have agreed to evacuate refugees from Macedonia. However, there are a number of countries in the region, and also beyond the region which have not yet offered to take any of those refugees who are to be evacuated, and they must be encouraged to share in the international responsibility to assist and protect refugees.

5.1 From Humanitarian Evacuation to Humanitarian Transfer

As Macedonia continued the revolving opening and closing of its border, it became clear that more immediate measures were needed. *In her briefing to the UN Security Council on 5 May, the High Commissioner for Refugees stated that, separately from the humanitarian evacuation programme, an additional “element of the response to further relieve pressure” on Macedonia was a voluntary “humanitarian transfer” programme of refugees to Albania. Noting that these transfers would have “operational consequences” in Albania, the High Commissioner went on to “urge the government of Albania to make available more rapidly a larger number of suitable sites” for refugee camps.*

It should not be forgotten that Albania, the poorest country in Europe, continues to be a willing host to refugees, when other countries have either not offered to take any refugees, or have offered to take very few on a comparative basis with Macedonia, Montenegro and Albania. However, there are acute shortages of accommodation in Albania, and there is increasing evidence of lawlessness and refugees being robbed and exploited. Serious questions must be raised about the prudence of transferring a large number of refugees to Albania under these circumstances, when there is agreement by a number of other countries to accept refugees from Macedonia, and all that is needed is time for them to conduct the necessary registration and evacuation according to the guidelines of the programme. Furthermore, given that refugees transferred to Albania from Macedonia will not qualify for evacuation to other countries, it is expected that they may show great reluctance, or even refuse to be transferred.

5.2 Lack of clarity regarding legal status

There is a considerable lack of clarity regarding the legal status to be afforded those refugees who are evacuated. It has been stressed by UNHCR that this evacuation was to be voluntary and the subject of informed consent on the part of the refugees. However, during the first couple of weeks that the programme was in place, even UNHCR was unable to state what legal status would be accorded to refugees in host countries, and it must be wondered how informed the choice of the refugees could have been in volunteering to be evacuated to a third country.

The UNHCR has consistently argued that ethnic Albanians fleeing the current situation in Kosovo would normally qualify as refugees under the 1951 Convention relating to the Status of Refugees (Refugee Convention)²⁴. This would imply that they should be entitled to the rights elaborated in that Convention, and, consequently, that the evacuation of refugees from Macedonia should properly be treated as the resettlement of Convention refugees. However, at the same time, UNHCR has not advocated that evacuated refugees be afforded Convention refugee status, and has not insisted that host countries afford refugees all the rights they are entitled to under international law. UNHCR has stated merely that the purpose of the programme is to ensure the “temporary safety”²⁵ of the refugees, but it is unclear just what this “temporary safety” is to entail. As elaborated below, this is problematic given that there is no agreed international standard on the rights of refugees under temporary protected status.

UNHCR has also stated that the programme “is not a resettlement programme”, as it “does not focus, as does resettlement, on addressing individual protection needs, rather it focuses on the protection requirements of the group. It moves groups of refugees so that all in need of protection can have access to safety.”²⁶ However, there are precedents for large scale resettlement operations, where refugees were resettled as groups after individual screening, and there is no intrinsic reason that this should not be possible in this instance as well.

²⁴ In the *UNHCR Position Paper on the Treatment of Refugees and Asylum-seekers from Kosovo*, HIWG/98/6, 11 November 1998, the UNHCR states that “In [the current] circumstances, it may reasonably be assumed that important numbers of those displaced by the conflict could have a well-founded fear of persecution for 1951 Convention reasons.” The High Commissioner, in her closing remarks at the Humanitarian Issues Working Group on 6 April 1999, reinforced and even strengthened this position, stating that “it must be clear that those currently fleeing Kosovo are refugees within the definition of the 1951 Convention. Existing laws in many countries will mandate that those evacuated be treated with all attendant rights.” Amnesty International concurs with this view.

²⁵ *UNHCR Guidelines for the Humanitarian Evacuation Programme of Kosovar Refugees in The Former Yugoslav Republic of Macedonia*, 14 April.

²⁶ *Revised UNHCR Guidelines for the Humanitarian Evacuation Programme of Kosovar Refugees in The Former Yugoslav Republic of Macedonia*, 26 April. The Australian government reportedly cited this UNHCR position in rejecting proposals to grant evacuated refugees permanent residency status, stating that would contravene the UNHCR Guidelines. *The Australian*, 14 May.

5.3 Concerns about screening at the Camps

Initially, the evacuation operation seems to have been conducted almost on a “first come, first served” basis, with people evacuated to countries not on the basis of family ties or vulnerability, but merely because of their place in the queue. However, it is now coordinated on the basis of several criteria established by UNHCR, namely voluntariness, vulnerability, and links to the host country, in particular family links. Registration for evacuation is done at the same time as camp registration; there is one form which serves both purposes.

The form exists only in English, and is filled out by either personnel of the Organization for Security and Co-operation in Europe (OSCE) or volunteers from the refugee population, who conduct the registration operation under the supervision of UNHCR.²⁷ Registration personnel ask the refugees about family members abroad, and would indicate on the form a preferred country for evacuation. UNHCR reportedly tries to get information about any relative living overseas, so that the wish of the refugee could as far as possible be accommodated.²⁸ After compiling all the necessary data, and selecting refugees for evacuation on the basis of UNHCR criteria, a list is submitted to the relevant host government for consideration.

While refugees are reportedly informed by UNHCR that they will receive only a temporary status in the host country, it appears that they receive nothing in writing, either from UNHCR, or from any of the countries of evacuation, at least not before arrival in the host country.

5.4 Reception in host countries

The above lack of clarity on the part of UNHCR, and more so on the part of host countries, has led to the result that various formulae have been followed by host countries in terms of the legal status accorded to those evacuated, and, consequently, a wide variance in the rights they are entitled to in the host country (e.g. the right to work or to receive social assistance, right to family reunification, access to education, freedom of movement). Most

²⁷ The Kosovo Verification Mission of the OSCE, which evacuated from Kosovo shortly before the NATO bombing commenced, has provided UNHCR with logistical support in Macedonia, including assistance with the registration and monitoring of the border.

²⁸ *Over the course of the few weeks following the announcement of the humanitarian evacuation programme, the number of countries offering to host refugees rose to 39 countries, representing a total number approximately 115,000 offers for receiving refugees.*

importantly though, there is no agreement as to how and when governments are to decide when these refugees are no longer in need of international protection, and can be returned to Kosovo.

Based on a sample of 20 governments offering places to evacuated refugees, it is clear that there is wide variance in legal status and other refugee rights they will receive. Some countries had to make legislative amendments in order to provide a status for those they would evacuate, while others used existing legislation to accord a type of temporary protected status. Other countries (though very few) are relying on their resettlement criteria, meaning that refugees will be evacuated on a combination of selection criteria based on immigration as well as refugee protection concerns.

Generally, there are five categories of treatment: 1) temporary protected status for initial periods ranging from as little as three months to one year; these statuses will be terminated according to the discretion of the host government, based on their view of the safety of return to Kosovo; 2) temporary protected status that over time accrues a right to access the asylum determination procedure for recognition as a Convention refugee or to some other form of right to stay in the country; 3) immediate access to the asylum determination procedure; however, decisions on those claiming asylum under this procedure are suspended for the foreseeable future; 4) access to the asylum determination procedure or some other form of right to remain; 5) status equivalent to those refugees who are resettled under regular selection programmes.

The vast majority of governments surveyed are offering some form of temporary protection status. The attendant rights of refugees also varies

widely - some will be allowed to work, to family reunification, to schooling and to social assistance. In other host countries, freedom of movement will be restricted to living in refugee camps or settlements, and no other fundamental rights such as the right to work will be granted.

Those countries that have put in place a programme that accords with the requirements of the 1951 Refugee Convention are few. For example, in both Canada and the United States, those to be evacuated will ultimately have a permanent right to remain and immediate access to all rights accorded to other refugees. Those evacuated to Canada will be able to access the asylum determination system.

Most countries have put in place a temporary protection regime. For example, those evacuated to Germany are to be offered protection on a temporary basis as "war refugees" for an initial period of three months, subject to periodic renewal (though it is as of yet unclear for how long). France has decided that those evacuated will initially receive a three-month permit to stay, and, after the expiry of that period, will get a renewable one-year permit to stay with the right to work and other social rights. In France, Kosovar Albanians are also entitled to lodge a claim for refugee status. France has not to date announced the number of refugees it will accept under the evacuation programme.

Sweden will initially grant eleven-month temporary residence permits to those evacuated, which can be extended for up to two years. Refugees will have a right to work, right to medical care and to family reunification. In Belgium, evacuated refugees will get a permit to stay for a period of six months, which can be prolonged every six months according to the

assessment of the Belgian government of the situation in Kosovo. Australia has decided to grant temporary status to 4000 evacuated refugees, who will be barred from applying for refugee status. If refugees leave the designated accommodation (military barracks), they will not be able to access social assistance benefits, or medical care, and will not be able to work.

The United Kingdom will grant one-year exceptional leave to remain in the country, with rights to social assistance benefits and work; assurances have been given that they will have a right to family reunification. Norway has decided that refugees will be given collective protection, which means that they are granted residence permits without an individual examination of their case. It will also mean that if the need for protection ends within a four-year period then these refugees will be required to return. However, if the need for protection exceeds four years, then these refugees will be granted a residence permit on individual grounds.

In sum, it is clear that host governments have chosen instead to afford only a "temporary protected" status to those fleeing Kosovo. There is little if any discussion as to what the criteria will be for determining that these refugees are no longer in need of international protection, and can therefore be asked, or made, to return. This is an important concern given that there is no international standard on the terms of "temporary protection"; meaning that it is entirely up to the host state to decide what rights to give those refugees temporarily protected, and to decide when it is appropriate for their return. If, as stated, the intention of the programme is to ensure that refugees are to voluntarily agree to be evacuated and to do so on the basis of being informed, the information

they are being offered when making their decision to be evacuated becomes an important concern.

As stated above, the humanitarian evacuation programme was initially focussed on reception in the region, on the basis that this would encourage and facilitate early repatriation. However, it is becoming increasingly clear that there is no real connection between the quality of protection that is available and geographic proximity. The only way that any scheme to share the responsibility of hosting refugees would be effective is if all governments, not just governments in the region, take part, based on the principle of equitable responsibility sharing.²⁹ In a welcome move, from 30 April UNHCR began to call for countries outside of the region of origin to take a quota of refugees under the humanitarian evacuation programme.³⁰

5.5 The rush to evacuate

²⁹ While the United States of America, Germany, and Turkey have all agreed to evacuating 20,000 refugees, other countries that could be expected to host refugees given their key role in refugee matters internationally and their relative economic strength have decided that they will take refugees only on an ad hoc basis, or have not committed any quota at all.

³⁰ High Commissioner's briefing supra.

As noted above, numerous issues remain regarding the humanitarian evacuation programme. However, the clear focus of attention has been in hastening the operation, and arranging that refugees are evacuated from Macedonia as soon as possible. UNHCR has recently made numerous appeals to accelerate the evacuation, and has even set a “target” of at least 2,000 refugees to be evacuated per day.³¹ UNHCR has indicated that the conditions in the camps are over-crowded and deteriorating, and, given that there are large numbers of new arrivals every day, the only solution is to accelerate the evacuation. However, the additional issue giving impetus to the programme is that the Macedonian authorities remain adamant that refugees will not be allowed to stay in Macedonia, and that the border will be kept open only if refugees will be relocated to a third country.

The rush of the international community to evacuate refugees as soon as possible tacitly accepts this Macedonian position. Indeed, the UNHCR itself states that the purpose of the Humanitarian Evacuation Programme is to “ease pressure on the host country thereby ensuring that refugees continue to have access to [Macedonia].”³² However, there is seemingly little analysis of whether allowing refugees to remain in Macedonia for a period of time that would enable an evacuation programme to be conducted in a rights respecting manner would indeed destabilize the country. In addition, one important issue has been lost in this rush to evacuate; which is that Macedonia has a clear obligation under international human rights law and refugee law to provide protection to those fleeing human rights violations in Kosovo, at least on a temporary basis.

Amnesty International recognises that ensuring protection for refugees is the responsibility of the international community as a whole. No country, including Macedonia, should bear a disproportionate share of this responsibility, merely because of its geographic location. As in previous situations involving sudden movements of large numbers of refugees, Amnesty International has from the outset of this refugee flow called upon the international community to give immediate priority to the establishment of a mechanism whereby the responsibility for protecting refugees is shared in a fair and just manner. However, it must be stressed that Macedonia fulfilling its obligations under the principle of *non refoulement* can in no way be contingent upon the implementation of a responsibility sharing programme.

The Excom has on numerous occasions reaffirmed the necessity for states to share the responsibility of hosting refugees. However, it has also been clearly noted that states must abide by their obligations under international refugee law, regardless of whether or not such responsibility sharing is taking place to the host country’s satisfaction. This is stated clearly in Conclusion 85, adopted at the 1998 session of Excom, where the Excom “[recognized] that

³¹ See e.g. UNHCR Kosovo Emergency Update 30 April, where UNHCR expresses disappointment that on the previous day the number of evacuated refugees was “well below UNHCR’s immediate target of 2,000 daily”, and “asks all governments to ... speed-up the pace of evacuations with immediate effect.”

³² *Revised Guidelines*, 26 April.

international solidarity and burden-sharing are of direct importance to the satisfactory implementation of refugee protection principles; [stressed], however, in this regard, that access to asylum and the meeting by States of their protection obligations should not be dependent on burden-sharing arrangements first being in place, particularly because respect for fundamental human rights and humanitarian principles is an obligation for all members of the international community". Macedonia's obligations, nor those of the international community, are not some bargaining chip which can be bartered in exchange for the pace of an evacuation scheme. They are clear obligations, which apply regardless of whether or not any sort of responsibility sharing scheme is implemented.

RECOMMENDATIONS:

To the Macedonian authorities:

-- Macedonia should abide by its international obligations and afford protection against *refoulement* to refugees from Kosovo, at least pending a durable solution to their plight. Under no circumstances should Macedonia close its border with Kosovo, or take any other measure which violates the principle of *non refoulement*.

-- Macedonia should cooperate fully with UNHCR, and ensure that UNHCR's supervisory role with regards to the protection of refugees is respected.

-- Macedonian police operating in the refugee camps should do so in a non-intimidatory manner, fully respecting international standards on the use of force and the prohibition of any form of ill treatment. In addition, all Macedonian officials who deal with refugees, including border officials and police officers, should receive training in international standards regarding the treatment of refugees.

To the international community:

-- With a view to maintaining the civilian and non-political character of refugee protection, the role played by NATO in the protection of refugees from Kosovo should be examined in international fora, in particular the UNHCR Excom.

-- The international community, in particular the UNHCR Excom, should reaffirm the principles of international refugee protection applicable in situations of large-scale influx, including the fundamental nature of the principle of *non refoulement*, and the importance of international responsibility sharing.

-- Countries hosting refugees evacuated from Macedonia should ensure that they are afforded the rights attendant with their status as Convention refugees, and in particular should ensure that they receive effective and durable protection against *refoulement*.

- Adequate information regarding the status of the refugees in the host countries, as well as the treatment they will receive, should be made available by host countries to refugees, in order that they may make a truly informed decision as to whether they wish to be evacuated there.
- Immediate attention should be given to the establishment of a mechanism whereby the responsibility to protect refugees is shared in a truly equitable manner. This mechanism should include developing criteria on which to base an assessment of when a country of first asylum faced with a large scale influx may be destabilised.
- Adequate financial assistance should be provided to Macedonia, to assist the country in dealing with the refugee influx.
- The international community should at all times respect UNHCR's supervisory role, and should also ensure that the organization is given adequate resources to carry out its mandate in an effective manner.

APPENDIX 1

Humanitarian Evacuation Programme - UNHCR Tables for 5 May 1999

UNHCR tables summarizing offers by country and related movements under the Humanitarian Evacuation Programme from The Former Yugoslav Republic of Macedonia.

Country (EUROPE)	Offer	Movements (cumulative)	Date of Confirmation of Offer
Andorra	6 to 10 cases		15-Apr-99
Austria	(up to) 5000	1,299	05-Apr-99
Belgium	up to 1200	1,202	19-Apr-99
Bulgaria	unspecified		16-Apr-99
Croatia	5,000	100	14-Apr-99
Czech Republic	several hundred	336	16-Apr-99
Denmark	(initially) 1500	324	08-Apr-99
Estonia	15		08-Apr-99
Finland	1,000	481	12-Apr-99
France	no quota / ad hoc	2,344	07-Apr-99
Germany	10,000	9,937	05-Apr-99
Greece	5,000		08-Apr-99
Iceland	100	23	06-Apr-99
Ireland	1,000		07-Apr-99
Israel	unspecified	106	11-Apr-99
Italy	10,000		04-May-99
Latvia	considering		08-Apr-99
Lithuania	100		16-Apr-99
Malta	100		07-Apr-99
Netherlands	2,000	1,619	19-Apr-99
Norway	up to 6000	2,325	05-Apr-99
Poland	1,000	638	
Portugal	2,000		08-Apr-99
Romania	6,000	41	12-Apr-99
Slovakia	500		09-Apr-99
Slovenia	1,600	115	15-Apr-99
Spain	(initially) 1,200	207	08-Apr-99
Sweden	5,000	758	8/19-Apr-99
Switzerland	(initially) 2500	33	8/23-Apr-99
Turkey	20,000	6,035	05-Apr-99
United Kingdom	several thousands	330	05-Apr-99
Total (indicative)	some 85,000	28,253	

only)

Country (WORLD)	Offer	Movements (cumulative)	Date of Confirmation of Offer
Argentina	500		21-Apr-99
Australia	4,000		07-Apr-99
Brazil	100		21-Apr-99
Canada	5,000	248	07-Apr-99
Chile	400 to 500		08-Apr-99
New Zealand	200 families		12-Apr-99
USA	up to 20,000		05-Apr-99
Uruguay	unspecified		26-Apr-99
Total (indicative only)	some 30,000	248	