

**THE WARRIOR REFUGEES VS THE HUMANITARIAN
IMPERATIVE: CASE OF AFGHAN REFUGEES IN PAKISTAN
AND BURMESE REFUGEES IN THAILAND**

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Abstract

The ‘warrior refugee’ phenomenon is a special problem of our time as it poses a threat to the environment of the refugee and most importantly the ‘humanitarian imperative’. In the advent of new conflict situations in the developing world *relief* and *aid* is sought after more than it ever has been and ‘humanitarians’ roam the fields in vast numbers and missions. International Humanitarian Law and International Refugee Law acknowledge the threat posed by ‘militant activities’ within refugee populated areas (RPAs), but no International Convention has subscribed to the term/concept of the ‘refugee warrior’. Thus, the category itself remains a *misnomer* within the refugee regime causing further constraints when attempting to provide security to the refugees. The ‘warrior refugee’ is still an active concept in the present refugee context; a study of pre Cold-War Afghan refugees and present day Burmese refugees will show that this phenomenon remains to be a threat. With the above issues in mind I have ventured to argue that that the ‘refugee warrior’ phenomenon remains a threat to the ‘humanitarian imperative’; in the way that it makes the international humanitarian regime rethink their principles and legal instruments, as the ‘humanitarian imperative’ could not only quell the militant refugee activity but make way for it too.

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Introduction

The end of the Cold War realized the advent of inter-state, ethnic and civil conflicts in the post-colonial global south. As a result there was a mass influx of refugee movements in the developing world which created more problems for the international refugee regime. Aristide Zolberg, a renowned scholar on refugee issues was the first to acknowledge these special problems of our time (1989). Among them, the formation of ‘refugee warrior’ communities was the most significant one that caught my attention.

The ‘refugee warrior’ is defined as;

A highly conscious refugee community with a political leadership structure and armed sections engaged in warfare for a political objective is it to recapture the homeland, change the regime, or secure a separate state (Zolberg, Surkhe & Aguayo, 1989: 275).

It is not very common that we come across the term ‘refugee warrior’ in the literature of international relations, international politics or refugee studies. However, with the advent of the Rwandan crisis and many other conflicts that has taken place in the 1990s (in the Great Lake region of Africa), the international humanitarian regime as well as scholars of various disciplines started to focus on this aspect.

Looking through the literature of refugee studies I have found important analyses and research conducted by scholars such as Fiona Terry, Jean-Christoph Rubin, Howard Adelman and Peter Nyers. Apart from Zolberg et al., who were the first to acknowledge this phenomenon. Jean-Christopher Rubin was the first to argue that refugee camps created a fertile environment for militant activities by non-combatants (Rubin, 1986). Peter Nyers has delved into the theoretical

aspects of the ‘refugee warrior’ concept and tried to expand it, so that it relates not only to the ‘statist’ trajectory, but one beyond this (2001). He sympathizes with the refugee warrior in a way that he is justified in his fighting as this gives him a ‘political’ voice which liberates him from the typical imprisoned stratus. Howard Adelman is a more prolific writer on refugee issues in the present world, and has discussed the implications and causes behind the militant activities of refugees (1998). He mainly focuses on the reasons behind militant activities by refugees and how political instability and regional dynamics play a role in ensuing it. But, it was Fiona Terry’s work which among the very few ‘practitioners’ in the field who has thoroughly analyzed the role of the ‘warrior refugee’ in the current humanitarian context (2002). She examines the issues that plague the humanitarian regimes who are working in conflict situations. Terry’s work reiterates the significance of ethical partiality; she further examines the side-effects of intervention by aid organizations and points out the need to acknowledge the political consequences of the choice to give aid. The author makes the controversial claim that aid agencies act as though the initial decision to supply aid satisfies any need for ethical discussion and are often blind to the moral quandaries of aid. Although Terry discusses the implications of aid distribution to non-combatants in refugee camps she does not elaborate on the dual dimension of effects the ‘warrior refugees’ have on the humanitarian imperative.

Thus, I have chosen to analyze and answer my thesis question, which is, “Is the ‘warrior refugee’ a threat to the humanitarian imperative?” through the contextual analysis of two case studies I will provide a better understanding of this phenomena as it relates to the current refugee situation as well as how it affected the refugee crisis in the past. Hence, I have chosen to delve deeper into the ‘warrior refugee’ activities among the Afghan refugee in Pakistan prior to the Cold War and

the current Burmese refugee activities at the Thai-Burmese border. Since these two cases are symbolic of the refugee satiations of the pre and post Cold war era it would make it feasible to understand the evolvement of the ‘warrior refugee’ concept and to show how the threat remains to be the same. By analyzing each of these cases, I was able to find out how each situation motivated militant activity among refugees, why the humanitarian agencies encouraged this or not. Hence, the case study analysis I was able to find the basis for the application of my ideas and then apply it to the current situation in the field.

In order to examine the principle of the ‘humanitarian imperative’ and how it is threatened by these ‘warrior refugee’ phenomena, it was essential to study some of the legal instruments that are in place that directs all humanitarian agencies in the field. I have chosen to study the ‘humanitarian operational tools’, International Humanitarian Law (Article 3) as it applies to refugees and finally Refugee Law (the Geneva Convention) that expresses the importance of *protection* as it applies to the refugee.

Through the study of these instruments I was able to identify the gaps that lie relating to the *identity* of the refugee. I will show how the difficulty of distinguishing between the “warrior refugee” and the “genuine refugee” poses a problem for any humanitarian agency as it complicates the process of aid distribution and question the ethical measures of their mission.

The literature mentioned above details the history and the evaluation of the ‘warrior refugee’ phenomena. Although it is important to understand the causes and implication of this issue I found that there is not much analysis done on the impact it has on the ‘humanitarian imperative’

(as it is the main principle in the humanitarian agency which workers are supposed to comply with). By also choosing to analyze the refugees of Myanmar (Burma) I have been able to identify the challenges that remain to be addressed even today, because it seems to me that many scholars have only focused on the Rwandan tragedy or most other African cases that had taken place in the past.

In my first chapter I analyze the significance of the ‘refugee warrior phenomena’ as it evolved during the course of history. A literature review will show the concept as it relates to IHL and Refugee Law bringing out the gaps of the legal instruments, how the warrior refugee poses a threat to their environment and the causes behind its formation.

The humanitarian imperative and the operational instruments of humanitarian action will be discussed in the second chapter, laying out the different approaches of these policies and how it can be an impediment to the insecurity of a refugee populated area or the camps. I will look deeper into the legal conventions that apply to the protection of the refugees and try to analyze the gaps that remain which affect the ethical and practical implementation of the humanitarian actions. The influences of the International community, host state, refugee combatants and the aid organizations are discussed as their collaboration or disagreements provide reasons that could encourage or discourage militant activities among refugees.

The third and fourth chapters will include the detailed analysis of the two case studies I have mentioned above.

Not much has changed in the global-order as many believe. If not the international powers, then the state authorities limit the missions of the humanitarian workers today. There is a threat to the humanitarian imperative as there is no agreement by all participating parties in a conflict and those intervening as to how needs can be met by ensuring the security and needs of the victims. Not only are these sometimes ethical and moral values trampled in the midst of technical and political pressures.

There are many reasons why ‘warrior refugees’ emerge and why it remains a threat to the ‘humanitarian imperative’. The humanitarian needs and the moral incentives are always a concern by all participating parties alike, but it always gets pushed to the sidelines with more ‘political’ and ‘legal’ agendas in sight. I am convinced by many scholars that say the ‘refugee warrior’ phenomena is a result of the failed humanitarian missions, but I believe that this issue works in conjunction; because, the same means of alleviating the warrior refugee problem could also fuel the same movement within the humanitarian environment.

Chapter 1

The significance of the Refugee Warriors or the Militant Refugees

The refugee, defined according to the United Nations Convention for Refugees (1951) is;

As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, Not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (United Nations High Commissioner for Refugees (UNHCR), 1951, p. 16)

However, in their book “Escape from Violence”, written by Zolberg et. al., (1989) the first ever acknowledgement of a new refugee problem is seen. The authors present the “refugee-Warrior communities” as a special problem of our times (Zolberg, Suhrke & Aguayo, 1989). Then, “what is most worrisome about the current refugee burden is not only the sheer magnitude of refugees...but also the long periods of time that they have spent in asylum,” wrote the Deputy of the UNHCR, W.R. Smyser, in an article in *Foreign Affairs* in 1985. His assessment then was that the –lasting refugee presence in many countries had altered the nature of the global refugee issue (Smyser, 1985, Pgs 157-159). According to the *UNHCR Global Trends Report* of 2008 there were some 42 million forcibly displaced people worldwide at the end of 2008. This includes 15.2 million refugees, 827 000 asylum seekers (pending cases) and 26 million Internally Displaced Persons (IDPs). Furthermore it was stated that developing countries are host to four fifths of the world’s refugees. Among the above, Pakistan is host to the largest

number of refugees worldwide (1.8 million), followed by Syria (1.1 million) and the Islamic Republic of Iran (980,000).

Despite UNHCR's efforts to find durable solutions during 2008, the total number of refugees and IDPs under its care remains high at roughly 25 million, almost unchanged compared to 2007, and together accounted for about three quarters of all people falling under the UNHCR mandate (UNHCR, 2009).

Hence, what Smyser wrote two decades ago still remains to be a pressing issue in the world refugee arena. Particularly, after the Cold War era, the world has seen an upsurge in civil and ethnic conflicts in the developing countries. The sheer number of refugees who have crossed over to neighboring states in search of refugees has multiplied; magnifying the burden on International Organizations (INGO's) such as the UNHCR, International Committee of the Red Cross (ICRC) and many others. This picture captures an important part of what has become a special problem of the contemporary refugee situation - *prolonged exile for millions* - whose prospect of return is blocked by seemingly insoluble conflicts such as that prevails in Afghanistan, Myanmar (Burma), Somalia and Iraq to name a few.

In most prolonged conflict situations seen today we perceive "failed states" being depicted, where that nation's ethnic groups started fighting for their rights or micro states frequently emerged as a result of those same conflicts (Adelman, 1998). As well as these internal disaffected and rebellious nationals (Snow, 1996), there were those who lived as refugees in neighboring states who either chose not to be repatriated or were not allowed to do so. Some of them posed a threat to the weakened sovereignty of the states from which they fled (Adelman, 1998). These refugees are not simply a passive group of dependents living under the care of aid agencies, the host state or the international community, but they are "an active and highly conscious community with a political leadership structure and armed sections

engaged in warfare for a political objective, be it to recapture the homeland, change the regime, or secure a separate state” (Zolberg et al., 1989, p. 241). Zolberg et al., (1989) introduces the “Palestinian refugees” as the archetypical refugee warriors of the post World War Two era, which he also refers to as a Refugee nation. For Zolberg, “their capacity for Organized Violence prefigured attempts by other refugees to take history into their own hands” (Zolberg et al., 1989, p. 241). The Zolberg thesis clearly emphasizes that the reasons individuals became refugees in the first place mostly explain why refugees turn in to refugee warriors (Zolberg et al., 1989). Thus, in recognition of their nature at being both dependent objects and actor-subjects in their own right, they have been called “refugee warrior communities” by scholars (Zolberg et al., 1989). Their existence raises problems not merely of obtaining sufficient relief money, as the UNHCR notes, but also of posing profound ethical and policy dilemmas that the UNHCR and other aid agencies, because of its dependent position, cannot confront.

These dilemmas are acknowledged in international law which recognizes a conflict between refugee status, on the one hand, and political activism, certainly of the belligerent kind, on the other (Zolberg et al., 1989). “Although the activists are a classic type of refugee, once in exile their political activities must be kept within bounds” (Zolberg et a., 1989, p. 276). Read carefully, one would find that the UN convention is cautious on this point (Article 2 requires only that the refugee comply with the laws of the host country), other segments of International law are not. For example, the Organization of African Unity (OAU) is explicit in stating through Article 3, that any “subversive activity” against any member states of the OAU is prohibited (OAU Convention, 1969, section. 4). Similar principles have been reiterated in various U.N. –General Assembly resolutions, by the council of Europe, and in the 1967 Declaration on Territorial Asylum (Goodwin-Gill &McAdams, 2007, p. 163-168).

In international law refugee-warriors clearly are a contradiction in terms and illegal. However, a lot of refugee populations are known to be associated with an armed struggle. “The way the warrior refugees interpret their refugee status, their religious traditions and their participation in armed violence has had

the effect of disturbing not only traditional aspects of refugee behavior but also received of politics and ethics that informs the world order nation states and citizen objects” (Nyers, 2006). As seen through cases of the Afghan *Mujaheddin*¹ communities and Nicaraguan *Contra*²s in Central America are examples of refugee warriors who maintain separate physical facilities for training purposes etc. even while residing within an ordinary refugee populated area.

The situations and circumstances surrounding refugee warrior communities are said to be diverse as they are unique. For example in the case of the Afghan warrior refugees they were displaced due to international and domestic conflict and were fighting for an independent Islamic state in Afghanistan. There is a great deal of consensus about them in academic and policy literature on refugees. According to Peter Nyers (Nyers, 2006) there are four identifiable convergences within this literature. First, there is a general agreement as to who is identified as a refugee warrior. Second, there is a consensus that if the above criterion is met, then what emerges is a “failed refugee”, as the category is a whole contradiction in terms, a category mistake. Third, this categorical mistake results in the effacement of the traditional “humanitarian” terms that define refugeehood. Finally the “refugee warrior” phenomena is understood almost entirely in terms of how it represents both a danger and a threat to human, national, regional, and international security. (Nyers, 2006). Hence from original contributors such as Zolberg et al. and other scholars in the field we see that there is a common understanding of the refugee warrior being a discreet category in and of themselves and thus should not be mistaken to be a “genuine” or bona fide refugee.

¹ The Islamic resistance fighters who formed a militia with very simple arms, they were refugees in Pakistan who fought against the Soviet troops that invaded Afghanistan.

² The term “contras” short for *contrarevolucionarios* denotes the various groups opposing the Sandinista government in Nicaragua from bases in Honduras and Costa Rica and within Nicaragua.

Although there is a slight difference allowed between refugee militants and regular refugee civilians, these communities do possess certain common features as well. To exist, they require sanctuary in a neighboring country permitting military operations from its territory. Prior to the Cold War most of the refugee warriors had friendly patrons who supported their deeds; I will later discuss how this has gradually changed with the evolution of International relations and regimes. Hence, “with a sanctuary for the warriors and relief assistance for the refugees, refugee-warrior communities can develop” (Zolberg et al., 1989, p. 276).

Because warriors are engaged in military activities across the borders that associate the host country in an act of war, communities of this type cannot persist for long unless they secure substantial external patron partisan support. In fact, most refugee warrior regimes prior to the Cold-War era thrived as a result of continuous recognition of their use as foreign policy instruments in related international rivalries (Zolberg et al., 1989).

The above condition may have established. What is different about the contemporary world that makes refugee-warrior communities a special problem of our time is, “first, the existence of a highly developed international refugee regime that can sustain large-scale civilian populations in exile for years, and second, the dominant ideology of democratic nationalism which makes a civilian refugee population a necessary adjunct for the warriors” (Zolberg et al., 1989, p. 277).

According to the writing of Karen Jacobson who has written much about refugee issues pertaining to refugee populated areas (RPAs)³ and refugee camps states that camps and refugees

³ RPAs refers to areas, usually border regions, that have experienced the brunt of an influx of refugees, where refugees are initially settled, and where most continue to

are widely used and targeted in the conduct of war and conflict (Jacobson, 2000). This situation occurs in Sudan, along the Thai-Burmese border to name a couple. It has always been the case that governments' responses to refugees, and to related security problems at border zones, have been motivated by regional and border politics. Prior to 1990, these politics were framed by the Cold War, and the presence of refugee-warriors in Pakistan, Ethiopia and Nicaragua were widely accepted. In the post-Cold War period, great power interest in regional conflicts has reduced, but security issues and refugee influx has become more virulent than ever (Jacobson, 2000).

Clearly, the 'International refugee regime' still remains the main source of providing for large populations of refugees within border regions as well as inner state areas. As Zolberg et al., had mentioned the nationalistic/democratic instincts of civilian refugee populations still persist among RPAs allowing militant activities among these people. Hence, more than the interests by international hegemony, the relief agencies have started to face the violence among refugees and its repercussions.

In the present world context, argument remains that, the nature of war fare has radically changed. Ensuing new wars that result in emergency situations have persistently eroded the principles and conduct of conventional wars and, indeed instrumentalized and undercut humanitarianism to the extent that the latter has been rendered ineffective or, worse even, been turned into a weapon or a source of income preyed on by an increasingly heterogeneous assortment of combatants (Leenders, 2009). Hence, today discourse on refugees and the humanitarian imperative questions

live. Although refugees distribute themselves throughout the host country by migrating into towns and other parts of the country, in very few countries do refugees have total freedom of movement. Refugees are usually confined to a zone designated by authorities, and usually referred to by name, such as 'Ngara', 'Goma', 'NWFP', 'the Burmese border' and so forth (Jacobson, 2000, pg 3).

this new indistinction between ‘warfare’ and ‘humanitarianism’ by third-world country combatants (Stedman and Tanner ed. 2003). The once encouraged and overlooked refugee warriors or refugee combatants suddenly became a threat to the discourse of ‘securitized humanitarianism’ (Loescher, 1990). According to Loescher et al., (1990) these refugee warriors remain to be spoilers and a significant challenge to the peace building efforts by host states and INGOs.

When the refugee warrior phenomenon appeared to be inducted by especially the dramatic militarization of Rwanda Hutu refugees in Zaire (Congo), the conceptual category gained acceptance within refugee studies and the humanitarian aid community alike (Jacobsen, 2001). Progressively, studies appeared on the role of refugee warriors in contemporary armed conflicts – including Rwanda Hutu refugees in Eastern Congo, Bosnian Muslim refugees in the former Yugoslavia, and current Iraqi refugees scattered in the Middle-East- making this phenomenon even more relevant to the present refugee and humanitarian discourses. The UNHCR, after being heavily criticized for unwillingly aiding Rwandan *genocidaires* in staging violent attacks from their refugee camps, followed suit by developing , in 1998, a ‘ladder of options’ guiding its employees on how to deal with refugees resorting to armed violence (UNHCR 1999; UNHCR 2007). Although certain scholars within a more theoretical debate hailed refugee warriors for liberating refugees from the humanitarian straitjacket of being passive, voiceless and docile victims (Nyers, 2006), most accounts stressed the dire consequences of the ensuing growth of militant refugee activities (Leenders, 2009).

Howard Adelman, a leading scholar in the refugee and migration scholarship area contends that refugee warriors are not the product of the original situation which resulted in their refugee status. Their activities are the result of the failure of the refugees to receive an alternative political status in another state or nation. This reinforces the arguments and thoughts presented earlier. We see that there is much criticism and a general consensus towards hosting states and international community. Adelman further states

Strictly speaking, the phrase "refugee warrior" is a misnomer. By international law and OAU law⁴, a refugee by definition cannot resort to violence. If a refugee resorts to violence, then that person no longer qualifies for refugee status. In law, a person may either be a refugee or a warrior, but he or she cannot be both. But law is one thing and practice is another. Laws excluding those who take up arms from being designated as refugees are virtually never enforced. Further, the connotation of the phrase *refugee warrior* immediately informs an audience of the group being discussed (Adelman, 1998, para. 8).

Hence, as established by many scholars such as Nyers, Fiona Terry, Sarah Lischer and others the warrior refugee constitutes a considerable problem to the "problem solvers". They pose substantial challenges to humanitarian organizations intent on maintaining their neutrality,

⁴ According to Organization of African Unity (OAU) law, states are not permitted to allow their territory to be used as a base for launching military action against a neighboring state. These laws disallow refugees exercising their "right of return" through armed force. The African refugee convention differs somewhat from other instruments of international refugee law which merely generally exclude those who take up arms from being classified as refugees. The preamble to the 1969 Convention on the Refugee Problems in Africa affirms that the signatories are "determined to discourage" refugees from using their status for subversive activities (paras. 4 and 5). Article III deals in its entirety with "Prohibition of Subversive Activities," prohibiting refugees from engaging in subversive activities against any member state of the OAU. Host states must "prohibit refugees residing in their respective territories from attacking any State Member . . . by use of arms, through the press, or by radio." (III, 2) To further ensure that these conditions are met, Art. II (6) advises that, "for reasons of security," refugees shall settle "at a reasonable distance from the frontier of their country of origin." These provisions are unique to African regional instruments of international refugee law. More generally, the Charter of the Organization of African Unity expresses "unreserved condemnation" for subversive activities on the part of neighboring states or any other state (Art.III(5)). The African Charter for Human and People's Rights states unequivocally as well that territories [of signatories' states] shall not be used as bases for subversive or terrorist activities against another party. (Art. 23, 2:b) Yet in the comprehensive survey, *International Dimensions of Humanitarian Law* (Geneva, Switzerland, Henry Dunant Institute: UNESCO, 1988), there is no reference to international law applying to prevent refugees from resorting to force.

impartiality and independence in refugee situations (Nyers, 2001).

When Zolberg et al., coined the term “refugee warrior” they were referring to the active refugee warrior communities residing in camps in Afghanistan, Palestine territory and other historical situations. Since then this concept has evolved especially with new fears of terrorism have erupted in the post 9/11 period. The U.S. Led ‘War against Terror’ appears to have consolidated the securitization of refugee affairs, and the study thereof, via the perceived connection between terrorism and asylum migration involving or relating to refugees (Zard, 2002). Terrorism and refugees’ much feared association with it put the category of the refugee warrior and its purported threat to security right on the doorstep of the West (Leenders, 2009), triggering stringent background checks, preventive incarceration and other security measures against refugees (Zard, 2002). Thus, international organizations have to rethink their policies regarding refugees and how to deal with the warrior or militant refugee. This would mean that organizations such as UNHCR and the ICRC who focus more on the “humanitarian imperative” would have to rethink what norms should be introduced to differentiate between the “warrior refugee” and the “genuine refugee”.

Having analyzed the reasons behind the formation of a refugee warrior community and the distinguishing characteristics of this party and its implications on the ‘humanitarian imperative’ in brief, it is my intention to go further in depth and analyze two cases (one prior to the Cold War and the other after the Cold War). This would help us comprehend why the ‘refugee warrior’ concept remains to be a threat to the humanitarian imperative.

Chapter 2

The Humanitarian Imperative

2.1 – Classic Humanitarian Law and the “humanitarian operational principles”

When Henri Dunant witnessed the slaughter and the suffering on the battlefield of Solferino in 1859, war was generally fought between two state armies along fixed lines of battle. War was perceived, whether rightly or wrongly, as being within the conduct of civilized, gentlemanly behavior. Thus, “when Dunant began to propagate the Red Cross principles, which eventually became enshrined in the Geneva Conventions, they were embraced by the European statesman as being a way to ensure the gentlemanly conduct of war” (Mills, 2005, p. 163-164). Thus, humanitarian action, including assisting wounded soldiers and others affected by the war, was seen as an act of compassion rather than an act of politics (Ignatieff, 1998). This is the classical model of humanitarianism—neutral, impartial, and independent. There was always an element of myth to this, but it worked well enough—at least to the extent that organizations like the ICRC was able to convince a wide variety of actors not to fear them (Mills, 2005).

Humanitarian action “posits a universal ethic found on the conviction that all people have equal dignity by virtue of their membership in humanity” (Terry, 2002, p. 19). The Red Cross principles of humanitarian action aim to embody this adage and promote its universal acceptance. The three principles, neutrality, impartiality & independence, and the humanitarian imperative are at the core of humanitarian law (1949 Geneva Conventions⁵) and are aimed at

⁵ The Geneva Conventions were adopted following the disastrous consequences of the Second World War

convincing belligerents that all sides are equally entitled to humanitarian assistance and that humanitarian action does not constitute intervening in to a conflict (Terry, 2002). Thus, let us have a brief look at the significance of these principles individually.

2.1.1- Neutrality

Much of ICRC's action is geared towards influencing the behavior of the belligerents and states, so it is important that they retain the confidence of these parties in order to initiate dialogues and gain access to victims, refugees, and prisoners of war. Thus, ICRC privileges the principle of neutrality as an operational tool for securing access and dialogue. But maintaining a neutral stance can involve concessions elsewhere in its functions and principles. For example, even though ICRC is the custodian of international humanitarian law, they are not allowed to testify against crimes that may have taken place in the field; as this could danger the lives of their colleagues and their reputation of confidentiality and neutrality, on which future access is thought to depend (Terry, 2002). This principle applies and is adhered to by UNHCR as well; the High Commissioner's work is to be nonpolitical and humanitarian and to relate primarily to groups and categories of refugees (UNHCR Statute, paragraph 2),(Goodwin-Gill, 2001). However, it is first and foremost the interest of the refugee that comes first to UNHCR, even when they have to consider between the asylum seeker and the refugee. Neutrality is questioned as they have to take the side of the 'refugee' in all accounts.

The Conventions entered into force in 1950. Since then there has been a mass escalation in civil and non-international conflicts. Hence, in addition to the four conventions two additional protocols (Protocols 1&2) were adopted in 1977 to place limits to the ways wars are fought.

Common Article 3 (of the 1949 Convention 1) further establishes fundamental rules from which no derogation is permitted. It is like a mini-Convention within the Conventions as it contains the essential rules of the Geneva Conventions in a condensed format and makes them applicable to conflicts not of an international character (ICRC legal resources, accessed in June, 2010)

Although neutrality is viewed as an operational tool to gain access to populations in need, the question of whether it is normally acceptable to retain neutrality in the midst of wrong and injustice remains a dilemma. Can humanitarian agencies look on while refugees are forcing some of their fellow camp members to participate in militant activities or when children are forced to take up arms? Blindness to wrong will lead to aid-workers taking sides, but from a moral perspective it would be wrong to allow certain activities. But aid agencies are not just bystanders; they are active participants in attempts to alleviate suffering. Then, is their responsibility greater or less if their intentions are good? ICRC argues that humanitarians cannot play judge and jury in the field and cannot hold a population collectively responsible for the actions of their leaders by choosing to aid only one side (ICRC, 2009, p. 399-401).

The desire to act in an impartial fashion and to retain an image of neutrality can also be in tension. The perceptions of neutrality held by belligerents are the practical measure of neutrality, and if the needs are greater on one side of the conflict than the other, then the tendency is for aid to be distributed disproportionately (Roberts, 1996). Then, in the cases of refugee warriors in Pakistan and the Thai-Burmese border it was difficult to retain neutrality; one, because in the case of Afghan refugees most relief agencies were partial towards the militants because of their “just” cause and two, in the case of the Burmese refugees aid agencies are helpless in the midst of Thai law (according to reports produced by agencies such as ICRC, UNHCT, TBBC etc.) and are unable to even create the necessary environment they require in the first place.⁶

⁶ I have elaborated on the reasons behind this in my fourth chapter.

2.1.2 - Impartiality and Independence

Although in theory impartiality is a less controversial principle among aid organizations than neutrality, in practice it is seldom applied in line with the universal values behind humanitarian action (Terry, 2002). Impartiality is based on the conviction that all people have equal rights and access to aid despite their race, ethnicity, religion or status in the conflict. However, it is only organizations that are politically and financially independent that can ensure aid is distributed on the basis of need alone. Unfortunately, throughout history it has been that aid agencies had to be dependent of government or major international donors who would provide them with funding. Hence, as we will see from the Afghan case and the Burmese case, most if not all humanitarian agencies has to cater first to the political needs or at least abide by their conditions before they distribute the aid. In the case of the Afghan warriors aid was distributed through the Pakistani authorities mostly to combatants and people who adhered to their rules, while in the Burmese refugee case aid would be distributed to the refugees directly but it was the Thai authorities who managed distribution, leaving UNHCR and other organizations helpless as they are not really able to monitor the situation as should be.

Independence refers to the freedom and individuality that the aid agencies require from the international regime, donor states, host states etc. I choose not to elaborate on this in length as it is quite the same as impartiality rather independence is necessary in order to be impartial. For example, the UNHCR or any other relief agency cannot operate independently of the Thai authorities, leaving them 'partial' to the government needs than that of the refugees of Myanmar (Burma).

UNHCR is particularly affected by funding discrepancies between those refugee emergencies that are perceived to hold important stakes for major donor governments and those that are not. Similarly aid organizations that aspire to link humanitarian action to conflict prevention and resolution and peace-building activities find tensions arising between those objectives and that of giving impartial assistance. In this condition agencies have to choose between the reasons of ‘need’ and ‘peace’, which should not be the case, as “need” should be the obvious choice according to humanitarian law.

2.1.3 - Humanitarian Imperative

The Code of Conduct of the Red Cross and Red Crescent Societies and NGOs in Disaster Relief specifies that the ‘humanitarian imperative’ should always come first when attending to an emergency (Eggli, 2001⁷). Cases of refugee mass influxes could, “under the circumstances, constitute a disaster for the purpose of the Code, but its application embraces a broader spectrum of natural or man-made crisis’ (Eggli, 2001, p. 121). In the case of an ethnic conflict and non-combatants operating from refugee camps, they would still be required to assist them when they are wounded, but this is hardly the case, especially when considered the Burmese refugee combatants. Of course, if we consider unarmed student Burmese refugees, they could be eligible for aid, but other combatants representing various ethnic factions would be considered not refugees by most aid workers, thus violating the ‘humanitarian’ principle or Code.

⁷ 1: The Humanitarian imperative comes first:

The right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. As members of the international community, we recognize our obligation to provide humanitarian assistance wherever it is needed. Hence the need for unimpeded access to affected populations is of fundamental importance in exercising that responsibility. The prime motivation of our response to disaster is to alleviate human suffering amongst those least able to withstand the stress caused by disaster. When we give humanitarian aid it is not a partisan or political act and should not be viewed as such (Eggli, 2001, p. 121).

As I will later elaborate in chapter four the Burmese student refugees are a ‘special’ category of refugees as they are considered to be threatened by their government for fighting with their voices and pens. They are pro-democratic and have been causing many riots in the cities. Many of them were forced to flee Myanmar (Burma) due to having threats on their lives. Now, there in Thailand under the protection of UNHCR, and the Thai government. This I believe is quite unfair considering the fact that the Thai government makes the aid agencies choose between ethnic groups of Burmese refugees when deciding where to send their aid.

Increased recognition of the negative consequences of humanitarian action has led some aid organizations to try harder to assess the good versus potential harm that aid engenders. Whether decisions should be based on doing more good than harm, doing no more than a minimum amount harm regardless of the total good, or ensuring that no harm is done, is open to debate (Terry, 2002).

This is indeed a dilemma considering the decisions that relief agencies sometimes have to take in a situation where they have to decide between the ‘good’ and the ‘harmful’ act, Because there are also instances that in some cases aid can be turned against the people it was intended to assist. This was seen clearly in the case of the Rwandan genocide where, aid became a mechanism of coercion and violence due to the insecurity within the camp environment . This was a result of being obedient to the political *status-quo* and the aid agencies not saying “no”!

Clearly, there is always an obstacle when trying to uphold the humanitarian imperative in any situation. It seems to me that somehow, it always get trampled by political agendas of the contending states and sometimes even relief agencies in the field. After all, “humanitarian principles were designed to guard against the use of humanitarian assistance to induce political or any other compliance” (Terry, 2002, p. 26).

2.2 – International Humanitarian and Refugee Law

2.2.1 – International Refugee Law/ 1949 Geneva Conventions

“The refugee protection regime, within which the United Nations High Commissioner for Refugees discharges his mandated functions, has its origins in general principles of human rights. At the same time, it is firmly founded on treaty and customary law obligations, particularly those flowing from the 1951 Convention and its 1967 Protocol, and also draws on principles and standards articulated in other international instruments or through court processes in a variety of jurisdictions. Finally, this regime is guided by so-called “soft law” pronouncements and directives of authoritative international and regional bodies, including the conclusions of UNHCR’s Executive Committee. The 1951 Convention has a legal, political and ethical significance that goes well beyond its specific terms: legal in that it provides the basic standards on which principled action can be based; political in that it provides a truly universal framework within which States can cooperate and share the responsibility resulting from forced displacement; and ethical in that it is a unique declaration by the 141 States Parties of their commitment to uphold and protect the rights of some of the world’s most vulnerable and disadvantaged people” (Feller, 2001).

The 1951 Convention is a landmark in the setting of standards for the treatment of refugees. It incorporates, either directly or as an inevitable interpretation, the fundamental concepts of the refugee protection regime, which are as relevant in the contemporary context as they were in

1951⁸ (Feller, 2001). Among this one of the major concepts is that of *refoulement* policy. As Article 33 of the convention states;

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (1957 Convention for Refugees).

Then, refugees are protected under refugee law, although protection is predominantly framed in legal rather than physical terms (Terry, 2002). Hence, if a state is unable to provide protection for their nationals, then a state of asylum can shelter them with the assistance of UNHCR. If refugee law is supposed to protect refugees and if the relief agencies cannot distinguish between the civilian and the militant refugee within the camp premises, would this not create a dilemma when considering the principles of humanitarian relief? If militant refugees are mingling among the genuine refugee community then would not that make him/her eligible for rights like everyone else? Further more if the warrior refugees are considered to be fighting a "just" war then aiding them would not be a crime would it? These are questions that many from the humanitarian sphere grapple with.

Although, it should be mentioned that the "distinction between the civilian and the militant refugee is also a tenet of refugee protection, and the concept of a refugee and the mandate of UNHCR are embedded in a discourse that is humanitarian, apolitical and civilian" (Terry, 2002, p. 29). Granting of asylum is considered a humanitarian act and as such cannot be disregarded as unfriendly by any other state. Furthermore the refugee camps should maintain a purely civilian

⁸ The complete convention can be accessed directly through <http://www2.ohchr.org/english/law/refugees.htm>

and humanitarian character. Yet, the gap lies in refugee law conventions and protocols as none of them have acknowledged the term of “refugee warrior” and ascribed laws that should be followed when dealing with them. Maybe the introduction of specific laws referring to “refugee warriors” would make it easier for humanitarian actors to accomplish the services based on the humanitarian imperative. This would also mean that in both refugee and International law there be a clear definition to the term of the “warrior refugee or the militant refugee” which would promote better application of law on the *bona-fide* refugee.

2.2.2 – International Humanitarian Law (Common Article 3)

All provisions of International Humanitarian Law (IHL) as codified in the Geneva conventions of 1949 and Additional Protocol of 1977 hinge on the fundamental distinction between “combatants” and “protected persons” (Gasser, 1993). Civilians are protected under IHL as long as they do not take part in hostilities. The Common Article 3⁹ relates specifically to conflicts of a non-international nature. It gives ICRC and other international actors the right to assist anyone who needs care, even if he/she is party to the conflict. However, IHL does not protect refugees who flee to the territory of a state that is not taking part in armed conflict (ICRC, Article 3. para 1). Again, we see gaps in the legal instruments that pertain to the protection of refugees which leads to the development of militant refugee activities and participation. First of all as in refugee law, IHL too does not clearly acknowledge to the term of the “warrior refugee” leaving no

⁹ Common to the four Geneva Conventions, marked a breakthrough, as it covered, for the first time, situations of non-international armed conflicts. These types of conflicts vary greatly. They include traditional civil wars, internal armed conflicts that spill over into other States or internal conflicts in which third States or a multinational force intervenes alongside the government. Common Article 3 establishes fundamental rules from which no derogation is permitted. It is like a mini-Convention within the Conventions as it contains the essential rules of the Geneva Conventions in a condensed format and makes them applicable to conflicts not of an international character: More can be found at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions>

suggested rules addressing them. Second, as agencies such as ICRC can provide for even members of the conflict party, it gives leverage to the militant refugees to lead on with their activities especially from a foreign land where at most times the host country does not really intervene in these activities; which most times takes place discreetly. For example, most Burmese rebels are supposed to be operating in the jungles on the Thai-Burmese border (Ball, 2003, p. 5-7).

Although refugee camps and safety areas must, according to the law¹⁰, retain a purely civilian or demilitarized nature, it is seldom ensured in practice. As mentioned in the introduction there have been a wide spread of “refugee warrior communities” the last fifty years and “safety zones” although supposed to be humanitarian zones mainly secured for refugees, it has always been the case that this has been violated (Roberts, n.d., para 1-4). The infiltration of refugee camps and safety zones by combatants has generated violent consequences on many occasions. For example, in 1994 “Both the genuine Hutu refugees and the *genocidaires* feared reprisals from the Tutsi-led victorious rebel army in Rwanda, the Rwanda Patriotic Front (RPF). The refugee camps that were constructed were soon controlled by the militants who used them as bases to launch attacks back into Rwanda, to attack prisons to free those accused of genocide and to kill potential witnesses” (Adelman, n.d., pg.3).

The refugee warrior phenomenon and the military use of safety zones bring the obligations of civilians, combatants, host governments, UN agencies and peacekeepers sharply into conflict

¹⁰ It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement (Article 60, Convention 1949, Additional protocol 1-1977).

<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>

(Terry, 2002). At the practical level it is difficult to legitimate the desire of the frustrated refugees to fight for their freedom/rights with the need to ensure for the safety for the overall civilian population in the camps. It is obviously impossible to maintain a purely humanitarian space in practice than compared to theory. Then, maybe the theoretical norms or legal instruments need to be improved to better guide the humanitarian actors to achieve the ‘humanitarian imperative’.

As Goodwin-Gill (2001) states, “International law is a dynamic institution and must evolve to meet the needs of the day” (Goodwin-Gill, 2001, p. 136). Then, a suggestion would be for the International Organizations and their legal actors to come up with a better definition for the ‘warrior refugee’ or the ‘militant refugee’ having analyzed the present day refugee situation that seems to plague the developing world.

Chapter 3

Case Study 1 – The Afghan refugee in Pakistan prior to the Cold War

3.1 – The background and ground situation in Pakistan 1970s-1989

The Soviet invasion¹¹ of Afghanistan provoked a massive exodus of Afghans across the border into Pakistan, initially, at a rate of 1000 per day, but increasing to an average of 4700 per day between January and June 1981 in response to Soviet tactics aimed at depopulating rural areas (L. Dupree & N. Dupree, 1988). The exiled people of this refugee flow consisted of women, men, children and armed rebels of which the latter were able to conduct their training activities next to the sprawling camps of their dependents. The Islamic refugees (mostly men), who clearly had links to major Islamic rebel organizations in the region; especially in Pakistan formed a movement and called themselves the *Mujaheddin*. As time passed a refugee community emerged, with annual inflows of funds from wealthy elites such as Osama bin-Laden, the Saudi Royals etc resulting in rebels taking de facto control over the border region (Anonymous, 2003). There was no border security during that time by either states and hence the *Mujaheddin* was able to enter in and out at their leisure. One would wonder why unlike other refugees who are more apt to flee to Western countries, the Afghan majority decided to stay on in their

¹¹ Also called the Saur Revolution (begun in April 1978) and the subsequent internationalization of the conflict left in its wake destruction, death, and large population movements. At the core of the above conflict was the struggle between a revolutionary leadership trying to use a rather weak central state to effect fundamental political socioeconomic change in the Afghan country side, and the entrenched local tribal power centers trying to defend themselves. The PDPA (People's Democratic Party of Afghanistan) led by Hafizulla Amin tried to modernize Afghanistan with the support and supervision of the Soviet Union. Unfortunately, inside party strife and nationalistic and secularist doctrines introduced by them resulted in a very angry population who decided to take matters into their own hands. Later on in 1979, the Soviet armies decided to invade Afghanistan to help the puppet regime quell the revolution further upsetting the Islamic populace, neighboring Islamic nations and even the anti-Communist West (Hassan, 1995. pg. 15).

neighboring regions. We could assume that they prefer to be ready and waiting for the opportunity to return to their land and also contribute to the freedom struggle from close proximity (Zolberg et al., 1989). **Index 1.**

According to Pakistani statistics, there were an estimated 500,000 refugees in Pakistan in mid-January 1980, more than 1 million by July 1980, 2 million by May 1981, and 2.5 million by December 1984. By 1989 the total was estimated to be around 3.5 million (Dupree, 1988). These estimates remained to be rough due to inherent refugee registration difficulties and porous borders that made it difficult to keep track of accurate numbers (Terry, 2002). On the one hand the UN thought that the numbers in the camps was inflated by false or multiple registrations, and on the other around 200,00 -400,00 refugees lay in sites outside the designated government camp areas thus disqualifying them of registration or food or non-food rations (M. Centlivres-Demont & P Centlivres, 1988). The “official” refugees settled in camps (or “refugee tented villages” as was called then) that were established for an average of 100,000 inhabitants, although some camps were much larger. By 1986 there were 350 such camps, 72 percent of which were located in NWFP, 24 percent in Baluchistan, and 4 percent in the Punjab (Dupree, 1988).

All the advantages refugees could accrue by being in a “humanitarian space” or a “humanitarian sanctuary” was evident in the refugee camps of Pakistan at that time. For a general onlooker it would be surprisingly calm, safe, devoid of disease and hunger. Let us not forget that the Afghan refugees received much attention from the a Pakistani government and the International sphere resulting in an ample supply of food, medical supplies, shelter, and most importantly military weapons (Kalashnikovs to be more precise). The camps also served another important crucial

function described by Zolberg et al., the bestowal of legitimacy upon the resistance movement: “Refugees constitute a legitimizing population for the warriors. “The presence of a large population in exile is taken as a physical testimony of support for the warriors, at least in the sense that they represent a rejection of the other side in the conflict” (Zolberg et al., 1989, p. 277).

In refugee studies literature, a refugee community consisting of the “bona fide” refugee and the “warrior refugee” are referred to as a “mixed population” of warrior refugees and genuine refugees (Nyers, 2001). Especially in this Afghan refugee study it is even more difficult to distinguish between who the genuine refugee is and who the warrior is. According to live reports by Doris Lessing (1987) even women among these refugee families contributed to the movement in some little way.¹² This makes it difficult to define if a refugee camp is militarized or not. The “kinship ties that bind the “authentic refugee” victim to the “inauthentic refugee warrior” are politically significant as exemplified through the Afghan refugee case (Nyers, 2001). According to Fiona Terry (2002) this was arguably the most important role the camps played in the Afghan conflict for the resistance and for Pakistan as a host. The more legitimate the cause, the greater the justification in the West for did continuing their support for the guerilla war (Terry, 2002).

Since the Afghan refugees were gaining universal support, the resistance did not need to manipulate the relief distributions in the camps to that end per se, but did so to cultivate support from on fraction over another. This means that most Islamic parties in Pakistan gained power at that time resulting in certain party members having access to aid and control over its distribution

¹² For more about women warriors in Pakistan read *The Wind Blow Away our Words* by Doris Lessing and you can find diary entries and letters contributed by one Ms. Tajwar Kakar who was a determined warrior among the Afghan refugee committee in Peshawar, Pakistan.

(Terry, 2002, p. 70-71). The food distribution system initially conducted by the maliks¹³ was also instrumental in the control of refugees, enabling the establishment of patron-client relationships between the maliks and refugee families. The maliks kept the ration books between distributions, charged a fee for facilitating the distributions, and accumulated extra rations for their favored clients (M. Centlivres-Demont & P Centlivres, 1988). Even though most Afghan refugees were not happy with this method they adhered as the Pakistani government was their major ally and the main supporter of the *jihad* movement. Since Pakistan was not signatory to the 1951 Refugee Convention or 1967 Protocol, UNHCR was allowed only the coordination of relief activities, leaving them helpless amidst the controlling maliks and aid distribution methods carried out in the refugee camps. Also, it must be noted that UNHCR and most other relief agencies were working with a political agenda or at least from the point of UNHCR trying not to take sides. After all the U.S. was the highest donor towards relief activities in Pakistan. All this to say that humanitarian aid was instrumental in the political manipulation of the Afghan refugee population. Most actors accepted this as a just cause during the Soviet Invasion of Afghanistan, but the repercussions of an absence of a “humanitarian space” and the wounding of the “humanitarian imperative” was realized with the withdrawal of the Soviet army (Terry, 2002, p. 80-81).

¹³ Maliks are the Islamic men (who were mostly Pakistanis) in charge of each camp and those in control of distributing the aid given by UNHCR.

3.2 – Violation of the “Humanitarian Imperative”: an analysis

The main question or concern for me as well as for a lot of scholars in the refugee field is why the humanitarian community accepted the status quo of the Afghan refugee camps in Pakistan. According to Fiona Terry (2002) there were two factors. One being the persuasions of the aid agencies working there that had political or technical motives driving them towards their mission. The second stems from the first and relates to the difference between the normative perception of the refugee community held by the international aid organizations and the way the refugees perceived themselves (Terry, 2002, p. 72-73).

3.2.1 - The Political and technical motives

The Afghan resistance was glorified and applauded by much of the Western world. Nineteen international NGOs were formed specifically to respond to the Afghan crisis, among majority of which were “solidarity NGOs” with an overt political agenda (Borton & Nichols, 1994, p. 45). “UNHCR established a permanent office in Pakistan in January 1980 and started what was to become “the largest assistance programme ever undertaken” by UNHCR” (Schoch, 2008). Eventually, there were up to around three million Afghan refugees in Pakistan. Beyond the supplying of relief goods like shelter, clothing, food and fuel, UNHCR’s activities ranged from providing building material for the camps and water supply, to veterinary services for the refugees’ about 3 million livestock and non-material assistance like education and training (Schoch, 20008). For a lot of outsiders, the fact that a superpower was using brutal and disproportionate strength to crush a popular resistance movement invoked a moral imperative to aid the victims (Terry, 2002).

The justness of the resistance cause was further enhanced by restrictions the government in Kabul placed on aid to the civilian populations in Afghanistan. The Kabul regime occupied Afghanistan's seat at the UN and any proposal that UN relief agencies intervene in the *Mujaheddin* areas faced effective veto from the Soviet Union (Terry, 2002, p.73). UN agencies and ICRC were restricted to working in areas approved by Kabul, which resulted in some clandestine relief operations taking place across borders. Before 1986 most relief operations were more focused on technical aspects of relief operations leaving a blind eye towards the use of camps by refugee militants of the resistance. Some organizations preferred to be official and not get involved with clandestine operations. However, not every organization could ignore the vested interests of their institutional donors or reduce their dependence on them. For example UNHCR was limited in its capacity to guarantee the civilian character of the camps since its leverage with Pakistan was weakened by Pakistan not being party to the 1951 Refugee Convention (Terry, 2002, p. 74). Although UNHCR was aware of the effect Pakistani officials had on camp control and also the militant activities they were allegedly advised by the U.S. to not interfere with Pakistani policies (Baitenmann, 1990. p. 68).

“The U.S. cross border program of non-lethal aid was even clearer in its aim: to bring essential supplies to Afghans living in resistance controlled regions so that the resistance would be able to organize genuine base areas” (Rubin, 2002. p. 224). There were also some organizations within Afghanistan who used the power of U.S. aid to obtain some amount of anonymity from the Kabul regime; this assisted in transporting aid to the warriors across borders and further strengthening their movement.

Thus whether the UN, ICRC or other NGOs adopted a position of solidarity with the *Mujaheddin* became channels of U.S. anticommunist policy, or simply focusing on the technical provision of humanitarian assistance, it was difficult to remain apart from the highly political context of the

Afghan refugee camps (Terry, 2002). The direct involvement of Pakistan authorities further exacerbated the difficulty of providing impartial humanitarian services to the refugee communities.

3.2.2 - The contending image of “refugeehood”¹⁴

The second reason as to why humanitarian organizations did not condemn the militarization of the Afghan refugee camps was that they did not distinguish between the ‘conventional’ refugee and the warrior refugee. Also as we will see later even the Afghan refugees perceived themselves not as hapless victims but heroic disciples of Prophet Mohammed who had to sacrifice their family and belongings to obtain freedom in a land of Muslims.

Previously in Chapter 1 and even in this chapter I have mentioned briefly the dilemma that exists between the non-distinction of the “genuine refugee” and the “warrior refugee”. The normative definition of refugees constructed by aid organizations is of dependent, dispossessed victims who are forced to flee their land. Hence, the typical donor image of the refugee would be that of a helpless individual needing immediate need of relief rations etc. This image sadly misconceptualized the real fact of majority of the Afghan refugees being a highly politicized population, many of whom chose to take up arms to fight against an infidel government and eventually return to the free homeland.

As for how the Afghan refugees perceived themselves, it was quite different from the typical refugee. They were first and foremost Muslims who only adhered to their readings and their seniors. Hence, we could say that for the Afghan warrior community being a citizen is not just being a part of a secular political sphere (that of a nation). To the Muslim community being a free *political animal*

¹⁴ I have borrowed this term from Fiona Terry’s literature *Condemned to Repeat* (Terry, 2002).

is being a part of their *Islamic-body-politic*¹⁵. Having performed the *hijrah* is considered to be a virtue of any member of the Islamic *body-politic*. Then, being forcibly displaced does not automatically result in the same kind of absolute exclusion from political relations that the Western political concept of refugeeness demands (Nyers, 2001). As Centlivres and Centlivres-Desmont (1998) argues, the concept of *mujahir* was a powerful motivational force in the construction of identity: “from a personal point of view it renders a refugee almost a fighter and, from a collective point of view, it binds the group to the very sources of Islam” (Centlivres & Centlivres-Demont, 1988, p. 24).

Then for the Afghan refugees in particular, the humanitarian and political were inseparable; this also distinguished them from the rest of the world’s refugee populations. The notions of choice and the refuge agency were for the most part overlooked by the West refugee regime when operating in Pakistan (Terry, 2002, p 77). Understanding the political nature of the refugees at the beginning would have necessitated the recognition of a dilemma and the reconceptualization of the applicability of Western refugee norms to the Afghan case. It might have also initiated a way of preserving a humanitarian space/imperative on a context in which the lines between the political and the humanitarian were obviously blurred (Terry, 2002, p. 77).

It is true that many scholars would criticize relief organizations of working in a political space rather than focusing more on the humanitarian aspect of their services. However, in a situation as the Afghan refugees one should not overlook the main humanitarian operational principle that had to be respected as well.

¹⁵ This concept derives from the fact that for Muslims fleeing from religious persecution is a major act and is called *hijrah*. The fundamental feature of this flight means that the Muslim will leave his nation or present environment if it remains detrimental to the practicing of his religion. He will then immediately flee to a county where he will have the freedom to practice his religion faith.

One being of “neutrality”; “obviously given the strict neutrality in aid operations was nor consistent with the proportionality prescript embedded in the principle of impartial relief” (Terry, 2002. p 79). Impartiality requires that aid be distributed without discrimination but to where the need calls most. The needs on the *Mujaheddin* side was indeed greater than that of the civil population in Afghanistan, but no aid agencies were officially authorized to operate in *Mujaheddin* areas. Note that ICRC’s “presence on both sides” entailed working in Pakistan with war wounded and in government held areas only after 1980 (Borton, Nigel et al., 1994, p. 45). Hence, aid agencies striving to assist refugees across the border sacrificed perceptions of neutrality in the conflict in order to meet profound need in the *Mujaheddin* held areas (Terry, 2002).

The lack of neutrality in cross-border relief proved to be less problematic than the compromise involved in supplying it. The aid agencies were dependent on the protection and assistance of the *Mujaheddin* refugee warriors; negotiations for the practical application of humanitarian values, such as ensuring that aid reached the neediest, were tainted by the support for the “cause” (Terry, 2002, pg.80). The absence of standards led to the manipulation of aid which developed in to conflict among factions after the withdrawal of Soviet forces. In the end “warriors” tuned into “warlords” who turned a freedom fight into an ethnic conflict in their home land which up to this day has left Afghanistan tattered and disillusioned.

Promoting reconciliation was never the intention of humanitarian organizations, their task was to create a genuine humanitarian space and work with respect to the humanitarian imperative; where aid could alleviate suffering with minimum negative consequences. However, it is then true but sad to say that in the Afghan case this proved to be the other way around.

Chapter 4

Case study 2 -The Burmese¹⁶ Refugees in the Thai border

4.1 – Burmese refugees: a background analysis

Since independence in 1948, Myanmar (Burma) has been plagued by an extraordinarily protracted internal war. After barely three months, the country was engulfed in a diverse conflict between the central government in Rangoon and a plethora of anti-government rebellions. Long-running insurgencies fought by the Communist Party of Burma (1948-1989) and a large number of well-armed ethno political organizations have threatened the central authorities throughout both the democratic eras (1948-58 1960-62) and the long period of military domination (1962-present). Under successive governments, the *tatniadow* (The Burmese armed forces) has fought back, always striving to make its counterinsurgency strategy more effective; it has weakened or finally defeated many of its opponents only relatively recently (Steinberg, 2006, p. 88-93). In the contested borderland where insurgency and counterinsurgency has been waged, the war has increasingly penetrated in to the daily lives of civilians over time.

¹⁶ Please note that I will be using the terms both Burma and Myanmar throughout my paper, as during certain periods the state was still referred to as Burma, although in the current situation it's accepted as 'Myanmar' by the international community. It is also acceptable to use the term "Burmese Refugees" by common international standards.

Thailand, which shares a porous 2,401-kilometer stretch of border with Myanmar, has received steadily increasing flows of displaced persons from Burma's ethnic minority¹⁷ regions since the Karens established the first "semi-permanent" refugee camps in 1984. In terms of registered camp populations along the border, in 1984 there were less than ten thousand; by 1990, after the Karennis and the Mons had also set up their camps, there were 43,500; and by 1995 the number had grown to over 92,000 people. These refugees, mainly ethnic Karen and Karenni, have been in exile longer than many other groups in the world, and for the vast majority of them, returning to Myanmar is unlikely in the foreseeable future (UNHCR, 2009). In 1996, the Mon camps were repatriated across the border, following the military cease-fire in June 1995. In the year 2000, over 122,000 persons were registered in a string of border camps: these included some 94,000 Karens, over 18,000 Karennis, and a population of around 10,000 Mons in their resettlement sites just inside Myanmar (Burma). Some 1,700 Burmese students and political activists, who fled after the 1988 pro-democracy uprising, were also residing in a holding center in Ratchaburi province near Bangkok. In addition to these displaced persons who are registered in the camps, Thailand has also absorbed approximately 100,000 "hidden" Dhans who fled Myanmar (Burma) with their extended families and now survive mainly as illegal workers in Thailand (Lang, 2002, p. 11). This is to say that there are many in displaced persons on either side of the border who walk in and out of camps in Thailand and who engage in economic activities in Thailand. For example an estimated 20,000 Myanmar (Burmese) women engage in the commercial sex industry in Thailand (Asia Watch/ Women's Rights Report, 1993). Refugees fleeing conflict

¹⁷ Burma is one of the most ethnically diverse nations in the world. Today, ethnic minority groups are estimated to make up at least one third of the total Burmese population 45 million and to inhabit half the land area. The 1974 constitution has demarcated seven ethnic minority states. The Chin, Kachin, Karen, Kayah (formerly Karenni) Mon, Rakhine (or Arakan) and Shan – and seven divisions; largely inhabited by the majority Burmese population. The State Law and Order Restoration Council, which has ruled Burma since 1988, itself refers to the '135 national races of Burma', but has not produced a reliable list of names. Anthropologists have simplified the sub-groups into four main families; the Tibeto-Burmese, Mon-Khmer, Shan (or Tai) and Karen (Smith, 1994. p. 17-18).

have been crossing Myanmar's eastern border jungles for the safety of Thailand for nearly 25 years. Inside Thailand, they find refuge in nine government-run camps along the border, where today some 140,000 Myanmar refugees and asylum-seekers receive basic food, shelter, medical care and schooling (INDEX 2).

Hence, the last 25 years Myanmar (Burmese) refugees have been crossing the Eastern border of the Thailand border jungles. Inside Thailand, they find refuge in nine government-run camps along the border, where today some 140,000 Myanmar refugees and asylum-seekers receive basic food, shelter, medical care and schooling (UNHCR, 2009). Although their basic needs are met, refugees have no freedom to leave the camps. According to reports by UNHCR, some who were born in the camps are now raising their own children there and frustration levels are high. Rape, domestic violence and substance abuse are chronic problems. With little opportunity for self-reliance refugees are dependent on humanitarian assistance at a time when a global food crisis and increases in commodity prices are exacerbating already-existing gaps in basic material support (UNHCR, 2009). If these pressures force refugees to seek work outside the camps, they could face arrest, detention, deportation and in some cases, sexual exploitation and trafficking. In 2005, a new prospect opened up for many of them with the advent of the world's largest resettlement programme. Since January 2005, more than 30,000 Myanmar refugees have left Thailand for resettlement in the United States, Australia, Canada and other countries. The trend is increasing, “with an expected 30,000 UNHCR submissions and 18,000 departures per year. For those left behind, the Thai government has expressed a willingness to allow expanded vocational training and the possibility of increased self-reliance within the camps” (UNHCR, 2009 & INDEX 3).

4.2 – Situation in refugee camps and the ‘Burmese warrior/militant refugee’

The Burmese-Thai border is over 2000 kilometers long with thousands of possible crossing points. New camps were established over the years close to wherever large refugee groups of new refugees crossed frequently in the wake of new military offensives (Bowles, 1998. p. 11). While some camps are located on main roads and near the villages, many are in remote areas. According to a field report by an UNHCR officer, “the journey to the camps that visit takes about three hours; most of it is jolting along a dirt road up a mountain, leading deep into remote border territory...” (Menikdiwela, 1996).

The first formal registration of the border population was taken by the Ministry of Interior (MOI) and UNHCR in 1999. A new mechanism, the Provincial Admission Board’s (PABs) was introduced later on to determine subsequent new arrivals. Unfortunately PAB was not able to fully deliver their mandate which resulted in many unprocessed arrivals as well as many refugees rejected by the PBAs but still living in camps. In 2004/5 MOI with support from UNHCR was able to carry out a new registration programme, where 101,992 refugees from the 1999 exercise was re-registered, identifying 34,061 who had arrived since that time, a total of 136, 052 (excluding students in the camps for educational purposes)¹⁸ (TBBC, 2009, p. 6). Further reporting by TBBC stated that PABs have started to consider the 2005 un registered caseload and those new refugees arrived between October 2005 and 31 December 2009, The PABs regularized

¹⁸ These are supposedly young children and not youth. However, it is not clear why they are no included and I feel that this is a weakness in the Thai administrative policies on refugees as some students could be targets for non-combatant militant activities.

the status of some 36, 840 persons including approximately 6,809 who were screened in 2009. However, due to ad hoc movements from Burmese people across the Thai border on a regular basis there are at least 50,000 unregulated people in the camps (TBBC Report, 2009. p. 66). The reason I have mentioned this screening process is here to distinguish between the gaps of the Afghan refugee situation in Pakistan and certain administrative measures that were missing then. The Thai government allowed this method as they knew security issues were rampant within refugee camps at the border, hence the consent for aid agencies to cooperate with the government to better regulate is refugee movements etc. However, even these measures remain to be ineffective when considering the freedom non-combatants/ militant refugees seem to gain in their activities within the refugee camps. The threat to the humanitarian imperative remains...

The camps, particularly the small ones, have habitually had a village like atmosphere. Planned by the refugee communities, the layout of the camps vary a great deal. For example, in some camps, houses are built in rows facing the main road through the center of the road, while some houses are built in clusters (Bowles, 1998. p. 12). Most camps have facilities such as hospitals and schools built in the centre of the compound. It is the refugees who run the communal facilities and provide the basic services. Although, the above description may sound 'decent' by our standards, the truth is oblique than it sounds. According to UNHCR the nine camps are in very close quarters and their prolonged confinement to camps has created many social, physiological and protection concerns (UNHCCR Report, 2009). The coping mechanisms of refugees have been eroded, and the restrictions imposed on them have increased their dependence on assistance. To add to this, the Thai government has imposed strict laws applying to refugees and asylum seekers. For example, those persons found outside of the camps are

subject to arrest and deportation. The most recent reports by TBBC, states that Thai policies regarding ‘voluntary repatriation’ remains to be threatened.

As for the administration of the camps every camp has a camp committee that administered refugees, looking out for their immediate needs (food, water and sanitation) and the registration of new refugees. Until the late 1990s the Thai government allowed Burmese refugees to be self-sufficient, at times even calling them their own (Bowles, 1998. p. 12). Also, until the 1990s NGOs were allowed limited access to refugee camps. However, since 1995, “there has been a transition from small, open camps with higher levels of refugee self-sufficiency to a highly dense aid reliant refugee situation, particularly in the Karen caps. This change has been due in part to the drastic determination in security in the Karen camps (TBBC Report, 2009. p. 67).

To understand the situation of insecurity in the Refugee Populated Areas (RPAs) and refugee camps and the concept of the ‘warrior/militant refugee’ one needs to understand the reasons behind refugee flight in the first place. Not forgetting Thailand’s cross border relations and the complexities of border land politics (Lang, 2002. p. 16).

There is no end in sight to the protracted ethnic conflict in Burma or its spill-over effects on Thailand (Ball, 2003. p. 8-9). In 1989-95, the State Law and Order Restoration Council (SLORC) reached ceasefire agreements with 14 of the armed ethnic insurgent organizations, including the largest Kachin, Wa, Shan and Mon organizations.

These ceasefire agreements proved to be an extremely clever mechanism for managing the ethnic groups (Ball, 2003. p. 8).

The process was directed by Lieutenant General Khin Nyunt, the new Prime Minister and the erstwhile head of military intelligence (MI or DDSI). These agreements require that the former insurgent groups cease hostilities against government forces, and acknowledge the sovereignty of the state and the authority of the SPDC, in return for the promise of infrastructure development programs and limited autonomy within defined territorial jurisdiction (including the right to retain arms and, at least implicitly, in the case of Chinese, Wa and Shan groups, the right to engage in drug trafficking and other criminal activities). “The ceasefire process also produced extreme factionalism among the ethnic groups; for nearly every organization which made a truce with the SLORC, another broke off to continue the fighting” (Ball & Lang, 2001). “For those continuing the armed struggle, the most devastating blow was the capture in January 1995 of the Karen National Union (KNU)/Karen National Liberation Army (KNLA) stronghold at Manerplaw, which had also become the headquarters of most of the ethnic insurgent organizations still fighting the Burmese” (Ball, 1998. Ch 8). A month later, it captured Kawmura, just north of Mae Sot, the last Karen base inside Burma. In January 1996, Khun Sa surrendered, together with a large proportion of his Shan-based Mong Tai Army (MTA), to Rangoon. His Shan drug trafficking groups have been increasingly displaced by the UWSA, which has used its ceasefire status to become the largest and most powerful drug trafficking group in the region – with the support of the SPDC generals in Rangoon and *tatmadaw* units stationed in the border areas. About 5,000 former members of the MTA formed a new Shan State Army (SSA), under Colonel Yawd Serk, which has adopted an anti-drug policy in addition to its

avowed goal of Shan independence, and which has continued to fight both the *tatmadaw* and the UWSA. Despite the ceasefires and its major victories, the *tatmadaw* has been unable to extinguish the insurgencies. Indeed, the ethnic groups, now more practiced in guerilla rather than positional warfare, have recently scored some important successes, sometimes in joint operations. For example, a joint force of some 1,500 SSA and 300 Karenni soldiers defeated *tatmadaw* forces near Ho Mong in May-June 1999 (Ball, 2003. pg 8). In April-May 2001, the SSA killed at least 210 *tatmadaw* soldiers and wounded more than 100 others at Par Khee, opposite Fang district in northwestern Chiang Mai province. In May-June 2002, the SSA was engaged in large-scale battles with both *tatmadaw* and United Wa State Army (UWSA) troops along large expanses of the border opposite Chiang Mai and Chiang Rai provinces. Some of the KNLA units have also scored important military successes, such as Battalion 201 (commanded by Lieutenant-Colonel Ner Dah Mya, son of Bo Mya), which operates opposite Task's Phop Phra district, and Battalion 103, which has conducted eight separate ambushes so far this year, including an ambush on 19 August which killed six soldiers from LIB 299 at Maw Ker Hta in Dooplaya district (adjacent to Battalion 201's area of operations) (Lang, 2003. p. 25-28). But these successes have come at a terrible cost to the ethnic peoples, who have suffered the *tatmadaw's* reprisals, and further increased the refugee legacy in Thailand.

The Burmese conflict is significant of yet another protracted ethnic or "guerilla conflict" of the post war era. As Myron Weiner states in his study, "a characteristic of low intensity , guerilla warfare is that combatants tend to rely on non-combatants as part of their support system, a situation which serves to blur the boundaries between combatants and non-combatants" (Weiner, 1996). Obviously, when various Burmese ethnic groups are been targeted by the majority ruling

parties of that country, these people are traumatized and fear drives them to the Thai borderland. Furthermore, low intensity guerilla infiltrations in the border region explain the growing insecurity in that region. Then, how do we explain the role of the 'militant or warrior refugee' in this context?

Firstly, we should remember that when people flee from ethnic conflicts they carry with them certain sentiments; which could be fear, resentment and they maintain their connections with their fellow group members even after their flight. These refugees remain closely connected to the conflict from which they fled, residing among, and identified with, combatants on one side in an ongoing war, a situation that politicizes and frequently complicates their sanctuary (Loescher, 1992). Hence, the various ethnic groups find themselves obliged (especially the males) to support their fellow combatants in the field. In the Burmese refugee case it is special because as compared to the Afghan refugees the Burmese are not fighting in the name of a religion. Most of the refugees have fled from their villages where the *tatniadov* had come and destroyed. According to Lang, the *tatniadov* insurgents have been and still are responsible for forcing innocent civilians to do hard labor for them, transport illegal goods and weapons across the border etc. (Lang, 2002. p. 78). The government would cut off supplies to any village that sheltered guerillas inside Burma, which negatively affected the civilians and so they would flee across the border to Thailand. Although, not explicitly stated in any reports or literature, it is quite obvious that these guerilla groups continue to fight back from Thailand.

A field study conducted by Pia Voglar for UNHCR it was found that;

With the imposition of a curfew, humanitarian aid-workers, higher officials and other foreigners usually leave campsites at day's close. Once these diurnal actors have left, the remaining authority is camp security¹⁹ and Thai paramilitary (*or sor*) that are respectively representing Karenni and Thai authority. Camp security is staffed by camp residents, while *or sor* paramilitaries are Thai nationals (Voglar, 2006, n.d.).

In theory, both parties are supposed to report any security incidents respectively to the Camp Committee, the assistant district officer (*palat*) or to UNHCR, and it is these parties who are responsible for the subsequent transmission of severe cases (e.g. rape and murder) to Thai legal authorities. Whilst there exist various circumstances that subvert this procedure (see da Costa 2006), nightfall marks an automatic shift of practical authority on a quotidian basis. With higher ranking officials and aid-agency staff sleeping in Mae Hong Son or (in the case of the Camp Committee) within the camp, fewer and lower-ranking officials are temporarily in charge of decision making. Although the regulation of immediate communication appears to be upheld at night, in practice supervisors are not informed about relevant incidents before the morning hours. Being the first to react immediately to and decide upon further handling of incidents, nocturnal watchmen bear a great deal of responsibility. Moreover, despite the fact that both camp security and *or sor* paramilitaries are charged to guard the campsites, refugees report seeing few *or sor* on patrol" (Voglar, 2006).

¹⁹ The two Karenni camps at the Thai-Burma border are administrated by one Karenni Refugee Committee (KnRC) and one Camp Committee (CC) per camp. It is the responsibility of the CC to nominate security officers with similar functions to a national police force. Thus, the camp security personnel are charged with the enforcement of camp rules and the restoration of order. Furthermore, these officers are expected to report civil, administrative and criminal cases to the camp judiciary. (da Costa 2006, pg. 20)

Although, the Thai guards are supposed to be looking out for suspicious events through the night, it certainly sounds that this is not what is happening. There have been reports and complaints of burglaries, forceful intrusions, especially during heavy shelling across the border (Voglar, 2006. p. 4-5). Hence, with no presence of humanitarian aid workers and plenty of space for non-combatants to regroup, it is quite easy for Burmese refugees to take part in military activities with their fellow members from across the border. This is another difference we can see between the Afghan refugees and the Burmese warrior refugees; the Afghan refugees indulged in their activities freely with the assistance from international parties as well as the host state. But, in the current post Cold War environment, the Burmese refugees have to fight for their rights and freedom discreetly and depend on their fellow combatants who operate across the border in Burma.

There is one group of special refugees that we need to mention here, and these are the Burmese student refugees who had to flee after constant protests against their totalitarian government.

Approximately 10 000 students sought refuge in the jungle along the Thai Burma border. Many moved from the jungle to Bangkok, Thailand, where more than 2000 registered with the United Nations (UN) High Commissioner for Refugees and became recognized by the UN as ‘persons of concern’ (Alden, Poole, Chantavanich, Ohmar, Nyi & Mollica, 1996. p. 1561). Although, these youngsters do not take up arms (most of these youngsters are Buddhist monks) they fight with their voices, hence I will be bold enough to call them ‘warrior refugees’, purely on the context of them being refugees who have decided to take an active stand even while being in

exile in Thailand and also collaborating with various media institutions and young refugees in an effort to educate the world about the atrocities that are taking place in Burma.²⁰

4.3 - The threat to the Humanitarian Imperative

As mentioned before, Thailand lays hold to over 1.3 million Burmese refugees over the past four decades. According to UNHCR reports some 3000 new arrivals have entered Thailand since June 2009 due to an upsurge in fighting in the border area of South Eastern Myanmar. Potential exists for fresh displacement into the run up to the 2010 elections in Myanmar (UNHCR Report, 2009).

Although the Thai government has pledged commitment to screening Burmese refugees over the past years, it seems like they are shying away from this policy due to the mass influx of Burmese refugees that cross their borders every day and raising new fears of security and other social consequences to their own state.

According to the U.S. Committee for Refugees and Immigrants (USCRI) the Thai Authorities repatriated about 3,000 Lao Hmong from the closed camp in Phetchabun to Lao PDR in about a dozen incidents, most of them by force, reverberating their keenness to repatriate as many Burmese refugees as soon as possible (USCRI Report, 2009). Further more

In May, a fire destroyed several hundred of the bamboo and straw shelters in the Hmong camp in Phetchabun province but injured no one. Anonymous authorities and aid workers alleged that the refugees set it to get the attention of UN Secretary-General Ban Ki-moon, who was in the region at the time, in hopes that this might circumvent their repatriation.

²⁰ More on these efforts can be seen by viewing the document, "Burma VJ" that became a major documentary in the International film arena.

In June, thousands of Hmong began a 350 km march to Bangkok to draw international attention to their plight, but riot police blocked their path, and arrested and jailed up to 600 of them” (USCRI, 2009).

Thailand is not party to the 1951 Convention relating to the Status of Refugees and has no refugee law and the 2007 Constitution does not provide for asylum. Refugees and asylum seekers have no legal status distinct from other foreigners and, under the 1979 Immigration Act, the presence of most of them is illegal. A Provincial Admissions Board (PAB) intermittently screens asylum seekers for admission to the camps. The RTG permits international NGOs to feed new camp arrivals until it can establish a more regular pre-screening procedure. Hence with strict regulations by the Thai government imposed on the UN and the humanitarian community it has been quite difficult to serve most of the direct needs of refugees (especially protection, health care and legal amenities).

Thus, it can be said that in the Thai-Burmese refugee situation the humanitarian community have been obstructed by the political agendas of the hosting state and the Burmese government. In the case of Afghanistan the relief agencies were not able to achieve the “humanitarian imperative” followed by the need of a humanitarian space. Reason being the influence from the International sphere and the host government. Then, although the Thai-Burmese refugee case is identified as a post cold war situation, it is indeed not quite difference of that from the Afghan refugee case. Both are residing in developing countries that are not party to the Refugee convention and both host governments treat refugees as a burden, but in the disguise of the “welcoming state that wants to show the world that they would always protect their neighbors.” However, both Pakistan and Thailand make it impossible for the humanitarian agencies to accomplish their

missions without being “impartial or neutral”. The only difference in this environment is that there is no super power trying to intervene in the affairs of the Burmese refugees and giving them military support to pursue their mission. Hence, I would conclude that in the case of the Burmese refugees in the Thai-Burmese border, it is the principles of “impartiality” and “neutrality” that again makes aid organizations compromise the ‘humanitarian imperative’ and make space for militant activities to thrive among the refugee sites.

Conclusion

Throughout this paper I have tried to show how the ‘refugee warrior’ phenomena remains to be a threat to the ‘humanitarian imperative’; analyzing the Afghan refugee case prior to the Cold War era and later the Burmese refugee case which remains to be an ongoing problem in the Asian region. The Afghan refugees proved to be a typical pre Cold War case where the Western and Islamic world sympathized with a primitive group of refugee militants who fought their communist oppressor. Hence, most, if not all, humanitarian agencies provided aid ignoring the underlying intentions of the Pakistani government and Islamic insurgents. Conceivably, compared to any other refugee situations, the humanitarian and political dimensions of the Afghan refugee population were mutually reinforcing. The exiled people representing an entire population of women, children and rebels was allowed free operations on Pakistani soil by the host state and the international community. This completely eroded the notion of ‘humanitarian space’ within the refugee camps, rather it created a political space where first priority was given to the freedom struggle rather than the security of the refugee population. Humanitarian organizations could not carry on their mission with the ‘humanitarian imperative’ but, were clouded by the influences of external parties who decided for them when, where and how aid should be distributed and handled.

Today, the same relief agencies (especially UNHCR and ICRC) are facing the same threat from the Thai government when tending to the needs of the Burmese refugees. Even though humanitarian agencies are able to discharge their services impartially and neutrally, the negative attitude of the Thai government and their mistrust of the Burmese refugees, including the

hostility toward the international relief agencies have left aid agencies helpless in the wake of humanitarian need. They are unable to assure the protection of the refugees or able to create the 'humanitarian space' that is required in order to meet the 'humanitarian imperative'. Then, it is clear that 'refugee warriors' are able to operate and evolve within this unprotected space due to the various reasons mentioned in the case study. This again poses a further threat to the security of the refugee population and the aid workers in reinstating the 'humanitarian imperative'.

The various codes of conduct and The Ladder of Options have undoubtedly improved awareness among aid organizations of the guiding principles of humanitarian action and the need to strive for certain minimum standards of care to save life and assure human dignity.. However, as scholars such as Fiona Terry have noted they are merely tools which provoke discussion without really garnering results. Hence, rules and principles become mere 'ends' in themselves to uphold, the important ethics of humanitarian actions are stifled, resulting in a failure to uphold the real meaning of the 'humanitarian imperative'.

As mentioned earlier on in the introduction and through the case studies, I came to realize that the literature in this field and the legal instruments in operation both lack information and reasons as to how the 'humanitarian imperative' not only can quell the militant activities' of refugees, but also encourage it. I feel I am contributing to this discourse by analyzing the dual qualities of the 'humanitarian imperative' that indeed remains a threat against the 'warrior refugee' phenomenon.

As discussed in this paper humanitarian action posits a universal ethic founded on the principle that all people have equal dignity and resources by virtue of their membership in humanity (Terry, 2002, pg.19). Hence, all humanitarian agencies try to uphold the main principles of humanitarian action (neutrality, impartiality, independence and the humanitarian imperative), but as discussed, it is a fact that this has become rather impossible. These principles are supposed to guarantee that refugees receive aid when and wherever required, yet most agencies underestimate the importance of ‘protection’ that comes with it.

Protection is as integral a part of humanitarian action as the alleviation of physical needs, yet receives little attention, despite the obvious clash that can occur between providing assistance and ensuring safety. From attracting combatants to the sites of food distributions in Liberia to being used to lure refugees from hiding in Eastern DRC, humanitarian assistance can compromise protection. I have briefly mentioned in the earlier chapters, the Ladder of Options introduced by UNHCR in 1998, which aims to address the issues of security that threatens refugee camps today, but they too are principles which would take a long period to garner positive results. Assuring high technical standards in relief operations is no substitute for protection: a vaccination card or full belly does not protect against *refoulement* or attack, as exemplified by the fate of Rwandan refugees in Zaire in late 1996 (Terry, 2002, pg. 2).

Keeping in mind that humanitarian action can benefit combatants and military refugees, relief agencies should be more responsible about how they carry out their missions. I have debated that protection could be harnessing refugee militant activity as well as combating it. However, if aid agencies were to know exactly who are deemed the “refugee warrior “among the belligerents in

the refugee area, then they could focus solely on the genuine refugee' and diminish the threats that militant refugee activities have on the humanitarian imperative.

When relief agencies and their workers are indulging in a mission they are and should be held accountable for their actions. "Accountability has both an *external* dimension in terms of 'an obligation to meet prescribed standards of behavior' and an *internal* one motivated by 'full responsibility as expressed through individual action and organizational mission'" (Ebrahim, 2003, pg 184). Hence, if relief actors could be held accountable for their actions and if they could hold themselves accountable for their actions they would be able at some point to make a wise judgment when securing aid and protection for the refugees. This is to say that sometimes ethics too have to be considered rather than always working by the *rules*.

What I have set out to accomplish is not a set of rules or mechanisms that would deter 'warrior refugee' activities from erupting in a refugee populated area. Rather, it has been my goal to prove that the 'refuge warrior' phenomenon remains to be a threat to the 'humanitarian imperative'; in a way that it makes the international humanitarian regime rethink their principles and legal instruments, as the 'humanitarian imperative' cannot only quell the militant refugee activity but make way for it too.

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Index 2

Political map of present day Myanmar (Burma)



Table 2

Index3

Refugee settlements on the Thai-Burmese border

BURMESE BORDER REFUGEE SITES WITH POPULATION FIGURES - June 2003

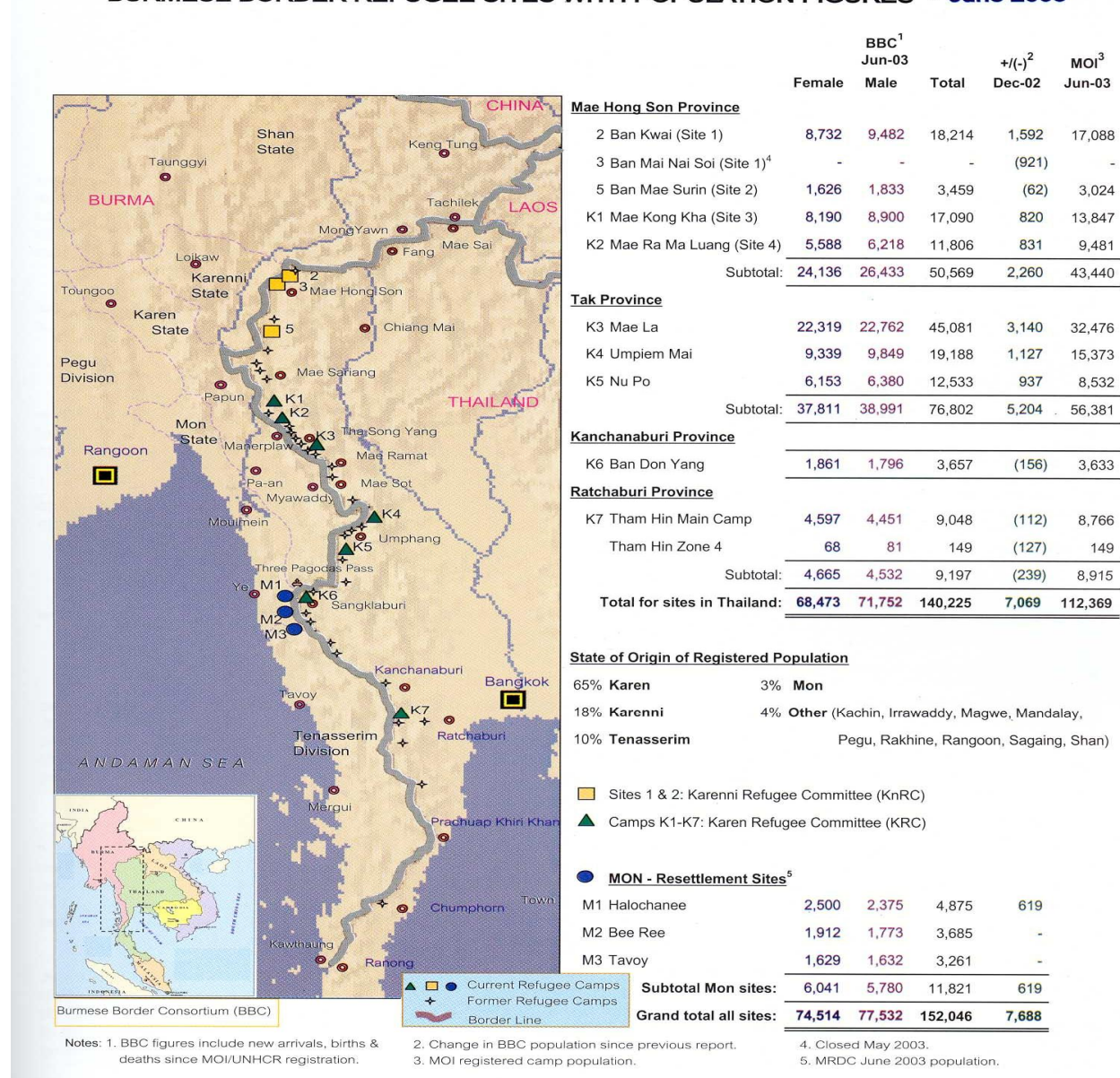


Table 3

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