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The Balkans at a crossroads: Progress and challenges in finding durable solutions for refugees and displaced persons from the wars in the former Yugoslavia

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Introduction

Over ten years after the signature of the Dayton Peace Agreement which ended the wars in Bosnia and Croatia, steady progress has been made in finding durable solutions for the hundreds of thousands of persons displaced by the wars in the former Yugoslavia. By September 2004, returns to and within Bosnia and Herzegovina reached the one million landmark figure. The number of persons in need of durable solutions (refugees and internally displaced) in the former Yugoslavia, which peaked at over two million during the Bosnian crisis in 1992-95 and the Kosovo crisis in 1999, decreased to less than one million by the end of 2003 and to approximately 560,000 by mid-2006.

Yet, behind these encouraging trends, the picture is more nuanced. Most of the refugees and internally displaced persons (IDPs) who found durable solutions were those displaced by the wars in Bosnia and Herzegovina and Croatia in the first half of the 1990s. But the majority of the IDPs and refugees who fled the Kosovo province of Serbia and Montenegro after the ousting of the Yugoslav army and the return of the ethnic Albanian majority in mid 1999 are still in their places of displacement and the situation of the minorities remaining in Kosovo is still precarious, as the analysis below shows. From an institutional point of view, there is still some “unfinished business”¹ in the Western Balkans: in June 2006 Montenegro declared independence and was admitted to the UN, spelling the end of the State Union of Serbia and Montenegro, a loose confederation that replaced the remnants of the Federal Republic of Yugoslavia. The final status of the Kosovo province of Serbia is also being discussed, in accordance with UN Security Council Resolution (UNSCR) 1244.

As result of this situation, UNHCR’s operations in the Western Balkans are centred on two themes: “Post-Dayton” refugees and IDPs (from the wars in Croatia and Bosnia) and refugees and IDPs from Kosovo. A third theme, beyond the scope of this paper, is the development of asylum legislation and procedures in accordance with international standards, in line with UNHCR’s traditional mandate.

The “post-Dayton” situation

The dissolution of the former Yugoslavia triggered a chain of events that brought about war, destruction and “ethnic cleansing”, epitomized by the Srebrenica genocide in Bosnia Herzegovina (BiH) in July 1995. These events caused a massive population displacement: by the time the war ended in December 1995 with the signing of the Dayton Peace Agreement, there were an estimated 1.3 million Bosnian IDPs and

* This paper was originally written for the Refugee Survey Quarterly (Oxford University Press) where it will be published shortly.

** When the paper was drafted, Montenegro was recognised as an independent state (June 2006). Hence references to the State Union of Serbia and Montenegro or its predecessor, the Federal Republic of Yugoslavia, pertain to the two republics (Serbia and Montenegro) prior to Montenegro’s independence. When reference is made to either of the two republics, this relates to the specific situation of either Serbia or Montenegro within the State Union or, more recently, to the two independent states.

¹ See for example, “Unfinished Business in the Balkans”, by James Dobbins, Rand Corporation, Testimony Presented to the US Committee on Foreign Relations, 14 July 2004.

500,000 refugees displaced in the sub-region plus some 700,000 refugees in Western Europe². In August 1995, the Croatian armed forces launched a military offensive called “Operation Storm” which managed to retake all the areas under Serbian control of the Krajina region of southern Croatia. As a result, over 200,000 ethnic Serbs fled their homes towards the rest of the Federal Republic of Yugoslavia, which in 2003 became “the State Union of Serbia and Montenegro” (SCG)³. By 1996, according to UNHCR’s data, SCG was hosting some 560,000 refugees, mainly from Croatia (297,000) and from BiH (250,000), the highest number of refugees in Europe. The most vulnerable of these refugees and IDPs ended up in public buildings, otherwise known as collective centres, such as disused schools and factory dormitories, not meant for permanent accommodation. Ten years later, the situation has significantly improved, at least in terms of numbers. According to updated UNHCR and government statistics, by mid-2006 the number of IDPs in BiH had fallen to 182,000 and the number of refugees in SCG to approximately 114,000 (80,000 from Croatia and 34,000 from BiH). What made this possible?

Serbia and Montenegro

For UNHCR, the preferred durable solution is voluntary repatriation and, according to UNHCR and government sources, some 138,000 refugees repatriated from Serbia and Montenegro to Croatia (68,000) and BiH (70,000), including both spontaneous and assisted returns. But, for UNHCR, there are two other durable solutions, namely local integration and resettlement. In particular, local integration was a solution vigorously pursued in Serbia further to the adoption of the National Strategy for Resolving the Problems of Refugees in May 2002, drafted with UNHCR’s assistance. The local integration “prong” of the National Strategy (which also pursued a repatriation prong) had four dimensions, namely: 1) the provision of durable accommodation; 2) the closure of collective centres; 3) employment programmes; and 4) facilitated access to citizenship.

Regarding housing for collective centre residents, in the period 1997-2005, UNHCR in cooperation with the Swiss Development Cooperation (SDC) carried out the construction of more than 2,500 housing units for almost 10,000 refugees and supplied building material for a further 3,000. Other collective centre residents were assisted to move on with a package consisting of cash and in-kind incentives. Furthermore, UNHCR, through its implementing partners, has provided 20,000 micro credits to refugee, ex-refugee and IDP entrepreneurs, and vocational training to over 1,500 refugees and IDPs to create better employment opportunities on the local job market. Many refugee families are now managing to earn an income sufficient to cover at least their immediate needs while others are developing small businesses. UNHCR’s micro-credit programme was handed over to local NGOs at the beginning of 2005 and has continued very successfully. The revolving fund has currently a total net value of nearly US\$ 4.8 million. These activities facilitated the closure of 347 collective centres which decreased from 446 to 99 between 2000 and the end of 2005, with a reduction of their population from 32,000 to 9,000. In parallel with the integration process, it is estimated that at least 200,000 refugees were naturalized and

² UNHCR, *The State of the World’s Refugees, Fifty Year of Humanitarian Action*, Oxford University Press, 2000, p. 219.

³ SCG stands for “Serbia i Crna Gora” (lit. “black mountain”, or “Montenegro”).

obtained Serbian citizenship. However, even if there is legal integration, the long term sustainability of economic integration will be difficult in an economy characterized by high unemployment and inflation (respectively 21% and 17% in 2005)⁴.

Apart from local integration, other features of the UNHCR programme in Serbia and Montenegro include legal advice (particularly on property and personal documentation), psychosocial support and humanitarian assistance for the refugees and IDPs remaining in collective centres. In Montenegro, the Office of the Montenegrin Commissioner for Displaced Persons adopted a National Strategy for Refugees and IDPs in April 2005 which foresees both local integration and voluntary repatriation. On 3 June 2006, following the outcome of a referendum, the Montenegrin parliament declared independence and was admitted to the UN on 28 June. The end of the State Union of Serbia and Montenegro, the loose confederation that succeeded the remnants of the Federal Republic of Yugoslavia, fortunately did not cause additional population movements as the separation from Serbia was consensual.

Bosnia and Herzegovina

In BiH, where UNHCR was given the mandate to coordinate the humanitarian relief effort and the return of refugees and IDPs in the Dayton Peace Agreement⁵, a key factor facilitating large-scale returns was the Property Law Implementation Plan (PLIP). The PLIP was a collaborative project launched at the end of 1999 by the Office of the High Representative for BiH (OHR), UNHCR and the OSCE, together with other partners. It had the objective of solving all outstanding claims by refugees and IDPs regarding property repossession, one of the main legacies of the war not only in BiH, but also throughout the region. The PLIP had two key features: strict enforcement of decisions to return property to the rightful owners, and no distinction between private property and long term leases for social housing. By mid 2006, 197,700 out of 211,800 property claims were solved through the PLIP mechanism, which is a 93.3% implementation rate.

The PLIP's success was key to facilitating overall returns (refugees from abroad and IDPs internally), which totaled 1,014,340 at 30 June 2006, but in particular, *minority returns*, that is returns (both refugees and IDPs) of persons to a situation in which they constitute an ethnic minority. Since the start of the programme in 1996, UNHCR recorded 456,307 minority returns, or 45% of the overall total returns. In this connection, it should be noted that while minority returns averaged 31,000 per year in the period from 1996 to 1999, they rose to an average of 76,000 between 2000 and 2003, following the introduction of the PLIP. These return figures indicate that to some extent the effects of ethnic cleansing have been reversed in line with the Dayton Peace Agreement that underlined the "right to return" to places of origin. However, return figures have dropped since 2003 and a definitive assessment of the long-term demographic composition of the population in BiH will be possible only once a new census has taken place. At this stage, while some analysts suggest that restitution does not always mean permanent return, as many minority returnees sell their repossessed

⁴ Source: National Bank of Serbia and European Commission, DG Enlargement.

⁵ As per Annex VII of the General Framework Agreement for Peace, otherwise known as the Dayton Peace Agreement.

houses to join members of their own ethnic group⁶, the results of a recently published survey show that only 5% of returnees have actually sold their houses and 10% are considering doing so in the future, confirming the overall success of the PLIP.⁷ However there is still a need for economic assistance to make returns truly durable.

UNHCR in BiH was also actively involved in the closure of collective centres and in providing alternative accommodation for their residents. From 1999 to the end of 2005, UNHCR and its partners managed to close 93 collective centres (a decrease from 108 to 15) reducing their population to 1,200, and constructed or repaired houses (also in cooperation with SDC) for a total of 1,880 beneficiaries, most of whom were from the collective centres.⁸ However, contrary to the situation in SCG, integration assistance was provided in the original places of residence as local integration in the place of displacement, including housing assistance, could have been perceived as 'condoning ethnic cleansing' and opposing the right to return. Other key features of the UNHCR programme in BiH include legal assistance provided through a network of legal NGOs (initially focusing on return issues, then also expanding to asylum and merged into a single NGO in 2003)⁹, community services and flexible quick support projects for returnees. As in Serbia, one of the main challenges for people who found durable solutions with initial assistance from UNHCR is the long-term economic sustainability in an economy with an estimated 40% unemployment (although, if we take into account the informal economy, the rate might be 20%)¹⁰.

Croatia

In Croatia, UNHCR's programme was mainly oriented towards assisting the repatriation and reintegration of returnees from Serbia and Montenegro and Bosnia and Herzegovina through legal advice and material assistance, including transport and income-generation projects. To date, a total of 137,185 refugee returns have been recorded by the authorities (27,097 of whom with direct assistance from UNHCR under the Protocol on Organized Returns and Croatia's Programme on the Return of Refugees), of whom an estimated 124,000 were of Serb ethnic minorities. As in BiH, housing and property issues were one of the main obstacles to returns and required sustained legal assistance and advocacy from UNHCR and its partners. Housing issues in Croatia can be broken down into three categories: 1) private property; 2)

⁶ See C. Philipott, "Though the Dog is Dead, the Pig Must be Killed: Finishing with Property Restitution to Bosnia-Herzegovina's IDPs and Refugees", *Journal of Refugee Studies*, Vol. 18, No. 1, March 2005, Oxford University Press. Even if Philipott argues that "restitution does not always mean permanent return as the owner ... rents or sells his apartment", he concedes however that "the restitution process has advanced the exercise of property rights as well as the right to return to a stage where it cannot be dictated by the barrel of the gun". Another paper that questioned the durability of returns was recently published by the Institute of War and Peace Reporting/Balkans Insight ("Bosnian Returnees Quietly Quit Regained Homes", Sarajevo, 31 August 2006).

⁷ *Durable Returns to a Durable State? An Opinion Poll on the Situation of Returnees in Bosnia and Herzegovina*, commissioned by the Swiss Development Cooperation to the Nadel Institute, Sarajevo, July 2006. It should be noted that in some cases the decision to sell property and migrate may however be induced not only by "ethnic" reasons, but also by "normal" rural-urban migration.

⁸ In terms of overall housing units targeting various types of beneficiaries of concern to UNHCR, over 28,000 were constructed with UNHCR's assistance from the beginning of the programme in the mid 1990s.

⁹ Called *Vasa Prava* ("Your Rights").

¹⁰ Source: "World Bank Country Brief 2006".

reconstruction of damaged property; and 3) occupancy/tenancy rights (long-term leases for social housing).

With respect to private property, according to government data, the repossession programme has been substantially completed with 19,260 housing units administratively repossessed and only 18 pending (though it is not clear how many units were physically repossessed). Progress was also made on housing reconstruction but, regarding socially-owned property, Croatia has abolished this system in 1996 and, as a result, many refugees who were the original tenancy rights holders were not able to repossess their apartments which were in the meantime privatized or rented out. The government has instead launched in 2003 a programme to provide alternative housing care for former tenancy rights holders who do not own an apartment or a house, but the programme does not provide a full legal remedy (i.e. restoration or adequate compensation) for lost tenancy rights, but only a housing solution for those wishing to return to Croatia. Furthermore, the programme has been slow to start, with few decisions benefiting refugees and no guarantees that the new apartments will be of the same quality and in the same location as the original ones. Nonetheless 11,874 requests for alternative housing were received by the government from former tenancy rights holders. It is estimated that there are still 30,000 refugee households in SCG and BiH who lost their socially-owned property in Croatia.

This situation is in sharp contrast with BiH where tenancy rights were equated to private property, a policy which enabled some 87,000 ex-tenancy rights holders to freely dispose of their property, i.e. either to return to their homes, sell their property, or benefit from the rent and opt for local integration. In any of these cases, this group is considered to have found a durable solution. This bottleneck may be partially correlated with a significant drop in refugee returns to Croatia in the last few years: 9,280 in 2003, 7,463 in 2004 and 5,261 in 2005, though other factors may also be at play, such as integration in the place of displacement and socio-economic problems in the areas of return.¹¹ To date there are still some 87,000 Croatian refugees displaced in the sub-region, compared with 337,000 in 1996 and 314,800 in 2000, while Bosnians currently number 36,000, compared with 409,400 in 1996 and 210,800 in 2000.

A “catalytic role”

The General Assembly Resolution on UNHCR of November 2003¹² welcomed “the efforts under way ... to promote a framework for durable solutions” and called upon UNHCR “to continue to play its catalytic role in mobilizing assistance from the international community to address the root causes as well as the economic, environmental and social impact of large-scale refugee populations in developing countries ... and in countries with economies in transition”. UNHCR’s challenge in

¹¹ A Human Rights Watch report on Croatia, issued while finalizing this paper (“Croatia: a Decade of Disappointment; Continuing Obstacles to the Reintegration of Serb Returnees”, New York, September 2006), concludes *inter alia* that: “Human Rights Watch is particularly concerned about the following obstacles to full respect of Serbs who have returned to Croatia: the lack of progress in resolving the issue of tenancy rights stripped from Croatian Serbs during the war; increase in the number of ethnically motivated violence and harassment against Croatian Serbs; ... Other concerns include ... slow progress in repair and reconstruction of Serb houses damaged or destroyed during the war...”.

¹² A/C.3/58/L.39 of 13 November 2003.

the Balkans, at least for the “post-Dayton” situation, was precisely this catalytic role to attract development actors that could fund programmes focusing on the sustainability of returns or local integration, without UNHCR itself becoming a development agency. One of these actors was the Council of Europe Development Bank (CEB) that provided its first grant to UNHCR in 2004 for its durable-solutions activities (closure of collective centres, housing and self-reliance) in BiH and SCG. By the end of 2004, the CEB also provided the BiH government with a soft loan of eight million Euro, matched by a four million Euro contribution by the government, for the reconstruction of 1,100 housing units for refugees and IDPs living in temporary accommodation such as collective centres. The loan is also an indication that the government of BiH started assuming a leading role in the process of return and reintegration. The European Commission, under its CARDS (Community Assistance for Reconstruction, Development and Stabilization) programme, also financed reconstruction activities in BiH and housing for refugees integrating in SCG. Furthermore, UNHCR consistently and successfully advocated for the inclusion of refugees and IDPs in the World Bank-led Poverty Reduction Strategy Process in several countries, but most prominently in SCG and BiH.

UNHCR’s “catalytic role” was not limited to attracting development funds, but included initiatives that might be termed “humanitarian diplomacy”. Recognizing that there were still a high number of refugees and IDPs for whom there was a possibility to find durable solutions if backed by sufficient political will (and financial support), UNHCR, together with the EC and the OSCE launched the Sarajevo Process in late 2004, in cooperation with the three concerned governments, namely Croatia, BiH and SCG, which came to be known as “the 3x3 Initiative”. The “3x3 Initiative” led to a Ministerial Declaration issued in Sarajevo in January 2005 in which the three governments committed themselves to cooperate in identifying and removing the obstacles to durable solutions for refugees and IDPs in the region by the end of 2006, although *de facto* it did not include IDPs and refugees from Kosovo (see below). The identified obstacles and proposed solutions were plotted in three national “road maps” (now four, with Montenegro’s independence), that were eventually going to be merged in a joint implementation matrix. While the road maps have been prepared and a lot of progress has been achieved on many issues (for example, the de-registration of refugees who obtained citizenship in Serbia and the repossession of private property in Croatia), one outstanding issue is that of the ex-tenancy rights holders of social housing in Croatia. In this respect UNHCR is advocating a comprehensive and just solution for the holders of terminated tenancy rights in the context of the Sarajevo process.

The Kosovo situation

As the war in BiH ended, another crisis was looming in the Balkans. Since 1989, when Kosovo lost its status as an autonomous province of the Republic of Serbia within the Socialist Federal Republic of Yugoslavia (SFRY)¹³, discrimination and

¹³ Serbia in turn was one of the six republics constituting the Socialist Federal Republic of Yugoslavia (SFRY), which included also Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Slovenia. With the declaration of independence and secession of the constituent republics, with the exception of Serbia and Montenegro, in 1992 SFRY changed its name to “Federal Republic of Yugoslavia” (FRY) and then again to “State Union of Serbia and Montenegro” (SCG) in 2003.

human rights abuses against the ethnic Albanian majority population increased. In February 1998 Serbian security forces intensified operations against the Kosovo Liberation Army (KLA). As security deteriorated, civilians started fleeing. A temporary ceasefire was established in September, but after the failure of the Rambouillet negotiations in February 1999 and renewed operations by security forces, NATO started an air campaign against the then Federal Republic of Yugoslavia (FRY). The fighting between the KLA and the Yugoslav Army escalated while 'ethnic cleansing' against civilians also intensified. This situation led to the exodus of some 445,000 refugees to Albania and 245,000 to The former Yugoslav Republic of Macedonia, assistance to whom proved to be a challenge to UNHCR and other humanitarian agencies and NGOs involved in the crisis, as contingency plans had been made for only 100,000 persons¹⁴.

On 9 June 1999, the FRY government accepted a peace plan that envisaged the withdrawal of Serb armed forces, the free and unimpeded return of refugees and IDPs, the establishment of a United Nations Mission in Kosovo (UNMIK) in charge of civilian administration and the deployment of a NATO-led Kosovo Force (KFOR), authorized by UN Security Council Resolution (UNSCR) 1244. Shortly thereafter, hundreds of thousands of refugees who had fled to the neighbouring countries, started flooding back, some spontaneously, others with UNHCR's assistance. The initial rehabilitation of the war-torn province proved to be another huge logistical challenge given the level of destruction and the need to provide at least dry accommodation for the returnees before the onset of winter, but the challenge was successfully met by UNHCR, the EC and USAID in a spirit of inter-agency cooperation. However, as returnees of the ethnic Albanian majority re-established themselves in the province, they meted out revenge not only on the Serbs, but also on the Roma and other minorities who were considered collaborators of the Milosevic regime. The ensuing burning, looting and violence, which amounted to another round of 'ethnic cleansing', caused a new exodus, but this time of Serbs and other minorities, towards Serbia and Montenegro: by the end of 1999 over 200,000 IDPs from Kosovo had joined the 500,000 refugees from Croatia and Bosnia, the most vulnerable of whom ended up in the same squalid collective centres inhabited by refugees.

Minority returns

As a result of these developments, UNHCR's mandate in Kosovo as per UNSCR 1244 (*i.e.* to contribute to create conditions conducive to the return of refugees and IDPs, monitor the situation of returnees and IDPs, support their reintegration, and exercise a supervisory and advisory role in the process of returns), changed its focus from the majority to the minority communities of Kosovo. Activities on the ground included community development projects that foster inter-ethnic dialogue and the organization of "go-and-see-visits" or "fact-finding" missions by IDPs back to their homes in Kosovo to make an informed choice on whether to return or not and, more recently, capacity-building of the Provisional Institutions of Self-Government (PISG). However, in view of the fragile situation, UNHCR's position was (and continues to be) that returns can be facilitated only on a strictly voluntary basis, but not promoted, let alone forced. In the first few years, the trend of minority returns was moderately encouraging: the number of returnees increased from 1,906 in 2000 to a peak of 3,801

¹⁴ This and the following paragraph are mainly drawn from UNHCR 2000, *op. cit.*, pp. 233-242.

in 2003. However, the violent riots of March 2004 contributed to a marked decrease in returns.

These riots, which targeted mainly Serb and Roma minorities, were sparked by unsubstantiated allegations that two ethnic Albanian boys, who drowned in the Ibar river flowing through the divided city of Mitrovica, died there because they were chased by Serb youths with dogs. While the riots did not have a huge quantitative impact as “only” 4,200 minorities were newly displaced, they had a significant qualitative and psychological impact because dozens of churches and hundreds of homes were set ablaze before the eyes of KFOR, the NATO stabilization force in Kosovo, and the UNMIK police. These events therefore undermined the confidence of the minorities not only in the readiness of the ethnic Albanian majority population to accept them as an integral part of Kosovo’s society, but also in the capacity of the international community’s security forces to contain violence. KFOR and the UNMIK police were perceived as “paper tigers”: although they managed by and large to protect people, they were unable to prevent the destruction of property. Minority communities, whether directly affected or not by the violence, have been left with a heightened sense of insecurity and isolation. Kosovo Albanians, meanwhile, have adopted a wait and see attitude, measuring and assessing the international community’s response.

These events naturally had a major negative impact on the rate of minority returns as well as on UNHCR’s and the international community’s investment in the creation of conditions conducive to return: after the 2003 peak of 3,801, returns dropped to 2,463 in 2004 and to 2,126 in 2005. In total, 15,280 minority returns took place from 2000 to June 2006, or just over 6% out of a population displaced within Kosovo and elsewhere in the sub-region currently estimated at around 250,000 persons (207,100 IDPs in Serbia, 16,500 in Montenegro, 21,000 within Kosovo, 2,000 refugees in The former Yugoslav Republic of Macedonia and 3,000 in BiH). This continuing decline in minority returns is also a sign of the continuation of low-intensity harassment, coupled by sporadic violent crimes against minorities. Unresolved property issues (residential, commercial and agricultural) as well as lack of freedom of movement affecting their access to basic services are other major impediments to the sustainable return of minorities even though the majority of the 4,200 persons displaced by the March 2004 events returned after a reconstruction programme implemented by the PISG.

As a result of this situation, a recently issued UNHCR position paper¹⁵ concludes that while the overall security situation of minorities has improved and some progress was made in freedom of movement and property rights, “members of ethnic minorities continue to suffer from ‘low-scale’ ethnically motivated security incidents such as physical and verbal assaults/threats, arson, stoning, intimidation, harassment, looting, and ‘high-scale’ incidents such as shootings and murders”. UNHCR is therefore still advocating that Serbs, Roma and Albanians in a minority situation (i.e. from northern Mitrovica)¹⁶ should continue to benefit from international protection, or at least

¹⁵ “UNHCR’s Position on the Continued International Protection Needs of Individuals from Kosovo”, Geneva, June 2006.

¹⁶ The city of Mitrovica in northern Kosovo is divided in two by the Ibar river: in the south ethnic Albanians are the majority as in the rest of Kosovo, in the north, including the districts of Zvecan and Leposavic, Serbs are the majority while some 4,600 ethnic Albanians live in a minority situation.

complementary forms of protection. They should not be forced back to Kosovo against their will where they could still face persecution or insecurity, nor should they be sent back to Serbia and Montenegro other than Kosovo on the basis of the so-called “internal flight alternative” where they would end up in secondary displacement in collective centres (see below).

This stance is also supported by the current lack of opportunities for full local integration in Serbia and Montenegro. Besides the difficulties in obtaining documentation (see below), IDPs in Serbia do not have access to the same integration schemes including permanent housing as those envisaged by the National Strategy for refugees, as this is against the official policy of returns to Kosovo, in a current politically charged context. In Montenegro, IDPs are not considered as citizens and are not granted permanent residence, a pre-requisite for access to rights such as employment and medical coverage.

Recent developments

Pursuant to SCR 1244 which stipulated that Kosovo is a province of Serbia and Montenegro under international administration pending a final settlement, and to UNMIK’s policy of “standards before status”, Ambassador Eide, the UN Secretary General’s Special Envoy, issued a report on standards implementation (such as rule of law, democratic institutions, freedom of movement, minority returns and protection) in Kosovo in October 2005. The report concluded that although progress was uneven, time had come to start the process to determine the province’s future status. Negotiations on the province’s future status commenced with the appointment in November 2005 of Martti Ahtisaari as the UNSG’s Special Envoy for the future status process for Kosovo and the establishment of the UN Office of the Special Envoy for Kosovo (UNOSEK) in Vienna, marking the beginning of a period of uncertainty and political posturing in the region. While there is no clear deadline or timeframe for the conclusion of these talks, it is expected that by the end of the current year a decision on Kosovo’s status will be made one way or the other.

Whatever the outcome of the status talks (or lack thereof, which will increase the frustration of the ethnic Albanian majority), there is a possibility that tensions associated with this process could trigger the displacement of at least some of the remaining minorities, currently estimated at 160,000.¹⁷ As a consequence, UNHCR is strengthening its emergency preparedness while at the same time remaining committed to facilitating minority returns on a voluntary basis.

In line with this two-pronged strategy, UNHCR agreed to become the Chair of the Belgrade-Pristina Direct Dialogue Working Group on Returns in April 2005 upon the recommendation of the then Special Representative of the Secretary-General (SRSG) for Kosovo, Mr. Søren Jessen-Petersen. The Chair facilitated a series of meetings between the Belgrade and Pristina delegations which resulted in the signing by the parties of a Protocol on Return to Kosovo. The Protocol, which emphasizes the voluntary nature of returns, was a positive sign that dialogue is possible, but it is

¹⁷ Without considering some 57,000 Serbs who live in northern Mitrovica, where they constitute the majority.

unlikely to have a significant impact on the rate of returns until the underlying political deadlock is solved.

The former Yugoslav Republic of Macedonia

As mentioned above, The former Yugoslav Republic of Macedonia (hereinafter The FYR of Macedonia)¹⁸ admitted some 245,000 refugees from Kosovo at the peak of the 1999 crisis. Given that they were almost all ethnic Albanians and The FYR of Macedonia itself has a substantial ethnic Albanian minority and was afraid that this influx would have tilted the ethnic balance, UNHCR encountered serious difficulties in securing access to the refugees in the country. Access was finally granted only after guarantees that some of the refugees would be transported to third countries under the so-called “Humanitarian Evacuation Programme” to relieve the burden on the country. Eventually some 96,000 refugees were airlifted to 28 countries.¹⁹

The fragile nature of the ethnic balance of the country was dramatically illustrated by the sudden explosion of a conflict in The FYR of Macedonia in February 2001 between separatist ethnic Albanian armed groups and government forces, which led to the displacement of some 165,000 persons (75,000 within The FYR of Macedonia and 90,000 to Kosovo). But fortunately, following the Ohrid Framework Agreement of August 2001 (brokered under the auspices of the EU), which envisaged a more equitable power-sharing among the components of Macedonian society, and confidence-building and reconstruction programmes implemented by UNHCR²⁰ and other humanitarian organizations, over 95% returned to their homes by the end of 2002. As well, the composition of the refugee population that sought asylum in The FYR of Macedonia changed after the repatriation of the hundreds of thousands of ethnic Albanian refugees from Kosovo who were replaced by a few thousand refugees from Kosovo’s minorities. Their numbers averaged just over 2,000 in the last three years with few prospects for repatriation to Kosovo, particularly after the violent riots of March 2004.

Unfortunately, the prospects for local integration remain dim: following the introduction of the asylum law in 2003, only very few (28) of the refugees who had received a Temporary Humanitarian Assisted Person (THAP) status (renewed every six months) since 1999 were granted refugee status, while 277 were rejected, 1,220 received humanitarian protected status and 720 were classified as asylum-seekers by end June 2006. Most of the negative decisions were based on the misguided application of the so-called “internal flight alternative” where asylum officials argue that the asylum-seekers could have found refuge in other parts of Serbia and Montenegro of which Kosovo is still part²¹, a policy also adopted by some Western

¹⁸ Macedonia was admitted to the UN with the following proviso: "By resolution A/RES/47/225 of 8 April 1993, the General Assembly decided to admit as a Member of the United Nations the State being provisionally referred to for all purposes within the United Nations as 'The former Yugoslav Republic of Macedonia', pending settlement of the difference that had arisen over its name." Greece had objected to the name 'Macedonia' as it contains a province with the same name. Macedonia is currently listed under the letter 'T', hence the capital 'T' of the determinative article 'The' of the full name.

¹⁹ UNHCR 2000, *op.cit.*, p. 239.

²⁰ UNHCR was explicitly mentioned in Annex C of the Ohrid Framework Agreement as the lead agency to implement returns and confidence-building measures.

²¹ Since Montenegro's independence of Serbia only, given that Serbia is the successor state to the dissolved State Union of Serbia & Montenegro.

European governments. As mentioned above, UNHCR on the contrary argues that such a policy is not reasonable because these rejected asylum seekers will most likely end up in secondary displacement in unrecognised collective centres given that the Serbian or Montenegrin authorities do not grant IDP status to rejected asylum seekers from Kosovo who are deported to their territories. As a result, many of the non-recognized asylum seekers or persons with humanitarian status are under threat of deportation to Kosovo by the Macedonian authorities, although so far nobody has been deported, also thanks to sustained démarches by UNHCR with the authorities. Meanwhile UNHCR is continuing to provide basic humanitarian assistance to this vulnerable group.

The Roma question

The lack of recognition of this group of persons of concern to UNHCR is not only due to “doctrinal” (mis)-interpretations, but also to the fact that it is almost totally composed of Roma, Ashkaelia or “Egyptians” (also known by their collective acronym “RAE”), the latter two also being stigmatized and marginalised groups, who, contrary to the Roma (who speak Romani and Serbo-Croatian and are mainly Orthodox), speak Albanian and are mainly Muslim. As mentioned above, the Roma in Kosovo and, to a lesser extent, the Ashkaelia and “Egyptians”²² were considered as collaborators of the Milosevic regime and hence were targeted by the ethnic Albanian majority after their return in 1999. They therefore featured prominently among the IDPs who fled from Kosovo towards the rest of the then State Union of Serbia & Montenegro, where Roma constitute 11.4% of the 223,570 IDP population or 12.4%, including the Ashkaelia and Egyptians (23,200 in Serbia and 4,500 in Montenegro).²³ Though the situation of Ashkaelia and Egyptians in Kosovo has improved to some extent in terms of access to rights such as freedom of movement, probably because of their greater cultural affinity with the ethnic Albanian majority population, the above-mentioned UNHCR position paper²⁴ concludes that Roma, together with Serbs, should continue to benefit from international protection.

But Roma are not only vulnerable as displaced persons: as a recently issued UNDP report argues,²⁵ unlike other IDPs, they were already vulnerable *before* displacement owing to their marginalized and discriminated status, particularly in the fields of education and employment. In addition to socio-economic vulnerability, Roma in general, and IDPs in particular, are also legally vulnerable as they suffer from what may be described as a chronic lack of documentation. To be sure, lack of documentation is a problem affecting all IDPs to a certain extent, but it is particularly acute for the RAE. This is probably due in part to discrimination and illiteracy, but also to a deep-seated cultural attitude that makes them wary about declaring themselves to the authorities for fear of being targeted. Whatever the reason, lack of documentation is a serious handicap to accessing rights, as persons who cannot prove

²² The “Egyptians” of Kosovo are not citizens of Egypt, but an ethnic group related to the Roma who claim to have migrated to the Balkans from Egypt some time in the 4th century AD.

²³ The detailed breakdown at 30 June 2006 is as follows: in Serbia, out of 207,103 IDPs there are 22,379 Roma (10.8%), 745 Egyptians (0.36%) and 78 Ashkaelia (0.04%); in Montenegro, out of 16,545 IDPs, there are 3,015 Roma (18.2%), 1,392 Egyptians (8.4%) and 65 Ashkaelia (0.2%); Source: UNHCR Representation in Belgrade.

²⁴ See note 15, above.

²⁵ *At Risk: Roma and the Displaced in Southeast Europe*, UNDP, Bratislava, 2006, p. 69.

their original residence cannot have access to IDP status. One of the consequences is that many live in “illegal” settlements, mostly in even worse conditions than “official” collective centres. Hence RAE IDPs are probably more numerous (possibly twice as many) than current statistics reveal.

But even for those who are recognized as IDPs, lack of documentation means difficult or no access to education, citizenship, employment and pension.²⁶ And the problems do not end with displacement, but persist upon return: for example it is difficult to establish the right to repossess a house without title deeds. Redressing this problem requires very often painstaking individual legal advice from UNHCR and its legal partners to establish rights and entitlements, as in the case of the return of the Roma to the *Mahala* (“settlement”, comprising 750 housing units) in southern Mitrovica, Kosovo, that was completely destroyed in June 1999 by the returning ethnic Albanian majority for reasons explained above. This is a prerequisite for the implementation of the physical reconstruction project, started with the support of UNMIK, the PISG, donors and development-oriented NGOs. This return/reconstruction project in Kosovo is one of the few that targets the RAE as most projects were focused on Serb returns. UNHCR has been advocating in Kosovo to shift the balance of attention also to Roma return projects other than the Mitrovica *Mahala*.

Regarding the prevention of statelessness, a mandate entrusted to UNHCR by successive General Assembly Resolutions, UNHCR has been lobbying states in the region, and particularly newly-independent or successor states, to introduce safeguards against the exclusion of particular groups, such as the RAE or IDPs in general, from citizenship for example, because residence as IDPs does not count towards the acquisition of citizenship, or because birth or original residence certificates were lost or never obtained. In this case UNHCR advocates that laws and procedures allow the use of additional evidence such as testimonies, rather than just formal identity documents, to prove a genuine link with the State in order to prevent statelessness, in accordance with relevant international conventions. Dual citizenship, wherever feasible, is also encouraged.

Conclusion

Substantial progress has been achieved in the Balkans in finding durable solutions for the hundreds of thousands displaced by the wars in the 1990s, with the help of UNHCR and other humanitarian actors, but mostly through the resilience of its people. The prospect of European integration was also a powerful incentive to set aside differences and cooperate to solve the plight of the refugees and the displaced, even though recently the EU’s readiness for further enlargement appears to have cooled down. Furthermore, humanitarian action has been most effective where it was underpinned by a political agreement, such as the Dayton Peace Agreement, and supported by sustained development interventions. In this case it is possible not only to find durable solutions, but even to progress from coexistence and tolerance to eventual reconciliation, although the latter is a long-term endeavour. However, humanitarian action cannot replace political will, otherwise it is in danger of

²⁶ See, IDP Interagency Working Group: “Analysis of the Situation of Internally Displaced Persons in Serbia and Montenegro: Law and Practice”; 2004, Belgrade.

becoming a “fig leaf”,²⁷ papering over the cracks. Humanitarian action without political will and consensus can only provide short term comfort through basic relief assistance (provided that funds continue to be available even in the absence of the media spotlight), but cannot be considered a genuine durable solution.

²⁷ See UNHCR, 2000, *op. cit.* , pp. 219-221.