

**IMPLEMENTATION OF PEACE AGREEMENTS IN CIVIL WARS  
THE PROBLEM OF REFUGEE REPATRIATION<sup>1</sup>**

by

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## **Introduction**

This paper is focussed on refugee repatriation and reintegration into a country which has suffered a civil war, produced refugees prior and during that civil war and has signed a peace agreement which includes a provision for the refugees to return *during the implementation* of the peace accord. I am not concerned with refugee repatriation that occurs in other contexts or other problems that occur with different solutions to the refugee problem such as restricting access of asylum seekers to first world countries or integrating refugees in countries of asylum even though those solutions may implicitly be parts of a peace agreement because provision has **not** been made for refugee repatriation. (For a discussion of terminological issues, see Appendix 2.)

Most returns are spontaneous (Akol 1987; Winter 1994, 168), preceding or immediately following the signing of an accord, or in response to violence in the diaspora, or never take place whatsoever whether provided for in the agreements or not (former Palestine and Yugoslavia), or take place as a concomitant of the pursuit of war itself (Cambodia and Zaire). Thus, a repatriation or reintegration plan may not be in place, or if in place, cannot be utilized because the refugees refuse or are unable to return or, on the contrary, there is a sudden, massive return. Refugees may leave behind systems of international protection and assistance to return without assistance or guarantees of protection, more or less as per their original flight.

Generally, the main decision makers in refugee repatriation are not always or even primarily the international brokers or the parties to the conflict; it is the refugees themselves. Peace agreements rarely make provision for this fact or for the suddenness of refugee movements and the calculus refugees make on relative risks. In some cases, refugees are forced to return to their home countries or other countries following a peace (Palestinians from Kuwait who went to Jordan following the Gulf War) with no provision or international assistance. (Richmond 1994, 215) In other words, in such cases refugees are produced as a result of the “peace”. Thus, the development of a repatriation strategy may be the exception rather than the norm. At the same time, in the absence of a concerted and determined effort to resolve the position of the refugees, more specifically, if refugees are not repatriated and satisfactorily integrated as the preferred strategy, they often metamorphose into refugee warriors, perpetuating a cycle of violence. (Zolberg et al 1989; Khiddu-Makubuya 1994; UNHCR 1995)

## **Refugee Repatriation Strategies**

If one attends to the work of scholars, successful refugee repatriation requires an optimax strategy of instrumental rationality to achieve success. Yet developing such a strategy is dependent on many variables that are unlikely to be very clear at the time the plan has to be developed, either as part of the peace agreement or immediately thereafter.

For example, refugee repatriation is normally one sub-objective within an overall strategy of implementing a peace agreement. (Cf. Downs “Evaluation Issues”) The various strategies for implementing the peace agreement are themselves context dependent; thus, strategies of repatriation

suitable to a peace agreement in which there has been a significant change in the social order, the parties to the agreement are sincere and committed to bringing about a durable peace to a minimal degree (cf. Prendergast “Civil Society”), and there few ‘spoilers’ of significance (or, using Doyle’s proposed scale, the factions are coherent, few and reconciled) are very different than the strategic requirements where an agreement is very fragile either because of inadequate commitment, the presence of spoilers, or both (or, in Doyle’s terms, there are many unreconciled factions and they have some significant degree of strength).

Further, developing such a strategy is not only context dependent but critically dependent on the information available, including basic information such as the numbers of refugees, their intentions about returning (or resisting the agreement), the role of militants in controlling outcomes, etc. But not only is much of the information unavailable, but we often do not even have the tools to obtain the information; after all we know little about converting a welfare economy of refugee camps to a self-standing economy of peace let alone the even more difficult task which Kumar points out - our inability to understand the war economy as a precondition for converting it to a peace economy.

Finally, the strategies must be compatible with the capacities and priorities of the partners required to implement the strategy. At the same time, the parties to the conflict may question the motives and legitimacy of some or even all of those third parties, particularly if they played a part *or appeared to play a part* in either supporting one side of the conflict or exacerbating and dragging out the conflict and contributing to the death toll in previous unsuccessful attempts to help broker a peace, or, finally, currently play a part in authorizing assistance - such as security in refugee camps - or insisting on norms - such as voluntary repatriation - under conditions in which assessing voluntariness, let alone permitting free choices to be made, seems more of a chimera than a reality. And none of these considerations touch the importance of the individual players supplied by third parties who are called upon to mediate and arbitrate. They are often chosen in an ad hoc way and may fall far short of the minimal requirements to fulfill their assigned tasks.

Assuming the above requirements are taken into consideration in formulating the strategy, another set of requirements come into play in the actual formulation itself. (Cf. Stedman, “Implementation Strategies”) The sub-objectives must be clearly specified - are the refugees to be returned to the country? to their regions? to their villages? to their specific homes? What percentage? By which routes? Over what period of time? With what security apparatus in place - en route, when they return? With what humanitarian and economic resources en route and when they return? These problems are particularly acute when the refugees being repatriated belong to one ethnic group and the population in place largely comes from another ethnic group. We need to recognize that the manner of the return itself can impact on the success of the repatriation itself as well as impact on the overall objectives of peacebuilding.

Further, return home is but the end of the beginning of the process of refugee reintegration. There are mines to clear, homes to be rebuilt, planting to be restarted, livestock acquired, and sanitation systems and access to markets reestablished. Further, some refugees return to areas in which the conflict continues in spite of peace elsewhere. There is also the established adage that returnees should not be privileged in the aid they receive relative to those who did not flee so peace agreements have to make provision for those who did not move as well as refugees.

There is also the problem of reintegrating exile cultures acquired when old case load refugees return, and even in the case of recent refugees who have acquired new attitudes, skills as well as new fears. (Akol 1987) Further, the refugees may have endured very different traumas than those who remained behind. Those with criminal pasts prior to or acquired in the camps must be separated from the remaining population if they are not to be allowed to terrorize the returnees as well as the local population. At the other end of the spectrum, the local authorities who are principally responsible for any reintegration process may limit the political reintegration of the refugees to restrict the political space in which those returnees can operate.

In other words, the definition of one sub-objective - the return of the refugees - requires a very high degree of specificity. On the other hand, developing the sub-objective of refugee repatriation is dependent on defining all the other sub-objectives with the same clarity and degree of specificity required for the repatriation strategy *before* one can properly develop the refugee repatriation strategy. For example, the type of political, legal and economic regime planned to be in place is critical in the ability to facilitate the repatriation and reintegration of the refugees.<sup>2</sup> The obverse is also true: drawing up a refugee repatriation strategy is often very critical to planning for the other sub- and overall objectives of the peace agreement. Further, planning for a long term self-enforcing conflict management system must begin even before these sub-objectives are implemented or information is available on their results. Developing a repatriation strategy is a precondition for developing strategies for achieving other sub-objectives - the feasibility, type and timing of elections (cf. Karl) or demobilization - and overall objectives.

Finally, given the instrumental rationality frameworks of donors or most of the third parties, unless all these strategies are developed and adequately articulated, the resources and cooperation of the donors are unlikely to be committed, but that commitment is usually a prerequisite for developing a practicable strategy. In other words, we do not simply have a chicken and egg problem. We have a coop full of chickens in which the strategic requirements seem to demand that before any one chicken can lay eggs, every other chicken must have laid its egg first, an existential as well as logical impossibility. What is more, plans must be in place so that there is a coherence in the way that the chickens lay their eggs to facilitate administrative and logistical coordination and prevent competition among the different programs. (Cf. Diller, "Human Rights")

If these factors do not make the problem too difficult if not impossible to solve, those strategies must be developed in a political context. If in formulating the strategy, one specifies that the lack of commitment is somewhat short of what is required, or that the spoilers are significant players who can undermine the implementation of the agreement, the mere specification of these factors can have

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<sup>2</sup> Each and every sub-objective will have its own set of requirements. For example, in ensuring human rights protection, systems must be planned for monitoring and investigating alleged breaches of human rights, and introducing redress mechanisms as well as institutional and educational building blocks for inhibiting the propensity to human rights violations. In the sub-objectives of disarmament and/or demobilization, the political economy must be in place to prevent demobilized soldiers from becoming thieves and murderers - the militarization of crime - in the absence of employment opportunities at the same time as a war economy is converted to a peace economy, and armed men must be induced to surrender their weapons, and, thereby, the only security and skill many of them know for a future which is inherently uncertain.

political costs on the willingness of the parties to go along with the agreement or the willingness of third parties to provide their resources and support. In other words, the development and articulation of an adequate implementation strategy requires a world of perfect knowledge not only about existing but about future events and contingencies, but also puts pressures on the parties to deceive both themselves and their supporters on the feasibility of executing the strategy.

Developing that strategy is not only dependent on analyzing existing situations and future prospects, but on understanding the past - the causes of the exodus in the first plan, the intermittent barriers to return, the acculturation of the refugees in their host states, the dynamic of diaspora/home country relations, and the degree of mobility both horizontally and vertically for the refugees in exile. Further, that analysis cannot be restricted to the contending parties, but must take account of the situation of the refugees within a larger global set of priorities. Refugee repatriation may have a very low priority for third parties relative to other goals with much higher ranking, such as keeping inflation low and thereby insisting on the imposition of structural adjustment programs on states in the weakest position to implement them. Third parties may have low risk policies in the provision of peacekeepers. Or their self interest may be focused on expanding their own economies so that the state emerging from a civil war is either regarded as peripheral to its own primary concerns or is viewed primarily as a potential source of resources and/or as a potential market.

We also need a very high degree of understanding of the forces and laws which permit peace agreements to be implemented successfully. Is a post-conflict regime both willing and able to repatriate and integrate the returnees? This theoretical understanding of the type of conflict and its particular set of causes, and the position of the specific conflict within a comprehensive and systematic taxonomy seems to be a prerequisite in determining whether return is appropriate and which mechanisms for repatriating refugees can be employed.

To the degree that such understanding has been developed, it requires that a whole layer of second order requirements be introduced to ensure that trust is increased at a faster rate than distrust, and that procedures are in place for dissipating that distrust in the face of obstacles that are likely to emerge and unknown factors that may arise - the CBMs referred to by Rothchild. One of those second order requirements, which I have dubbed *Stedman's First Law*, states that: a high degree of certainty is required to develop a successful implementation strategy, but a successful implementation strategy must be premised assuming uncertainty about each and every factor critical to the agreement - about the motivation and resolve of the parties, the strength of spoilers, the commitment of third parties, the motivation of refugees to return, the willingness of the host population to receive the refugees, etc. There are at least three additional laws implicit in Stedman's work that must be posited to comprehend the necessary conditions for a successful implementation strategy.

*Stedman's Second Law* states that in order to plan a successful implementation strategy, adequate resources must be available, but a successful implementation strategy must be premised on the assumption that the resources available will be inadequate. *Stedman's Third Law* states that although clarity, precision and comprehensiveness are requisites for such agreements, agreements are primarily symbolic documents which depend upon creative ambiguity and the ability not only of the contending but of the supporting parties to read hope and posit virtue into a situation of despair and the exercise of human stubbornness. *Stedman's Fourth Law* states that peace agreements must be hyped

to garner support and the parties portrayed in the best light, but must also be premised on the likelihood that each of the parties will only be governed by their own self interests rather than the interest of the collectivity.

We can add other such laws. For example, *Prendergast's First Law* states that reconciliation processes must be *operational before* an agreement is signed in order for third parties to put the support in place requisite to bringing about the reconciliation to follow an agreement. *Prendergast's Second Law* states that third party support tends to undermine and even destroy the requisite local institutions that must be reinforced to facilitate reconciliation, and, in particular, allow the refugees to participate in their own rehabilitation. These laws are only apparently contradictory, for they merely require that internal processes of support must already be in play before an agreement in order to obtain outside support after an agreement; however, that outside support must not come into play in such a way as to weaken those internal processes and institutions.

Other laws seem to be more deeply contradictory. The *Diller de Soto Law* states that trade-offs in dealing with past abuses and in preventing human rights abuses in the future by compromising the requisite institutional requirements for human rights protection - a theoretical prerequisite for refugee repatriation - undermine the possibility of implementing human rights protection; but trade offs between human rights and peace, or impunity/amnesty and justice, are prerequisites of any peace agreement. There is a parallel *Spear de Soto Law* that says that undetected arms caches and soldiers who are not demobilized or integrated into a unified army or refugee warriors that are not repatriated all threaten the implementation of a peace agreement, while any realistic peace agreement must accept the reality that many arms caches will not be disclosed, and many soldiers and refugee warriors will not be demobilized but will remain in readiness to resume the war if the peace agreement fails. Call has formulated his own two trade-off laws: in order to secure a peace, the military must be demobilized, but the cost of demobilization may be born by *increased* insecurity for the civilian population and a decreased ability to repatriate refugees; and, implementing a peace agreement requires security while that security depends in the first instance upon relying on the very forces that were responsible for the insecurity during the civil war, including repatriated refugee warriors.

## **Theoretical Strategies and Practical Implementation**

If theory presumes an instrumental rational strategy in which we set forth all the variables, all the conditions, all the norms, all the overall and subordinate goals, and add to them anticipated side-effects while making provision for unanticipated consequences as well as developing a coherent framework for implementing a peace agreement, practitioners throw up their arms and insist that they operate in a world of very imperfect knowledge, where uncertainties overwhelm any certainties available, where incoherence and conflicts are the norm even among those present to help<sup>3</sup> let alone the contending

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<sup>3</sup> Cf. Guttieri on the tensions and conflicts among the cultures, priorities, and instrumental mechanisms of the peacekeeping, international political and the NGO cultures let alone the internal rivalries within each of those cultures such as third party states - Jones - or international financial institutions - Woodward. If the practitioners are riddled with conflicts, Kumar notes that these conflicts are at least as prevalent among the theoreticians - between

parties, where planning focuses on preventing the exceptions and the extremes rather than in establishing norms, where the prime information available can be categorized as impressions rather than solid knowledge, and where opportunity and crisis decision making is the norm, and deliberative decision making among competing alternative options is as rare as a dodo bird.

If the agendas of theoreticians and practitioners seem so out of synch, what about the discrepancies between the demands practitioners make on the contending parties and their failure to apply those same criteria to themselves? Lessons learned activities of practitioners are far more likely to cover up failures than disclose them.<sup>4</sup> Third parties responsible for assisting in the implementation of peace agreements demand accountability from the parties to a peace agreement (cf. Cousens), but do not live up to the same criteria such as transparency and access to the information that go into the formulation of its policies and practices, and are not held accountable for failures of public officials when they do not live up to their public responsibilities.

But the practitioners themselves suffer from deep cultural divisions. (Cf. Jones) There are four or five types of actors concerned with the refugees -

- a) refugee organizations representing or claiming to represent the refugees;
- b) humanitarian agencies;
- c) international agencies, particularly those with a prime concern with refugees (UNHCR);
- d) states, particularly the states in which the refugees have found refuge, and the state from which the refugees have fled;
- e) military security services, peacekeepers, local military and gendarmes, security employed by NGOs and international agencies.

These institutions have different priorities, values, modes of operation and constituencies to which they are accountable. Refugee organizations represent the refugees but may not be accountable to them, particularly when militant political factions control the refugee camps. Humanitarian agencies are concerned with the welfare rather than the political interests of the refugees, with their own organizations and the fund raising needed to help the refugees, sustain their organizations as well as the work to which they are committed. States have the security of their states and its citizens, as well as the positions of their leaders as primary objectives, even when giving refugees sanctuary or when accepting or rejecting refugees for return. International agencies, such as UNHCR, answer to their benefactors as well as their humanitarian mandates which restrict their activities to established modes and objectives (such as “voluntary” return) and limit their abilities to provide security while insisting that the prime

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international relations scholars and area experts.

<sup>4</sup> Cf. the misleading UN official account of its role prior to and during the genocide in the UN publication, *The United Nations and Rwanda 1993-1996* (New York: UN Publications, 1996). Not only was their own role covered up in their own publication, but spokesperson of the Secretary General alleged that the facts revealed in Study 2, “Early Warning and Conflict Management: the Genocide in Rwanda” of *The Joint Evaluation of Emergency Assistance to Rwanda* were inaccurate. Further, “the chair of the Steering Committee sought clarification (unsuccessfully) of the ‘factual inaccuracies’ alleged by the UN Spokesperson and the Under-Secretary General for Humanitarian Affairs.” *The Joint Evaluation of Emergency Assistance to Rwanda: A Review of Follow-up and Impact Fifteen Months After Publication*, Copenhagen: DANIDA, June 12, 1997, 8-9.

functions of such an agency is protection for the refugees. Security services may be given refugee protective roles, but generally are more often deployed in the more traditional roles of neutral observers and buffers between warring parties and, as in Yugoslavia, are usually ill-equipped to undertake more robust tasks.

Within and among these groups there are many debates on how to cooperate and create coherent action. (Winter 1994), but the inability to effect such a coherence has had drastic effects on the security and welfare of the refugees, as in the Kibeho massacre (Adelman 1997). This effects the determinations of how return is to be effected, the timing of any return, the modes and pace of return, the destinations for returnees, etc.

In sum, both theory and practice are placed in impossible positions by their own and mutually conflicting agendas.

### **Fundamental Ethical Clashes**

There are not only analytical prerequisites to developing an effective repatriation strategy, there are normative ones as well. At the most general level, demanding full truth and trust in a context of deep suspicion and distrust is often critical. But these requirements are often set down in a context in which the incentives to deceive *for the best* as well as the worst of motives may be in operation - such as painting too rosy a picture of the benefits of repatriation and downplaying the hostility that may emerge simply because of the inequity in the assistance available to refugees in the rehabilitation process and that available to families who never fled.

Underpinning the institutional cultural clashes discussed above, though not reducible to them, are fundamental differences over values and their ranking. Should refugees have the right to move anywhere, or are they virtual prisoners within their welfare camps? This right to movement is also a right not to be moved, that is refoiled or returned under pressure, though sometimes the refugees are induced, pressured or even forced to stay as refugees by coercive force. In many cases, there is often little choice. If not-so-gentle means of persuasion are adopted to effect a return - cutting down food rations to induce movement, presumably in a context in which militants might have been preventing the exercise of free choice - then the refugees have not really been free to stay or return. All this assumes that the state to which the refugees are scheduled to return is genuinely interested in taking them back.

Such a rights foundation for refugee laws clashes with the principle of the primacy of state authorities as the responsible agents for protecting their citizens. For, in the interest of accelerating refugee return and preventing camps from breeding a new wave of refugee warriors, a more proactive policy on refugee return and more robust actions may be adopted. As the inverse of this in Israel, the sovereignty of states and their commitments to their primary national groups may stand in the way of both return and an acknowledgement of refugee rights of return.

How do you rank state interests and the security of states against international law and conventions as well as universal moral benchmarks like human rights and the rights of any individual to live in a state which provides protection?

Physical threats to the lives of the refugees and even humanitarian workers has led some humanitarian agencies to push physical security higher up on their list of priorities and led them to adopt

more “realist” oriented policies, including the use of peacekeepers to guard their own organizations as well as the refugees. Some have even explicitly supported humanitarian intervention - the use of third party forces to guarantee the flow of humanitarian aid.

## **Humanitarian Intervention**

In Zaire, as the civil war began and Kabila’s Rwanda-backed forces attacked the refugee camps from which ethnic cleansing had been launched in the Masisi region, the camps were quickly evacuated by hundreds of thousands of fleeing refugees. Though there had been many calls for the use of coercive force under UN auspices to eliminate the coercive control by ex-FAR and *interahamwe* (Rwandese militia under the Habyarimana regime) of the refugee camps (UNHCR 1995, 32), the debate escalated as the refugees fled the camps. There was a new proposal that a military force protect humanitarian workers to supply the refugees with needed water, food, shelter and health services. The latter proposal was seen by many Africans as an intervention in a civil war which would interfere with the rebel’s ability to prosecute the war. On the other hand, the initiative was defended as a necessity to fulfill the first obligation of agencies to protect the refugees. Opponents to the plan argued that countries did not seem to be interested in protecting the refugees with military forces when they were being intimidated by the extremist Hutus. Defenders of the plan countered that the lives of the refugees were not threatened as they seem to have been during the civil war, seemingly justified given the reports on atrocities against the refugees that came in later. The Canadian-led peacekeeping operation, contrary to the wishes of the 5 November 1996 Kenya meeting of regional African states, decided not to take on the ex-FAR and *interahamwe*, but to send a humanitarian protection mission. As a result, the local African states effectively made the deployment of such a humanitarian force virtually impossible to implement. In other words, humanitarian intervention may not be seen to be humanitarian, or even when accepted as such, may be ranked lower than the security of the states in the region.

## **Protection**

Protection is, thus, the primary issue - protection from whom, by whom, against what threat and to what end. (Koehn 1994) The issue of protection extends to times of flight, within camps and on return. When I wrote this initial draft of this paper in October 1997, 37 Tutsis were killed by Hutu extremists within Rwanda in a transit camp where they were awaiting resettlement from former Hutu houses that they had occupied to new plots and houses of their own. (Cf. Pesen 1993) Since then, murders of local residents have recurred regularly as refugee warriors returned among the hordes of returning refugees and have been able to destabilize the north-west region of the country.

The rights of refugees, thus, are not the only problem. There is also the rights of existing inhabitants to live in security. Further, the problem of human rights protection is greatly complicated by refugee flows when refugee warriors are not disarmed or those who are suspected of having committed violations of international humanitarian law are not separated from those who are not suspected. Refugee protection issues are clearly inseparable from the process of military demobilization demonstrated in Angola, Chad, Eritrea, Ethiopia, Mozambique, Namibia, Rwanda, Uganda, and

Zimbabwe. (Cf. Refugee Policy Group 1994, Coletta et al 1996, and Ball 1997) An environment conducive to repatriation for refugees who want to return must be provided at the same time as policing borders must be introduced to deter violent incursions. (77-78) UNHCR (1995, 44) adds to that list a formal invitation to repatriate by the new government, establishing international tribunals to end a culture of impunity for those who committed crimes against humanity, and proper management of the repatriation process by means of staging areas, transit camps and relief centres.

Protection is often expanded to include more than physical security. For example, defining property rights may be critical to providing long term security as well as facilitating repatriation. But how far back do those rights extend? Do returning Tutsis from 1959-62 have rights to regain their properties or only those who left in the most recent outflow in 1994 following the genocide? UNHCR (1995) contended that disputes over ownership inhibited refugee repatriation.

The issues of security and property rights are also tied into employment, because peace requires the demobilization and 'reeducation' of many soldiers from both sides and the integration of the remainder into one army. Without that, the demobilized soldiers easily resort to activities with which they were familiar - the use of force to rob and steal, producing more homeless and new waves of refugees from both sides as the army launches reprisal attacks on the opposing forces.

Finally, development aid has been identified as a source of largesse which makes political connections important and, in poor developing countries, often serves as a magnet of corruption in the award of contracts. This, in turn, sets up a motivation for preserving a regime and rewarding only one's allies (and usually members of one's own ethnic or ideological group) at the expense of democracy and human rights, setting up a new cycle of opposition, strife and violence.

On the other hand, development assistance has been critical to the reintegration of refugees and the reconciliation of conflicting parties in post-peace agreement periods as the enormous leverage of international resources, linked to the peace process, stresses reintegration of the uprooted as a condition of aid, though ideally in a context in which assistance is given to the existing population as well as the returning refugees based on need. (Gorman 1987, 1991, 1993a, b, c, 1994; Kuhlman 1994; Milhalkanin 1993) However, development assistance has been "less successful in promoting effective collaboration and cooperation between themselves, and the international effort was unable to tie reintegration assistance into sustainable national development processes." (Stein 1997, 155)

### **The Application of these Conundrums to Refugee Repatriation**

Ideal conditions for refugee repatriation require both a change in the political order and that the peace agreement already demonstrate its durability. But in order for the political order to be transformed and/or the peace agreement to be durable, the refugees must have been repatriated. The state must ensure a quality of national protection for the returning refugees, but the returning refugees may themselves destabilize the prospects for national protection by adding to the internal contentious and contending voices and even actions. Third party actors must assist in the integration of the refugees in such a way that they demonstrate equity with respect to existing inhabitants already living in areas to which the refugees will be returned, but third party actors rarely have sufficient resources to adequately integrate the refugees let alone assist the existing population. Further, organizations whose mandate is

only to assist refugees *who are outside their country of traditional habitation* are often called upon to assist in the protection and reintegration of the internally displaced. And while such organizations may call for repatriation, when repatriation is viewed as an unrealistic ideal, such third parties may in practice be working to integrate the refugees in the host states, particularly in cases where displacement may have been an important objective of one or both of the contending parties to the conflict.

## APPENDIX 1

### TWENTY QUESTIONS RE REFUGEE REPATRIATION AND REINTEGRATION

1. Were refugees an important ingredient in the peace agreement in your case study?
2. What knowledge is available about numbers of refugees, their conditions, their desires, the genuine interests in repatriating the refugees?
3. How many refugees were there as an absolute number and as a percentage of the population of the country?
4. Are the refugees located in adjacent states?
5. How many of the refugees want to return?
6. Do militants in refugee camps control the ability of the refugees to make independent choices about repatriation?
7. Does the peace agreement make provision for the repatriation of the refugees?
8. If so, is the repatriation provision, in your estimation, a rhetorical gesture at one pole or a sincere essential part of the peace agreement?
9. Have third parties guaranteed the provision of resources required to move and reintegrate the refugees a) adequately; b) semi-adequately or c) inadequately?
10. Were these third parties accepted by the contending parties as: a) neutral; b) semi-biased; c) outright partisan?
11. Was there any difficulties with the leadership provided by third parties to help repatriate and reintegrate the refugees?
12. What degree of specificity is provided in the implementation clauses with respect to the location of the return, the numbers to be returned, the time period, and under what circumstances and with what protection?
13. What security will be in place after the return and how will it be monitored?
14. What resources were provided for in the agreement and actually made available to reintegrate the refugees?

15. What provision was made for equity between the refugees returning and those parts of the population already in place generally and more specifically with respect to property rights and employment opportunities?
16. What provisions were in place in reintegration for the exceptional circumstances of the refugees - the traumas they suffered and the cultural alterations, both positive and negative, they underwent when in exile?
17. In the overall plan, what priority is given to refugee repatriation?
18. What priority does refugee repatriation have in third party planning?
19. How do the provisions for refugee repatriation and reintegration relate to and cohere with the planning to achieve the other sub-objectives of the peace agreement?
20. To what extent were the norms of various third parties contentious and, if so, how did the clash of norms affect the refugee repatriation and reintegration?

## APPENDIX 2

### PROBLEMS OF TERMINOLOGY

#### 1. “Resettlement” (cf. UNHCR 1995)

a. Refugee settlement refers to the temporary or quasi permanent settlement of refugees in countries of first asylum . Refugee *resettlement* is used generally with respect to moving refugees to third countries, most frequently the major countries of immigration.

b. In order a) not to confuse refugee return to their home countries with refugee resettlement to countries of asylum, and b) to avoid the political connotations of resettlement, even though strictly speaking, whenever refugees are moved, they are resettled, it is suggested that the problem be referred to as “refugee return,” or “refugee repatriation” when referring only to refugees who were across borders, or “refugee reintegration” when the issue encompasses more than just a place change for the refugees as is usually the case..

#### 2. Naming the Refugees

The names given to refer to refugees are politically sensitive and loaded. Refugees from the Old Mandate of Palestine were called Palestinian refugees, referring to the territory from which they were deprived of their homes or livelihood, and, therefore, included Jews as well as Arabs; the referent “Palestinian” refugees by 1960 came to refer only to the Arab refugees (Adelman 1987, 1994a, 1996, 1997b), and in a terminology that helped define their distinctive nationality in opposition to some pan-Arabists and some Zionists who denied a distinctive Palestinian identity.

In Rwanda, referring to the refugees from 1959-62 as “Tutsi” runs counter to the ideology of the current government which wants to obliterate Tutsi/Hutu distinctions as a an ‘artificial’ source of conflict and when, over the years, democratically inclined Hutu had also become refugees; at the same time, in the exodus in 1994, calling the refugees “Hutu” suggests that they fled because they were Hutu, but calling them extremist Rwandese misrepresents the fact that many innocent people, who honestly believed that they had much to fear from the victory of the “Tutsi-led and dominated” victors, were among the exodus. In the case of Congo-Brazzaville, the refugees who fled the Congo mostly fled into the Congo - the Democratic Republic of the Congo, formerly Zaire and, before Mobutu, the Democratic Republic of the Congo; all this creates confusion in whether to refer to the refugees as Congolese or Zairean refugees. In sum, naming the refugees is a politically loaded exercise; neutrality is virtually impossible, but sensitivity is not.

#### 3. Defining the refugees

In addition to ethnicity related to political geography, which are key ingredients in defining the people to whom one is referring, there are the questions of signs and causes. If one takes signs as the primary

defining characteristic, then virtually anyone displaced, inside or outside the political borders, is generally referred to as a refugee. In fact, according to the UNRWA definition of a refugee from Palestine, anyone who lost their home (they may have moved down the block into a cousin's home) **OR** means of livelihood - they may not have been displaced from their home at all, merely from their work, is a refugee. Whereas according to Article I of the Refugee Convention, only those with a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular group, or political opinion are "genuine" refugees. (Goodwin-Gill 1996) On the other hand, from the political science literature, and, again, most observers, this definition is far too narrow, and most refugees are simply those who flee violent conflict. (Zolberg et al 1989); these are generally referred to as Humanitarian as distinct from Convention Refugees. And, of course, the application of the Convention Definition in policy and case law has created a huge literature in its own right related to both the subjective factors and the perceptions of risk (are these to be assessed only with reference to the past or also with respect to the future or only the future?), and the objective factors - those fears must be 'well-founded', generally referring to the assessment of the risk *to a particular individual* of persecution on return. (Cf. Carlier et al 1997) Implicit in such references are issues of human rights, but are cases of forced abortion (China) and forced female circumcision "persecution"? Should refugee law be subsumed under human rights law? (Hathaway and Dent 1995) Further, there are enormous numbers of procedural issues - wherein lies the burden of proof and to what standard - the claimant establishing the proof, the balance of probabilities or the benefit of doubt given to the claimant - and who does and under what circumstances is the assessment to be made? How are the grounds to be interpreted? I only hint at the vast number of issues within the legal definition alone, which is inherently narrow relative to the whole problem, to indicate why it is of virtually no relevance when issues of refugee return and peace agreements are the issue.

Nevertheless, the Convention Definition becomes critical where distinctions are made using the term "refugee" to refer only to those who have crossed an international border (based on the Convention) and not to the internally displaced. On the other hand, some limits must be drawn on who is a refugee - according to when they left, under what circumstances, and what they have been doing since their departure. Thus, "refugee warriors" - those who go abroad or, when abroad, take up arms against the regime from which they fled - are not defined as refugees by humanitarian agencies, but are central to the refugee problem in peace agreements. Finally, if one tries to define refugees in terms of "root causes", does one get into "developmental" and "environmental" refugees, or even give up on resolving a refugee problem on its own if the root causes are rooted in globalization and the new economic order (Richmond 1994)?

## APPENDIX 3

### THE TEN COMMANDMENTS OF PEACE AGREEMENTS

1. *Stedman's First Law*                      A high degree of certainty is required to develop a successful implementation strategy, but a successful implementation strategy must be premised assuming uncertainty about each and every factor critical to the agreement - about the motivation and resolve of the parties, the strength of spoilers, the commitment of third parties, etc.
2. *Stedman's Second Law*                      In order to plan a successful implementation strategy, adequate resources must be available, but a successful implementation strategy must be premised on the assumption that the resources available will be inadequate.
3. *Stedman's Third Law*                      Although clarity, precision and comprehensiveness are requisites for such agreements, agreements are primarily symbolic documents which depend upon creative ambiguity and the ability not only of the contending but of the supporting parties to read hope and posit virtue into a situation of despair and the exercise of human evil.
4. *Stedman's Fourth Law*                      Peace agreements must be hyped to garner support and the parties portrayed in the best light, but must also be premised on the likelihood that each of the parties will only be governed by their own self interests rather than the interest of the collectivity as a whole.
5. *Prendergast's First Law*                      Reconciliation processes must be *operational before* an agreement is signed in order for third parties to put the support in place requisite to bringing about the reconciliation to follow an agreement.
6. *Prendergast's Second Law*                      Third party support tends to undermine and even destroy the requisite local institutions that must be reinforced to facilitate reconciliation.
7. *Diller de Soto Law*                      Trade-offs in dealing with past abuses and in preventing human rights abuses in the future by compromising the requisite institutional requirements for human rights protection undermine the possibility of implementing human rights protection, but trade offs between human rights and peace, or impunity/amnesty and justice are prerequisites of any peace agreement.
8. *Spear de Soto Law*                      Undetected arm caches and soldiers who are not demobilized or integrated into a unified army threaten the implementation of a peace agreement while any realistic peace agreement must accept the reality that many arms caches will not be disclosed and many soldiers will not be demobilized but will remain in readiness to resume the war if the peace agreement fails.
9. *Call's First Law*                      In order to secure a peace, the military must be demobilized, but the cost of demobilization may be born by *increased* insecurity for the civilian population.
10. *Call's Second Law*                      Implementing a peace agreement requires security and that security depends in the first instance upon relying on the very forces that were responsible for the insecurity during the civil war.

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