

Humanitarian Intervention and Peacekeeping

8. The Ethics of Peacekeeping and Humanitarian Relief

A Humanitarian Pragmatic Approach

The Case of Zaire¹

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I Preface

Canada has taken a lead in assisting refugees², in peacekeeping, and in many other humanitarian endeavours in the international arena. This leadership has been particularly significant when Canadian initiatives are undertaken in response to complex emergencies.³ All of these efforts are intended to help construct a better world. These initiatives stand in stark contrast to international initiatives presumably governed primarily by the self-interest of the intervening state and determined by realism instead of morality.⁴ At the same time, these initiatives are intended to be practical and efficacious and are not simply the product of abstract norms or totally other-directed behaviour. This pragmatic idealism or humanitarian realism contrasts not only with realist-based behaviour and with strictly morally dictated behaviour, but also with ignorant behaviour in which neither norms nor rational calculation of interests are involved.

Case studies of Canadian initiatives can be useful in understanding the ethical norms influencing such actions and if they were in conflict, how they were reconciled or mediated. We do not have to choose between an amoral realism and an abstract principled idealism. We really choose amongst competing norms in light of the circumstances as perceived and the anticipated consequences of each alternative. I imply which norms should or should not be operative in governing responses to international crises either politically or theoretically, and which norms are the relevant ones, only after I ask which norms were involved. What impact and role did they play? Then and only then can I ask what role *should they have played* in the complex emergency and the international response to it. Thus, the chapter will deal both with the connection between ethics and self-interest, including security concerns, as well as with the connection of these themes in the formation and critique of Canadian

foreign policy.

Lessons learned, for Canada or more generally, can vary with the case used. For example, Raimo Väyrynen's introductory chapter, "How Much Force in Humanitarian Intervention," takes Yugoslavia as a benchmark. Compared to Zaire, the Yugoslavian case is complicated by many more political, military, and economic considerations. It is a difficult case to serve as a benchmark to examine international ethics. I prefer the simpler one of Zaire⁵, and not simply because Canada played such a prominent role in contrast to the Canadian participation in Yugoslavia. In Zaire, although other alternative options were available – such as taking no action, or, at the other extreme, imposing a regime on the area through the use of overwhelming military force – in fact, two distinct alternatives were considered. Either address the issue of the militants who controlled the camps or restrict activities to support for humanitarian operations. The latter might involve providing protection for the delivery and distribution of humanitarian relief supplies or also include protection for the refugees themselves in the camps or in flight. In former Yugoslavia, there were many more options while the capacity of the West to implement most of them was questionable. Yugoslavia was a minefield in modern ethical and political theory as well as on the ground. In Zaire, however difficult the choices, the options were clearer and there were fewer theoretical political issues at stake so that the problem of assessing the ethical issues is far less complicated.⁶

II Background

In addition to linking ethics with issues of self-interest in the context of the development of

Canadian foreign policy, I want to place the case within a temporal and spatial context. For crises, and the responses to them, are context dependent. What can and should be done in Asia or Europe is different than what can be done in Africa. Further, since the end of the Cold War, the context for dealing with issues of conflict in Africa has shifted dramatically. The response is no longer determined primarily as a by-product of East-West rivalry.

A civil war had been fought in Rwanda from 1990 to 1994. The war ended with a victory of the rebels, but only after a genocide had taken place in which at least 500,000 Tutsi were killed.⁷ The perpetrators were included among the fleeing masses. Hundreds of thousands of Hutu refugees fled to Zaire along with the military and militias who had been implicated in the genocide. The Hutu were not the intended victims of the genocide. 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. When these strategies began to fail, the militants, concerned that they would be thrown out of Zaire as Mobutu was dying, tried to secure their place in Zaire by allying with local ethnic groups and attacking local Tutsi. Thus, the Rwanda civil war continued to be fought using refugee camps as bases. When local Tutsi became the targets, a new civil war was started in Zaire.

Though 300,000 local Tutsi were killed or driven out in the Masisi region in North Kivu, when the *genocidaires* turned to attack the local Tutsi in South Kivu, the Banyamulenga were ready. They repulsed the attacks and, in turn, attacked the Hutu refugee camps, driving the refugees out. As the civil war developed and Kabila's Rwanda-backed forces eventually 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. Over 640,000 Hutu, freed from the intimidating presence of the genocidal militants, crossed the border back into Rwanda. The civil war moved west away from the Rwandan border.

Previous to the defeat of the militants and the release of the refugee camps from their control, there had been many calls for the use of coercive force under UN auspices to disarm the ex-FAR (Forces Armées de Rwanda) and the interahamwe (Rwandese militia under the Habyarimana regime). The requests for intervention by UNHCR to disarm the militants started in 1994 not long after the camps were set up.⁸ The debate resumed in March of 1996 when the refugee camps were used to attack the local Tutsi population. The discussion of options escalated considerably in the fall when the refugees began to flee the camps as the ADFL began to score victories. The concern was then not focused on removing the militants from control but on the use of military force to protect humanitarian workers and to ensure that water, food, shelter, and health services reached the refugees. The rebellion in Zaire, set off by the militants in the camps attacking the local Banyamulenge population, had cut the refugees off from the humanitarian agencies servicing the camps. The immediate crisis seemed to be their humanitarian plight.

Many Africans viewed the proposed 1996 intervention that focused only on humanitarian aid as interference in a civil war that would drastically affect the rebels' ability to prosecute the war. On the other hand, humanitarian intervention was defended as a necessity to fulfil the first obligation of agencies to provide aid to the refugees. Opponents of the plan argued that countries had not been interested in protecting the refugees with military force when those same refugees were being intimidated by the

extremist Hutu. Defenders of the plan countered that the lives of the refugees were not threatened in the camps in the same way as they seemed to be when the civil war broke out in Zaire in 1996. This position subsequently was viewed as fully justified given the reports of alleged atrocities against the refugees after all the camps had been evacuated.

In November 1996, Canada launched an aborted peacekeeping mission with the intention of creating a militarily protected corridor to ensure that humanitarian relief (food, water, health services, etc.) could be delivered to the Hutu refugees in Zaire.⁹ The primacy of humanitarian approaches over political ones seems to be a common characteristic of most of the attempts to deal with intrastate conflicts in the nineties. This was a product of a combination of elements prevalent after the end of the Cold War. When the communist threat had disappeared as either an inspiring idea or a real military threat on the ground, the significant force of humanitarian principles appeared from under the shadow of the realist paradigm that seemed to dominate in the Cold War era. Further, the predominance of the CNN effect had emerged. That is, the portrayal of humanitarian disasters on television stimulated in the public a demand that the government act to do something, even if the issue was not one that affected the self-interest of the state. Further, the legacy of the Cold War had left a left-leaning public oriented to believing that coercive military action risked initiating a nuclear war in which the whole world would be destroyed. They were wary of military adventures that could risk a nuclear war. The right-leaning public and the military were convinced that unless a war could be won quickly with massive use of force, public support of the military would vanish. The politicians would then abandon the effort to pursue and win the war leaving the army to suffer a humiliating defeat. As a result of the combination of both attitudes, the residue in the nineties was a low or no risk attitude to military intervention. There was a

demand for military humanitarianism but at no military risk. Even when self interest was at stake and intervention could be defended on humanitarian and legal grounds, as with the conquest of Kuwait by Iraq just when the Cold War ended, then massive force could be employed but still under the principle of no or little risk. At the same time, the Gulf War misled thinkers in understanding that a very different, though complementary, set of principles had emerged to influence the uses of military intervention. So the realist paradigm was seen as one at odds with rather than complementary to these principles. Further, the principles were caricatured as unrealistic bleeding heart moralism, sometimes with justification.

III The Principles of Intervention

Thus, though the Zaire case is relatively more straightforward than the crisis in former Yugoslavia, a number of principles common to both cases seemed to emerge. This list of principles does not purport to be exhaustive. They refer to the treatment of the victims of conflict, the relations with local states and prime actors in the conflict as well as the conduct of interveners from the international community.

1. Repatriation of Refugees:

In contemporary doctrine, repatriation to the home country is viewed as the best solution for refugees. No consideration seemed to have been given to the possibility of resettlement abroad or the permanent settlement of the refugees in Zaire.

2. Voluntary Repatriation:

Voluntary repatriation for refugees was upheld as a dominant principle with respect to refugee return even though there was overwhelming evidence that the refugees were not free to choose to return even if they wanted to go home because of intimidation by the extremists.¹⁰

3. Physical Protection for Refugees and the Internally Displaced:

The international community is legally and morally obligated to provide physical and legal protection for refugees. There was some success in providing physical protection but little headway was made in protecting the rights of the refugees who were subject to the control and manipulation by the Hutu extremists.

4. Humanitarian Aid and Assistance:

Providing humanitarian assistance to the refugees was not only a moral imperative, but this humanitarian imperative became the dominant governing principle for most NGOs and international agencies, and for many it was so predominant that it eliminated the consideration of other ethical imperatives.

5. Refugees and Refugee Warriors:

International Refugee Law as well as the OAU Convention¹¹ require that refugee camps not be used to launch attacks against the countries from which the refugees fled and certainly not against local civilian populations. This principle was recognised but not enforced by the international community.

6. Respect for Sovereignty

Consent of the parties, characteristic of classical peacekeeping, was a governing principle of any peace operation. However, the consent of the Zairian government was only nominal for the overall operation. The Zairian government was ignored in terms of obtaining permission for the entry point for

the peacekeepers or the advance military mission. That military mission communicated directly with the rebels without the permission of the Zairian government.

7. Political Impartiality

The intervention was intended to be neutral. Part of the reason for the choice of Canada to lead the mission was to provide that image of impartiality as well as to paper over differences and leanings of major powers, more specifically, France and the United States. Further, the type of intervention and its purpose was regarded by a number of African states as itself partial. The Rwandans viewed the intervention as favouring the other side.¹² An intervention that did not confront the refugee warriors was unacceptable to the victorious rebels. The interposition of a foreign military army was seen as a way of preserving the status quo for the refugee warriors and inhibiting the prosecution of the civil war.

8. Financing Humanitarian Aid versus Humanitarian Intervention utilizing Peacekeepers:

Major powers, particularly the US, are wary of even the financial burden of peacekeeping. This is especially true if there is a prospect that the peacekeepers could become embroiled in a civil war. Yet the failure to deal with the underlying political issues may be more costly in the long run, especially when a new round of fighting is merely postponed. But there seemed to be greater readiness to absorb the high cost of humanitarian aid and reconstruction after the conflict than the costs of military intervention to prevent the conflict.

9. Low Risk Military Humanitarian Intervention:

International intervention is morally obligated, at the very least, in cases of genocide¹³:

a) When the refugee men in one UNHCR (United Nations High Commission for Refugees) camp in the

former Yugoslavia were slaughtered when the camp was overrun by the enemy, the UN was unwilling to take effective action.

b) When the militants in the Zairian camps attacked the local Banyamulenge population in Masisi in the spring of 1996 as a continuation of the genocide, no humanitarian intervention was even contemplated. This was the case even though the effective military capacity on the ground was very limited, certainly in comparison to Yugoslavia. A low — or even NO — risk approach to international peacekeeping seemed to be the governing norm.

Thus, the feature characteristic of the Zaire case (and shared by the Yugoslav case) was the governing principle adopted: delivery of humanitarian aid was more important than a political or military solution. Further, military forces were required to ensure the delivery of that aid, as much as possible, indifferent to the merits or demerits of either of the contending sides. The international community maintained the right to the limited use of force for self-defence and humanitarian purposes. However, the potential of even this limited degree of military involvement served as a deterrent for military intervention at the same time as pressure for intervention increased to ensure the continued provision of humanitarian aid to the refugees. Ironically, to add weight to ensure both that the military would not be used and, if it was, there would be a limited number of casualties, the intervention when it was sanctioned, was authorized under a UN Chapter VII provision. This allowed a very activist militant approach to those undermining the humanitarian effort at the same time as it deterred any such effort.

10. Coherence amongst the Interveners

. The real power brokers in the equation were the various countries involved in the issue. It has become a commonplace to assert that intervention should not take place unless the intervening parties

are governed by agreed upon goals and governing norms. But the decision to intervene was also a by-product of the conflict among the major powers, specifically between the United States and France. France was really backing the Mobutu regime, and, therefore, in effect, backing the extremists in the camps, at least indirectly. The United States was giving support to Rwanda, and, through Rwanda effectively to the rebels, again, at least indirectly. The Americans, following PDD 25¹⁴, were reluctant to become involved¹⁵ and tended to want to leave the problem to local states, in particular, Rwanda and Uganda, to solve. Though for a short period in October 1996 the Americans deviated somewhat from this pattern, they quickly returned to their post-Somalian norm of strictly limiting American involvement in humanitarian interventions. France, at the other extreme, was willing, if not eager, to land troops in Zaire to protect the refugees, and, hence, inhibit the advance of the rebels, thereby protecting Mobutu. Though approaching the problem from opposite standpoints, and though each country had a unique logistic capacity to airlift troops and equipment, both were opposed to becoming involved in disarming the extremists in the camps, and the US was a reluctant supporter of any humanitarian intervention. In that stance, they stood in total opposition to the regional African states who had volunteered to send troops to separate the militants from the rest of the refugees, but wanted an international sanction as well as financial and logistic support for such an initiative.

IV Counting, Classifying and Accounting

One does not normally think of numbers as involving ethics. But the number of refugees became a central ethical **and** political issue in Zaire. There were three ethical issues related to the number of

refugees – accuracy, association and accountability. The basic ethical issue was straightforward. How many refugees were there? What seems like the most basic of factual issues becomes an ethical issue when we attach the norm requiring ‘accuracy’. The issue of association becomes clearer if we ask, ‘How many genuine refugees were there?’ More specifically, how many genuine Rwandan Hutu refugees were there in the camps as distinct from Burundian refugees or militants? The issue of accountability focuses on the responsibility of agencies and states when they disseminate inaccurate and misleading figures. In other words, who was to blame for the confusion about the numbers?

The variations in numbers had significant political effects. If there were 1,200,000 refugees and only 640,000 returned, then there were 560,000 refugees who fled west.¹⁶ Since most did not reappear, they were allegedly slaughtered. This made the treatment of these refugees almost equivalent to the genocide in Rwanda. If the genocide in Rwanda obligated international intervention, so did the disaster in Zaire. In light of the failures in Rwanda, the plight of the refugees combined with a concern with the prevention and mitigation of another alleged genocide, the international community was obligated to intervene in Zaire to save the lives of the refugees.¹⁷ Further, the American military was accused of trying to “air brush” the refugees out of history.¹⁸

These are the central issues. They were rooted in what became known as the *bataille des chiffres*. What are the facts? How many refugees were there in Zaire in the first place? Purportedly, 1,200,000¹⁹ refugees had fled to Zaire. A joint mission (UNHCR, WFP - World Food Program, USAID - United States Assistance for International Development, and Echo - the European Community Humanitarian Organization) estimated that there were 1,106,000 people. Note that the figure refers to people, not refugees.²⁰ These numbers in the camps in Zaire were before the upheavals

in the Fall of 1996 and the large return of refugees to Rwanda.²¹ Of these refugees in Zaire, 140,000 were Burundians.²² This meant that a total of 966,000 Rwandese refugees and refugee warriors were in Zaire, assuming the joint mission figures were correct.²³

But, as stated above, this figure, assuming that it was correct, included refugee warriors. Of the over one and one-half million Hutu Rwandese who fled Rwanda between April and July of 1994, 10 to 15 percent “were alleged to have participated directly in (the) mass killing” in Rwanda. The extremist militant group included the hard-line political leadership at all levels. Almost all of them fled to Zaire. Thus, of 966,000 Hutu Rwandans, 140,000 to 210,000 were genocidal killers or their families.²⁴

The estimate of the number of militants or refugee warriors can be approached another way. A report to the UN Secretary-General in 1994 (Degni-Ségui 1994, 16) divided the non-refugee Rwandan population in eastern Zaire into three groups:

1. Former leaders, principally consisting of 50 families lodged in Villas at Bukavu;
2. An estimated 16,000 military personnel of the ex-FAR (with families, the population of this group numbered 80,00);
3. The militants in the militia, possibly 50,000, but probably more like 35,000, and, in any case, difficult to enumerate since they lived amongst the refugees; including family members, since far fewer of them were accompanied by families compared to the ex-FAR, their numbers perhaps totaled around 100,000.

This meant that approximately 180,000 refugee warriors and their family members were in the camps.

Deducting the militants and their families from the realistic figure of 966,000 Hutu Rwandan refugees in the camps leaves approximately 786,000 genuine refugees in the camps - based on the

assumption that the original UNHCR figures were accurate. It is generally the case that camp populations are normally exaggerated by an average of 10%. and much more when controlled by militants. If so, then even these figures are inflated by at least 80,000 and possibly as much as 200,000. Assuming the lower figure, this would make the genuine Rwandan Hutu refugee population in Zaire just over 700,000. Of these, 15,000 were forcefully repatriated by the Zairian army in August of 1996. An additional 646,000 repatriated spontaneously in November. Assuming that only genuine refugees repatriated – 670,000 of them – this left 30,000 missing refugees among the approximately 180,000 militants and their families who fled west. If the Canadian²⁵ and American military calculated estimates of the camp population of only 900,000 (not 966,000) are accurate, then very few genuine refugees could have been killed.²⁶

The political issues were directly related to the above ethical issues. From the very beginning, the major issue was how to separate the criminals from innocent refugees. After the camps were attacked by the rebels and emptied, the mission to separate genuine refugee from the militants had already been accomplished by the rebel forces. Further, the case of the missing refugees seemed to be a phantom issue. So there was neither a protection nor a humanitarian issue. By then doubt about the mission was already widespread in the media — *Vancouver Sun* front page 19 November, *Globe and Mail* front page 18 November, *Toronto Star* front page 18 November. The very next day the same papers headlined on the same front page that the mission was going forward. By 21 November, the *Winnipeg Free Press* (B1) and the *Montreal Gazette* (B1) were pronouncing the Canadian plan in disarray, stimulated, no doubt, by Chrétien's statement the day before that Canada might give aid rather than troops.²⁷

This issue of simple fact — numbers — became a critical factor in the debate over continuing the military mission after the 646,000 refugees had returned home in November 1996. Some UN and NGO spokespersons insisted on continuing the mission because 400,000 refugees were still missing and dying in the jungles of Zaire. For example, the UN Secretary-General himself said that, “as of 18 November 1996, approximately 600,000 and close to 150,000 Burundian refugees remain in Zaire.”²⁸ The news reports had already reported that 500,000 refugees had been repatriated.²⁹ UNHCR spokesperson, Melita Sunjik, issued a statement on 22 November 1996 that 700,000 refugees remained in eastern Zaire who had been located on satellite photos.³⁰ The January UN Secretary-General’s Report tried to introduce some correction. It stated, on the one hand, that the number of returnees was underestimated by referring to 646,000 refugees as ‘several hundred thousand’. At the same time, the missing were reduced from hundreds of thousands to tens of thousands in a diplomatic balancing act that insisted that this ‘does not mean that the refugee problem has been solved. At a minimum, several tens of thousands remain unaccounted for in Zaire, their whereabouts undiscovered and their living conditions unknown. It is clear, however, that every effort should continue to be made to locate them and provide them with food, shelter, and medicines to meet their humanitarian needs.’³¹ Hundreds of thousands had become tens of thousands, consistent with the belief of many that the only people really left in Zaire from Rwanda were the *genocidaires*, their families, and their captive Hutu carriers. The rest were phantom refugees.

The military eventually told a different story. According to Canadian reports, the total number of refugees moving away from the border with Rwanda remained at about 200,000 when 640,000 refugees had already returned. The Canadian report further concluded that humanitarian access to those

refugees was available, and that the mission for which they were deployed had been accomplished, especially given the erosion in support in the region for the deployment of the Multinational Neutral Force (MNF). This confirmed MNF commander General Maurice Baril's assessment on 3 December that the MNF mission has largely been accomplished and the mandate should come to an end. More significantly, Baril noted that, 'some HRAs persist in their attempt to paint a continued humanitarian crisis in the making and deny the factual information made available to them at the local level.'³²

The debate over such a basic fact as numbers had an important implication on what was to be done following the spontaneous return, a debate that should and could have been resolved but, instead, led to a great deal of animosity between peacekeepers and Non Governmental Organizations.³³ Who was to blame? The UNHCR had originally used inflated figures. But these were later corrected. Most NGOs, on the other hand, fixated on the highest possible figures and fed the media that disseminated these hysterical counts. Further, the NGOs went further and accused the American military of a cover-up and the Canadian forces for being lap dogs of the Americans.

But all NGOs cannot be tarred with the same brush. An MNF assessment report of 10 December 1996 stated, 'If one begins with the figure of 1.1 million and takes account of possible over-estimates of up to 20% based on generous food distribution and over-registration, it is possible that the real number of refugees in Eastern Zaire at the beginning of Nov 96 was closer to 900,000. Some 640,000 are known to have returned to Rwanda in the past few weeks. If the figure of 200,000 is accepted as being a reasonable estimate of those who may not want to return then we would be able to account for 90% of the original estimate of the total refugee population.'³⁴

The failure to resolve this most basic of debates not only made it much more difficult to arrive at

a policy for the ‘missing’ refugees, but directly affected the credibility of the United Nations and the UNHCR. It also affected the image of who was to be held responsible for moral crimes against humanity. There was a second related problem — one of classification — that directly affected the issue of facts. Refugee warriors,³⁵ as distinct from genuine refugees, could have numbered about 180,000 if families of the militants are included. The camps had been controlled by ex-FAR (Forces Armées de Rwanda, the Rwandese army under Habyarimana) and interahamwe militia which largely had been responsible for the genocide. Thus, armed warriors, who are not by international law genuine refugees, and many of whom were likely criminals guilty of genocide who had launched military excursions into Rwanda and killed civilians, and had instigated conflict between local Hutus and the Banyamulenge, were included under the designation ‘refugee’ needing humanitarian assistance. The international community, which provided the aid to the refugee camps, had been impotent in separating the innocent refugees from their militant controllers to facilitate repatriation. They even failed to ensure that excess humanitarian aid was not purloined by the ex-FAR (Forces Armées de Rwanda) and sold on the black market, now compounded the problem by conveying an image of helpless deprived refugees fleeing westward when many were genocidal killers and militants.

But this was not the view conveyed by many if not most of the highly respected international human rights bodies. ‘The Commission estimates that based on various reports and testimonies of allegations approximately 200,000 refugees on Zairean soil, the majority of whom are ethnic Hutus, have lost their lives or disappeared in an arbitrary manner,³⁶ as a result of a deliberate strategy of gradual extermination of a portion of the Rwandan population. To this end, procedures were adopted, in a premeditated, constant, and persistent manner that strongly resemble (sic!) acts of genocide.’³⁷ As

Amnesty International had concluded earlier in the opening page of its report of 3 December 1997 called *Democratic Republic of Congo: Deadly alliances in Congo forests*, ‘many of the more than 1,000,000 refugees from Rwanda and several hundred thousand from Burundi were being deliberately and arbitrarily killed in large numbers by forces of the main armed opposition group, the *Alliance des forces démocratiques pour la libération du Congo* (AFDL), Alliance of the Democratic Forces for the Liberation of Congo.’³⁸ The confusion over basic facts such as numbers, and the categories for communicating those facts, had somehow turned the tables so that the killers suddenly became the victims of genocide,³⁹ an intentional strategy of the ex-FAR.

V. Coherence

Confusion over numbers and the categories under which those numbers should have been counted were not the only source of difference in determining what to do. Originally, two strategies for a peacekeeping force had been proposed. The first entailed directly addressing the issue of the militants who controlled the camps. There were two purposes for dealing with the issue of refugee warriors. They controlled and used genuine refugees for military, political and economic purposes in the pursuit of the conflict with the new government in Rwanda; this could have been stopped and the refugees could have been freed to make their own decisions. Secondly, the militants could have been prevented from attacking Tutsi (Banyamulenge) in Zaire, as they had in the Masisi district, and launching military excursions into Rwanda. In that way, not one but two wars could have been ended, and ended by dealing with the instigators of the war. There were other possible goals, such as bringing the *genocidaires* to justice, but this was not even considered. The second alternative entailed providing

protection for humanitarian relief supplies for the refugee camps and for the refugees who had fled the camps.

Numerous parties had been urging the first policy, including the UNHCR and the head of USAID.⁴⁰ This was the recommendation of the summit of regional leaders held in Nairobi on 5 November 1966. However, the second option was adopted by the UN for the Canadian-led mission.

Would an international intervention to take out the ex-FAR militants and interahamwe that controlled the camps have forestalled the attack by the rebels against the camps? If successful, would it have prevented the alleged disappearance of tens of thousands of refugees? Alternatively, was it more prudent to leave the ‘freeing’ of the camps to the rebels, with the consequent return of the bulk of the refugees. This was clearly not the intent of those who advocated that a humanitarian intervention be restricted to the protection of humanitarian relief corridors to supply the refugees.

The international community was in total disarray over what humanitarian use of coercive forces should involve. There were eight types of actors concerned with the refugees:

- a) refugee organizations claiming to represent the refugees — in this case, such agencies were inseparable from the control of the ex-FAR and the interahamwe;
- b) the various ethnic groups involved — the Congolese Tutsi or Banyumulenge, the Katangans, the Kasai, etc.;
- c) various rebel groups in Uganda, Sudan, Angola, etc. who could forge alliances to obtain military training, arms, bases, and actions which could undermine the governments they were intent on overthrowing;
- d) humanitarian agencies delivering aid, food, and health care to the refugees;

- e) international agencies with a prime concern with refugees (UNHCR) and the political situation (the UN itself and the Organization for African Unity);
- f) local states, particularly the states in which the refugees were located (Zaire) and the state from which the refugees fled (Rwanda and Burundi), but including Uganda, Tanzania, Kenya, Angola, and, given the regional implications of the crisis, Sudan, Ethiopia and Eritrea as well;
- g) overseas states with a concern for the refugees and/or the impending crisis in Zaire — the USA, France, the EU, as well as countries such as Canada apparently more concerned with the humanitarian issues than the geo-political aspects of the crisis;
- h) military security services, mercenaries, local military and gendarmes, including forces of the Zairian army employed by the UNHCR for security purposes.

These collective agents had 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. In the case of Zaire, the militants were both opposed to repatriation and certainly to any intervention in which they were the targets. Humanitarian agencies are concerned with the welfare rather than the political interests of the refugees, with their own organizations and the fundraising needed to help the refugees and sustain their organizations. On the issue of intervention, the NGOs were divided. A few supported the need to separate the militants from the genuine refugees. Others, while eventually conceding that military intervention was necessary or else the refugees might die, opposed the use of that military for anything but the security of humanitarian aid. 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 functions of such an agency is protection for the refugees. In this case, UNHCR took a proactive and leading position in requesting security forces: a) to separate the militants from the rest of the refugees; and b) to protect the refugees and the aid workers.

The intervention option was restricted to support for a purely humanitarian mission. In this context, when Canada offered its leadership and support, backing for the Canadian initiative only came from the great powers on condition that the mission had a restricted humanitarian mandate. This, of course, alienated the regional states in Africa who had not even been consulted on the decision. Though not predicted, it was predictable that these states, in particular Rwanda, would not co-operate with such an intervention.⁴¹ What becomes clear is that our values are skewed. Volunteers go to these countries ostensibly to serve others. Peacekeepers go at some risk to themselves to mitigate conflicts in which they have little self-interest. But the actual priorities are protecting a state’s reputation, protecting one’s own soldiers, protecting international humanitarian workers, and, at the bottom, protecting the local population. The reality of this triage in security comes directly into conflict with the governing rhetoric. Further, there seems to be little recognition to the degree that this NO RISK self-interested policy is a product of the Cold War. Nor does there seem to be much understanding of how counter-productive it is.

What is more, it allows policy makers to operate in a fantasy world that disregards local concerns, interests, and, especially goals. Without local co-operation, security services, even with a very restricted humanitarian mandate, were in no position to fulfil their mandate. Fortunately, the spontaneous return of over 600,000 refugees to Rwanda allowed the military mission to declare victory without

actually even being deployed on the ground. After all, the decision to deploy the troops was the catalyst that advanced the rebel timetable for attacking the camps.

Nevertheless, innocent women and children were effectively abandoned, even if they were the wives and children of *genocidaires* and up to 30,000 genuine refugees forced to flee with them. We still do not know how many of them died and how they met their deaths, though there are too many substantiated rumours not to suspect that thousands were killed. In good part, the abandonment of these people must be attributed to the failure of the international community to adopt a coherent and effective policy for dealing with the refugee crisis.

Within and among these groups there are many debates on how to co-operate and create coherent action,⁴² but the inability to effect such coherence has had drastic effects on the security and welfare of the refugees, as in the Kibeho massacre.⁴³ This affects 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 reading those debates one cannot help concluding that the stand an agency took on the policy debate, as well as the factual and categorical issues, depended as much if not more on the culture that agency represented than the objective data. The peacekeepers from leading states and many of the international agencies came down on one side of the debate while many NGOs and virtually all human rights organizations came down on the other side of the debate.⁴⁴

VI. Control, Repatriation and Peace

Most refugee returns are spontaneous,⁴⁵ preceding or immediately following the signing of an

accord.⁴⁶ The main decision-makers in refugee repatriation are not always or even mainly the international brokers or the parties to the conflict. The refugees themselves are the key decision-makers — provided they are able to make decisions free from coercive intimidation. Peace agreements rarely make provision for this fact, the calculus refugees make on relative risks, or for the suddenness of refugee movements. However, in some cases, refugees are forced to return to their home countries or other countries following a war⁴⁷ with no provision or international assistance.⁴⁸ In such cases, refugees are one result of the ‘peace.’

At the end of 1996, the return of the Rwandese refugees had slowed to a trickle. The refugees claimed to be afraid of the treatment they would be accorded upon their return to Rwanda. For most humanitarian agencies, the rhetoric of fear, as well as the reluctance of the refugees to move, was in part attributable to the militants’ selection of the scouts who went back to Rwanda and then returned to the camps to report negatively on conditions at home. The reluctance to return was due, in part, to the intimidation of the refugees by the militants, but more likely the fear of return based on deeply embedded beliefs as well as actual incidents of returnees being targeted by militants in Rwanda.

The initial repatriation of Tutsi refugees in 1994 followed this norm since the return was a product of the peace wrought, not through a peace agreement, but by the victory of the RPF (Rwanda Patriotic Front) in Rwanda. The flight of the Hutu into Zaire in 1994 was itself different from the 1959-64 original flight of the Tutsi in at least three respects. The massive exodus of the Hutu in 1994 followed the breach of a peace agreement, the Arusha Accords, by the extremist Hutus who were eventually defeated; flight followed that defeat. In 1959-64, flight also followed the defeat of the ruling Tutsis, but there was no peace accord that had been breached. Secondly, it is well known that if refugees are not

repatriated and satisfactorily integrated, they often metamorphose into refugee warriors, perpetuating a cycle of violence; this happened to the Tutsi refugees of 1959-64.⁴⁹ However, in Zaire from 1994 to 1996, the refugee warriors were warriors first and became refugees second when the defeated army and militias fled across the Rwandese border. Thirdly, in 1959-64, the international community ignored the Tutsi exodus. In 1994-96, the international community did not respond effectively to the genocide itself. But when the genocide was virtually over, and the genocidists, along with hundreds of other innocents, fled Rwanda, the humanitarian intervention of the international community was certainly swift and relatively effective. That humanitarian assistance backed by an international force, however, was not a sign of moral virtue, but one of failure. It signified opting to provide humanitarian assistance when expatriots from the donor countries were involved, but failure to intervene to protect hundreds of thousands of lives from genocidal massacres in Rwanda when western aid workers were not around. Nevertheless, the eventual repatriation of the Hutu from Zaire conformed to the norm — it followed a military defeat, that of the militant extremist Hutu by the rebels in Zaire — and was unanticipated, sudden, and spontaneous.

Intervention in Rwanda appeared at first to involve some risk, though that risk turned out to be virtually nil. This low risk had been signalled by the non-resistance to the French *Operation Turquoise*, but perhaps only because the French never provided a significant threat to the genocidists and did not venture into the countryside to prevent the killings there. In fact, many interpreted the French intervention as a cover to allow the genocidists to escape.⁵⁰ In refugee camps, the soldiers provided the infrastructure support for relief and protection for the aid workers who were at very little risk. Thus, a humanitarian intervention restricted to a humanitarian mission, seemed without risk. Alternatively, any

action against the well-equipped and apparently well-trained ex-FAR and the interahamwe seemed to be very risky. On the one hand, this proved to be a gross overestimation given the lack of real resistance offered by the Hutu armed extremists to the rebels. On the other hand, there was a gross underestimation of the fire-power in the hands of the militants given the array of arms⁵¹ and the number of soldiers⁵² under the control of the militants.

The most unique feature, however, of the Rwandese refugee plight in Zaire was that the attacks on the camps were the catalyst for the spontaneous return of over 600,000 refugees from Zaire to Rwanda, a spontaneous return that relieved the pressure for intervention. Nevertheless, there were still at least 150,000 to 200,000 extremists, their families and genuine refugees who fled westward, though, as I indicated earlier, some estimates went much higher. Whether there were more or less, whether or not there were phantom refugees as a product of erroneous and deliberately exaggerated counts in the first place, the fate of the remaining refugees remained a problem, but one that the dissolved effort in humanitarian intervention was unable to tackle. Further, this group that fled would pose a continuing security problem both for Zaire as well as for Rwanda.

Whether dealing with security in the camps financed by the international community, repatriation as the primary goal of the international community, arms flows into the area, or the development of military armies among the refugees and in control of them, the international community ends up appearing as a paper tiger with very little control over the direction or pace of events.

VII. Fundamental Ethical Clashes and Moral Consistency

Underpinning the institutional cultural clashes and incoherence, though not reducible to them, and overlaying the apparent impotence within the international community, 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 *refouled* or returned under pressure, though sometimes the refugees are induced, pressured or even forced to stay as refugees by coercive force. 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 a 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 destined to return is genuinely interested in taking them back. Thus, both the right to return **and** not to return clash with the need to find a permanent solution for the refugees.⁵³

This clash between rights and needs overlaps with a conflict between refugee rights and the principle of a state authority as the primary responsible agent for protecting its citizens or strangers on the territory of that state. 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 was the case by the Tanzanian authorities following the massive return of the Hutu refugees from Zaire to Rwanda. An inverse situation is prevalent in Israel⁵⁴ and Republika Srpska; state sovereignty and a commitment to the primary national group may stand in the way of both return and an acknowledgement of refugee rights of return. In Macedonia, the right of a small country to protect itself from an overwhelming influx of refugees who could claim a right of asylum resulted in

another dimension of the conflict. Fortunately, this one was overcome when a third principle, that of burden sharing was brought into play and many of the refugees were relocated from Macedonia. How do you rank the state legitimate interest in security against international laws and conventions that are based on universal moral benchmarks like human rights and the rights of individuals to live in a state that 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 and the refugees. Some of these organizations have even actively advocated humanitarian intervention.

Protection is, thus, the primary issue - protection from whom, by whom, against what threat and to what end.⁵⁵ The issue of protection extends to times of flight, within camps and on return. Protection extends to local inhabitants as well as refugees.⁵⁶ The rights of refugees are not the only problem. The duty to disarm refugee warriors is a very different obligation. Further, the problem of human rights protection is greatly complicated by refugee flows.⁵⁷ Kumar argued that a human rights field operation (HRFOR - Human Rights Field Operation in Rwanda) should be incorporated into a regional approach that would focus on: (a) disarming refugee warriors; (b) separating those who are suspected of having committed violations of international humanitarian law from those who are not suspected; (c) providing an environment conducive to repatriation for refugees who want to return; and (d) policing borders to deter violent incursions. (Kumar, Krishna, ed. (1997), 77-78) UNHCR 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.⁵⁸

The above suggests that the more basic problem is not the competing interest of states, or the conflict between state interests and individual human or refugee rights, or the failure of existing international regimes to be effective, or even the failure to observe international laws let alone very lofty international norms. These competing ethical grounds are seen to be at the root of the problem, but are not. They appear to be the problem only of ethics is presumed to be the implementation of abstract principles. For such a conception demands that we have a moral framework that can overarch the differences between different ethical theories. But there exists not overarching principle that can overcomes the differences between those who espouse different fundamental premises for determining international policy. Classical realists believe that the prime determinants of international affairs are self interest and power. Liberal international regime realists agree, but believe that international agreements, treaties and institutions can mitigate these interest and power conflicts. Grotians hold international law to be the final arbiter in international affairs. While moralists desire that international action be rooted primarily in a concern for human rights.

If the demand for coherence can only be established by constructing an overarching ethical theory that can resolve these differences, then we lack the necessary foundation for constructing effective actions. Proposals for humanitarian intervention are simply products and compromises for these competing perspectives. The result is that efforts in developing a consistent ethical basis for dealing with international humanitarian situations, and, in particular, in providing the normative grounds for humanitarian intervention which can be effective in mitigating disasters, flounder on the absence of a solid ethical base. We have division rather than a consistent foundation for behaviour.

But if we take the position that all of these elements – self interest and power, international regimes and international laws as well as international moral principles – all play a role. The most unethical position is to allow ourselves to be frozen into inaction or relegated to repeating ineffective actions. What is required is judgement that takes these competing principles into account in assessing what the context of a situation permits and dictates.

VIII. Context Related to Domains or Levels of Decision-Making

How do we then deal with the issue that different countries see situations differently? Further, these various states remain the prime decision-makers in international affairs whatever the degree of erosion in sovereign national power by globalization. What will fly in Preoria very much depends on what other crises are rampaging throughout the world and what the media decides to cover. Is the conflict in a place with enormous potential wealth — the Congo/Zaire — or is it in a strategic centre?

The context alone makes it impossible to deduce what can and should be done from abstract moral principles. The context is not only regional in the area in which the crisis is taking place, but the context of the countries proposing to intervene is also relevant. Further there is a temporal context. What can and should be done in a globalized economic and communications world is very different from what matters when distances were long and regions were totally remote.

There is another time context that is crucial. A past crisis can cast a long shadow over a current one. Somalia shadowed the Rwanda decisions. The failures in Rwanda made everyone eager to act and not allow a recurrence. Nevertheless, decision-makers were still unable to overcome the long shadow

of Vietnam, of Afghanistan, and, more generally, the Cold War. Frozen into impotence, the Zaire crisis was allowed to develop without any intervention. One of the most important contextual factors is the unwillingness of interveners to act except if there is a crisis.

This simply means that ethical judgements require a sophisticated analysis of the *full* context, one that takes various temporal as well as spatial factors into account in attempting to make decisions that take various ethical norms into account. Ethics is a matter of making informed decisions when there are competing norms and not refusing to make those decisions or making foolish and ineffective ones because of these competing norms and the complexity of the factors involved.

In the case of Canada, it demands that Canadians recognize both the strengths and weaknesses bring to the international arena and complex emergencies. Along with the Scandinavians, Canada generally bring an international and humanitarian focus. In doing so, Canada pays too little attention to competing interests and powers and begins to resemble an NGO. International initiatives seem to be propelled by moral considerations without sufficient attention to practicalities and the realities of competing interests. The latter do not mean that Canada should back off from its internationalism. Quite the reverse. That internationalism demands that Canada become more effective in context analysis and in the difficult judgements necessary to take competing moral perspectives into account.

IX. Metaethical Principles for Ethical Judgements

The above analysis does not mean that there are no ethical guidelines to make such decisions just because there are not overarching ethical norms from which decisions can be deduced. In fact, part of the root of the problem is an insistence that goes back to the Greeks. Ethics must be principled.

Ethics concerns claims derived from ethical first principles akin to geometry. This is erroneous *and unethical*. Ethics is a judgmental field in which reason weighs competing ethical norms in the context of a given situation to derive a reasoned judgement.

My own proposal is based on five metaethical *complementary second order norms*, what I call the 5 c's. They are correspondence, coherence, control, consistency, and context. The first principle states that ethical determinations require a base in reality and a correspondence to real facts. That makes the numbers of missing refugees in Zaire at the end of 1996 a critical factor, for there is an enormous difference over what is to be done if the figure of those missing is over 600,000 or if the figure is 20,000. I can provide numerous instances of such discrepancies in humanitarian accounting which impact on ethical decisions and judgements. As another example, OXFAM, following the Israeli invasion of Lebanon in 1982, published full page ads declaring that 600,000 were made homeless by the war in order to raise money to assist the victims. The Israelis published a figure of 19,000. The first figure was based on a misconstrual of a Red Cross cable that stated that 600,000 people were *affected* by the invasion. The Israeli figure was too low since there was a calculation error of 10,000 in the report arriving at the figure and some of the areas where the homeless took refuge had been missed in the count. Thus, even though the count had been prepared by a very reputable Israeli scholar, the real figure of the homeless in south Lebanon (excluding Beirut which had not yet been attacked) was slightly more than double the Israeli figure, namely 40,000. The latter figure was provided by the Centre for Refugee Studies at York University following an audit of all counts and used by all sides in the conflict.⁵⁹ Of course, number counts are only the most basic of facts, and there are numerous other factual issues. But the determination of factual issues is crucial in making ethical judgements.

The second metaethical principle is coherence. The general argument is that incoherence in interactional action contributes to the harm rather than mitigates it. Therefore, it is incumbent upon all parties to make their best efforts to arrive at a coherent policy in attacking the issue. Just as in an operating room, so in international interventions, you cannot have each of the parties pursuing different goals and following different procedures. The chaos is increased rather than being replaced by order. And order is critical in dealing with emergencies.

Now one must also recognize that striving for correspondence and working for coherence are often at odds, but much of the incoherence is based on discrepancies about facts which can be sorted out by a number of basic techniques such as the use of independent auditors. That is why setting up institutional mechanisms to sort out the factual issues is a crucial necessary precondition but not a sufficient condition for developing coherent policies among divergent actors.

The third principle is control. The operation must lead to enhanced predictability in outcomes even if initial efforts are based on relatively low effectiveness. To continue the medical analogy, heart transplant operations may initially contribute little to the decline in mortality rates from heart disease, but if repeating the process yields improved outcomes each time, then following and developing the procedure is worthwhile. Thus, different forms of intervention in complex emergencies must be evaluated repeatedly, and not just in one instance, to monitor effectiveness in predicting and controlling outcomes. At the same time, it is important to recognize how relatively little control outside countries have in an actual situation. Further, interveners do not even control their own ethical agendas but seem to act as expressions of one agenda rather than another. Yet continuity in upholding ethical principles seem critical if these principles are to be effective.

The principle of ethical continuity seems to be in direct contrast to principles based on control and predictability. For the latter encourages innovation and experimentation to achieve increased control. The former reinforces conservative practices and argues that old patterns and practices should be continued unless reasons can be shown for their being ineffective and counter-productive. Thus, when the UN Human Rights Commission began visiting prisoners charged with genocide in Rwanda in 1994, using untried methods for assessing prisoner's rights, the result led to the decision to cancel all visitation privileges by the international community. The International Red Cross was right to be furious at the amateur bungling of the Human Rights Commission whose processes, which took no account of the ICRC lessons learned in over a century of work in such circumstances, ended up leading to the temporary cancellation of their own access. This does not mean that all past practices must be preserved. It only means that new practices be treated as experimental, carried out in a context of experimentation, and incorporated only when it can be established that they are more effective and humanitarian than other alternatives. In all cases, judgements must be made, and some second order guidelines must be developed to make such judgements in a reasonable manner.

Finally, there is the principle of contextualization — that is, there can be no judgement derived from a single principle. All ethical judgements are the result of reconciling competing principles in the context of a particular situation. The most important implication is that ethical actions cannot be derived from single principles, whether those principles be human rights, rights to refugee repatriation or protection, or any other single principle. Rather, competing ethical principles are weighed against one another within a context of second order procedural norms that I suggest be based on the five c's described above.

Endnotes

¹ Two different drafts of this paper were originally presented. The first was at the Canadian Defence and Security Workshop, Centre for International and Security Studies, York University, in the Fall of 1997. The second was at the Congress of the Social Sciences and Humanities, Canadian Society for the Study of Practical Ethics, 30 May to 1 June, University of Ottawa. I am grateful to the comments received at these two venues that contributed to this very different final version.

² Adelman, Howard with David Cox (1994) 'Overseas Refugee Policy,' in *Immigration and Refugee Policy: Australia and Canada Compared* (2 volumes), eds. Howard Adelman, Lois Foster, Allan Borowski and Meyer Burstein, Melbourne: University of Melbourne Press, 255-282; Adelman, Howard (1996c) 'The Right of Repatriation — Canadian Refugee Policy: The Case of Rwanda,' *International Migration Review*, Spring Vol. 30, Special issue, *Ethics, Migration, and Global Stewardship*, 289-309.

³ Complex emergencies are sometimes defined in terms of the complexity of the crisis because ethnic conflicts, refugees, economic, political and military factors, are all present. Complex emergencies are also defined in terms of the complexity of the response; many actors are involved — local states and larger powers, international agencies and NGOs. The latter may include humanitarian as well as human rights and development aid organizations. Further, the various actors are involved in many ways — diplomatically, providing economic aid, volunteering observers and as peacekeepers, etc. This case is complex in all of the above senses. The crisis was complex. All the various classes of outside actor were

involved. And all were involved in a variety of ways. (Cf. Weiss, Thomas G. and Cindy Collins (1996) *Humanitarian Challenges and Intervention: World Politics and the Dilemmas of Help*, Boulder: Westview Press.)

⁴ For purposes of brevity, we have omitted an overview of ethical approaches in international relations. For an overview and broader compass in examining the different theoretical traditions of international ethics, see Terry Nardin and David R. Mapel (1992). *Traditions of International Ethics*, Cambridge: Cambridge University Press.

⁵ For a more detailed argument for this choice, cf. Adelman, Howard and Dr. Abbas H. Gnamo and Dr. Shally B. Gachuruzi (1997) *A Framework for Conflict Resolution: Peacebuilding and National Reconciliation in the Great Lakes Region of Africa* (Zaire, Rwanda and Burundi), Toronto: YCISS, York University.

⁶ This was also true of the study of the Rwanda intervention. Cf. Adelman, Howard (1997c) 'The Ethics *Local Sovereignty and International Responsibility*, eds. Michael Keren and Christian Tomuschat, Berlin: Humboldt University.

⁷ Estimates vary from 500,000 to 800,000 or even 1,000,000 Tutsi aside from the moderate Hutu who had been killed. Most recent figures have settled on the low end of that range. For example, Alan J. Kuperman ("Rwanda in Retrospect," *Foreign Affairs*, January/February 2000, 79:1, p. 101) argues that only 500,000 were killed. Alison des Forges (*Leave None To Tell The Story: Genocide in Rwanda*, New York: Human Rights Watch, 1999, p. 15) has downsized her earlier estimates to 507,000.

⁸ UNHCR (1995) *The State of the World's Refugees: In Search of Solutions*, Oxford: Oxford University Press, p. 32.

⁹ Adelman, Howard (1998f) 'Early Warning and Humanitarian Intervention: Zaire — March to

¹⁰ In Zaire, militants of the same ethnic group as the genuine refugees controlled the camps from within and helped prevent repatriation, but refugee repatriation was upheld as the prime goal for solving the refugee situation. (Allen, Tim and Hubert Morsink eds. (1994) *When Refugees Go Home: African Experiences*, Geneva: UNRISD)

¹¹ 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 & 5). Art.III deals in its entirety with "Prohibition of Subversive Activities", prohibiting refugees from engaging in subversive activities against any member state of OAU (III.1). The Article requires that the host states undertake to "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 neighbouring states or any other state (Art.III5). The African Charter on Human and People's Rights states unambiguously that, "territories [of signatory states] shall not be used as bases for subversive or terrorist activities" against another party. (Art.23(2)b)

¹² This concern with benefiting the other side was heightened by the general suspicion of the international community. After all, the same international community had failed to stop or even mitigate the genocide, and had failed to do anything about the extremists who controlled the camps. Since the rebels, and more importantly, their backers in Rwanda and Uganda, had no reason to trust the international community to act with dispatch and effectiveness, there was little incentive for the local states to co-operate with the humanitarian intervention force. They concluded that their own position would be made worse and even jeopardised by the international initiative.

¹³ Signatories to the 1948 Genocide Convention have the legal right and the *moral* obligation under international law to investigate and to take measures to halt genocide and punish the perpetrators.

¹⁴ PDD 25 was a US Presidential Directive promulgated in May of 1994 at the beginning of the genocide in Rwanda and in the aftermath of the Somalia fiasco to severely restrict the use of American military forces in humanitarian interventions.

¹⁵ Schraeder, Peter J. (1994) *United States Foreign Policy Toward Africa: Incrementalism, Crisis and Change*, Cambridge: Cambridge University Press; Mandelbaum, Michael (1994) 'The Reluctance *Foreign Affairs* 94, Summer.

¹⁶ Greg Philo compiled the number of refugees reported as returning and as missing on British broadcasts between the 15th and 19th of November. ('The Zaire Rebellion and the British Media: An analysis of the reporting of the Zaire crisis in November 1996 and 1997,' Glasgow Media Group, Background paper to the 'Dispatches from Disaster Zones' Conference, London, 28 May 1998) The numbers of returnees in 23 different reports were reasonably consistent in spite of some significant

variations, generally using a figure of 400,000 to 500,000. However, the numbers said to be missing were all over the map varying from 100,000 to 800,000.

‘still hundreds of thousands missing’	ITN <i>Channel Four</i> News	(15.11.96);
‘700,000 people at least missing (aid worker)	<i>News at Ten</i>	(15.11.96);
‘Another 800,000 out there (UN)’	BBC2 <i>Newsnight</i>	(15.11.96);
‘100,000 starving refugees fled’	<i>The Mirror</i>	(16.11.96);
‘400,000’	ITN 2045	(16.11.96);
‘About 180,000 have fled in the opposite direction’	BBC1 2125	(17.11.96);
‘Another 500,000 to come’	<i>The Mirror</i>	(19.11.96).

¹⁷ Lord Eric Avebury, Vice Chair, Parliamentary Human Rights Group, House of Lords letter to the editor *The Genocide Forum* 4:7 February 1998 (p. 3) argued that 281,000 refugees were missing. Henry Huttenbach, the editor of the same newsletter in which Lord Avebury’s note appeared, argued that, ‘unless it can be *proven otherwise* that less than the 50% of the 685,000 refugees actually came back to Rwanda, it is safe to add at least another 340,000 to the 281,000 still unaccounted for making a total of 625,000 “lost” Hutus.’ ‘The original claim published in *TGF* was that 670,000 Hutu refugees may have been killed or forced to die of exposure.’ (*The Genocide Forum* 4:7 February 1998, 3) This deformed use of mathematical reasoning was presumably intended to establish some sort of moral equivalence between the crisis that struck the Hutu refugees in Zaire and the genocide in Rwanda.

¹⁸ US Committee for Refugees, ‘How many refugees are in Eastern Zaire? Why estimates vary widely,’ press release, 26 November 1996. The NGO community claimed that the US, for its own political purposes, had deliberately understated the figures. Nick Stockton of OXFAM, UK labelled the press

release as part of ‘Operation Restore Silence’(February 1997) and claimed that there was a concerted effort to ‘air-brush’ the allegedly missing refugees out of international consciousness.

¹⁹ Cf. Study 3 of the Rwanda Evaluation, *Humanitarian Aid and its Effects*, Copenhagen: DANIDA, 1996, p. 106. See also clause 17 of the UNHCR response to the Evaluation (EC/46/SC/CRP.28, p. 4.

²⁰ Even President Pasteur Bizimungu of Rwanda, in September of 1996, referred to 1.1 million Rwandan refugees in Zaire (Christian Jennings, Reuters, 10 September 1996) and failed to distinguish between genuine refugees and armed militants.

²¹ Most Hutu refugees were concentrated in Eastern Zaire. After 100,000-200,000 spontaneously repatriated within the first two months of their arrival in Zaire before the ex-FAR and *interahamwe* established full control over the camps, there were an estimated 850,000 refugees in Goma, 332,000 in Bukavu and 62,000 in Uvira. The official refugee population in Zaire was reported to be 1,194,000 after taking into account the approximately 50,000 that died in the cholera outbreak in Goma. 140,000 of these were Hutus from Burundi. Therefore, there were said to be 1,044,000 Rwandese Hutu refugees in Zaire. Even these figures were said to be exaggerated since the militants in the camps prevented a proper census, and it is generally believed that these figures were exaggerated by at least 10% and more likely at a minimum of 15%.

²² Of the 140,000 Burundians in the total, 103,000 were repatriated. 20,000 remained in the DRC. Either 17,000 went missing or the original number of 140,000 had been exaggerated by about 12%.

²³ . This figure was about 55,000 higher than the conclusions of Study 3 of the Rwanda Evaluation (*Humanitarian Aid and its Effects*, Copenhagen: DANIDA, 1996, p. 106.) which determined that

there were 170,000 in Ngara and 740,000 in Goma for a total of 910,000. These figures might be able to be reconciled since an estimated 50,000 individuals died in Goma in 1994 as a result of cholera. Further, tens of thousands of refugees repatriated to Rwanda before the militants gained full control of the camps and prevented further repatriations.

²⁴ They constituted the bulk of the refugee population who fled west and relocated in Tingi Tingi, near Kisingani, after the refugee camps on the border of Rwanda were destroyed by the ADFL attack.

²⁵ Earlier, Canadians were totally confused about the refugee figures. Once, the Canadian Department of Defence estimated that there were about 200,000+ refugees fleeing west (these were most likely the militants and their families). At the same time, the Canadian Foreign Minister was telling the House of Commons on the 19th of November with complete confidence that there were 500,000 refugees still in Zaire. The very same day the government interdepartmental task force wrote a memo stating: “The refugee situation in eastern Zaire remains unclear. Reports provided by the international relief agencies on the ground, as well as discussions conducted by Canadian officials and allied countries, are often conflicting. The fact of the matter is that we do not know exactly the number, the location or the needs of the refugees and displaced persons in that country.”

²⁶ Both American and Canadian estimates claim an original total camp population of only 900,000 after the original 100,000 to 200,000 spontaneous repatriation. If 15,000 were forced across the border in August of 1996, if 640,000 Rwandan refugees spontaneously returned in November, if 140,000 of the original group of refugees were from Burundi, if approximately 180,000 refugee warriors and their families fled eastward, then this figure may be too low. In any case, no significant number of missing

refugees existed when the camps were evacuated.

²⁷ Canadians would soon conclude that they had been misled by the figures of the humanitarian agencies. Canadian military analysts did not get their figures from the US but by directly downloading the same US and UK reconnaissance data and undertaking their own analysis. What were their conclusions? The presentation to the MNF Eastern Zaire Group Meeting of 13 December 1996 in Uganda reported that the fighting had sent ‘approximately 200,000 refugees into the mountains to the west. The group initially camped in the area of Numbi where I observed them from the air on 21 Nov 96 ... By 28 Nov a large number of these refugees had detached themselves from the main group and gathered in Minova on the western edge of lake Kivu. Approximately 30,000 refugees would return to Rwanda in the following two days. The remaining refugees in the Numbi area continued to move west from Numbi to the Lowa Valley.’ The report continued and stated definitively that the rebels did not come into contact with the refugees who split into smaller groups and fled into the forest where reconnaissance aircraft were only able to track 20% of them. The rest had ‘disappeared.’ The report also concluded that ‘there were no signs of force used to persuade the refugees to move west.’

²⁸ UN Secretary-General’s report to the Security Council on the Implementation of Resolution 1078 (1996), 20 November 1996, paragraph 35.

²⁹ Cf., for example, *Montreal Gazette*, 18 November 1996. If the UN SG were correct, since he had already discounted the Burundian refugees, that would have meant there were 1.1 million Rwandan refugees in Zaire alone before the 1996 war started, except that in the same SG report, paragraph 25 referred to only 400,000 returnees. The inconsistency in the SG’s use of figures is evident in paragraph

24a when he stated that, ‘While hundreds of thousands of refugees have started to return to Rwanda, an approximately equal number are still scattered in eastern Zaire without access to help from the international community.’ In diplomatic mathematics, 600,000 remaining and 400,000 repatriated become approximately equal.

³⁰ K, Channel 4 1900-1950 (21.11.96): ‘The UNHCR has used satellite technology and reconnaissance planes to locate up to 700,000 Rwandan refugees, missing in Eastern Zaire. The Rwandan government had claimed that most of the refugees had returned home. But the UNHCR says finding the missing people shows that international help is still needed.’ (officials warn, there are a third of a million Rwandans still displaced in Zaire, trapped in a civil war and being abused by all sides.’ ITN 2200-2230 29.4.97 (Philo 1998, 19)

³¹ Report of the Secretary-General of the United Nations, clause 10 (p. 5), 1 January 1997, “The Implementation of Resolution 1080” which concerned the launching of the Multinational Neutral Force (MNF) into Zaire led by the Canadians.

³² Memorandum, General Maurice Baril, 3 December, 1996.

³³ Reducing the debate to its simplest and one on which most would agree, the debate resolved around two different calculations. If one starts with 1.2 million refugees and then deducts three amounts, the Burundian refugees, the *genocidaires* and their families and then the number of returnees, then there were still 150,000 to 215,000 missing refugees. This would be consistent with the MSF 16 May 1997 report that there were 340,000 Hutu *refugees* (my italics) dispersed in the Zairian forests.

1,200,000
- 140,000 Burundians

- 100,000 to 260,000 *genocidaires*

-646000 returnees

314,000 to 154,000 missing refugees including refugee warriors

³⁴ Australian MNF Assessment Report, 'Refugees in Zaire,' 10 December 1996.

³⁵ Astri Suhrke coined the phrase 'refugee warriors' in the now classic volume by Ari Zolberg et al (1989). Strictly speaking, the phrase 'refugee warrior' is a misnomer. By international and OAU law, a refugee by definition cannot resort to violence. (Cf. Melander 1986, Henkin 1991, Goodwin-Gill 1996 and Carlier 1997) According to Organization of African Unity (OAU) law, refugees are not permitted to exercise their 'right of return' through armed force. More generally, the Charter of the Organization of African Unity expresses 'unreserved condemnation' for subversive activities on the part of neighbouring 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) In law, a person may either be a refugee or a warrior, but he or she cannot be both. Although the phrase 'refugee warrior' is used, refugee warriors are not in fact or in law refugees. Therefore, the number of refugees versus warriors in the refugee camps in Zaire need to be sorted out because the numbers in each group will be critical to understanding the situation in Zaire as it developed.

³⁶ If the numbers of refugees that were killed had been reasonably documented, those figures could be used as another source to estimate the original number of refugees in Zaire. Unfortunately, this has not been the case. The ICHRDD and ASADHO report of June 1998, which was written on the basis of synthesizing all other documents and reports, has no reliable basis using its own numbers. [following comments omitted] Thus, when 15,000 of refugees who survived and went onto Tingi Tingi after fleeing

Walikali are estimated as having died (presumably because no one knew what happened to them) but where no eyewitnesses of killings were cited, I did not include these figures.

³⁷ The International Centre for Human Rights and Democratic Development (ICHRDD) and L'Association Africaine pour la Défense des Droits de l'Homme en République Démocratique du Congo, *International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the Democratic Republic of Congo (Former Zaïre) 1996-1997*, Montreal, June 1998. This was not the only report to cite such numbers. MSF in its 16 May 1997 report estimated that there were 190,000 persons who had disappeared. MSF accused the ADFL of a 'deliberate strategy aiming at the elimination of all remaining Rwandese refugees, including women and children.' (16 May 1997) [sentences omitted] Further, the ICHRDD report, while being dogmatic in its summary, waffles considerably in the content of the report. For example, page five refers to 'tens or hundreds of thousands' as having lost their lives. This means the range of the death toll was between 20,000 and 400,000 -- quite a range.

³⁸ Amnesty International, *Democratic Republic of Congo: Deadly alliances in Congo forests*, 3 December 1997, p. 1.

³⁹ My focus, however, is not on whether genocide was intended or committed. Further, based on reports, I find it entirely credible that there were large scale murders, torture, rape, illegal detentions, etc. What I find wanting is how these become blown up to a figure of 200,000 when there is not even the least effort to reconcile counts or take into account contrary evidence and interpretations from reputable parties. My only conclusion is that this figure was a product of the misleading figure of 1.2

million refugees assumed to be in Zaire as well as the failure to track where the fleeing 'refugees' into the interior had gone.

⁴⁰ Brian Atwood made precisely such a proposal at the Rwanda Roundtable in Geneva in June of 1994.

⁴¹ In the visit on 5 November 1996 of Ambassador Raymond Chrétien with Paul Kagame, Vice-President of Rwanda, Kagame made it clear that he would take direct action to deal with the ex-FAR in Zaire if the international community failed to act.

⁴² Winter, Roger (1994) 'Ending Exile: promoting Successful Reintegration of African Refugees and Displaced People,' in Adelman and Sorenson (1994) 159-171.

⁴³ Adelman, Howard (1997d) 'The Failure to Prevent Genocide: The Case of Rwanda,' *Mediterranean Social Sciences Review*, ed. Anthony Spiteri, Foundation for International Studies, Valletta, Malta.

⁴⁴ Donini, Antonio (1995) 'Beyond Neutrality: On the Compatibility of Military Intervention and
The Fletcher Forum, Summer/Fall.

⁴⁵ Akol, Joshua O. (1987) 'Southern Sudanese refugees: their repatriation and resettlement after the
Rogge (1987) 143-157; Kuhlman, Tom 'Organized versus Spontaneous
Settlement of Refugees in Africa,' in Adelman and Sorenson eds.(1994) *African Refugees*, Boulder:
Westview Press 17-142 ;Winter, Roger (1994) 'Ending Exile: Promoting Successful Reintegration of
African Refugees and Displaced People,' in Adelman and Sorenson (1994) 168.

⁴⁶ This was certainly the case after the Arusha Accords were signed on 4 August 1993. While great
detailed plans had been made to return the internally displaced to their homes, particularly by the United

Nations Development Program (UNDP), systematically and carefully, within three weeks of the signing, before UNDP could even launch its operation, over 700,000 refugees simply got up and walked home.

⁴⁷ This was the case with the Palestinians from Kuwait who went to Jordan following the Gulf War.

(Adelman 1997b)

⁴⁸ Richmond, Anthony H. (1994) *Global Apartheid: Refugees, Racism, and the New World Order*, Toronto: Oxford University Press, 215.

⁴⁹ Zolberg, Aristide R., Astri Suhrke and Sergio Aguayo (1989) *Escape from Violence: Conflict and the refugee Crisis in the Developing World*, New York: Oxford University Press; Khiddu-

Makubuya, Edward (1994) 'Voluntary Repatriation by Force: The Case of Rwandan refugees in

Sorenson (1994) 143-158; UNHCR (1995) *The State of the World's*

Refugees: In Search of Solutions, Oxford: Oxford University Press.

⁵⁰ Prunier, Gerard (1995) *The Rwanda Crisis: History of a Genocide*, New York: Columbia University Press.

⁵¹ In documents concerning the army reorganization and revision of the command structure of the ex-FAR, the description of arms included 5 helicopters, 8 APCs (Armoured Personnel Carriers) with 90 mm guns and 9 APCs with 60 mm guns without counting the 2000 mortars and hand held rockets. (Cf. The 48 page report: *RAPPORT DE LA REUNION DU HAUT COMMANDEMENT DES FORCES ARMEES RWANDAISES ET DES MEMBRES DES COMMISSIONS TENUE A GOMA DU 02 AU 08 SEPTEMBRE 1994*.) In addition, a series of bills of lading for military supplies from MHL-Tec Corporation Limited, Ragnal House, Peel Road, Isle-of-Man, indicated the extent of the munitions

supply line going back to the pre-genocide days.

⁵² There were two or three divisions -- 18,000 to 40,000 men under arms. The figure of three divisions in the ex-FAR in Zaire is based on a number of sources. On the other hand, other documents (Project Liberation Rwanda) indicate that there were only two divisions, [figures omitted] for a total manpower of almost 18,000. Further, a document, *Restructuration des Forces Armees Rwandaises* signed by Major General Augustin Bizimungu, Commander of the FAR and stamped Top Secret which lists the order of command, clearly indicates there were only two divisions. I am grateful to Massimo Alberitzi of the Italian newspaper, plain *Corriere Della Sera*, from whom I indirectly obtained many of the documents on the military capacity and armaments of the ex-FAR and interahamwe.

⁵³ Cf. Ferris 1993, Forsythe and Pease 1993, Roberts 1993, *Brown Journal* 1994, Cohen 1995, Hathaway and Dent 1995, Manikas and Kumar 1997.

⁵⁴ Adelman, Howard and John Sorenson, eds. (1994) *African Refugees*, Boulder: Westview Press; and Adelman, Howard (1996d) 'Palestine Refugees, the Right of Return and the Peace Process,' *Economics of Peace in the Middle East*, Bashir Al Khadra, ed., Yarmouk University.

⁵⁵ Koehn, Peter H. (1994) 'Refugee Settlement and Repatriation in Africa: Development Prospects and Sorenson (1994) 97-116.

⁵⁶ For example, in October 1997, 37 Tutsi were killed by Hutu extremists within Rwanda in a transit camp where they were awaiting resettlement to new plots and houses of their own from former Hutu houses that they had occupied.

⁵⁷ Kumar, Krishna, ed. (1997) *Rebuilding Societies After Civil War: Critical Roles for*

International Assistance, (Boulder: Lynne Rienner Publishers) 63.

⁵⁸ UNHCR (1995) *The State of the World's Refugees: In Search of Solutions*, 44.

⁵⁹ Adelman, Howard, 1982, 'Homeless Refugees and Displaced Persons in Southern Lebanon Resulting from the Israeli Invasion of Lebanon,' CRS, York University, Toronto.