

## *PART V: Ethical Dilemmas of Refugee Policy*

### *The Right of Repatriation – Canadian Refugee Policy: The Case of Rwanda*

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This paper examines the principle of the right to repatriation and the Canadian dilemma in applying that principle in dealing with both refugees and the country from which they originally fled, Rwanda. It is particularly concerned with the right of individuals to be a member of a state and with the right to regain membership in a state from which they fled.

One norm – the principle of the right to repatriation – and the Canadian dilemma in applying that principle in dealing with both the refugees and the country from which they originally fled, Rwanda, is the focus of this paper. I pose three questions: was the norm applied and, if so, how; second, if it was not, could it have been; third, if the norm was not applied and could have been, should it have been?

I want to distinguish this paper from studies dealing with refugee rights as an aspect of (or related to) human rights within a domestic jurisdiction – such as the right to nonrefoulement or the freedom of internal movement, or, more broadly, the rights of refugees to health, welfare, and gainful employment in a country of asylum (*see*, for example, Hathaway and Dent, 1995; *see also* Hathaway, 1995). Such studies begin with individual rights and the need of certain individuals for special protection by the international community because an individual lacks rights enforceable against the host state. The concern is with the individual's range of human rights within a political regime as a subject of international law. From that approach, the rights regime is a universal doctrine applicable to all persons whatever their status. A focus on the specific rights of refugees examines the particular status of those persons living in one state because they lack the protection of their home state. In other words, those studies are concerned with the rights of individuals, not only irrespective of their nationality but irrespective of whether they can exercise the rights of their nationality. Those studies begin with the rights of all humans and ask questions about how those rights are protected by a specific state and, in the case of refugees, how their rights are and can be protected by the international community within states where they lack membership.

This essay begins with what I have argued elsewhere is a prior question (*see*, for example, Adelman, n.d., 1994b). It is a question not covered by human rights law and practices. The latter refers to the rights of individuals in

relationship to the state in which they live. I am concerned with the right of individuals to be a member of a state and, more specifically in this essay, with the right to regain membership in a state from which they fled. Within the latter range of studies, this paper is one of a series on the right of repatriation, that is, the right of a refugee to return to his/her original state from which he/she fled and the international norms and policies with respect to that right. Are those norms enforced? Are they enforceable? Can such rights be enforced? Should they be enforced?

This article approaches the problem of the right to repatriation neither from the refugees' viewpoint nor from the perspective of the country of origin but from the perspective of a third country dealing with the refugees, with the country of origin, and with the country of first asylum. Specifically, what norms Canada does use in approaching the issue of repatriation for refugees from Rwanda? More specifically, this study focuses on the Tutsi refugees in Uganda who claimed a right of repatriation to Rwanda and the Canadian policy and norms in dealing with the issue of the right of repatriation for those Tutsi refugees.

Thus, this paper is not about the rights of a refugee within a regime. It deals with the right of a refugee to recover membership in her regime of origin and the policies of a country, such as Canada, towards those rights.

I begin with an outline of Tutsi refugee history and the attempts of those refugees to exercise the right of repatriation to Rwanda. A sketch of my understanding of the right of repatriation in international affairs is then provided, followed by the normative options available to third party states and how that norm is applied by the countries most closely involved with Rwanda. Specifically I then examine Canadian policy with respect to those efforts in comparison to the norms available internationally and applied or ignored by other countries.

Since the Canadian ministries and agencies dealing with the issue of the rights of those refugees have different mandates, different cultural norms, and very different procedures, it is not surprising to find that the norms governing Canadian policy are not uniform. Thus, I will also compare the various norms used by the different ministries and agencies as they affect policy in this case relative to the international norms available and relative to each other.

The six ministries and agencies that I will examine are: the Immigration and Refugee Board (IRB), the Ministry of Citizenship and Immigration Canada (CIC), the Canadian International Development Agency (CIDA), the Department of Foreign Affairs (FA), the Department of Defense (DD), and, finally, the Canadian Center for Human Rights and Democratic Development (CCHRDD). To gather the material for this inquiry, I examined statistical data produced by the IRB, confidential cables, internal policy documents, retrospective analyses, and interviewed a total of 33 persons employed by the various agencies and departments. Before we deal with Canadian policy, we first must

provide the background on the refugees themselves and their history of a search for a permanent country of residence.

### *THE TUTSI REFUGEES FROM RWANDA*

The Banyarwanda consist of a population of over 17 million people who constitute not only the populations of Rwanda and Burundi, but make up sizable minorities in Zaire, Uganda, and Tanzania. Before the recent huge exodus of Hutus from Rwanda following the Rwandan Patriotic Front (RPF) victory over the extremist forces in Rwanda in July of 1994, there were already over 2 million Banyarwanda in the surrounding states of Uganda, Zaire, and Tanzania.

The Banyarwanda speak the same language in all five countries. Nevertheless, even though they have a common culture, speak the same language and share the same religions in roughly the same proportions, there are divisions among the Banyarwanda – specifically between the Tutsis and the Hutus. In both Rwanda and Burundi, Hutus constitute about 85 percent of the population and Tutsis 14 percent, though these percentages vary dramatically, most recently because of refugee flows.

The terms “Hutu” and “Tutsi” designate peoples descended from cultivators and pastoralists respectively, the latter possibly arriving at a later date into Rwanda than the former. But that was many centuries ago. The deeper source of the division lies in the historical fact that the Tutsis used to rule over the Hutus. In Rwanda, one Tutsi clan, the Nyiginya, achieved predominance in central Rwanda and in a few generations expanded their rule to cover the territory of what is now Rwanda. The rulers (both soldiers and administrators) as well as cattle-herders were predominantly Tutsi (14%); the Hutus (85%) were predominantly farmers.

As in the settlement of the West in North America – made famous in the song from *Oklahoma* – a constant theme of twentieth century Rwandan politics (in spite of significant intermarriage and movement between the two groups) was, “Why can’t the farmers and the cowboys just be friends?” The divisions had been reified under first the German and then the Belgian colonial masters who actually gave out identity documents which stipulated that a person was either a Hutu or a Tutsi, thus destroying with one administrative move much of the flexibility that had previously existed with respect to the two designations. These identities were then made into an even deeper part of each group’s history when, approaching independence, the Hutus overthrew the Tutsi ruling class in 1959 in Rwanda, killing an estimated 10,000 and producing the first of several exoduses following large massacres.

The Tutsi refugees formed themselves into *Inyenzi*, literally cockroaches, guerrilla bands who attacked from Burundi, Zaire, Tanzania, and Uganda. On December 21, 1963, 30 years before another turning point in Rwandan

history, following an *Inyenzi* attack from Burundi, another 10,000 Tutsi were killed in popular slaughters, with an additional 20,000 executed by the government as traitors. Another orgy of violence occurred in 1973 in an effort to ethnically cleanse the Catholic seminaries of the Tutsi-dominated clergy and educational establishment until Habyarimana (from Gisenyi in the north) pulled off his coup d'état. Then Hutu-Tutsi relations seemed to calm down. Nevertheless, by the end of the 1980s, the refugee population, almost 30 years after the first flows, stood at 550,000 according to UNHCR figures, and almost 1 million according to Tutsis, with 350,000 in Uganda alone.

In addition to the identity divide between the Hutus and the Tutsis and the existential divide between the Tutsi refugees and those Tutsis who remained in Rwanda, other divisions exist among the Banyarwanda, such as regional rivalries between the groups and clans located in the north and those in the south-central area of Rwanda. Habyarimana was from the north; his 1973 coup was a victory of those from the northwest over the previous Hutu rulers who came from the central region of the country. Since the Hutus and Tutsis are divided into clans and the clans are regionally based, regional and clan rivalries overlap.

The most important division in recent Rwandan (and Burundi) history is none of the above. It is a trifold division between the extremists (whether Hutu or Tutsi) who root their actions in an ideology of ethnic homogeneity to the exclusion of the other, those who base their ideology on a pluralist system in which all citizens of Rwanda (or Burundi) can be equal citizens while retaining and taking pride in their Hutu, Tutsi, or Twa identity, and a third group who believe that the only way to overcome conflict in the area is to "*aufgehoben*" Hutu, Tutsi, and Twa identity into a "larger" national identity, for example Rwandese.

But this is to get ahead of the story. Our focus is on the refugees outside of Rwanda, particularly those in Uganda who resolved to use force as a lever to claim the right to return.

In a new five-year plan announced by President Habyarimana on January 15, 1989, he stated that we "*ont accepté de bonne grâce le verdict de la démocratie.*" The statement also included his policy towards the refugees. He thanked his fraternal states for giving his compatriots the chance to become citizens and contribute to their economic development (only Tanzania had in fact granted full citizenship unequivocally to the Banyarwanda). In that context, he promised a permanent solution to the refugee population of 500,000 to 1 million persons. The permanent solution, however, of the Rwandan government excluded massive repatriation.

*Rwanda ne voudrait pas, ardemment, que tous les réfugiés puissent revenir un jour, mais parce qu'il ne voit pas du tout comment cela pourrait être possible, car les contraintes de notre pays sont devenues telles – l'exiguité territoriale extrême, la précarité de nos ressources s'y ajoutant, sans compter l'extraordinaire croissance démographique nous posant des défis*

*presqu'insurmontables – que, raisonnablement, humainement parlant, il n'est tout simplement pas possible d'imaginer le retour massif de nos réfugiés.*

The return of individual refugees would be considered on humanitarian grounds, but massive return was excluded. In the case of the 350,000 refugees in Uganda, the Rwandan government wanted the permanent solution to be permanent resettlement in Uganda.

The refugees had other ideas. They had helped Museveni overthrow Obote. Key senior officers in the Ugandan army were Tutsis. A new decree permitted them to become citizens. But the citizenship law did nothing to pierce the armor of prejudice directed at the Banyarwanda in Uganda ever since independence. In the 1962 Ugandan Constitution, only an individual born in Uganda prior to October 9, 1962, if one of his/her parents had been born in Uganda could become a citizen. Though a provision of the constitution allowed application for citizenship for such persons within two years, the Banyarwanda were not informed of the provision. Thus, the constitution effectively barred from citizenship not only the Tutsi refugees who had fled Rwanda, but many Banyarwanda who had migrated to Uganda after 1962. Being called Munyarwanda is associated in Uganda with suspicion, prejudice, discrimination, ridicule, hatred, and even persecution.

Under the circumstances, it is not surprising that 95 percent of the Tutsi refugees rejected the offer of citizenship, even though such rejection entailed that they could not own land. Most had become convinced there was no secure future for them in Uganda.

The Rwandan refugees in Uganda and the Habyarimana government were on a collision course. Following a 1988 Tutsi diaspora conference in Washington, D.C., the option of returning by force came more and more into the fore. At the same time, Habyarimana was in serious trouble domestically for the first time. The prices for coffee, the major foreign exchange earner for Rwanda, had crashed on the international market, impoverishing many of the peasants. The World Bank responded by ordering a severe structural adjustment program.<sup>1</sup> In order to strengthen his government, Habyarimana committed himself to multiparty democratization in July of 1990.

To some observers, this economic and political weakness precipitated the war as the Tutsis tried to take advantage of Habyarimana's weakness. For others, Habyarimana's rhetorical opening towards democracy was interpreted as an incentive to invasion since the Tutsis in Uganda were afraid that Habyarimana

<sup>1</sup>Structural adjustment programs, which were endorsed by most countries offering development assistance in the late 1980s, are designed to improve the balance of payments of a country by integrating that country into the international market economy by more extensive reliance on market forces and decreasing the role of the state in the economy, including the reduction of government subsidies and expenditures (*see* Burdette, 1994).

would regain the high moral ground now held by the Tutsis in exile with their platform of national reconciliation and democratization. In fact, the collision course had been set earlier, with resistance to return reinforced by the arrival of Hutu refugees from Burundi, and the determination of the Tutsi refugees to return, by force if necessary, reinforced by the rising criticism within Uganda of Museveni. The criticism stemmed from his allegedly pro-Tutsi policies and the rise in prejudicial behavior against the Banyarwanda in Uganda. Further, the return by force of the refugees to Rwanda would solve an important domestic problem for Museveni.

Did Habyarimana's reopening of the negotiations with the refugees, under UNHCR pressure, serve as a trigger for the October invasion? Alternatively, was the offer too late in coming, with the inertia of the secret planning for an invasion already well underway? Or were the Tutsis suspicious that this was just another Habyarimana stalling tactic? Perhaps the invasion was motivated by all three factors. In any case, the Tutsi refugee army invaded Rwanda on October 1, 1990, precipitating a civil war that lasted almost four years. In the on-and-off war, a military advance would be followed by a minor slaughter of domestic Tutsis and then negotiations, though the slaughters became progressively worse as the war dragged on. With the final breakthrough in negotiations for implementing a new broad-based government on April 5, 1994, an extremist army coup dispatched Habyarimana, murdered the moderate Hutu ministers, resumed the war against the Rwandan Patriotic Front (RPF), and commenced the slaughter of 500,000 to 800,000 Tutsis within Rwanda in an extraordinarily organized genocide. The victory of the Tutsi-led RPF invasion force over the extremists also resulted in the flight into exile of almost 2 million Hutus and the beginnings of a new refugee warrior army on the borders of Rwanda.

This renewal of a new threat from another group of refugee warriors sitting on the borders of a country from which they fled may seem to make it even more imperative that we develop a greater understanding of the responsibilities and obligations of foreign states in dealing with refugees who demand a right of return and, more seriously, resort to the use of force to obtain that right. However, the situation is somewhat different this time since the current government does not deny the refugees a right to return, but it is the refugees who fear returning and the government which promises that, upon their return, everyone will be allowed to live in safety, except those guilty of participating in the genocide. Prosecution would await them.

Nevertheless, we must clarify the right to repatriation and the responsibilities of other countries in dealing with that so-called right, for the Rwandan government may not even formally offer the Hutu refugees the right to return for much longer.

## *THE RIGHT OF REPATRIATION*

The right of repatriation or the right of return refers to the right of an individual to go back to a country from which she fled or was forced to flee. Some argue it also refers to the right of return to a territory from which she fled, even though the country currently governing the territory may not have existed or may not have governed the territory at the time of flight. Though I myself question the latter interpretation of such a right, it is not necessary to go into it in this paper since Rwanda was a state with the same territorial jurisdiction in 1959 and 1962 when the Tutsis first fled Rwanda as that country was gaining independence from Belgian trusteeship. The Hutus gained power by overthrowing the Tutsi monarchy. As far as we are concerned in this paper, the right of repatriation is the right to return to the territory of a state in which the person was already a member.

It should be remembered that, in many states, to be born within the territory and borders of a state does not automatically make one a member. Kuwait ejected the Palestinians following the Gulf war, including Palestinian children born in Kuwait, arguing that those children were not citizens. Again, it is not necessary to go into the issue of a citizenship birthright because the Tutsis that fled Rwanda in 1959 and 1962 were citizens of Rwanda. However, it is somewhat relevant concerning the children who were born in exile.

Do those children enjoy a right of return? And the children's children? Or should they be considered members of the states in which they were born?

Further, the purpose of this paper is not to explore the status or effectiveness of such a right but the policy of other countries, specifically one country, Canada, in acknowledging the claim to such a right and responding to that claim. For our purposes here, it is widely recognized that a country is not permitted to cancel the membership of a citizen born in that country and refuse that person readmittance, though, in fact, the USSR in the past exercised precisely such a policy. So does China currently. Thus, even though the right to return to a state in which one was born and held citizenship is a widely recognized right, it is not one that is universally recognized.

Further, assuming that a right to return is indeed a right, it is not one which is enforceable in law by the international community. It directly conflicts with sovereign rights and the most sacred sovereign right of all, the right of a state to determine its own membership. Assuming the right of return exists, the principle of nonintervention in the domestic affairs of other states means that such a right of return is subordinated to the principle of nonintervention.

However, this is also true of other so-called universal rights. They are generally issues of moral persuasion rather than enforceable rights under international law. So we will not be concerned with the legal unenforceability of such a right of return. Instead we assume that the right is unenforceable in

law, and ask the question – what other norms of behavior do third party countries adopt in responding to claims for a right of return and the resistance of the government of a country to the exercise of such a claim?

In the case of refugees, repatriation of citizens to the country from which they fled or were forced to flee is phrased as one of the three options available for permanently resolving a refugee situation. Further, it is an option to be exercised only voluntarily by the refugee; there could be no forced return. But neither could a country be forced to take back the people who fled even if they wanted to return voluntarily.

This was the case of the Tutsi refugees from Rwanda. The right of repatriation existed as a preferential but not an enforceable norm.

### *FOREIGN POLICY AND THE RIGHT OF REPATRIATION*

If the right of repatriation was not an enforceable right, what options were available to other states in dealing with the state from which they fled or were forced to flee? What options were and are currently available in dealing with the refugees themselves? One option was to adopt a policy of realism and accept the fact that, much as it would be preferable to have the refugees return, there was no way to effect that return. The other two options would have to be explored – either settlement within the country of first asylum or resettlement abroad.

The latter option left open two different possibilities. A country such as Canada could select the refugees who wanted to come to Canada and who had applied to come under one of three rubrics: as normal immigrants; as immigrants under relaxed criteria, the Canadian parlance for humanitarian refugees, which used to be called designated class immigrants and is on the verge of receiving a new title; or as Convention refugees. Secondly, the refugees could select Canada as their target country, somehow manage to reach a port of entry or gain a visitor's visa to Canada, and once there, make a refugee claim under the Geneva Convention. Whether selected by immigration officials or self-selected as refugee claimants within Canada, in either case Canada would be operating within its authority and under its formal jurisdiction.

Although the right to repatriation is not an enforceable right in international law, a foreign country, such as Canada, had other techniques available in addition to the formal authority of solving the issue within the realm of its own jurisdiction by resettling the refugees in Canada. For in addition to an enforceable authority and the authority that fell within its domestic jurisdiction, Canada could use influence. And there were a variety of instruments available to use Canadian influence to protect the refugees.

The most obvious was the diplomatic route available to Canadian Foreign Affairs. The diplomats could either attempt to influence the countries of first



asylum to grant permanent status to the refugees, attempt to influence the Rwandan government to repatriate the refugees, or try a combined effort of the two. Further, once the invasion took place by the Tutsi refugees attempting to force open the issue of their right of return, Canada, through the United Nations or other international bodies, could use its influence, including the option of making available its military for participating in peacekeeping operations, to facilitate a settlement among the disputants.

Other forms of persuasion were available. Canada had a healthy human rights movement, including the quasi-governmental International Centre for Human Rights and Democratic Development (ICHRDD), which could attempt to embarrass the regime in power to induce it to take actions to prevent any further refugees from fleeing and to induce the government to allow refugees to return. Further, ICHRDD could use its material support – a very different form of influence – to help set up organizations in the civil society of Rwanda which could be used to pressure the government to change policies that induced more persons to flee, or to even democratize so that a new democratic regime would permit the reentry of the refugees.

Material influence was also available to the Canadian International Development Agency (CIDA) which was a big donor to Rwandan development. CIDA could use the leverage of its development funds to induce changes in the government more favorable for refugee return or to assist in the actual reintegration of the refugees.

In sum, in the case of an unenforceable right, a third party has available to it the option of using its formal authority, both domestically and abroad, to resettle the refugees permanently within Canada, or, either alternatively or in addition, to use its persuasive and material influence to change the policies of the country to which the refugees want to return or the countries in which they have found temporary asylum.

Note that these are permissive options. With one exception, they are not obligations which third party states must take. States have both necessary positive and negative options as well as a range of permissive options between. Outside states are not obliged to use force to facilitate the return of the refugees, with one important caveat – unless the current situation is a threat to the peace and security of that state. Though Uganda might possibly offer such an argument and qualification to the prohibition against forcible intervention, this option was not available to Canada.

In addition to the negative obligation not to use force to resolve the problem of repatriation, Canada also had a positive obligation under the Geneva Refugee Convention to which Canada was a signatory. Any Tutsi refugee who reached a Canadian port of entry or managed to enter Canada could claim to be a refugee in accordance with the Geneva Convention. Canada had an obligation to consider such a claim fairly and judiciously and to allow the

refugee to stay in Canada if such a claim could be established, provided the person was not a criminal.

However, most of the options available to Canada were permissive ones applying to the use of Canadian influence rather than the use of force or the use of Canadian formal authority within the bounds of international law. When the issue is one primarily of permissive rather than obligatory norms and the instruments available are the tools of persuasion and material influence, this does not mean that such permissive norms are without prescriptions. In addition to norms which encourage and discourage certain activities, there are boundaries to such norms. For example, though Canada is permitted to use its economic assistance program to influence the policy of a country vis á vis encouraging the country to allow a right of repatriation to be exercised, using bribery and corrupt material influence would generally be considered beyond the boundaries of permissive behavior.

What then were the norms that guided the policies of a foreign government such as Canada in dealing with a claimed right of repatriation? What are the permissive norms in using diplomatic and material influence, and what are their boundaries? Is the use of force ever permitted?

### *INTERNATIONAL NORMS IN RESPONDING TO A RIGHT OF REPATRIATION*

The norms governing the behavior of bordering states when there is a large forced exodus are much clearer than the norms governing the behavior of those states when there is an attempt to return. The Geneva Convention obligates those states to allow entry and not to send the refugees back. On the other hand, the norms governing humanitarian intervention permit a state to intervene in the situation producing the forced exodus if that exodus threatens to disrupt the peace and good order in the domestic affairs of that state (*see* Adelman, 1992). When 10 million refugees flowed out of what was then called East Pakistan into India, India intervened in the war to support the local population and defeat Pakistan, allowing the return of the 10 million refugees to what became the independent country of Bangladesh. There were some mild remonstrations towards India at the resort to the use of force against its old rival, but the international community generally understood and to some degree sympathized with the intervention. Neighboring states are obliged to receive the refugees and provide them with at least temporary asylum. They would also appear to have the option of intervention if the exodus is large enough for the state to deem the situation threatening to its own peace and security.

In fact, the international community, though there were a few critics, did not protest the Turkish closure of its border to a large outflow of Kurds from Iraq following the Gulf war and Saddam Hussein redirecting his wrath on the

Kurds in the north. But the acquiescence of the international community to the closing of the border was accompanied by interventions to create an area in the north as a safe haven for the Kurds. Thus, even the right to asylum would appear to have limits determined by assessments of whether the outflow is a threat to peace and security and, further, what other actions can be and are taken to protect the people who are not being permitted to become refugees. However, what about when the flow goes the other way?

The international community seems to be in a quandary. On the one hand, it condemns the resort to force. It is also wary of any conflict which can destabilize a region. On the other hand, refugees who flee a country in which they enjoy citizenship do have a clear and unequivocal right to return. Countries of origin are obliged to allow their nationals the right to be repatriated.<sup>2</sup> On the other hand, states are not to permit invasions of other states from their territories.<sup>3</sup> These norms, clearly, are not always compatible, either in principle or in practice – nor were they in the Rwanda case.

Part of the dilemma in assessing and evaluating the use of force to put the right of return on the negotiating table is the issue of who is using the force and for what purpose. The Tutsi-dominated Rwandan Patriotic Front (RPF)

<sup>2</sup>These norms also include the problem of refugees exercising their “right of return” through armed force in the case of the African refugee convention, which, in that respect, differs from other instruments of international refugee law. The African Charter on Human and People’s Rights (1986) states that “Every individual shall have the right to . . . return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health and morality.” (Art. 12(2)) The same right is affirmed in Article 13 of the Universal Declaration of Human Rights (1948), though not qualified as in the African Charter: “Everyone has the right to leave any country, including his own, and to return to his country.” The relevant clause in the International Covenant on Civil and Political Rights (1966) is similar: “No one shall be arbitrarily deprived of the right to enter his own country.” (Art. 12(4))

<sup>3</sup>These norms also include the problem of refugees exercising their “right of return” through armed force in the case of the African refugee convention which, in that respect, differs from other instruments of international refugee law. 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 (§§ 4 and 5). Article III deals in its entirety with “Prohibition of Subversive Activities,” prohibiting refugees from engaging in subversive activities against any member state of OAU (Art. III.1), and 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” (Art. III.2). To further ensure that these conditions are met, Article II(6) advises that “for reasons of security,” refugees shall settle “at a reasonable distance from the frontier of their country of origin.” These provisions are unique to African regional instruments of international refugee law. More generally, the Charter of the Organization of African Unity expresses “unreserved condemnation” for subversive activities on the part of neighboring states or any other state (Art. III(5)). The African Charter 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).

invaded on October 1, 1995, after they became convinced either that there was no other means available or that the time was ripe given the strength of their base in Uganda, the relative weakness of Habyarimana, and the RPF estimate that Habyarimana was bluffing in offering some repatriation or was not offering repatriation per se. The French and the Zairians provided military support to Habyarimana to stop the invasion. The ostensible rationale was that this was a Ugandan-supported invasion or that it was an insurrection by a dissident group, and the military agreements between the Rwandan government and the respective states had to be invoked. In the name of peace and security in the region, in the name of repelling a foreign invasion, in the name of the stability of a regime, a European power and an African dictatorship resorted to the use of force to assist the government and oppose the use of force as a means of placing the right of return on the negotiating table.

Of course, the right of return was not even part of the discourse for France and Zaire. The resort to the use of force to overthrow a popular government, or even an unpopular government of the majority by a small 'ethnic' minority in exile, was. But the invasion was not considered a foreign invasion by the United Nations which, in the aftermath of Kuwait, might certainly have wanted to appear consistent and, at the very least, denounce foreign aggression. Though Uganda was widely suspected of having supported the invasion, either explicitly or tacitly, the invasion was not one of a foreign country and was not considered to be so.

But if it was a civil war between a Tutsi-led minority and the existing government in power in Rwanda launched by Rwandan refugees from abroad, on what grounds were France and Zaire to rationalize their intervention to save the Habyarimana regime? The only grounds could be power politics; norms would have appeared to be absent from the equation. In fact, norms were used to justify the invasion – the illegitimate resort to force against a regime which had widely been recognized as the legitimate government and, further, one which had chosen to spend few of its resources on arms to protect itself.

The government was militarily weak and had not ruled primarily through the use of coercive force. The government was a government ruled by the majority ethnic group, but coming from one faction within that majority in the northwest of the country. Nevertheless, the government was widely recognized as the legitimate government of Rwanda. Finally, it was a government that had set out along the path to economic and political reform, even if hesitatingly and, perhaps, even less than half-heartedly. The resort to the use of force in such circumstances, it could be argued, should be an ultimate and not a first-line weapon.

But it is understandable why the RPF would consider the promise to deal with return to be empty rhetoric. They had been demanding their right to return for 30 years. Nothing, let alone anything effective, had been done by the international

community to advance their cause. In this case, it could be asserted that it is not that might makes right, but when a right is not dealt with, the resort to might will be. At the very least, the resort to force is understandable.

One possible explanation for the failure to condemn the resort to the use of force on either side was the lack of moral clarity on the issue, quite aside from the power politics that may have been the dominant factor in the picture. After all, the international community did not really even debate either the condemnation of the invasion by the RPF or Uganda's suspected role in supporting the invasion (denied by Uganda) or the military support provided by Zaire and the Europeans for going to the aid of the Rwandan government.

The study of the Canadian policy towards the invasion indicates that the picture was far more complex, though the mechanisms of response to the refugees demanding repatriation could be drawn from the same repertoire – the use of force, the use of material or persuasive influence, and the use of the legal authority when the issue fell within its jurisdiction – such as application to immigrate to Canada or the application for asylum by a refugee claimant within Canada.

## *CANADIAN NORMS IN RESPONDING TO THE RIGHT OF REPATRIATION*

### *Legal Norms within Canadian Jurisdiction – The Right to Asylum*

In examining a small sample (12) of cases of refugee claims made by Rwandan refugees in Canada, the cases seem to have been successful based on the contention that the refugees had a well-founded fear of persecution. In none of the cases do we find a discussion of the refugees attempting to exercise a right and that right being rejected, or of the government resisting such an exercise. The only issue was whether the refugees were at risk within Rwanda or in their country of asylum.

I did not look at any cases in the 1980s or ascertain if there were any, so the invasion, the subsequent war, and the reprisals meted out on Tutsi civilians undoubtedly had a great bearing on the determination of the refugee claim. My interest, however, was whether the issue of a right of return (from the refugee insisting on such a right and the state denying such a right) had any bearing on the decision. I could find no evidence that it did.

What was taken into account was whether, if they did return, they could have felt secure. I gained access to documents from files of Rwandan refugees who either applied to immigrate as humanitarian refugees or, in one case, to sponsor his wife once the refugee claimant gained Convention refugee status. The right of repatriation (as distinct from the ability to repatriate) or the right of a state to determine absolutely who could and who could not return was not raised as an issue. In two of the cases, the children were born in exile. In one, the woman was the wife of a Burundi citizen and had been employed for

five years in a prestigious Jesuit high school. In all three cases, the applications were rejected. In none was the fact that they were unable to repatriate taken into consideration in the first interviews.

For example, in the case of the school teacher, she was considered to have successfully settled in Burundi because of the above-mentioned factors. Further, the dangers in Burundi were also dismissed as irrelevant in determining the case in question. However, in the second interview of the school teacher, the questioning/evaluation took place at the end of July of 1994, after the RPF had defeated the extremist Rwandan government that had pulled off the putsch following the downing of the airplane carrying Habyarimana. At that time the application was again rejected, this time because the Tutsi applicant was now determined to be free to repatriate to Rwanda in safety. The freedom to exercise the right of repatriation was used as a grounds for rejecting an applicant, whereas the inability to exercise the right had not been used as a grounds for accepting an applicant. In other words, the relevant norm was not one of rights – either insisted upon but denied or rejected – but one of security – either in the state in which the refugee found herself or in the state from which the refugee had fled.

I examined too few cases to determine whether this was part of general policy or the norm in deliberation on such cases. Nevertheless, one can conclude that the evidence available does not seem to indicate that the inability to exercise the right of repatriation influenced a positive consideration in these cases, but the ability to exercise a right to repatriation was used in a negative determination.

### *Development Aid*

The moral and policy groundwork becomes even more muddled when we examine the policies of various other departments and agencies of government. The Canadian International Development Agency (CIDA) did not even consider repatriation appropriate in the case of Rwanda. CIDA officials argued that Rwanda was the most densely populated country in Africa (with a population growth rate of 3.9 percent per year and a population density of 290 inhabitants per square kilometer). According to the CIDA experts, there was no place to which the refugees could return in a country where 90 percent of the population lives on agricultural land, and arable land was in short supply because of both hilly terrain and swampy lands. The economy was undiversified, with manufacturing almost exclusively devoted to satisfying domestic needs. In other words, although Canadian policy in general preferred the repatriation of refugees to their country of origin as the most favored solution to refugee problems, in the case of Tutsi refugees who had fled Rwanda this was not the Canadian policy in the eyes of CIDA. Canadian development aid policy, without making it explicit, seemed to favor permanent settlement in countries of first asylum, namely Burundi, Zaire, Uganda, and, to a smaller extent, Tanzania.

Part of the explanation for this is the CIDA attachment to the Habyarimana regime. In 1982, Canada initiated a number of bilateral projects beyond the previous aid provided to the National University of Rwanda. As the Canadian overseas development budget expanded and Africa became the most important focus of that development aid, Rwanda was considered the jewel in the crown of countries receiving Canadian aid. During the 1980s, Rwanda was perceived by CIDA officials as incredibly stable with virtually no corruption and a very small portion of its gross national product being expended on its relatively small military force of 5,000 personnel. Rwanda was, in turn, rewarded for its perceived commitment to the rule of law and for delivering results in its partnership with Canada in aid projects by becoming the highest recipient of aid per capita than any other country.

Rwandese exiles accused Canadian policymakers in particular, and the international community in general, of closing their eyes to the persecution of Tutsis in Rwanda under the guise of regional and ethnic balance. For CIDA officials, the anti-Rwandese propaganda efforts were considered to be the product of Tutsis who had been forced out of Rwanda over 20 years ago. Their vitriolic attacks were perceived as lacking any credibility. According to these veteran Rwandan development hands, President Habyarimana, though his image was beginning to tarnish slightly, remained a man dedicated to the well-being of his people, one who could do little wrong in the eyes of those he ruled.

In sum, CIDA was not only unsympathetic to the exercise of the right of repatriation and was unwilling to use its material influence available through development aid to facilitate a program of return, but regarded critics of its policies as agitators and malcontents, the source of and actual cause of the destruction of their years of development work through the instigation of the war. To them, the process of needed reform was underway. To forestall Habyarimana recovering his favored status in the eyes of Rwandans, the Tutsi-led RPF invaded Rwanda from Uganda. Though CIDA policy eventually did make democratization conditional upon the supply of aid, they never did make the repatriation of the refugees a condition of aid. However, CIDA was very active in supplying humanitarian aid in support of the peace effort and, in particular, in support of the return to their homes of the internally displaced following the signing of the Arusha accords on August 6, 1993. This enormously successful endeavor made their absence of effort, indeed negative attitude, on repatriation of external refugees all the more striking.

### *Diplomacy*

External Affairs was far less one-sided than CIDA. After the commencement of the war, Canadian foreign policy towards Rwanda began to shift from an exclusive dependence on foreign aid to initiatives which placed a large stress on

preventive diplomacy. Human rights concerns had become a cornerstone of Canadian policy by the late 1980s, though this cornerstone was subsequently dropped by the Liberal Chretien government shortly after it came to power in 1994. For example, the Canadian ambassador, using Canadian clout as a large donor to Rwanda, became the moving force to gain access to political prisoners for the ICRC, access which had been cut off from October of 1987 to June of 1990. The ambassador spoke directly with the director of prisoners, and Canada was successful in gaining access to detainees by the ICRC.

Did that concern with human rights spill over into defense of the right to repatriation and, if so, when? Brian Mulroney, the Canadian Prime Minister during the beginning of the 1990s until he retired from politics in 1993, wrote President Habyarimana three times after he spoke personally to him at the Francophone Summit in October of 1991. Habyarimana had buttonholed Mulroney at the summit to complain about the Ugandan role in the invasion and to ask Mulroney for more aid. Mulroney, in turn, suggested that Habyarimana had helped bring the problems on himself and his country by refusing to repatriate the refugees from Uganda and Tanzania and for increasing the amount of funds devoted to defense from a very low ratio in 1970 of 2.5 percent of government expenditures to what Mulroney would point out in a subsequent letter in 1992 amounted to over 25 percent of the government budget. Brian Mulroney also accused Habyarimana in his correspondence, in diplomatic language of course, of dragging his feet in the peace negotiations. This type of communication shifted Canadian policy 90 degrees away from its former emphasis only on development to an active role in the 1990s in pressuring the government to facilitate the repatriation of the refugees.

This policy was balanced by one directed at Rwanda's neighbors and Uganda in particular. Canada put pressure on Rwanda's neighbors to play a constructive role, and supported the diplomatic mediating initiatives of the Tanzanians. On December 15, 1991, the Minister of External Affairs also wrote her counterpart in Uganda expressing the Canadian concern with armed incursions into Rwanda being launched from Ugandan soil which Canada felt would destabilize the region. Canada urged Uganda to play a positive and supporting role in the negotiations beginning in Arusha. The Prime Minister, in his third letter to Habyarimana in September of 1992, indicated that he had written Museveni urging that the parties search for a durable solution to both the conflict and the problem of the refugees.

In the meanwhile, other letters were being dispatched to some Canadian allies with an influence in the region (though, interestingly enough, not to France). The Canadian External Affairs Minister on February 11, 1992, wrote her counterpart in Britain, followed by a personal visit, encouraging Britain to dissuade the Ugandans from permitting incursions into Rwanda from Ugandan territory. Canada was aware that Britain had a military attaché in Uganda,



but the British denied any knowledge or reports of Ugandan support for the RPF invasion, a denial the Canadian diplomatic officials suspected of being disingenuous.

At the same time, the External Affairs Minister wrote the President of Nigeria, who then occupied the Presidency of the OAU, asking that the OAU take the lead in reactivating the peace negotiations, not only between the RPF and the Rwandan government, but between Rwanda and Uganda. This was followed by the Canadian Prime Minister's letter to Habyarimana on March 4, 1992.

The Canadian government initiatives on peace in the region, in the human rights area, and in support of democratic institutions were almost always linked to support for the repatriation of the refugees. Further, they were not merely based on diplomatic exchanges. Canada practiced human rights conditionality in its aid policy or, at least, communicated that human rights were a condition of aid.

In fact, the CIDA budget had been seriously cut. Canada had to reduce its development aid going to Rwanda by one third in 1993 and in 1994 because of those cuts and because Canada had decided to focus its aid on fewer countries, and Rwanda was not included in the priority list. However, when Canada communicated the news of the cuts to the government of Rwanda, it stated that the cuts were made because nothing had been done about the appalling human rights violations.

Canada had also initiated a more direct attack on human rights abuses. On December 6, 1991, the External Affairs Minister wrote Ed Broadbent, a former leader of the small opposition federal New Democratic Party, whom Brian Mulroney had appointed in a rare nonpatronage gesture following Broadbent's retirement as leader of that party, to head a new independent but government-financed International Centre for Human Rights and Democratic Development based in Montreal. This letter followed the Francophone summit in October of that year and expressed government concern with the increasing number of human rights violations in Rwanda, as well as the government support of the opening towards democracy in Rwanda that had begun in 1990. In that letter, the Minister suggested that Broadbent visit Rwanda and consider initiating some program in that country.

### *Human Rights*

Broadbent visited Rwanda in November of 1992 as one part of a three pronged effort in Rwanda. As a result of his visit, Broadbent came away with a very different portrait of Habyarimana than that of the CIDA experts on Rwanda and the Rwanda experts in External Affairs; he carried away the impression of a clever, devious, two-timing, double-dealer.

In addition to gathering firsthand evidence itself, the ICHRDD began to provide financial support to the development of indigenous human rights organizations within Rwanda. The indigenous human rights organizations supported by ICHRDD were at the forefront in their criticisms of the Habyarimana regime's abuse of human rights.

The ICHRDD also provided support for an international investigation of human rights abuses in Rwanda. Two Canadians were part of the international team of eleven which traveled to Rwanda in January of 1993 as part of the international team of investigators. The international inquiry into human rights violations in Rwanda in January of 1993, in its press briefing in Brussels upon its return from Rwanda, was the first to name the slaughters within Rwanda as part of an effort at genocide. The Habyarimana government was accused of being the instigator.

However, the human rights organizations had nothing to say about the right of repatriation. They basically confined their observations and activism to concern with the relationship of citizens to the government.

### *Peacekeeping*

The last branch of government to become involved with Rwanda was the Department of Defense. Following a United Nations goodwill mission during the first two weeks of March led by Macaire Pedanou, during which a ceasefire was signed on March 9 that required foreign troops to be withdrawn and an international joint UN/OAU interpositional force to be established, the mission went on to Arusha in Tanzania to observe the opening of the peace talks which had been started on March 16 between the Rwandan government and the RPF. However, the Arusha talks quickly became deadlocked, and France requested that the Secretary General deploy U.N. military observers in an attempt to avert the renewal of hostilities. A Canadian General, Major General Maurice Baril, who was in charge of the Planning Division as well as serving as Military Adviser to Kofi Annan, the Under-Secretary General who ran the Department of Peace-Keeping Operations (DPKO) of the U.N., led a technical mission to both Rwanda and Uganda in the first week of April. The mission recommended that one hundred U.N. military observers be placed on the Ugandan side and, as well, preparations be made to send a larger force to supervise the ceasefire, disarm the combatants, organize and train a merged military/police force, and provide election observers if a peace agreement were signed. The peacekeepers would be involved in observing and, hence, helping prevent reinforcements of refugees for the RPF, but were not involved in the repatriation that was supposed to follow a peace agreement.

The United Nations approached Canada asking that personnel be sent as part of the mission. Canada agreed to provide the leadership for such a mission

if requested. A formal request of precisely that type followed, and Canada asked General Romeo Dallaire, who had accompanied Major General Baril on the technical mission, to assume the leadership of the mission to Rwanda. The Secretary General, on May 20, 1993, requested authorization for a United Nations Military Observer force for Uganda and Rwanda (UNOMUR). In the interim, the OAU sent a Neutral Military Observer Group (NMOG) to Rwanda. Neither had anything to do with refugee repatriation and indirectly would prevent refugee repatriation until there was an agreement that such repatriation proceed by peaceful means and mutual agreement of the conflicting parties.

On June 22, 1993, the U.N. Security Council passed resolution 846 establishing a military observer mission to visit Rwanda. The resolution was a compromise between those who wanted the United Nations to play a larger role and be deployed within Rwanda and countries such as the United States which were not only wary of a larger role for UNOMUR, but were wary about whether the combatants were yet ready for peace. On July 21, Major General Dallaire was chosen to command the mission. Shortly thereafter, on August 4, President Juvenal Habyarimana and Alexis Kanyarengwe, President of the RPF, signed the Arusha accords. Another technical mission, this time led by Dallaire himself, determined that a larger force should be sent with a broader mandate than the previous one, but not nearly as broad as the one requested in the terms of the Arusha accords. Resolution 872 was passed by the U.N. Security Council authorizing UNAMIR, with NMOG and UNOMUR falling under its responsibilities. On October 5, the Security Council established UNAMIR under the command of Dallaire.

The peacekeepers were not given a mandate to disarm civilians and to confiscate arms caches unilaterally as provided in the peace accords. UNAMIR was dispatched to Kigali to assist the Rwandan government in such tasks. After April 6, 1994, the peacekeepers had to stretch their terms of engagement to establish protective zones and even rescue threatened civilians, a peacekeeping role which Canadian foreign policy formally repudiated in 1995 in dealing with Bosnia. The peacekeepers could and would play only a minimal role in protecting civilians, largely Tutsis, in the slaughter that followed April 6, 1993, but played no role in refugee repatriation.

### *Summary*

In sum, using Canadian authority, the federal government seemed to be suffering from a multiple personality disorder. The IRB, in hearing claims for refugee status by Rwandans, did not take into consideration the ability or inability of the refugees to repatriate. The Immigration Department in considering applications from overseas did, that is, when they needed to use the

ability to repatriate as a rationale for rejection. They did not use it as a rationale for acceptance.

CIDA, the Canadian development agency, not only did not utilize the right to repatriation as part of its policy framework, but they regarded the right as set aside by the demographic and economic development facts of Rwanda. This, however, was not the policy of Foreign Affairs or of the Prime Minister, who linked the right of repatriation with democratization and human rights protection as part of the same package on which Canadians attempted to influence the situation in Rwanda. However, when it came to the Canadian organization responsible for promoting human rights and democratization in Rwanda, the concern with the issue of the right of repatriation seems to have been absent. This is also true of the Department of Defense when it became involved in peacekeeping in Rwanda.

### *CONCLUSION*

The right of repatriation is a preferential and not an obligatory norm in international affairs. It is a preferential norm that seems to be ignored or set aside as even a matter of discussion when power politics are at work. Further, in the case of Canada where power politics was not a consideration, the right of repatriation occupied an ambivalent status. Within Canadian jurisdiction and authority, it is not taken into consideration by the refugee board in adjudicating refugee claims. This seems appropriate since the issue at stake is whether the individual has a well-founded fear of persecution, and not where that individual can best be protected from that fear. However, in the case of the immigration department, which seems to stress the ability to repatriate rather than the right to repatriate, this supposedly desirable norm seems to be taken into account only when it is a possibility, and then only as a basis to reject an applicant. In the few cases examined, the inability to exercise the right of repatriation does not seem to have been used as a rationale for acceptance of the applicant.

For those agencies which rely on influence, the Canadian development agency not only did not take the right into consideration but seemed to deliberately set it aside as inapplicable in the demographic and economic context of Rwanda. Canadian foreign policy diplomats took the opposite stance.

However, the right to repatriation was an issue integrated into the diplomatic rhetoric of Canadian foreign policy diplomats dealing with the question. But it was not part of the rhetoric of the agency responsible for promoting human rights and democratic development, however sympathetic they might have been to such a right. Nor was the repatriation made part of the mandate of the Canadian peacekeepers when they became active in Rwanda.

In sum, even as a preferential and unenforceable norm in an international normative framework, within the domestic and foreign policy realms the norm seems only to be applied rhetorically. It seems to be used to exclude people when convenient by the immigration department but not as a rationale for acceptance. It is countermanded by the development agency. And it is ignored by the agency responsible for human rights and democratic development as well as by the peacekeepers when they are active.

Given this reality by a country such as Canada which is not involved in the power politics of the region and has set about to have a policy determined primarily by lofty norms, the right of repatriation, though sometimes referred to for rhetorical effect, does not seem to have been a significant norm guiding Canadian policy.

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