REFUGEES AND PEACEKEEPING
by
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Introduction

Alan James ("History of Peacekeeping: An Analytic Perspective") provided a classification of the variety of types of peacekeeping in terms of the form and function of such efforts. Was the conflict ideological or one of ethnic conflict, or had there been a massive violation of human rights? Was the peacekeeping operation one of enforcement or one of a good will ambassador and counsellor coming between warring parties? Was it a border operation or one which fell within the jurisdiction of a sovereign state? What was the purpose of the peacekeepers if they did operate within the territorial jurisdiction of a state?

If Alan James provided a classificatory analysis that stressed the continuity of peacekeeping operations since WW II, Tom Weiss ("Peacekeeping Since 1985") offered a conceptual analysis and a somewhat different classification that stressed the discontinuity between the increased number of peacekeeping operations of the last few years and those that predated them because his focus was not on the form and function of the peacekeeping operations primarily, but on the local authority granting permission for the peacekeeping initiative. The *Agenda for Peace* does not mention the term, "intervention" once, but the new type of peacekeeping operation in northern Iraq, in Somalia, in Bosnia-Hercegovina, and even in Cambodia have been interventionist operations without the consent of any or all the parties to the conflict. Further, parties to the conflict have been political or ethnic groups which had no constituted authority of any kind.

Phillippe Kirsch ("Legal Issues") complemented Tom Weiss's distinctions by filling in the legal aspects to differentiate classical peacekeeping from the expanded operations that have emerged since 1988 and a new third type which operates in an unprecedented environment where the peacekeepers are no longer present as a result of the formal consent of the conflicting parties and are present within the borders of a state with both a more proactive role and greater risk to the peacekeepers. Hence, the rules of engagement differ. Further, the peacekeepers may be there as much to protect civilians as to keep the warring parties apart. Thus, the peacekeepers may have different functions, such as providing security for humanitarian assistance and safe havens. The prohibition against interference in the domestic affairs of a state has been set aside somewhat in the new peacekeeping mode.

Complementing these theoretical and historical papers have been a series of much more grounded presentations - case studies of Cyprus and the Western Sahara, a detailed analysis of the high cost and multiplication of these new operations and the inadequate resources to pay for them while the UN itself was expanding its responsibilities in the protection of the environment, human rights and the provision of humanitarian relief which have added to the pressures on the infrastructure and personnel of the UN, and the innovative steps that are underway to develop the intelligence, planning, chain of command, decision making and communication capacity of the UN to respond to these new challenges.

In the alternating provision of an intellectual framework for looking at the issues and much more grounded analysis in terms of actual operations, this paper will weigh in on the side of a theoretical analysis. However, instead of providing an analysis and classification of peacekeeping operations in terms of form, function, political theory and legal practice, this paper will attempt to provide an answer to the two questions raised by Ambassador Louis Frechette. In what situations should the international community intervene when there are a multitude of ethnic conflicts and civil wars on this earth, when

intervention no longer follows the classical policy of requiring the agreement of the parties to the conflict and where ethnic groups or ideological enemies may be at each others throats rather than between two different states? Secondly, how should the international community intervene? Or as Colonel John Bremner put both questions so pithily, "Where are we going?" This paper offers to provide a *grundlegung*, a grounding for the new modes of peacekeeping in refugee theory.

A Philosophical Preface-The Kantian Vision

Individuals and groups who carry the onerous burden of peacekeeping and peacemaking deal with the gritty reality of risking lives and protecting lives. Philosophers deal with such esoteric subjects at what it means to live the good life. It is difficult to be concerned about the good life when your job is simply to protect the living.

Immanuel Kant, the great German philosopher who wrote at the end of the eighteenth century, began his essay on *Perpetual Peace* with these remarks: "The practical politician (and I might add, the practical military officer or diplomat) assumes the attitude of looking down with great self-satisfaction on the political theorist as pedant whose empty ideas in no way threaten the security of the state, inasmuch as the state must proceed on empirical principles; so the theorist is allowed to play his game without interference from the worldly-wise statesman." If you think war is dangerous, look at the danger of showing disdain and contempt or even condescension for the realm of theory and playing with apparently empty ideas. Even if the ancient Athenians took the wrong course in executing Socrates just for being a philosopher, they correctly discerned that philosophers are very dangerous and insidious. Look at Immanuel Kant himself. He introduced the idea of envisioning a peaceful world policed by a League of Nations – surely the emptiest and most hair-brained idea the world had heard to that date when the governing principle of the world of international affairs was that each state was merely responsible for its own security. Beware of empty ideas. They have the habit of filling up with action.

Philosophers are doubly insidious. We do not ask you to accept our ideas because they are correct. We simply point out, as Kant did in that seminal paper, that we are simply asking worldly-wise statesmen, diplomats and military officers to act **consistently** in the case of conflict. Beware not only of the Ides of March and the ideas of philosophers, but of requests that you be consistent in your actions.

With that warning label – namely, that philosophers as well as cigarettes are dangerous to your health – let us recall the content of the Kantian vision and the idea that I believe has been singularly responsible in the realm of theory for the role Canadians and others have been increasingly asked to play as peacekeepers for the United Nations.

Kant wrote that, "there must be a league of peace (*foedus pacificum*)." Though this central idea of Kant's is often recalled, the two criteria he set for its implementation may have been forgotten. Kant went on to distinguish a league of peace "from a treaty of peace (*pactum pacis*) by the fact that the latter terminates only one war, while the former seeks to make an end of all wars forever." The long term goal was not just an armistice or even simply a peace treaty between the warring parties, but each peacekeeping operation should be assessed in terms of whether or not it contributes or detracts from the long term goal of terminating war altogether. Kant went onto say that, "This league does not tend to any dominion over the power of the state itself and of other states in league with it." (356) The immediate goal was **not** dominion over the state but merely the maintenance of freedom and security. The inhabitants of the state itself had to remain responsible for reconstructing their civil society and reestablishing the government. I remind you of these two criteria which were set out in the first vision of an international peacekeeping force.

Ambassador Louise Frechette raised the question about guidelines about where to intervene and how to intervene given the multitude of conflicts around the world. Kant provided two guidelines. In the answer to where, you have to ask the question whether the intervention will advance the day when we can live on this earth without war. That is the security criterion. Secondly, with respect to the issue of how, the answer is to establish law and order **not** to be king of the castle, but to establish law and order so that humans in that area are free to establish their own governments and develop their own civil societies. The choice of where to provide peacekeepers must be guided by whether the operation contributes to the long term goal of terminating war altogether. The choice of how to introduce a peacekeeping operation must be guided by the principle that the league of peace must not seek dominion over a society but only the security so that the people of that society are free to choose their own government and construct their own civil society.

The Kantian vision was a product of the historical imagination, a created world, a self-contained entity which serves as an end-in-itself. Kant was not concerned with a possible world in the sense of alternative events and actions that could have happened instead of what actually did happen.[39] Kant was concerned with a possible *future* world. What I now want to show, however sketchily, is how, in the twentieth century, we have witnessed the application and development of this possible idea through four different actual phases in the development of international refugee policy. These are not arbitrary phases, but stages in which "each and every element has a specific role in the interrelated whole."[40]

An Historical Perspective on Refugees-Four Phases of Development

The development of international policy with respect to refugees in the twentieth century can be divided into four phases, roughly separated by the four quartiles of this century. These four phases in which the new international refugee order has developed over the twentieth century to deal with the flow of refugees and provide humanitarian assistance may be summarized as follows:

The Development of an International Response to Refugee Flows

Phase I   Spontaneous Self-Selection and Resettlement

Phase II   Separation
                 Forced Repatriation
                 Protection of Minorities

Interim   Repatriation (of DPs) versus Resettlement (of
                 refugees)

Phase III   Protection for individuals who were outside the borders of their
                 home state and who had a well-founded fear of persecution

                 Humanitarian and settlement assistance for those in refugee-like
                 situations

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[39] Cf. Geoffrey Hawthorn, *Plausible Worlds: Possibility and Understanding in History and the Social Sciences*, Cambridge: Cambridge University Press, 1991.

[40] José C. Bermejo-Barrera, "Explicating the Past," *History and Theory* 32: Nov., 1993, p. 21. Bermeyo-Barrera has written a number of books in Spanish on the philosophy of history – *Psicioánalisis del conocimiento histórico* (Madrid, 1982), *El Final de la Historia Teórica* (Madrid, 1987), *Replanteamiento de la Historia: Eassayos de Historia Teórica II* (Madrid, 1989), and *Fundamentación lógica de la Historia* (Madrid, 1991).

Phase IV   Stemming flows of Refugees

        In the period before and immediately after the Great War, or what later became known as World War I, there was still empty land where refugees could flee to start a new life. The whole earth had not yet been carved up into political entities divided by borders with controls to limit entry and resettlement. Individuals who suffered under one political jurisdiction could flee to and resettle in another jurisdiction. Individuals and families fled to a jurisdiction where they would not be persecuted. It was a period of spontaneous self selection and self-settlement where the opportunities were open and the responsibility for seeking and finding a safe haven rested with the refugees themselves.

        The second phase beganimply facilitated the separation of the two communities. Asia Minor, for example, was expunged of its large Greek population in 1923. (Marrus, pp. 96-109) Where separation and partition were not seen as practicable, as was the case in the flight of the Armenians from the mass murder and persecution by the Turks, the League of Nations acted to assist in their resettlement. (Marrus, pp. 74-81; 119-121)

        Resettlement was the core approach to refugees who fled as a result of ideological conflict, such as the 800,000 Russians throughout Europe in 1921 or the 10,000 Italian anti-fascists who resettled in France in the 1930s. However, when the problem was ethnic persecution on a massive scale and it was no longer perceived to be practicable for countries mired in the great depression to accept refugees, borders were closed. The High Commission for Refugees had been established in 1933 to deal with these refugees, but James G. McDonald resigned in 1935 in protest at the very few resettlement places available to deal with the refugees and the unwillingness of the international community to tackle the problem at its source. (Marrus, pp. 161-166) Even the Evian Conference in 1938, specifically called to deal with the Jewish refugees from Nazi Germany in a carefully orchestrated public relations exercise, affirmed the rights of governments to limit the intake of refugees on the basis of whether they were likely to be able to reestablish themselves given the absorptive capacity of the receiving state. (Marrus, pp. 166-207)

        Even after the end of World War II, the policy of forced repatriation continued. The Potsdam Agreement[41] made provision and the allies implemented the forced repatriation of the *Oeustdeutsch* who had lived in Poland, Czechoslovakia and Hungary for generations - when the exodus from Russia and the Baltic states are included it is estimated that 11 million Germans were repatriated to the devastated economy of a Germany with a population of only 40,000,000 people at the time. The Yalta Agreement of February, 1945,[42] provided for the repatriation of Soviet citizens without obtaining their consent, a provision which was largely but not entirely implemented.

        However, it must be recalled that if people were forcefully repatriated, they were not *called* refugees. For if you were scheduled for repatriation, you were not a refugee, but were formally referred to as Displaced Persons. The debate over nomenclature focused on the International Refugee

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[41] Cf. A. de Zayas, *Nemesis at Potsdam: the Anglo-Americans and the Expulsion of the Germans*, 1977. See also Marrus, pp. 326-331.

[42] N. Tolstoy, *Victims of Yalta*, 1977 and Mark R. Elliott, *Pawns of Yalta: Soviet Refugees and America's Role in Their Repatriation*, Chicago, 1982.

Organization (IRO).[43] UNRRA, the United Nations Relief and Rehabilitation Agency set up at the end of 1943, was not authorized to deal with or find solutions for refugees who "who cannot return to their homes."[44]f Soviet citizens without obtaining their consent, a provision which was largely but not entirely implemented.

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In the IRO constitution, set up to succeed UNRRA and to escape the agreements to forcefully repatriate people, a distinction was made between refugees -- pre-or post- war victims of Nazi or fascist regimes or of racial, religious or political persecution -- and displaced persons (DPs) who were displaced in the course of or after World War II. With respect to DPs, the IRO was "to encourage and assist in every possible manner the early return to their countries of origin".[47] If Jews were classified as DPs, the IRO would be expected to arrange for their repatriation. "A DP may be defined as a person displaced by war but wishing to return home once the fighting is over. A refugee, on the other hand, may be defined as a person who has fled home and who does not wish to return, at least not to the circumstances which occasioned flight."[48]

The end of the second phase of international refugee policy can be characterized by induced resettlement for a population which could not be repatriated by either force or international law and norms. The treatment of the Jews and the Palestinian Arabs characterized this shift.

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[43] Cf. Roger Zetter, "Labelling Refugees: Forming and Transforming a Bureaucratic Identity," (*Journal of Refugee Studies*, 4:1, November, 1991) where Roger uses the case of Cyprus to indicate the important consequences of labelling. For the history of UNRRA, see Louise Holborne, *The International Refugee Organization: A Specialized Agency of the United Nations - Its History and Work 1946-1952*, London, 1956.

[44] UN doc. A/C.3/SR.1-11. Cf. George Woodbridge, *UNRRA: the History of the United Nations Relief and Rehabilitation Administration*, 3 vols. (New York: Columbia University Press, 1950) Marrus *Oeustdeutsch* who had lived in Poland, Czechoslovakia and Hungary for generations - when the exodus from Russia and the Baltic states are included it is estimated that 11 million Germans were repatriated to the devastated economy of a Germany with a population of only 40,000,000 people at the time. The Yalta Agreement of February, 1945, provided for the repatriati

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[46] UN doc. A/C.3/SR.1-11. Cf. George Woodbridge, *UNRRA: the History of the United Nations Relief and Rehabilitation Administration*, 3 vols. (New York: Columbia University Press, 1950) Marrus estimated UNRRA was responsible for returning almost 2 million refugees which still left 650,000 without homes. (p. 320) See also Kim Salomon, "The Cold War Heritage: UNRRA and the IRO as Predecessors of the UNHCR," in Göran Rystad, ed. *The Uprooted: Forced Migration as an International Problem in the Post-War Era*, Lund University Press, 1990. For a guide to UNRRA archival sources see Marilla B. Guptil, "Records of the United Nations Relief and Rehabilitation Administration, 1943-1948," *Journal of refugee Studies*, 5:1, No. 1, 1992.

[47] Annex 1, para. 1(b), Draft Constitution of the IRO, A/127.

[48] Solomon 1990, p. 159.

If Jews were classified as refugees, then Palestine was the obvious place for them to be resettled, given the terms of the Mandate and the limitation of other options. As the Report of the High Commissioner for Refugees submitted to the Twenty-First Ordinary Session of the League of Nations Assembly had noted, "Palestine alone has made a contribution of any size' in reference to large-scale or group settlement of Jews.[49]

The Arab countries, led by Egypt and supported by Britain, first attempted to set repatriation as the goal of the IRO for all persons, whether refugees or DPs. Mr. Kamel, the delegate of Egypt[50], proposed amending paragraph 2 of the Preamble of the Draft Constitution of IRO to require serious reasons to justify resettlement. Though defeated, the British delegate led the opposition to the provision[51] (which passed) defining German and Austrian residents of Jewish origin as "refugees". Britain based its case on the ostensibly high moral principle that this was merely a backhanded attempt to clear Europe of its Jews, in other words to accomplish Hitler's goal of making the German-speaking parts of Europe "Judenrein".[52] The main Arab effort then shifted to prevent resettlement of Jews in Palestine by placing specific conditions on resettlement, such as preventing resettlement where the Jews "will create political difficulties in the countries of resettlement or in neighbouring countries" or where resettlement is undertaken "without the consent of the peoples of the countries of reception and without full consultation with the States members of the United Nations most directly concerned".[53] These efforts were also defeated as were a number of other subsequent efforts.

The Arabs, backed by the British, were defeated in the attempt to make repatriation the exclusive function of the IRO or to include Jews in those slated for repatriation. Even when repatriation was argued on the highest morals grounds of equality, non-discrimination and the opposition to a Europe free of Jews, the Arabs and British were unable to succeed in targeting the Jews for what would have been forced repatriation. When the major efforts focused on resettlement, the Arabs and British were unable to hedge the resettlement plans with conditions which would exclude Palestine as a target area for resettlement of the remnant of European Jews. Instead a policy of resettlement which, in the case of the Jews, was forced upon the majority of the inhabitants of the area in which they were to be resettled. In the case of the Palestinian Arabs, a policy of resettlement was adopted without the consent of the Palestinians to be resettled. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was set up ostensibly to provide interim aid and employment, but, in reality, to resettle the Palestinian refugees in the Arab states under the guise of economic integration.

If the first phase of the international policy of dealing with refugees had been characterized by open borders, the second phase was characterized by drawing new borders and dividing ethnic populations on different sides of the border while guaranteeing the protection of minorities left on the wrong side. The partition of Palestine was the last effort in that phase of solving a refugee policy. As the last phase, a new state for the Jews was

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[49] Records of the Twenty-First Ordinary Session of the League of Nations, p. 232.

[50] 21st meeting of the Third Committee of the United Nations General Assembly of the United Nations on November 12, 1946.

[51] of Annex 1, Part 1, Section H, para. 3.

[52] A/C.3/61; A/C.3?68, p. 5, 9.

[53] E/86, p. 6.

created, Israel, and an almost fifty year legacy of Palestinian refugees without a state to guarantee their protection remained.

In contrast to the first phase of international refugee policy, the period was characterized by redrawn rather than open borders, by forced repatriation and resettlement rather than the voluntary free movement of people, and by a system in which the international community accepted the responsibility for protecting minorities within the jurisdiction of a state and for provision of their essential needs when they were outside the jurisdiction of a state in which the refugees were members. It was a period characterized by a plethora of international refugee organizations, each set up to deal with a specific refugee problem - much as we now have a plethora of acronyms for peacekeeping operations each set up to deal with a specific conflict area - rather than developing a generic institutional approach to deal with all refugees. UNRWA was the last of these institutional creations.

The Mandate of the UNHCR

The Convention of the United Nations High Commission for Refugees of 1951 moved away from regarding refugees *en masse* to focus on them as persecuted individuals, moved away from assistance to legal protection, and focused only upon those who were already outside the borders of their country of origin in spite of the pleas by Greece, India and Pakistan that the mandate include those displaced by civil war, the latter arguing that those suffering from disease and starvation were much worse off than those suffering persecution. Eleanor Roosevelt led the debate and successful resolution that a genuine refugee was one who was outside his/her country of origin and had fled because of a well founded fear of persecution on a number of grounds. Such refugees would be guaranteed that (s)he would **not** be repatriated to the country where the individual had been persecuted. To be a refugee was a guarantee that an individual outside his or her own country and so labelled would not be returned to that country. It was a refugee regime built on two principles - the human rights of the individual and the sacrosanct character of the borders of the political state. Because the original solution to the refugee problem focused on resettlement, the other solution offered was *voluntary* repatriation; the compulsory exchange of populations of the post WWI period had been rejected.

Instead of open or shifting borders, borders were reified. You were only a refugee if you were outside the jurisdiction of the state that had the historical responsibility of providing for an individual's protection. Forced solutions were given up in favour of ostensible voluntarism. But it was no longer the voluntarism of the first part of the century when there were a large number of states in which refugees could resettle. It was a voluntarism which depended on the willingness of states to also volunteer both to support the UNHCR financially and to provide opportunities for the persecuted individuals to resettle. Instead of a system of the individual seeking the protection of a state or the international community ostensibly guaranteeing the protection of minorities, the international community through the UNHCR guaranteed the protection of individuals who had been persecuted and who had not yet been accepted by a state which would assume responsibility for their protection.

Most refugees did not require that individual protection. They were accepted *en masse* because they fled states regarded as enemy states with antithetical values and norms. Those fleeing communism and the confines of the Iron Curtain were resettled in the West. States, in particular the United States, Australia and Canada, perceived refugees in ideological political terms. If you fled a communist regime, you were a refugee. In 1956 and 1968 refugees who had fled from Hungary and Czechoslovakia were accepted en masse by these countries of immigration and refugee resettlement. The refugees did not have to be communists. At the end of that period, Canada took in over 100,000 American draft dodgers and deserters from the Vietnam War because Canada wanted to differentiate itself from the behemoth to its south engaged in a war with which Canadians

largely disagreed, though Canada never had the courage to designate that intake as a refugee flow.

The last phase of the development of international refugee policy and practice began in 1973. Idi Amin began the practice of ethnic cleansing. Chile began the practice of ideological cleansing. The Ugandan Asians were expelled and Western states resettled its first group of refugees en masse who were neither fleeing communism nor European. The socialists and communists who opposed Pinochet were allowed to leave from their sanctuaries in various embassies and were also resettled. The beginning of a non-racist, non-ideological refugee regime had begun. Of the 35,000 Ugandan Asians and 35,000 Chilean refugees, Canada took in and resettled about 20% of each of those groups.

When the Communist government after its capture of the south began practices which led to a more subtle form of ethnic cleansing of the Vietnamese Chinese and ideological cleansing of dissenters in the former South Vietnam, a massive resettlement of what would number over a million refugees was begun in the late seventies and early eighties. This was on top of the massive flows of refugees into neighbouring states as refugees from Cambodia, from a plethora of states in Africa, from Afghanistan into Pakistan and Iran, from Cuba into Florida, settled temporarily or permanently in their first countries of asylum.

During the eighties, the numbers seeking asylum grew exponentially. The development of human rights laws within Western states provided increased protection that refugee claimants who arrived spontaneously would be given the protection of due legal process under domestic legal requirements. By the late eighties, western states were inundated with spontaneous influxes of individuals claiming refugee status in a system which was only conceived and designed to handle asylum claimants in the hundreds. Laws and regulations were passed throughout the western states who were signatories to the Convention to both provide legal processes for dealing with those claimants while the search began for means to stem the tide. States were both legally obligated to accept these refugees if they satisfied the criteria. At the same time, refugee claimants who did not satisfy the requirements were either legally deported or prevented by legal means (visas, fines on airlines, interdiction outside the borders of one's state, etc.) from arriving in the first place.

For example, the OECD conference in March of 1993 in Madrid on Migration and Development attempted to examine whether development aid would assist in stemming the tide of migrants - economic and political. Development assistance as a method of stemming the flows of hordes of unwanted migrants seemed to be put on the back burner once it was recognized that in the short and medium terms the flow of migrants would actually increase as a result of such efforts.

The four phases of development of refugee policy witnessed a shift from relatively open borders, to a policy of altering borders in the areas of conflict, to a system of sacrosanct and fixed borders where those who crossed borders had either to await repatriation, integrate in the first country of asylum or be resettled. When the latter demand seemed to overwhelm the supply of spaces the West seemed willing to provide, sacrosanct borders became increasingly closed borders as the borders of other states were redrawn, de facto if not de jure. The four phases were characterized by: voluntary resettlement; forced repatriation and resettlement; voluntary repatriation, settlement and resettlement; and legally obligatory resettlement, repatriation and settlement within the country of origin though perhaps in a different area than one's home. The responsibility for protection shifted from the individual to an international theoretical system for minority protection, an actual system for individual legal protection, and protection of minority groups either through total resettlement or repatriation in a protected haven where they could act as a self-determining and governing majority.

I now want to examine the contradictions of international policy with respect to refugee flows in four distinct areas of international humanitarian military intervention - Iraq, Cambodia, Somalia and Yugoslavia.

Refugees and Peacekeeping

Since the end of the Cold War, the international community has experimented with safe havens in Iraq and the former Yugoslavia, and the delivery of humanitarian aid protected by international troops **inside** countries of conflict without the permission of any formal state authority as in Somalia. International troops and observers are present in Cambodia to oversee the reestablishment of both a civil society and a state regime to keep the peace. While the international community dithers over Bosnia-Hercegovina, as we watch day after day on our television screens the slaughter of helpless civilians and hear tales of their brutal treatment, particularly of women, the West debates extending humanitarian military intervention to the killing grounds of Bosnia. In an effort at preventive peacekeeping, troops have been sent to the borders of Macedonia to prevent the spread of the Yugoslav imbroglio and a consequent larger flow of refugees.

The link between peacekeeping and refugees begins after the end of the Cold War in the latter part of the fourth phase of the above development of the international refugee regime when peacekeeping moves out of its classical phase of interposing blue helmets between two contending parties and peacekeepers move into the interior of states without the consent of any or all parties to a conflict and where there may have even been a total disintegration of a unified state authority. To analyze this connection, the four cases of Iraq, Yugoslavia, Somalia and Cambodia can be distinguished by two criteria - whether the states are multi-national or predominately nation-states, and whether the states have recognized governments in place which may be in the process of being challenged by a militant opposition, or whether there is an absence of a single recognized authority over the whole state or area and there is a presence of competing groups seeking authority through the barrel of a gun.

Iraq and the Kurds

Prior to the termination of the Cold War and the effort to establish a new international world order following the invasion by and defeat of Iraq in Kuwait, there was an uprising by the Kurds against the rule of Saddam Hussein. The intact Iraqi army began to quell the rebellion and the Kurds were forced into the hills as they were turned back from the borders of Turkey but not the borders of Iran. Prior to the Gulf War, the Turks might have been accused by the international community for closing its borders to the persecuted Kurds. Instead, the United States obtained international sanction to create safe havens for the Kurds in northern Iraq, thereby creating the conditions for the development of an autonomous *de facto* state of Kurdistan under international protection but without international recognition. The old consultative assembly building in Irbil for the powerless Kurd assembly has been renovated to house the Kurdish parliament. The Patriotic Union of Kurdistan (PUK) under the leadership of Jalal Talabani and the Kurdistan Democratic Party (KDP) under Maoud Barzani's leadership have done the unthinkable, merged their *peshmerga* forces into a single national army. The Kurds have created a legislative arm and the political authorities of the nascent state has been given the monopoly over the use of coercive force. They even have a foreign policy. In return for cooperating with the Turks in the crushing of the Kurdish rebels within Turkey, the Turkish armed forces provide logistic support to the nascent Kurdish state all under the auspices of a humanitarian relief effort to provide a safe haven for the Kurds.

The international community says that no state should *refoule* a refugee fleeing persecution. When they are forcefully prevented from seeking asylum, the international community did not condemn those guilty of refoulement, but intervened to provide protection for the Turkish border and for the Kurdish

minority within the supposedly sacrosanct borders of the nation-state of Iraq, reinforcing thereby a quasi separatist state.[54] The international community in the name of sacrosanct borders and the integrity of the state of Kuwait ordered Iraq to be attacked. In the aftermath of that victory, the international community still upheld the sacrosanct character of state borders but has been the major instrument for the de facto division of Iraq.

Cambodia

Cambodia is renowned the world over for its infamous killing fields and the estimated one and one half million Cambodians killed when the Khmers Rouges occupied the seat of government in Phnom Penh. When they were driven out by the Vietnamese, they retained some control in north-western Cambodia and took control of the large camps within Thailand which housed "refugees" whom the Thais had refused to allow to be designated formally as refugees. With the agreement among the four contending parties in Cambodia at the end of 1991 to end hostilities and attempt to create a government, The United Nations committed three billion dollars and over 20,000 peacekeepers to oversee the successful return of almost 400,000 refugees and the recreation of a civil and political order in Cambodia.

For the first time, even the Japanese agreed to contribute peacekeeping forces. With great difficulty, the Japanese reversed their postwar ban against sending Japanese troops onto foreign territory Peacekeepers were sent under the auspices of UNTAC, the UN Transitional Authority in Cambodia, to ensure a peaceful election of a constitutional assembly on May 23-25, 1993. But the decision was dependent on both sides agreeing to the Japanese role.

The Khmers Rouges abrogated the agreement. They refused to disarm or take part in the election. At the end of January of this year, the Phnom Penh government in a military preventive action to stop an alleged Khmers Rouges dry season offensive, attacked the Khmers Rouges at Siem Reap in the north-west, at Kompong Thom in central Cambodia, at Kratie in the central eastern area of Cambodia and in a major thrust against the Khmers Rouges headquarters at Pailin along the Thai border. The Khmers Rouges struck back. They began their own process of ethnic cleansing by attacking Vietnamese settlements in Cambodia, beginning with the murder of 34 Vietnamese on March 9th in the floating village on the Tonle Sap river in the area ostensibly controlled by the undisciplined Bulgarian peacekeepers who have been accused of sexually harassing and raping Cambodian women and ignoring Cambodian traffic laws. Subsequent attacks followed and a number of the 400,000 Vietnamese in Cambodia have fled as even the government party fails to even speak up for their protection. 400,000 Cambodian refugees have been returned under UN auspices. Are we witnessing the creation of 400,000 Vietnamese refugees under UN auspices in exchange? The Khmers Rouges have attacked and killed Bulgarian peacekeepers and even killed one Japanese policeman, in the process and raising another hue and cry in Japan about the Japanese presence in Cambodia. Even Phnom Penh is not immune from attack as grenade attacks and firebombs are thrown at cafes in the capital.

Even more seriously, up to 100 election workers and candidates have been murdered. Yasushi Akashi, the Japanese head of UNTAC set up a special prosecutor to try two alleged killers, a Phnom Penh policeman and a Khmers Rouges soldier, but no actual trial seems to be in the offing. The UN has sent in peacekeepers in a land where one of the parties openly disavows electoral

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[54] Cf. Adelman, "Humanitarian Intervention: The Case of the Kurds," <u>International Journal of Refugee Law</u>, Volume 4, No. 1, April 1992 and "The Ethics of Humanitarian Intervention: The Case of the Kurdish Refugees," <u>Public Affairs Quarterly</u>, "Special Issue on Refugees," Volume 6, Issue 1, January 1992.

politics, has refused to surrender its arms and blatantly attacks Vietnamese civilians, UN election and humanitarian officials and the UN peacekeepers themselves. No monopoly on the control and use of coercive force has been established in Cambodia, the prerequisite to developing a civil society and a government selected by and responsible to the people.

What can the UN forces do after the election - withdraw and watch a civil war break out or increase their numbers to give the newly elected government a chance, assuming, of course, that the electoral process works adequately enough for a government to be considered as the legitimate representative of the people.

The contradiction is the following. The UN claims to be impartial and neutral between and among competing factions. In fact, it is not partial at all. It is committed to a liberal theory of responsible government and of individual human rights. At the same time, it is committed to a stable order based on the sovereignty of states with the state holding a monopoly on the use of coercive power. But while the UN may insist that a state have an elected form of government responsible to and chosen by the people, the UN does little to uphold the fact and the principle that any responsible government must have a monopoly on the use of force. In the hands of an irresponsible government, that monopoly can be turned against the people themselves.

UN Authority and Somalia

The UN sent troops to police Somalia but they were useless and had to stay in their barracks until they were rescued by a much larger, better equipped US force sent not so much to rescue Somalia from anarchy as to rescue the UN from an impotent effort at peacekeeping. Since the American forces have departed, reports emerge that the militant anarchy is also returning. Given the stigma attached to the presence of American forces, there is a reluctance on the part of the Americans as well as the international community to rely on the overwhelming power of the US, but without the presence of that overwhelming power, the ability to repress those who would resort to arms to resolve their differences seems to diminish over time.

Further, in the anarchy of Somalia, a central authority is needed to run the economy and institute a working judicial system. The *Economist* has called for the UN to set itself up as "king of the Somali castle." (March 6-12, p. 18) But this is precisely what the people themselves must do. The UN must not establish itself as king of the castle but as a praetorian guard until the institutions of the civil society and the political state are reestablished and strengthened.

Ethnic Cleansing in Bosnia-Hercegovina

How is the international community to navigate between the Scylla of ethnic nationalism and the Charybdes of sacrosanct sovereign states? How, as Patrick Moynihan recently phrased the question (*Pandemonium: Ethnicity in International Politics*, Oxford: OUP) can the world be made safe both for ethnic groups and from ethnic fanaticism? (Cf. also Adelman, "Ethnicity and Refugees," in World Refugee Survey, 1992, pp. 6-11.)

Can one really take seriously that the Croats, Serbs and Muslim Bosnians could live in peace together successfully in a reorganized federal state in line with the Vance-Owen peace plan? Can the Serbs in Bosnia-Hercegovina really be expected to surrender the contiguity and enlargement of their territorial base in Bosnia-Hercegovina? How can those territories be recreated as dominantly Muslim cantons when they have already been ethnically cleansed and populated by Serbs since under the latest version of the Vance-Owen plan, Muslim forces will not be allowed to return? Though the Security Council voted on

February 22nd to set up a the first special war crimes tribunal since Neurenberg does anyone expect any of the war criminals to be tried?

In other words, the peace plan **says** it provides for a return to the status quo ante, but in the form of a federated state, while everyone seems to recognize it really means the international recognition of the separation of the ethnic groups in accordance with the facts on the ground. Ethnic cleansing at this late date will have been rewarded in the guise of an internationally imposed peace. Even the earlier efforts of the United States to airdrop relief supplies in the beginning of March was debated as a controversial move which might arouse Serb aggression and stimulate attacks against the lightly armed UN peacekeeping forces.

So 75,000 peacekeepers might be required to ostensibly to keep peace between ethnic groups but, in reality, to recognize the order of victory - the victory of Serbs over both Croats and Muslims and the victory of the Croats over the Muslims. The alternative to such a hypocritical peace plan is bombing of Serb artillery, supply lines and supplies and perhaps lifting the arms embargo on the Muslims. Alternatively, UN peacekeepers could be sent into an unstable area to secure safe havens for the refugees when it is difficult enough for the UN troops to provide safe havens for themselves. The obligations are difficult enough to sort out without raising questions about the contradictory goals and the questionable means of achieving a moral obligation of protecting civilians from slaughter and rape.

Conclusion

There are numerous other areas where the UN could be sent to keep the peace between and among warring ethnic factions, warlords and tribes - the conflict between Armenia and Azerbaijan, in Myanmar, in South Africa, etc. In most of those places, as in Bosnia-Hercegovina, Somalia, Kurdistan and Cambodia, there is no real peace to keep. But at least the UN troops may have inhibited more expansionist all-out wars. In none of these areas is there a clearly defined political objective within reach or honestly articulated. Each situation is full of contradictions and controversy. The chances of success is slim as Boutros Boutros Ghali promotes his new Agenda for Peace.

The UN in the guise of creating safe havens for refugees participates in the *de facto* partition of a country, the very presence instigated in defence of the sacrosanct character of state borders. The UN, in the attempt to create a neutral ground for the creation of a democratic regime in Cambodia, becomes a target for militants with both real and moral bullets. The UN which began its history as the instrument for decolonization, is urged on to become the instrument of neo-colonial authority in Somalia. And in Bosnia-Hercegovina the UN, through delay and procrastination, is destined to become the authority which sanctions ethnic cleansing and guards the reality on the ground as it deplores these same results rhetorically.

The league of peace is not and cannot be in the business of stopping each and every war. It must, as Kant said, be in the business of making an end of all wars forever. Two criteria were proffered. The league (or the UN) cannot operate as king of the castle, assuming dominion over the power of the state even if only on an interim basis but must restrict its efforts to the maintenance of freedom and security. The inhabitants of the state itself have to remain responsible for reconstructing their civil society and reestablishing the government. Further, each peacekeeping operation should be assessed in terms of whether or not it contributes or detracts from the long term goal of terminating war altogether. The UN can only do this if it sorts out whether it wants to be a league of nations protecting ethnic groups and ensuring they have a role in their own self-determination (there are over 5000 nations on this earth) or a league of states with sacrosanct borders. Otherwise the UN will meander from one insoluble quagmire to another.

Sacrosanct borders are not holding up action by the international community when those borders have been made porous by the indigenous population. The real question is whether the international community is willing to risk the lives of its citizens serving under UN auspices for a cause in which there is no immediate or apparent security threat to themselves, no vital economic interests, no military aggression across a recognized international border of a member of the UN.

It will only do so if there are clear moral guidelines and goals for doing so. The UNHCR has moved fro protecting refugees who have fled across a border to attempting to protect displaced persons within a border, but it is not clear about its mandate or the measures it must use to protect minorities within such states. Until a clear guideline has been established for both self-determination and for the protection of minorities, and until the UN is willing to assert its full powers to monopolize the use of coercive power until states in conflict put their house in order, the UN will continue to be hampered by contradictory normative conceptions and ineffectual tools on the ground.