

A Failure of Protection: Refugee Camps and the Proliferation of Conflict.

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*“What begins with the failure to uphold the dignity of one
life all too often ends with a calamity for entire nations”*

UN Secretary-General Kofi Annan 2002

Introduction

Today it is estimated that violent conflict has caused the displacement of some 25 million people throughout the world. (OCHA) In many cases as people flee violence, the ensuing refugee exoduses can actually perpetuate and expand such conflict, as refugee populations become incorporated into a wider strategy for war. For exiled military forces, civilian populations lend international legitimacy to their cause, provide human shields in case of attack, new recruits, food and medical care. Refugee camps in such circumstances serve as rear bases of operation in attacks across state borders. Support or indifference to such realities within the receiving State, or the support of an external patron, perpetuates the proliferation and escalation of conflict across borders, risking open international conflict that has the potential to envelop additional states and de-stabilize whole regions.

Despite the serious implications of militarized refugee camps for regional peace and security, humanitarian assistance and refugee protection, the topic has received relatively little consideration within international relations, beyond being viewed as one of many security issues concerning refugee flows. Weiner, M (1993) 1-35 Historically, the militarization of refugee populations has been supported as part of a wider power struggle; in the service of some perceived greater good. However, such a position is increasingly untenable today in the wake of cold-war politics, particularly when measured against circumstances in Rwanda, where the motivation serving militarization was the perpetuation of genocide. The scale of the crisis in the Great Lakes Region during the refugee emergency of 1994-6 and subsequent regional conflict that followed provides a useful framework for investigation. During the course of this discussion I will reflect upon the unresolved issue of the international protection of refugees, considering the prescription of international law and the range of actors involved when seeking to address such concerns.

Responding to this issue at an international level is one of the most pressing matters facing the international community. The general paralysis of action in Rwanda sparked the proliferation of conflict in the region. The ensuing conflict in the DRC, dubbed Africa's World War, as it involved several foreign powers and rebel groups is estimated to have killed 3.8 million, caused the internal displacement some 3.4 million and created a refugee population of around 2 million in neighboring Burundi, Tanzania, Uganda and Rwanda by the time a transitional government took power in July 2003. (IRC)

Body

The 1951 refugee convention and the 1967 Protocol relating to the Status of Refugees serves as the basis for International Refugee Law. A refugee is defined as any person who *"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country..."*

A refugee is a civilian. A person who continues to pursue armed action against his or her country of origin from the country of asylum cannot be considered a refugee. However, in reality, especially during a mass exodus, separating the two groups can be problematic, particularly if the receiving State lacks the willingness or resources necessary to do so. The safety provisions accorded to every human being under international human rights and international humanitarian law, regardless of the individuals' status, become the responsibility of the receiving state, which must guarantee their safety and maintain the civilian nature of the refugee camps. The responsibilities of the receiving state include, the demobilizing and disarming of any non-civilian exile who wishes to be integrated into the refugee population, separating those who are not entitled to international protection, such as perpetrators of genocide or other war crimes, from the wider refugee population. Furthermore, states are charged with preventing the supply of arms to refugee areas and protection the refugee population from acts of violence and intimidation. In essence, on paper, host states are responsible for providing physical and legal protection to refugees, while humanitarian organisations provide the accompanying material assistance of water, food, shelter and healthcare.

Humanitarian organization such as UNHCR, the main UN body responsible for refugee protection, do not constitute a police force or a judicial body, and as such is unable to physically separate the two groups or protect genuine refugees from military forces who have taken flight with the refugee population. Its' main role when pursuing its' international protection mandate is to ensure that states are aware of, and act upon, their obligations to protect refugees. Thus efforts are geared towards enhancing the states own capacities, whilst seeking to foster

international co-operation in burden and responsibility sharing in the receipt and hosting of refugees. However, the physical safety of refugees is not the responsibility of any precise international mandate. The responsibility to protect refugees is problematic, in part, as a consequence of the legal definition of protection at an international level. Protection can be viewed in one of two ways, either the defence of legal status, or rather physical defence; which implies the recourse to force by international peacekeepers to ensure the safety of refugees. However, it would seem logical to conclude that although they could be viewed as two separate concepts, they are invariably linked. Physical protection is a condition of successful legal protection.

In April of 1994, the Central African Republic of Rwanda witnessed the beginning of a genocide that would claim the lives of 800,000 Tutsi. The genocide was brought to an end, not by the intervention of the international community, but by the Rwandan Patriotic Front (RPF), the children of some 150,000 Tutsi refugees, who had fled to Uganda following Rwanda's independence from Belgium in 1959. As the RUF neared Kigali, the Rwandan Hutu leadership forced around a million Hutu civilians into the eastern Congo (formerly Zaire). The international humanitarian community established refugee camps along the DRC. Elements of the defeated Forces, Armées Rwandaises (FAR) and a Hutu militia, the Interahamwe (those who work together) retained strong support from the Congolese government, using the camps to launch raids back into Rwanda. Establishing military training bases in close proximity to the refugee camps, the leadership stockpiled weapons, trained and recruited refugees and exploited the international humanitarian aid system to access food and medical supplies.

The provision of humanitarian food aid benefited the military regime in a number different of ways, at the most basic level by providing material sustenance.

Militants were relieved of the extra burden of having to look for food and were able to dedicate more of their effort to military preparation, whilst supporting family members and close political aides. Furthermore, relief resources could be used to finance military conflict, particularly prevalent within the Goma refugee camp, where the over-inflation of the size of the populations by the camp leaders, allowed for mass relocation of resources. *"Food represents power, and camps leaders who control its distribution divert considerable quantities towards war preparations"* Destexhe, A. MSF (1994) Concurrently, camp leaders were able to legitimize their remit as a 'State-in-Exile', and serve the basic dietary requirements of their people.

The military capabilities of the former Rwandan Army and militia actually grew whilst in the Congo. In 1990 the Rwandan army counted 30,000 troops. By 1995 the former army boasted a strength of 50,000, due to new recruits and the absorption of the former militia. Lischer, S (2005)

81 Without welcoming hosts, or substantial external support by a foreign patron, military elements in flight can only exist as an isolated roving armed faction, unable to obtain arms and conduct training and over time will be absorbed within the wider refugee population as refugees. Fundamentally, the presence of the refugee population afforded the militant leadership a sense of international legitimacy. The physical size of the population could be used to reflect a wider notion of support for the cause, strengthening their testimony to be the Rwandan government in exile. Certainly, measures to stop any potential return of refugees to Rwanda are testimony to the importance of civilian population. Jean Bosco Barayagwiza, a genocidal leader from the refugee camps summed this up well, asserting, “even if (the RPF) has won a military victory it will not have the power. We have the population” African Rights (1995) 1094

Over the following two years the international community remained indifferent to the militarization of the camps, with no outside state willing to send armed forces into the region, served to proliferate conflict. The influx of around a million Hutu refugees in the East of the Congo resulted in an upsurge of ethnic conflict between the various Congolese ethnic groups. The presence of the Rwandan Hutu polarised relations between the previously amicable Tutsi and Hutu populations, whilst fostering the persecution of the Congolese Tutsi by other indigenous groups, including hunter-gatherer tribal populations. After repeated warnings that it would intervene, the Rwandan Army invaded the DRC in response to unresolved issue of international protection for refugees, removing the security threat posed by the genocidaires who resided within the refugee camps on its' border. Following a series of unrelenting attacks on the camps, an unprecedented mass reverse flight of 600,000 refugees occurred. The unforeseen mass return prevented the Rwandan government from separating militants from refugees, thwarting their desire to punish those responsible for the genocide. Also, during the attacks, thousands of refugees fled west deeper into the forests of the central Congo. Beyond the reach of humanitarian agencies the majority were left to an uncertain fate.

With this in mind, the receiving State's response in times of a refugee influx is central in preventing the spread of violence, whether those in flights are opposition rebel groups or a state in exile. The State's response can largely be determined by two factors, the State's *capacity* to secure its own border areas and disarm arriving refugees and its *willingness* to prevent the proliferation of violence. Generally speaking, the usual scenario concerns a capable receiving state, which is unwilling to intervene ensures the civilian nature of refugee camps because of its' support of, or sympathy with, the militarized population in flight. Although rare, a State which lacks the means to secure its' own territory and has little motivation to stop the spread of violence, is clearly the most dangerous, the most notable example being the Congolese government during the Rwandan refugee crisis of 1994-6, the consequences being international

war. The final response is a State who is will to stop the spread of violence, but lacks the means. In this context, the assistance rendered by the international community to the state determines whether violence is fanned or curtailed. Obviously, the most favourable combination would be pro-active action by a willing and capable state, however such examples are minimal, particularly within the African context where essentially less capable states are the host of large refugee populations, with the possible exception of Tanzania during the Rwandan refugee crisis.

The role of the refugee hosting state in the escalation of conflict is well illustrated when we draw comparisons between the circumstances of the Congo to the West, which housed around 1.2 million Hutu after the genocide and Tanzania to the East, which housed around 500,000 Hutu refugees. In comparative terms the violent quagmire in the Congo was not replicated in Tanzania, which remained relatively peaceful. Fundamentally, the genocidal refugee leaders were not able to militarize the camps to anywhere near to same degree; consequently violence was kept to a minimum. Lischer, S (2005) Unlike the Congo, Tanzania was willing and capable to deal with the refugee influx. Tanzania was most importantly a stable state with a good history in its' accommodation of refugee populations. The political willingness to limit the militarization of camps in Tanzania is in part related to the fact that it did not retain close political ties with either the Hutu or Tutsi populations, making an impartial response more favourable. Furthermore, the government has a long history of making generous asylum offers to both Hutu and Tutsi refugees, from Rwanda and Burundi since independence in 1961.

Crucially, Tanzania approved the deployment of police to the camps to provide security. This allowed UNHCR to conduct a census of the refugee population, that previously it had been unable to do, consequently, curtailing the misuse of aid supplied, where food rations were reduced from 350,000 to a more accurate 230,000. Terry, F (2002) 3 In the Congo, UNHCR had been prevented from doing so by armed refugees, allowing for the exaggeration of refugee quotas. Furthermore, the Tanzanian authorities appointed UNHCR as head of operations, which allowed for the better overall co-ordination of aid supplies, the agency approving only a handful of NGOs to work in camps. The weak government structure in the Congo, by contrast, was unable to provide any effective oversight of UN agencies or the multitude of NGOs, allowing for greater exploitation of resource amid the chaos.

Advocates for Refugee protection often cite refugee camps' proximity to the state borders as a factor in the spread of violence. Although, it may be concluded that close proximity of camps in the eastern Congo to the Rwandan border strengthened the claim of the militants that a successful retaking of Rwanda was likely. However, the fact that the camps in Tanzania were also within mere walking distance of the border, whilst not contributing to the spread of violence,

suggests that the tight policing of borders remained the determining factor. Furthermore, despite UNHCR's commitment to encourage states to move camps further inland, such actions are increasingly unlikely; as such a policy suggests permanence, a situation that would be viewed with hostility by host populations.

Whilst considering the role of states in the protection of refugees, concurrently we must also consider the development of international standards that lend financial support to countries hosting refugee populations, as the hosts are invariably developing nations. The former permanent representative to the United Nations echoed such sentiments at the 48th Session of the UNHCR Executive Committee, recognizing that *"refugees and mass movements are first and foremost a 'developing country' problem and that the biggest 'donors' are in reality developing countries who put at risk their fragile environments, economy and society to provide refuge to millions"*. Clearly, such considerations cannot be overlooked. In such states, institutions of law and order, the police and the judiciary have inadequate funding and aptitude to deal with large refugee influxes. What incentive is there for developing nations to join the wider international community and become signatories to the refugee convention, if subsequently they are offered no assistance in the management of the refugee population beyond immediate material need? Arguably, in the Congo the state did not have the physical means to protect the civilian refugee population, even if it had decided to do so.

The militarization of refugee camps places severe strain on humanitarian principles. The principle of neutrality, in particular, denotes a duty to refrain from undertaking any actions that further the interests of one party engaged in violent conflict or compromises those of the other. When refugees are exploited in this regard, as a tool of conflict, humanitarian 'assistance' can become paradoxical; in seeking to provide for those in need, humanitarian organisations can serve to strengthen the hand of those who seek to perpetuate their suffering.

Humanitarian organisation cannot afford to be ignorant of the wider political and military context, in which they choose to work. Certainly, impartiality is a fundamental concept at the very core of relief endeavour. However, their very presence in such a situation requires an awareness of their role. Both nation states and aid organisations are guilty of the presumption that humanitarian endeavour in the absence of political and military attention is better than walking away. In some circumstances, most notably with regard to the Hutu refugee crisis in the Congo, where aid did directly increase the level of conflict, this is exactly what they should have done.

The role of humanitarian intervention in Rwandan provoked the development of the SPHERE project as a means to address the dual role that NGO's can play in assistance and protection of

refugees. However, the emphasis was placed upon assistance and failed to offer any practical methods that would secure the right to such assistance. Weissman, F (2004) 306 Although the endeavour was worthy as a route to greater professionalism amongst humanitarian workers. There is certainly a need for humanitarian actors to have an understanding of their position within, and knowledge of, the wider political climate in which they work. The absence of even a basic understanding of the context of their work was plainly evident in the initial months of Rwandan crisis, where it was widely perceived that the refugees fleeing into the Congo were the survivors of the earlier genocide. The OAU estimated that roughly 10% of the refugee population, being over 100,000 people were actually militants and war criminals. Lischer, S (2005) 81 Consequently, it was only later that aid agencies began to assist the survivors within Rwanda itself.

There remains an ongoing theoretical debate amongst humanitarian actors over the paradox presented by their work in Rwanda regarding neutrality. Is it morally tolerable to remain neutral when faced with unqualified wrongs? Can aid agencies be bystanders to such abuses and sidestep making judgements in the name of impartiality? To my mind it remains patent that, despite the desire to remain impartial, it is unattainable for material assistance to have a neutral effect within a conflict environment. Or considering such abuses, should aid be withdrawn? Does withdrawing aid reduce the harm caused to the civilian population, or rather will the withdrawal of aid exacerbate their suffering? Anderson, M (1999) In spite of being a worthy field of enquiry, regarding the role of NGOs, they cannot be charged with taking direct responsibility, although they certainly have an important role to play. Their presence, in the first instance, is only necessary once governments become unwilling or unable to shoulder their own responsibilities to aid their citizens or those in their charge. The crisis played out in the Congo remained fundamentally a political and security issue. NGOs are, however, invested with considerable moral clout, that can be used to lobby governments to fulfil such obligations.

UNHCR has a crucial role to play in fostering a culture of mutual response and responsibility. Refugee and wider human rights law retain an important place within the west, as they help define the identities of liberal nations. Adherence to such principles is important to the West as they seek to spread notions of a universal (human rights) moral standard. Consequently, although UNHCR is not unaffected by its' funding structures, powerful states are particularly sensitive to the criticism they have received for not providing a leadership role on these humanitarian principles. Though direct criticism may be contentious, the agency will gain great respect and support in the long term if it champions the principle of refugee protection. The realization of such ideals presents real challenges, however it remains in the best interests of nation states to find acceptable solutions to refugee problems. In efforts to revitalize the

international protection regime, UNHCR has engaged States, intergovernmental, non-governmental organization and refugee experts in a series of Global Consultations on International Protection in late 2000, the result of which being the adoption by UNHCR and States of the 'Agenda for Protection' in 2002. Although not a legally binding document, it does reflect a broad consensus of understanding between the agency and member states on what specific actions should be undertaken to realize agreed goals in refugee protection.

When reflecting upon the failings of the refugee protection, this failure should be viewed within the context of wider international law, which provides the overall legal framework to which refugee law is a part. Whilst receiving protection under the Refugee Convention of 1951 and the subsequent 1967 protocol, refugees are also protected under the statutes of human rights law, which address such concerns as the fundamental right to life, the freedom from cruel and inhumane treatment or punishment and specifically the freedom of movement (which is directly restricted as a consequence of militarization). Correspondingly, refugees are protected under the 1949 Geneva Conventions and their 1977 protocols, should they find themselves in situations of armed conflict. Those engaged in violent conflict are obliged to distinguish between civilians and combatants, thus guaranteeing the safety of civilians from acts of violence. The responsibility of states to these international statutes is realized at an international level by a multitude of reporting structures, individual complaints procedures and recently through the International Criminal Court, though the Court itself does not constitute an ultimate authority, devised to operated in a complementary fashion to national criminal jurisdictions, thus consequently *"enforcement is primarily the responsibility of states, including in the formation of foreign policy, raising potential for profound conflicts of interests"* Helton, A (2002)¹²⁵

Such conclusions point to a fundamental disparity between the development of international statutes serving the fundamental rights of the individual, whilst conversely, being framed within an international system that is built upon the notion of fundamental state sovereignty, which either encourages paralysis or becomes an excuse for inaction. However, in spite this, it seems that the notion of sovereignty is also evolving in the post cold-war era. Increasingly, sovereignty is being associated with the responsibility of the state to uphold fundamental human rights. A state relinquishes sovereignty if it fails to address the basic rights and needs of its citizens or *those under its' jurisdiction*. In this regard, Kofi Annan, in his speech to the General Assembly in 1999, re-affirmed the centrality of the protection of human rights enshrined in the United Nations Charter when professing the notion of *'individual sovereignty'* and subsequently asserting that *"States bent on criminal behaviour (should) know that frontiers are not an absolute defence...that massive and systematic violations of human rights – whether they may take place – should not be allowed to stand"* Accordingly, sovereignty is not a shield against international intervention in the

provision of humanitarian assistance. Although this evolution has not developed into a mechanism of implementation, at the very least it can reflect the willingness in some quarters to develop a wider notion of solidarity, which if developed into policy, could be applied to serve the protection of refugee populations.

Certainly, what is needed most is speed of action. During the early months of the crisis thousands of refugees willingly returned home to Rwanda. Over time, within the camps militant elements became increasingly entrenched within the wider refugee population and were able to prohibit return with the consolidation of their power. With this in mind, it becomes critical that combatants are separated from the civilian population as quickly as possible. As UNHCR concluded, *"In certain situations, ... there may be no other option than to deploy international policy or military forces to effect the separation and exclusion of people who do not qualify for international protection as refugees"*. Lischer, S (2005) 116

Although it must be conceded that the situation in the Zairian refugee camps was an extreme example, in terms of sheer scale and long-term consequences, it would be folly to view such circumstances in isolation of a wider global trend, in spite of comments to the contrary. The EU special envoy to the Great Lakes Region, Aldo Ajello asserted in his opening statements of Kuhne (ed), *Improving African and International Capacities for Prevention and Resolution of Conflict*, p 35, that *"we were confronted with a situation which was completely abnormal: the coexistence in the HCR camps of civilian refugees and military forces"*. However, such circumstances have existed since the end of The Second World War. The first and most notable example bring the Palestinian Refugee Populations that emerged in Syria, Lebanon, the West Bank and the Gaza Strip in the aftermath of the 1948 war. Furthermore, during the cold war era, the West, who viewed the refugees as useful political actors, often assisting such populations. Refugees became a useful illustration of communist oppression, serving to bolster the hegemony of the West. Secondly, arming such groups was a useful strategy in weakening the soviet block, or regions of perceived soviet influence, the militarization of camps serving as part of a fight for the greater good. In this regard, through the Cold War period refugee crises played a part in the propitiation of civil wars throughout the globe. Two notable examples are international support for the anti-Communist (if somewhat genocidal) Khmer Rouge on the Cambodian/Thai following the invasion of Vietnam. Terry, F (2005) Similarly, the United States provided military support for the anti-Communist *contra* rebels based in the Nicaraguan refugee camps in Honduras. William Stanley noted, *"contras were apparently free to come and go and used the camps for rest, political and logistical support, and recruitment"*. Stanley, W (1993)

Similarly, there are recent examples in the wake of the crisis in Rwanda. During 2000 and 2001 Liberian refugees in Sierra Leone, were similarly militarized by LURD (Liberians United for Reconciliation and Democracy), with the support of Sierra Leonean, Guinean and British governments. Consequently, the pro-Taylor RUF (Revolutionary United Front) targeted the refugee camps, and also UNHCR and associated NGOs for their indirect support, making the camps unsafe for humanitarian workers. Weissman, F (2004) 167 Conversely, Sierra Leonean Refugee Camps in the Parrots Peak region of Guinea came under attack from government forces for allegedly harbouring RUF forces, hindering humanitarian access. Terry, F (2002) 7

Conclusion

For some, refugee 'warriors' could be viewed as freedom fighters liberating their own people from oppression, for others they will be terrorists seeking to destabilize a sovereign state. However, such groups will always come into conflict with those whose priority is the peaceful resolution of conflict, regional stability, and the provision of humanitarian aid exclusively to refugees. The international crisis in the Great Lakes Region of Africa, that was perpetuated through the militarization of refugee camps, remains a deep scar on the conscience of the international community, where *those responsible for genocide, the greatest crime against humanity, remained living with impunity in camps run by the United Nations, and the very same system established to protect refugees became the source of their peril.*" Terry, F (2002) 2

The indifference to the militarization of the refugee camps in the DRC, serves to proliferate conflict. Shying away from a commitment to provide physical protection of refugee camps that are at risk of militarization, only results in the need for even greater financial investment by the international community in the long term. Such short sightedness was clearly evident in hindsight when considering the events in the aftermath of the Rwandan crisis.

International peacekeeping operations, states and the humanitarian aid industry have an important role to play in dealing with this source of instability. The militarization of refugee camps is a critical source of violence and instability within a region in the countries in which they find refuge, and for the countries from which they have fled. When gauging the international community's adherence to its' responsibilities under refugee law, refugee policy must be measured against its' sustainability, that it does not directly contribute to the formation of future refugees by inflaming the cycle of conflict. There remains a fundamental need to deepen and strengthen the concept of the global protection of refugees, remaining one of the most pressing

tasks facing the international community. A genuine improvement in the physical protection of refugees can only be achieved through the considerable enhancement of multilateral cooperation and a shared commitment to implement new practical arrangements to address the current gaps in refugee protection. To this end, in the absence of norms and practices to deal with, the militarization of refugee camps, formal actions need to be developed with the various apparatus of the United Nations system, specifically those offices responsible for peacekeeping and human rights activities.

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