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A Critique of the Report of the Panel on United Nations Peace Operations

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Given the express commitment in the United Nations Charter ("Charter") to the preservation of international peace, it is understandable that the United Nations ("UN") was driven to engage in peacekeeping. In fact, the UN has engaged in fifty-three peacekeeping operations since its inception in 1945, with thirty-five of these taking place in the last decade.[1] The acceleration in the use of peacekeeping operations coupled with increased costs have created if not a crisis, then at least a very serious problem for the UN. This has been recognized at the highest level in this international organization as made evident by the Secretary-General's convening of "a high-level Panel to undertake a thorough review of the UN's peace and security activities, and to present a clear set of specific, concrete and practical recommendations to assist the United Nations in conducting such activities in the future."[2] This Blue Ribbon Panel[3] ("BRP"), in turn, transmitted its response to the Secretary-General by August 17, 2000. In what follows, after looking briefly at parts of the Charter as well as some comments of U.S. Ambassador Richard Holbrooke, I shall summarize and evaluate the recent Proposal of the BRP on UN Peacekeeping Operations. My evaluation of this proposal will be unorthodox, for it will,

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1. Ambassador Richard C. Holbrooke, *Holbrooke Remarks on UN Peacekeeping Reform*, May 16, 2000, *at* http://www.usembassy.state.go/posts/ja1/wwwh2575.html (last visited Nov. 30, 2000).

2. *Report of the Panel on the United Nations Peace Operations: A Far Reaching Report By an Independent Panel*, U.N. Doc. A/55/305-S/2000/809, *available at* http://www.un.org/peace/reports/peace_operations/docs/full_report.htm (last visited Nov. 30, 2000) [hereinafter *Report*] (quoting a letter transmitted from Secretary-General Kofi Annan to both the President of the General Assembly and the President of the Security Council).

3. The Blue Ribbon Panel comprises of Mr. Lakhdar Brahimi, Chair, Mr. J. Brian Atwood, Ambassador Colin Granderson, Dame Ann Hercus, Mr. Richard Monk, General Klaus Naumann (ret.), Ms. Hisako Shimura, Ambassador Vladimir Shustov, General Philip Sibanda, and Dr. Cornelio Sommaruga. *Report*, *supra* note 2, *at* http://www.un.org./peace/reports/peace_operations/docs/panel_members.htm (last visited Nov. 30, 2000).

besides making what could be called conventional criticisms, highlight problems with the proposal when applied to the *ætiological* and *security* issues of peacekeeping. I shall attempt to illustrate these problems in relation to the issue of involuntary population transfer.

The starting point for a discussion on international peacekeeping is the Charter. Article 1 lists among the purposes of the UN, the maintenance of international peace and security.[4] While this is certainly not the only purpose listed,[5] it tends to dwarf other objectives as made evident by the number of times this objective is referred to both in the preamble and the body of the Charter.[6] For instance, Chapter 4, Article 11, empowers the General Assembly with the consideration of general principles of cooperation in the maintenance of international peace and security.[7] In Chapter 5, Article 24, the Security Council is empowered with the "primary responsibility for the maintenance of international peace and security."[8] In Chapter 6, Article 33, parties to a dispute that endangers international peace and security shall first seek a solution by peaceful means.[9] And finally, Chapter 8, Article 52, provides for regional arrangements in dealing with matters relating to the maintenance of international peace and security.[10] The numerous references to the maintenance of peace and security within the United Nations Charter make it sufficiently clear that it is one of the most important objectives of the Charter.

On May 16, 2000, four months before the release of the Report of the BRP, U.S. Ambassador Holbrooke acknowledged that the UN's peacekeeping record is under challenge in at least five parts of the world today: Sierra Leone, Congo, Kosovo, East Timor, and Lebanon, with the outcome of an additional ten missions waiting in the wings. He is firmly of the opinion that reform of the present peacekeeping system is essential. Additionally, Holbrooke speaks of the system being "desperately over-stretched," stating that "strings will snap" unless reform occurs, as well as addressing the unsustainability of the current peacekeeping system.[11] Making allowances for the usual diplomatic rhetoric advanced by the Ambassador, there is nevertheless something disturbing in what he says that must resonate with most of us. Simply put, as he says, it is a core part of the UN's very personality that it functions to keep the peace. Subtract this from its functions, and it remains a shadow of its former self, or at least a shadow of what its creators intended. So what, then, are the issues raised by

4. U.N. CHARTER, art. 1, para. 1.

5. Others include the development of friendly relations among nations, international cooperation, and being a center for harmonizing the actions of nations.

6. *See generally*, U.N. CHARTER, art. 1, paras. 1-3, and art. 2, paras. 3 and 6.

7. *Id.* at art. 11, paras. 1-4.

8. *Id.* at art. 24, para. 1.

9. *Id.* at art. 33, paras. 1-2.

10. *Id.* at art. 52, para. 1.

11. Holbrooke, *supra* note 1.

Ambassador Holbrooke, and how do these get addressed, if at all, by the Report of the BRP?

There are two issues that Ambassador Holbrooke addresses. The first of these is the workings of the Department of Peacekeeping Operations ("DPKO"), specifically, its planning, deployment, staffing, and procurement process. Of these, Ambassador Holbrooke confronts mainly the matter of staffing, stating that the DPKO staff needs "substantial expansion," and that the Secretariat needs to have "a pool of qualified, trained pre-screened specialists that can be dispatched at short notice."[12] To facilitate this, he recommends agreeing with the request of the Secretariat to "develop and staff a rapid deployment management unit that maintains a roster of qualified military, police, and civilian experts."[13] Here, one sees him fusing into one discussion points touching on staffing and deployment. In addition, he briefly touches upon the matter of planning by saying the DPKO needs an organizational structure that will permit it to handle current demands as well as future ones.[14] Finally, Ambassador Holbrooke contends that the procurement procedure needs to be streamlined so that missions get timely delivery of what they want, and that the UN's Brindisi logistics base be equipped with state-of-the-art equipment.[15]

The second issue Ambassador Holbrooke addresses is the financing of the UN's peacekeeping. He believes that the UN's peacekeeping system was created during the Cold War, and has had the effect of putting the UN in "a potentially fatal financial straightjacket."[16] Without delving into his analysis of the evolution of the present crisis, one may still profitably examine what he says is the position of the United States ("U.S.") with respect to this matter. There are three ideas captured by this position as it applies to the financing of peacekeeping through the UN. First, the creation of a new tax bracket for middle-income countries that will assess them fairly. Second, the revival of a role for all five permanent members of the Security Council through a floor rate or other mechanism that affirms their special responsibility. And third, the reduction of reliance on a single contributor through a ceiling rate, and implementation of objective thresholds, so that countries may move up and down based on changing economic indicators.[17]

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12. *Id.*
13. *Id*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*

It is clear from the proposal put forward by Ambassador Holbrooke on behalf of the U.S. that the content of the proposal is negotiable. What seems less negotiable within the proposal is that the status quo is sustainable. In fact, it would be plausible to say that the U.S. position, when deconstructed, says quite the opposite—that the very survival of the UN depends upon remedying the financial system associated with peacekeeping. It is not difficult to construct a valid and sound argument here on behalf of the U.S.'s position as presented by Ambassador Holbrooke. It would run as follows: an essential purpose, perhaps the essential purpose of the UN, is the preservation of international peace and security through peacekeeping, and such peacekeeping requires a restructuring of the financial system and burdens assumed in peacekeeping matters. Therefore, the essential purpose of the UN cannot be fulfilled without a restructuring of the financial system and burdens of peacekeeping. Finally, to complete the argument, one may add the following: the UN will fail if its essential purpose is not met; consequently, without a restructuring of the financial system and the burdens of peacekeeping, the UN will flounder. For those who are skeptical of this argument, one should hastily add that the predecessor of the UN—the League—failed. And though the League did not fail for financial reasons, it did fail owing to the absence of major powers such as the U.S., Germany, and Japan. The same could happen in the case of the UN if the U.S. was to abandon its interest in this international organization, either by withdrawing or simply by becoming too distantly attached to it. Either way, the foregoing argument is both valid and sound. Such seems to be the subtext of Ambassador Holbrooke's address.

I now wish to consider the response of the BRP to the request of Secretary-General Kofi Annan, made on March 7, 2000, for an investigation into the Peacekeeping Operations of the UN. A summary of the recommendations of this Panel is now available, and it is to this summary that I now turn.[18]

1. Preventative Action:

"The Panel endorses the recommendations of the Secretary-General with respect to conflict prevention . . . ." The Secretary-General has called upon all organizations that aim at conflict prevention to address their challenges in a more integrated fashion, stressing Member States' obligations under Chapter 5 Article 2(5) of the Charter to give "every assistance" to such activities of the UN.[19]

2. Peace-Building Strategy:

i. "A small percentage of a mission's first-year budget should be made available to the representative . . . of the Secretary-General leading the

18. *See Report, supra* note 2, *Summary of Recommendations, at* http://www.un.org/peace/reports/peace_operations/docs/recommend/htm (last visited Nov. 30, 2000).

19. U.N. CHARTER, art. 2, para. 5.

mission to fund quick impact projects . . . ."[20]

ii. A doctrinal shift should occur "in the use of civilian police, other rule of law elements and human rights experts in complex peace operations . . . ."[21]

3. Peacekeeping doctrine and strategy:

"Once deployed, United Nations peacekeepers must be able to carry out their mandates professionally and successfully and be capable of defending themselves . . . ."[22]

4. Clear, credible and achievable mandates:

i. "[T]hreshold conditions, such as consistency with *international* human rights standards and practicality of specified tasks and timelines . . ." must be satisfied "before the Security Council agrees to implement a peace agreement with a UN-led peacekeeping operation."[23]

ii. "The Security Council should leave in draft form resolutions authorizing missions [o]f sizeable troop levels until such time as the Secretary-General has firm commitments of troops . . . from Member States."[24]

iii. "Security Council resolutions should meet the requirement of" a clear chain of command when peacekeeping operations deploy into dangerous situations.[25]

iv. "The Secretariat must tell the Security Council what it needs to know" rather than "what it wants to hear when formulating mission mandates."[26]

5. Information and Strategic Analysis:

The Secretary-General should establish the Executive Committee on Peace and Security Information ("ECPS") and Strategic Analysis Secretariat ("EISAS") "which would support the information and analysis needs of all members of the ECPS."[27]

6. Transitional Civil Administration:

"[T]he Secretary-General should invite a panel of international legal experts . . . to evaluate operations that have transitional administrative mandates."[28]

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20. *See Report*, *supra* note 2, *at* http://www.un.org/peace/reports/peace_operations/docs/recommend/htm (last visited Nov. 30, 2000).

21. *Id.*

22. *Id.*

23. *Id.* (emphasis added).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

7. Determining Deployment Timetables:

"The United Nations should define 'rapid and effective deployment capacities' as the ability . . . to fully deploy traditional peacekeeping operations within [thirty] days after the adoption of a Security Council resolution, and within [ninety] days in the case of complex peacekeeping operations."[29]

8. Mission Leadership:

"The Secretary-General should systematize the method of selecting mission leaders."[30]

9. Military Personnel:

"Member States should be encouraged to enter into partnerships with one another within the context of the UN Standby Arrangement System (["]UNSAS["]) to form several brigade-size forces."[31]

10. Civilian Police Personnel:

"Member State[s] are encouraged to establish a national pool of civilian police officers that would be ready for deployment to United Nations peace operations."[32]

11. Civilian Specialists:

"The Secretariat should establish a central Internet/Intranet-based roster of pre-selected civilian candidates available to deploy to peace operations at short notice."[33]

12. Rapidly Deployable Capacity for Public Information:

"Additional resources should be devoted in mission budgets to public information and the associated personnel and information technology required to get an operation's message out and build effective internal communications links."[34]

13. Logistics Support and Expenditure Arrangement:

i. "The Secretariat should prepare a global logistics support strategy to enable rapid and effective mission deployment . . . ."[35]

ii. "The General Assembly should authorize and approve a one-time expenditure to maintain at least five mission start-up kits in Brindisi . . . ."[36]

iii. "The Secretary-General should be given authority to draw up to US$50 million from the Peacekeeping Reserve Fund, once it [was] clear that an operation was likely to be established."[37]

iv. "The Secretariat should undertake a review of the entire

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29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*

procurement polices and procedures . . . ."[38]

14. Funding Headquarters Support for Peacekeeping Operations:

There should be "a substantial increase in resources for Headquarters support of peacekeeping operations and . . . [h]eadquarters support for peacekeeping should be treated as a core activity of the United Nations. . . ."[39]

15. Integrated Mission Planning and Support:

"Integrated Mission Task Forces (["]IMTFs["]) . . . should serve as the first point of contact for all [mission-specific] support . . . ."[40]

16. Other Structural Adjustments in the DPKO:

"The current Military and Civilian Police Division" and the "Military Adviser's Office in the DPKO should be restructured."[41]

. . .

20. Peace Operations and the Information Age:

"Headquarters peace and security departments need a responsibility centre to devise and oversee the implementation of common information technology strategy and training for peace operations . . . ."[42]

Before turning to an evaluation of the BRP with respect to its recommendations on the UN's Peace Operations, I should point out that this proposal is certainly not the only such proposal made over the past few years. Other proposals include the U.S. Institute for Peace Study Group Reform Proposal, proposals by John Mackinlay and Jarat Chopra, The Chapter VII Committee Proposal, the Sword and Olive Branch Proposal, and the Blue Helmet Proposal.[43] While it is too much to undertake an analysis of these proposals here, it suffices to say that they concentrate on many of the matters raised by the BRP, to wit: procedures, planning, logistics, and organizational structures.

I begin my evaluation of the BRP's Proposal with some comments from U.S. President Bill Clinton. Speaking on September 6, 2000, at the Millennium Summit, the President remarked, "In East Timor and in Sierra Leone the UN did not have the tools to finish the job. We must provide those tools—with peacekeepers that can be rapidly deployed with the right

38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. Carl Conetta & Charles Knight, *Review of Selected UN Staff Reform Proposals, Project on Defense Alterations*, *at* http://www.comw.org/pda/weburevu.htm (last visited Nov. 29, 2000).

training and equipment, missions well-defined and well-led, with the necessary civilian police."[44]

Against this claim, one might ask: "How well does the BRP Report fare? Does it provide the proper tools for effective peacekeeping?" An answer to these questions can be provided by looking more carefully at the foregoing summary of the BRP's recommendations. We have seen that the BRP recommends the following: (1) the creation of a Rapid Deployment Brigade, consisting of 5,000 persons, that is deployable within thirty to ninety days; (2) "[r]estructuring of the DPKO into a more permanent organizational system;" (3) "[r]estructuring Security Council procedure to create clarity in the Chain of Command; (4) "improv[ing] communications between the UN Secretariat and Security Council regarding mission mandates;" (5) "[creating] a panel of legal experts to explore ideas for interim criminal codes;" (6) "increasing resources for peace operations' headquarters;" (7) "establish[ing] an information and strategic analysis unit to serve UN departments concerned with peace and security;" and (8) "[g]ranting the Secretary-General discretion to fund peacekeeping missions prior to Security Council resolutions in order to speed up deployment."[45]

Nonetheless, as suggested by Don Kraus,[46] there are shortcomings in the Recommendations of the BRP. The first shortcoming is that the time frame is not fast enough. While the thirty to ninety days is an improvement over the current six months, it is still too slow.[47] Although the events in Rwanda, Kosovo, East Timor, and Sierra Leone simmered for some time, they exploded suddenly. Thirty days after each of these explosions was simply too late to stop the ethnic cleansing, genocide, or crimes against humanity that occurred.

A second shortcoming is that the training of the Rapid Deployment Brigade is "left primarily to Member States with an unspecified time allowed for group training."[48] The result is that performance in the field will be compromised.

A third shortcoming is that a five thousand member force of on-call Member State troops would still have to "overcome many of the same political [hurdles] encountered by current peacekeeping forces."[49] Member States would still be able to opt-in or out-of each mission, and Field Commanders might very well be tempted to take their orders from their nation's military command center rather than the DPKO.[50]

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44. *United Nations Rapid Deployment Force, Does the Brahimi Report Go Far Enough?, at* http://www.cunr.org/Brahimicopmarissonreport.htm (last visited Nov. 30, 2000).

45. Don Kraus, *Campaign For U.N. Reform, at* http://www.cunr.org/Brahimicopmarisssonreport.htm (last visited Nov. 30, 2000).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

Don Kraus, heading up the Campaign for UN Reform, has contended that some, or all, of these difficulties could be met by taking to heart the benefits of the McGovern-Porter Act.[51] His suggestions for improving on the BRP's Recommendations are the following: The UN Rapid Deployment Police and Security Force would be trained as a single unit of volunteer soldiers, with a deployment time of fifteen days, and would work solely for the Security Council. The Force would "allow Member Nations the time to develop the consensus and political will required to gather forces for a peacekeeping deployment."[52] Casualties would be seen along the lines of a "cop on the beat rather than a soldier losing his or her life for a cause not deemed in the national interest."[53] Further, he argues that the U.S. Congress must debate UN Rapid Deployment simply because it is the only legislative assembly in the world which can hold a credible debate on the question of a UN Rapid Deployment Force.[54]

It is time to turn to an assessment of the BRP's Recommendation in light of Ambassador Holbrooke's comments made both prior to, but in anticipation of, the Recommendations, as well as those comments made after the release of the Recommendations.

A rather obvious point should be made at the start.[55] While the Panel's Recommendations have taken into consideration organizational restructuring of the DPKO, improved communications, changed procedures, modified planning, deployment, staffing, and procurement, they have not taken into consideration a serious reform of the UN's "potentially fatal financial straightjacket."[56] To say this, is ultimately to say that no serious effort has been made either directly or by implication to address the sound and valid argument made by Ambassador Holbrooke which goes to the heart of the very well-being and life of the UN. With no effort at serious financial reform, the peacekeeping purpose of the UN is undermined and *a fortiori* the UN itself is undermined. This is Holbrooke's contention and it is not met by anything said by the BRP.

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51. *Id.* (citing HR 4453, 106th Congress (2000)).

52. *Id.*

53. *Id.*

54. *Id.*

55. Perhaps an even more obvious point is that the BRP should have been established much earlier. After all, questions about the Department of Peacekeeping Operations had been raised after the UN debacles in Bosnia and Rwanda. *See* CARL OFF, THE LION, THE FOX, AND THE EAGLE, 6 (Random House, 2000) ("The failure of these crucial peacekeeping missions in Bosnia and Rwanda left a blight on the United Nations and its Department of Peacekeeping Operations, and seriously put in question just what on earth this institution was good for.").

56. Holbrooke, *supra* note 1.

Furthermore, while the idea of a Rapid Deployment Force ("RDF") of some five thousand persons is laudable (allowing time for Member Nations to develop a consensus on where they wish to go together), the thirty to ninety days spoken of in the report should be modified in light of the more attractive suggestion made in the McGovern-Porter proposal of a fifteen day time period. Here, the point made by Don Kraus is in order. The matter of command authority and the unwillingness of field commanders to take their orders from the DPKO rather than their national capitals is far more problematic. This seems particularly true in the case of the U.S., if not at the first stage when the RDF would be deployed, then certainly at the second stage when a peacekeeping force would be deployed. For example, Presidential Decision Directive 25 ("PDD")[57] maintains the following: The President retains and will never relinquish command authority over U.S. forces. On a case-by-case basis, the President will consider placing appropriate U.S. forces under the operational control of a competent UN commander for specific UN operations authorized by the Security Council. The greater the U.S. military role, the less likely it will be that the U.S. will agree to have a UN commander exercise overall operational control over U.S. forces. Any large-scale participation of U.S. forces in a major peace enforcement mission that is likely to involve combat should ordinarily be conducted under U.S. command and operational control, or through competent regional organizations such as NATO or *ad hoc* coalitions.[58]

It would appear from the PDD that, while problems may not arise in connection with UN authority over U.S. troops at the RDF level, the same cannot be said of control over the substantial peacekeeping initiatives that would follow. This puts the UN in a dilemma: either lose U.S. support for peacekeeping initiatives by insisting on UN control over peacekeeping operations, or sacrifice the integrity of the UN operation by having something less than a clear command structure in the field because each participating member state is engaging in peacekeeping in its own way. The first of these choices is unattractive for the reason that often, though not always, U.S. participation in the peacekeeping effort will be essential to the operation's credibility. The second choice is unattractive because it creates the potential for disorganization in the field as each participating member state proceeds in its own manner.

An unacceptable approach to the foregoing dilemma would be to preserve the integrity of UN peacekeeping operations by subordinating them to U.S. control. Charges of normative chauvinism would undoubtedly result, and the consequence would be a perceived lack of objectivity, and possibly authority, by the UN. This would be too high a price for the UN to

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57. This Directive is titled *The Clinton Administration's Policy on Reforming Multilateral Peace Operations*, and was published in May, 1994. 33 I.L.M. 795 (1994).

58. Glen Bowens, *Legal Guide to Peace Operations* (Carlisle Barracks: U.S. Army Peacekeeping Institute, May 1998), pp. 363-64.

pay. Those who value the UN as an international organization should be wary of this approach, because in other contexts U.S. representatives have recognized the interests of regional organizations to be the same as those of the U.S.. On at least one occasion, Ambassador Holbrooke spoke of NATO interests in conjunction with U.S. interests, suggesting they were one and the same.[59] If the UN peacekeeping operation were to become a U.S. peacekeeping operation, certainly its alleged objectivity and international identity would be questioned. In this event, one is left with the original dilemma: either lose credibility by failing to have U.S. participation, or sacrifice the integrity of the operations by not having a unified command control. Clearly the UN faces a challenge in establishing, after the RDF, a peacekeeping force that is credible and yet still at a sufficient arm's length from the U.S..

The remarks that I have made are not meant to be ill-spirited. The BRP has, indeed, presented a proposal that deserves consideration. Nonetheless, it does strike me that the financial problem and the Command and Organizational Control problem have not been properly addressed. But over and above these difficulties, one may add, without being uncharitable, that much of what is examined seems a bit removed from the center of difficulties facing UN peacekeeping initiatives. Examples of such removed issues include parts of the proposal dealing with: (1) public information; (2) logistics support and expenditure management; (3) the funding of proper headquarters for the support of peacekeeping operations; (4) integrated mission planning and support; (5) other structural adjustments in the DPKO not previously discussed; (6) operational support for public information; (7) peace-building support in the Department of Political Affairs; (8) peace operations support in the Office of the UN High Commissioner for Human Rights; and (9) peace operations in light of the age of information and technology.

These objections notwithstanding, there are a couple of other areas where I believe queries can be raised in connection with the BRP Proposal. The starting point of my discussion here is the Charter and the articles referred to at the commencement of this paper, which address the purpose of the UN as, among other things, the preservation of international peace and security. The text of the Charter says that the UN pursues peace and security in the international context, even though the General-Secretary, Kofi Annan, seems to lose sight of this context. He says in his letter to the President of

59. In a letter dated June 16, 1996, to President Bill Clinton, Ambassador Holbrooke clearly fused NATO and U.S. interests, saying "Of the many organizations in the former Yugoslavia in the last five years, only NATO—that is, the United States—has been respected. What NATO/IFOR demands, happens." RICHARD C. HOLBROOKE, TO END A WAR 339 (Random House, 1998).

the General Assembly and the President of the Security Council, dated August 21, 2000, "On 7 March 2000, I convened a high-level Panel to undertake a thorough review of the United Nations peace and security activities. . . ."[60]

By his statement, the Secretary-General seems to think of the UN's purpose as being that of peace and security *simpliciter* rather than international peace and security. In the case of the Kosovo War, NATO clearly intervened in a domestic conflict, and though it is tempting, in light of the Secretary-General's comment, to believe that this conflict fell within the ambit of UN authority, it did not. So the Secretary-General's comment is unhelpful because it blurs the distinction between domestic and international matters. However, in contrast to the Secretary-General, the BRP seems to be sensitive to this distinction and deliberately focuses on the *international* dimension of peace and security. Notwithstanding this focus, the lion's share of the BRP's attention is on issues of peace with little said of security. What is said regarding matters of security is largely confined to what is found under the heading *Peace-building Strategy*, and includes a brief discussion of the roles of civilian police, rules of law, and human rights experts. However, that is all. Furthermore, security issues are marginalized, even in the international context, and the *ætiology* of the social conflicts that lead to peacekeeping is completely neglected.

It is simply inexcusable that the BRP failed to address *ætiological* issues related to international peace and security, even if consideration of some issues within domestic jurisdictions was required. There seems little point in designing a super deluxe peacekeeping operation if it fails to address the fundamental causes of the dispute in the first place. And there seems little point in designing a super deluxe peacekeeping operation if it fails to address issues of security once peace has been established. With an end to illustrating, but not to proving, why both the *ætiological* and security issues need to be addressed, the subject of population transfer must be considered.

Recent humanitarian catastrophes have been characterized not only by killings, but also by population transfers. The tragedies of Kosovo and Rwanda are two cases in point. Population transfer has been used by governments to "subjugate, conquer, and colonize peoples worldwide."[61] Policies that are built around population transfer assume one of two forms. They may assume the form of involuntary relocation, or they may assume the form of settler infusion. Under forced relocation, governments "expel individuals from an area and force them to relocate to a different territory."[62] In layperson's *parlance*, under this form of transfer, authorities seek to get rid of a group of people that, for one reason or another, they deem

60. *Report, supra* note 2.

61. Eric Kolodner, *Population Transfer: The Effects of Settler Infusion Policies on a Host Population's Right to Self-Determination*, 27 N.Y.U. J. INT'L L. & PO. 159, 159 (1994).

62. *Id.*

undesirable. Under settler infusion, governments "systematically transfer their own citizens into territories primarily inhabited by a different and distinct [ethnic] group of individuals."[63] Again in layperson's *parlance*, under this form of transfer, authorities seek to control a territory through ethnic means by sending out, not "shock troops," but ordinary folk who will export their own culture to a new land. In this paper the concern is only with population transfer construed as involuntary relocation.

Involuntary population transfers, in any context, raise ethical issues, humanitarian issues, and natural laws of nature.[64] There are six categories in positive international law under which involuntary population transfers have been analyzed. These are: "(1) deportation of enemy civilians from occupied territory during war; (2) deportation of a minority pursuant to a peace treaty; (3) expulsion of a vanquished people after *debellatio* and subjugation without a peace treaty; (4) expulsion of a national minority in time of peace; (5) population exchange treaties; and (6) involuntary transfer of a national minority within the territory of a sovereign state . . . ."[65] Of these, the one most applicable to situations like Kosovo and Rwanda is probably (4), the expulsion of a national minority in time of peace. In light of these new crises, however, an additional category, (7) the expulsion of a national minority in time of war, may be more fitting. Combined, (4) and (7) are the kinds of population transfers that best illustrate the subject of the present investigation.

Before confining the discussion to points (4) and (7), one should appreciate the rather ubiquitous nature of population transfers, whether involving settler infusion or involuntary transfers, in the course of human history. One of the earliest practitioners of population transfers was the Assyrian Tiglath-Pileser III (745-727 B.C.), who made forced resettlement a state policy. The Athenians were also avid participants, and moved the Delians from Delos in order to make the island a sanctuary for Apollo, the god of letters, music, and light. Though Babylonians, Greeks, and Romans had policies that were similar to those of Tiglath-Pileser, it was not until the Middle Ages that either expulsion or the forced removal of peoples was undertaken on a significant scale. Once collective identity came to be based less on ethnicity and more on religious belief, the Jews were singled out as a sizeable minority for expulsion. Accordingly, they were expelled from England in 1290, France in 1306, Hungary in 1349-60, Provence in 1394

63. *Id.*

64. Alfred de Zayas, *International Law and Mass Population Transfers*, 16 HARV. INT'L L.J. 207, 209 (1975).

65. *Id.*

and again in 1490, Austria in 1421, Lithuania in 1445, Spain in 1492, Cracow in 1494, and Portugal in 1497.[66]

But it was not just the Jews who were singled out for persecution and involuntary removal. With the revocation of the Edict of Nantes in 1685, the Huguenots fled France seeking sanctuary from religious persecution.[67] And in the 1640s and 1650s England "seized the opportunity to expel most of the remaining Catholics from Ulster."[68] In 1755, the British Governor of Nova Scotia, Canada, ordered "the removal of the French-Acadian minority numbering about 15,000 and had them scattered throughout the other English colonies."[69]

And in the U.S., on the heels of two Supreme Court cases, *The Cherokee Nation v. the State of Georgia*[70] and *Worcester v. The State of Georgia*,[71] the Cherokee Nation was involuntarily transferred from Georgia to Oklahoma, resulting in the loss of more than a quarter of the expelled Indians.[72]

In the Middle East during World War I, an estimated 1.5 million Armenians died at the hands of the Turks when driven out of their homeland in the years following 1915.[73] Then following the First World War, the Greco-Turkish Treaty of January 30, 1923, compulsorily transferred 1.6 million Greeks from Asia Minor where they had lived since early Greek times, as well as 384,000 Turks from Greece to Turkey,[74] inspiring Josef Kunz, editor of the *American Journal of International Law*, to say that the transfer was "overwhelmingly condemned as cruel and inhuman."[75]

It would be remiss not to mention the involuntary removal of millions of Soviet citizens during the regime of Joseph Stalin. While this expulsion has been amply described in Alexandras Solzhenitsyn's *Gulag Archipelago*, it only received official recognition in Nikita Kruschev's speech before the Twentieth Party Congress in Moscow on February 25, 1956. Mass

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66. Andrew Bell-Fialkoff, *A Brief History of Ethnic Cleansing*, FOREIGN AFFAIRS, June 1993, at 110.

67. For a detailed discussion of the history of the Edict of Nantes, see JANINE GARRISSON, L'EDIT DE NANTES (Fayard, 1998).

68. Bell-Fialkoff, *supra* note 66, at 113.

69. de Zayas, *supra* note 64, at 251.

70. 30 U.S. 1 (1831).

71. 31 U.S. 515 (1832).

72. *See generally,* MARION L. STARKEY, THE CHEROKEE NATION (1946).

73. *See generally,* Vahakn N. Dadrian, *Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications*, 14 YALE J. INT'L L. 221 (1989) (discussing in detail the background for the genocide of the Armenians during the First World War); *see also* Harry Emerson Fosdick, *Shall the Fundamentalists Win?*, Riverside Church Archives Committee, 1999 (remarking on the effect of the Turkish population transfer in a sermon preached on May 21, 1922). In the same publication, Dr. Fosdick castigates the U.S. Government for its position in claiming that the deportations and killings "were none of our business at all." *Id.* at 14.

74. Stelio Seferiades, *L'Echange des Populations*, IV Recueil Des Cours, 386 (1928).

75. Josef Kunz, *The Present Status of International Law for the Protection of Minorities*, 48 AM. J. INT'L L., 282, 283 (1954).

deportations were ordered, including Cossacks from the Kuban territory, Ukranians, Crimean Tartars, Meskhetians, and some of German ethnicity who were deported to Central Asia, Siberia, and regions beyond the Urals. The lethal conditions of these transportation programs resulted in the deaths of somewhere between five and fifteen million people.[76]

And, of course, the notorious actions of Hitler leading up to and during the Second World War. This Nazi "cleansing" program included not only acts of mass genocide against the Jews, Gypsies, gays, and disabled, but also cleansing through deportation. Notable in these deportation operations were the 1.2 million Poles and the 300,000 Jews who were taken from regions incorporated into the Reich and removed to non-incorporated areas. As Bell-Failkoff notes, deportees were given at most two hours to prepare themselves for their forced removal to a part of Poland not ready to receive them.[77]

On August 12, 1945, the U.S., the former Soviet Union, and Great Britain jointly decided on a plan to force the removal of German populations from Eastern Europe. It is thought that close to 12 million Germans were forcibly removed from Poland, Czechoslovakia, Hungary, Romania, and Yugoslavia at this time, with about 2.1 million of these succumbing to conditions of war, disease, hunger, and cold.[78] It was this involuntary removal which the great twentieth century theologian, surgeon, and Bach organist Albert Schweitzer criticized in his acceptance speech for the Nobel Prize in 1954.[79]

While some may be inclined to see the last two centuries as a march in the direction of civility and rationality à la Hegel, many of us, especially when confronted with the foregoing evidence of involuntary population transfer, would be more inclined to side with Dostoevsky and say that the very words, when applied to these centuries, "stick in one's throat."

The forcible transfer of people through deportation stands at the heart of some of the most recent and tragic conflicts in Kosovo, Rwanda, and Sierra Leone. History makes clear that state policies predicated on deportation are not new and are not likely to disappear. These transfers stand as an ætiological starting point for the loss of peace and the inevitable commencement of war. While such transfers are certainly not the only ætiological starting point for war, they serve as vivid and robust reminders

76. *See generally,* LEO KUPER, GENOCIDE: ITS POLITICAL USE IN THE TWENTIETH CENTURY (Yale Univ. Press, 1981).

77. Bell-Failkoff, *supra* note 66, at 114.

78. *Id.* at 115.

79. ALBERT SCHWEITZER, DAS PROBLEM DES FRIEDENS IN DER HEUTIGEN WELT (C.H. Beck, 1954).

that they are at least one starting point. With this firmly rivetted in one's mind, it is easy to see that the BRP does not go far enough. By neglecting the ætiology of conflicts, it does not pay adequate attention to the need for "effective strategies for conflict prevention" even if it does endorse the Secretary-General's recommendations for conflict prevention contained in the Millennium Report.[80] The occurrence of involuntary population transfer makes it clear that an understanding of the ætiology of conflicts is necessary for developing strategies of conflict prevention. The social disruption and legal obscurities surrounding the involuntary population transfer during the Kosovo War disclose the need to found conflict prevention on an understanding of ætiological starting points. In fact, the case of Kosovo illustrates these points very well.

By March 18, 1999, just a few days before NATO began its bombing campaign, there were about 300,000 people who had been displaced from their homes in Kosovo when they sought sanctuary in the countryside. Following the bombardment by NATO, these numbers swelled to about 1.5 million, and included a majority of people seeking sanctuary in Albania, Greece, and Macedonia as well as other countries. The social disruption was real even prior to the bombing, but became even more obvious thereafter. The displacement quickly gave way to a policy of involuntary population transfer against a background of internal—not international—armed conflict. This displacement gained considerable momentum by the commencement of the bombing. In the absence of plainly articulated conflict prevention strategies, one is not easily persuaded that even a "rapid deployment force" deployed within thirty days —or even within fifteen days—would have had the effect of decreasing this momentum early enough.

On the legal side, it is not apparent what role there is for the UN in an internal armed conflict when territorial integrity is protected under Article 2(4) of the Charter and when international peace and security are its emphasis. In other words, it is likely that an internal armed conflict would be immunized from the actions of the UN. Thus, there is some uncertainty in the Charter over what the UN can do in this ætiological area. Complicating matters is the fact that Article 3, common to the four Geneva Conventions, is the sole provision that applies to internal armed conflicts. In addition, international law is silent on whether mass deportations in a civil war constitute a violation of Article 3.[81] The result is that one is left not knowing the following: does the Charter apply in this ætiological area; and, if so, does Article 3 apply? Even if the answers are in the affirmative, how could the UN effectively engage the parties to the dispute so as to make a difference? And alternatively, how could the UN be effective if it were not

80. *Report of the Panel on United Nations Peace Operations: Executive Summary*, U.N. Doc. A54/2000, *available at* http://www.un.org/peace/reports/peace_operations/docs.summary.htm (last visited Nov. 30, 2000).

81. de Zayas, *supra* note 64, at 221.

to engage the parties at an early pre-population transfer stage? Regrettably, these are issues not considered by the BRP.

The issue of involuntary population transfer also bears upon the BRP's Proposal in another way. The Charter emphasizes, as indicated before, that one of the key purposes of the UN is the preservation of international peace and security. But the BRP's suggestions, almost in their entirety, relate to issues of peace and say little or nothing of security. It is, however, in the area of security that peacekeeping missions have run into considerable difficulty. The Kosovo situation is a case in point, and ties together the issues of involuntary population transfer and security.

The condemnation of the recent spate of violence in Kosovo on August 4, 2000, by the Interim Administrative Council for Kosovo, is evidence of the absence of such security.[82] Moreover, Dr. Bernard Kouchner, head of the UNMIK, has said, "Serbs and Roma, in particular, are often still excluded from daily life and are under great personal security risks."[83] But what constitutes a violation of one's security? A chapter from the Canadian Constitution is helpful. Part I, Section 7 of the Constitution Act of Canada states that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."[84] The Supreme Court of Canada has included within the ambit of the right to personal security a right to be free from state interference with bodily integrity and serious state-imposed psychological stress.[85] It is state interference in profoundly intimate and personal choices of an individual that triggers a breach of a person's security. The UN Charter, in its purpose of aiming to preserve international peace and security, can be viewed as aiming to protect, among other things, bodily integrity and a zone free of state-imposed psychological stress. However, there is very little in the BRP's Proposal that deals with this kind of protection, that is, with the issue of security. When faced with involuntary population transfer, as in Kosovo, this is the very kind of issue that the BRP should have addressed. There is some discussion, by the BRP, of a doctrinal shift in the use of civilian police, other rule of law elements and human rights experts, but the suggestions are, for the most part, pretty thin. The Blue Ribbon Commission's emphasis on peace, or as Hobbes would say, the cessation of war, still leaves plenty of room—as Kosovo

82. *Bringing Peace Kosovo News Reports, available at* http://www.un.org/peace/kosovo/news/kostor/htm (last visited Sept. 28, 2000).

83. *Complete Kosovo Coverage, at* http://www.un.org/peace/kosovo/news/kosovo2.htm (last visited Oct. 15, 2000).

84. CAN. CONST. (Constitution Act, 1982) pt. I, (Canadian Charter of Rights and Freedoms), § 7.

85. Morgentaler, Smoling & Scott v. R. & Attorney Gen. of Canada, [1988] 1 S.C.R. 30.

shows—for a lack of security. This, I think, is part of the intent of Dr. Bernard Kouchner's most recent comments.

To conclude, among the most serious deficiencies in the BRP's Proposals is a failure to deal with the general issue of finances facing the UN, and the implications this holds for fulfilling its peacekeeping mandate. This is the point made persuasively by Richard Holbrooke in his capacity as the U.S. Ambassador to the UN. In addition, there exists the failure to address the Command and Organizational Control problem. But over and above these criticisms is the criticism which relates to what I might label the alpha and omega of peacekeeping operations. As the discussion on involuntary population transfer shows, peacekeeping operations frequently have their origins in situations that are socially messy (ethnic conflict) and legally untidy (internal armed conflict). These operations, ideally, end not only with the establishment of peace, but also with the establishment of security, as the discussion on involuntary transfer illustrates. Peace, though decidedly better than war, is not the same thing as security. So there exists both an ætiological and a security dimension to peacekeeping operations, both of which need to be addressed. It is regrettable, therefore, that in addition to other deficiencies, the BRP neglected to look at the alpha and omega dimensions of Peacekeeping Operations.[86]

86. The author would like to thank his colleague, Dr. Maurice Williams, for his comments made on an earlier draft of this paper.