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Intrastate Ethnic Conflicts and American Interests

John R. Bolton

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by John R. Bolton

It is fashionable in academic settings and Washington salons to discuss the correction of international human rights abuses as a cost-free exercise, both human and financial, propelled by higher moral imperatives that brook no toleration of practical obstacles. Policy objections based upon non-human rights considerations are frequently dismissed from discussion contemptuously as unworthy of serious treatment. Unfortunately, this approach to human rights, especially in the context of the United States' international involvement, obscures far more than it clarifies.

Ethnic and religious conflicts within states represent the most likely sources of violence, death and gross violations of human rights around the world. While

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conflicts between states are far from reaching the "end of history," as recent clashes between Ecuador and Peru, followed by border skirmishes between Venezuela and Columbia, compellingly demonstrate, they will likely be eclipsed in severity and frequency by intrastate warfare. The breakup of former ideological monoliths, themselves some of the worst abusers of human rights in history, has only made these ethnic and religious conflicts more likely by removing the totalitarian restraints that previously held them in check. The lack of congruence between international boundaries and ethnic population concentrations in many parts of the world similarly provides another source of tensions and potential conflict.

In country after country, such as the former Soviet Union, ex-Yugoslavia, Somalia and Haiti, ethnic and religious hostility, anarchy and class warfare threaten the hold of fragile governments. Both in the run-up to, during, and in the aftermath of military hostilities associated with such divisions, the prospects for human rights abuses are obviously substantial, as are the difficulties in attempting to deal with them. Accordingly, while it may be appropriate to ask what the international response to such intrastate conflicts should be, it is also important to understand the limitations and costs associated with intervening to try to resolve them, or even to bring them to a cease fire. Moreover, it should not be surprising if the responses to such questions dictate differing responses in different conflicts.

Perhaps the most often-suggested vehicle to address international ethnic and religious turmoil is the United Nations, through such devices as peacekeeping, or "peace enforcement," forces authorized by the Security Council, the provision of humanitarian assistance by UN specialized agencies, elements of the Red Cross movement or non-governmental organizations, war crimes tribunals, or other formulations, all of which generally involve the oversight, if not the actual, very active participation, of the Council. Although regional organizations might also be candidates for such roles, few realistic observers believe that any existing regional organizations actually have the wherewithal to accomplish anything in contexts where there is even the slightest prospect for complexity or ambiguity. Thus, any assessment of the possibility of successful international involvement in intrastate ethnic or religious conflicts must turn on the suitability and efficacy of a role for the Security Council, albeit frequently operating in conjunction with other elements of the UN system, such as the UN High Commissioner for Refugees, or the UN Human Rights Commission.

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Recent developments in former Yugoslavia and Somalia, and fears of a repetition of such problems in Haiti and elsewhere, have suggested to many Americans that such involvement is not generally in the best national interests of the United States, particularly if becoming involved implies a direct commitment of U.S. military forces as part of an international peacekeeping force.

Republican-sponsored bills in Congress, now under consideration, would substantially reorder U.S. participation in UN peacekeeping operations to take account of these lessons. Not surprisingly, these proposals have drawn fire from both self-described human rights watchers and UN enthusiasts, with some critics implying that contemporary Republicans are not even being true to their Cold War ideals, and that they need lessons in internationalism. These criticisms are misplaced and potentially dangerous, especially for the young Americans in uniform who might be sent off to chase academic illusions in the name of human rights.

Careful American corporate lawyers drafted the UN Charter, and specifically the important provisions governing the jurisdiction of the Security Council. Internationalists like John Foster Dulles wrote in non-utopian language about

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Point/Counterpoint is a regular feature of *The Human Rights Brief*. The purpose of the section is to encourage meaningful, intellectual discussion on contemporary issues in human rights and humanitarian law through the presentation of two diverse, though not necessarily opposing, opinions on the subject at hand. Commentaries for the Point/Counterpoint section are generally solicited by *The Brief*, however, the Board of Editors welcomes all submissions, comments, and suggestions. The newsletter does not facilitate the exchange of the authors' compositions prior to publication. The views expressed in the Point/Counterpoint section are those of the authors and do not necessarily reflect those of *The Human Rights Brief*, the Center for Human Rights and Humanitarian Law, or their Directors or staff.

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but potentially highly successful ventures, even the fate of path-breaking efforts to establish a world-wide rule of law will suffer. The same pressures to disengage from conflict situations would be at work to undermine the two tribunals that have so far been created to deal with international crimes (former Yugoslavia and Rwanda). Their failure would breed more disaffection and hate between communities and encourage the killers to repeat their crimes, safe in the knowledge that there is no price to pay for them.

These voices rarely scrutinize the role the military may have played in the mistakes made on the ground and instead blame all of the problems on misguided political decisions.

The world should certainly exercise restraint in the temptation to use military might to deal with complex emergencies. Yet, when the peace and security of mankind are threatened, there is clear international law that legitimizes the use of force. Similarly, the Genocide Convention makes it clear that the duty of the international community—and individually of each State party to the Convention—is to prevent and punish this crime. Therefore, at least when it comes to genocide, the international community must be ready to use force as a last resort to protect the lives of vulnerable and unprotected victims. This option must remain in the arsenal of the world leadership, to be used judiciously but firmly if need be. It is even more important for the United Nations and for countries that play a leadership role in world affairs to create and display an array of measures short of military intervention so that the latter is truly a measure of last resort.

UN insistence on consent and on its own misunderstood neutrality, callous and culturally-determined conceits about the intractability of conflicts, and the resurgent wave of neo-isolationism in the United States are trends that conspire against a sober and realistic assessment of recent experiences. Worse than that, they prompt an attitude of selfish and parochial skepticism about mankind's ability to solve the problems of man-made calamities. And in the end, this will result in another genocidal rampage going unchecked.

If the United States turns its back on these moderately priced but potentially highly successful ventures, even the fate of path-breaking efforts to establish a world-wide rule of law will suffer.

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what the Council's role should be, and implicitly what it should not. Their original intent, set out in the Charter's Preamble, was "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind." To that end, they charged the Security Council with responding to threats to, or breaches of "international peace and security," the buzz words that both empower and limit the Council's mandate.

Even in the face of massive problems for the UN, its supporters now want it to intervene to restore stability and prevent gross violations of human rights where governments (one shrinks from calling them "nation-states") around the world are unable to maintain for themselves. This sort of peacekeeping role, once called "nation building" in Somalia by the Clinton Administration, is very different both from the Security Council's role under the Charter, and from UN peacekeeping between states that emerged occasionally when the Council was not grid-locked by the Cold War. To suggest otherwise is both historically inaccurate and dangerously flawed.

In the present context, the UN's record hardly makes it a likely candidate for a successful human rights champion.

First, UN peacekeeping did nothing to keep regional conflicts out of the broader U.S.-Soviet conflict. Indeed, the very examples of UN successes most often cited, like Namibia, Cambodia, El Salvador, and Mozambique, were precisely the scenes of Cold War surrogate conflicts. Peaceful resolutions with UN intervention there became possible only as the Cold War receded, not the other way around. Moreover, all of these examples were principally U.S. diplomatic efforts implemented by the UN. Breathtakingly, the UN's supporters ignore the most profound and dangerous regional standoff of them all - for forty long years, the division of Europe. There, NATO prevailed, the Warsaw Pact collapsed, and the UN was missing in action. Thus, in the present context, the UN's record hardly makes it a likely candidate for a successful human rights champion.

The UN's founders did not set out to rid the world of tragedy.

Second, the interventionist doctrine ignores the carefully circumscribed limits of Security Council authority: international peace and security. Not in Somalia, not in Cambodia and not in Haiti did such a threat really exist. At best, former Yugoslavia is a mixed case, involving the breaking apart of one country in civil war, and the creation of several nascent new states. Even there, the long-feared outbreak of warfare throughout the Balkans (and the threat of what? World War III?) has yet to occur, belying any substantial international impact. Human rights activists sometimes concede that many of their preferred venues for UN involvement concern situations of "human" security that cause intense emotional reactions in distant capitals. Yet, they do not propose amending the Charter to encompass their expansive views, but simply ignore what the Framers drafted.

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The UN's founders, moreover, did not set out to rid the world of tragedy. That goal, humane though it may be, requires a higher power not present in the United Nations. This is not a cynical withdrawal from human rights concerns, but a hard-headed recognition that the UN itself is an organization of member governments.

Third, UN involvement in intrastate disputes almost always risks a lack of consent among the warring parties, the sine qua non of successful peacekeeping among states. When states are in conflict, there are typically identifiable governments, usually located in capitals governing territories with existing or former internationally accepted boundaries, with definitive command-and-control authority over their respective military establishments. In such circumstances, exemplified by the Israeli-Syrian truce along the Golan Heights, justifiably cited as a UN success story by diverse authorities who cannot agree on much else, a neutral UN-authorized peacekeeping force can often play a useful role.

> What would be the international reaction if only a few of the human rights violators, and very low-level ones at that, were tried and convicted by the United Nations?

By contrast, when the parties have neither stable governments nor territories, when their capitals are either portable or war zones, and where military commanders may either be the real governors, or independent, or both, it is no wonder that informed consent is hard to find. The absence of consent, as in the former Yugoslavia, makes it harder both to carry out the humanitarian mission assigned to the UN, and to preserve the kind of objectivity necessary for any kind of human rights oversight.

Fourth, there is an important and too-often-overlooked distinction between the kind of peacekeeping the UN has successfully achieved, such as in the Golan Heights, and the more muscular operations that the UN advocates apparently prefer in places like Bosnia and Somalia. UN peacekeepers have never been successfully deployed with anything like a war-fighting capability, and in many cases are only lightly or completely unarmed. The past two years have repeatedly demonstrated that peacekeepers cannot begin as peacekeepers, become peace enforcers overnight, and then switch back again without any adverse consequences to themselves or the trouble-spot in which they serve.

It is legitimate to ask whether the "international community" can play a useful role in international ethnic conflicts short of military force, whether in the form of enforced sanctions or a military presence on the ground. For example, much attention has recently been devoted to efforts to operationalize a war crimes tribunal to adjudicate allegations of human violations in former Yugoslavia. One need not condone the practices of executions, ethnic cleansing, systematic rape as a tactic in warfare, torture or any other abuses, however, to wonder if show trials will really change much of anything.

During the Gulf Crisis, the Bush Administration carefully considered whether to try Iraqi leaders in absentia for war crimes committed during the invasion and occupation of Kuwait. Substantial evidence of such war crimes existed, both from eyewitnesses and in documentary and other forms, and the jurisdiction of Kuwaiti courts could not be challenged. Kuwait courts were considered preferable to courts established by the U.S.-led coalition to avoid the allegation that non-Arabs and non-Moslems were punishing Iraqis unfairly.

Nonetheless, after considerable internal debate, the Administration concluded that trials in absentia night actually be counterproductive. First, absent any mechanism to apprehend the defendants for punishment, the entire exercise might not only be irrelevant but might also undercut the credibility of the UN's opposition to human rights abuses. Second, convicting human rights abusers could well remove whatever incentives they might have to overthrow their abusive masters and deliver the real war criminals for international prosecution. Third, there were doubts as to how impartial any trials would be perceived internationally, when the defendants were not present to conduct their own defenses.

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While the Administration was not squeamish about the due process rights of war criminals, there were legitimate concerns about how the trials might play into the propaganda campaigns of those opposed to the goals of the U.S.-led coalition. As a result, both the United States and the Security Council decided only to accumulate and preserve evidence for possible use at a future date, to be determined.

> Ultimately, within states, so long as the nation-state system survives, people have to learn to live in peace with their fellow countrymen.

Much the same could be said in the case of human rights trials in former Yugoslavia. At present, only a very limited number of those accused of gross violations of human rights have been indicted or are actually in custody and accessible to UN tribunals, almost all of them being Serbs. Preparations for similar trials in Rwanda follow the same pattern. Whatever the contemporary rhetoric, these proceedings will be a far cry from Nuremberg. What, for example, would be the international reaction if only a few of the human rights violators, and very low-level ones at that, were tried and convicted by the United Nations? What would that indicate about the seriousness of the UN effort, and the commitment of the "international community?" The likely answers to these questions are not encouraging if the aim is to conduct trials for allegations of human rights violations other than for purely "feel good" reasons.

In short, the interventionist human-rights lament is badly flawed, both conceptually and operationally. Intrastate ethnic and religious conflict is not really within the legitimate domain of the Security Council, nor could it be without an expansion of the Council's jurisdiction and resources, neither of which is either likely or desirable. UN or other international measures less than military force are also unlikely to have a profound or sustained impact, at least in the foreseeable future.

The real solution to intrastate ethnic conflict is not, and probably never can

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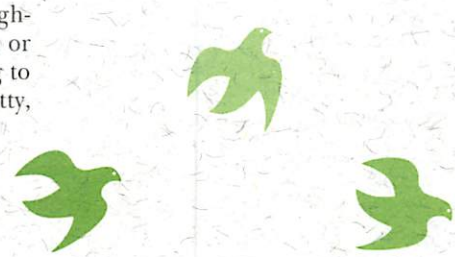
be, the imposition of peace and stability from outside the zone of conflict itself. Ultimately, within states, so long as the nation-state system survives, people have to learn to live in peace with their fellow countrymen. They cannot be taught, and ethnic tranquillity cannot be imposed from the outside, no matter how high-minded the motives of the outsiders, or how tragic the situation they are trying to alleviate. This reality may not be pretty, but it is accurate.



WCL Professor Participates in Election Monitoring in Nepal

by Angela Collier

Andrew Popper, Associate Dean of Administration and WCL Law Professor, travelled to Nepal in November 1994 to monitor the country's mid-term elections. The monitoring program was conducted under the direction of the National Election Observation Commission (NEOC), an indigenous Nepalese organization, and involved observers from every continent.

The observers were divided into teams of three or four and dispatched throughout the country. Popper, who acted as spokesperson for his team, was assigned to monitor the election process in various polling stations in the province of Dhading. Following the election, a coordinating committee assessed the teams' reports and made recommendations to the Nepalese Congress regarding election certification.

> The election was "moving, irregular, exciting, full of hope and democracy, but at the same time full of problems."

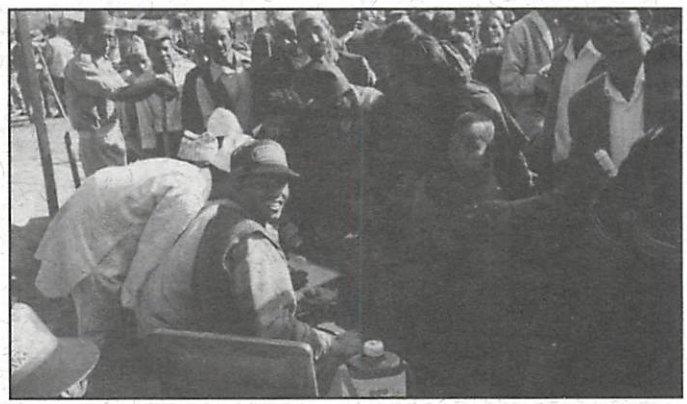
Popper recalls that the election was "moving, irregular, exciting, full of hope and democracy, but at the same time full of problems." He believes that voters were intelligent and highly interested in the election process, but lacked good sources of information on the issues and ideologies of the parties. Popper notes that some of the election practices were questionable, including underage voting, rough treatment by riot police, and the breaking of some ballot-box seals. "The very form of government may hang in the balance when such forces are in conflict," states Popper. "Thus, the election becomes a civil form of decision-making, in sharp contrast to violent revolution."

> "In a three-year-old democracy, even twenty percent voter fraud may have to be tolerable.

Despite the problems, the NEOC Coordinating Committee ultimately recommended certification of the election in which the Marxist-Leninist party received a majority of votes. Concurring with the NEOC's decision, Popper states, "Besides the fraud, I was taken by how strongly everyone felt they were affecting an outcome." He adds, "In a three-year-old democracy, even twenty percent voter fraud may have to be tolerable. There were improprieties, but they did not reach the level to de-certify." Overall, Popper recalls his experience in Nepal as rewarding. "It is humbling and a privilege to be part of a process that goes to the heart of public governance."

Dean Andrew Popper

Dean Popper with voters at the Gajuri polling station in Dhading province, Nepal



Dean Andrew Popper

Local officials at the Negalpanini polling station in Dhading province, Nepal review the registration qualifications of voters. Nonetheless, some individuals below the legal voting age were permitted to vote.

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Assembly Resolution. That is, the declaration, once approved, can be used by adjudicative and administrative bodies for its interpretive value of indigenous peoples' rights as a reflection of the collective "state of mind" of the Member-States of the OAS.