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<p style="text-align:center">Individual versus Group Rights and the Question of Refugee Repatriation [1]</p>

Before the impending war last summer (August 2008) in Georgia, the General Assembly took up the protracted refugee crisis in the region and adopted (On May 15) a resolution recognizing "the right of all refugees" (including victims of reported "ethnic cleansing") to return to Abkhazia and their property rights. It "regretted" the attempts to alter pre-war (1992-1993) demographic composition and called for the "rapid development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes."[2] The vote was 14 Member States in favor to 11 against and 105 abstaining. It is hard to imagine the vote as a strong endorsement of repatriation. This was largely a post Soviet exhibition game, where several of the post communist countries poked the Russian bully in the eye. The Russian response came later in the summer. In reaction to escalating tension and a hard to comprehend decision by Georgia to attack South Ossetia, the prepared Russian army devastated Georgia within days, and would have run the country over had it not encountered a relative robust international opposition. It is tricky at present to determine for certain to know whether the Georgians believed that the UN resolution was a real support of repatriation, or only claimed it to be. Whether the seeming international support – of which the GA support was important, but even more so the US pandering -- encouraged Mikheil Saakashvili, Georgia President, to attack Ossetia in August 2008.

The international community views the right of return for the uprooted as a basic human right. This is seen as both legal and moral right. It applies formally to refugees and in substance to the internally displaced (IDPs), and extends to what today would be designated by UNHCR as "persons of concern".   This has not always been the case. In the immediate aftermath of WWII, population expulsions, which were pervasive during the war, continued and spread, leading within three years to the worst global

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[1] This essay borrows from a joint manuscript I am writing with Howard Adelman, Rites of Return.
[2] http://www.un.org/News/Press/docs//2008/ga10708.doc.htm

refugee crisis of the last century.[3] The displaced persons in Western Europe immediately after the war numbered 7 million, including forced labor, prisoners and deportees. There were a comparable number in the East. Many of those, except for perhaps 2 million, were repatriated very soon after the end of the war. Those who would or could not be repatriated came to populate the DP camps.[4] In addition to those uprooted victims, the end of the war saw a most violent interethnic violence led to the then prevalent policies of population transfers, forcible expulsions, "voluntary" escapes and partitions. In addition to the population transfers within the emerging Soviet block, expulsions in central Europe and in the Indian subcontinent included, in each region, between 10 and 20 million refugees.[5] In India, the disagreements are whether the number of refugees in the nine months after August 1947 is closer to 10 to 18 million Hindus, Sikhs and Muslims who were expelled and forced to flee. The disagreements over the number of dead are comparable: from under 200,000 to more than a million and a half. Decolonization brought its own upheaval. In addition to India, the British evacuation of Palestine was followed by the 1948 war and the ongoing Israeli – Palestinian conflict. A decade later, Cyprus became a flash point. In Africa, the postcolonial period created states that witness ethnic violence and horrific refugee crises through war and violence until today.

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[3] Michael R. Marrus (1985)*The Unwanted: European Refugees in the Twentieth Century*. New York: Oxford University Press; Andrew Bell-Fialkoff (1996) *Ethnic Cleansing.* New York: St. Martin's; Robert K. Schaeffer (1990) *Warpaths: The Politics of Partition.* New York: Hill & Wang; Robert K. Schaefer (1999) *Severed States: Dilemmas of Democracy in a Divided World* Lanham, MD: Rowman & Littlefield.

[4] Earl G. Harrison reported to President Truman ("The Treatment of Displaced Jews in the United States Zone of Occupation in Germany, 1945") in August 1945 that, in Germany and Austria, there were "more than six million displaced persons." (non Germans) Mark Wyman (1998) *DPs: Europe's Displaced Persons, 1945-1951.* Ithaca, NY: Cornell University Press; Tony Judt (2005) *Postwar: A History of Europe Since 1945*. New York: Penguin, 22-32.

[5] The ethnic cleansing continued during the Cold War. Cf. Cf. Tomasz Kamusella (1999) "Ethnic Cleansing in Silesia 1950-89 and the Ennationalizing Policies of Poland and Germany," *Patterns of Prejudice*, 33:2, April , 51-73; (2003) "Ethnic Cleansing in Upper Silesia," in Vardy and Tooley, 180-191; also (2002) "Nation-Building and the Linguistic Situation in Upper Silesia," *European Review of History* 9:1; (2004) "Upper Silesia 1870-1920: Between Region, Religion, Nation and Ethnicity," *East European Quarterly.* For the connection between ethnic cleansing and evolving human rights norms, see Jennifer Jackson Preece (1998) "Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms," *Human Rights Quarterly* 20:4, 817-842.

Gross violations of human rights, war crimes, and mass violence have characterized modern society and modernization. Over the last two centuries, numerous countries inflicted violence on foreign and domestic populations, leading to uprooting and the mass movements of refugees and Internally Displaced Persons (IDPs). As many as two hundred million refugees were uprooted in the course of domestic and international political violence during the 20th century. Of those, many millions were repatriated; but many millions were not. Most of those who could not return remained displaced for years, at times for decades and generations. From Rohingas from Burma to Palestinians in Lebanon, from Sudanese in Kenya to Bhutanese in Nepal, the list of protracted refugee crises is long.

In the first half of the twentieth century, ethnic expulsion (referred to as racial, religious, national, minority) was the preferred solution for conflicts between peoples. During the following three decades, between 1950 and 1980, expulsion was replaced by a status quo: rejecting the legitimacy of expulsion, and aiming to resolve refugee crises by repatriation, settlement in countries of first asylum and resettlement via migration elsewhere. By 1980, repatriation became the accepted "optimal solution" of international rhetoric.

As politics and moral standards shifted, the past too became subject to moral revisionism. War crimes topped the list of historical wrongs to be addressed. This trend accelerated since the end of the Cold War.[6] The increased attention to violence and victimization diminished the value of historical context. If previously the crucial question to define a "victim" was whether the victims were ours or the enemy's, in the 1990s the focus shifted from the causes to the fact of uprooting, which ipso facto constructed victimization.

The response to a wide – an all inclusive -- definition of "victim" has increasingly emphasized the right of repatriation, or, as it is widely known, the right of return. The right of return supposedly provides a solution to refugee crises and even discourages ethnic cleansing and uprooting. In public discourse, the right of return is comprehensive;

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[6] Elazar Barkan (2000); Elazar Barkan and Alexander Karn (eds.) (2006) *Taking Wrongs Seriously: Apologies and Reconciliation*. Stanford: Stanford University Press.

the right applies whether or not the individual or the group held citizenship in the state that that now controls the territory from which the flight took place. Further, the right is seen to extend to the progeny of those who fled even though they may not have been born in this territory or country.

These beliefs inform the general international conviction that the right of return is enshrined in international law and this has been translated into domestic legislation. Dialectically, the international system is influenced by these beliefs. Purportedly, the right of return has a solid foundation based on a series of conventions and declarations, first and foremost Article 13(2) of the Universal Declaration of Human Rights (UDHR) which states: "Everyone has the right to leave any country, including his own, and to return to his country."[7] The Convention Relating to the Status of Refugees (28 July 1951) supposedly strengthens that right, which is not limited to claimants who have refugee status.[8] Article 1(C), that recognizes the rights of stateless persons, stipulates that it is up to the refugee to freely determine whether or not to return to the country of his nationality or, in other formulations, to the country of his "former habitual residence." Regional human rights laws with provision on the right to freedom of movement evidently strengthen this interpretation. Article 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR) stipulates a "right to enter his own country" (Paragraph 4).[9] The formal legal discussion of return focuses on refugees as individuals, but the prevalent civil society view contends that the right to return represents customary international law and applies in cases of mass uprooting because there is no distinction between individual and group rights. Over the last generation the predominant policy privileged the resolution of the plight of refugees through repatriation

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[7] UN General Assembly, *Universal Declaration of Human Rights,* GA Resolution 27 A (III), Adopted 10 December 1948, http://www.un.org/Overview/rights.html.

[8] UN High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Adopted 28 July 1951, http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf.

[9] UN General Assembly, *International Covenant on Civil and Political Rights*, GA Resolution 2200 A (XXI), adopted 16 December 1966, entry into force 23 March 1976, http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

in contrast to local integration in the first country of asylum or resettlement in a third country.[10]

Concurrently with the growing nationalistic exclusionary structure of international politics, a new regime of international organizations evolved that were formalized in treaties. International agreements and conventions heralded the beginning of human rights, including at their heart the humanitarian care for refugees. This new order failed to prevent widespread bloodshed and sacrifice or to create a new stable polity, but, nevertheless, remained in place in the immediate years after World War II. However, within a few years, a new dominant regime emerged. Changing borders became the exception. The (rhetorical) obligation to protect minorities within states was abandoned. States became self-enclosed reified entities as the doctrine of non-intervention in the domestic affairs of states reigned. The new regime was based on *individual* rather than communitarian human rights, including the rights of *individual* refugees *not* to be returned to a persecutory regime that had targeted them. This was correctly dubbed a revolution in the international regime as states willingly qualified their sovereign authority, created a specific regime of rights for refugees, and allowed individuals who legitimately feared persecution to claim the protection of a state of which he or she was not a member.[11] States that abused their own citizens became subject to criticism to try to shame them into behaving in accordance with the new rules.

The early days of forming an international human rights regime (1948-1951) expressed the politics of hope and the development of a European and even an international legal protection regime, a doctrine that became a staple of post-WWII conventional legal scholarship. But the remnants and aftermath of violence prevented the resolution of the refugee problem based on individual rights. This flurry of activity to establish new rights and protections took place as the international community was reeling under the news of some of the largest ethnic expulsions ever. Tens of millions were forced from or fled in Europe and Asia. Most have largely disappeared from global

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[10] For example, Tanzania 'forcefully' repatriated a half a million Hutus to Rwanda in 1996.

[11] Erika Feller, Volker Türk and Frances Nicholson, eds., *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003).

political consciousness.[12] The civil society view of the right of return is demonstrated by Amnesty International's claim of the yardstick of 'international practice':

> [T]he argument that large-scale displacements are excluded from the right to return is contradicted by international practice, as evidenced in consistent calls by UN bodies for the return of large numbers of refugees and displaced, such as Palestinians, Afghans and Greek Cypriots and, in the case of the former Yugoslavia, by the enforcement of the right to return in the Dayton Agreement.[13]

"Practice" in this case is identified with rhetorical claims ("calls by UN bodies") and not with the effectiveness and institutionalization required to deliver actual results. The argument of this paper is that the actual practices differ from rhetorical claims that assert what the practice is or should be. This distinction leads to a different conclusion, taking into account the identity of the refugees in order to understand the gap between the rhetoric and the practice. Identity -- national, ethnic, religious – turns out to be a crucial variable which determines whether repatriation is feasible or not in a post conflict situation. Whether refugees are repatriated is determined by whether the refugees belong to a minority or a majority group. When ethnic (religious) *minorities* are uprooted, there is generally one constant: the displacement often becomes permanent. There are exceptions. A few minorities have been repatriated but minority displacement as a result of ethnic clashes and political violence is unlikely to be undone. More significantly, the international community is unable to reverse the expulsion in any significant way, even in the rare cases where strenuous efforts were exerted.

The discussion of the right to return, repatriation, and restitution from a legal perspective ordinarily overlooks the question of ethnic identity and minority return. International laws and norms are blind to the identity of individuals and groups, and

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[12] The partition of India, and the ethnic Germans from Central East Europe are the best known and larger groups. There were others.
[13] Amnesty International, *Bhutan: Nationality, Expulsion, Statelessness and the Right To Return*, ASA14/001/2000, 1 September 2000, http://www.amnesty.org/en/library/info/ASA14/001/2000/en.

therefore treat the question of repatriation independently of identity, the nature of the conflict, or the actual practice of return. Politics is left out of the discussion of the right of return. The freedom of movement, for example, is constructed as a principle that should be implemented regardless of political constraints. The emphasis contradicts the pre-1990 UNHCR position which always qualified the principle of voluntary repatriation with fundamental changes in the conditions that produced the refugees in the first place. This prerequisite for assisting in repatriation disappeared under the new refugee regime. The dissonance between the existence of tens of millions of refugees and IDPs and their inability to return, instead of raising questions about the status of international law and norm of repatriation, results most frequently in a more insistent affirmation of the rights.

The response ought to center on the refugees as victims. This means that the attempt to enable refugees to rebuild their lives ought to be prioritized, and physical repatriation should come only second. One support for this position comes from an unlikely source, the Pinheiro Principles as presented to the UN Committee on Economic, Social and Cultural Rights.[14] This may be viewed as "unlikely," because Pinheiro Principles articulated a comprehensive commitment to support the expansive interpretation of rights as a basis for repatriation to homes and for restitution. According to Pinheiro, refugees alone can give up and abrogate the right to return voluntarily. Yet, Pinheiro introduced the question of feasibility as a factor for consideration.

While for a generation the UNHCR has advocated repatriation as the preferred solution for most refugees, any actual formulation of a "right" to repatriation is more complicated. The repatriation argument is often based on two rationales: First, individuals have a right to their homes. Repatriation is a condition of exercising that right. Thus, states have obligations to assist refugees to return, and the home state has an obligation to allow the return so they can retrieve their homes. The question of redress of population expulsion is more complicated. There is little doubt that the right to repatriate to one's

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[14] See the UN Economic and Social Council, *Housing and property restitution in the context of the return of refugees and internally displaced persons*, Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, Principles on housing and property restitution for refugees and displaced persons, E/CN.4/Sub.2/2005/17, 28 June 2005, http://www.badil.org/e-library/Pinheiro-Principles.pdf.

home is enshrined in many human rights documents. Most clearly this was articulated in the Dayton Accord that ended the Bosnia conflict.

The right articulated in universal language, however, is often denied in practice, and refugees are kept in "provisional" limbo for years and decades. The international community and often refugee advocates insist on the obligation of the parties involved to allow the refugees to return and thus protect their rights. These explicit demands do not refer to politics, though their success or failure depends very much on the political situation. Similarly, the denial of repatriation is often based on international law, but shifts the focus from individual rights to the right of self determination and security (defense).

These debates illuminate the conflict of rights and the role of historical memory in the implementation of rights. Let me make a strong assertion, and then I will attempt to briefly illustrate it with one case. I argue that, as a matter of fact, not law, refugees who are uprooted as part of an ethnic conflict and belong to the non-victorious ethnicity (defeated, or when the conflict ends in a stalemate, without an outright victory) are generally not allowed to return. What does the general rejection of return of minorities mean to the status of the right of return as an international law or norm? Currently there is a near consensus that the *right* exists. But that does not practically assist the displaced.

This political, historical reality is largely ignored by advocates of refugee repatriation who focus on the right to repatriate. The necessary question must then be: Can the rhetorical emphasis on the universal claim of the right of return help resolve the ethno-political conflict and lead to repatriation? Unless we can show otherwise, political reality teaches us that ethnic minorities are not repatriated.

If this description is true, that presents challenges of how to bridge the rights of the uprooted with rebuilding their lives. I would like to suggest that the focus ought to be on the individual rights of the refugees to resettlement, to housing and numerous other rights. If we want to pursue the principled right not to be expelled, this may be very worthy, but it seems that it ought not to take precedent over the individual well

being of the refugees. The political solution should be sought in the political arena, in the relations between states. Refugees should not be a weapon in the struggle.

The combination of a discussion of feasibility of return and compensation is central to conflict resolution.   Refugees adhere to their status in part because they have no incentive to give it up. As refugees they are entitled to some measure of help, even if this often condemns them to prolonged suffering. By giving the status up they give up whatever unrealistic hope they may have of restituting their property, gaining compensation, or otherwise improving their lives. The reason to provide compensation to refugees is that they could build new life for themselves.

Provision for compensation would conceivably diminish the objections of refugees to a political solution while enabling them to improve their own economic situation. The combination of loss of home and property makes the refugee feel bereft as if she had slipped into an abyss. In the absence of a property settlement or an offer of resettlement and state membership elsewhere, no exit strategy is available; the only choice is to continue fighting. Giving up status as a refugee is perceived as abrogating property claims. The hope to claim the property keeps many refugees in their dismal status, and reinforces resistance to resettlement.

This shift towards privileging repatriation over resettlement or rehabilitation accelerated the changes in the refugee regime doctrine that had taken place in the 1970s and 1980s. A confluence of events led to the reformulation of the policies of repatriation that began with the dramatic rise in the number of spontaneous arrivals in western states of individuals claiming asylum. The ongoing Indochinese refugees fleeing in the 1980s presented the prospect of ever increasing numbers and a process which only served to attract more refugees. The international community began to view repatriation of refugees to their home country as the easiest and best way to resolve the plight of refugees. In the 1990s, the policy was extended to IDPs. The treatment of and response to the Indochinese refugees provided the tipping point from an emphasis on resettlement to a new stress on return. The shift was triggered in part by the belief that the refugee resettlement programs aggravated the refugee flow by providing a magnet for more movement, a so-called 'pull factor'. In that context, the multiplication of refugee

situations, sometimes on a massive scale in Asia and Africa, made resettlement appear unsustainable. Further, with easier communication and transportation, refugees began to use the individual-based refugee protection system developed around the 1951 Convention to arrive spontaneously in western countries to claim protection as a matter of right, threatening the ability of states to manage and control inflows. Increased numbers and costs led also to fears – subsequently realized – that western countries would respond by prevention and intervention strategies. Western states indeed responded by initiating a number of measures to inhibit refugee flows, including interdiction, the introduction of visas, and the use of detention. A parallel movement among aid and development agencies began to focus on economic development in the home country of the 'refugees' as a means of reducing the 'push factors' that impelled them to leave their homes.

Permanent settlement in the first country of asylum was met with great resistance in most refugee cases leading to the development of containment strategies that included a vast increase in the creation of refugee camps, new restrictions on entry, a development of a set of interdiction tools to prevent refugees from even reaching a state's air and sea ports, re-interpretations of the refugee convention, and a new emphasis on return. Historically, the predominance of the rhetoric of the right of return in international politics did not result from a philosophical or ethical reevaluation, or any other structured rethinking about policies or values, but as a stop gap measure and a response to political pressure. The inability to respond to the Indochinese refugee crisis in the late 1980s was turned from a policy failure into an ethical virtue. Transforming the inability to assist the refugees through resettlement into a principle stand to protect the refugees' rights, in particular the right of return.

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I would like to suggest that as human rights professionals and advocates, the challenges we face force us to come to terms with "real world" limitations and explore how we mediate the conflicts between different rights, and square these with ethical and social justice.   The recent example of the war last summer in Georgia, allows us to look at the predicament as it evolves.   Although the war in summer uprooted many new

people, the displacement of refugees in Georgia had been an ongoing deprivation since the early 1990s, receiving only occasional international attention. The war in August 2008 aggravated the refugee crisis and uprooted between 160,000 and 200,000 people. In a nutshell the dilemma is how to assist the refugees and the IDPs to rebuild their life. The political situation is anchored in a rights dilemma: should the refugees rebuild their life in their old homes, that is, to be repatriated; or should the assistance be directed to help them resettle in new areas.

The dilemma involves ethical and legal questions from a group and individual perspective. How do we define the stakeholders? Is it the state and the collective identity, that is Georgians, Abkhazians, Ossetians? Or are the uprooted individuals the refugees themselves who are the main stakeholders? One could imagine that all of the above categories ought to be included, but in reality each group sees its interests and rights as contradictory to the others, and to the individuals. Most clearly we can think of it as a conflict between self-determination, that is, national rights and various political, civil, social, and economic rights of the uprooted.

 The hundreds of housands refugees were uprooted in the Republic of Georgia as a result of regional and local conflicts, partly a civil war, partly an ethnic conflict. The uprooting and expulsion took place first mostly in the early 1990s, and secondly, recently in August 2008. Of those displaced, many refugees were able to return to their homes, or communities, but many others could not. The most important variable that delineates those who were able to return from those who could not is their ethnic identity: that is their status as minority or majority refugees.

The Soviet census in 1989 the population of Abkhazia which was a region in Georgia, showed 525,000 persons of which 17.8 per cent were Abkhaz; 45.7 Georgian; 14.6 Armenians; and 14.3 Russians.[15] When Georgia declared independence in 1991, just before the collapse of the USSR, Abkhazia was part of the new country. Within a short period, the weak state of Georgia was subjected to a coup, a civil war, and ethnic

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[15] Catherine Dale, "The Dynamics And Challenges Of Ethnic Cleansing: The Georgia-Abkhazia Case," *Refugee Survey Quarterly Vol. 16, No. 3, 1997*

struggle. When the separatists in Abkhazia and South Ossetia began their struggle, the central government was not in a position to respond quickly. Although Russia itself was at low ebb of its international power, it supported the separatists in Abkhazia and South Ossetia, who achieved de facto independence from Georgia. While the war was ongoing and the Georgian army had the upper-hand, there was widespread belief that Georgians intentionally burned down and looted Abkhaz homes, as well as perpetrated violence including torture and murder. The Abkhaz conventional view, supported and argued by their ethnic leadership, sees the ethnic violence as intentional and planned.[16] Analogous views are held by the Georgians. This ethnic animosity quickly led to widespread ethnic conflict and expulsion, of about 250,000 Georgians (almost 40 percent of the population) from Abkhazia (1992-1993) and about 23,000 from South Ossetia. Smaller numbers of Ossetians were expelled to Russia. The region which had been multi-ethnic, though with clear delineation of the ethnic groups in different localities, with particular economic ties and occupations, has become largely ethnically homogenous.

How many were expelled? How many refugees and IDPs were waiting to be repatriated from the 1990s conflict? One estimate put the number the displaced at about 140-150,000. The UNHCR cites 220,000 IDPs before the summer of 2008 (and 275,000 as persons of concern, including IDPs who returned to Gali). Some of the over quarter million Georgians never left Abkhazia, others returned to Georgian enclaves. Certainly, the vast majority of the Georgian population has disappeared from the cities or towns, as did any appearance of multiethnic society. The numbers are disputed, like in so many other conflicts, with each side provides statistics to substantiate its own claim. How does one count families of mixed identities Abkhaz-Georgian? Yet the majority of Georgian IDPs remained displaced, and those who returned "to Gali region live in constant fear."[17] The repatriation to this border region which was over 90 percent Georgian before the war, made the return more feasible, and underscores how much the ethnic majority is a precondition for return. In this case, it is ethnic homogeneity. In

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[16] Dale, ibid. The destruction of the Abkhaz State Archives in the first days of the war provides a central "proof".

[17] ibid

contrast, Georgians as minority did not return to other regions. As a local majority, they returned with fear.

It is worth emphasizing that the notion of minority has to be understood in the context of the post conflict demography, not in that of the earlier time. In this case, the Georgians were the majority, but after the expulsion, they became a minority. This observation has nothing to say about the justice of self determination, and it is clear that the displacement violates the rights of the displaced. The only issue emphasized in this context is that the political reality that is created by the power relations among the groups is determined by the post conflict demography.

The other minorities fared differently. The Greek largely helped by the Greek government were evacuated to Greece, and most stayed there. Substantial number of Armenians and Russian escaped to Russia, where they remained, although noticeable minorities stayed. They were able to stay because politically they supported "the locals," which now turned out to be Abkhaz. Abkhazians were also uprooted by the war, and while the destruction left many as IDPs and large areas are depopulated, the region is mainly populated by Abkhaz, who have come to hold power and thus became "the majority."

One critical question is whether the wars involved ethnic cleansing. The criteria may include the question of central planning and of war crimes, not just the observation of who was uprooted. The documented evidence is inconclusive, but the practice is certain. Indeed, the pattern of expulsion of the Georgians as an ethnic group is repeated against other ethnicities, in Abkhazia and more recently in South Ossetia. One can hardly refer to it as anything but ethnic expulsion, intimidation, and domination.

The General Assembly Resolution.

Back to the vote in the UN. Was the General Assembly vote, a vote of confidence in an international system that supported repatriation? The vote itself can tell us much. Most countries did not participate. A miniscule support which may have been read, correctly, by Russia and others, that there is no international support for repatriation. For the

outsider, the impression was that the GA overwhelming vote was not to care one way or another.

Before last summer the region had received relatively minimal international attention since 1995. Indeed the GA vote was more of a testimony of how marginal the region was, rather than of its centrality. It was against this background that the local tensions and sporadic violence together with a shift in the global power relationship, led to a new war. The Georgian government, supported by the West, misjudged its political alternatives and retaliated to local violence by initiating an open war against South Ossetia which in turn provided the Russian Army with the pretext to attack Geogria, and for the South Ossetians to expel Georgians. Initially there were many South Ossetians who fled to Russia, but they were able to quickly return. The Georgian refugees, however, had no similar option. Indeed, following the cease fire, many Georgians in the border region were expelled by military and paramilitary Ossetians. Initially most escaped as far as Tiblisi, the capital, but gradually, and in line with the government and the international institutions preferences, many began to relocate, mostly to the regional city Gori, following the Russian evacuation of it.

Over the years, in particular since the 2003 Rose revolution, Georgia received extensive western support. Significantly, western policy was to support Georgia, not for any specific policies. This meant that even belligerent Georgian policy was backed rhetorically by the west. It is conceivable that the Georgian leadership was confused the rhetorical support with their hope for military aid. In August 2008, Georgia seriously miscalculated its own power and western support, which led to quick war with Russia. The Georgian failure was clear for external observers, as it was soundly defeated. Interestingly enough, the mood in Tiblisi following the war was one of victory. Government propaganda was working at full steam.

The war resulted in formally new 158,000 IDPs, about 128,000 Georgians who fled to other parts of Georgia and some 30,000 from South Ossetia who fled to Russia after the initial Georgian attack. Immediately after Russia won the war, the Ossetians who had fled to Russia, returned. Taken all together with the refugees from the 1990s, and

depending on who is counted, there are anywhere up to 400,000 displaced.[18]   Georgia demanded that the IDPs, the refugees, would be allowed to be repatriated. Russia refused.

The displaced status depends in part on the question of what is the legal status of the seceding regions. Do Abkhazia and South Ossetia have national self determination rights? And in this case, does Georgia's belligerent approach and the Georgian population's opposition to the Abkhaz and Ossetian secession raise legitimate security concerns for them? Or are these illegitimate rebellions which ought to lead to the question of whether only Georgia can exercise national demands?

The new Georgian refugees who fled from South Ossetia in August 2008 numbered initially 15,000. They are unlikely to return. Another group is of Georgian refugees who were displaced by Ossetian militia from the border region and from territories south of the border occupied by the Russians. The militia and others destroy the villages of the refugees, ensuring that there would be physically nowhere to return to. The specific feasibility of return however will be determined by the political situation. In places that European peacekeepers will control, it might not be impossible that some rebuilding may take place. There is hefty capital investment in the rebuilding of Georgia. The lack of political support translated into a show of financial support. The US has committed one billion dollars and the EU pledged over 700 million dollars (in addition to individual countries).[19] Given the right political situation and priorities the resources might be there for a partial reversal of the displacement. At the moment this is not the case. The question is how will the refugee welfare be attended to?[20]

The war came to an end with a six point plan presented by Sarkozy. While the draft of the plan called for "Free access to humanitarian aid and to allow the return of refugees" the part related to the refugee return was rejected and deleted. The continued animosity may well be resolved at the international level and will establish a stable

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[18] That would include the Gali IDPs that were considered persons of concerned in the Spring of 2008 by the UNHCR

[19] "EU Plans 500 Million Euros Aid for Georgian Refugees"
http://www.bloomberg.com/apps/news?pid=20601085&sid=aPGm3_bqfJ88&refer=europe

[20] David L. Phillips, "Post Conflict Georgia," The Atlantic Council, (September 30, 2008).

border which separates western observers from Russian peacekeeprs. It is most unlikely that in areas not under western observers, Georgian refugees will return.   But even in areas under OSCE or European partial control, unless the Georgians can establish a majority, they are unlikely to return. Here the example of Bosnia ought to be illuminated. In Bosnia, under the best conditions, return to mixed communities was negligible, took a long time, and involved more old people than building a community. Instead the preeminent question was of property reparation. It is critical to recognize that the preferred solution to the refugee predicament and the state and international priorities in its relation with Russia may conflict with each other.

The international community is bent on resisting the Russian domination of the countries bordering it. If Georgia sovereignty is violated, there could be others to follow. One could imagine Finland's attempts to join NATO facing harsh Russian response. It is within this international power play, and the possible renewed "Cold War" that the resettlement of the refugees becomes immensely important and potentially controversial. To resettle the refugees might be viewed as symbolizing the recognition by Georgia of Ossetia becoming part of Russia. The inverse – namely maintaining the displacement of the refugees, placed in temporary shelters in public buildings and dilapidated hotels, may provide a symbol that the political future is unsettled.   These arguments of leaving the refugees in their current situation while providing only humanitarian aid in order pressure Russia and Ossetians to settle the conflict has to be treated as a politically controversial policy, but even more important is its impact on the individual refugees.

At times history teaches us some simple lessons, one of them how unlikely that the Georgians would return as a minority. Over the 20th century no refugees were repatriated as a group to a place where their ethnic brethren were not a majority. The few exceptions were a result of power and force, not rights. This is unlikely to be the case in Ossetia or Abkhaz.

The question therefore is how to protect the rights of the refugees. One proposal might be to try for a short time to facilitate their return, and to follow the anticipated failure by their resettlement. If the definition of "short" can be defined ahead of time, and does not

become an indeterminate duration, this may be a sound proposal. One would like to see short mean weeks rather than months or years. In addition, the preparation for resettlement has to begin immediately, since with the coming winter and other constraints, the refugees are not likely to be able to rebuild their lives for a long period. The advantage of such a short and focused effort is to be able to both engage the nationalists who do not want to give up the refugees' right of return, while making the preparation to assist the refugees.   Unfortunately, there is reason to suspect that the Georgian government will use the refugees as a political football, as it has for the last 15 years with the refugees from the earlier conflict, insisting on maintaining the refugees (IDPs) displaced under the pretext of refugees' rights.

This is a manipulation of rights, not a statement of a moral policy. Refugees have numerous conflicting rights many of which are violated. Security and housing are the most obvious of these. To privilege the question of repatriation over rebuilding lives, over the right to housing, focuses on the national priorities not the individual. The challenge is to channel the international concerns to aid the refugees, and limit the international relation questions, the negotiation with Russia, and the efforts to reverse the cleansing or the change of borders, to political negotiations. The rehabilitation of the lives of refugees should not be sacrificed behind the cover of refugee rights.