ETHNIC CLEANSING AND THE NORMATIVE TRANSFORMATION OF INTERNATIONAL SOCIETY *
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INTRODUCTION

In the early 1990s a new term entered the language of politics: ethnic cleansing. By 1997 that term was commonplace. It appeared regularly not only in media reports but also in the pronouncements of those international and non-governmental organizations (NGOs) concerned with various ethnic conflicts around the globe - be they in the Balkans (Bosnia and Croatia), the Caucuses (Armenia and Azerbaijan), Africa (Somalia and Rwanda) or Asia (Cambodia). Seemingly, ethnic cleansing was a phenomenon of the post-Cold War era: that, at least, was the impression one received from most writing on the subject - which as of the end of the 1990s remained primarily journalistic.

This impression, however, was misleading. In fact, forcibly moving populations defined by ethnicity (race, language, religion, culture, etc.) to secure a particular piece of territory - thereby cleansing that territory of a particular group - has been an instrument of nation-state creation for as long as homogeneous nation-states have been the ideal form of political organization. Since Woodrow Wilson first hailed national self-determination as the organizing principle of the 1919 territorial settlement, ethnic cleansing has affected millions of people around the world. The following are but a few European examples: in the interwar period, 1.5 million Greeks cleansed from Turkey, 400,000 Turks cleansed from Greece, between 92,000 and 102,000 Bulgarians cleansed from Greece, 35,000 Greeks cleansed from Bulgaria, 67,000 Turks cleansed from Bulgaria; during World War II and its aftermath, 110,000 Romanians cleansed from Bulgaria, 62,000 Bulgarians cleansed from Romania, 1.2 million Poles cleansed from areas incorporated by the German Reich, 700,000 Germans cleansed from Latvia, Lithuania, Estonia, Romania, Yugoslavia and Italy and relocated into the Nazi Incorporated Territories of western Poland, six million Jews cleansed from Nazi occupied Europe and eventually exterminated, 600,000 Soviet citizens belonging to politically suspect ethnic groups (e.g., Chechens, Tatars, Pontic Greeks) cleansed from their historic homelands on Stalin's orders and relocated beyond the Urals, 14 million Germans cleansed from Poland, Czechoslovakia, Hungary, Yugoslavia and Romania, 140,000 Italians cleansed from Yugoslavia, 31,000 Hungarians cleansed from Czechoslovakia, 33,000 Slovaks cleansed from Hungary; since 1948, 45,000 Turkish Cypriots cleansed from Greek Cyprus, 160,000 Greek Cypriots cleansed from Turkish
Special Rapporteurs S. A. Al-Kwasawneh and R. Hatano concluded in their 1993 report, the political will to ban the practice of ethnic cleansing was growing and by the mid-1990s may have become sufficient to move at all levels towards a relevant international legal code. This certainly appeared to be the case by the end of 1999. By this time, the United Nations was examining the viability of an international convention on the prohibition of ethnic cleansing and other international organizations - in particular the Council of Europe and the Organization for Security and Cooperation in Europe - were also paying greater attention to the problems raised by ethnic cleansing, especially with regard to the early warning and prevention of minority/majority conflicts and mass refugee flows.

This normative shift in international attitudes towards ethnic cleansing is arguably evidence of a larger normative transformation in international society itself wherein the right conduct of states within their sovereign jurisdictions across an expanding range of issues has become a legitimate concern of international relations and not simply a matter of domestic politics. By the end of the twentieth century, states had become subject to an ever expanding body of international law and policy which not only constrained their actions but increasingly also required particular actions as, for example, with regard to how states treated citizens and non-citizens, responded to ethnocultural diversity, organized government, waged war, etc.

The international response to ethnic cleansing within Kosovo during 1998/9 is indicative of this increasingly solidarist conception of what constitutes legitimate and illegitimate conduct of both individual states and indeed the society of states itself. When the Serbian dominated Kosovo police with support from the JNA began a policy of ethnic cleansing against the Albanian majority within Kosovo, international society's response was far more solidarist than it had been towards events in Bosnia and Croatia only a few years earlier. As diplomatic efforts to bring about compliance with human and minority rights standards were considered ineffectual by Western governments, a NATO led aerial bombardment campaign was initiated to force the Yugoslav government to accept international requirements to cease ethnic cleansing, permit the return of already expelled refugees, and accept an international peacekeeping mission within Kosovo itself. Whether or not such military intervention was conducive to the prevention of ethnic cleansing - and there is significant debate amongst both policymakers and academics on this issue - the fact that it was undertaken at all underscores the fundamental shift in normative thinking on ethnic cleansing which has occurred in the period since 1948.
Cyprus, over 300,000 ethnic Turks cleansed from Bulgaria, 2.5 million people displaced as a result of the conflict in former Yugoslavia, many of whom were the victims of ethnic cleansing. It should be emphasized that this list is not exhaustive.

Indeed, so widespread was the practice of ethnic cleansing or forced population transfer (which is the older expression used to describe those practices associated with ethnic cleansing) in the twentieth century and so far reaching were its consequences that United Nations Special Rapporteurs S. A. Al-Kwasawneh and R. Hatano in their 1993 report The Human Rights Dimensions of Population Transfer offered the following observation: "As much as population transfer has prevailed as an instrument of state-craft in every age in recorded history, ours could be distinguished as the century of the displaced person."

I will argue that the practice of ethnic cleansing is fundamentally linked to the political ideal of the homogeneous nation-state and the ethnic nationalism that underscores it. This is an ideal that rejects pluralism in domestic politics in favour of uniformity and affirms the virtue of the territorially bounded political community predicated upon a shared ethnic identity. In circumstances of demographic ethnocultural complexity - and these circumstances are the rule rather than the exception - such a community can of course only be brought about by securing a better fit between political boundaries and ethnicity. Either national minorities can be physically eliminated by removing peoples to fit existing nation-state boundaries or by adjusting international boundaries to fit existing demographics. The latter possibility - adjusting boundaries - is usually justified on the basis of the ethnic composition of adjacent territories which can of course also be manipulated by moving peoples. In this way, the practice of ethnic cleansing becomes an instrument of nation-state creation.

From the perspective of international relations, those actions associated with ethnic cleansing become significant because of their ability to affect order and stability within the states system. This fundamental connection between ethnic cleansing and international order underscores international thinking on the practice throughout the twentieth century. What has as yet not been fully appreciated, however, is the extent to which international responses towards ethnic cleansing reveal a fundamental normative transformation within international society. Prior to 1948, ethnic cleansing was considered conducive to international order and stability and on that basis became a recommended practice of international society. Since 1948, ethnic cleansing has increasingly been viewed as destructive of international order and security and thus increasingly a.
prohibited practice of international society. The various international attempts post-1948 to regulate the domestic conduct of states relevant to ethnic cleansing across a whole spectrum of laws and policies regarding sovereignty, human rights, the conduct of war, and international intervention is indicative of a new conception of international legitimacy which places greater emphasis on the right conduct of states within their sovereign jurisdictions and, to this extent, I will argue is evidence of a new found solidarism within international society.

WHAT IS ETHNIC CLEANSING?

The term ethnic cleansing has its origins in the 1990s Yugoslav conflict and is in fact a literal translation of the Serbo-Croatian/Croato-Serbian etnicko ciscenje. It is of course impossible to determine who was the first to employ the expression - although the suggestion has been made that etnicko ciscenje was in fact part of the Yugoslav National Army's (JNA) military vocabulary and was used by the JNA to denote their policy of removing Croats and Moslems from territory conquered and claimed by rump Yugoslavia (Serbia-Montenegro). There can be no doubt, however, that the expression was first publicized in the West by journalists reporting Yugoslav developments and that by the late 1990s it had entered the official language of international institutions and NGOs.

So what, then, were journalists, world leaders and NGO representatives talking about when they used this term? Both the 1990s expression ethnic cleansing and its older, more general synonym forced population transfer refer to those practices designed to remove specific groups from a given area - be it within a state or across international frontiers. Ethnic cleansing, however, is a distinctive kind of population transfer - one that is exclusively based upon ethnic criteria. For example, United Nations Special Rapporteur Tadeusz Mazowiecki defined ethnic cleansing as "the elimination by the ethnic group exerting control over a given territory of members of other ethnic groups". Moreover, ethnic cleansing may be equated with the "systematic purge of the civilian population based on ethnic criteria, with the view of forcing it to abandon the territories where it lives".

Consequently, while ethnic cleansing affects people what is really at stake is territory; the primary consideration behind moving people is to secure territory defined in ethnic terms. In other words, the quest for territory inhabited only by one's own people is arguably the modus operandi of the ethnic cleansing process; the goal, then, is the ethnically homogeneous or pure (cleansed of minority ethnic groups) nation-state. Ethnic cleansing is therefore an instrument of nation-state creation. Indeed, such
population movements are often carried out to bolster claims for international boundary changes or to consolidate control over disputed frontier areas. The cleansing of Croats from Serbian occupied Krajina, the cleansing of Azerbaijanis from Nagorno-Karabakh, and the cleansing of Russians from Chechnya are just a few post-Cold War examples of ethnic cleansing's role in the quest for national self-determination.

Ethnic cleansing may be a dramatic expulsion conducted suddenly and en masse or it may occur more gradually over a longer period of time. Such forced movements usually take place when territories are being fought over and thus when boundary revision is a real and immediately obtainable possibility - i.e., during armed conflict (whether civil or international), in the context of belligerent occupation or following the cessation of hostilities. In these circumstances, the potential political gains of ethnic cleansing - territorial readjustments and the creation of ethnically homogeneous nation-states - are most apparent. That being said, however, ethnic cleansing can and indeed has occurred during peace time as well - this was for example the case as regards the exodus of Moslems from Bulgaria in the 1980s. Further, ethnic cleansing may involve only the domestic acts of a particular state or occupying power (as in Bosnia and Croatia) - in which case it usually occurs during hostilities and is a pretext or justification for territorial claims. Or, alternatively, it may be stipulated in the bilateral or multilateral agreements of a number of interested parties (as in the interwar exchange of populations between Greece and Turkey) - in which case it usually occurs after the cessation of hostilities and is a means of safeguarding an existing territorial division.

As a practice, ethnic cleansing can consist of a number of different actions committed by one ethnic group against another with a view to compelling flight. People may simply be rounded up, detained and deported. Alternatively, their movement may be the result of other, more indirect measures including some or all of the following: the removal of elected authorities; the prohibition of ethnic associations and minority language use; forced homogenization or assimilation; work restrictions; restricted access to education, housing, medicine, food or humanitarian aid; forced labour; confiscation of property; political violence in the form of pogroms and purges; or terror campaigns inflicting beatings, rape, castration and even death. Yet, regardless of the measures used, the end result is the same: a given area is eventually cleansed of a particular group of people defined in ethnic terms and thus the dominant ethnic group comes closer to achieving a homogeneous nation-state - that is ethnic cleansing.

CHANGING PRACTICES IN TWENTIETH CENTURY EUROPE
Interwar

Ethnic cleansing became a significant element of international relations following the end of World War I. The peace settlement of 1919 aimed to restructure international society according to the requirements of national self-determination defined in ethnocultural terms. At this time, distinct linguistic and cultural characteristics were widely accepted as proof of nationhood. If the peoples inhabiting a particular area had a unique language and culture - and thus a common ethnic identity - then they could legitimately claim a right to national self-determination. Thus, from 1919-1920 new nation-states were created in Central and Eastern Europe. Out of the defeated Austro-Hungarian Empire, Ottoman Empire and Prussian Kingdom emerged a dozen new or enlarged states all of whom claimed legitimacy on grounds of nationality: Poland, Czechoslovakia, Austria, Hungary, Yugoslavia, Romania and Albania. Added to these were Finland and the Baltic states which emerged out of the disintegrating Russian Empire: Estonia, Latvia and Lithuania.

A fundamental weakness in this new European order of 1919, however, was the indeterminate nature of ethnic identity and the limited assistance it was actually able to give in delineating frontiers. In other words, the 1919 boundaries unavoidably created both new nation-states and with them new national minorities that could potentially threaten the territorial division of the post-war settlement through separatism or irredentism. Ethnic cleansing - or population transfer as it was then called - was viewed as a legitimate means of overcoming these national discrepancies (i.e., of improving the fit between national boundaries and the ethnic composition of the population within them). National minorities who remained outside the boundaries of their ethnic group's nation-state could simply be relocated. It was hoped this would ease tensions both within and between states by reducing the incidence of disruptive minority claims for national self-determination. At the same time, the transfer of national minorities to their ethnic group's nation-state was considered the fulfillment of that minority's right to national self-determination - once moved, they would become a part of that body politic which reflected their ethnocultural distinctiveness.

It is in this context that the exchange of populations between Greece and Turkey and Greece and Bulgaria took place. These population transfers were authorized and (in theory) regulated by the Treaty of Lausanne of 1923 (for transfers between Greece and Turkey) and the Convention on Reciprocal Voluntary Emigration signed at the same time as the Neuilly Treaty of 1919 (for transfers between Greece and Bulgaria). The Treaty of Lausanne is the better known of the
two—presumably because the numbers involved were so much greater (1.5 million Greeks and 400,000 Turks as opposed to between 92-102,000 Bulgarians and 35,000 Greeks). The Greco-Bulgarian arrangement was in principle voluntary though the persons concerned nevertheless did come under pressure to relocate. In contrast, the Treaty of Lausanne was explicitly compulsory. Greeks and Turks were either forced to leave Turkey or Greece or—having fled during the war of 1922—were prohibited from returning. Nevertheless, the Lausanne Treaty was intended to ensure these forced movements were both "orderly and humane". The League of Nations was assigned supervisory responsibility and transferees were guaranteed compensation for properties left behind. The transfers themselves were accomplished quite quickly, but the monetary compensation later proved unworkable. While a few leading statesmen—included Lord Curzon, then British Foreign Secretary, (who was of course quoted at the beginning of this paper)—deplored the transfers because of the very many social and economic problems they involved—a majority "gradually exhibited a peculiar euphoria over the simplicity of the solution" of ethnically mixed populations that population transfer was thought to embody. Indeed, the Treaty of Lausanne became an oft cited precedent for "orderly and humane" transfers of population throughout the 1920s, 1930s and 1940s. Thus, for example, the bilateral transfer agreement concluded between Romania/Turkey in 1936— as a result of which 67,000 Turks were relocated to Turkey—was justified at least in part by reference to the so-called success of Lausanne.

World War II and its aftermath

By the early 1940s, Germany had emerged as the principle protagonist of transfer agreements in Europe. The movement of populations was a fundamental component of Nazi policy immediately prior to and during the Second World War. Needless to say, Jews were moved to concentrations camps from across Nazi occupied Europe as a first step towards the "Final Solution". However, cleansing Europe of its historic Jewish population was not Hitler's sole concern as regards ethnic cleansing. Hitler was also deeply committed to the idea of bringing ethnic German minorities in East Central Europe—where they had lived for centuries—back to the Reich as part of his plan for the fulfillment of German national self-determination.

Consequently, in accordance with Hitler's policy of Umsiedlung or resettlement, German minorities were relocated to areas claimed by the expanding German Fatherland. Thus, for example, under bilateral agreements with the Baltic states, Italy, Romania, Yugoslavia, and Bulgaria German Volksdeutsche were "repatriated" to the Reich. The vast majority of these ethnic Germans were resettled in the Incorporated Territories of western Poland, Upper Silesia
and East Prussia. To make way for these returning Germans, the Slav populations of these territories were forcibly - and indeed often ruthlessly - expelled. Elsewhere in the Reich, non-German populations were also ethnically cleansed from border regions to bolster German claims to these areas. Thus, for example, over 100,000 French were expelled from Alsace-Lorraine into Vichy France.

Similarly, the Nazi/Soviet alliance - which outlined a territorial division between Germany and the USSR - also became a pretext for population transfer agreements intended to permanently secure the stipulated boundary revisions. The three German/Soviet agreements of 1939-1941 all provided for the forced transfer of populations. As a result of these agreements, 100,000 Germans were moved from Soviet occupied Poland to the Incorporated Territories and in exchange between 30-40,000 Ukrainians and Byelorussians were moved from German to Soviet occupied areas. This ethnic cleansing was of course made in the attempt to create a tidier German/Slav division in the region. Likewise, following the Soviet annexation of Bessarabia and Northern Bukovina (from Romania) in 1941, more than 137,000 Germans from these areas were relocated to the Reich.

Other treaties and agreements involving the forced movement of non-German minorities were also concluded during the war to strengthen those boundary revisions Hitler awarded to his allies (such territorial adjustments were a common fee paid for association with Nazi objectives). Hungary, for example, sought to recover territories and kin-minorities lost as a result of the 1919 settlement. As part of Hungary's alliance with Nazi Germany in 1940, the Hungarian state was ceded territory in (neighboring) Slovakia and Romania that she had lost as a result of the Trianon Treaty of 1919 - despite the fact that Hungarians made up a substantial proportion of the population in these regions. In order to make these newly claimed areas majority Hungarian - and thus to protect them from rival claims to self-determination by other ethnic groups - Hungarian minorities from Yugoslavia and elsewhere in Romania were forcibly relocated to them.

Enthusiasm for ethnic cleansing as a solution to outstanding minority problems was not confined to the Axis powers. As World War II progressed, both the British and American governments also came to believe that population transfers would play a key role in the post-war settlement.

With the fresh memory of the failure of the League's minority system in their minds (see footnote 30), the planners of post-war Europe proposed to solve the problem of minorities not by redrawing frontiers nor by attempting another guarantee of minorities rights (both of which had been tried in 1919 with unsatisfactory results), but rather by eradicating the minorities themselves. Of course, any such
programme would necessarily raise additional problems from the humanitarian point of view, but it was thought that temporary discomfort and dislocation were not too high aprice to pay for future peace and stability.

The first serious proposals for post-war transfers were brought forward by the Czechoslovakian and Polish governments in exile and concerned the German minorities there. During the interwar period, both Czechoslovakia and Poland possessed substantial minority populations - particularly ethnic Germans - and accordingly both had been subject to the League of Nations System of Minority Guarantees as regards the treatment of these groups. The general consensus amongst Czechoslovakian and Polish government officials was that the large and internationally protected German minority had not only been pretexts for Nazi aggression but also accomplices in that aggression. It subsequently became established fact that German minority groups in Czechoslovakia, Poland and elsewhere in occupied Europe did indeed participate in fifth-column activities both before and during the war. Thus, Czechoslovak and Polish officials were eager to ensure that this potentially subversive element was removed from their states after the war by a policy of forced transfer. They were, however, quick to assure the British and American governments that such transfers would satisfy the criteria of "orderly and humane" as established under the Treaty of Lausanne. As Czechoslovakian President in exile Eduard Benes assured British Foreign Secretary Anthony Eden in 1941,

I accept the principle of transfer of populations...If the problem is carefully considered and wide measures are adopted in good time, the transfer can be made amicably under decent human conditions, under international control and with international support. [Benes] ...did not recommend any method which involves brutality or violence.

With these reassurances, the British and American governments endorsed the principle of transfer as a necessary means of ensuring future peace and security in post-war Europe. Thus, for example, President Roosevelt is reported to have said that the Allies should make some arrangements to move the Prussians out of East Prussia the same way the Greeks were moved out of Turkey after the last war...while thi is a harsh procedure, it is the only way to maintain peace....

In a similar vein, Churchill argued that

...expulsion is the method, which, so far as we have been able to see, will be the most satisfactory and lasting. There will be no mixture of populations to cause endless trouble....A clean sweep will be made. I am not alarmed by
these large transferences, which are more possible in modern conditions than they ever were before.

The authorization to forcibly transfer populations in post-World War II Europe was finally given in the Potsdam Protocol of 1945 wherein the Allies authorized the transfer of ethnic Germans from East of the Oder-Neisse line, from pre-war Poland, Czechoslovakia and Hungary. The Potsdam Protocol thus declared that

The Three Governments [American, British and Soviet]...recognize that the transfer to Germany of German populations...will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.

There is evidence to suggest that the British and Americans had originally expected a transfer of between 3-6 million Germans. Moreover, following the precedent set in the Treaty of Lausanne, it was envisaged that these transfers would be supervised by an international commission that would ensure "orderly and humane" conditions prevailed and that would compensate transferees for lost properties, etc. These plans, however, were overcome and ultimately frustrated by events. Poland, Czechoslovakia and Hungary began transferring Germans before an international commission could be formed - in the end, it never was. Moreover, though not specifically authorized to do so, Yugoslavia and Romania also expelled their German minorities citing the Potsdam provisions as justification for their actions. As a result, over 14 million Germans were expelled under conditions of starvation and terror. So far from "orderly and humane" were the actual conditions in which the flight occurred that more than 2 million people died or were killed in the process. As the New York Times reported from Germany in February 1946,

...it was also agreed at Potsdam that the forced migration should be carried out 'in a humane and orderly manner.' Actually, as every one knows who has seen the awful sights at the reception centers in Berlin and Munich, the exodus takes place under nightmarish conditions, without any international supervision or any pretense of humane treatment. We share responsibility for horrors only comparable to Nazi cruelties....

Yet, despite evidence of brutality in the practice of ethnic cleansing, the policy continued. Bilateral transfer agreements to remove unwanted national minorities from post-World War II Europe were also concluded in 1946 between Czechoslovakia and Hungary, Hungary and Yugoslavia, Yugoslavia and Italy, the Soviet Union and Poland, and the Soviet Union and Czechoslovakia.
Since 1948

After the immediate post-World War II period, the incidence of ethnic cleansing in Europe declined considerably. This may in part be explained by the fact that the most troublesome minorities of the interwar period - the German minorities in East Central Europe - were virtually all forcibly relocated to Germany between 1945-1947. Moreover, as the Soviet Union tightened its grip on Central and Eastern Europe and the division between East and West became increasingly impenetrable the opportunities for transfer became correspondingly more limited. Nevertheless, the use of ethnic cleansing as an instrument of nation-state creation was not entirely eradicated from Europe either.

For example, during the Cypriot Crisis of 1975 - when Turkey invaded the island - approximately 45,000 Turkish Cypriots fled Greek controlled areas fearing they would be subject to attack or reprisal by the rival ethnic community. At the same time - and again fearing for their lives - about 160,000 Greek Cypriots fled in the opposite direction (i.e., away from Turkish controlled areas). Twenty years later, the territorial division created by this process remained in place. Consequently, as of 1997 ethnically cleansed individuals and their descendents were still displaced from their historic villages and without compensation for properties left behind.

Ethnic cleansing was also carried out in Bulgaria during 1984-1989. Beginning in 1984, the Communist government led by Todor Zhivkov began implementing a policy of forced assimilation of the ethnic Turkish minority designed to strengthen their political control over the Bulgarian state and its people. Ethnic Turks were required to change their names to Bulgarian equivalents - often by military officials and at the point of a gun. Those who refused to assimilate lost their jobs and were denied access to education. At the same time, Mosques were closed and Moslem practices as regards burial and circumcision were prohibited - those who disobeyed were imprisoned. In 1989, a Turkish dissident movement was formed to resist these assimilationist measures. The Bulgarian government responded with violence and mass expulsions of the activists. In this repressive environment, over 300,000 ethnic Turks fled to neighboring Turkey.

Needless to say, however, the most well known and notorious example of ethnic cleansing in Europe since 1948 was that carried out in Bosnia and Croatia in the early 1990s as part of the process of carving homogeneous nation-states out of the former multinational Yugoslavia. In 1991 - even before Croatia and Slovenia had declared independence - about 20,000 Serbs fled Croatia for Serbia. Although the violent measures which later came to be used by both the JNA and irregular
civilian forces had not yet begun, it is important to remember that proposed Croatian constitutional measures were at this time being criticized by the European Union, Council of Europe and other international organizations for providing inadequate minority rights protection. Indeed, it was on the basis of Croatia's minority rights shortcomings that the Badinter Commission - convened to establish common European Union criteria for the recognition of Yugoslav successor states - recommended against immediate recognition of Croatian independence. Thus, it was clear that the Serbian minority would not be welcomed in an independent Croatia. Consequently, many Serbs believed their position post-independence would be untenable and so were encouraged to leave sooner rather than later.

Once independence was declared and the war to determine control of former Yugoslav territory had begun, ethnic cleansing became rampant and increasingly violent. By the beginning of 1992, there were 158,000 refugees in Serbia alone. One month after Bosnia's declaration of independence, some 420,000 people had fled or been forced from their homes. By the end of that summer, one third of the Serbian minority in Croatia had been cleansed and ten percent of Croatia's population were Croat refugees ethnically cleansed from Croatian territories seized by Serbian forces. According to the United Nations High Commissioner for Refugees, the total number of displaced persons in former Yugoslavia had reached 2.5 million by July of 1992. The organized rape and internment which accompanied this vast displacement - and were indeed measures of ethnic cleansing - are of course infamous. Despite international condemnation of these actions, the process of ethnic cleansing continued and did not come to a halt until the territorial objectives of the various successor nation-states were more or less realized. In the hope of maintaining this tenuous stability, the Dayton Peace Agreement (1995) reluctantly confirmed the territorial divisions achieved through ethnic cleansing and granted self-government to the Bosnian Serbs in their self-declared Republika Srpska.

EVOLVING NORMS IN INTERNATIONAL SOCIETY

Given the extensive use of ethnic cleansing to secure a better fit between national boundaries and ethnic demographics, it was only to be expected that international society would seek to regulate the practice and prohibit its most inhumane consequences. The discussion which follows will attempt to clarify the present status of ethnic cleansing in international society: Is ethnic cleansing legitimate if it is sanctioned in the domestic law of the sovereign state concerned and is carried out solely within the borders of that state?; Is ethnic cleansing legitimate if it is carried out across the borders of two or more states but is based on international agreements between such
states?; Can ethnic cleansing be justified in some circumstances, e.g. war?

Broadly speaking, international law relevant to ethnic cleansing may be found in four areas - humanitarian law, crimes against humanity, human rights texts and emerging law and standards. As a result of these various provisions, arguably the only population transfers sanctioned under international law in the 1990s were voluntary movements conducted in an orderly and humane fashion and with the guaranteed right of return. Admittedly, international society would have difficulty corroborating whether or not such criteria had been fulfilled - particularly as regards voluntariness. Nevertheless, the intent of these international law provisions was certainly to limit the incidence of ethnic cleansing and other types of forced population transfer.

Humanitarian law

Humanitarian law refers to that body of international law which is concerned with protecting individuals in times of war. Broadly speaking, the Hague Convention (1907) outlines the rights and responsibilities of combatants while the Civilians Convention (1949) concerns the protection of noncombatants. Thus, in general, humanitarian law is applicable only to international armed conflict - although some clauses also specify minimum standards in cases of internal conflict. Thus, humanitarian law is relevant to ethnic cleansing when such practices are carried out during warfare.

The Hague Convention (1907) makes no explicit mention of population transfer (of which ethnic cleansing is a particular kind). This, omission should not, however, be interpreted to mean that ethnic cleansing was considered permissible by the drafters. On the contrary, Jean Pictet argues that this omission "was probably because the practice of deporting persons was regarded at the beginning of this century as having fallen into abeyance". Alfred de Zayas has further contended that

the practice of expelling hundreds of thousands or even millions of civilians from their homes and deporting them... did not seem to belong to the Twentieth Century.

It may, however, be more accurate to say that ethnic cleansing did not belong to the pre-1919 era. The absence of ethnic cleansing from the international agenda of 1907 is only to be expected given that the right of nations to national self-determination was not recognized until 1919. The Hague Convention therefore predate the political ideal of the homogeneous nation-state and its concomitant instrument of nation-state creation: ethnic cleansing.
Yet, although explicit prohibitions of ethnic cleansing did not exist nor were likely to be stipulated in 1907, deprivations in general were already prohibited under the Lieber Code (1863) - which influenced the Hague Conventions and the development of its provisions into customary international law. Article 23 of the Lieber Code held that "private citizens are no longer murdered, enslaved, or carried off to distant parts ...." Thus, for example, the Nurnberg Tribunal ruled that "mass deportations were contrary to international conventions ... and the laws and customs of war". Several of the accused at Nurnberg were found guilty of having committed the crime of mass deportation.

The prohibition of mass deportations in warfare was further strengthened and clarified in article 49 of the Geneva Convention IV relative to the Protection of Civilian Persons in time of War (1949) and its Additional Protocols I and II (1977). Article 49 of the Geneva Convention - which concerns the protection of civilians in enemy territory - states that "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory... are prohibited regardless of their motive." Exceptions are permissible only if "security of the population or imperative military reasons so demand" and even then, persons must be returned home as soon as hostilities in the area have ended. From this article, Theodor Meron concludes that "although it was less clear that individual deportation was already prohibited in 1949, I believe that this prohibition has by now come to reflect customary law." Thus, in as much as ethnic cleansing constitutes a specific form of mass deportation - one that targets minority ethnic groups - it is not a legitimate instrument of warfare.

Crimes against humanity

Mass deportations are also prohibited by the notion of "crimes against humanity" which differs from war crimes in that crimes against humanity may be committed in peace as well as in war and against a state's own citizens (as for instance when the majority ethnic group in a state targets its minority citizens). Moreover, the fact that a particular action was sanctioned in domestic law prevailing at the time it was committed or was authorized in military orders is not a defense where crimes against humanity are concerned. This concept, then, extends protection against ethnic cleansing to domestic, peace time circumstances such as those pertaining in Germany during the 1930s or in Bulgaria during the 1980s and removes the legitimacy of domestic laws sanctioning it. Article 6 of the London Charter of the International Military Tribunal (IMT Charter) - adopted to assist in the prosecution of Nazi war criminals - defined
"crimes against humanity" as "murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war." The IMT Charter was acceded to by nineteen states in addition to the original signatories - Great Britain, the United States, France and the Soviet Union. Moreover, both the United Nations General Assembly and the Convention on the Nonapplicability of Statutory Limitation to War Crimes and Crimes Against Humanity (1968) ultimately affirmed the principles of international law recognized in the IMT Charter and the judgement of the Nurnberg Tribunal - thus further confirming "crimes against humanity" and the inclusion of mass deportation under this rubric as customary law. Thus, for example, the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (1993) lists "unlawful deportation or transfer" as part of the tribunal's competence.

Human rights law

There are a number of international human rights texts which also provide indirect protection against ethnic cleansing. It has been suggested, for example, that such indirect protection may arise from provisions concerning inter alia the right to self-determination, protection against genocide and discrimination, freedom of movement, freedom of religious worship, freedom of assembly, freedom of expression, cultural identity, adequate housing, right to education, and protection against forced labour. All of these various provisions pertain to acts which fall into the category of practices associated with ethnic cleansing (see p. 6). Such provisions may be found in a number of international texts including the following: the United Nations Charter (1945), the Universal Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenant on the Elimination of All Forms of Racial Discrimination (1966), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, and Linguistic Minorities (1992). However, the explicit prohibition of ethnic cleansing or forced population transfer occurred far less frequently.

An express prohibition against mass expulsions was included in the Fourth Protocol to the European Convention on Human Rights (ECHR) (1950). Article 3 of the protocol states that "No one shall be expelled by means either of an individual or of a collective measure from the territory of a state in which he is a national." Article 4 goes on to prohibit
"collective expulsion of aliens". The fulfillment of these rights is limited by article 15 which allows for derogation in "time of war or other public emergency threatening the life of the nation." It remains to be seen, therefore, how effective a protection these provisions would provide to ethnic cleansing in wartime or civil unrest (which are of course precisely the situations in which ethnic cleansing is most likely to occur). Until the 1990s, this was the only human rights text to specifically prohibit forced expulsion.

However, the UNESCO Declaration on Race and Racial Prejudice (1978) affords evidence of a movement towards the prohibition of forced assimilation and forced population transfer in international thinking on minorities and related matters. Its preamble notes that racism is manifested through unjust practices amongst which are the forced assimilation of members of disadvantaged groups (which, as in the Bulgarian example discussed above, is often a precursor to ethnic cleansing). Yet until the 1990s, no precedent existed for the explicit prohibition of forms of assimilation intended to alter an individual's language, culture and ultimately his or her ethnic or national identity or policies involving the transfer of an individual from one locale to another on the basis of ethnic or national identity.

The Organization for Security and Cooperation in Europe (OSCE)'s Copenhagen Document (1990) went beyond the international status quo in this regard when it stated in Section IV (32) that "persons belonging to national minorities have the right to freely express, preserve and develop their ethnic, cultural, linguistic or religious identity...free of any attempts at assimilation against their will." Similarly, the Council of Europe's Convention on the Protection of National Minorities (1995) specified that states shall refrain from both "practices aimed at the assimilation of persons belonging to national minorities against their will" and from "measures which modify the proportions of the population in areas inhabited by persons belonging to national minorities". Thus, as a result of these two texts, by the mid 1990s direct prohibitions of ethnic cleansing had become a part of international human rights law, at least insofar as it applied to Europe.

Emerging law and standards

As is apparent from the foregoing discussion, many aspects of ethnic cleansing were by the mid 1990s already regulated under humanitarian law, crimes against humanity and international human rights agreements. However, the process of institutionalizing specific prohibitions against ethnic cleansing was far from over. As United Nations Special Rapporteurs S. A. Al-Kwasawneh and R. Hatano acknowledged in their 1993 report, "further protections and guidelines for
regulating the practice will rely upon emerging standards and legal principles, among other future developments."

In the 1990s there were a number of international agreements in draft form which would have further strengthened protection against ethnic cleansing. These draft agreements included the International Law Commission (ILC)'s Draft Code of Crimes Against the Peace and Security of Mankind, the ILC's Draft Articles on State Responsibility and the Council of Europe's Draft National Minority Rights Protocol to the ECHR. Several provisions of the Draft Code of Crimes Against the Peace and Security of Mankind refer to "deportation or forcible transfer of population" and cite these practices as examples of "systemic or mass violations of human rights". As regards the Draft Articles on State Responsibility, of particular importance to situations of ethnic cleansing is article 19 which cites among essential state obligations "safeguarding the right to self-determination of peoples" the legal consequence of which is for states "not to recognize...the situation created by such crime", "not to render aid or assistance to the State which has committed such a crime" by aiding in "maintaining the situation created by such crime". This provision is pertinent to ethnic cleansing in that it "may imply that states are required actively to ensure the undoing of situations created by such [forced] transfers" and at a minimum must not "recognize or support financially the illegal state of affairs." Similarly, The Draft National Minority Rights Protocol to the ECHR would require positive state actions to prevent situations of ethnic cleansing from arising. Article 11 of this draft minority rights protocol would recognize the right of persons belonging to national minorities to "have at their disposal appropriate local or autonomous authorities or special status" matching "the specific historical and territorial situation".

In addition to these draft texts, a number of other developments within the international legal sphere also provide an indication of the direction international thinking on ethnic cleansing was taking by the end of the twentieth century. In 1986, the International Law Association adopted the Declaration of the Principles of International Law on Mass Expulsions. This declaration defined "expulsion" as "an act or a failure to act...with the intended effect of forcing the departure of persons against their will" for reasons of "race, nationality, membership of a particular social group or political opinion". Moreover, the declaration stated that compulsory transfer or exchange of population" was "inherently objectionable, whether affected by treaties or by unilateral expulsion".

Further proposals for the increased international codification of prohibitions against population transfer
were made in the 1990s. In 1993, for example, the International Institute for Humanitarian Law called upon the United Nations and other regional bodies to urgently consider the adoption of international legal mechanisms to prohibit population transfers. A similar opinion was voiced by the President of the International Red Cross in relation to the conflict in former Yugoslavia and the evidence of ethnic cleansing in Bosnia and Croatia. And finally, the United Nations Special Rapporteurs on Population Transfer - S. A. Al-Kwasawneh and R. Hatano - called for "a specific legal instrument" to "clarify that population transfer is prime facie, unlawful". Moreover, they argued that such a legal remedy should "confer beyond reasonable doubt the criminal responsibility" of those engaging in ethnic cleansing, "allow for remedies" and "provide for early warning and other preventative machinery".

CONCLUSION

This paper has sought to demonstrate that although ethnic cleansing is an historic instrument of nation-state creation international responses to such actions have shifted dramatically over the past century. In the interwar and early post-World War II periods, international society was prepared to accept and indeed promote ethnic cleansing in the interests of international peace and security. By the mid 1990s, it was increasingly unwilling to tolerate such actions; for example, recognition of the territorial division created by ethnic cleansing in former Yugoslavia was not only grudging but also motivated by the desire to prevent further actions of this kind.

Why? Because the effects of ethnic cleansing - with their demonstrated potential to create mass refugee flows both within and across international frontiers - were themselves recognized as potential sources of international instability and even conflict. Even more than this, such actions were in and of themselves increasingly viewed as illegitimate in the context of evolving international norms on human and minority rights. Such international standard setting was, of course, the subject of renewed interest and activity in the 1990s. The strong condemnation of ethnic cleansing in former Yugoslavia as well as in Rwanda and Cambodia, for example, was indicative of a growing recognition of the many problems - international as well as domestic - created by ethnic cleansing and a corresponding readiness to address the issue of legal clarification.

As a result, by the mid 1990s there was evidence of a new willingness within international organizations to develop a specific legal instrument aimed at ethnic cleansing which would remedy any defects or ambiguities that remained as regards the status of this practice in international society at the end of the twentieth century. As United Nations