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WILL THE STATE DEPARTMENT FORCE SOVIET POWS BACK TO THE USSR?

INTRODUCTION

An ugly shadow darkens the pending multinational negotiations over Soviet troops in Afghanistan — the possible forced repatriation to the USSR of the 250 Soviet troops who have defected to the Afghan Freedom Fighters. Moscow before has demanded and obtained the return to the Soviet Union of its soldiers who desperately wanted to remain abroad. If the Soviets are trying to obtain this again, as part of a general peace settlement in Afghanistan, the United States should oppose them. Since it appears that the State Department is considering supporting the Moscow position on the POWs, Ronald Reagan should order the Department not to acquiesce in any such agreement.

The primary parties concerned in the Afghan peace talks are the U.S., Pakistan, the United Nations, the Soviet Union and its puppet regime in Kabul, and the seven-pronged *mujahideen*, a 200,000-man collection of anti-communist Muslim resistance forces.

Bowing to Soviet Demands. At present, after ravaging Afghanistan for approximately a decade, the Soviet Union has stated its willingness to withdraw its 115,000 strong invading force over nine months. But crucial sticking points remain. The Soviet Union, for example, demands that all foreign aid to the popular *mujahideen* Freedom Fighters be terminated before withdrawal commences, while insisting on its right to continue its massive military and economic support for its surrogates in Kabul. Additionally, over the strong objections of Pakistan and the *mujahideen*, the Soviet Union has refused to replace the Kabul dictatorship with an interim coalition government to ensure a peaceful repatriation of some 5 million Afghan civilian refugees currently suffering in Pakistan and Iran.

To encourage some flexibility in the Soviet negotiating posture, the State Department is contemplating pressing the *mujahideen* to bow to Soviet demands to forcibly repatriate all of the 250 Soviet POWs held by the *mujahideen*. Those State Department officials contemplating this should be ordered to stop. Forcible repatriation of Soviet POWs would violate international treaties, longstanding custom, and respect for human life and liberty. It

would be a personal tragedy for the former Soviet soldiers. The State Department instead should offer the U.S. as a sanctuary for Soviet POWs, who could then seek immigration as refugees, and urge the *mujahideen* to resist Soviet demands for a return of all its POWs if the former wishes to receive the Afghan POWs when the hostilities cease.

There is no excuse for a reprise of the shameful Miroslav Medvid affair. In 1986, the U.S. immigration service and State Department forcibly returned Soviet seaman Medvid to Soviet authorities after he had fled his ship in U.S. waters. Despite assurances that Medvid would be treated well, it is now widely believed that he is seriously ill — or even dead — from massive doses of powerful drugs administered by the Soviets to prevent further escape attempts.

POWS: PAST TREATMENT

Historically, warring nations eschewed forced repatriations of POWs. This was because forced repatriation could discourage desertion in future wars. Nations found it in their interest to encourage desertions by their adversaries during wartime.

Examples: The Versailles Treaty of 1919, which officially ended World War I, inveighed against the forcible repatriation of POWs. The repatriation treaty of April 19, 1920, between Germany and the Soviet Union declared, "Prisoners of War and interned civilians of both sides are to be repatriated in all cases where they themselves desire it."

The venerable European tradition against forcible repatriation of civilians or soldiers whose return to their native countries might endanger their life or liberty was initially ruptured in the 1939 Nazi-Soviet pact, which insured Soviet support for Hitler when he attacked Poland, France, Belgium, Holland, Norway, Denmark, and Great Britain. An unpublished clause in that agreement provided for the exchange of political dissidents or prisoners detained in the other's territory.

"Marched Off to Unknown Destinations." During and immediately after World War II, Britain and the U.S. gave in to Stalin's demands and forced the repatriation to the Soviet Union of millions of Soviet POWs who had surrendered to or fled to the Germans. Upon returning home, all these POWs were either summarily executed or otherwise harshly punished.¹ U.S. Ambassador to Moscow Averill Harriman confirmed the brutal treatment administered by the Soviets to forced returnees in a report to the State Department on June 11, 1945:

It is known that repatriates are met at ports of entry by police guard and marched off to unknown destinations....It is quite possible that persons considered guilty of deliberate desertion or anti-state activity are being shot, while some few with good war records who have been captured when severely wounded or under similar circumstances and have refused service with Germans may be released to return home. Great bulk of

1 See Nikolai Tolstoy, *The Secret Betrayal, 1944-47* (New York: Scribners, 1977).

repatriates, however, are probably being placed in force labor battalions and used in construction projects in Urals, Central Asia, Siberia or Far North under police supervision.

When the sorry story of forcible repatriation of Soviet POWs was widely publicized through the research and writings of Nikolai Tolstoy, Nicholas Bethell, Aleksandr Solzhenitsyn, and others, the Prime Minister of Great Britain during the war, Winston Churchill, was harshly criticized. The *Times* of London, the *New York Times*, and the *Washington Post* all carried stories revealing the callous forcible repatriation.- A Solzhenitsyn publication criticized both Churchill and President Franklin Roosevelt for accepting forcible return of Soviet POWs.

Churchill tacitly conceded his guilt in 1952 when he wrote to Foreign Secretary Anthony Eden on the fate of Chinese POWs in South Korea: "It is a matter of honour to us not to force a non-Communist prisoner-of-war to go back, to be murdered in Communist China. This is not a matter of argument, but one of fundamental principles for which we fight and, if necessary, die."

SOVIET INTERESTS AND THE POWS

The Soviet Union is exceptionally vulnerable to disloyalty by its troops because of its oppressive treatment of non-Great Russian nationalities and their religious creeds. During World War II, Ukrainians deserted *en masse* to invading Nazi forces because of hatred for the Soviet Union. Fearing disloyalty from troops sympathetic to Catholicism prevalent in Czechoslovakia, the Soviet Union in 1968 crushed the "Prague Spring" with soldiers recruited from east of the Ural Mountains. In Afghanistan, Muslim soldiers in the Red Army are largely relegated to supply and logistics tasks far from the front-line fighting against the *mujahideen*. This back-seat deployment of Muslims confirms Soviet fears of military desertion.

PRISONER OF WAR CONVENTION

Dissatisfaction with the treatment of POWs during World War II prompted the 1949 Geneva Prisoner of War Convention, ratified by the U.S. in 1955. Moscow probably will invoke Article 118 of the Convention to justify forcible repatriation of its 250 POWs held by the *mujahideen*. This Article provides: "Prisoners shall be released and repatriated without delay after the cessation of hostilities."

But from its inception, Article 118 has been interpreted as prohibiting involuntary repatriation of POWs. During the Korean War Armistice negotiations, for instance, some 22,000 North Korean and Chinese soldiers detained by the United Nations Command did not want to return home; they instead said that they wanted to waive their POW repatriation rights under Article 118. Article 7 of the Convention, which prohibits waiver of rights by POWs, was invoked by North Korea and China to argue in favor of repatriation under Article 118 on the theory that the POW rights it confers could not be disclaimed.

U.N. General Assembly Resolution. The U.N. Command and the U.S. insisted, however, that no POW would "be repatriated by force" or be "coerced or intimidated in any way." This position did not offend Article 118, the U.S. and U.N. argued, because it should be interpreted in light of conventional and customary international law, and in conformity with moral postulates safeguarding individual freedom. These legal doctrines rejected involuntary repatriation of POWs, and nothing in the purpose or history of Article 118 suggested an intent that it override this longstanding centerpiece of international relations.

The U.S. and U.N. arguments ultimately were accepted by all parties to the Korean War Armistice talks. On December 3, 1952, a U.N. General Assembly resolution affirmed "that force shall not be used against prisoners of war to prevent or effect their return to their homeland."² In furtherance of the resolution, the U.N. placed thousands of North Korean and Chinese POWs in the temporary custody of neutral powers, for resettlement or relocation to the extent possible as they wished.

POWS AND AFGHANISTAN

The Afghan *mujahideen* hold approximately 250 Soviet POWs. Six Soviet military defectors have received asylum in the U.S. since hostilities commenced...More want asylum.. Senator Gordon Humphrey, the New Hampshire Republican, presented to the White House and State Department the names of eighteen Soviet defectors who do not want repatriation but want to resettle in the U.S. Ludmilla Thorne, a Freedom House specialist in the Soviet Union, similarly has given U.S. officials notes and letters from Soviet POWs begging for asylum. One letter from a young Ukrainian to Ronald Reagan says:

What I saw in Afghanistan turned my brains inside out. I did not participate in combat operations, but what I saw was enough for me to understand...beginning with the zinc coffins and ending with the cynical stories told by Soviet pilots...I had two choices, either to close my eyes and pay no attention to everything that was happening around me...or to leave...I did not desert because I wanted a pair of American blue jeans.— I had them in the Soviet Union. But I left because I did not want people to refer to me as a "Russian Fascist"...I appeal to you that you grant me political asylum in the United States.

If Washington remains silent or indifferent to the issue of forcible repatriation, the *mujahideen* may well give Moscow what it wants.

POWS AND U.S. POLICY

The U.S. should declare the Soviet POWs as refugees. A U.N. Convention defines a refugee as "[a]ny person who, owing to well-founded fear of being persecuted for reasons

2 U.N. Doc. No. A/Res./18/VII 1952); Dept. State Bull. 702 (1952).

of...religion or...political opinion, is outside the country of his nationality," and owing to such fear is unwilling to avail himself of the protection of that country.

Based on Soviet maltreatment of its POWs in World War II, a Soviet POW held by the *mujahideen* would possess a well-founded fear of persecution for political opinion if repatriated. Under the Soviet dictatorship, all actions of individuals are political statements. To desert the military is to express opposition to the political tyranny in the Soviet Union.

13-Year Prison Sentence. In the Soviet Union, to prosecute deserters is to persecute for political opinion. One Soviet soldier, Nikolay Ryzhkovy, returned to the USSR after he was urged to do so by Soviet KGB agents in New York. He is now serving a 13-year "strict regime" prison camp sentence in Mordovia. Soviet deserters held by the *mujahideen* would in fact be persecuted for political opinion under the false banner of desertion if repatriated. Thus, they are legally entitled to refugee status under international law.

In addition to morality, practical considerations also call for a strong U.S. policy in support of Soviet POWs. The threat of involuntary repatriation would daunt most would-be deserters from the Soviet Red Army.

The State Department should thus urge the *mujahideen* to recognize Soviet POWs as refugees under international law if the latter so claim. Further, the Department should voice its willingness to accept these POWs as refugee immigrants under the Refugee Act of 1980. The Act's definition of refugee generally echoes that of the U.N. Convention, and authorizes the President to admit refugees in numbers justified by humanitarian concerns or the national interest.³

CONCLUSION

Sergei Busov, a former Red Army deserter in Afghanistan, wrote Reagan from Canada in 1986 describing the situation of many Soviet POWs who remain in Afghanistan:

We have spent many sleepless, anxious nights together with the *mujahideen*...we have shared the last crumbs of bread and the last drops of water....Is it possible that after all of this, my friends and I are destined to live a life of anguish and suffering, without freedom? Can it be, that this is all we deserve?

In response to this, Representative Don Ritter, the Pennsylvania Republican, has introduced H.Con.Res. 169. It so far has 64 cosponsors. This resolution expresses the sense of the Congress that "Soviet defectors and prisoners of war in Afghanistan who request political asylum and are eligible under United States law should be granted political asylum and be transported to the United States by the proper agencies of the United States Government."

³ See 8 U.S. Code 1101(a)(42), 1157.

Experience has taught that Soviet malevolence will greet Soviet defectors and POWs. Ronald Reagan and George Shultz should not repeat the mistake of Winston Churchill in believing otherwise, or in neglecting incentives for Soviet deserters. Nor should the State Department tolerate any repetition of the Medvid fiasco by indulging a possibility of Soviet benevolence toward soldiers who by action or word criticize the regime.

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