Conference on The Promotion and Protection of Human Rights in Acute Crisis

11-13 February 1998

REPORT

Department for International Development

and

Human Rights Centre, University of Essex

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Many people at the University of Essex deserve thanks. Its Vice Chancellor, Professor Ivor Crewe, immediately saw the importance of the project and provided leadership in ensuring that the University's administrative bodies facilitated the resolution of the problems that arose. He set the tone of the conference in his welcome address at its opening, a tone characterised by intellectual rigour, practical analysis and an informed exchange of ideas.

The Steering Committee convened by the Human Rights Centre of the University ensured that the conference sought to bring as many facets as possible of the issues to be discussed coherently before its participants. Its members, in addition to myself, were Professor Kevin Boyle (Director of the Centre), Ian Martin (Fellow of the Centre), Professor Geoff Gilbert, Professor Françoise Hampson and Jane Wright (all of the Department of Law), Dr Anthony Verrier (Department of Government) and Kate Mackintosh who prepared the conference working paper. In fact, Ian Martin's wide field experience coupled with an impressive record of scholarly analysis of field operations was an indispensable anchor for the whole endeavour.

The praise many have given to the practical functioning of the conference belongs squarely with the team of organisers: first Alison Jolly laid the foundations, but could not see the project through because she went to join a UNHCR human rights project in Tashkent at the end of 1997, and then by her successor Anne Slowgrove, staunchly assisted by Dr Marina Arlati. Thanks are also due to the staff at One Great George Street Conference Centre.

Finally, and certainly top of the bill, thanks are due to all the participants, governmental, non-governmental and academic; especially those who agreed to bear the burden of writing the authoritative papers that are reproduced here. Many also travelled far to be with us.

Nigel S Rodley
Professor of Law
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May 1998

Contents

Page

- Introduction 1
- Recommendations 5
- Opening Address by the Rt Hon Clare Short, MP 11
  Secretary of State for International Development
- International Responses to Acute Crisis: Supporting Human Rights through Protection and Assistance 15
  Discussion paper prepared by Kate Mackintosh
- International Human Rights Law and Machinery for Monitoring its Implementation in Situations of Acute Crisis 51
  Nigel S Rodley
- International Humanitarian Law in Situations of Acute Crisis 61
  Françoise Hampson
- Work of the International Committee of the Red Cross (ICRC) 73
  Carlo von Flüe
- An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict 79
  Geoff Gilbert
- Humanitarian Aid and Neutrality 89
  Nicholas Morris
- Dilemmas in Providing Humanitarian Assistance in Crisis Environments 93
  David Bassiouni
- Sharpening the Weapons of Peace: The Development of a Common Military Doctrine for Peace Support Operations 97
  Philip Wilkinson, MBE
- From Conventional Peacekeeping to Multidimensional Field Operations 107
  Emma Shitakha
- A New Frontier: the Early Experience and Future of International Human Rights Field Operations 113
  Ian Martin
- UNDP's Role in Promoting and Protecting Human Rights in Crisis and Post-Crisis Countries 131
  Colleen Duggan
- Appendix A - List of participants i
- Appendix B - Agenda v
- Appendix C - Biographies of speakers ix

REPORT OF A CONFERENCE ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN ACUTE CRISIS

London, 11- 13 February 1998

INTRODUCTION

From 11-13 February 1998 a conference on "The Promotion and Protection of Human Rights in Acute Crisis" was held in London, organised by the UK Department for International Development and the University of Essex Human Rights Centre. The purpose of the conference was to examine, in depth, the need for, and the implications of, a human rights-based response by the international community to situations of internal conflict and political instability. Recommendations arising from the conference are set out in the following section.

Participants, of which a list is contained in Appendix A of this report, came from offices of the main intergovernmental agencies carrying out peacekeeping, human rights and humanitarian operations; leading non-governmental organisations working in the area of human rights and humanitarian assistance; representatives of several donor governments, as well as academic authorities on various aspects of the field. Discussions were based on a working paper prepared by Ms Kate Mackintosh for the University of Essex Human Rights Centre and papers presented by various participants. The agenda, with chairs and presenters, is contained in Appendix B and their biographies in Appendix C. All participants were asked to speak in their personal capacities, without commitment on behalf of their organisations.

While the focus of the conference was on the challenge of protecting human rights in the midst of acute conflict and violence, in opening it the Secretary of State for International Development, the Rt Hon Clare Short MP, placed the subject within a broader framework of conflict prevention and post-conflict peace-building.

Conflict within society, over resources or its direction is based on many factors, but frequently includes ethnic and religious division. Such conflicts are neither unusual nor inevitably a problem. It is the failure to manage such conflicts, without resort to violence and social breakdown, that is the main concern. The international community has an interest in and a responsibility to contribute towards the prevention of destructive conflict in all societies. Prevention will require many different approaches, but all should be based on the linkage between respect for all human rights, the rule of law, development, democracy and peace. The conference valued the important final report of the *Carnegie Commission on the Prevention of Deadly Conflict.* [1] This offers to states and the international community as a whole, a range of proposals for action that would reduce the number and duration of acute crises in the world.

Nevertheless, situations of intense internal conflict within states continue to proliferate, posing many dilemmas for the international community, for individual donor countries and international, as well as national, humanitarian organisations. The sheer scale of human victims in such conflicts justifies international concern and engagement in efforts to protect

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1 Carnegie Commission on Preventing Deadly Conflict, Preventing Deadly Conflict: Final Report, with Executive Summary (Carnegie Corporation of New York, December 1997).

the millions of civilians put at risk. The stark evidence in such conflicts of complete disregard by state and non-state actors of the requirements of human rights and international humanitarian law, equally justifies international action to ensure both the protection of civilians, and the accountability of those responsible for gross violations of human rights and humanitarian law for the building of lasting peace.

Then there is the vital phase of international involvement, after the fighting has stopped, in helping the local society to build a stable peace that does not contain the seeds of renewed violence and conflict. To build enduring peace a coherent policy must inform international engagement, which itself must go beyond the provision of humanitarian assistance. Humanitarian assistance must be seen as an essential component of, rather than as a substitute for, a holistic policy approach. This is all the more vital, as sadly, there will be more cases of acute crisis, such as the examples of Bosnia, Rwanda and the Great Lakes, discussed at the conference. The need for a coherent and principled response (that is, governed by the duty to protect human rights) is recognised, but far from being achieved. The United Nations as a whole, has been moving to lay the basis for such a response to acute crises. Following the adoption of the Secretary-General's reform strategy for the organisation, four Executive Committees were created in January 1997, in order to create policy and strengthen decision-making processes in the main sectors of the UNs work - Peace and Security, Humanitarian Affairs, Economic and Social Affairs, Development Operations and Human Rights. As a cross-cutting issue in the work of the entire UN system, it was decided that the fifth sector, human rights, should be mainstreamed into all aspects of the organisation's activities. This has resulted, since April 1997, in the adoption of a "strategic framework" approach for relief and development activities in countries undergoing acute crisis (see Colleen Duggan).

Another factor for the international community to address is the growing trend of regional involvement in peacekeeping operations. While this undoubtedly offers a valuable contribution to crisis management, serious issues of political and legal accountability and of respect for human rights and humanitarian principles have arisen. The primary leadership in peacekeeping must continue to be exercised by the United Nations as the body responsible for international peace and security. To provide that leadership, the United Nations needs the support and political will of all its members.

In the context of acute crises to which the international community is called upon to respond, a human rights focus raises some dilemmas. Identifying and debating these dilemmas was one purpose of the conference and the papers prepared for it. Tension can arise between human rights protection and the provision of humanitarian assistance to those in acute need during conflict. Put directly, should humanitarian agencies be prepared to shelter and feed suspected criminals under international law, such as the *'génocidaires'* in the Great Lakes region, in order to ensure that the bulk of Rwandan refugees should not die of starvation? There is also sometimes perceived to be a potential conflict between the calls for justice on the one hand, and reconciliation and peace building on the other. The exigencies of securing support from those involved in fighting is sometimes seen to conflict with the duty to document and render accountable those guilty of serious human rights violations during the conflict. This tension, if resolved inappropriately, can lead to the cycle of impunity that may be the breeding ground for future crises.

The general thrust of the discussion in the conference was to the effect that, while the different perspectives and operational approaches of the many international actors working to alleviate or end violent conflict will always be real, a common commitment to a human

rights-based approach should ensure that such dilemmas can be resolved in a principled way. Across the range of interventions - military action to protect civilians, peacekeeping operations, human rights field operations and humanitarian assistance - there is need for a greater convergence in the planning and implementation of common goals. Those goals must also be realistic and false expectations of what can be achieved by humanitarian organisations alone should not be promoted by states. Indeed no coherent strategy can be followed in the absence, both of the political will to give effect to it, including by military means if necessary, and the commitment of substantial financial and material resources to ensure that the various components of the strategy are in place. The issue is now no longer whether there should be a human rights-based approach, but on how to give effect to it.

The purpose of the conference then was to generate ideas as to how in a practical sense, effective international responses to the new challenges of internal conflict can be advanced. The recommendations in the following section were been drawn up by the organisers following the conference. While reflecting the organisers' sense of the general approach of the Conference, they are not necessarily subscribed to by each participant. They are addressed as appropriate to the international community as a whole, the United Nations agencies, other bodies and to donor countries.

The written papers included with this report offer important and concrete suggestions for action from the perspectives of the different agencies and institutions called upon to act in such crises, as well as setting out the international legal framework drawn from human rights, humanitarian law and refugee law. These suggestions informed many of the recommendations and deserve study in their own right.

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RECOMMENDATIONS

Previous debates on the supposed problems posed by human rights as an element of international response to emergency situations, have been superseded. Any comprehensive response to addressing and redressing these situations is now acknowledged as requiring a human rights dimension as a central element of that response. Without that approach, the response is likely to be disconnected from the causes of the emergency (all too often including the failure to ensure respect for human rights) and ill-adapted to resolving it on a durable basis (axiomatically requiring respect for human rights), as well as risking undermining the very legitimacy of the response.

All the recommendations should be read from the perspective of this central policy conclusion.

1. International preparedness for effective responses to situations of acute crisis

A *The need for early warning*

1.1 Situations of political and ethnic conflict, which may develop into acute crisis, will continue to require a capacity in the international community to ensure effective, timely responses, including through more specific and better co-ordination of early warning mechanisms, such as by more effective monitoring of states of emergency, and even more importantly through creating machinery designed to collate and interpret information already available, with a view to stimulating action by the international community.

1.2 An international mechanism for monitoring states of emergency, and measures taken under the state of emergency, should be developed. The mechanism should ensure that more robust international supervision of human rights accountability under emergency legislation will be applied, where there are inadequacies in national supervision of emergency powers. The monitoring mechanism should use standards available under international human rights and humanitarian law, for example, the non-derogable provisions of the International Covenant on Civil and Political Rights and the standards contained in Article 3 common to all Geneva Conventions, when evaluating the legitimacy of norms, measures or practices in a state of emergency.

1.3 The United Nations Commission on Human Rights and its member states should ensure that there is effective debate and action on situations of threatening or acute crisis, notably on the basis of information which has been reported by its own machinery. In particular it should have as a special agenda item to follow up those situations which have been the subject of concern expressed by that machinery. It should also ensure that its rapporteurs have timely access to a country of concern, that they are afforded facilities to undertake their missions, and that personnel mandated

to respond to situations of actual or threatened acute crisis, are defended as to their independence and integrity in pursuit of any mandate given by the Commission.

1.4 The Office of the High Commissioner for Human Rights should ensure that reports from human rights operations in situations of actual or threatened acute crisis, received by the office, are brought to the attention of the Commission and other human rights bodies.

B *Co-operation and co-ordination between international agencies and donor governments*

1.5 Effective response requires the establishment at UN and regional levels, as well as within countries, of structures for co-operation and co-ordination, capable of devising and executing effective and timely intervention, based on an agreed strategy. Many of the elements of such co-operation already exist, but require more systematic co-ordination to produce the essential agreed strategies for international support or involvement.

1.6 The Executive Committees (EX COMMS), established by the Secretary-General of the UN, to develop policy and strengthen decision-making, within which the promotion and protection of human rights will be a integral part, is a welcome initiative in improving the effectiveness of the UN in dealing with acute crises. The Office of the Co-ordinator of Humanitarian Affairs and the Inter-Agency Standing Committee, should be encouraged to develop systematically this initiative in respect of international responses to emergencies.

1.7 The capacity for effective response to acute crises may require the commitment of military forces to protect civilians and help secure peace. The role of such deployment of forces is to create the conditions in which other agencies and organisations can operate. If resort to military force is potentially necessary, then the ability of the other components of the peace operation on the ground to call on that force, must be credible. Over- or under-deployment of forces needs to be avoided. The decision to deploy military forces requires the provision of an appropriate and clear mandate to the military forces and the necessary military resources to carry it out. Without both, such deployment carries substantial risk of failure.

1.8 Countries should create civilian stand-by mechanisms, such as have been developed in Norway (NORDEM) and in Canada (CANDEM), in areas such as human rights and peace building, to facilitate UN and regional rapid responses to acute crises.

C *Strategy formation and preparation*

1.9 The principal goal of intervention is to assist the settlement of the conflict, on a long term basis, in a manner that is consistent with human rights. Human rights protection is therefore central to any strategy of involvement, and should provide the framework for the development of a strategy, as well as its implementation. Humanitarian assistance and a human rights framework are mutually re-enforcing, especially where the relief agencies are part of the strategy formulation.

1.10 The preparation of a strategy for intervention, based on a thorough policy analysis of all the relevant information available in respect of the particular local situation, is an essential pre-requisite to any such intervention. The strategy should include both entry and exit arrangements and address what the longer term policy commitment to co-operation and assistance with the country is to be. In this regard a strategy should set itself objective bench marks by which it can be judged, and the scale or focus of the operation adjusted.

1.11 The development of a strategy should involve consultation with all relevant actors including, where possible, the state and government undergoing the crisis, as well as with NGOs and others within the country in question. To the extent feasible, consultation with the actors in the host society should inform an assessment of what strategy will be most sustainable and what commitment in terms of resources will be required of the international community and donor states.

1.12 Strategy formation in advance of presence should proceed on the basis of respect for the different mandates of the actors who are part of the co-operation. That means devising strategy that takes account of the mandates of leading, experienced organisations such as the ICRC and UNHCR, as well as of relief agencies. It means respect for their experience with principles such as neutrality and impartiality. Military and police, who may be called upon to become engaged later, should also be involved in planning from the outset. An agreed basis for involvement should mean that agencies, as far as possible, are not expected, without support, to face the dilemmas which, for one example, were faced by UNHCR in having camps in the Great Lakes region of Africa intimidated by armed *'génocidaires'*, who could not be separated out from the genuine refugee population by unarmed relief workers.

1.13 Existing training programmes for preparation and implementation of peacekeeping, peace support or military operations should be identified and evaluated with a view to clarifying which of them should be supported and, if necessary, improved and expanded.

1.14 Donor governments should commit themselves to programmes of human rights education and training for their military, police, civilian (including human rights field officers) and other involved personnel. Programmes of effective training directed at creating professional capacity to operate in acute emergencies, encompassing guidance on how to operate within a human rights, humanitarian and/or refugee law framework, should be established through donor co-operation. Such training initiatives should include:

a) collaborative training involving the military and those NGOs prepared to be involved, regarding the planning and conduct of such operations in general and contingency planning for specific situations at the first sign of crisis;

b) training of the military, aimed at all levels of personnel which may be involved, including the incorporation of human rights in operational planning exercises. This may suggest the need for a civilian human rights adviser to the armed forces who should be involved in operational planning (eg training exercises) and training.

1.15 Training should contribute to ensuring that different national contingents and different components of an operation can work together, that is, it should facilitate 'inter-operability'. Preparation, not only on a purely national basis or for armed forces and civilian components separately, is necessary, so that the military and other agencies (IGOs and NGOs) can collaborate effectively in the field. Governments should ensure that such training is established at the level of the United Nations, and regional bodies. The requisite capacity must be built up within both political (eg EU) and military (eg NATO) regional bodies.

2. Field Operations

2.1 Peacekeeping, peace enforcement and peace building operations should be governed by the agreed strategy, and should always include the promotion and protection of human rights. Human rights should normally be a central component of such operations. The mission should have a human rights advice facility, which should be attached to the Head of Mission, to any military component and to any CIVPOL component. The personnel for such a facility should be selected by a competent authority such as the Office of the High Commissioner for Human Rights (OHCHR).

2.2 Human Rights work in the field, such as fact finding, monitoring or providing technical assistance, should be entrusted to a separate component. This human rights component should report to the OHCHR, or the appropriate analogous authority of the organisation responsible for the mission. Human rights monitoring functions and national capacity building tasks should not be treated as alternatives nor as exclusively sequential tasks, but should reinforce each other.

2.3 Human rights training should be given to local police services. Resources for training and reintegration of civilian police forces are central to a successful human rights strategy.

2.4 In situations of acute crisis in which states, the UN, or multilateral bodies have a presence or responsibility, there is a duty to ensure respect for international human rights obligations and humanitarian principles towards the local population, especially civilians. This requires respect, in particular, for international human rights and humanitarian law, international law on refugees and internally displaced persons, as well as the law applicable to particularly vulnerable groups (such as children).

2.5 Each intervention and each component of an intervention should be governed by a code of conduct enshrining ethical principles, such as the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief.

2.6 Each intervention should be governed by an agreement amongst the various components designed to ensure the maximum co-ordination and co-operation, based on agreed principles in the implementation of the involvement strategy.

2.7 Implementation handbooks for humanitarian workers incorporating previous experience should be prepared.

2.8 Relief is part of international co-operation contributing to the promotion and protection of human rights, and to the application of the standards of international humanitarian law. Regular collaboration between relief, humanitarian law and human rights organisations should exist in the field, with a view to ensuring an appropriate and effective division of responsibilities, based on the specific competences of the organisations involved. A lead human rights protection agency should, if possible, be identified to promote such collaboration.

2.9 Personnel from all agencies should have basic training in the corpus of international human rights and humanitarian law.

2.10 A system for the independent monitoring of the activities of those in the field should exist. A mechanism of complaint, for example, a humanitarian ombudsman, should also be available to the local population, without prejudice to complaint mechanisms created by national military contingents.

2.11 Debriefing programmes for the various components of the mission, with a view to identifying failures and successes, need to be established. Lessons learned should be thoroughly and systematically drafted. This should be done with the assistance of an independent evaluation body, with the task of with objectively assessing the progress of field missions.

3. Funding

3.1 Funding needs to be available within the UN regular budget, to ensure that there can be a swift and efficiently managed human rights protection response, within the overall international operation, as well as to support the standing international human rights machinery.

3.2 Funding for the operation should be sufficiently secure to permit the most effective recruitment, deployment and functioning of its various components, in particular, its human rights component. Funding should not be used to interfere with the operational autonomy of agencies.

4. Strengthening international accountability for the protection of human rights

4.1 States should commit themselves to fulfilment of existing commitments in the promotion and protection of all human rights, in particular, through full implementation of the Vienna Declaration and Plan of Action agreed at the World Conference on Human Rights 1993.

4.2 To this end, states should:

a) undertake the universal ratification of all human rights treaties, avoiding, as far as possible, resort to reservations, and reviewing of existing reservations with a view to withdrawing them;

b) recognise that all human rights are universal, interdependent and interrelated, within the framework of the promotion of democracy, development and respect for human rights and fundamental freedoms;

c) observe international accountability, through the relevant organs of the United Nations, and bodies established under human rights treaties, in compliance with their human rights obligations .

d) provide an effective system of remedies to redress human rights grievances and violations at the national level. This requires proper funding for the institutions concerned with the administration of justice, including law enforcement and prosecutorial agencies, and especially an independent

judiciary and legal profession, in full conformity with applicable standards contained in international human rights instruments.

4.3 The international community should contribute an increased level of technical and financial assistance, and the United Nations should use special programmes of advisory services, to ensure the achievement of strong and independent administration of justice at national levels.

4.4 In the context of situations of acute emergency, state responsibilities include respect for the principles of international human rights law relating to the resort to derogation from human rights commitments, and to the principles of international humanitarian law. These include the duty,

a) to protect the lives, security and integrity of non-combatants or persons in the hands of the parties to the conflict;
b) to ensure the humane treatment of detainees;
c) to ensure accountability for the control over who is armed and the use of force.

4.5 In the context of situations of acute emergency and without prejudice to any pre-existing obligation in international law, states should allow access by the ICRC to those detained in connection with the conflict, and allow the ICRC to monitor compliance with common Article 3 of the Geneva Conventions.

4.6 Steps to counter the existence of impunity need to be taken, including by offering full support for the adoption and speedy ratification of the proposed statute on an International Criminal Court, and promoting, adopting and implementing legislation aimed at exercising universal jurisdiction in respect of perpetrators of war crimes and crimes against humanity.

5. Arms Sales

5.1 Arms exporting countries should not promote sales which undermine the public finances and economy of recipient countries, or to destinations where purchasers might use such arms for internal repression or external aggression. States should agree on the proposed European Code of Conduct on Arms Sales and work to strengthen it, as well as support the European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Weapons.

6. Enterprises and Human Rights Violation

6.1 Businesses which are in countries experiencing acute crises should be encouraged to adopt principles that would contribute to the promotion of respect for all human rights in their relations with governments and opposition force.

Opening Address by

THE RT HON CLARE SHORT MP
Secretary of State for International Development
UK Department for International Development

Reception at the Institute for Chartered Engineers, London
11 February 1998

I am grateful to Vice Chancellor Crewe for hosting this event, and delighted that the Human Rights Centre of the University of Essex were able to respond to my request to organise this conference. The Centre has a well-deserved world-wide reputation for radical thinking, and its work inspires all who work in the cause of human rights. May I add my own welcome to all participants here. I know that many of you have taken the trouble to come from far and wide, and the range of expertise and institutions you represent is impressive. But, above all, we are here because we are united in the common resolve to try to do more - to protect and promote the rights of people who are the daily victims of systematised violence and oppression.

Last week I was in Bosnia. Last October I visited Rwanda. Both countries - and many situations elsewhere - bear testimony to the shameful failures of the international community in doing too little too late. They remind us, first, of the need to do more to prevent violent conflict; second, of the responsibility, when conflict erupts, to prevent civilians from being subjected to ethnic cleansing, rape, genocide and other war crimes; and third, of the need, when conflict subsides, to build lasting peace which no longer contains the seeds of future violence.

As this audience is well aware, the British Government has declared its intention to place human rights at the centre of its international development and foreign policies. Most people identify "human rights" with liberty and physical security - rights, for example, which Professor Nigel Rodley, the co-director of this conference, defends so robustly as the United Nations Special Rapporteur on Torture. But, too often, people are unaware that "human rights" include the economic and social rights necessary for dignified living - the right to adequate health, food, water, education and work. Both sets of rights are given equal priority in the Universal Declaration on Human Rights, the fiftieth anniversary of which we celebrate this year. The entire work of my Department which we have defined in the White Paper as "eliminating poverty" through sustainable development, is work for the realisation of human rights. It is not true as some would argue that the alternatives are full bellies or human rights. The right to food, work, healthcare and the expression of views and needs are all human rights. These describe the fundamental rights of every human being on the planet. Nowhere are they fully realised. Governments have a duty to seek to secure them for all their citizens. Too often human rights are treated as issues over which governments of industrialised countries hector those of developing countries. Instead they should be seen as work in progress and we should be willing to constructively engage wherever rights are not realised.

Poverty elimination is a moral imperative but also essential to the world's security because conflicts are both a cause and a consequence of poverty. In all societies, competition over access to essential resources and differences over political, religious or other beliefs are common. These can generate conflict, but do not inevitably lead to violence. There are many examples - from north and south - where communities have drawn on both deep-rooted traditions as well as modern systems of democracy, justice and security, to find constructive and peaceful ways to settle their quarrels. We must make more of this because though a quarrelsome disposition is undoubtedly part of the human condition, so is the aspiration for peace and stability. The Government committed itself in our development White Paper to expanding our efforts to prevent or resolve conflicts in ways that respect the interests of the poor and powerless, and particularly those that are excluded or marginalised.

I share the disappointment of many who believe that the international community has been too slow to grasp the opportunities provided by the end of the cold war. The pattern of today's warfare is that it is concentrated within poor countries and the outbreak of armed conflict impoverishes the poor further. This conflict threatens civilians as never before. Women, children and other non-combatants are ten times more likely to be the victims of modern conflicts than soldiers. The risks include death and injury but also the risk of being uprooted from their homes or subjected to barbaric abuse, the legacy of which can haunt and bitterly divide generations to come. To them it is scant consolation that the cold war is over. For them there has been no peace dividend. On the contrary.

The challenge is daunting - but we can do better. We do have diplomatic, trade, development and military instruments at our disposal that could be used to better effect. As I said to the Defence select committee of the House of Commons this morning, it is within our capability to deploy them with the energy required to find durable solutions to long-standing crises. In doing so, I would like to give particular emphasis to two key strands of policy which will be major determinants of success or failure.

First, is the security sector in developing countries. In many countries, their security forces themselves are a major cause of conflict and violation of human rights. We have all seen how badly trained and managed armed groups outside proper democratic control spread destruction, hold their own communities and countries to ransom, and assert corrupt influence farther afield. Thus security sector reform is a key development issue that needs to be tackled with greater determination than has been the case so far.

Sierra Leone is the most recent example of the consequences of failure to restructure the security forces.

Second, is the requirement to limit the means to wage war. Excessive and inappropriate military expenditure in poor countries is wasteful and destabilising. The OECD is pressing arms exporting countries not to promote sales which undermine the public finances and economy of recipient countries or where purchasers might use the arms for internal repression or external aggression. The Government has led initiatives to develop an EU Code of Conduct for arms sales, and we strongly support the EU Programme for Preventing and Combatting Illicit Trafficking in Conventional Weapons. Gordon Brown's Mauritius Mandate aimed at speeding up debt relief for the most highly indebted countries also committed us to refuse export credits for unproductive expenditure - which is often military. The commitment was given for two years and we invited other countries to join us in this commitment.

Let me now turn to the major focus of this conference, how best to protect human rights during conflict. This is, of course, crucial to reducing the suffering of those caught-up in ongoing conflicts. But I also believe that this is of wider importance because the success of human rights protection during today's conflicts has a direct bearing on the quality and sustainability of tomorrow's peace. Giving determined effect - as best as we can amidst the chaos of violent conflict - to a fundamental and universal set of human values, sends an uncompromising signal to all those who may be contemplating future violence. Maintaining some humanity amidst the prevailing brutality is also a route - tenuous perhaps but all the more precious - for reconciliation and healing.

The leading international role in crisis management, including the human rights dimension, must be that of the United Nations, although there is also an important role for regional arrangements such as the OSCE and the OAU. The British Government strongly supports Kofi Annan's efforts to modernise the UN, including a more proactive conflict prevention capacity. There is some way to go before this can become a reality, and it will require not just administrative reforms but a more significant change of mind-set than has been evident so far. It will mean member states - in their dealings with and through the United Nations - understanding that their real interests in stability go beyond the short term promotion of their national interests. It will mean working more co-operatively rather than vying for, or seeking to buy influence in UN bodies. It will mean breaking out of

entrenched caucuses of donors or G77, and reaching out to form new alliances united by a common interest to build a more stable and just international order.

The UN has a global legitimacy but, in the minds of the world's citizens, this derives not only from legal treaties signed by their governments, but also from what they perceive as the UN's moral relevance, and its practical engagement in the problems that matter. This includes the way in which the UN is seen to approach its central role in promoting peace and security. It implies a greater inclusiveness than has been usual to date. It means diplomats and community representatives working in mutually respectful partnership, and recognising that 'top down' and 'bottom-up' approaches are both necessary. As so many cases have illustrated the quick-fix of a "political peace" unravels quickly unless it is accompanied by a wider "social peace".

Protecting human rights in crisis situations includes the option to deploy military forces when all else has failed subject, of course, to authorisation by the Security Council. But experience of imposing protection by military means is mixed, as indicated by the experience of Iraq, Rwanda, Somalia, and the pre-Dayton phase of operations in Bosnia. The establishment of 'safe areas' in Bosnia had laudable aims, but the practical implications - how the UN was to ensure their safety - were never fully thought through. The tragic events of Srebrenica in July 1995 - which shame us all - spelled the end of that flawed policy, and catalysed the decision to deploy a NATO-led multinational force with robust rules of engagement, which succeeded in stopping the fighting in Bosnia. The obvious lesson is that, when military intervention occurs, the forces must have the equipment, training, mandate and rules of engagement that they need to live up to the responsibilities the international community has placed on them. But obtaining the necessary international change of mind and creating consensus for this will often be difficult.

For many of the world's crises today, non-military options for the creation of a neutral space where civilians' rights will be protected, may be a better way forward. The basis for protecting human rights in crisis situations is well-established through the array of international humanitarian, human rights, refugees, and child protection laws and conventions. No doubt, there is scope to refine available instruments and fill gaps, notably with respect to protection for the internally displaced. But we must not leave experts to debate legal points such the precise conventions to be applied in particular cases leaving the public marginalised and befuddled. Human rights abusers thrive amidst such confusion. That is why I feel that much more could be done to communicate the essential simplicity of the human rights protection message. The best chance of protecting individuals is through an irresistible global climate of public and political opinion and action that sends a single message of 'zero tolerance' to all current and aspiring tyrants. My own view is that the public would strongly support such an approach. The problem is not compassion fatigue but despondency and pessimism.

Along with this new message must go the capability to bring to book the perpetrators of human rights crimes. Lasting peace is not possible without open acknowledgement of wrongs that have been done, and justice that is real as well as visible. Justice does not mean retribution, and South Africa and other countries have shown innovative ways in which society can try to come to terms with past abuse. It is essential to a stable future that those who perpetrate genocide, war crimes and crimes against humanity must not be allowed to do so with impunity. At the global level, I am pleased with the progress being made on setting up the International Criminal Court. But such exalted institutions can appear remote. As the procedures for the ICC are decided, we must make sure that they are accessible to those who have suffered most and are least capable of articulating their hurt.

It is right that human rights violations should be publicly condemned, but rights promotion requires more than monitoring and denouncing from afar. It requires engagement and partnership on the ground. I therefore welcome the trend in UN human rights work towards a field presence, and the appointment of Mary Robinson as the UN High Commissioner for Human Rights. We are committed to giving her all the support we can to develop the effectiveness of her Office in mounting human rights field operations.

I know that there is a point of view that seeks to keep human rights work at arm's length from what is perceived as the all-important political work to negotiate the end of a conflict. I am also aware that some traditional humanitarians are still wary of too close an association with human rights operations because of the uncomfortable tensions that this might generate. I do not think that these fears should paralyse the search for new working arrangements. For example, I am glad to see that there is now a fuller recognition that a lasting peace will not be possible in Afghanistan unless international political negotiators take fully on board the gender and other human rights issues which activists have been championing for some time.

Finally, I would like to touch specifically on the subject of humanitarian assistance. The past decade has seen humanitarian programmes of a magnitude unprecedented since the end of the second World War. But, at the same time, this extraordinary expression of global solidarity has been accompanied by a serious deterioration of "humanitarian space" which poses a fundamental threat to humanitarianism itself. The reason, I believe, is that the international community has chosen to forget the basic principles and standards of humanitarian conduct exemplified, for example, by the founders of the Red Cross movement. In the pragmatic world of inter-agency competition and media glare, principles are perceived to get in the way of "getting the aid convoy through" at almost any cost.

We have seen humanitarian assistance sustaining a genocidal leadership and its fighters in the refugee camps in former Zaire, and it is alleged that humanitarian assistance was used to lure refugees forcibly dispersed from those camps out of hiding and to their deaths. Humanitarian care is often said to have protection value for people caught-up in conflicts, but in circumstances like this, the opposite is the case. It is therefore not surprising that, in the eyes of many people, humanitarian aid has lost its moral currency, and is often vilified as getting into the wrong hands: feeding fighters, creating new war economies, and fuelling conflicts. I understand that some agencies accept that up to 30% of humanitarian assistance may go astray. Clearly this is not acceptable. It is a duty of humanitarian assistance providers not to undermine protection and human rights. There is no instant solution but we need a re-dedication to uphold humanitarian norms and standards, so as to recover the ground that has been lost. For our own part, DFID is committed to working with our partners in the European Union and beyond to develop an ethical code of conduct for humanitarian intervention in conflict situations.

In conclusion, let me summarise what I see as a broad framework for the protection of human rights in acute crisis. Foremost must be to prevent violent conflicts through sustainable development to tackle poverty and related causes of instability, and also to create democratic institutions for the peaceful resolution of differences in society. Reforming the security sector of developing countries, and reducing military expenditure and arms proliferation must be priorities. The principal responsibility for crisis management must be with the United Nations which, while deserving our full support, also needs stronger encouragement to strengthen its capacity to grasp the opportunities of the post cold war world. It must be more efficient and build more inclusive partnerships if it is to maintain its legitimacy and moral leadership in the eyes of the world's citizens. And finally, in the actual arenas of violent conflict, practical human rights protection operations, ethically-based humanitarian programmes, and political mediation efforts must work in synergy as part of an overall strategic approach to find durable solutions to conflicts.

Your conference will, no doubt, debate these and related issues. Our policy intent is clear, and our course firmly set. But we shall need all the advice, support and constructive scrutiny we can get from groups and experts outside government as we implement our commitments. I am sure that your deliberations will influence our thinking. I ask you to help us develop our thinking and capacity to implement the aspirations outlined in our White Paper. This work is not easy but I am certain that we have it within our grasp to make considerable progress.

International Responses to Acute Crisis: Supporting Human Rights through Protection and Assistance

Kate Mackintosh

EXECUTIVE SUMMARY	**17**
INTRODUCTION	**19**
1. PROTECTION	**20**
1.1 Military intervention to protect civilians	**20**
1.2 Safe areas	**20**
1.3 Peacekeeping Operations	**24**
1.4 Human Rights Field Operations	**26**
2. ASSISTANCE	**35**
2.1 No substitute	**35**
2.2 Avoiding negative effects on protection	**37**
2.3 Maximising the protection potential	**40**
2.4 Humanitarian workers as human rights monitors	**43**
CONCLUSION	**46**
QUESTIONS FOR DISCUSSION	**46**
BIBLIOGRAPHY	**48**

EXECUTIVE SUMMARY

Recent situations of acute crisis have highlighted the limitations of existing mechanisms for the protection of human rights and the challenges posed to humanitarian principles in complex emergencies. The current seminar seeks to address these problems, and to suggest how best to protect people caught up in conflict situations from violence and human rights abuses. This paper aims to provide a background for discussion at the seminar by clarifying the issues involved. It reviews recent experience of field operations to protect or assist individuals with a view to improving the protection they offer from violence or persecution.

Within field operations, the customary division of activities into either "protection" or "assistance" is followed. "Protection" initiatives seek either to protect from the violence of armed conflict - the field covered by international humanitarian law - or to protect an individual's human rights - the field of international human rights law. "Assistance" programmes consist of the provision of food, shelter and medical services to the victims of conflict. Clearly these too are rights issues; but they are categorised here as assistance rather than protection to maintain the paper's focus on protection from violence and persecution.

Protection

The paper first examines field operations to protect civilians from violence or to protect individuals' human rights in situations of acute crisis. Initiatives range from the deployment of troops in the midst of conflict to late- or immediately post-conflict peacekeeping operations and dedicated human rights field operations.

While humanitarian intervention against the will of the government concerned is not (yet?) acceptable, military action at the limits of consent has been undertaken to protect civilians in recent years. A recent development has been the creation of "safe areas", which serve to highlight the human rights concerns provoked by such action. The organisation of these areas, and in particular the failure to make them strategically neutral, has meant that, despite some protection effect, they cannot be said to have been successful in their aim of protecting from violence. Furthermore, the very existence of safe areas, along with other forms of in-country protection, may undermine the right to asylum. At the same time, the creation of areas outside the *de facto* jurisdiction of the national authorities can leave a human rights protection vacuum which the international community is under some obligation to fill. There is a danger that such initiatives will unwittingly collude with war aims, when one of these is civilian displacement. Careful consideration of the right to freedom of movement may help minimise political manipulation in this regard. Lastly, actions need to guard against providing discriminatory protection slanted towards the group most in political favour.

With the scope afforded by the end of the cold war to "wider peacekeeping", human rights are playing an increasing role in post-conflict stabilisation. Arguments about the importance of human rights to peace support the inclusion of a dedicated human rights element in peace-keeping operations, and its integration with the other elements of the operation. Human rights information provides a good indicator of the progress of peace, and dealing with ongoing human rights issues at the political level can prevent the re-emergence of conflict. The military and police components of peace-keeping operations can also be better used in human rights work to provide a solid basis for reconciliation and help prevent future conflict.

Dedicated human rights field operations are an important new development in the international community's response to conflict. As an instrument in post-conflict "peace-building" they are intended both to stabilise a situation in the short term, and to encourage structural developments which support human rights. Strong political support is crucial to their success, both in terms of authority and financial backing.

While operations to date have been promising, there is widely acknowledged to be room for improvement. Most importantly, human rights operations need to be institutionalised: a stable base is required from which to work on logistics and recruitment, on training and standard methodologies, and on lessons learned and evaluation. The obvious home for such an institution is in the Office of the UN High Commissioner for Human Rights. Other areas in need of development are the structural independence of human rights operations from the UN political process; their public reporting function; the co-ordination of activities with other UN agencies in the field, and, crucially, ensuring proper follow-up by dovetailing the activities of human rights field operations with those of the standing UN human rights mechanisms

Assistance

The paper then considers humanitarian assistance and its impact on protection: if emergency relief does have an effect on human rights and conflict, how can this relationship be managed so that protection is maximised?

Assistance may have a negative effect on protection simply by substituting for protection initiatives which are inevitably more politically sensitive. This tendency has been criticised as a general feature of international response to conflict in the 1990s, and has been a particular subject of debate around the work of UNHCR. Awareness has also grown recently of the ways in which relief may either prolong conflict by sustaining warring parties, expose civilians to violence, or may undermine human rights by supporting an oppressive regime. Assistance given in the absence of consent, under military protection, has proved particularly fraught. Thorough planning of aid in a conceptual framework which considers the protection needs of the beneficiaries minimises these risks, and may highlight ways in which humanitarian assistance can be used positively to support human rights and prevent conflict. Within the UN system, the inclusion of human rights at the planning stage of humanitarian assistance could become routine through early consultation with the High Commissioner for Human Rights.

There is some divergence among humanitarian organisations over how far protection goals can be integrated into assistance. For some, humanitarian assistance is already provided within a protection framework, namely that of international humanitarian law, and the principle of neutrality recognised therein must remain paramount. Moves towards human rights "conditionality" in assistance are rejected as an abandonment of humanitarianism. Others are trying to use make use of a human rights framework in planning their relief activities.

The role of relief workers in more traditional human rights monitoring and advocacy, rather than in structural protection work, is also currently under debate. Aid workers have access to considerable human rights information due to their wide field presence in situations of acute crisis, particularly valuable in the absence of a human rights field operation. Information may be passed privately to human rights monitoring bodies or human rights violations may be publicly denounced: the consequences of action need to be carefully considered and channels communication need to be established to maximise this resource.

The major theme to emerge from the review is that the use of a human rights analysis in planning and implementing responses to crisis can improve protection. Consideration of the human rights framework strengthens peace initiatives and helps steer a path through the sensitive terrain of a conflict situation. Both protection and assistance initiatives can impact on the civil and political rights of individuals, and on their exposure to violence. Managing this impact, and maximising its potential, is aided by clear enunciation of protection goals.

INTRODUCTION

The British government has signalled its intention to take a human rights-based approach towards its foreign and development co-operation policies. Recent situations of acute crisis have highlighted the limitations of available mechanisms for the effective protection of human rights, and the increasing challenges posed to humanitarian principles during complex emergencies. The current seminar seeks to address these problems and to suggest how best to protect individuals caught up in conflict from violence and human rights abuses. This paper is intended to provide a background for discussion: it aims both to clarify the issues involved and to provide a suggested list of questions for the seminar to address.

The paper reviews international responses to situations of war and violent conflict which involve a field presence to see how they can better protect individuals. Responses, either during armed conflict itself or in its immediate aftermath, are traditionally categorised as either “protection” or “assistance”. “Protection” initiatives seek either to protect from the violence of armed conflict - the field covered by international humanitarian law - or to protect an individual’s human rights - the field of international human rights law. Field operations which seek to protect civilians from the violence of armed conflict include military interventions in the midst of conflict, recently to protect safe areas, and traditional peace-keeping functions, such as the separation of combatants and the monitoring of cease-fires. Initiatives to protect human rights include monitoring by actors in the field, aspects of wider peacekeeping such as the training of national officials and human rights institution-building, including the activities of dedicated human rights field operations.

The two forms of protection are intertwined both from the point of view of the individual, who feels equally in need of protection as a civilian from the fall-out of conflict and as an individual from persecution by the state, and because of the interdependence of human rights and peace. While peace is essential for meaningful enjoyment of human rights, it is also recognised that human rights abuses are one of the root causes of conflict, and that without respect for human rights there is little chance of a lasting peace. Efforts to prevent or mitigate conflict support human rights, and vice versa. The paper will therefore consider how protection in general can be improved through international responses to acute crisis.

“Assistance” programmes consist of the provision of food, shelter and medical services to the victims of conflict. Clearly these too are rights issues. They are categorised here as assistance rather than protection to maintain the paper’s focus on protection from violence and persecution. International human rights law is concerned with economic, social and cultural rights as well as civil and political rights; the focus here on the latter group of rights, however, entails the customary division of activities into either protection *or* assistance. Assistance is thus considered for its impact on protection from violence and persecution rather than in terms of its own assistance goals.

Field operations with a protection mandate are reviewed first. Military intervention to protect individuals is considered in general, and “safe areas” in particular are evaluated for their impact on human rights. The contribution human rights can make to peace-keeping operations, and vice versa, is examined. Human rights field operations are reviewed in some detail as an important development for human rights in the international community’s response to acute crisis. The paper then turns to humanitarian assistance and its relation to protection: if humanitarian assistance does have a significant impact on human rights and conflict, how can this relationship be managed so that protection is maximised?

1. PROTECTION

The following section examines field operations to protect civilians from violence or to protect individuals' human rights in situations of acute crisis. Initiatives range from the deployment of troops in the midst of conflict to late- or immediately post-conflict peacekeeping operations and dedicated human rights field operations. The contribution a human rights analysis can make to increasing protection is highlighted in military and peacekeeping initiatives. The potential of human rights field operations is then considered in detail, along with recommendations for improving their impact.

1.1 Military intervention to protect civilians

If civilians are at risk in the height of conflict, protecting them from their assailants with military force may be the only effective defence. The UN Charter only authorises such interventions without the consent of the government concerned in the face of acts of aggression and threats to international peace and security as determined by the Security Council. Arguments continue around how far the notion of a threat to international peace and security can be stretched to fit internal atrocities, where individuals may need protection both from armed attack and from persecution. As one commentator has summarised:

> If the wind is breathing in the direction of collective humanitarian intervention, it may be difficult to keep it blowing in the absence of a threat to international peace and security manifested by palpable transborder consequences.[1]

The experience of recent conflicts has shown that humanitarian intervention against the will of the official government is not yet acceptable. Chapter VII actions on humanitarian grounds in the 1990s - in Iraq, Bosnia, Somalia, Rwanda and Haiti - have not crossed this threshold, although the limits of consent have been stretched. [2]

These efforts have been hampered by their halfway-house nature: neither military intervention per se nor traditionally neutral humanitarian action. The tragic failures of the operation in Bosnia, for example, are often put down to the lack of a sufficiently credible threat of enforcement. On the other hand, it has been suggested that abandoning the traditional consent basis of humanitarian action in conflict renders perceived impartiality elusive, and that imposing protection by military means will inevitably lead to the coerced party seeking to undermine the arrangement. At the same time, the fact that something is being done may postpone or replace more decisive military action to bring real security to the populations at risk.[3]

1.2 Safe areas

A 1990s development at the limits of intervention has been the creation of "safe areas" with some kind of international military presence in Iraq, Bosnia and Rwanda. These serve to illustrate many of the human rights concerns raised by military interventions to protect civilians, and so are examined in some detail below. It should be remembered, however, that the majority of civilians in two of the cases discussed, Bosnia and Rwanda, were *outside* the safe areas during the conflict.

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1 Rodley, N 1992 p.40. Haiti is at the limits of this analysis.

2 Iraq, see below. Haiti: SC res. 940 of 31.7.1994 authorised the use of "all necessary means to facilitate the departure from Haiti of the military leadership … and to maintain a secure and stable environment", although at the request of the internationally recognised president Aristide. But before the US-led force intervened in Haiti the consent of the de facto president, Jonassaint, was also obtained. Consent was negotiated in former Yugoslavia and in Rwanda, less freely given in the former case perhaps; and there was no government in Somalia to either give or withhold consent.

3 The lack of a sufficiently muscular mandate to achieve the desired ends is often mirrored by inadequate resources which further hamper the operations' ability to deliver. There is a protection argument in favour of abstaining from all intervention unless the necessary means - both in terms of resources and authority to act - are available.

While there is precedent for a certain type of safety zone to protect civilians in international humanitarian law, those differ from the "safe areas" discussed here principally in that they are demilitarised zones, premised on the consent of the parties. The recent examples were coercive in nature, established by Security Council resolution, and have been less than totally successful in meeting their humanitarian objectives. They have a number of implications for human rights.

The safe havens and security zone in northern Iraq were created in 1991 in response to Iraq's persecution of Iraqi Kurds. [4] In the wake of its defeat in the Gulf war, Iraq was persuaded to accept the presence of UN guards in the zone[5] and a no-fly zone was declared. In Bosnia in the first half of 1993 Srebrenica, Zepa, Sarajevo, Gorazde, Tuzla and Bihac were declared safe areas with an UNPROFOR deterrent presence backed up by the threat of air action.[6] And in the summer of 1994, the Security Council authorised France to use "all necessary means" to protect civilians at risk[7] in the genocidal conflict in Rwanda. French troops established a "secure humanitarian zone" in the south west of the country in Opération Turquoise, to which the peacekeeping force, UNAMIR, was subsequently deployed.

An alternative to asylum?

All three initiatives were in some measure responses to refugee problems. Turkey had closed its borders to the Iraqi Kurds, fearing a destabilisation of the fragile south-east of the country. The UN Special Rapporteur on former Yugoslavia first suggested security zones there to avoid large numbers of displaced people having to seek refuge abroad as the capacity and willingness of asylum countries was being exhausted. [8] Operation Turquoise in Rwanda was authorised in the context of concern over the exodus of refugees to Tanzania, which had already occurred, and the threatened movement towards Zaire. Safety zones were seen as an alternative to asylum.

One of the principal human rights concerns, then, in relation to this kind of in-country protection is that it undermines the fundamental right to seek asylum from persecution while not providing enough security to be a satisfactory alternative. The Croatian government, for example, refused to accept 30,000 Bosnian Muslims from northern Bihac as refugees: it was claimed that they could benefit from UN protection in a Serb controlled UN Protected Area in the autumn of 1994.[9] Zaire closed its borders to Rwandan asylum-seekers during Operation Turquoise, although it reopened them under international pressure.

Despite some limited successes, none of the safety zones provided absolute protection from armed attack, a fact which stemmed from the failure to create zones that were truly outside the theatre of conflict[10]. The Iraqi security zone was used by the PKK in their insurgency against the Turkish state, and was raided by Turkish troops several times as a result. The safe areas in Bosnia had a strategic significance which rendered them too vulnerable to attack, as the calamity of Srebrenica made clear.

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4 See Cooke, H 1995

5 SC res. 688, the basis of the UN action in Iraq, was not a formal authorisation of intervention, rather requiring Iraq to "allow immediate access by international humanitarian organisations". By identifying a threat to international peace and security, however, it does establish the basis for Chapter VII enforcement action.

6 SC res. 819 established the Srebrenica zone; the others followed under res. 824.

7 UNAMIR's mandate at that time included the protection of civilians at risk; SC res. 929 authorised France to use "all necessary means", the term authorising military action, to achieve the humanitarian objectives as set out in UNAMIR's mandate for a maximum period of 2 months pending UNAMIR's deployment.

8 E/CN.4/1992/S-1/10

9 UNHCR also negotiated an amnesty for the group to return, an option closed off both by Abdic and by the Krajina Serbs.

10 Other important factors were the lack of a strong military mandate to protect the zones, and the failure to delimit them clearly.

In Rwanda the problems occurred after the departure of the French. The presence of a considerable number of armed members of the former Rwandan government in the camps for the internally displaced in the former Zone Turquoise - now under the nominal protection of the peacekeeping force, UNAMIR - led the new state troops to close them by force. In the case of the largest camp at Kibeho this resulted in thousands of casualties[11].

Beyond protection from armed attack, experience suggests that the absence of a human rights protection programme can leave the civilians nominally protected in safe areas at risk of serious harm inside the zones. While the UN Special Rapporteur was able to operate in the Bosnian safe areas, and the Human Rights Field Operation in Rwanda was able to monitor the displaced person camps in the former Zone Turquoise[12], human rights abuses by the Kurdish authorities in the safety zone in Northern Iraq were reportedly severe[13]. The creation of zones by the international community which are often outside the effective jurisdiction of the *de jure* authorities carries with it a responsibility to replace the national system with some form of international human rights supervision. The importance of human rights in planning such in-country protection measures was acknowledged early by UNHCR in its 1991 *Note on International Protection*:

> the Office is aware that the protection of persons inside their country of origin is feasible when accompanied by necessary guarantees fully consonant with international human rights standards. In-country protection, e.g. through the establishment of internationally guaranteed safety zones, needs to be weighed against the rights of individuals to leave their own country, to seek and enjoy asylum or return on a voluntary basis, and not to be compelled to remain in a territory where life, liberty or physical integrity is threatened.

Lastly, despite a package of humanitarian assistance to all the zones, the material conditions of life in these areas cannot be said to provide a satisfactory alternative to asylum. A safe area will only ever offer a temporary solution, and as such should not replace the long term option of refugee status.

At the same time, traditional asylum in a safe country is not a realistic alternative for the majority of civilians fleeing armed conflict. They will not be eligible for refugee status under the 1951 Convention on these grounds alone, although they may fall into the ambit of the OAU Convention of 1969[14]. If they are granted asylum, it is likely to be in refugee camps; these offer no more than the safe areas can in terms of material security and protection of human rights, and are equally vulnerable to armed attack. As with safe areas, this is particularly true if they are not purely civilian and are situated in the periphery of the conflict. And a desire to avoid refugee flows is not merely self-interest on the part of receiving states, or those who will be funding assistance efforts: mass population displacements may well cause conflict, as the Security Council has recognised, which is the ultimate threat to human life[15].

Freedom of movement

A second human rights concern arises over the establishment of such areas when one object of the war is civilian displacement. In Iraq, the security zone could be read as an unwitting collusion with "ethnic cleansing", as Iraqi Kurds were forced to move to that area. International humanitarian law recognises the gravity of such displacement and outlaws forced movement[16]. In Bosnia, on the other hand, the

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11 See Kleine-Ahlbrandt, STE 1996

12 After the establishment of HRFOR in September 1994

13 See Amnesty International report *Human rights abuses in Iraqi Kurdistan since 1991* 28.2.1995

14 Article 1(2)

15 Ironically, preventing refugee flows may make it harder for the UN to act under Chapter VII of the Charter - see note 1, above.

16 Art. 49 Geneva Convention IV in occupied territory; art. 17 Additional Protocol II

population was prevented by the authorities from leaving the safe areas as part of the Bosnian resistance to "ethnic cleansing". The rationale of safe areas (realistically not safe enough) was invoked to support an important denial of freedom of movement to civilians at risk.

Discrimination in protection

Safe areas serve to illustrate a troubling feature of military action undertaken at the limits of consent to protect civilians. The wider political context (and motivation) behind the intervention may lead to patchy and discriminatory protection, with civilians in strategically uninteresting areas missing out on the protection of the international community. This accusation has particularly been levelled at the intervention in Bosnia, although Opération Turquoise in Rwanda has also attracted this criticism:

> Analysis of the lead up to the massive refugee influx in the Goma area and the reasons why on-the-ground preparedness by agencies was so limited concludes that Opération Turquoise had the effect of diverting the attention of agencies, key analysts and the media away from the developing crisis in the North-West, and reduced the sources of information on the build-up of IDPs there.[17]

Open Relief Centres

One solution to the problems posed by (inadequate) military protection explored by UNHCR in Sri Lanka was the creation of "Open Relief Centres". Closer to the traditional humanitarian law concept of demilitarised safety zones based on the consent of the parties, these centres have no strategic significance and the Sri Lankan government has agreed not to intervene in the camps without consulting UNHCR. The opposition LTTE appear also to accept the humanitarian nature of this effort[18]. While the absence of enforcement powers may appear to offer reduced protection in these areas, the fact that the centres have not been targeted for attack and that no one is known to have died there as a result of military action does suggest that real safety in these situations is more likely to result from the creation of a truly neutral space for civilians than from international firepower. The presence of UNHCR protection officers in the Centres also provides for a certain level of human rights monitoring.

Internally displaced persons

Safe areas are part of a wider strategy of in-country protection which is a response to waning enthusiasm to accept asylum-seekers; to the increase in non-international conflict; to a certain acceptance of international involvement in internal conflicts and to a high-profile product of these: the internally displaced person (IDP). IDPs have no specific status in international law and, not being outside the country of their nationality or habitual residence, do not feature in UNHCR's formal mandate. Nonetheless, as the reasons for their displacement are frequently the same as the causes of refugee flow and as the two groups are often mixed up together, both the United Nations General Assembly and the Executive Committee of UNHCR have passed resolutions authorising UNHCR to assist IDPs in certain circumstances.

Clearly the particular needs of IDPs should be considered in all international responses to conflict, as this group has been shown to be particularly vulnerable. Such ad hoc arrangements are less than satisfactory, however. Work is currently being done to investigate how the protection of this class of people can be improved on a more consistent basis, most notably by the Special Representative of the UN Secretary General on internally displaced persons, Mr Francis M Deng.

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17 Joint Evaluation vol.3 1996 p.55

18 See Landgren, K 1995 and Clarance, W 1991. The Open Relief Centres may have been successful in protection against armed attack, but were still subject to the problems associated with humanitarian assistance in conflict, see below.

1.3 Peacekeeping Operations

> Increasingly, peace-keeping requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military … Peace-making and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people … The authority of the United Nations in this field would rest on the consensus that social peace is as important as strategic or political peace.
>
> Boutros Boutros-Ghali *Agenda for Peace*

Recent UN operations in "wider peace-keeping" have included a human rights element[19]. This strategy is based on the belief that human rights violations are one of the root causes of conflict and "complex emergencies", and unless these are tackled there will be no lasting peace. Interethnic conflict may be particularly likely to be fuelled by the failure of state mechanisms to protect the human rights of one group, who are forced to look for alternative sources of protection. This can provoke other groups to adopt defensive behaviour toward the first, setting off a spiral of ethnic tension. In addition, serious human rights violations militate against reconciliation, pointing both to the need to prevent a deterioration of the human rights situation in any peace-keeping operation and to the importance of addressing past violations. And in cases where violations are actually less severe than rumoured, an impartial monitoring body may serve to reduce the fear and suspicion which can fuel conflict. The Special Rapporteur for the Former Yugoslavia reported in 1994 that

> there is … a great deal of misinformation, rumour and propaganda which, on investigation by objective international monitors has been disproven. The dissemination of such falsehoods only serves to dehumanise the enemy, deepen the persecution complex, fuel the flames of ethnic hatred and, ultimately, prolong the conflict[20].

Addressing human rights is crucial to the success of an operation: the integration of a human rights element into overall UN post-conflict strategy improves protection[21].

Against this analysis are ranged arguments which set protection from violence *against* human rights protection, and consider that an over-emphasis on human rights can hamper the peace process. As Under-Secretary General for Peace-Keeping Operations, Kofi Annan made the following comment about the inclusion of a human rights element in peace-keeping mandates:

> The most important of these principles is that human rights activities should be included in peace-keeping operations only when the mandate given by the Security Council or General Assembly specifically so provides. Furthermore, in those missions where the mandate does include a human rights element, usually in a multi-disciplinary operation, account must be taken of the wider policies of that operation. This may require a carefully calibrated approach, for example where **over-zealous pursuit of the human rights mandate could have a negative bearing on the co-operation of the parties on which the overall success of the peace-keeping operation may depend.**[22]

However, experience to date suggests that this is a short-term view, and that the mainstreaming of human rights in peace-keeping operations contributes to their success. Three of the UN human rights field operations undertaken so far have been established before the signing of final peace agreements, in the hope that the human rights presence would pave the way for such a conclusion: in El Salvador,

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19 For a review of all international human rights field operations so far, see Martin, I 1997, with current conference papers

20 Tadeusz Mazowiecki report to United Nations General Assembly, cited in LaRose-Edwards, P 1996 p.11

21 These are the same arguments that support the use of human rights mechanisms at an earlier stage to prevent conflict.

22 to Ayala-Lasso 3.3.1995, cited in LaRose-Edwards, P 1996 p.54-5

Haiti and Guatemala. An evaluation of the UN Human Rights Verification Mission in Guatemala (MINUGUA) described how

> While peacemaking was still underway, MINUGUA's presence in the field was serving as both an instrument of "preventive diplomacy" (preventing existing disputes from escalating) and "peace-building" (identifying and supporting structures that will tend to strengthen peace in order to avoid a relapse into conflict)[23]

so ripening the conditions for success of the peace effort. The first Aspen Institute study reported how "The developments in El Salvador showed that effective human rights verification can contribute to a broader political agreement"[24], while in Haiti, neglect of the human rights situation by the political actors undermined the search for a lasting settlement: negotiations with the military in the face of their violation of human rights in the second phase of the MICIVIH deployment led to a perception of the weakness of the international community and arguably to the later foundering of the peace process[25]. Amnesty International considered that the relative success of ONUSAL and UNTAC in El Salvador and Cambodia was "at least partly attributable to the serious, open and accountable procedures of the human rights divisions. Without [which] … human rights concerns are likely to go uncorrected and jeopardise the ultimate credibility of the whole operation"[26].

It may be easier to obtain agreement on the deployment of a human rights field operation than on other aspects of a peace settlement. Each party may accuse the other of violating human rights and neither will want to be seen as afraid of international supervision in this regard.

Further, human rights information is crucial to an understanding of the pattern of conflict, so that a human rights mission can supply important data to those involved in the political process. The former Director for Human Rights with MICIVIH in Haiti commented that

> The Mission, spread out throughout the country and investigating more closely than anyone else bloody events in the capital, was the international community's best guide to understanding the local political reality.[27]

The failure to recognise that reality meant that "the international efforts were doomed". Later, as Chief of the Human Rights Field Operation in Rwanda (HRFOR) he makes the same point again. The closure of the UN political office in March 1996 left the New York departments without a field presence, yet they were unable to take advantage of the significant monitoring being carried out by HRFOR:

> HRFOR's reporting was highly relevant to those in New York with overall responsibility for UN strategy, yet it reached them only belatedly, via Geneva, and not directly.[28]

Unfortunately, this coincided with the build-up of the Eastern Zaire crisis: the human rights information gathered by HRFOR could have been of particular assistance to the international community in the context of the developing drama there.

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23 Franco, L & Kotler, J 1997 p.43

24 Hammarberg, T Introduction to Henkin, AH (ed.) 1995 p.10

25 Martin, I in Henkin, AH (ed.) 1995 p.110

26 Amnesty International 1994 p.22

27 Martin, I in Henkin, AH (ed.) 1995 p.110

28 Martin, I Aspen Institute *(forthcoming)* p.28

1.4 Human Rights Field Operations

The term "human rights field operation" is used here to refer to substantial field operations designed to maintain a continuous presence over a period of time in the wake of conflict. This excludes the field visits of the UN Human Rights Commission Special Rapporteurs, for example. Operations to date have been fielded by the UN, by the UN jointly with a regional organisation, or by a regional organisation alone[29]. Their role and achievements are examined below, together with recommendations for maximising the potential of these operations to protect human rights.

Functions and goals

Human rights field operations are an instrument in post-conflict reconstruction, or "peace-building", and so are linked to an internationally-backed peace process rather than necessarily to a formal peace-keeping operation. They can stand alone, as MICIVIH did in Haiti, or as HRFOR in Rwanda after the departure of UNAMIR. As discussed above, human rights operations were deployed before a final peace was negotiated in El Salvador, Haiti and Guatemala in order to create the right climate for agreement. In Cambodia, UNTAC's human rights activities were aimed in the short term at creating a neutral political environment for democratic elections, and in Rwanda HRFOR's activities were expected to encourage the return of refugees. This is the stabilising function of the monitoring role.

Alongside these short term aims, human rights field operations are usually intended to play a more durable part in peace-building by encouraging structural developments which support human rights. ONUSAL in El Salvador focused on monitoring to begin with, but its responsibilities were expanded to include judicial reform, work with the military, the creation of a national civilian police force and of a Human Rights Ombudsman's office by the final peace agreements. MICIVIH's original mandate omitted this structural aspect, which was subject to continuing negotiations, but the revised mandate included institution-building and technical assistance, along with assistance to a future Truth Commission and Reparations Committee. Other field operations have tended to have an institution-building and technical assistance mandate from the start.

It has become clear that this dual approach maximises the impact of operations. Former Chief of HRFOR in the Rwanda described the complementarity of the two functions::

> in which the monitoring would identify needs for training and resources, the technical co-operation would provide means of addressing those needs, and the monitoring would again provide feedback on the effectiveness of technical co-operation projects in improving aspects of the human rights situation to which they were directed.[30]

This is not something that was recognised from the outset. Where the Centre for Human Rights was involved, this was attributable in part to the structural division there between Special Procedures (monitoring) and Technical Co-operation. This has been addressed by the Centre's restructuring as the Office of the High Commissioner for Human Rights, bringing both divisions together in the new Activities and Programmes Branch. The OSCE mission in Bosnia and Herzegovina unfortunately replicated this split with its team of "human rights" officers on the one hand and "democratisation" officers on the other.

When to field an operation

Given these two broad goals, when is it appropriate to field an international human rights operation? In order to stand a reasonable chance of success, the conditions in the target country must be suitable (institution-building, and even monitoring, may be impossible or counter-productive in the midst of

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29 See Martin, I 1997 for an overview of human rights field operations to date.

30 Martin, I Aspen Institute *(forthcoming)* p.20

the conflict) and international support must be strong. This means both political support in the form of robust responses to violations reported by the human rights operation, and financial support to ensure adequate resources. The necessary political support is often reflected in the clarity and strength of the negotiated mandate. In Guatemala

> the work of the Mission was greatly facilitated by the clarity, comprehensiveness and self-executing nature of the Agreement. The solid framework if established gave MINUGUA a clear mandate to deal with sensitive situations and make independent and often high profile statements on human rights violations and the respective responsibilities of the Parties.[31]

The deployment of the civilian monitoring mission in Haiti (MICIVIH), may have been premature in the light of its forced evacuation. MICIVIH's Director for Human Rights had the following to say:

> It could be argued that the human rights deployment should have awaited more congenial political conditions, and that the international presence should then have been a more robust one, including uniformed police as well as civilian observers. The International Civilian Mission returned to Haiti after its first evacuation in the obvious absence of political conditions assuring its ability to function according to its terms of reference or the continuing tolerance of its presence. The Haiti experience therefore points to the need to consider the minimum conditions for the deployment of a human rights presence.[32]

Another field operation for which the pre-conditions mentioned above appear precarious is the Burundi mission (HRFOB), established under the aegis of the High Commissioner for Human Rights in April 1996. The high level of generalised violence in Burundi makes travel out of the capital hazardous, and members of the international community are certainly not immune from this. There has been a demonstrated willingness in some cases to target them[33]. The monitoring role of the operation is therefore limited by security issues, although informed observers believe that a sufficient presence of human rights monitors in the provinces could have some dissuasive effect if it were possible to field such a presence[34]. The security of individual field officers is increased if there are both adequate resources and the manifest resolve of the international community to take punitive action if the physical security of field officers is violated. Conditions do not seem ripe, however, for structural human rights work within the Burundi mission: "Its technical co-operation activities appear naïve in the absence of a political context in which respect for human rights could be institutionalised"[35].

This security problem is now also being faced by HRFOR in Rwanda[36]. At the time of writing, the operation's field presence is severely restricted by the civil war under way in the north-west of the country. While activities in the rest of the country continue more or less as normal, monitoring in this area cannot be as comprehensive or useful as it was when the field operation was fully maintained. Nonetheless, as long as some information is being collected the international presence is seen as worthwhile, although the value of HRFOR's educational activities in this context may be less clear. The level of the conflict in the country also results in the authorities being less receptive to human rights criticism; when insurgency reaches a certain threshold, human rights monitoring (which focuses by definition on the state forces) is more susceptible to accusations of political bias [37].

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31 Franco, L & Kotler, J 1997 p.13

32 Martin, I in Henkin, AH (ed.) 1995 p.122

33 Notably the fatal attack on ICRC staff in the summer of 1996.

34 Martin, I in conversation with the author.

35 Martin, I 1997 p.7

36 5 members of HRFOR were murdered in south-western Rwanda in February 1997.

37 Inclusion of monitoring of international humanitarian law, if the threshold criteria for its application ("armed conflict") is met, may help the operation to avoid appearing one-sided as it applies equally to all parties to the conflict.

Achievements

The achievements of the human rights operations fielded so far can be divided into two categories relating to the two broad goals outlined above: firstly the impact of the operation on the immediate human rights situation and secondly the degree to which the operation's efforts have contributed to the development of indigenous capacity for human rights protection .

Both are difficult to evaluate. Preventive impact is always hard to assess, requiring an estimation of what would have happened in the absence of the intervention. Nonetheless, accounts by those involved in the missions at a high level conclude that they led to a decrease in arbitrary detentions (El Salvador); to some improvement in prison conditions and the release of some untried detainees on humanitarian grounds (Cambodia); to an end to the traditional patterns of human rights violations (Guatemala); that many individuals were helped by the interventions of observers (Haiti), and that the operation had a positive short term impact on human rights violations (Rwanda)[38].

Assessment of the development of capacity to protect human rights is even harder, in part because the effects of institution-building on the human rights situation are long-term (and intended to be). Indicators can also become confused with concrete project goals: just because a civilian police force has been established does not mean the human rights situation has improved. This problem is addressed by Franco and Kotler in their paper on MINUGUA:

> In many cases, the Mission referred to "program outputs" as opposed to "policy outcomes". That is, they referred to the successful carrying out of activities contemplated in the project without judging the extent to which these activities were having a discernible impact on the overall behaviour of the institutions.[39]

Short term assessment therefore often goes little further than an examination of whether institution-building and technical assistance aspects of the mandate have been carried out. But in this respect the achievements of some human rights field operations have been considerable. Efforts generally targeted those institutions considered crucial to human rights protection: the judiciary, the police, the army and the prison system, as well as civil society, especially human rights NGOs. There have also been efforts to raise awareness of human rights through formal and informal education programmes with all sectors of society.

In El Salvador, the smaller missions which replaced ONUSAL played an important role in institution-building:

> Staff participated in discussions within the Assembly regarding legislative reform and helped to forge a consensus for the approval of various reforms to the Constitution; they also took part in a technical commission studying the repeal of the new Police Career Law.[40]

In Haiti, after the extension of the mandate to include technical assistance, the mission carried out in-depth studies of police, prisons and the judiciary, resulting in a set of recommendations which were implemented by the local authorities, including the introduction of registers in centres of detention. Although an earlier assessment had identified the mission's failure to develop close relationships with NGOs as a key weakness[41], NGO training seminars and workshops were later introduced, including in human rights monitoring skills.

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38 Aspen Institute papers, 1995 & 1997

39 Franco, L & Kotler, J 1997 p.33

40 Faroppa, J & Whitfield, T 1997 p.5

41 Lawyers Committee for Human Rights 1995

The operation in Cambodia had far wider scope to institute reform as it was effectively running the country as the Transitional Authority. Some interesting projects there included strengthening the Sangha, a Buddhist order of monks whose beliefs were seen to be supportive of human rights, working with human rights NGOs as co-trainers in programmes for the military and the police, and the introduction of human rights defenders as counsel for unrepresented defendants in criminal trials (although this "made little dent in the virtually 100% rate of conviction"[42], illustrating the need for indicators - the rate of conviction - beyond the creation of institutions presumed to support human rights - defence counsel).

MINUGUA in Guatemala took the innovative step of creating a Trust Fund in Support of the Guatemalan Peace Process to receive international donations for institution-building activities, which were carried out with all the key state institutions, as well as with NGOs and the Human Rights Ombudsman, along with extensive human rights education programmes. The Mission considered that

> "the growing demand for its decentralised education activities were an indicator that human rights issues, and institutions and individuals working in human rights protection and defense, were gaining legitimacy in Guatemala."[43]

In Rwanda the work of HRFOR helped develop the justice system, although it remained unclear in September 1997 whether it would manage to operate independently of the military, and national human rights institutions had still not emerged after the war. The security situation was too sensitive for national human rights NGOs to carry out much monitoring work themselves[44].

Recommendations for improvements

a) Independence from political departments

The contribution a human rights component can make to the effectiveness of a peace-keeping operation has been discussed. Conversely, the human rights element of such an operation can itself benefit from association with the wider political process by gaining authority, but also runs the risk of being compromised by this connection. Dennis McNamara, formerly the Director of the Human Rights component to the UN Transitional Authority in Cambodia (UNTAC), described the tensions thus:

> UN human rights actions … risk being weakened by the same political process… Effective peace-keeping demands that UN administrators constantly mediate and keep diplomatic channels open to the … authorities if the political action is to succeed. Antagonistic human rights interventions do not assist in this process, and many senior officials faced with such situations naturally favour diplomacy and compromise over confrontation.
>
> There is clearly a delicate balance to be struck between broader political interests and the human rights responsibilities of such operations.[45]

The autonomy of the human rights operation becomes crucial in this situation. In Haiti, the Human Rights Director reported that "There were, however, a few occasions on which the state of the political negotiations placed some pressure on the human rights reporting"[46], and acknowledged that

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42 Adams, B 1997 p.17

43 Franco, L & Kotler, J 1997 p.32

44 Martin, I Aspen Institute *(forthcoming)*

45 McNamara, D in Henkin, A (ed.) 1995 p.78. cf. the statement of Kofi Annan cited above, p.6

46 Martin, I in Henkin, A (ed.) 1995 p.103

> "It is almost impossible for a political negotiator to resist the temptation to shape the reporting to the current needs of the political process, while the credibility of a human rights presence requires the absence of any suspicion that this is affecting its work."[47]

The recent "Mincho" case in Guatemala provides a salutary example of the delicate balance going awry. In this case, MINUGUA was accused in the international press of covering up the possible torture and forced "disappearance" of a member of the URNG guerrilla movement. As two of the previous leaders of that operation report: "the Mission had to defend itself from the very serious accusation that it suppressed the verification of this killing, so as not to upset the peace negotiations at a very delicate moment"[48]. It was given the Secretary-General's seal of approval, but the writers note nonetheless that

> "A Mission with a strong reputation for independence and integrity suddenly found itself in a straitjacket, and ended up tarnished by scandal. At minimum, the experience points to a need for more discussion and experimentation with mechanisms to ensure that human rights are honored while keeping the peace."[49]

Such mechanisms include the institutional separation of the human rights operation from the political aspects of the wider mission. Reporting lines play an important role here: it has been suggested that human rights field operations should in future report to the High Commissioner for Human Rights as a way of reinforcing the autonomy of the human rights element, as is the case with Abkhazia (Georgia), Angola and Eastern Slavonia[50]. In these three cases reporting is to the High Commissioner but through the Chief of Mission or SRSG, simultaneously allowing for co-ordination with overall UN strategy.

b) Co-ordination with other UN agencies

This co-ordination between UN agents on the ground is another important area which has not been trouble-free in operations fielded so far. As well as a lack of communication due to structural problems, there have been problems of overlap and competing mandates as human rights field operations move into areas traditionally the preserve of other agencies, albeit with a different focus.

El Salvador was an early example of these difficulties. There was a lack of coordination between the political office of ONUSAL, the Police and the Human Rights Division, made worse by each having separate reporting channels. The relationship between the Division and the Special Representative of the Human Rights Commission was unclear, and when the Centre for Human Rights carried out a needs assessment mission they appeared to ignore ONUSAL's human rights reports. Projects were then negotiated between the Centre and the El Salvador Ministry of Foreign Affairs without consulting the UN field presence[51]. In Haiti, the Special Rapporteur was not sent MICIVIH's public statements from UN New York on a consistent basis; and relations between the human rights field operation and the Special Rapporteur posed considerable problems in Rwanda. The complexity of operations in Bosnia Herzegovina, with its multiplicity of different organisations with human rights concerns, has led to significant coordination problems[52].

Clearly, the integration of policy and creation of clear communication channels between the specialised human rights bodies of the UN must be a priority. The institutionalisation of human rights

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47 *ibid.* p.122

48 Franco, L & Kotler, J 1997 p.40

49 *ibid.* p.44

50 Martin, I 1997 p.16

51 Faroppa, J & Whitfield, T 1997

52 See Martin, I 1997

field operations under the overall supervision of the High Commissioner could provide an answer to this, offering a focal point for UN human rights activities.

Wider use could also be made of the Crime Prevention and Criminal Justice Division (formerly Branch) in Vienna, whose mandate naturally touches on human rights, and whose expertise would be invaluable in human rights training for law-enforcement officials. One successful example is provided by the evaluation of the Haitian penal system carried out jointly with the Human Rights Centre (now the Office of the High Commissioner for Human Rights) and the Crime Branch in Vienna, which led to a draft penal reform project.

There may well be an overlap between a human rights field operation and the protection work of UNHCR. Monitoring can be a function to be shared, as in Rwanda where Memoranda of Understanding were drawn up to use each organisation's "comparative advantage". Institution-building projects can be usefully co-ordinated with UNDP, uniting

> UNDP's long-term project management capability and the capacity of a human rights field operation to make available professional expertise and to utilise its unique outreach to identify needs and be supportive at the local level.[53]

MINUGUA was able to take advantage of lessons learned in this respect by earlier missions, and created a MINUGUA - UNDP Joint Group "to define strategies, design appropriate projects and promote international assistance for strengthening national human rights entities"[54], although conflicts over mandates were still reported.

Within, or alongside, a peace-keeping operation, similar issues arise over relationships between elements of the peace-keeping operation and the human rights operation. The human rights operation can act as a mainstreaming force, collecting human rights intelligence from other agencies and showing the relevance of human rights to their role. UN civilian police monitors (CIVPOL) and military observers (MILOBS) may have monitoring mandates, and should receive training in international human rights standards to maximise this resource[55]. CIVPOL's investigating skills are particularly useful to human rights verification, and they can also be involved in training their national counterparts in relevant human rights norms. The CIVPOL trainers then also take this expertise back to their country of origin. The military can play an analogous training role. When aware of the principles of international human rights law, their wide field presence means they can observe and report on the human rights situation, as well as having the armed capacity to stop violations if their mandate provides. Military expertise in forensic analysis of gunfire and bullet marks is similarly useful to human rights investigations. Again, training in human rights gained by the military element is carried back to the donor state.

In both Haiti and Rwanda MILOBS and CIVPOL had monitoring mandates which overlapped with that of the human rights field operation, and there was inadequate coordination between the different agencies[56]. In Rwanda information was shared at a local level and joint investigations were occasionally carried out, but this was largely dependant on the creation of individual relationships rather than a co-ordinated strategy at headquarters level.

c) Institutionalisation

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53 Martin, I Aspen Institute *(forthcoming)*

54 Franco, L & Kotler, J 1997 p.28

55 This raises the important issue of international forces' compliance with international humanitarian law. While discussion of this topic is outside the scope of this paper, reports of violations in Somalia in particular highlight the urgency of eliminating confusion on this matter. For a full discussion of the issues involved, see Hampson, FH 1995.

56 Relationships in Haiti were "underdeveloped" Granderson, C 1997 p.37

There is an undoubted need, identified in various studies of the human rights field operations to date, to institutionalise these projects.

1. For Logistics and Recruitment

One of the major failings in operations so far has been start-up. Operations organised by the Centre for Human Rights - now the Office of the High Commissioner for Human Rights - in Geneva are hampered by that institution's lack of experience of field missions and suffer severe logistical problems. This last was particularly noticeable in Rwanda, although the Haiti operation - organised out of New York - was also hindered by the slowness of UN procurement. In a fragile post-conflict situation, human rights field operations can lose vital credibility if they are unable to establish an effective presence fast.

The preferred option of the Office of the High Commissioner for Human Rights is for a solid partnership with the Field Administration and Logistics Division of DPKO in New York to be established, with a liaison office in Geneva[57]. Such an arrangement would also streamline recruitment. All operations have complained of recruitment difficulties, as no organisation is currently equipped to carry out large-scale rapid recruitment of human rights officers for work in the field. The Office of Human Resources Management in New York, which has experience of recruitment for field operations, is not well-placed to tap into human rights expertise, and the OHCHR does not have the administrative capacity to deal with recruitment alone. The OHCHR now has a roster of professionals; ideally it would select candidates and FALD would deal with the administrative procedures. Recruitment is crucial to the success of such operations, which rely to a large extent on the commitment, imagination and sensitivity of officers in the field.

Funding methods and procedures have accentuated the problems. Several of the operations have had to rely on voluntary contributions, which has proved particularly difficult[58]. Rigid and overcentralised funding procedures have proved ill-suited to the fast-changing environment in which a human rights field mission must operate. Once the UN (rather than the OAS) began providing all administrative services in Haiti, the Head of Mission reported

> The rigidity of its financial regulations rendered the organisation of small-scale human rights and civic education programmes a time-consuming and bureaucratic nightmare. In addition, each change of mandate cycle paralysed these operations for at least two months because of delays in finalising approval for the new budget and the early suspension of activities to facilitate the completion of accounting procedures before the end of the mandate.[59]

The post-UNTAC operation in Cambodia, organised by the CHR, was similarly unable to respond flexibly to perceived needs in-country. “Virtually all of the administrative problems experienced could be resolved by the delegation of authority to the Cambodia office” writes one participant, concluding that, as more field offices of the CHR (now OHCHR) open, “to decentralise will be to survive”[60].

Likewise, a more stable funding base is essential to the success of future operations. One practical suggestion by the previous High Commissioner for Human Rights, Ayala-Lasso, was the creation of a revolving fund for field operations with non-earmarked contributions. This has not been taken up.

2. For Training and Standard Methodologies

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57 interview with Mautner-Markhof, G November 1997

58 See Martin, I 1997 p.11 ff.

59 Granderson, C 1997 p.38

60 Adams, B 1997 p.38

An ongoing issue in the field operations so far has been the need to develop standard training programmes for human rights officers, as well as standard methodologies. So far each operation has found itself starting from scratch, drawing up field manuals and planning training courses for its staff during its deployment, usually without reference to the experience of previous missions. The OHCHR in Geneva has been working for some time on a standard manual which is due to be published shortly. The International Human Rights Trust has also been active in this area, organising a round table discussion in 1996, and has since published the results of its research[61]. Clearly this process should be centralised; the OHCHR would seem to provide a natural home.

3. For Lessons Learned and Evaluation

The third important function which an institutionalised human rights field operations unit could perform is to focus evaluation and lessons learned. Feeding into the standard methodologies mentioned above, this would lead to the development of a more thorough doctrine of human rights field operations. Experience so far has shown this to be a necessary and neglected area. The Director of the Human Rights component of UNTAC recorded that

> Regrettably, there was no organised debriefing of the heads of the various components of UNTAC, nor was there any apparent attempt by the UN to take into account many of the lessons which had been identified in the final reports of UNTAC components.[62]

Although the Lessons Learned unit of DPKO visited Haiti, this was only to report on relations between the civilian mission and the UN peace-keeping operation. Rather, the Head of Mission was able to say that

> MICIVIH has not benefited from the experience of similar missions … periodic meetings of senior staff of these missions to exchange ideas, strategies and experiences would be mutually beneficial.[63]

And the experience in Guatemala was the same:

> On the one hand, MINUGUA had no contact with other analogous missions (e.g. Rwanda). It also lacked the means to disseminate its own experience.[64]

The European Commission, an important donor to the Rwanda operation, did carry out two systematic evaluations of HRFOR. The fact that a proportion of the human rights officers in that mission were specifically funded by the EU, who maintained a resident EU co-ordinator in Kigali, provided the impetus for this.

d) Public Reporting

Another feature of field operations which needs to be clarified and strengthened is their public reporting function. The first Aspen Institute meeting concluded that

> One of the essential aspects of maintaining the credibility of an operation is to ensure that its findings and activities are regularly and frequently reported and widely disseminated, internationally as well as within the country itself.[65]

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61 Kenny, K 1996

62 McNamara, D in Henkin, A (ed.) 1995 p.76

63 Granderson, C 1997 p.38

64 Franco, L & Kotler, J 1997 p.13

65 Clapham, A & Henry, M in Henkin, A (ed.) 1995 p.138

This has not however been the case in all the missions fielded so far. Those mandated by the Security Council or the General Assembly have reported publicly, but there is less clarity over the status of reports both by human rights components of peace-keeping operations and by the operations fielded by the High Commissioner for Human Rights. It has been pointed out that in the latter case the position has been complicated by co-existence of a human rights field operation and a Special Rapporteur: the mandates of the Rwanda and Burundi operations implied that public reporting was to be through the Special Rapporteur, causing some difficulties for the field operations[66].

The current OHCHR presence in Cambodia has also run into difficulty. It has been criticised for failing to speak out enough about the human rights situation, being hampered by having to obtain case-by-case authorisation from Geneva:

> Many Cambodians have questioned the silence of the Cambodia office after instances of particularly severe human rights violations. Others have questioned how the office can encourage Cambodian human rights workers to do advocacy and complain about violations when the United Nations chooses to remain mute.[67]

Ad hoc methods have been developed to overcome structural constraints. The interrupted nature of the MICIVIH presence in Haiti did not help to set up a regular reporting structure, but the Mission established the practice of issuing regular press reports on particular incidents. A similar tactic was deployed in Rwanda, where the operation had no specific mandate to report publicly on human rights rather than on operational activities until spring 1997. ONUSAL did report publicly, and arranged for a local NGO to publish a popular version of each report, and MINUGUA has followed this example, both reporting publicly and ensuring significant coverage in the Guatemalan press. The operation's leaders have identified three important contributions this made to the protection of human rights:

> On the one hand it gave muscle to the verification, keeping both Parties on notice that violations would be a matter of public record … [Secondly,] it helped legitimate a human rights discourse previously labelled as subversive, and helped to move the public debate toward a common diagnosis of the problems to be overcome. Finally … it set an example of objectivity that will be crucial for the Guatemalans to build into their own work.[68]

The inclusion of a public reporting function in the mandate of an operation is a reflection of the political support it is afforded, and a clear signal that its work is to be taken seriously.

e) Follow-up

Finally, it is crucial to plan for continued international involvement after the departure of a human rights field operation. The standing and *ad hoc* mechanisms of the UN Human Rights Commission are an obvious resource, and coordination between these and human rights field operations would again be facilitated by the institutionalisation of field operations under the overall supervision of the High Commissioner for Human Rights.

Cambodia provides a useful example of follow-up projects in the wake of UNTAC's departure after the elections[69]. The Paris agreements establishing the operation provided for continued monitoring of the in-country situation by the Human Rights Commission, including a Special Rapporteur, but a Special Representative was appointed instead without a specific monitoring role. Despite initial anxiety about this apparent weakening of international supervision, both Special Representatives have interpreted their broad mandates to include monitoring and public advocacy of human rights issues.

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66 Martin, I 1997 p.15

67 Adams, B 1997 p.39

68 Franco, L & Kotler, J 1997 p.19

69 The following account is based on Brad Adams' paper for the Aspen Institute meeting 1997.

The establishment of an office of the Centre for Human Rights (now OHCHR) and its accompanying field presence has been crucial to the effectiveness of the Special Representative, providing far more detailed human rights information than would otherwise be available.

While this solid presence provides a good example of follow up activity, delays in the establishment of the Cambodia office were a problem: the office risked losing experienced staff from the UNTAC human rights mission, and ongoing promotional activities were affected, leading to a "considerable loss of credibility" for the Centre. It is clear from this experience that follow up should be planned and implemented in concert with the withdrawal of a field operation, to avoid this kind of disjuncture and accompanying loss of momentum. Commentators have also suggested that an explicit plan and budget for follow up activities should be included at the outset in future peace-keeping operations, so that the necessary funds are sought while the political will is strong.

Continued international involvement should not obscure the importance of establishing strong national human rights institutions, governmental and non-governmental, who naturally have a far more valuable role to play in the long-term protection of human rights.

2. ASSISTANCE

Humanitarian assistance consists of the provision of food and water, shelter, and medical services to the victims of conflict. The customary separation of these assistance activities from protection initiatives is followed to maintain the paper's focus on protection from violence and persecution. Clearly, assistance can be seen as a human rights issue in itself. Here, however, it is analysed for its impact on protection from violence and on the protection of civil and political human rights. The negative effects humanitarian assistance may have on protection are considered first, along with strategies to minimise these. The paper then reviews ways in which humanitarian assistance could positively support human rights and protect individuals.

The range of actors involved in assistance is greater than that in protection. Assistance is an area in which NGOs play a particularly important role. While the protection initiatives examined above are carried out primarily by intergovernmental organisations (IGOs), both IGOs and NGOs are major players in humanitarian relief. There is also an important difference between NGOs who specialise in relief work and arrive for the emergency, and those who have an existing field presence for development work and switch to relief when a crisis erupts. While these organisational differences have significant implications for policy recommendations, the following analysis deals as a whole with the protection issues which may face any organisation involved in humanitarian assistance.

2.1 No substitute

> one of the major challenges facing humanitarian organisations today is the tendency to use humanitarian assistance as a substitute for political action.
>
> *Cornelio Sommaruga, President of the ICRC, February 1997*

The volume of humanitarian assistance has increased massively since the end of the Cold War. According to OECD / DAC figures, the proportion of overseas aid devoted to emergency assistance rose from 2% to 6% from 1990 to 1996[70]. This peaked in 1994 at around $7 billion, although subsequent years have seen expenditure of $3-4 billion. While this may be explained in part by increased need due to conflict in the wake of the change in world order, it also represents a change in focus of the international response to conflict abroad. The end of the Cold War has reduced the incentive of the major powers to intervene politically by reducing the sphere of their strategic interest:

70 cited in Chr Michelsen Institute 1997 p.6

there is less political will to “take sides”[71]. At the same time, domestic pressure on states to “do something” about human suffering overseas exists, fuelled by media coverage.

Direct satellite broadcasting from the scene of disaster both demands action from the international community and suggests that humanitarian assistance is the appropriate response. The Joint Evaluation of Emergency Assistance to Rwanda, the first major evaluation of international responses to a complex emergency, described how the complicated political crisis which had resulted in conflict and genocide there was represented as a simple human disaster story through reporting on the refugee influxes into neighbouring countries in the summer of 1994. As a senior ICRC official reported: “Suddenly it was a humanitarian problem. The refugee situation translated the crisis into terms that could be understood by the world at large”[72]. The study concludes that “The media’s concentration on humanitarian relief operations, especially in Goma, may have contributed to the relative over-emphasis on the humanitarian to the detriment of the political by governments”. The donor nation public becomes aware of the crisis and sees assistance as the solution, chiming with the reluctance of the authorities to tread a more complex and sensitive path.

But humanitarian assistance cannot do more than relieve immediate suffering, and needs to be part of a wider peacemaking strategy. In general, the humanitarian agencies are well aware of this. The policy document *UNHCR strategy towards 2000* recommends:

> UNHCR should resist becoming involved in protracted humanitarian operations which are not supported by broader peacemaking strategy or in which it is clearly not in a position to enlist respect for its humanitarian principles. While remaining ready to protect and assist civilian populations in conflict situations, UNHCR must insist in future that such involvement be clearly linked to measurable progress in peace negotiations.[73]

The message is rather directed to international political actors. The Joint Evaluation referred to above finds a “key lesson … that humanitarian action cannot serve as a substitute for political, diplomatic and, where necessary, military action”[74]. As it went to press in 1996 it was able to record that “Despite massive loss of life and the expenditure of enormous sums of money[75], an estimated 1.8 million Rwandese remain in camps outside their country, and many observers expect the civil war to be resumed at some point”[76]. As we now know, the situation deteriorated past this point, with a civil war currently under way in the north-west of the country, and an unknown number of the refugees having met their death in the former Zaire.

The danger is that the provision of assistance is not only an inadequate response, but will remove the impetus to deal with the difficult causes of conflict by creating the impression that “something is being done”. Real solutions will be postponed. Not only is humanitarian assistance ineffective as a real solution to the crises it is deployed to alleviate, but the terms of the current debate in which it is given primary importance place protection - through a longer-term solution - at risk. Generously, the simple resort to humanitarian assistance as the only response to crisis may be characterised by

> a tendency to forget that in all these cases the disaster has been man-made and requires changes in policies, institutions and possibly even in the structures of states and their boundaries.[77]

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71 intervention became a viable option with the removal of the SC veto - hence Iraq, Somalia and Bosnia. But the tendency to disengage from international affairs described here prevailed after the Somalia debacle in mid-1993.

72 Loane, G cited in Joint Evaluation vol.3 p.151

73 *UNHCR strategy towards 2000* para. 67

74 Joint Evaluation vol.3 p.157

75 approximately $1 million per day in 1996 according to the study (p.156).

76 *ibid.* p.15

77 Roberts, A 1996 p.27

More critically, this response has been seen as the North's "institutional accommodation" of repeated emergencies in the South, and a powerful force in making such emergencies permanent[78].
Increased humanitarian assistance is also one result of a growing reluctance to accept refugees. Humanitarian assistance often accompanies strategies of in-country and temporary protection which are replacing traditional asylum. The UN High Commissioner for Refugees explains this trend as follows:

> First, to the degree that previous refugee flows were often linked to the "proxy wars" of the Cold War, states sometimes had a strategic interest in hosting refugee populations. Other refugee movements were linked to colonial liberation wars … Second, governments of Africa established a truly remarkable record in granting asylum to refugees … the sheer magnitude and accompanying spread of insecurity has created severe strains … Third, as countries in the North are facing large, and what they consider to be irregular, migratory flows into their countries, the critical distinction between refugees and migrants has become blurred and eroded the consensus on the importance of asylum.[79]

As a result, potential refugees are accommodated in camps either inside their countries of origin, or on a temporary basis in neighbouring states, to which humanitarian relief is provided. Again, the provision of assistance risks displacing protection unless the two functions are clearly defined.
This dilemma is most clear in current debates over the role of UNHCR. Some commentators consider the agency to be substituting humanitarian action for the duty to provide international protection as outlined in its mandate and codified in international refugee law. The apparent downgrading of the Division of International Protection within the organisation (which is perhaps being reversed currently) is seen as a strategic mistake:

> The marginalisation of protection also explains why, against experience and principle, UNHCR's senior policy makers were prepared to tolerate and to service refugee camps in eastern Zaire that failed by a considerable margin to maintain the 'exclusively humanitarian and civilian character' required by international law and the Executive Committee, with the tragic consequences we see today[80].

Others within the organisation dispute this analysis. They argue that

> The provision of assistance reinforces UNHCR's protection activities, both in countries of asylum and in countries of origin. In many situations, humanitarian relief and the international presence it requires is also the most tangible expression of the organisation's efforts to protect refugees, avert and resolve refugee situations.[81]

They also point out that assistance buys access for protection work, States being unlikely to accept large numbers of refugees in the absence of UNHCR's practical assistance, and underline the value of an international presence to the respect of the refugees' human rights. Despite the interaction of the two, the tendency among some actors to conflate protection and assistance ("assistance is protection from starvation", &c) is not helpful here. As will be discussed further below, the clear enunciation of human rights and protection principles in the planning framework for all initiatives is the surest way to avoid detrimental effects of assistance on protection, and to maximise the protection potential of assistance itself.

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78 e.g. Duffield, M *The Symphony of the Damned* 1994, and others cited in Chr Michelsen Institute 1997 p.13-14.

79 Ogata, S 1996 p.2

80 Goodwin-Gill, G 1996 *(2)*

81 *UNHCR strategy towards 2000* para. 50

2.2 Avoiding negative effects on protection

While it is crucial to avoid substituting assistance for protection, it is increasingly recognised that humanitarian relief programmes may impact on protection issues: there may be unforeseen negative effects on human rights and conflict, and conversely there is potential to do good in these areas. The negative effects of assistance on protection, and how to avoid them, are considered first.

Avoiding undermining protection from violence

In terms of negative effects, it is a widely accepted risk that the provision of material assistance may prolong conflict by sustaining the combatants themselves. All the major humanitarian actors have had to deal with the issue of aid intended for civilians in conflict areas being diverted to the armed forces: UNICEF reported 30%.of aid being taken by Bosnian Serbs to allow relief through to Sarajevo, for example, and Norwegian Peoples Aid work informally to the principle that no more than one third of the aid they supply should go to armed forces. Clearly these agencies have managed to set a limit at which they feel the net positive effect outweighs the net negative effect. A similar balance sheet approach led to the suspension of humanitarian activities in Liberia in June 1996. David Bryer, Director of Oxfam, explained:

> The Liberian warlords had looted more than 400 aid vehicles and millions of dollars of equipment and relief goods, and those thefts had directly supported the war and caused civilian deaths and suffering. . . In this case, I do think that more lives are likely to be saved by preventing such looting than by providing humanitarian aid.[82]

On a smaller scale, Save the Children (Norway) reports withdrawing its support from primary schools in Sri Lanka when it discovered that its funds were being used for propaganda.

Traditional humanitarians might argue that the risk of prolonging the conflict is worth running, if civilian hardship during the fighting is reduced (although beneficiaries are unlikely to prefer humanitarian assistance to decisive action to put an end to the conflict, as interviews with civilians in Sarajevo during the siege of that city attest)[83]. More emphatically, others point to the relative insignificance of relief spending (less than 1% of world defence expenditure, for example) and the absence of empirical evidence that humanitarian assistance does in fact prolong conflict. They argue that the use of unsubstantiated speculation to this end to justify withholding civilian relief represents an abandonment of humanitarianism.

It is also argued that armies are always the last members of a society to starve and will take food from civilians by force if necessary, so that attempts to channel assistance exclusively to civilian beneficiaries are pointless . One attempt to reduce the risk of such theft is to hand out ready-made meals, as was done in the Somalia famine of the early 1990s (which also reduces unwanted trading of food). A more controversial approach has been advocated by the NGO *African Rights* for Sudan, where a large proportion of relief is diverted to the military on both sides. Instead of attempting to prevent this - implicitly seen as futile - *African Rights* suggests formally recognising that much of the food is destined for the armies on either side and making such consignment official. “The soldiers could then sign for their supplies, and delivery of this food could be made contingent on the non-diversion of supplies consigned to civilian populations”[84].

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82 cited in Roberts, A 1996 p.34

83 In Bosnia, the international presence deterred air strikes which might have put an end to a situation of ongoing violations. “The humanitarian operation became an end in itself. Its inviolability was frequently invoked as an excuse not to execute the threats of force” Judge, L 1996

84 African Rights 1994 p.15. Solutions based on formalising the separation between combatants and civilians can be meaningless in the type of non-international ethno-political conflicts which typify current unrest. As one commentator has said of the relief operation in Bosnia: “The notion of giving aid to needy civilians only was a nonsense when nearly every able-bodied man was mobilised” Judge, L 1996 p.8

More extremely, deliberately feeding the army has been seen as a form of protection of the civilian population for these same reasons. This position was adopted by some NGOs in relation to the provision of assistance to Rwandan refugees in camps in Zaire, many of whom were known to be members of the former government forces or militia.

> "Apart from the value of aiding the non-combatant families in the camps, *the main purpose was to pre-empt predatory raids from these camps onto the towns and other camps*. The strategy consequently served to reduce violence in the area, at least in the short run." [85] (emphasis added)

Such a plan, at the limits of accommodation to violence, serves as a reminder of the inadequacy of humanitarian assistance as a sole response to conflict. In the absence of political / military strategies of protection or resolution, the traditional short term goals of humanitarian relief may be perverted into direct support of the cause of the humanitarian need.

A recent shocking example of relief inadvertently exposing its intended beneficiaries to violence occurred in Kivu when people were drawn from hiding by the distribution of aid and to assembly points for repatriation only to find themselves the object of armed attack. This echoed the situation in Ethiopia in 1984 which led *Medecins Sans Frontières* to speak out and be expelled from the country.

Avoiding undermining human rights

Humanitarian aid may directly affect the conflict in ways which undermine human rights. Assistance will tend to support the established powers, either directly (supplies, taxes, wages) or by relieving the authorities of their obligation to provide for the civilians under their responsibility. The presence of international agencies may lend legitimacy to those in power. This regime may violate human rights, indeed this may be at the root of the conflict. Increased awareness of these human rights implications has inspired a range of NGOs to adopt the principle of "Do No Harm" in their humanitarian work[86]. Save the Children (UK), for example, has suspended its operations in Afghanistan as a result of the acute gender discrimination and persecution of women there; in particular because this has made it impossible to recruit female staff and reach women beneficiaries.

In the cases described above the relative merits of continuing an operation or withdrawing may have been relatively clear. However, mechanisms for assessing the impact of relief on protection could be further developed. A request to the UN Human Rights Commission from the Sub-Commission on Prevention of Discrimination and Protection of Minorities to authorise a study on the implications for human rights of UN action, including humanitarian assistance, was rejected by the Commission in 1995[87]. But the current aim to mainstream human rights in the work of the UN offers an opportunity to integrate protection goals into assistance. The present High Commissioner for Human Rights has suggested using the case of Rwanda as a prototype for examining the interaction between humanitarian assistance and human rights.

Some maintain that international humanitarian law provides sufficient tools for such assessment, expressed in the traditional principles of neutrality and impartiality in humanitarian work, as developed with subtlety by the Red Cross movement. Others believe a broader conceptual framework is necessary; one which encompasses the full range of effects humanitarian assistance can have on the human rights and safety of the intended beneficiaries. The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, sponsored by the Steering Committee for Humanitarian Response and the ICRC and adopted in December 1995, is a first step in this direction. A more recent development is the Sphere project, a joint initiative of two NGO-liaison

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85 CMI 1997 p.24

86 see particularly the work of Mary Anderson

87 Decision 1995/107; cf. sub-commission's 47th session agenda items 19&13

groups: InterAction and the Steering Committee on Humanitarian Response. This project is attempting to draw up a humanitarian "claimants"' or beneficiaries' charter for relief organisations, drawing on the provisions of international human rights and humanitarian law which bear directly on the "rights" of civilians in conflict to protection and assistance.

In another attempt to make use of an international human rights law framework, Save the Children (UK) and UNICEF are trying to use the UN Convention on the Rights of the Child as a programming guide, although some in the organisations remain sceptical as to its practical value. Nonetheless, they consider a thorough analysis of the consequences of fielding an operation, as well as those of not fielding one, to be a crucial part of their planning, and this would include the protection impact of both provision and methods of delivery. One example is the provision of less exchangeable food baskets to people in refugee camps, in order to minimise the number of times they have to leave the camps as they are known to be subject to violence and theft on entry and exit.

There have been suggestions that the most reliable way to provide emergency aid within a human rights framework is to deploy human rights experts alongside humanitarian workers with the explicit brief to assess the human rights situation and the impact of the assistance. A step along this path was the DHA proposal that humanitarian monitors be deployed in the relief effort in the Democratic Republic of Congo. The argument here is that humanitarian workers do not have the expertise to make such assessments to the required standards, and that a clear definition of roles is the key to coordination and efficiency. It also removes the risk run by humanitarian organisations whose human rights assessments cause them to lose neutrality in the eyes of the actors in the conflict, and so to expose their staff to danger.

Another aid to assessment of the protection impact of assistance is feedback from the beneficiaries. As well as harnessing crucial information about the human rights impact of assistance programmes, this is one step on from the definition of principles, providing a way of improving compliance with them once adopted. The Joint Evaluation of Emergency Assistance to Rwanda, itself an important development in the area of accountability, recommended the establishment of an independent body to whom beneficiaries may either complain or seek information about the assistance intended for them[88]. Following the annual British Red Cross conference in 1997, a small project team has been set up to explore the idea of a humanitarian ombudsman, although it is not clear at this stage whether this will be an international or a British project.

Increased media attention to the humanitarian aspect of violent conflict, discussed above as a potentially negative influence in terms of long term solutions, might nonetheless also play a role in increasing the evaluation of programmes for their protection impact and accountability to beneficiaries, through closer scrutiny of humanitarian assistance.

2.3 Maximising the protection potential[89]

Humanitarian diplomacy

The same mechanisms may also serve to highlight ways in which humanitarian assistance can be used positively to support human rights and security. One example is the use of relief delivery to encourage peace-oriented dialogue. UNOCA, established in 1988 in Afghanistan, employed aid in a way designed to promote dialogue between the parties to the conflict[90], and another prominent example is

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88 Joint Evaluation vol.3 1996 p.163

89 The following section makes considerable use of the study carried out for the Norwegian Ministry of Foreign Affairs by the Christian Michelsen Institute in 1997.

90 see Donini, A *The Politics of Mercy: the UN Co-ordination in Afghanistan, Mozambique & Rwanda* Thomas J Watson Institute for International Studies 1996

the 1989 negotiation of relief corridors in Operation Lifeline Sudan. "OLS officials built on the agreements reached with one side in the conflict to entice the other into concessions. The Operation encouraged dialogue, and this was seen as a direct contribution to the peace process"[91]. The agreements lasted for only a few months, however, and later commentators consider the conflict resolution impact of the initiative to have been negligible. The Operation continued as a straightforward relief effort, having abandoned its protection goals. Nonetheless, this is an example of what came to be known as "humanitarian diplomacy", whereby relief is thought to contribute to peace by providing super-ordinate goals and promoting communication between the parties whilst granting them some legitimacy- a goal espoused by Jan Eliasson as head of DHA and James Grant as head of UNICEF.

Humanitarian assistance as bargaining tool

Beyond humanitarian diplomacy lie attempts to use humanitarian assistance as a bargaining tool to support human rights and to protect civilians from violence. One relatively successful attempt at this is found in the Ground Rules in Southern Sudan, where factions sign up to a set of principles in order for the area under their control to receive assistance. These principles include:

- the distribution of aid on the basis of need alone and only for civilians
- free humanitarian access to populations
- respect for the Geneva Conventions and the Convention on the Rights of the Child
- the inviolability of aid workers and their property

As well as the receipt of aid for the areas under their control, the factions are motivated to accept the Ground Rules as granting them some legitimacy.

Clearly, the option of using aid to negotiate improved respect for human rights may not always be available, in particular to NGOs. The situation in Southern Sudan is rather exceptional in its lack of central authority; competition between factions for legitimacy can be exploited to give outside actors more influence than they usually have when dealing with a sovereign state.

Governments and IGOs will tend to have more sway than an NGO. Nonetheless, some argue that the leverage offered by humanitarian assistance will never be large enough to justify the effects on the intended beneficiaries of withholding it. There is little evidence that national governments step in to fill the gap when international relief is not provided: when humanitarian assistance is used as a bargaining tool, the danger is not only that withholding will it fail to produce the desired change in behaviour, but also that the intended beneficiaries will be left high and dry. Traditional humanitarians thus consider that the introduction of human rights conditionality into emergency relief runs contrary to the humanitarian imperative, whereby assistance is provided to all without distinction purely on the basis of need. The UN Special Representative for Somalia Mohamed Sahnoun was criticised for his attempts to manipulate faction leaders with the provision of aid which was seen as straying too far from the traditional principle of neutrality: "UN humanitarian officials perceived this as dangerous, especially after the deployment of UNITAF at the end of 1992"[92] as it could pave the way for unscrupulous reciprocal manipulation of aid delivery for political ends.

Co-ordination of protection strategies

In a multi-actor emergency, coordination is essential to the success of any recipe which seeks to maximise protection. The principal obstacle to the coordination of protection strategies of course is the difficulty of reaching consensus on this issue:

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91 CMI 1997 p.26, and see Minear et al *Humanitarianism Under Siege: A Critical Review Of OLS* 1991

92 CMI 1997 p.24

> co-ordination is a concept approved by all but defined by few … The notion of leadership is controversial, and many donors privately admit that co-ordination in the sense of the loss of sovereignty is the last thing they want.[93]

Within the UN system, co-operation between the new Emergency Relief Co-ordinator and the High Commissioner for Human Rights offers one way to co-ordinate policy. Statements by Sergio Vieira de Mello at the end of 1997 indicate that the new office will place greater emphasis on promoting prevention and protection, and that the interaction of protection and assistance is increasingly recognised there. The Strategic Framework Process for countries emerging from conflict, piloted in Afghanistan, is designed to streamline UN agencies' responses, and a human rights input here will have a significant mainstreaming effect.

A practical first step towards the coordination of protection strategies among a wider range of actors was the ICRC-organised workshop on *International Humanitarian Law and Protection*, held in Geneva in November 1996. This examined interaction between agencies, and looked at the question of a common ethical framework[94]. A follow up seminar is planned for March 1998.

Even if consensus can be reached in principle, coordination mechanisms have proved notoriously hard to make work. Many NGOs may be too decentralised to be co-ordinated at Headquarters level. Clearly, good communication between actors at field level is essential, but attempts to achieve this have not always fulfilled their potential[95]. A more promising example of such a common arrangement at field level is the Joint Policy of Operations in Liberia[96], although "The aid agencies were torn between a desire to insulate themselves from the political process, and a desire to make a direct contribution to peace. As a result, a joint strategy eventually proved elusive"[97].

Training of humanitarian workers in humanitarian & human rights standards

Training clearly has a crucial role to play in improving the protection impact of assistance programmes. Most operational agencies concede that the human rights training given to their field workers is currently inadequate; many are looking at ways to improve this in their organisation. DHA organises training on humanitarian principles, and several organisations request the ICRC or UNHCR at field level to provide seminars for their staff in their respective areas of expertise. International human rights, humanitarian and refugee law provide ready made, tested protection frameworks which should be used to the fullest extent. Nonetheless, this can only supplement clear policy decisions by each agency about how to maximise human rights within their organisation.

Humanitarian assistance in structural peacebuilding

The potential of humanitarian assistance to take a proactive role in conflict prevention and resolution on a structural level is also being discussed. Mark Hoffman of the Conflict and Development Unit at LSE argues for all humanitarian assistance to be reconceived in a framework which identifies societal forces which militate against violence. Where possible, relief should seek to "foster the development of the political will, the social institutions and the societal capacity to deal with conflict without recourse to violence"[98]. A practical example of this approach is the committee-like structures created by NGOs operating in Sri Lanka to deal with practical assistance issues, with the subsidiary goal of

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93 Prendergast & Scott 1996

94 see discussion of the Code of Conduct and the Sphere project discussed above, p 24

95 For an analysis of the failure of co-ordination structures in one particular situation see Kleine-Ahlbrandt, STE 1996 on the Kibeho incident in Rwanda April 1995

96 see Scott, C *Humanitarian Action & Security In Liberia 1989-1994* TJ Watson , Institute paper #20

97 CMI 1997 p.21

98 Hoffmann, M 1997 p.6

facilitating contacts between opposing groups. Another is a multi-ethnic brick making project in Rwanda, devised in the hope that by working together to satisfy a common need political divisions may begin to be transcended and alternative solidarity networks established in a grassroots echo of the humanitarian diplomacy discussed above.

The NGO CARE recently organised an international conference for its staff on conflict resolution in recognition of the potential to integrate protection goals into assistance[99]. Norwegian Church Aid reported that as the assistance they provided in Ethiopia helped beneficiaries take control of their lives, this led to the development of civil society and an emergent political opposition[100]: effectively an incidental democratisation project through the provision of material assistance.

Clearly, this is an ambitious agenda and such projects will have to be elaborated with great sensitivity to the local context. Some commentators consider that humanitarian agencies should avoid being led by these goals lest they find themselves unable to respond to emergencies, leaving people without immediate protection. It is also pointed out that conflict resolution takes time and requires political solutions; it is unclear whether the type of activities referred to above have any noticeable impact. Perhaps traditional short-term protection, and certainly respect for international human rights and humanitarian law, are more effective preconditions for conflict resolution.

Those in favour of preserving traditional neutrality are particularly wary of mixing humanitarian assistance with structural work. They argue that it is precisely this kind of aid which is at most risk of favouring one or other faction in a conflict, or of shoring up a repressive state. The recent UN Strategic Framework Process as applied to Afghanistan concluded that the only capacity building that should be undertaken was that of individuals, precisely to avoid skewing the power equation.

Addressing scarcity as conflict prevention

More broadly, if scarcity is seen as a cause of conflict then all assistance has a protection role. Resources can be used in a preventive manner both to reduce scarcity and to support moderating distributive institutions[101]. The efficiency and long-term sustainability of assistance is then a protection issue. While a detailed critique of humanitarian relief in fulfilling its own assistance goals is outside the scope of this paper, the principal area of concern is sustainability. Outside assistance can weaken the local authority's obligation to provide with negative long-term effects for the civilians under their control and undermine viable local coping structures by creating an artificial economy. Indeed, this is a crucial part of the "Do No Harm" philosophy. The effect on local NGOs also needs to be taken into account. In general, assistance which supports local capacities for peace and development is both the best way of ensuring the short term success of humanitarian aims and of incorporating protection goals into assistance.

Post-conflict priorities

In a post-conflict phase, one important area of assistance is in demobilisation projects to redirect conflict-inclined leaders and occupy ex-soldiers, who may have few other skills to fall back on. Focusing on skills training and education for children and adolescents is one way of preventing the recruitment of child soldiers as well as reducing criminal violence in post-conflict society.

2.4 Humanitarian workers as human rights monitors

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99 Nairobi, January 1996

100 CMI 1997 p.44

101 for details of work developing this idea see CMI 1997 p.25

In a study of UN peace-keeping operations in 1994, Amnesty International made one of its key recommendations that there should be no international "silent witnesses":

> All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.[102]

The wide field presence and considerable resources of humanitarian organisations means they could play a significant role as monitors in the protection of human rights. But such a position is fraught with difficulty and humanitarian actors are far from consensus on how to deal with this issue.

In deciding whether or not to make public statements organisations must balance the value of their operational presence, which may cease if anti-government statements are made, against the importance to the victims of their situation being made public. This last is inevitably less visible and so more difficult to evaluate. However, it is important for the positive impact of publicity to be properly considered, rather than dismissed as outside the remit of a humanitarian organisation, and for channels for the private passing of information on gross human rights violations to be established and made known to staff in the event that a decision to inform is taken.

Different groups will tend to weigh the factors according to their wider role and the presence of other actors in the field. While the basic ICRC position, for example, is to work in confidence through diplomatic channels silence is not an absolute rule:

> The ICRC denounces grave violations of humanitarian law when all its representations fail and it is in the interest of the victims to make such a denouncement.[103]

Differences of opinion centre around just what is in the interest of the victims. While the ICRC might prioritise maintaining a presence in the country and continuing operations, MSF typifies an agency at the "solidarity neutral" end of the scale who might be more likely to think the interests of the victims best served by denouncing abuses, even if by doing so they were unable to continue their humanitarian work[104].

The presence of other organisations who could fill the role of one who gets expelled is clearly an important factor. ICRC is the classic example of an agency which has unparalleled access to "victims" as a result of its confidentiality policy, and their role is irreplaceable. Norwegian NGOs co-operate so that if one speaks out and is expelled the others carry on their work[105].

Despite these controversies, many organisations already pass relevant information to human rights NGOs, although the UN mechanisms are less well-used, and are looking to improve the direct contributions they can make in the human rights field. UNHCR recognises that:

> a humanitarian presence can often serve as an important witness to and, where possible, prevent and mitigate persecution and human rights violations.[106]

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102 Amnesty International 15-Point Program for Implementing Human Rights in International Peace-keeping Operations; point 2.

103 Lavoyer, J-P 1981

104 see their actions in Ethiopia in 1984

105 CMI 1997

106 *UNHCR strategy towards 2000*

However, there are dangers associated with using humanitarian workers as substitutes for experienced monitors[107]. Inexperienced monitors are more subject to manipulation by the sources of their information, and may find themselves unwittingly caught up in propaganda wars. But while humanitarian workers cannot replace skilled human rights monitors, the dissemination of certain basic standards can be of use. The lack of a stock methodology for human rights monitoring complicates the issue, but work being done by the Office of the High Commissioner for Human Rights could usefully be adapted for these purposes.

Reporting structures are also crucial: within the humanitarian organisations, from those organisations to human rights bodies, and from these last to the political decision makers. Without clear information routes intelligence will be wasted and have less than maximum impact on the human rights situation it identifies.

Humanitarian assistance under military protection

Neutrality is acutely threatened by the shift from the traditional consent basis of humanitarian assistance to armed protection of the assistance programmes themselves, as in Somalia and the former Yugoslavia. Clearly if military protection is required the traditional consent basis of humanitarian assistance is not present. As the president of the ICRC has said:

> the mere threat of the use of force aimed at facilitating humanitarian work can jeopardise humanitarian action, in particular since such a threat cannot be maintained indefinitely. Indeed, it causes the military operation to lose credibility while at the same time hampering efforts to provide humanitarian aid on the basis of consensus between parties[108].

The ICRC did use multi-ethnic groups of armed protectors - “technicals” - in Somalia, but this presented problems. “After a year-long period of give and take, as the ‘technicals’ tried to become the dominant players in the game, the ICRC backed out, having handed over its share of the relief operation to the UN or its relief agencies”[109]. ICRC currently considers that

> That experience has taught us, however, that such arrangements have serious drawbacks in the long term. Indeed, if we were to resort to such measures on a more general scale, humanitarian action would lose the neutrality and impartiality it must preserve in order to be able to operate in aid of all victims.[110]

The delivery of humanitarian assistance in the former Yugoslavia, under the protection of UNPROFOR, served to highlight a number of related problems for protection. In the absence of a general consent, access to beneficiaries has to be negotiated each time with controlling authorities. This leads easily to manipulation and to provision of aid to those whom the authorities allow rather than to those in need. Dependence on UN for security made it difficult to work in areas out of political favour. As with the safe areas discussed above, the interference of the political agenda with the humanitarian effort led to discriminatory provision of relief: there was less NGO activity in Serb-controlled areas of Bosnia under UNPROFOR[111].

A way of avoiding such dilemmas of course is to act early enough on reports of human rights violations so that the conflict does not deteriorate to the point where humanitarian assistance can only be provided under armed guard. Amnesty International has remarked:

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107 see the DHA suggestion p.27, above

108 Sommaruga, C 1997

109 Russbach, R & Fink, D 1994

110 Sommaruga, C 1997

111 Judge, L 1996

> human rights aspects have generally not been considered or tackled early enough to prevent conflict from escalating to a situation where attempts to deliver aid may draw international agencies into the conflict itself … The argument that taking human rights into account at an early stage will taint “purely” humanitarian efforts is not convincing - on the contrary, assessment of the human rights situation must be part of what informs UN policy at the earliest stages.[112]

CONCLUSION

The paper has reviewed recent experience of field operations to protect or assist individuals. Issues pertinent to improved protection from violence or persecution have been highlighted in a range of interventions: military action to protect civilians from conflict; peace-keeping operations; dedicated human rights field operations, and humanitarian assistance. The major theme to emerge from the review is that the use of a human rights analysis in planning and implementing responses to crisis can improve protection. Consideration of the human rights framework strengthens peace initiatives and helps steer a path through the sensitive terrain of a conflict situation. Both protection and assistance initiatives can impact on the civil and political rights of individuals, and on their exposure to violence. Managing this impact, and maximising its potential, is aided by clear enunciation of protection goals. From this devolve a host of important questions for the design and implementation of future projects. The current seminar is intended to address these. As a starting point for discussion, a number of suggested questions, drawn from the body of this paper, are set out below.

QUESTIONS FOR DISCUSSION

Military action to protect civilians

- Should international military action to protect civilians be abstained from unless all necessary means, in terms of resources and strength of mandate - are available? *p.4*
- Does in-country protection, such as the creation of militarily-protected “safe areas”, undermine the right to asylum? *p.5*
- Can truly “safe areas” be created by force? *p.5*
- If safe areas can be created, does the international community have a responsibility towards the respect of human rights within the zone? How can this best be met? *p.5*
- When population displacement is a war aim, how can the rights of civilians not to be displaced, as well as their freedom of movement, be protected? How can protection measures avoid coinciding with these war aims? *p.6*
- How can protection measures ensure they benefit all groups equally? Does the absence of consent inevitably lead to discriminatory protection? *p.6*
- Should there be a right of access by international agencies to IDPs? *p.7*

Peace-keeping operations

- Does giving human rights a high profile in peace-keeping operations hamper the peace process? *p.8*
- How can the transmission of human rights information to the UN’s political departments be improved? *p.9*

Human rights field operations

- Should a human rights field operation only be established under optimum political conditions? If conflict escalates, at what point should an operation withdraw? *p.11*
- How can the impact of human rights field operations be better evaluated? *p.12*

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112 Amnesty International 1994 p.28

- How can both the real and perceived independence of an operation from political departments be assured? *p.14*
- How can coordination with other UN agencies be organised? How can the human rights component of an operation act as a mainstreaming force for human rights within the other agencies? *p.15*
- Should human rights field operations be institutionalised under the High Commissioner for Human Rights? *p.17*
- How can human rights field operations be put on a sounder financial footing? *p.18*
- Is the development of a standard methodology for operations desirable? How might this best be achieved? *p.18*
- How can the development of a doctrine of human rights field operations be encouraged? *p.18*
- Should all operations report publicly? *p.19*
- How can follow-up be assured after the departure of a field operation? *p.20*

Humanitarian assistance

- How can governments, IGOs and NGOs ensure that humanitarian assistance does not replace necessary political, diplomatic or military action as a response to crisis? *p.21*
- Is protection at risk of being subsumed within assistance, for example in the work of UNHCR? Does this threaten protection? *p.23*
- How can any negative effects assistance might have on protection be evaluated? Can international human rights and humanitarian law play a useful role here? *p.26*
- How can the views of the beneficiaries be harnessed to this end? *p.27*
- How can negative effects identified be avoided? *p.24, 26*
- Are codes of conduct for relief agencies useful? How can compliance with these be assured? *p.27*
- How can humanitarian assistance actively support human rights and peace? Does this agenda stray too far from neutrality? *p.28*
- Can withholding assistance in the interests of long-term solutions be justified in terms of the immediate victims? *p.28*
- Can coordination of protection strategies between agencies be improved? How? *p.29*
- Would improving the training of humanitarian workers in human rights and humanitarian principles contribute to better protection? *p.30*
- Can humanitarian assistance contribute to structural peacebuilding? Should it try? *p.30*
- To what extent should humanitarian workers become involved in human rights monitoring? How could human rights information from humanitarian organisations be used most effectively? *p.31*
- How should organisations deal with the problems posed by providing humanitarian assistance under military protection? *p.33*

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International Human Rights Law and Machinery for Monitoring its Implementation in Situations of Acute Crisis

Nigel S Rodley

Introduction

There are substantial variations in the kinds of situation we may be considering during this conference that could be characterised by the term "acute crisis". The archetypes are:

1 the highly repressive state
2 the state in civil war
3 the collapsed state.

The highly repressive state could be typified by Haiti before the military de facto government was overthrown; the civil war situation may be exemplified by that obtaining in Rwanda before the Rwanda Patriotic Front seized power; the collapsed state is illustrated by Liberia. There are various gradations between these three archetypes and a state may move from one to the other. For example, a repressive state may be the cause of discontent leading to civil war. Algeria at present may be held as an example. A civil war may so develop that there are no victors and the state is substantially weakened (Colombia?) or eventually collapses (Somalia).

International human rights law, like the very concept of human rights, presupposes the existence of a relatively stable government or at least an analogous locus of effective power exercising governmental-like functions, since that law essentially relates to the relationship between, on the one hand, those that exercise the governmental-type power and those over whom it is exercised.[113] By and large neither the law of human rights nor the notion of human rights is well adapted to dealing with the anarchy attendant on the generally collapsed state.

In civil wars or conflicts approaching civil war proportions international human rights law does play a role in purporting to regulate the way the state parties to the conflict treat those within their power. However, international humanitarian law is also applicable (to all parties) and may in some cases be better adapted to addressing the human rights aspects of the conflict.[114] Indeed, as far as the right to life is concerned, the International Court of Justice has opined that international humanitarian law supplies the relevant *lex specidis*.[115]

Where international human rights law clearly comes into its own is in the case of the repressive state where the problem is the existence of a government that does not respect human rights. It may be tempting to think of such situations as not being appropriately categorised as ones of acute crisis. However, the opposite may well be true. As a rule governments resort to repression when they feel weak and the more ferocious the repression, the weaker they are probably feeling. Accordingly, high levels of repression may well be seen as early warning indicators of a crisis that could lead to a sustained challenge and possible eventual downfall of the government in question, not least as a result of growing resistance to the repression.

The flexibility of international human rights law

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113 Rodley, 'Can Armed Opposition Groups Violate Human Rights?' in Mahoney, K. and Mahoney, P. Human Rights in the Twenty-first Century: A Global Challenge, Nijhoff, Dordrecht/Boston/London, 1993, p.297.

114 Hampson, Françoise International Humanitarian Law in Situations of Acute Crisis, p.00 below.

115 Legality of the Threat or Use of Nuclear Weapons (1996), Advisory Opinion, 35 ILM 814, para.25.

It is often thought that international human rights law is the normative reflection of the reality of the modern stable western state. Desirable as some may think that may be, it is not the case. For example, while it encourages it does not require the abolition of the death penalty except as regards state parties to protocols to the International Covenant on Civil and Political Rights (the Covenant) and the European or Inter-American Conventions on Human Rights (ECHR and IACHR, respectively).[116] It also recognises the problems faced by all states in the "real world". Thus a number of the rights envisage the possibility of restrictions being imposed for certain purposes. This is particularly true for the so-called fundamental freedoms, that is, the freedoms of religion or belief, expression and speech, and association and assembly, as well as the freedom of movement.[117] For example, the European Commission of Human Rights concluded that the conviction of a well-known British pacifist and her two-year prison sentence (for distributing a leaflet held to be calculated to encourage collective desertion of duty by British soldiers at risk of being sent to Northern Ireland) did not violate article 10 (freedom of expression) of the European Convention on Human Rights, because of the 'claw-back' clauses relating to national security and the prevention of disaster.[118] In addition it is possible in times of public emergency, generally accepted as including war, to derogate from or suspend the application of certain rights contained in international instruments.[119] Taking another instance from the United Kingdom, the European Court of Human Rights considered that the problem of terrorism in Northern Ireland justified derogation from article 5 (liberty and security of person) of the Convention aimed at permitting administrative internment of suspected terrorists.[120] Indeed, most rights contained in international treaties are subject to derogation or suspension in time of war or public emergency.

Of course governments are all too aware of the possibilities of restricting the scope of certain rights and derogating from them or other rights and I do not wish to suggest they are free virtually to tear up the rule book if they consider themselves under pressure. On the contrary, the limitations themselves are subject to limitations. The limitations in respect of the restrictions contained in the "claw-back" clauses to certain rights are such as that they have to be provided by for law and that they have to be "necessary" or even "necessary in a democratic society" and that they may only be resorted to for one of the stated purposes permitted for the restriction. For example, the right to freedom of expression may be restricted on grounds of ensuring respect to the rights and reputations of others and protecting national

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116 (United Nations) International Covenant on Civil and Political Rights, 999 UN Treaty Series 171, adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976; as of 28 January 1998: 140 state parties, and Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the Death Penalty, adopted by General Assembly resolution 44/128, 15 December 1989, entered into force 11 July 1991; as of 28 January 1998: 31 state parties. (Council of Europe) Convention for the Protection of Human Rights and Fundamental Freedoms, European Treaty Series n. 5, signed 4 November 1950 and entered into force 3 September 1953; as of 10 December 1997: 39 states parties, and Protocol n. 6, European Treaty Series n.14, signed on 28 April 1983 and entered into force 1 March 1985; as of 5 November 1997: 27 states parties. (Organisation of American States) American Convention on Human Rights, OAS Treaty Series n.36, signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969 and entered into force 18 July 1978; as of … 00 states parties; and Protocol to the American Convention on Human Rights to Abolish the Death Penalty, OAS Treaty Series n.73, approved at Asunción, Paraguay, 8 June 1990, 20th regular session of the General Assembly, not yet entered into force.

117 Kiss, A., 'Permissible Limitations on Rights' in Henkin, L. (ed.) The International Bill of Rights - the Covenant on Civil and Political Rights, Columbia University Press, New York, 1981, p.290.

118 Arrowsmith vs. United Kingdom, Application no. 7050/75 (1980).

119 See generally, Oraá, J., Human Rights in States of Emergencies in International Law, Clarendon Press, Oxford 1992; Fitzpatrick, J. Human Rights in Crisis - the International System for Protecting Rights During States of Emergency, University of Pennsylvania Press, Philadelphia, 1994.

120 European Court of Human Rights, Case of Ireland vs. United Kingdom, Judgement, 18 January 1978.

security, public order, or public health or morals, whereas a restriction on freedom of conscience may be for public safety, order, health or morals or the rights and freedoms of others, but not for national security.[121]

The limitations on derogations involve the following:

- certain rights are non-derogable, in particular, the right of non-discrimination solely on ground of race, colour, sex, language, religion or social origin; the prohibition of torture or other cruel inhuman or degrading treatment or punishment; the right of life; freedom from slavery; non-retroactivity of criminal law; and freedom of conscience;
- the state of emergency itself must threaten the life of the nation
- it must be officially proclaimed
- the measures taken must be strictly required by the exigencies of the situation
- the measures must not be inconsistent with the state's other obligations under international law.[122]

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121 Under the Covenant the rights to freedom of expression and conscience are framed as follows:

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary;
   (a) For respect of the rights or reputation of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

122 Article 4 of the Covenant reads as follows:

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other State Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A

All these are factors by which state action to limit the enjoyment of human rights may be assessed. In particular, the requirement of reviewing a measure of derogation by reference to the exigency of the situation introduces a notion of proportionality which is potentially far-reaching. It means not only that every suspension of a right or part of a right is reviewable, but also that even where a suspension may be justified, the particular measures relied on pursuant to the suspension may be deemed to be excessive. For example, in Aksoy v. Turkey[123] the European Court of Human Rights found Turkey to have violated ECHR Article 5, para 3 which requires a detained person to be brought promptly before a court, despite the fact that it had been duly suspended by notice of derogation submitted by the Government of Turkey. This was because the measures taken, namely, holding persons for four days or more without access to the outside world including a lawyer or a court was held to be too broad a cession to the power of the state. As far as the non-derogable rights are concerned, the substantial area of overlap between these and the "fundamental principles of international humanitarian law" as reflected in Article 3 common to the four Geneva Conventions should be noted.[124]

Machinery for monitoring

Where a state is a party to an international treaty that itself provides for a monitoring body then that body will be able to assess the compatibility of invoked restrictions or suspensions with the overall treaty obligations. This therefore would be the case, for example, with the Human Rights Committee as it discharges its functions under the International Covenant on Civil and Political Rights or the Committee Against Torture.[125] Clearly their powers in this area tend to be limited as far as their common function is concerned, that is, reviewing periodic state reports submitted by the government of the country in question. Yet even this relatively mild technique of review of reports can lead to the Committees' expressing certain clear views and creating substantial pressure on a government to take those views into account. Our own government has had to face criticism from the Committees in respect of its

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further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

The analogous articles in the regional conventions are Article 15 of the European Convention on Human Rights and Article 27 of the American Convention on Human Rights. Note that the requirement of notification is not a condition of derogation, although, once there has been notification of derogation from one provision, it will not be possible to derogate from another where the derogation has not been notified.

123 European Court of Human Rights, Case of Aksoy v. Turkey (100/1995/606/694), Judgement, 18 December 1996.

124 Common Article 3 to the Geneva Conventions of 12 August 1949 reads (in part) as follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(I) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

125 (United Nations) Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1465 UN Treaty Series 85, General Assembly resolution 39/146, 10 December 1984, entered into force 26 June 1987; as of 28 January 1998: 104 states parties.

emergency measures applicable to the situation in Northern Ireland.[126] While few cases have raised the issue, the Human Rights Committee would clearly be able to assess measures invoked by way of limitation or suspension of rights in cases it considers under the Optional Protocol of the Covenant providing for the right of individual petition. (A recent setback has been the first ever denunciation of the Optional Protocol by Jamaica, apparently because of the number of adverse Human Rights Committee findings in respect of death sentences after unfair trial or appeal procedures. This is certainly the case for the European Commission and Court of Human Rights established under the ECHR and for the Inter-American Commission and Court of Human Rights established under the ACHR.[127]

Of course, treaty bodies only have jurisdiction in respect of the states that are party to the treaties setting them up. However, all members of the United Nations are subject to the operation of a range of machinery that has evolved slowly from the mid-1960s to the present day. Thus a number of countries are subject to year-round scrutiny by special rapporteurs or representatives or experts established by the Commission on Human Rights to review the human rights situation in the country, often on the basis of visits to the country where the government in question agrees. The mandate holders report annually to the Commission on Human Rights and in numerous cases also on an interim basis to the General Assembly.[128]

However, some countries are politically or economically too powerful to be subjected to such machinery, that is to say, they can prevent (sometimes by threat of economic retaliation) the accumulation of sufficient votes in the inter-governmental Commission on Human Rights to adopt a resolution envisaging the creation of such bodies. It was in recognition of this reality that the Commission started creating thematic mechanisms which look at a particular problem but on a country-by-country basis.[129] The first of these was the Working Group on Enforced or Involuntary Disappearances (1980), followed by the Special Rapporteur on Extrajudicial, Summary and Arbitrary executions (1982), the Special Rapporteur on Torture (1985) and the Special Rapporteur on Religious Intolerance (1986) and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (1993). There have been several others but these are the ones that deal with violations of non-derogable rights.

Typically, the mechanisms receive information from various sources, primarily non-governmental organisations, transmitting urgent cases direct to the foreign ministries of the governments in question with a view to ensuring that the feared harm does not take place, transmitting substantiated information from similar sources to the government with a view to getting the governments' comments, and reporting annually to the Commission on Human Rights on the exchange of information. For the last few years, the first three of these mechanisms have also concluded appropriate country entries with their own observations on the situation as regards their mandate. They also undertake missions to countries where they feel an on-site visit would be appropriate and the government is prepared to accept them and they report back to the Commission on Human Rights on those missions and their findings. While these can represent substantial pressure on a particular government they are ultimately as influential as the international community wishes them to be. For example, in 1993 the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions had visited Rwanda

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126 Rodley, 'Rights and Responses to Terrorism' in Harris, D. and Joseph, S. (eds.) The International Covenant on Civil and Political Rights and United Kingdom Law, Clarendon Press, Oxford, 1995, p.121. Most recently, see Report of the Human Rights Committee, UN Doc. A/50/40 (1995) paras. 408-35 and Report of the Committee against Torture, UN Doc. A/47/44 (1993), paras. 93-125.

127 The African Charter on Human and Peoples' Rights has no derogation article.

128 See Alston, P. (ed.) The United Nations and Human Rights - A Critical Appraisal, Clarendon Press, Oxford, 1992, p.126.

129 Id., at 173ff.

and made a number of recommendations which if acted upon could have at least made the genocide that took place there harder to carry out. The fact is, his report, a kind of early-warning signal, was ignored at the Commission.[130]

Another problem with the UN's treaty bodies and non-treaty bodies is the dearth of resources available to the Office of the High Commissioner for Human Rights to support their work. Few of them have even one person working full-time on the mandates, even those that are world-wide. Ideally, those resources would be provided in the form of permanent staff. Short of that, more associate experts (formerly known as junior professional officers - JPOs) would be provided by governments on a temporary basis. Inevitably the burden falls on the traditional donor governments and this creates problems of geographic balance for the UN staff. One solution has been for the development agencies of those governments to fund JPOs from development-aid-receiving countries. While I am grateful that the UK's Foreign and Commonwealth Office provides me with funds, through my University, to pay a modest stipend for a research assistant to support my work as Special Rapporteur on Torture and I recognise the substantial contribution the UK makes to peace operations, I venture to hope that the UK and other governments represented at this conference that have not yet done so could finance the recruitment of human rights JPOs to help professionalise and make more effective the UN's human rights machinery.

Field presences

A recent interesting development that is the subject of a substantial monograph by Ian Martin is the introduction of human rights field presences, particularly of the United Nations, in certain situations of acute conflict.[131] There is a wide variety of these, some occurring as part of the preparations for an eventual peace agreement, some pursuant to a peace agreement between the parties, some established by the international community in the wake of peace-keeping intervention or even a peace-enforcement intervention and some by special agreement between the High Commissioner for Human Rights and the country in question, either on its own or together with a Special Rapporteur. Some have been established by the Security Council, others by the General Assembly, others are of multi-organisational character involving both the UN and the OAS. The UN component could be organised in New York or in Geneva. Some have clearer mandates than others, some are more established than others, some are subject to secure funding, others to insecure funding. There is inconsistency in the method and channels for reporting, particularly at the public level. The less administratively or financially secure the operation, the less likely it will be for the personnel to be sufficiently organised and qualified to carry out the mandate with a high degree of professionalism. Nevertheless, there can be no substitute for an in-country presence as the most effective means of monitoring a human rights situation when the job is done properly and it is to be hoped that governments and the United Nations Secretariat learn from their varied experiences so that future operations are more soundly established than some of the earlier ones. Also, the experience of Somalia suggests the need for human rights monitoring of peace-keeping and peace-enforcement operations.

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130 Commission on Human Rights, Report by Mr B.W. Ndiaye, Special Rapporteur on his mission to Rwanda from 8 to 17 April 1993, UN doc. E/CN.4/1994/7/Add.1. For example, he called for the dismantling of the political-party militias (para.74), which in fact went on to carry out the genocide, and for removing from Rwandese identity cards references to ethnic origin (para.84), which were used to identify Tutsis for the purpose of the genocide.

131 Martin, I., A New Frontier - The Early Experience and Future of International Human Rights Field Operations, University of Essex, Human Rights Centre Papers in the Theory and Practice of Human Rights n.19.

An especially promising innovation was the establishment in 1997 of a field office of the High Commission for Human Rights in the Colombian capital of Bogotà.[132] Its function is to monitor the human rights situation in a country where armed conflict and violent organised criminality presents serious challenges to the authorities; it is also mandated to assist in providing advisory services and technical assistance. However, it is financed by the European Commission which insisted that recruitment of the personnel would be undertaken by an activist NGO (the International Commission of Jurists), while the head would be appointed by the Government of Spain. Inappropriate though the ICJ's role is in principle, there has been no substantial criticism of the staff. The even more inappropriate role for Spain unfortunately seems not to have been compensated for by comparable respect for the competence and commitment of the incumbent. Whatever problems there are with the UN's recruitment systems, the European Commission's cure, unwisely accepted by the former High Commissioner, seems to have been more harmful than the disease.

Combating impunity

All of the measures considered so far are ones that essentially rely on exposure or the threat of it to deter or at least limit serious human rights violations. However, some governments are either so unconcerned about international opinion or so desperate to retain power in the face of legitimate or illegitimate challenge that they will ignore such exposure if they think the stakes are sufficiently high. In other words, they carry on violating human rights often at a high level of criminality, for example, by resort to extrajudicial executions, torture, disappearances.[133] To combat the impunity represented by these continuing violations the international community has begun belatedly to build on the experience of Nuremberg.[134] In other words, it has sought to pierce the corporate veil of the state to reach out for the individuals responsible for the atrocities.

There have been two ad hoc tribunals established in this decade - the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Both are the product of a failure of political will by the international community, in particular, the Security Council, to take more decisive, by which I mean military, action to stop the atrocities that were being committed in those countries. Nor has there been sufficient international commitment to ensure their effective functioning and more importantly the presence of key indicted suspects, though it is too early to make a balanced and informed assessment of the tribunals. For myself, I do not think the Yugoslav tribunal at any rate will be seen in retrospect to have been a failure.

However, there is something unappetising about establishing such tribunals on an ad hoc basis and after the fact to deal only with those situations in which the Security Council can muster the necessary majority to agree the operation. This has led to moves to draft a statute for a permanent international criminal court. The process is well underway and it may not be overly optimistic to envisage that it will adopted at the Diplomatic Conference this year as a fitting commemoration of the 50th anniversary of the adoption of the Universal Declaration of Human Rights in 1948. There are still numerous questions to be agreed, questions which could affect the effectiveness and even the legitimacy of the eventual court. Even if these are

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132 See UN doc. E/CN.4/1997/11.

133 For example, the Vienna Declaration and Programme of Action adopted by the 1993 United Nations World Conference on Human Rights (reprinted in 14 HRLJ 352 1993) 'view(ed) with concern the issue of impunity of perpetrators of human rights violations' (para.91) and envisaged that 'States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law' (para.60).

134 See Meron, 'International Criminalization of Internal Atrocities', 89 AJIL 554, 1995.

satisfactorily resolved, it will be a long time before all states are party to the statute, especially those states where the crimes within the Court's jurisdiction are most likely to arise. It will also be difficult to ensure that those who should appear before it are in fact brought within its jurisdiction. Nevertheless it will be a symbol of possible retribution regardless of what *de facto* or *de jure* impunity the individual perpetrators of war crimes and crimes against humanity may enjoy at national level. It will also be a disincentive to international negotiators to be parties to so-called peace agreements which in return for an amnesty for the perpetrators of atrocities will get agreement to a spurious and possibly flawed short-lived peace in the country in question.
One way the individual members of the international community could contribute substantially to the process of restricting impunity would be by legislating to commit themselves to have criminal jurisdiction over the perpetrators of war crimes in non-international armed conflict and crimes against humanity as they do over torturers in respect of state parties to the Convention against Torture or as they do in respect of war criminals in international conflict under the Geneva Conventions of 12 August 1949. The adoption at the national level of the required legislation would be also a potential deterrent to potential perpetrators of war crimes and crimes against humanity.

Advisory Services and Technical Assistance

One usual contribution by the international community during the period of reconstruction after a situation of acute conflict, and this applies to the rebuilding of collapsed states, as well as other situations, is the provision of advisory services and technical assistance for the purposes of law reform and legal and human rights institution-building. This is at present an under-researched area. What is clear is that the efforts in question should be co-ordinated at the international level by those who are familiar with the norms and institutions of international human rights law. All too often donors are anxious to send in their own experts on their own systems to give advice and make suggestions sometimes without any regard to the internationally agreed norms and institutions. This is a recipe for future problems. It is also a means of seeming to give international legitimacy to the adoption of norms and institutions which may well be incompatible with the effective protection of human rights. The assisted states need neither the cultural insensitivity of being invited to import institutions that have no resonance in their domestic traditions nor advice on how to legislate more effectively for the implementation of traditional institutions, in the name of the cultural sensitivity, that would for example provide for people to be sentenced to cruel, inhuman and degrading punishment. There is also room for promoting training of peace-keepers and human rights field presences.

Conclusions

The main purpose of this presentation has been to set the international legal and institutional framework for addressing problems of human rights violations, with particular focus on situations of acute crisis. Little of it is relevant to the situation of the collapsed state before the phase of reconstruction. Much of it is relevant to other situations ranging from the repressive state to the states in various phases of internal conflict short of collapse. Most of it is subject to the co-operation of the state in question and only has the means of persuasion and exposure to encourage compliance.
Already at this stage a number of possible policy suggestions nevertheless emerge:

- encourage adherence to international human rights treaties and their optional interstate and individual complaints mechanisms, perhaps by offering humanitarian aid and trade

incentives and discourage withdrawal from or non co-operation with such mechanisms by withholding such incentives

- discourage non-cooperation with the non-treaty bodies or the threat of use of economic and trade measures to avoid scrutiny by such bodies by withholding financial aid and trade incentives
- provide associate experts to work in the relevant sections of the Office of the High Commissioner for Human Rights (OHCHR)
- encourage states in crisis to agree the deployment of field offices of the OHCHR, again, perhaps, by offering financial trade and aid incentives and by helping put those presences on a secure financial footing
- monitor the human rights performance of peace-keeping and peace-enforcement operations
- promote adherence to the eventual statute of the proposed International Criminal Court, supported by the same incentives
- adopt and promote the adoption of legislation that would ensure that states can themselves take jurisdiction over crimes within the jurisdiction of the future court or the existing tribunals and would permit all necessary co-operation with those courts
- establish co-ordination among multilateral and bilateral donors in the field of advisory services and technical assistance, both to avoid duplication and to ensure that the services and assistance are properly adapted to local conditions and traditions and that they genuinely conform to international standards in the field
- provide training for field presences.

International Humanitarian Law in Situations of Acute Crisis

Françoise J Hampson

Introduction

In the conclusion to her paper, Kate Mackintosh states that:

> 'the use of human rights analysis in planning and implementing responses to crisis can improve protection'.[135]

The thesis of this paper is that, if human rights analysis is to shape responses during as well as after the worst of a crisis, that analysis must take into account international humanitarian law.

The paper will first examine what international humanitarian law is about and then consider similarities and differences between that body of rules and international human rights law. The third section will consider the context in which international humanitarian law operates, by following through the evolution of the crisis. Finally, there will be an attempt to evaluate the role which international humanitarian law does and / or could play.

What is "international humanitarian law"?

International humanitarian law is also known as the law of armed conflict or the law of war. In this paper, the first formula will be used, with the abbreviation IHL.

IHL is the body of rules which regulates the conduct of organised fighting parties during time of conflict. It is therefore immediately apparent that it is only of relevance to those crises which involve organised fighting and not, for example, to situations of famine, unconnected with war. The reference to organised fighting is to distinguish situations in which IHL is applicable from those involving criminal violence or mere banditry, in which it is not. In some circumstances, it may be difficult to distinguish the two, as in the case of local people with guns manning barricades in Bosnia-Herzegovina. Relevant factors for determining how the violence should be characterised include the existence, or otherwise, of some structure of command, military and / or political.

IHL applies equally to all the fighting parties, irrespective of the lawfulness of the resort to armed force. A separate body of rules addresses the lawfulness of the resort to armed force.[136] The equal application of IHL to all the parties does not in any way affect their legal status. In

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[135] Mackintosh K., International Response to Acute Crisis: Supporting Human Rights through Protection and Assistance, Conference Discussion Paper, p.34.

[136] UN Charter, Articles 2(4), 39, and 51; see also customary law of self-defence and on what constitutes "intervention". International law recognises a right of self-determination in some circumstances. It is not clear whether that includes a right to resort to armed force to achieve it. International law does not recognise a right of secession from an independent sovereign state but, where an entity has effectively seceded, international law provides for the legal consequences.

particular, it does not imply, tacitly or overtly, any recognition of "rebels" or view as to the legitimacy of their cause.[137]

In essence, and this must be accompanied by the usual caveat concerning oversimplification, IHL regulates the conduct of hostilities with a view to keeping the inevitable killings and destruction to the inevitable minimum and protecting, so far as possible, those not involved in the fighting (i.e. civilians). It affords particular protection to the most vulnerable victims of war, such as the wounded and sick and persons in the power of the "other side", including former fighters.

It attempts to achieve those objects by

1. identifying what can be attacked and /or
2. identifying what cannot be attacked, except in certain circumstances and
3. proscribing indiscriminate attacks, on account of the risk involved to those not participating in the conflict and
4. proscribing the use of certain weapons on account of their effects.

This part of IHL is concerned with the conduct of military operations and essentially consists of "thou shalt not" injunctions.[138]

IHL addresses the need for protection of the most vulnerable by imposing obligations on the party in whose hands they find themselves. The protection of the wounded, sick, shipwrecked, prisoners of war and civilians in the hands of an opposing party essentially takes the form of "thou shalt" obligations.[139]

The detailed rules which make up IHL are to be found in both treaty law and customary law. There is a considerable body of detailed treaty rules, much of which has received widespread ratification.[140] Most of the treaty law concerns international armed conflicts, that is to say conflicts between two or more states and situations of belligerent occupation, whether or not opposed.[141] In some circumstances, conflicts in the name of self-determination are treated as international, even if they take place within the territory of one state.[142]

There is a limited amount of treaty law applicable to non-international conflicts and, within that limited framework, the main focus is on protecting civilians and the particularly vulnerable.[143] In other words, there is very little on the conduct of hostilities between the fighting parties, beyond the minimum rules necessary to protect the civilian population from direct attack or the indirect effects of the fighting.

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137 e.g. Protocol I Additional to the Geneva Conventions of 12 August 1949, Article 4; common Article 3 to the Geneva Conventions of 1949. For treaty texts generally, see Roberts A. and Guelff R., Documents on the Laws of War, Oxford, 2nd edition, 1989.

138 See, in particular, Hague Convention IV Respecting the Laws and Customs of War on Land, 1907; Protocol I Additional to the Geneva Conventions of 12 August 1949.

139 See, in particular, the four Geneva Conventions of 12 August 1949 and Protocols I and II thereto of 1977.

140 Virtually every State has ratified the four Geneva Conventions, over 140 States have ratified Protocol I and over 120 States have ratified Protocol II.

141 Common Article 2 to the Geneva Conventions of 12 August, 1949.

142 Article I para. 4 of Protocol I Additional to the Geneva Conventions of 12 August 1949; see note 2 supra.

143 Common Article 3 to the Geneva Conventions of 12 August 1949, and Protocol II Additional to the Geneva Conventions of 12 August 1949.

a) International and non-International conflicts

A moment's thought will make it clear why there is this difference between the treaty rules applicable in international and non-international conflicts. In the first situation, a state is fighting against a similar type of entity and one which can make the same type of legal claims. In the case of the Gulf War in 1990, for example, Iraq was in fact the aggressor. Kuwait had the right of self-defence. Iraq would also have had the right of self-defence if it had been attacked. That symmetry is not found in internal conflicts. The State has the monopoly on the legitimate use of force. The "rebels" are engaged in unlawful violence, usually against the State. If captured, they may be tried not merely for murder but for treason. Even if the "rebels" confine their attacks to members of the security forces, they are still subject to the exercise of the state's criminal jurisdiction.

In other words, a civil war is not, legally or politically, the same kind of thing as an inter-state war but within one State. States are very concerned lest they appear to give recognition to the "rebels" or legitimacy to their cause. This explains why the rules are less developed, particularly with regard to the conduct of hostilities. It does appear, however, that, in some quarters at least, there is the beginning of a tendency to assume that "gaps" in the rules applicable in civil wars can be filled in with the more detailed rules applicable in international conflicts. Two examples will illustrate the trend. One is the extension of limitations on the use of anti-personnel landmines (APMs) to non-international conflicts, by treaty law.[144] The second example comes from the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY), which has before it issues such as the applicability of the rules on command responsibility in non-international conflicts.[145]

Nevertheless, it is clear that, legally at least, it is important to distinguish between a conflict characterised as international and one characterised as non-international. There are two other significant threshold questions. Within the category of non-international conflicts, one must distinguish between high intensity civil wars, in which relatively detailed treaty rules are potentially applicable[146], and conflicts of a lower intensity in which the only applicable treaty law is common Article 3 of the four Geneva Conventions of 1949.[147] The second threshold issue is the question of what constitutes an "armed conflict"? Isolated and sporadic acts of violence are not included.[148]

It will be recalled that human rights law also has a threshold - the point at which a state is entitled to derogate and modify the scope of certain of its obligations.[149] There is no formal

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144 Revised Protocol II to the 1980 Geneva Convention on Certain Conventional Weapons, revised in 1996; see also the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction.

145 The characterisation of the conflict as international / non-international can legitimately vary from case to case. The Blaskic ("Lasva Valley") Case, Case No. IT-95-14-T, involves inter alia military command responsibility during the conflict between Croats and Muslims in Bosnia-Herzegovina. The case of Slavko Damanovic ("Vukovar Hospital"), Case No. IT-95-13a-PT, involves inter alia political command in relation to the killing of patients from Vukovar Hospital at Ovcara.

146 Protocol II Additional to the Geneva Conventions of 12 August 1949, Article 1, para.1.

147 No minimum threshold is specified but see Protocol II Additional to the Geneva Conventions of 12 August 1949, Article 1, para.2.

148 Protocol II Additional to the Geneva Conventions of 12 August 1949, Article 1, para.2.

149 Rodley, N.S., International Human Rights Law and Machinery for Monitoring its Implementation in Situations of Acute Crisis, Conference Discussion Paper.

link between the human rights threshold and the IHL threshold.[150] It is to be hoped that human rights monitoring bodies will determine that a state which invokes its right to derogate is estopped from claiming that the situation does not cross the threshold for the application of at least common Article 3 of the Geneva Conventions. This should not be used as an excuse for lowering the derogation threshold. It is to be hoped that common Article 3 will be applied even in situations in which a State is not entitled to derogate.

b) Customary Law

Customary law also plays a significant role in IHL. Given the quantity of treaty law, customary plays something of a subsidiary role in international conflicts. Potentially, it has a much greater part to play in internal conflicts. There is considerable uncertainty as to the content of customary law in such situations. That may be clarified in 1999 when the International Committee of the Red Cross (ICRC) is due to submit a report on customary law to the next Red Cross Conference. It will be based on what is believed to be the most thorough examination of state practice ever undertaken. In the meantime, the ICTY is already making a contribution. The appeal chamber has already stated that significant parts of the "laws and customs of law" applicable in international conflicts also apply, as a matter of customary law, to internal conflicts.[151] Significant clarifications of custom as a source of IHL can be expected from that Tribunal over the next few years.

c) Enforcement of International Humanitarian Law

The system of enforcement of IHL is its weakest point. It relies principally on enforcement through the criminal law of the fighter's own state. In addition, every State is required to bring proceedings against those suspected of having committed "grave breaches" of the Geneva Conventions and Protocol I of 1977, irrespective of the nationality of the alleged offender or the victim and irrespective of where the act was committed.[152] In the case of internal conflicts, the ICTY has ruled that States are free to bring proceedings on the same basis against individuals accused of violating Common Article 3 of the Geneva Conventions.[153] They are not, however, required to do so. Much will depend on whether the domestic law of a particular State allows for this type of jurisdiction (universal jurisdiction).

It is self-evident that the overwhelming majority of war criminals remain unpunished. There are a variety of reasons for this. First, State authorities do not have a good track record for the prosecution of their own forces for suspected violations of IHL. They do enforce the rules when the issue concerns the effective functioning of the armed forces (e.g. failure to obey an order) but not when the victim was a foreigner or a civilian. Publicity may lead to prosecution

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150 There are cases in which human rights enforcement bodies have shown an awareness of IHL or even have applied it; “Abella” v. Argentina, Report No. 55/97, Inter-American Commission on Human Rights.

151 Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Decision of the Appeals Chamber in Prosecutor v. Duško Tadic, a.k.a. “Dule”, 2 October 1995, Case IT-94-1-AR 72.

152 Geneva Convention I of August 12, 1949, Article 49 and analogous provisions in the other three Conventions and Protocol I Additional to the Geneva Conventions of 12 August 1949, Article 85.

153 Tadic Case, note 16 supra. In 1997, Lord Avebury sought, unsuccessfully, to introduce legislation which would have made possible trials for the alleged violation of common Article 3 before courts in the United Kingdom.

in individual cases but then the defendant may have a sense of grievance for having been picked on arbitrarily.[154]

It is not clear that non-State forces have even shown the desire to "prosecute" a member of their own or the State forces. They do not generally have the machinery to do so. If any proceedings precede punishment, they are almost certainly a singularly rough form of justice.

The record of third States is no better. It will be recalled that, in the case of "grave breaches", they are under a legal obligation to prosecute. Nevertheless, the author knows of no case where a State prosecuted an individual on that basis alone.[155]

Prosecution may be difficult during an ongoing conflict for practical reasons. Even after the end of the fighting, however, experience suggests that there is no improvement. Amnesties are often said to be the price of a peace agreement and a transition to civilian rule. The experience of amnesties in Central and Latin America suggests that this may be called into question.[156] Very recently in Argentina there have been heated debates about a long-standing amnesty for low and middle rank officers involved in the "dirty war". Sleeping dogs may have a tendency to wake up! Even at the point of transition, individuals in Rwanda and the former Yugoslavia have disputed the claim that there is a conflict between justice and reconciliation. The victims of the situation, and not just outsiders, have said that there can be no reconciliation without at least some measure of justice.

No consistent position has been taken by third States. Hand-wringing has not been accompanied by effective action. There are, of course, practical difficulties in bringing proceedings before their own courts but, even where that has been possible, they have generally shown a great reluctance to do so.[157] The one exception is in relation to suspects from the former Yugoslavia. Certain states have brought proceedings, usually either because they had offered the suspect to the ICTY, who rejected him, and they effectively had no option but to try him themselves or because they had not introduced the domestic legislation necessary to effect a transfer to the ICTY.[158] This "spin-off" effect of the existence of the ICTY suggests an additional reason for supporting the creation of a permanent criminal court.

Third states have also seen sleeping dogs wake up, as in the case of pressure to try those alleged to have committed international crimes during World War II. The experience in Australia, Canada and the UK suggests, not surprisingly, that trials fifty years after the events are fraught with difficulty. They also illustrate the possible problem of giving refuge or granting asylum to war criminals and those responsible for crimes against humanity or genocide.

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154 e.g. trial of Lt. William Calley following publicity about the massacre at My Lai, during the conflict in Vietnam; see also proceedings in Canada and Belgium arising out of the activities of their peace-keeping forces in Somalia.

155 e.g. the transfer of an individual out of occupied territory would appear to be a “grave breach” of Geneva Convention IV of August 12, 1949, Articles 47 and 49. Nevertheless, it does not appear ever to have been contemplated to bring proceedings against Israeli officials, including Ministers, who ordered or implemented such transfers. There was, however, a legal obligation to do so.

156 Sieder, R., (ed.) Impunity in Latin America, Institute of Latin American Studies, 1995; Hayner, P.B., ‘Fifteen Truth Commissions - 1974 to 1994: A Comparative Study’, 16 Human Rights Quarterly, 1994, p.597.

157 e.g. Reporters Sans Frontières sought by court action to persuade the French authorities to exercise jurisdiction over named Radio Télévision Libre des Milles Collines journalists, allegedly based in France. They were unsuccessful at both first instance and on appeal.

158 Cases have been brought before the courts of Sweden, Germany and Denmark.

This points to the need for trials at the time or as soon as possible after the event. The domestic legal system is best placed, practically speaking, to obtain evidence and summon witnesses. There are nevertheless real political difficulties in expecting a post-conflict domestic legal system to give fair trials to suspected war criminals. An international tribunal is a necessary fall-back but it needs to have the power to compel attendance and the production of documents.

If there was a reasonable prospect of an individual being tried for violating IHL, it might have a marked effect on the current trend of deteriorating respect for the laws and customs of war.

Similarities and differences between IHL and international human rights law

The underlying object of both IHL and human rights law is to avoid unnecessary pain and suffering. Both bodies of rules are based on respect for the human person.

There are significant differences between the two sets of rules but, far from being a cause of conflict, they in fact enable the rules to complement one another.[159] They need to work in different ways because they are designed to operate principally in different situations.

IHL, both in customary law and as treaty law, is very much older in origin than human rights law. The first text which resembles a military code is that of Sun Tzu.[160] The three main monotheistic religions contain principles, of varying specificity and obscurity, regulating conduct in conflict. To that tradition was added chivalric notions of honour, at least between fighters of a certain rank. The political developments in the seventeenth and eighteenth centuries, notably the creation of sovereign nation states, contributed to the nationalisation of honour. This gives IHL something of an advantage over human rights law, when it is invoked with the kind of belligerents so common today. The argument sometimes made, that international human rights law reflects Western imposition, does not apply. It is possible to appeal to fighters by appealing to the warrior tradition and / or cultural and religious principles in their own society. Both these sets of values may include care for the vulnerable and protection for non-fighters. In many situations, there is a very real ignorance regarding human rights values, not least because the values of civil society are unknown. Human rights notions do not exist in a vacuum of political philosophy. The only premise of IHL, however, is the fact of fighting. That may make it easier to enter into an IHL dialogue than a human rights dialogue, where there has never been the lived experience of civil society.

Another difference is that IHL is based on membership of a group and on obligations, not rights. How a person has to be treated depends on whether he / she is a civilian or a combatant or whether he / she is wounded or sick. It does not depend on any inherent attribute of the individual. The preoccupation of human rights law with the individual and its apparent lack of concern for the community causes difficulty in gaining acceptance for human rights values in cultures and societies which are much more community-minded than Western European societies. Those cultures may also be more receptive to the acceptance of obligations than to the assertion of rights.

Insofar as IHL and human rights law "deliver the goods", they do so through different systems and structures. Stable, which usually also means strong, government is necessary to deliver

159 The ICRC's "Avenir Project": Challenges, Mission and Strategy, 12 December 1997, ICRC, p.4 at 3.1.2

160 Sun Tzu wrote The Art of War over two thousand years ago.

effective human rights protection. Respect for human rights usually makes such governments more stable, not less. The machinery of stable government includes functioning legal systems and independent judicial officers. That machinery is necessary to human rights protection. Without it, there can be no long term foundation for human rights protection. Protection of human rights requires mechanisms to investigate alleged abuses and thereby to prevent them. For these reasons, it seems impossible to envisage meaningful human rights protection in a failed State.

IHL, by contrast, functions essentially through the criminal law, whether enforced by court martial or the ordinary criminal courts. It imposes obligations on individuals, for the breach of which they may be criminally liable. An important tool for ensuring respect for the rules is the principle of command responsibility. A commander is responsible not only for what he does but also for what those under his command do, if he knows or ought to have known about it. This not only assists in maintaining discipline but, if the commander knows that in practice he will be called to account, it can make a significant difference to respect for the rules by soldiers on the ground.

It is possible to have highly disciplined fighting forces even where state structures are collapsing. If there is a culture of obedience to orders and responsible command, this could remain an effective constraint on conduct, even where the chances of trial may be remote. It should be remembered that simply because civilian judicial mechanisms have ceased to function does not necessarily mean that the threat of a court martial is an empty one.

In other words, in the case of failed States, it will rapidly become very difficult to ensure human rights protection but the possibility of IHL acting as a constraint on the conduct of fighters may last a little longer. Insofar as IHL depends more than human rights law on the conduct of individuals on the ground, the possibility exists that fighters in one area may respect the rules whilst those in another do not. Insofar as human rights require effective institutional protection (e.g. effective investigators, effective prosecutors, independent judges), a breakdown somewhere is more likely to mean a breakdown everywhere.

These factors suggest that, during a period of armed conflict, use of IHL as a tool of persuasion with the fighting parties may be more effective than reliance on human rights principles alone. This is likely to be particularly the case with non-State fighters. In the aftermath of the fighting, reliance has to be placed on human rights because IHL ceases to be applicable, except in relation to criminal proceedings arising out of the conflict. In that case, the protection of the vulnerable in situations of acute crisis requires the use of both IHL and human rights to achieve the same goal. The choice will depend on what is likely to be most effective with the particular group being addressed and at that particular stage in the evolution of the conflict.

The context

Whilst IHL is only applicable during the conflict, the situation on the ground before the outbreak of fighting will have an impact on the conflict and what happens during the fighting will affect the situation after the close of hostilities.

a) Pre-conflict situations

There are usually clear warning indicators that a situation is deteriorating to the point at which open organised fighting is likely. Many of the signs surface in one or other of the human rights bodies.[161] The problem is not that they are not recognised for what they are but rather that the international community appears unable to find the will and resources to take effective preventive action.

Significant under-development is often accompanied by a lack of good government. A small element of economic disturbance may set in train increasing disaffection and criminality. The threat to governmental authorities will often be met with greater repression. Whilst the elements are different in each situation, the pattern is often remarkably similar. The economic, social and legal system is often fragile, with little scope for adjusting to setbacks. A problem, man-made or natural, occurs and the authorities do not have the tools, resources or experience to cope, other than by resorting to increasingly repressive measures in the face of disturbances. Another common model is where one group within a State feels itself to be disadvantaged and wants greater autonomy or even secession. Even if other elements are present, such as different ethnicities, there is usually also some perception of economic grievance. That is probably also true in the third type of scenario - a power struggle, possibly with an ideological component. For a significant number of individuals to be willing to fight, they must think that they have nothing to lose and / or something to gain or they must think they have no choice.

The form the collapse into fighting takes will affect the extent to which an organised infrastructure can be used, for example for the delivery of humanitarian assistance. The pre-conflict situation will also affect which agencies are already in theatre. A development agency already on the ground may be able to implement relief programmes more rapidly if personnel are already there and they have existing contacts with officials at both the local and national level.[162]

Weapon procurement, by both states and other parties, will shape the conduct of the conflict. Whether unreasonable quantities of weapons are stockpiled or whether they are purchased in the immediate run-up to the conflict, the international community is in a position to do something about it. The difficulty is that it appears illegitimate for a well developed Western State with sophisticated armed forces and equipment to tell another State what it can be allowed to have to defend itself. Expressing the total appropriate defence expenditure as a proportion of GNP or of expenditure on health and education may be less objectionable.

If States wished to prevent crises from becoming wars, much might be achieved through effective limits on weapon acquisition. Economic pressures within arms manufacturing States make it very unlikely that this problem will be addressed effectively.

b) The conflict

The causes of the conflict may well affect the form that the fighting will take, along with such practical constraints as resources and geography. In particular, if the very object or goal of one party is unlawful (e.g. the involuntary displacement of a distinct group in the population)

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161 Rodley, N.S., note 15 supra.

162 e.g. SCF (UK) in Somalia.

it is most unlikely that it will be achievable by lawful means. That will make it more difficult to get respect for IHL on the ground. "Ethnic cleansing", for example, required the targeting of civilians, in order to get them to move. That includes not only direct attacks but also denial of humanitarian assistance. There is a certain logic to the means chosen in pursuit of the unlawful goal. The unlawfulness of both means and ends is unlikely to deter the belligerents. Where the goal is simply to gain power, it may be easier to persuade the parties to avoid unlawful means in the pursuit of that objective.

There is a real challenge for the international community. If aggression or "ethnic cleansing" or atrocities are not to be rewarded, then the means must be found to prevent them. States lost a good deal of credibility on account of their moral posturing about atrocities in Bosnia-Herzegovina, without having the political will to generate the means to prevent the objectionable results. Where States take strong moral positions but no effective action to support them, any peace-keeping forces in the field are, from the outset, likely to suffer a loss of credibility. This adversely affects their deterrent value.

The presence of "peace-keeping" forces will affect the dynamics of the conflict.[163] The issues include whether the force is there with consent, whether it has a Chapter VI or Chapter VII mandate, whether it has a peace-enforcement, wider peace-keeping or traditional peace-keeping role, whether it has the human, material and logistic resources to carry out its mandate, whether it has clearly defined and achievable goals or whether its presence is a substitute for policy and whether the various contingents have the training and experience necessary for the particular operation. Whilst these elements are inter-related as far as the operation itself is concerned, they reflect different types of problems. Far and away the most significant issue is the question of political will. If the international community wills the end, it must will the means - but often does not do so. Another problem is decisions with a decisive impact on the likelihood of achieving the military objective being taken by diplomats and politicians, without adequate consideration being given to non-negotiable military realities (e.g. “safe areas” in Bosnia-Herzegovina). A variety of legal questions are also likely to arise, both with regard to the creation of the force and in the dealings of the contingents with one another and with the force commander.

What the "peace-keeping" force can do and what it is perceived as being able to do (which may well be different) will have a significant impact on the conduct of the belligerent parties. The force may become the target of attack, both directly and by being made ineffective.[164]

The variables associated with the role and configuration of the force and the variables in the response of the belligerents to the force make it impossible to predict in the abstract what will happen in a given situation. It can nevertheless be said with some certainty that the presence of the force will affect the conduct of the hostilities and the treatment of victims of the conflict. In other words, it will have an effect (positive or negative) on the respect for the rules of IHL. Those rules, and the language of the rules will be an important means of

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163 See generally, Hampson, F.J., ‘State’s Military Operations Authorised by the United Nations and International Humanitarian Law’ in Condorelli, L., The United Nations and International Humanitarian Law, Padova, 1996; Palwankar, U., (ed.) Symposium on Humanitarian Action and Peace-keeping Operations, ICRC, 1994.

164 Convention on the Safety of United Nations and Associated Personnel, 1994, criminalises direct attacks but it is far from clear that the analysis on which such an approach is based is in the interest of peace-enforcers; see Hampson, F.J., ‘The Protection of “blue helmets” in International Law’, 36 Mil. L. and L. of War Review (1997), p.203. See generally von Flüe, C., (ed.) International Humanitarian Law and Protection, Report of the Workshop 18-20 November 1996, ICRC.

communication between the fighting forces and the "peace-keepers". It may, in a real sense, be the only common language between them.

The peace-keeping forces not only have to deal with the belligerents but also with the presence of intergovernmental and non-governmental organisations that find their way to conflict zones. They include UN agencies, UNHCR and UNICEF. The NGOs include long-established, responsible and experienced organisations. They also include "cowboys", whose presence may attract media attention which puts pressure on other organisations to engage in high profile work to maintain donor support. The ICRC clearly has a unique role in being expressly mandated to be involved in conflict situations and having unparalleled experience. Nevertheless, the ICRC way of doing things is not the only way of doing things. Different approaches of different organisations could, if properly co-ordinated, complement one another to the benefit of those they are there to help.

The other players with a potentially important role are the world media. The extent to which the "CNN factor" plays a decisive role is a subject of dispute between journalists themselves.[165] A separate but relate question is the need for journalists to know and understand IHL. That would enable them to distinguish between political elements in the situation and war crimes.[166]

Whilst these players are not the principal addressees of IHL, nevertheless the law provides a context for their activities and may determine how they are characterised. The moral sense of an NGO that it should be able to deliver relief because it is helping victims may find expression as their “right” to deliver or the recipients' “right” to receive humanitarian assistance. Again, the language of discourse of IGOs and NGOs with belligerents and peace-keepers alike is IHL. It is all that is available to them in common. This phenomenon is also reflected in the language of Security Council resolutions. In the past decade, they have used the language of IHL very much more than previously. It is significant that it is not merely lawyers who are analysing activities in terms of IHL but all the players, both those in the field and those dealing with the political aspects of the conflict. In order for IHL to be used in this way, it is necessary for all the parties to learn the language. Progress is being made but there is a long way to go.

c) Post-conflict

The way the conflict is conducted will play an important role in shaping the outcome. The duration of the fighting, the extent of population displacement, the type and scale of atrocities, the extent of destruction of the physical infrastructure, will all affect the chances of obtaining a sustainable cease-fire and its content. Those elements will be affected by who is where and doing what and what is being reported. The actions and reactions of the parties are shaped by and expressed through the moral precepts which form the foundation of IHL. Examples from the conflict in Bosnia-Herzegovina will illustrate the point. "Ethnic cleansing" seemed wrong per se. It was not the detention of men of fighting age that was wrong but the conditions of detention and the savage ill-treatment to which they were subjected. The detention of women and children would be wrong per se. The attacks against the "safe areas" were wrong because

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165 Roberts, A., Humanitarian Action in War, Adelphi Paper 305, 1996, International Institute for Strategic Studies, Oxford University Press, p.82; Gowing N., Real Time Television Coverage of Armed Conflicts and Diplomatic Crises: Does it Pressure or Distort Foreign Policy Decisions?, Press, Politics and Public Policy Working Papers 94-1, 1994, Harvard; Gowing’s review of Bell M., In Harm’s Way: Reflections of a War Zone Time, 1995, Hamish Hamilton, in British Journalism Review (1995), n.4, p.67.

166 Gutman, R. ‘Crime Reporting’ in War Report, February-March 1998, p.34.

they were full of displaced people who could not defend themselves and were made victims twice over. The fact that, in the last case, the public did not know that the Bosnian Serbs were being attacked by forces within the "safe areas" is beside the point. Given the facts as he knew them, "Joe Public" thought it was wrong and, had the facts been as he thought them to be, it would also have been unlawful.

IHL in providing a context for the analysis of conduct in conflict also shapes the outcome. No one can pretend that it is decisive but it is the language through which the experience is mediated.

As the situation evolves into one in which rehabilitation, the re-establishment of the institutions of civil society and the protection of human rights become predominant, the new players will be building on a foundation created in part by an IHL analysis. It is therefore important that they should understand both the IHL discourse which they inherit, as well as the human rights language with which they will seek to build the future.

Some aspects of the conflict will need to be addressed even whilst peace building is under way. The obvious examples include clearing unexploded munitions, notably APMs and determining whether alleged war criminals are to be prosecuted and, if so, by whom. There will also be a need to disarm the fighting parties and to enable them to make the transition to a peace-time environment. This can be a particular problem in the case of orphaned child soldiers. The police force will need not only to be trained but to be subjected to effective accountability. It is likely that the police will have played a nefarious role in the situation which deteriorated into fighting and during the conflict. They may well need to prove they deserve the confidence of a suspicious population.

The case of the policy provides an instructive example of what needs to be done to secure effective human rights implementation. An observer would be forgiven for concluding that the international community thought it sufficient to provide a few training sessions for the new police force. In fact, what is needed requires much greater analysis. In a context in which there has been no real experience of civil society, the police may have perceived themselves, and been perceived by others, as defenders of the State, rather than as defenders of the public. That would point to a need to educate both the new police force <u>and the public</u> as to the proper role of the police. Even that is insufficient. A combination of sticks and carrots is necessary. The police must be promised and actually receive an appropriate salary, so that there is no "need" for them to resort to corruption. It must be seen as a worthwhile job, not just in financial terms; one which and individual would not wish to loose. It must also be clear that breaches of the rules will result in the loss of the job. That requires effective accountability and an independent investigative mechanism. The public must be encouraged to make justified complaints, secure in the knowledge that they will be investigated and acted upon. That, in turn, requires an effective and independent system of prosecution. In other words, any attempt to create an effective police force which does not address the need to create an effective, independent, non-corrupt legal infrastructure, is probably doomed to failure.

Where the new police force consists of demobilised ex-fighters, there are special challenges. It is first necessary to ensure that they do not remain potential fighters, masquerading as bodyguards or specialist police force. That means de-militarising and disarming them, a task which may have to be carried out by soldiers. To avoid loss of face for them, it may in fact be necessary to use the threat of a big military stick. This enables the "policemen" to surrender their weapons because they had no choice, rather than tempting them to risk shooting it out.

De-militarising them has to be done consciously. It is not likely to be effective if a policing culture is simply superimposed on a military one. That may call for different trainers from those used to inculcate good policing habits.

The creation of an accountable police force cannot be achieved without an analysis of the past role of the police and the role in the crisis of the individuals destined to be policemen in the future or without the creation of effective mechanisms of accountability.

This is but one illustration of a more general issue. Alongside the legacy of the fighting, peace-building needs to be taking place. That involves in post-conflict situations, participation, accountability, and respect for the rule of law. A human rights analysis then again comes into its own.

Conclusion

Those who think that human rights law is not applicable in armed conflict situations are, quite simply, wrong. Its application is, however, modified and restricted. It is not designed for conflict situations.

International humanitarian law, however, is designed for just such situations. It meets the needs of fighting parties in an even-handed way whilst seeking to protect civilians and the most vulnerable to the greatest extent practicable.

The concepts and language of IHL provide a neutral, non-partisan tool, which can be used by all the actors involved in the situation, including IGOs and NGOs. For them to be able to use it, they first need to learn it. More needs to be done to ensure that all those who may need to use IHL get to know it.

Proposals

- link the derogation threshold in human rights law to the threshold of common Article 3 of the Geneva Conventions 1949 by saying that at least the latter is applicable if the State asserts the right to derogate

- give domestic courts the jurisdiction to try those suspected of violating common Article 3 on the basis of universal jurisdiction, subject to the consent of the appropriate law officer

- ensure that the International Criminal Court will not only have the jurisdiction to try suspected war criminals but the power and resources to make that effective - Amongst other things, reservations which would preclude the transfer of nationals to the ICC must be prohibited

- make the dissemination of IHL a matter of command responsibility within the armed forces and, as required by international obligations, ensure dissemination of IHL to the civilian population by including it in the educational curriculum

- further improve the participation of NGOs in joint training exercises with armed forces

- provide human and material support for the military courses run by the International Institute of Humanitarian Law, San Remo. (It provides courses on IHL run by the military and for the military. Sponsorship is needed to help members of the armed forces from less

developed countries to attend and to create a permanent staff.. Members of the armed forces, and not just lawyers, should be positively encouraged to attend, both as participants and instructors.)

The Work of the International Committee of the Red Cross (ICRC)

Carlo von Flüe

General introduction

The ICRC is a humanitarian and independent organisation working on an international level: its action takes place in situations of armed conflicts and in other situations of internal violence.
Part of the International Movement of the Red Cross and Red Crescent, the ICRC is its founding body, the other components being the National Societies of Red Cross or Red Crescent around the world (175 in 1997) and their International Federation, which maintains its headquarters in Geneva.
The Cross and the Crescent of the emblem have, incidentally, the same value. Each one of these components is independent and no hierarchical relation exists between them. Nevertheless, each components sees its role defined in the Statutes of the International Movement of the Red Cross and Red Crescent.

We can summarise by saying that the ICRC is responsible for the co-ordination of all the activities of the Movement in times of war, the International Federation has a co-ordinating responsibility in natural and technological catastrophes and in development situations. National Societies can conduct activities in all these situations both on a national and an international level.
Regular meetings between the different components of the International Movement take place every two years and are called Council of Delegates and every four years, provided that there are no problem, an International Conference reunites the different components of the Movement with the States Parties to the Four Geneva Conventions of 1949.

The activities of the Movement are conducted both in times of peace and war: a constant effort of co-ordination is needed, and the Agreement on the organisation of the International activities of the Components of the International Red Cross and Red Crescent Movement of Seville of 1997 is a recent effort towards a more functional co-operation between the different components.

The work of the ICRC

The ICRC has a two fold activity: first as a guardian of international humanitarian law and secondly as an operational organisation. On the field level, it maintains two types of delegations, namely, operational and regional.

As guardian of the law, the ICRC has the duty to promote and develop international humanitarian law, if necessary and it carries out the important task of disseminating this body of law as well as the Red Cross and Red Crescent Fundamental Principles. A recent effort consisted in implementing the Advisory Services which should help, on a regional level, Governments to adapt their national legislation to international standards and to adopt rules and sanctions against violations. Moreover, an important role is played by the National Societies in taking appropriate measures to protect the emblem. This task which may

appear theoretical remains important, especially nowadays when humanitarian personnel is so often confronted to situations where they themselves become targets.

Preventive activities

In everyday speech the word "preventive" may have several meanings. The ICRC is often asked to play a role in the field of prevention. If we speak of prevention of armed conflicts, it is definitely an activity for which involvement of the political sphere is essential and therefore such activities are beyond the capabilities of the ICRC which can, nevertheless, play an important role in this field.

Experience shows that it is generally too late to begin spreading awareness once a crisis breaks out, the best protection that can be offered to potential victims is ensuring respect for fundamental principles of humanity, for instance, in the conduct of police or military operations.

A Round-table on Preventive Action was held in Copenhagen in November 1997 on this topic. The ICRC attempted to define what it means for prevention: a set of measures and activities intended to prevent harmful events or to limit their adverse consequences in order to prevent abuses from happening to limit their scope and to contain or keep to a minimum the harmful effects of abuses.
Among these measures, promotion of norms is of paramount importance. Promotion of international humanitarian law or human rights law is an enormous challenge in itself, involving education, training and awareness-raising. One can say that a faithful implementation of humanitarian law, may create appropriate preconditions for parties to a conflict to eventually choose other means than war to solve their problems.

The ICRC invests a great deal of resources and energy in activities of dissemination of international humanitarian law and fundamental principles, both in peacetime and in time of war.
For the ICRC prevention includes in particular:

- preventive humanitarian diplomacy
- dissemination of international humanitarian law
- incorporation of international humanitarian law into national legislation

While there is a considerable agreement on education or awareness programs in peacetime, there is growing uncertainty as to the effectiveness of these responses in the midst of crisis situations.

Operational activities

The ICRC carries out a double activity as two sides of the same coin, the relief assistance activity can not go without the protection one.

The ICRC works on the basis of international humanitarian law, which provides the frame for its activities. It can act on a conventional mandate or on its right of initiative given to it by its Statutes. It main objective is to work as close as possible and in favour of

the victims of war or other situations of violence, who can be soldiers or combatants no longer taking an active part in the hostilities (i.e. the sick, the wounded and the prisoners) and the civilians (i.e. IDP's, refugees, the most vulnerable - women and children, elderly people - civilian internees etc.).

As you know, the main traditional activities in the field of protection are the work of what is called the Central Tracing Agency, which consist in particular, in organising Red Cross message exchanges in co-operation with the Red Cross and Red Crescent National Societies network, and aims at establishing links between separated families, prisoners and their families etc.

Other activities of protection deal with the complex problem of missing persons, visiting detention centres, prisoners and other civilian internees and monitor the situation of the civilian populations in general.. All these activities are accompanied by regular reports to the concerned authorities with a view to help them to improve the situation when necessary.

The ICRC adopts a criteria of confidentiality in this domain of activity, which should be understood as a tool to allow it to be better present near the victims.

In the field of relief assistance, the ICRC is active in emergency situations. Each situation being different, it is important to the ICRC to take into account the reality of the situation in establishing surveys. The effects on a more longer term in defining programmes have to be taken in consideration and this as from the initial phase in establishing the programmes. It is therefore vital to be aware of all the phases of what the UN language defines as continuum, and thus despite the fact that the validity of a temporal and linear approach from emergency to rehabilitation and development is deeply put in question. It would be far to lengthy to elaborate on this now.

Simply expressed, the ICRC defines its programmes based on the needs only.

Its relief assistance programmes can go from war-surgery to more general responses in the field of health, which may include food and non-food programmes (often better than to give a fish, is to provide fishing material), water and sanitation and medical programmes, to the shelter one.

In limiting its activities in emergency response, the ICRC has to make the link with what was before and with what comes after.

Partners of the ICRC

The ICRC bases its work on the principle of independence, which does not mean isolation, and is therefore very much aware of the importance and the need of co-ordinating humanitarian activities and to work in "concertation" with other actors, particularly at the field level. Without going into the complex subject of co-ordination, we can again summarise in saying that the period when the ICRC was practically alone in carrying out humanitarian activities in situations of armed conflicts is definitely over, as a large number of different players are now present in the field.

When we refer to partners, that means for the ICRC primarily National Societies, and not only the ones coming from the rich countries, but particularly the ones from the countries facing the problems. These local partners are very important to facilitate access to the regions and in helping the ICRC to understand not only the culture but also the situation of a region. If it is true that they are not always well organised, it is also true that they are often the only local organised structure in the country, despite the fact that, in some cases, they are not always complying with the Fundamental Principles of the Movement, particularly those of neutrality, independence and impartiality.

So how to act when faced with a National Societies which does not comply with the fundamental principles? The ICRC may still accept to work with this National Society (this approach is valid as well for non officially recognised Red Cross or Red Crescent Society), but the activity will be accompanied by a constant effort to push it to comply with the Fundamental Principles.

National Societies are present in the country before the conflict, and play therefore an important role in implementing, in advance, support measures for the civilian populations.

One of the problems arising from the increasing presence of actors in the field is that the National Societies often being the only existing structured organisations at a local level may accept to implement programmes from governmental or intergovernmental organisations. Such programmes may sometimes be in contradiction with the Fundamental Principles which should characterise the work of all components of the International Movement. Efforts are put in keeping the different components of the Movement to work in adherence with the Fundamental Principles.

The importance of ethical guidelines

Initiatives to improve humanitarian response were taken by the International Movement. We may recall here the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief sponsored by the Steering Committee for Humanitarian Response and the ICRC, which is not a manual on how to deliver relief aid, but rather a text to provide general ethical references with the purpose to help organisations to avoid basic mistakes in carrying out their work. To date, more than one hundred major NGOs have signed up the Code. It is interesting enough to note here that the word neutral does not appear in the text of the Code, but stresses that humanitarian assistance should be carried out in an impartial way.

If in the area of emergency relief, ethical guidelines have been drawn up with a view to maintaining standards of conduct, no similar principles have yet been laid down for protection activities.

As mentioned by Kate Mackintosh in her Discussion Paper, International responses to acute crisis: supporting human rights through protection and assistance, prepared for this Conference, the ICRC took the initiative in November 1996 to organise a workshop on International Law and Protection, in order to discuss issues relating in particular to humanitarian law and human rights law, in an attempt to reach a common definition of the notion of protection.

The importance of having common concepts to facilitate communication between humanitarian organisations is important,: this does not prevent the different organisations from developing their internal reflecting and adopt other definitions for their internal use.

One of the problems which may affect the work in the field is that organisations do not understand the same meaning when communicating with each others - and this has become particularly true nowadays with the presence, in theatre of operations, of players coming from different backgrounds and origins - the political, the military and even the economical ones.

The November 1996 meeting proposed two definitions of protection , one of them being: any action undertaken for the purpose of preventing, stopping or avoiding the repetition of unlawful acts by those wielding power. The meting concluded nevertheless that it was too early to adopt a common definition, but concluded positively on the need to establish a common ethical framework for this kind of activity. Another workshop aiming at continuing the debate with a limited number of organisations is scheduled to take place in Geneva in March 1998.

ICRC is evolving

As you may know, in July 1996, the ICRC embarked on a project aimed at analysing and gaining fresh perspective on a contemporary environment for humanitarian activity. After more than a year of both internal and external consultations and deliberations the initial conclusions of this debate known as "Avenir Project " was submitted to the Assembly, the ICRC's supreme decision-making body in December 1997.

The ICRC in undertaking this project, is re-stating its exclusively humanitarian mission, which is "to protect the lives and dignity of victims of war and internal violence and to forestall the suffering engendered by such situations".

One important conclusion is the uncertainty which has been affecting humanitarian action since 1989. Even if States remain the key players in the international system, the ICRC is particularly concerned at the weakening of State structures. It is also concerned at the lack of respect for human dignity in a growing number of contexts, and at the recourse to humanitarian action as a means of seeking legitimacy when political solutions are not found.

Consequently, the strategic guidelines adopted by the ICRC consist of:

- restoring independent humanitarian action, knowledge of and respect for humanitarian law and principles to their status
- bringing humanitarian action close to the victims, looking to the long term
- strengthening dialogue with all players
- increasing the ICRC's efficiency.

As Françoise Hampson pointed out, it is important to understand international humanitarian law as a tool for action. A flexible and pragmatic approach is sometimes needed in order to carry out activities, keeping in mind that priorities should be given to the response to those who suffer from the consequences of war and thus, humanitarian

response should be defined by the needs only, and by no means by other factors - either political, military or economical. If this were not the case, then this type of action could no longer be defined as humanitarian action. The ICRC undertook a number of initiatives these last few years with a view to making humanitarian action better understood. We can mention here the Humanitarian Forum held in Wolfsberg in June 1997 (the next is scheduled in June 1998), as already said, the Round-table on Preventive Action held in Copenhagen in November 1997, a more systematic organised exchange with UN agencies, the obtention of the observer statute in 1990 at the General Assembly was of great help. More organised exchanges with the non-governmental sector and with humanitarian (including the human rights one) NGOs in particular testify also to that: the workshop mentioned before is an example, and we have now a yearly meting with NGOs organised jointly with the Graduate Institute of International Studies (GIIS) in Geneva - in the course of the last one which took place the 5 December, the topic raised was the security of field staff. Just this week, a three days meeting was held in Brussels where the ICRC answered favourably to the Belgian government proposal to jointly organise a seminar on the relation between humanitarian and military and on the notion of humanitarian space. At the end of March, together with ECHO, the ICRC will organise, in Lisbon, a seminar on Humanitarian Action: Perception and Security.

Moreover the ICRC is more actively contributing to training, not only for its own staff, but also for training at an academic level. More organised exchanges with the academic world, i.e. the HELP courses, which since 1986 are organised with a University partner with the aim to better study principles of intervention in the domain of health and to develop and to disseminate a common approach for humanitarian organisations, more active involvement. A more active involvement in the NOHA network in Europe as well as in a number of universities in North America. More activities in this field would of course require additional funds and additional staff, something for which the organisation does not have the necessary resources at present.

An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict

Geoff Gilbert

This paper divides into four sections, although in reality these distinctions are not so clear-cut: the obligations of States towards displaced persons; the position of UNHCR in acute crises; the obligations of States toward displaced persons in time of armed conflict under humanitarian law; and, problems for displaced persons and UNHCR not so far resolved.

The Obligations of States toward Displaced Persons

The term displaced persons is used to refer to both those who have crossed an international border and may qualify as refugees and to those who are internally displaced. The starting point with respect to the obligations of States is the 1951 Convention Relating to the Status of Refugees[167] - States surrounding the State suffering the acute crisis will bear the initial burden of anyone who manages to cross an international border, but subsequently acute crises will give rise to refugee flows to Europe and North America and other industrialised States.

The 1951 Convention, as amended by its 1967 Protocol, imposes obligations on States with respect to anyone who

> "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it".[168] (Article 1A.2)

While twentieth century practice towards displaced persons focused originally in the inter-War period on groups, the 1951 definition has become very individualised - can this particular applicant for refugee status show a fear of persecution for one of the five enumerated grounds. The result, discussed more fully below, is that people fleeing armed conflict or other acute crisis still need to prove that they have a well-founded fear of persecution for one of the Convention reasons. Ordinarily, those fleeing armed conflicts will not automatically qualify as refugees according to UNHCR's 1979 *Handbook on Procedures and Criteria for Determining Refugee Status*[169]:

> "Persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees. ... However, foreign invasion or occupation of all or part of a country can result in persecution. ... Thus, every case has to be judged on its merits ...."

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[167] 189 UNTS 50. And see the 1967 Protocol, 606 UNTS 267. The obligation toward children is reiterated in Article 22 of the Convention on the Rights of the Child, 28 INT.LEG.MAT. 1448 (1989).

[168] In its original formulation, refugee status could be restricted to those displaced as a result of events occurring before 1951 in Europe - some States, such as Turkey, maintain the geographical limitation. As at 30 November 1996, Congo, Madagascar, Monaco, Hungary, Malta and Turkey limit refugees to those arising as a result of events in Europe. Madagascar and Monaco have not yet adhered to the 1967 Protocol, so the temporal limitation is also extant in their case.

[169] 1979, at paras.164-66.

Well-founded fear

No attempt is made here to explore fully the intricacies of the terms set out in Article 1A.2.[170] The fear must be subjective to the applicant, but must also be objectively justified. The more objective evidence there is for the fear, the more immigration officials will accept an assertion of personal fear.

Persecution for a Convention Reason

Persecutor?

This requirement raises a number of issues. The first concerns from where must the persecution stem. There is no problem where the State is the source of persecution or where it encourages or condones persecution by third parties. There is, however, a lack of consensus where the State fails to be able to prevent persecution by a third party, such as a rebel insurgent group, and where the State has collapsed, such that no one power is in control.[171]

Persecution?

As for what amounts to persecution, violations of the non-derogable civil and political rights, pre-eminently torture, obviously fulfill the test, given the fear is current. Detention can also amount to persecution, particularly if it is the consequence of the applicant's exercise of a matter of conscience. Less certain is whether interference with economic, cultural and social rights will suffice - discrimination against an ethnic group within the State in relation to the opportunity to obtain work or the allocation of housing could in certain circumstances be seen as persecution.[172]

The problem with being caught up in an armed conflict, international or non-international[173], is that the threat to life and human dignity may not be seen as persecution - there is nothing individualized in the threat. That position may be changing, though, and the Canadian Immigration and Refugee Board produced *Guidelines on Civilian Non-Combatants Facing Persecution in Civil War Situations* [174] in 1996 which adopt the opposite interpretation to that traditionally held to be the law. Under the Canadian approach, one has to see whether the applicant can prove a link between her/his fears arising from the armed conflict and persecution for a Convention reason, but the claimant need not show that s/he was personally targeted. Recent non-international armed conflicts have evinced tactics which violate the laws

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170 Readers are advised to consult G. Goodwin-Gill, *The Refugee in International Law*, 2nd ed., 1996, for a scholarly exposition. There is also the EU Joint Position on the Definition of Article 1 of the 1951 Convention, OJ (1996) L 63 p.12.

171 *e*.g. Somalia.

172 *Gashi and Nikshiqi v Secretary of State for the Home Department*, unreported IAT, Appeal No.HX/ 75677/95 (13695), 22 July 1996, concerning Albanians from Kosovo.

173 Most armed conflicts are now non-international - see, UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, 1997, Figure 1.5, at p.24.

174 Issued pursuant to s65(3) Immigration Act - last updated as at 22 February 1997. Available at *http://www.cisr.gc.ca/guidline/civilian/default.htm*.

of war [175] or constitute gross human rights violations for Convention reasons, such as ethnic cleansing in Bosnia-Herzegovina or genocide in Rwanda.

> "Where the persecution which has occurred, or the possibility of persecution in the future, is directed at the claimant's group as a whole rather than each individual member of the group, it is the fact of membership in the group which provides the foundation for the fear. Where the targeting is due to the possession of a certain characteristic related to a Convention ground, then all those who possess the characteristic may be at risk of harm by reason of their possession of that characteristic. In such a case, the linkage to a Convention ground is not negated by the fact that the persecutor does not 'discriminate' between one possessor of the characteristic and another possessor of the same characteristic. What is important is that the group is targeted, or that there is a reasonable possibility of the targeting of the claimant or the group in the future."[176]

Under the Canadian Guidelines, being killed in crossfire between opposing militia is a risk for all civilians in an armed conflict: on the other hand, being the subject of shelling because your village is principally populated by members of a particular ethnic group, being raped because you are a woman from a particular ethnic group, suggests Convention refugee status for the applicant.

Excluded Persons

By way of corollary, it should also be borne in mind that a person with respect to whom there are serious reasons to believe that they have committed war crimes, crimes against peace or crimes against humanity, other serious non-political crimes or acts contrary to the purposes and principles of the United Nations, shall not enjoy refugee status - Article 1F. It should not be thought, however, that unarmed, civilian UNHCR workers should have to exercise this exclusionary power where those with respect to whom there are these serious reasons for denying refugee status are still armed and exercising influence in camps.

If a person qualifies as a refugee under the 1951 Convention, then they shall not be refoulé [177] to a State where their life or freedom would be threatened - Article 33. **[178]**

Where the person is displaced across an international border in Africa, then the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa [179] will provide additional rights [180] and obligations. Having reiterated Article 1A.2 of the 1951 Convention, the OAU Convention provides:

> "*Article 1.2* - The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either

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175 See common Article 3 of the Geneva Conventions 1949 and Articles 4, 13 and 14 of Protocol II, 1977.

176 Canadian Guidelines, *supra n*, Analysis, §II - footnote omitted.

177 *i*.e. sent back.

178 "*Prohibition of Expulsion or Return ('Refoulement')*
1. No Contracting State shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

179 1001 UNTS 45.

180 Voluntary Repatriation as set out in Article V will be considered below.

> part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality".[181]

Within the African continent, which has the largest number of the people of concern to the United Nations High Commissioner for Refugees,[182] people displaced by acute man-made crises are therefore accorded refugee status, although if they leave Africa their claim will be judged under the 1951 Convention.

Beyond the Conventional protection of refugees, customary international law may also have a role to play. If *non-refoulement* is to have any practical effect, then displaced persons must have a right to seek asylum in line with Article 14 of the Universal Declaration of Human Rights, 1948. Furthermore, considered opinion is that *non-refoulement* is also customary international law - the only question is the scope of customary *non-refoulement*. Is it only as broad as Article 33 and tied to the Article 1A.2 definition of refugees, or does it bear a wider meaning? Would it protect all those from a war zone, even if they could not prove individualized persecution for a Convention reason[183]? Does the temporary protection offered in the West enhance or detract from the customary status of *non-refoulement*? Should temporary protection be formalised? All these questions go beyond the scope of this paper, but they have a bearing on States' obligations to those fleeing acute crises.

Finally in this section on States' obligations, international human rights law has been seen to have a direct part in the protection of displaced persons in an acute crisis under both the 1984 United Nations Convention Against Torture[184] and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[185] Under Article 3 of the Torture Convention, States are obliged not to

> "expel, return ('*refouler*') or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture."

Article 3 of the ECHR similarly guarantees all persons within the jurisdiction of a State party freedom from torture or inhuman or degrading treatment or punishment. The European Court of Human Rights has applied this protection such that if a third State would breach those rights, then the ECHR State party would be in violation if it were to return a person to that third State.[186]

It may seem strange to have started a paper on the rights of displaced persons in time of acute crisis by focusing on States' obligations not to return them, as if they were already clear of the war zone and in an industrialized State in the West. However, those rights apply to persons who cross any international border who fear persecution for a Convention reason. Furthermore, this approach should also make it clear that displaced persons are owed rights by States and that it is the obligation of States to protect them from that persecution.

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181 See also, the Cartagena Declaration on Refugees, 1984, OAS/Ser.L/V/II.66, doc.10, rev.1, pp.190-93.

182 See *supra n* at pp.286-89.

183 Additionally, if the displaced person is a protected person within the meaning of Geneva Convention IV, 1949, then sending them back to a war zone might also violate the State's obligations under that Convention.

184 23 INT.LEG.MAT.1027 (1984) & 24 INT.LEG.MAT.535 (1985).

185 ETS 5 (1950); hereinafter, ECHR.

186 See *Soering v United Kingdom*, Series A, vol.161; *Chahal v United Kingdom*, (70/1995/576/662), 15 November 1996; *Ahmed v Austria*, (71/1995/577/663), 17 December 1996.

UNHCR and Acute Crises

When one thinks of displaced persons in time of acute crisis, the work of the United Nations High Commissioner for Refugees comes to the fore. During the 1990s, the United Nations has been in a position to act in a more interventionist way. Sometimes this was manifested as in the war against Iraq up to the liberation of Kuwait, sometimes with less resolute action, such as UNPROFOR's unclear role in Bosnia-Herzegovina, sometimes by the equivalent of "applying a sticking plaster to a gash to the carotid artery"[187]. It is principally with respect to these last two types of situation that UNHCR has had to deal. Where resolute action and political will to bring the crisis to an end were not forthcoming from the United Nations, the resulting displacement of civilians has meant that UNHCR has had to provide protection in circumstances which were not secure, either for those displaced or for its own staff. UNHCR cannot 'solve' a crisis which has given rise to displacement, only States can resolve the crisis, with UNHCR providing protection to persons within its concern.

In this section, the position of UNHCR will be considered in the light of its mandate and taking account of its extended functions as the United Nations has required it to undertake a greater role in acute crises. It should first be noted that under Article 35 of the 1951 Convention, States parties must co-operate with UNHCR in supervising the application of the Convention's provisions. Nevertheless, the High Commissioner's own mandate was laid down in the 1950 Statute of her office.[188] It has subsequently been expanded.[189] It needs to be emphasised that the High Commissioner's mandate is one of protection; if assistance is provided, then it is only as an adjunct to protection.[190] Furthermore, the work of UNHCR is to be

> "of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees."

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187 Sometimes the United Nations has used assistance as a substitute for a policy of restoring peace. For UNHCR, assistance is a mere adjunct to its obligation to protect.

188 UNGA Res.428(V) Annex, UNGAOR Supp. (No.20) 46, UN Doc.A/1775, 14 December 1950.
"**Statute of the Office of the United Nations High Commissioner for Refugees**
1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities. In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees if it is created.
2. The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.
3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.
9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.
11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies. The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly."
The General Assembly has subsequently adopted further Resolutions defining the High Commissioner's role - see HCR/INF/48/Rev.2.

189 And the mandate is now to be found in several sources, much like the British Constitution.

190 This is not to establish a dichotomy, it is to recognize that protection has priority and should lead assistance. It is the overarching principle and is wider than assistance. The danger is that the international community treats assistance as a substitute for ultimate protection.

The High Commissioner reports to ECOSOC and thence to the General Assembly. The General Assembly, by virtue of paragraph 9 of the Statute, can extend the mandate. The High Commissioner is also advised by the decisions of the Executive Committee (EXCOM).[191] What needs to be noted is that there is no express operation-oriented role in the Statute for either the Secretary-General or the Security Council, although both can invite UNHCR to act.[192]

There are three areas where UNHCR's role has come to the fore in recent years. The first concerns voluntary repatriation. Voluntary repatriation is mentioned in the Statute,[193] alongside assimilation into the new national communities in which the refugees find themselves - the overarching responsibility of UNHCR is protection which must govern whether a voluntary repatriation or assimilation is the preferred option. Voluntary repatriation, however, is acknowledged to be the optimal solution. The main question for international law is just how voluntary must the repatriation be[194]? The OAU Convention[195], provides:

> "*Article V.1* - The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will."

Thus, States in Africa which are hosting refugees, as defined, cannot, at least in theory, repatriate them against their will. While voluntary repatriation is mentioned as one of its functions in the Statute, UNHCR has appeared to treat it as its primary response to refugee influxes in recent years. It is laid down as a task of UNHCR in Article I.5 of the Dayton Agreement and in the Quadripartite Agreement between UNHCR, Russia, Georgia and Abkhazia of 4 April 1994.[196]

> "Until a few years ago, it was assumed that repatriation could take place only after a significant change in the political order of the refugee creating country, or following a peace settlement. Today, voluntary repatriation is considered the most desirable solution to humanitarian crises, and active steps are being taken to create favourable security, political, human rights and socio-economic conditions to enable refugees and displaced persons to

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191 Currently there are fifty-three States on EXCOM, including the five permanent members of the Security Council.

192 The Secretary-General has been able to *invite* the High Commissioner to participate in United Nations humanitarian efforts since 1972 (UNGA Res.2956 (XXVII), para.2, 12 December 1972). UNHCR has been given functions by the Security Council in response to humanitarian crises in many resolutions in recent years, *e.*g. UNSC Res.787 (1992), 16 November 1992, where para.19 called on the Secretary-General and High Commissioner to promote "safe areas for humanitarian purposes" - to that extent, it is recognized that displacement can be a threat to international peace and security. So far, every extension of UNHCR's role by the Security Council, and for that matter the Secretary-General, has been with prior consent of the High Commissioner (I am indebted to Nicholas Morris for this information).

193 *Supra n*, paras.1, 8(c) and 9. See also EXCOM Conclusions 18 (XXXI) 1980, 40 (XXXVI) 1985, and 74 (XLV) 1994; Note on International Protection (submitted by the High Commissioner), paras.35-38, 9 September 1991. See Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, 1997.

194 EXCOM Conclusion 18 (XXXI) 1980, paras.(b) and (c). See also, 40 (XXXVI) 1985.
"(b) The repatriation of refugees should only take place at their *freely expressed wish*; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of *absolute safety*, preferably to the place of residence of the refugee in his country of origin, should always be respected." (emphasis added)
A related problem arising out of armed conflicts concerns the position of prisoners of war once the conflict has ceased. It may be that they would qualify as refugees and so should not be *refoulé*. Alternatively, they may just not want to go back, so repatriation would not be voluntary. However, Article 118 of Geneva Convention III, 1949, imposes an obligation on States to repatriate POWs after the cessation of active hostilities - indeed, under Article 85.4(b) of Protocol I, unjustifiable delay in the repatriation of POWs can be a grave breach.

195 *Supra n*, Article V.

196 See also, Bucheli, *The Returnees to the Gali Area: A Discussion Paper*, UNOMIG 1996, pp.13-14 and 22.

return home. Voluntary repatriation is now taking place to relatively safe and secure areas in countries engulfed in internal conflict or in the absence of a peace agreement.”.[197]

Whether Rwanda was safe at the end of 1996 when there were mass returns from camps in Burundi, the former Zaire and Tanzania is open to question. Amnesty International has accused UNHCR of ignoring the true human rights situation in Rwanda at that time.[198] Repatriation is, without doubt, one of the main areas where the rights and responsibilities of UNHCR need reconsideration.

> “One of the greatest challenges facing UNHCR at present, and one which is likely to grow in the years ahead, concerns the organization’s involvement in situations where refugees are returning to their own country because of external pressures or an absence of realistic alternatives”.[199]

UNHCR is left balancing the competing interests of the host State, the source State and the refugees whom it has a duty to protect.

The original mandate was to refugees, that is those who had crossed an international border and could show persecution for a reason set out in the Statute.[200] Today conflicts are predominantly non-international in character,[201] and most concomitant displacement is within the State. One might have a situation, therefore, where a non-international armed conflict is taking place, some non-combatants have managed to cross an international border, others are internally displaced, whilst a third group still live in their homes - the disputes in Bosnia-Herzegovina and Georgia are good examples. If UNHCR provides protection in such an acute crisis, then it is difficult to see how they can separate out those truly within the 1950 mandate from the rest. UNHCR has worked for several years with internally displaced persons in many crises.[202] The question is not whether this work is *ultra vires* the mandate, rather it is a question of regularising the role. The Representative of the Secretary-General on Internally Displaced Persons, Deng, is due to present a new set of Guiding Principles on Internal Displacement to the Commission in March 1998 - this definition will require only that the internally displaced person or group of persons has been forced to flee

> “in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters ….”.[203]

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[197] Ogata, *World Order, Internal Conflict and Refugees*, John F. Kennedy School of Government, Harvard University, 28 October 1996, at pp.2-3. UNHCR has assisted the voluntary repatriation of 900,000 Somalis to relatively safe areas in Somalia which, it is recognised, is still unstable.

[198] See Amnesty International, *RWANDA Human rights overlooked in mass repatriation*, esp. p.17, AI Index AFR 47/02/97, 14 January 1997; and, *GREAT LAKES REGION Still in need of Protection: Repatriation, Refoulement and the Safety of Refugees and the Internally Displaced*, esp. p.5, AI Index AFR 02/07/97, 24 January 1997. *Cf.* Morris, *Protection Dilemmas and UNHCR’s Response: a Personal View from Within UNHCR*, 9 IJRL 492, at pp.494-95. Within UNHCR, the return from the former Zaire is now termed an evacuation.

[199] UNHCR, *UNHCR Strategy Towards 2000* (1996), at para.25.

[200] The Statutory definition is very similar to that found in the 1951 Convention, although there is no reference to membership of a particular social group.

[201] *Supra n*.

[202] See UNGA Res.2958 (XXVII), 1972.

[203] Article 1, *Draft* Proposed Guiding Principles on Internal Displacement, 1998, drawn up by the Representative’s team of international legal experts. I am grateful to my colleague Françoise Hampson for a copy of this Draft - the final version of the text for the Commission may vary from what is stated here.

Whether there will be a United Nations High Commissioner for Displaced Persons in the future, responsible for the protection of all those displaced regardless of whether they have crossed an international border, is still to be seen.

If internally displaced persons are just refugees who have not managed to cross an international border, UNHCR is also increasingly operating in-country with people who have not been forced to flee at all. It is lead agency under the Dayton Peace Accords for Bosnia-Herzegovina. During the conflict in Bosnia-Herzegovina, UNHCR had the so-called safe areas thrust upon it.[204] In those safe areas were internally displaced persons and the people ordinarily resident in Gorazde, Srebrenica and Zepa, neither group within the 1950 mandate. The logic of in-country work ought to be, however, that it may ameliorate potential refugee-producing conditions, or that it amounts to the continued protection of refugees being repatriated. There may be a conflict of interest, or at least additional competing pressures, where UNHCR is involved with refugees in a neighbouring State and is simultaneously in overall charge of restoring civil society in the country from which they have just fled. It is worth reiterating, however, that UNHCR is not a general humanitarian relief agency, but is, rather, motivated by its obligation to protect. Protection of those of concern to the High Commissioner should motivate all UNHCR activities - States should not impose other objectives on UNHCR for short-term 'solutions'. The problem is that UNHCR is never allowed to make mistakes in situations where States are not even prepared to start answering the questions.

UNHCR and the International Law of Armed Conflict

Finally, and very briefly, during an armed conflict there are rules of the international law of armed conflicts which affect UNHCR. The Fourth Geneva Convention of 1949 Relative to the Protection of Civilians in Time of War provides in Article 44 that Parties to the conflict shall not automatically treat as enemy aliens refugees who do not enjoy the protection of a government. Further, Article 26 provides that Parties shall facilitate the renewal of contact where families have been dispersed. Geneva IV provides for relief to all civilians in Articles 23, 55 and especially 59 and 61. Moreover, Protocols I and II of 1977 deal with displacement[205] and humanitarian relief with respect to all those caught up in conflict. Protocol I, which applies to international armed conflicts and wars of self-determination, provides that Parties to the conflict should allow for the provision of humanitarian relief to civilians on an impartial basis in a territory which is inadequately supplied - such should not be seen as an interference or an unfriendly act. However, the parties to the conflict can impose conditions on its passage as long as such would not result in the starvation of the civilian population. Article 18.2 of Protocol II, which applies to non-international armed conflicts, provides that the State Party to the conflict, but not the rebel force, must consent, although in practice every faction along the route the relief column will

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204 On the other hand, this safe areas work stems from United Nations Security Council Resolution 688 (1991) concerning the Kurdish safe haven in Northern Iraq; the resolution recognized how human rights violations and concomitant refugee flows are a threat to international peace and security.

205 The rules relating to the displacement of civilians during an armed conflict set out in Protocols I and II are not dealt with here, being more an aspect on the limitations placed on the means and methods of warfare.

take will have a voice in the distribution of relief.[206] While these provisions are to be welcomed, it is not at all clear in the international law of armed conflict that the fact that the Parties to the conflict are obliged to permit something subject to conditions, that that fact should give rise to rights in the individual victims, nor even less that the ICRC and UNHCR thereby have a right to meet these needs of the civilian population. A right of access to refugees in armed conflict, if such exists in international law, is not readily discernible from Protocol I - the best that might be divined is a right in UNHCR to offer relief action.

Problems and Recommendations

In this section, issues are presented which go beyond the simple law so far discussed.

- The first issue that needs to be addressed by governments concerns the financing of UNHCR. It is insupportable for extra tasks and obligations to be imposed on UNHCR without increased income. Moreover, if the work of the High Commissioner is to be of an "entirely non-political character", as agreed by States every five years in the General Assembly's renewal of the mandate, then financial security is an element of that independence.

- The use of safe areas during an acute crisis should not call into question the obligation of other States to extend protection from *refoulement* to those who fear persecution. A safe area should not be seen as giving rise to the option of the Internal Flight Alternative for someone applying for refugee status in Europe. Safe areas are a temporary solution to a problem and are created to avoid fighting in those places, not to deal with mass movements.

- Is there a need for an express right of access to displaced persons in time of acute crisis for UNHCR? While it might be a 'paper right', that it exists may prove useful when trying to force recalcitrant States to grant access, especially if backed up by diplomatic pressure. Failure to comply with this putative might also be seen as threatening international peace and security if the consequence is that the displaced would have no option but to try and cross an international border.

- In the Great Lakes region, there were camps where those who had committed genocide in Rwanda hid behind the human-shield of the thousands who had fled the advancing army of the new Rwandan government. The international community did little to resolve the crisis and left UNHCR and other agencies to deal with the displaced. UNHCR ended up providing protection to war criminals and genociders. It could have withdrawn and no-one can know how many who deserved its protection would have died. UNHCR's mandate is one of protection, not one of international criminal law enforcement by direct or indirect means.

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206 A favourite tactic of the Bosnian Serbs was to have the old women from a village sit in the road to block it - I am indebted to Karin Landgren for this information.

207 Published in French in "Operations des Nations Unies - Leçons de terrain" (p 357-362), the proceedings of a symposium held on 16 and 17 June 1995 by the *Foundation pour les Etudes de Défense* (ISBN: 2-911101-02-2).

- Prevention is better than repatriation. Working to ameliorate the conditions which give rise to the flow of refugees from potential acute crises will be time and money well spent. That requires a human rights infrastructure for States which are in a pre- or post-conflict situation.

Humanitarian Aid and Neutrality[207]

Nicholas Morris[208]

Introduction

Humanitarian action saves lives but cannot substitute for the political will necessary to reach peace. In the implementation of an agreed political settlement, humanitarian and political action can work well together, as in Namibia, Cambodia and Mozambique. In the absence of the necessary political will, and especially when substituting for it, humanitarian action risks being compromised, or perceived as compromised, as in former Yugoslavia and Somalia.

The delivery of humanitarian aid amidst conflict has, for over a century, been predicated on respect for certain basic principles. These principles require that humanitarian aid be provided impartially to civilians, on the sole criterion of need, without distinction as to their origins or beliefs. Neutrality has been understood as the condition - not taking sides directly or indirectly - that allows humanitarian aid to be given impartially. By definition, humanitarian aid should not contribute to the military effort of any party to the conflict. Humanitarian action requires the consent of the parties to the conflict and assumes that, when they consent, they will also respect the principles.

In the past, humanitarian aid in and around conflicts was generally seen by those with the power to obstruct it as impartial and neutral. There were notable exceptions, for example, Biafra and southern Sudan. There were conflicts where humanitarian aid was not attempted, at least not on a scale commensurate with the needs. At critical times, the United Nations, if not the International Committee of the Red Cross (ICRC), was absent from a number of conflicts as a result of a combination of practical and political constraints, an assessment that the basic principles could not be respected, and the absence of media pressure. Afghanistan, Angola, Somalia and Vietnam are examples. Today, the expectation is that the United Nations and non-governmental organizations will help victims of conflict whatever the circumstances.

The problem

Humanitarian aid has probably often been less neutral in effect than was assumed. It now faces new challenges. The difficulties confronting a humanitarian operation where authority and law and order have collapsed are self-evident. Even when authority and some rule of law exists, recent experience suggests that in certain conflicts, the maintenance of neutrality may pose major problems. Neutrality can no longer be assumed. A combatant's perception of the humanitarian operation has become the practical measure of its neutrality, and thus of the safety of humanitarian aid workers. At the same time, the international community has new expectations that are exposing the limits of humanitarian action.
The reasons for the obstruction of humanitarian aid in Bosnia and Herzegovina illustrate problems encountered and to be expected elsewhere. All sides have seen the humanitarian operation led by the UN High Commissioner for Refugees (UNHCR) as directly helping their enemy. With nearly every able-bodied male mobilized, the distinction between civilians and

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208 The views expressed in this article are those of the author, a UNHCR staff member, and not necessarily shared by the United Nations or UNHCR.

combatants was largely meaningless. Until the Bosniac/Croat peace agreement in February 1994, Croat and Serb forces surrounded the Bosniacs in central Bosnia, as the Serbs still do elsewhere. For them, the humanitarian operation was demonstrably not neutral: it was undermining their military efforts by breaking the siege and prolonging the war. Political pressures and the presence of the UN Protection Force (UNPROFOR) could extract grudging consent from those who controlled access, but did not change this perception.

All sides in such conflicts use humanitarian food aid for political ends and to feed their military forces. For the Bosnian government forces in the enclaves and Sarajevo, other sources were too limited to give them a choice. The provision of fuel for humanitarian purposes gives rise to even greater challenges to humanitarian aid's neutrality. The fact that UNHCR supervised delivery and ensured proper use was irrelevant in former Yugoslavia, because while this fuel met priority humanitarian needs, for example, heated hospitals, it released other fuel for the military. Thus the Bosnian government accused UNHCR of fueling Serb offensives on Gorazde and Bihac, and its opponents blocked access for UNHCR fuel, maintaining that it would be used against them.

Military support to humanitarian assistance

Such perceptions have cost the lives of humanitarian aid workers. In a humanitarian operation with military support, the perception that this military support is itself not neutral is even more damaging. The provision of air support to UNPROFOR in Bosnia revealed a major divergence between NATO and humanitarian organizations over the concept of neutrality and humanitarian aid. For NATO, humanitarian aid that the UN Security Council had mandated UNPROFOR to support was being obstructed, and force - or preferably the threat of force - should be used to remove the obstruction. Announcing its 2 August 1993 decision to draw up "options for air strikes", the North Atlantic Council stressed the "humanitarian purpose of the military measures foreseen".

For the humanitarian organizations, such an argument was a dangerous contradiction in terms. International humanitarian law imposes on parties to a conflict the obligation to accept humanitarian aid but does not confer on others the right to impose it. The delivery of relief and the ending of suffering are legitimate objectives for an international military intervention. The deployment of the American-led Unified Task Force (UNITAF) to Somalia in December 1992 is an example. Such interventions cannot be neutral: an enforcement operation under Chapter VII of the UN Charter is incompatible with a humanitarian action, which, like traditional peace-keeping, is based on consent. Such an operation may also make the International Committee of the Red Cross (ICRC), the custodian of international humanitarian law, feel obliged to distance itself from the UN's humanitarian action. Close cooperation among the ICRC and other humanitarian organizations is essential.

Once the Bosnian Serbs perceived the intent of Security Council/NATO/UNPROFOR actions as punitive and directed only towards them, whatever was left of the operation's neutrality in the Serb military mind was gone. UNPROFOR’s major role in supporting the humanitarian operation was of no moment. The Bosnian Serbs saw little distinction between UNHCR and UNPROFOR, and accused UNHCR of direct responsibility for the use of NATO air power against them. There are obvious parallels from Somalia. There, by early 1993, the neutrality of the humanitarian organizations was being prejudiced by an enforced close association with and subordination to the military actions of UNITAF. By July 1993, the expanded UN Operation in Somalia (UNOSOM II), which had replaced UNITAF and was also operating under Chapter VII

of the Charter, was at war with one party to the conflict in Mogadishu, with disastrous consequences for all concerned.

Sanctions

Humanitarian assistance has been seen as the "safety net" for the most vulnerable civilians in states subject to sanctions. As the humanitarian operation in Iraq since 1991 has shown, the safety net has great difficulty in functioning effectively. Even if it did, a state subject to sanctions may perceive this assistance as also facilitating the imposition of sanctions, which it could argue was in effect the expectation of the Security Council. When sanctions are tightened, so are the controls and constraints on humanitarian assistance. Bosnian Serbs argued that the humanitarian operation should compensate for the effect of tightened sanctions. When their arguments were rejected, their perception of bias and the likelihood they would obstruct assistance to their opponents increased.

The political context

Humanitarian aid can relieve suffering. It can arguably help create time for political solutions, but it cannot end conflict. Nor can it substitute for the responsibility of authorities for the well-being of civilians on the territories they control, even when circumstances render the full discharge of their responsibility impossible. In the absence of real prospects for peace, a humanitarian operation will face increasing - and may even generate - problems. For example, in Angola, where the UN's political and humanitarian actions have been closely linked, the difficulties faced by the humanitarian operation increased whenever the prospects for peace receded. Such problems will be severe when a humanitarian operation is subordinated to political considerations, particularly those resulting from an unwillingness on the part of the international community to address root causes. Continuing humanitarian assistance (and political containment) may then become a higher priority than ensuring respect for the principles that should govern it. Actions denounced by the international community as "unacceptable" become, if only by default, accepted in practice. The direct attacks on aid workers (and, of course, on UNPROFOR) in former Yugoslavia, and on them and refugees in camps outside Rwanda, are examples.

When humanitarian aid is seen as a substitute for justice, the neutrality of the aid itself may be questioned. The example of Bosnia is instructive. The government considers the emphasis placed on the humanitarian operation to be an evasion by the international community of its responsibilities. If the choice is humanitarian aid or progress towards a more just political settlement, albeit involving more suffering, the latter is preferred. Thus the Bosniacs have obstructed the delivery of humanitarian aid to their own civilians in order to influence the international community to change its stance and not treat aggressors and victims as equal. They object strongly to the phrase "parties to the conflict", and resent the fact that while the Security Council resolutions establishing the mandate of UNPROFOR at least identify the aggressor, the humanitarian operation does not.

There is a related direct criticism of the neutrality of humanitarian aid: that it should not seek to be neutral and impartial when the aggressor prevents humanitarian assistance from reaching the victims of his aggression. This argument, made by the Bosnian government, and the Bosnian Serb perception that humanitarian aid helps their enemy, illustrate the dilemmas facing

humanitarian organizations when their own ability to ensure neutrality and respect for the basic principles is severely circumscribed. The debate on humanitarian "linkage" - conditioning assistance to one side on that side's consent to similar access to the other side - is an example. The alternative may be to continue to assist the former while being denied access to the latter. Such linkage is, however, not neutral: humanitarian assistance should be an individual right, and not be conditioned on the actions of others. (Linkage may also be a price besiegers are prepared to pay, and therefore will not work.) Humanitarian linkage is unlikely to be perceived as neutral by those who control access. But for the victims, reluctance to make such linkages can reinforce the perception of appeasement and injustice in the guise of humanitarian principles. The inability of humanitarian organizations to resolve such dilemmas satisfactorily in large part explains why all sides in the Bosnian conflict have on occasions deliberately and fatally targeted the humanitarian operation.

The situation in the Rwandan refugee camps provides a stark example of the intractable problems facing humanitarian action in the absence of preventive or curative political action. That operation assists soldiers, militia and civilians who are held to be responsible for genocide and whose declared aim is the overthrow of the Rwandan government (itself grounds for disqualification from humanitarian assistance). The international community has been unable or unwilling to ensure that such persons are removed from the camps and brought to justice. The humanitarian organizations are unable to stop assisting these persons except by stopping assistance to all, including the far larger number of their victims.

Conclusions

In the types of future conflict most likely to challenge the response of the international community, humanitarian aid will often not be perceived as neutral and impartial. For this reason, even if it can start, it is subsequently likely to forfeit consent. In such circumstances, UN or other military support to the humanitarian operation may facilitate delivery, at least in the short term, but with time is likely to exacerbate the problem. The use or threat of force in support of a humanitarian operation, except in clear self-defence, will gravely prejudice that operation. Problems will increase in the absence of a political solution. In operations where problems of the sort faced in former Yugoslavia are expected, a more restrictive approach to the scope of international humanitarian assistance may be advisable.

The principles themselves should not be compromised; there may be circumstances when a humanitarian operation should be stopped. Humanitarian action cannot solve problems that are political in nature. Their solution requires the political will necessary to prevent suffering or remove its underlying causes. If the international community is prepared to use force to this end, this should be independent of the humanitarian operation. Where the required political will cannot be mobilized, the humanitarian operation will have a better chance of success when it is clearly separated from the international community's efforts at political containment.

Dilemmas in Providing Humanitarian Assistance in Crisis Environments

David S Bassiouni[209]

1. Introduction

The occurrences and prolongation of intra-state civil conflicts show no sign of abating. More non-state parties are emerging as major actors in conflicts. They and several authorities caught in the quagmire of violence are either unaware of their obligations to the International Humanitarian Laws (IHL), Human Rights Laws and associated principles, norms and standards or disregard them with impunity. The net result is an environment of fear, insecurity and total denial of the basic human rights for millions of victims of armed conflicts world-wide. Efforts to establish access and provide assistance to these victims pose some of the most challenging dilemmas to the international humanitarian community in our times. This paper attempts to capture the essence of these dilemmas and their influence on the delivery of humanitarian assistance and the associated ethical questions which humanitarian actors are compelled to constantly grapple with. It in no way provides adequate answers to these dilemmas but emphasises the paramountcy of the best interest of the victim as the action point of last resort.

2. Critical Assumptions

The selection of the major dilemmas is based on a number of critical assumptions relevant to the humanitarian sector. They include the structural causes of humanitarian crises and their protracted characteristics, the resort to humanitarian response in place of political action, when prevention has consistently failed, and the lack of international leverage in stopping conflicts.

The root causes of humanitarian crisis are closely linked to social, political, economic, religious and ethnic factors which cannot be eliminated overnight by the waving of the magic wand. They are likely to persist and continue to trigger crises. Whereas the ideal approach is to forecast crises in advance and proceed to either prevent and pre-empt it or prepare for it, in the real world, this scenario hardly occurs. On the contrary, in the absence of effective preventive measures, the world has now reluctantly come to accept victims - refugees, IDPs etc. as the normal feature of humanitarian crises. It has also been compelled to accept humanitarian response rather than prevention as the standard remedy to crises.

Alleviating suffering and saving lives are necessary and noble acts, but this merely amounts to "treating the symptoms and manifestations of the disease without curing the patient".

Globally, the international community lacks the necessary leverage over parties in conflict, especially when they are non-state parties. Coercion could work, but peace-keeping operations have their advantages and disadvantages.

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Unless these dilemmas are addressed, they will continue to frustrate the efforts and best intentions of humanitarian and human rights workers.

3. The Dilemmas

Based on the critical assumptions enunciated, the paper resorts to a number of criteria to select seven major dilemmas for consideration. These include factors that:

- impede the effective delivery of humanitarian assistance in civil conflicts
- deny basic human rights to affected populations
- prolong crises into long protracted emergencies

The few selected dilemmas include:

- humanitarian assistance as a factor in prolonging civil conflicts
- upholding political expediency at the cost of humanitarian assistance
- regionalisation of peace-keeping
- pursuing justice on a grand scale as a factor in generating humanitarian problems
- economic interests undermine peace efforts and prolong conflicts
- lack of integrated approach in the delivery of humanitarian assistance
- denial of basic human rights to people in need is tantamount to denying them life-saving assistance.

3.1 Humanitarian assistance as a factor in prolonging conflicts

A debate has been going on, on whether humanitarian assistance benefits the victims of conflicts or merely sustains the arsenals and war machinery of parties in conflict. Seizure and control over transport and logistics, food and supplies intended for victims, and employment opportunities created by the aid industry come readily to mind. The challenge to the aid workers is whether to use the delivery of assistance as a trump card to force compliance or be acquiescent. Presuming they resort to the first option, is it ethically acceptable? What price in terms of human suffering and lost lives would be required to support such an option ? Can we afford it ?

Whatever situation one operates in, it is important to monitor and determine how much assistance trickles down to the targeted beneficiaries. At the same time, it is incumbent upon the aid workers through their interlocutors and leadership outside the country to be open and transparent in exposing the abuses of humanitarian assistance as a deterrent to future untoward actions and the tendency to walk away with impunity.

3.2 Upholding political expediency at the cost of humanitarian action

The recent blockade and intervention of ECOMOG/ECOWAS into Sierra Leone to restore an elected government presents a good case of how political expediency was given priority and paramountcy over humanitarian action. Any effort to undertake cross-border operations and assist populations in need was viewed as a legitimising action bolstering the fortunes of the military Junta in power. The likely result is that by the time the military Junta falls, Sierra

Leoneans would have suffered untold misery and paid dearly with their lives. It is rational to present the counter-argument that decisive actions by ECOMOG in Liberia and Sierra Leone could usher in peace, democracy and elected governance. However, it is highly debatable whether allowing humanitarian assistance into Sierra Leone could, in the long run, save and legitimise the Junta. Humanitarian assistance has been flowing into Somalia for years without ever conferring legitimacy upon any faction in that country.

3.3 Regionalisation of peace-keeping

Peace-keeping over the last few years has witnessed a trend towards regionalisation. The role of ECOMOG/ECOWAS in West Africa and NATO in Ex-Yugoslavia bring to the fore the debate on the merits and demerits of the regionalisation of peace-keeping operations which has so far been the domain of the United Nations. Although this trend is a welcome departure, it is wrought with certain difficulties. On the one hand, assuming responsibility for maintaining order and peace in one's backyard is commendable. On the other, if regional peace-keeping is not based on even-handedness with all parties in conflict, it has the potential to convert a well-meaning mission into part of the problem.

3.4 Pursuing justice on a grand scale as a factor in creating humanitarian problems

For the government of Rwanda to enjoy credibility with its people, it must be seen to be exercising justice by bringing the perpetrators of genocide to trial. However, the slow mill of justice has created the largest concentration of detainees in the world living under the most appalling conditions. With 130,000 detainees held in several prisons and cachots in the country, even operating with the most efficient legal system in the world, it is estimated that it would take about 200 years to bring all detainees to trial. In the meantime, the appalling state of prisons is causing major humanitarian problems. The challenge there is whether humanitarian assistance should be used to improve prison conditions and inadvertently encourage the government to place more of its citizens in detention or support activities that address life-threatening problems and assist the government to find creative, lasting solutions. This could include introducing an appropriate Rwandan version of the South African Truth Commission or supporting the recent government initiatives in engaging detainees in public works and promoting community courts.

3. 5 Economic interests undermine peace efforts and prolong conflicts

Over the last few years, parties in conflict have usually used their hold on power to control tracts of territory and exploit the natural resources therein to feed their war chests. Timber, minerals, and oil are examples of how illicit trade in a number of countries in crisis has contributed in a significant way to prolonging civil conflicts. Most of these trades are based on the bartering of raw materials for small arms. Hence, the proliferation of small arms in some regions, e.g. Africa. These trades are very lucrative and many faction leaders have a vested interest to see them continue even at the cost of prolonging conflicts. Efforts at sanctions have not yielded the desired results. The challenge is how to bring about the necessary pressure to bear upon the source of the illicit trade - the buyers - and this way deprive the sellers of their customers. If this cycle of unholy alliance could be broken, we would have found some solution to one of the most intractable causes of sustained protracted wars.

3.6 Lack of integrated approach in the delivery of humanitarian assistance

Rivalry and competition amongst aid agencies often provide factional leaders with ready instrument to use one agency against the other. Solidarity is broken. Efforts at complementing each other's strengths and acting in unison, should remain the guiding principle for operational agencies at the field level. The question is, whether the humanitarian actors should maintain solidarity even when populations are placed at risk. The real test to what level a unified approach and solidarity could be maintained should always be that the best interest and survival of populations at risk remain paramount.

3.7 Denial of basic human rights to people in need

By denying basic humanitarian assistance to crisis victims (i.e. not giving access to humanitarian actors), they are being deprived of basic human rights. Also, the actual modalities of furthering human rights while delivering humanitarian assistance in a conflict produces its own dilemma by creating insecurity for humanitarian workers who may be viewed as "spies" in the eyes of some parties to the conflict. The challenge is whether such rights should be guaranteed through coercion/enforcement or by creating a culture of respect for human values and dignity. A critical examination of the attitudes of authorities that choose to ride roughshod over the rights of their citizens may provide some clues that could contribute to the greater understanding of this particular dilemma.

4. Conclusion

The dilemmas that humanitarian actors encounter in the delivery of humanitarian assistance are real. They are likely to continue to impede the effective delivery of assistance and frustrate peace initiatives and prolong conflicts into protracted emergencies. As aid workers grapple with these dilemmas, the best interest of the victims must always remain paramount. The argument is advanced that the greatest tragedy in humanitarian action could be the acquiescence by the humanitarian community to accept in despair a culture of co-existence with crisis. On the positive side, the new leadership in the humanitarian field is unlikely to allow such a culture to hold root.

Sharpening the Weapons of Peace: The Development of a Common Military Doctrine for Peace Support Operations

Philip R Wilkinson, MBE [210]

Executive Summary

During the Cold War, peace-keeping (PK) forces were often deployed in the aftermath of inter-state conflicts to monitor and facilitate peace agreements. Generally, judgements concerning the commitment of the parties to the peace process could be made with some certainty. Such operation were well within the capability of most European (often Nordic and conscript) forces. The Nordic nations were more involved in UN PK operations than members of the UN Security Council and consequently they made the most significant contribution to PK doctrine at this time, stressing that PK forces should be neutral and essentially passive observers.

With the end of the Cold War the nature of PK operations changed. Operations increasingly involved interventions into volatile, high-risk, intra-state and uncertain environments such as Cambodia, Somalia, Bosnia and Rwanda, in which a wide-spread humanitarian disaster might be either the cause or consequence of a conflict. There has been a dynamic development of PK doctrine in all states with experience of operating in these environments.

The consent of the parties has always been fundamental to the success of a PK operation. While this is still true, the difficulties associated with predicting the consent of the parties in volatile circumstances have demanded that PK forces be prepared for its loss. One of the lessons of UNPROFOR in Bosnia, for example, was that one should deploy prepared for a Peace Enforcement operation from the outset where it is uncertain if there is a peace to keep.

Peace Enforcement (PE) doctrine is concerned with the 'grey area' between PK and war. The need for doctrinal development in this area was demonstrated by the failure of the UN Operation in Somalia (UNOSOM II). This operation moved from one of PK to one of war fighting - bypassing PE completely - making UNOSOM II party to the conflict and thus unable to conduct any further PK role.
A new doctrine of impartial PE was designed to ensure that military forces do not become party to a conflict but use a combination of coercion and inducement to create the conditions in which other diplomatic and humanitarian agencies can build peace. This doctrine sanctions the *impartial* use of force, where actions will be taken against or in support of any party, depending on its compliance with the operational mandate and principles enshrined in international humanitarian law. Where forceful activities are driven purely by principled and clearly defined impartiality, the inevitable damage to consent is, at least, easier to rebuild. PE therefore requires considerable military control and restraint, where military commanders balance short-term advantages gained from the use of enforcement techniques, with the requirements of the other civilian agencies involved.

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Prevailing thinking is that the most cost-effective use of scarce resources can be achieved through the early development of a multi-agency strategy or mission plan to decide entry strategy, co-ordinate the incremental engagement of various agencies, and define lines of operation, objectives, main effort, exit strategies and co-ordination mechanisms. It is the responsibility of the head of mission (EU High Representative or UN Special Representative) to develop and co-ordinate the mission plan, although the military force commander will make a significant contribution.

While the new doctrinal consensus reflects the broader political, diplomatic and humanitarian context of Peace Support Operations (PSO), much that is stated on civil-military co-ordination remains an inspiration which is not yet reflected in current practice. Within operational theatres and at the tactical level, Civil-Military Co-ordination (CIMIC) techniques are relatively well advanced. Within certain nations and at the political and strategic level, however, government ministries involved in the same PSO often do not plan and conduct operations jointly and consultations with non-governmental agencies is often non-existent.

Without policy direction to establish strategic and political consultation and co-ordination mechanisms within nations and NATO, it is unlikely that the international community will be able to intervene effectively to prevent the widespread violation of human rights and help create an environment in which the causes of conflict can be addressed by civilian agencies.

PART I: History of Peace-keeping Doctrine

During the Cold War

The formulation of military doctrine for operations involving troops, on behalf of the United Nations (UN) has been through several recent stages of development. In the Cold War era, with the exception of the Korean War, UN forces were principally involved in what has become known as traditional peacekeeping operations. While not specifically mentioned in the UN Charter peacekeeping operations, involving both military observers and peacekeeping forces, were deployed in the aftermath of an inter-state conflict to monitor and facilitate a peace agreement. The parties to the conflict were relatively responsible and judgements concerning their commitment to the peace process could be made with some certainty. While relatively benign, with the exceptions of the Lebanon and Congo, such operations were well within the capability of most European (Nordic) conscript forces.

At that stage, the UK and the other permanent members of the UN Security Council, did not become directly involved in UN activities - the 1950-53 war in Korea being the one major exception. This was for reasons of both politically perceived partiality in the ongoing ideological struggle and because countering Warsaw Pact aggression in Europe dominated military thinking and doctrine of the major European powers. Also many of the European colonial powers (up until the 1960s), were also engaged in countering insurgencies in their various dependencies. At this time, the involvement of troops from the permanent members of the UN Security Council, in UN Peacekeeping operations (PKOs) in Africa and the Middle East was minimal. As a consequence it was the Nordic nations who made the most significant doctrinal contribution to peacekeeping doctrine.

In 1992 Sweden, Denmark, Norway and Finland produced “Nordic UN Tactical Manuals, Volumes 1 and 2”. Volume 1 focused on principles, operational matters and issues such as

civilian and humanitarian tasks while Volume 2 went into the detail of peacekeeping techniques. In many areas this manual was similar to that produced by the British Army in 1988, called Army Field Manual, Volume V, Part 1 "Peacekeeping Operations". The only discernible doctrinal difference between the two manuals, was the emphasis the Nordic manual placed on neutrality while the British manual focused on impartiality. Given the British Army's history of counter-insurgency operations it is not surprising that the UK doctrine favoured a more pro-active approach than the Nordic preference for neutrality. These differences were, however, reconciled in later years in response to the different demands of peacekeeping in volatile intra-state environments.

Post-Cold War

With the demise of the Cold War, and the greater involvement of the major powers in UN operations, the development of doctrine for PK, has been dynamic. In 1993 and 94 the UK and US both developed their own, but compatible peacekeeping manuals; the UK's AFM Volume 5, Part 2 "Wider Peacekeeping" and the US's FM100-5 "Peace Operations". Both took the basic peacekeeping philosophy in the Nordic Manuals and attempted to stretch it for adaptation by full time professional armies, and to make it more robust and suitable for the more uncertain circumstances in which forces found themselves more frequently operating. "No use of force" evolved to "minimum use of force", to "minimum necessary use of force" and the concept of neutrality shifted to one of impartiality. The key difference being that neutrality suggests observation and passivity while impartiality requires principled judgements in relation to the mandate and endorses consequential impartial responses. These doctrinal developments were based on an ever widening international consensus as experiences and lessons learned were being shared by an increasing number of practitioners.

At the same time that nations were developing their new doctrine for Peace Support Operations(PSO) to meet the challenges of the new strategic environment of collapsed and collapsing states, NATO was addressing the same issues. In 1992, at the Athens Conference, Ministers first tried to develop a strategic directive for PSO and in 1993 the Military Committee endorsed MC 327 "Military Planning for PSO". MC 327 remained extant until 20 October 1997 when it was replaced by MC 327/1 " Military Concept for PSO". In the interim, NATO and SHAPE PSO doctrinal statements were tied to the original MC 327, which itself was tied to the Athens report.

In 1996, due to its increasing role in Bosnia, Sweden decided to update its doctrine and bring it more in line with other participating nations. In 1997 they published their first joint manual with the UK, simply entitled "Peace Support Operations". The Irish army, with its long history of regular force peace-keeping and in particular the staff at the UN Training School, Ireland (UNTSI), were also actively, yet informally, engaged in the debate on doctrinal development.

Elsewhere, doctrinal consensus had been developing over the previous years within the FINABEL group of nations (France, Italy, Netherlands, Allemagne, Belgium, Espagne and Luxembourg, but now expanded to include Portugal and Greece). The FINABEL group of nations, however, perhaps because it is less institutionally tied to prescribed procedures proved to be a more amenable environment to exchange ideas and develop doctrinal consensus. In 1995 and 1996, in a series of enlightened meetings FINABEL developed its own doctrine for PSO in paper T25R. This was based upon the then current lessons of the major practitioners and the development of the paper itself greatly helped draw the burgeoning consensus tighter together.

While T25R was institutionally tied to using the then endorsed NATO definitions for PSO, definitions with which the nations were becoming increasingly at odds, it did explore the changed strategic environment and draw a distinction between PSO and War Fighting. War fighting was seen as being based upon the defeat of a designated enemy, whereas PE was not. While PE might require the application of force, combat operations were conducted impartially against whosoever did not comply with the mandate and were designed to enforce compliance not necessarily defeat the non-complying party. It also highlighted the multi-agency nature of PSO when it defined success in PSO as settlement, not victory, "though settlement is rarely achievable by military efforts alone".

MC 327/1 drew upon the new conceptual framework in T25R but was able to redefine the definitions to the general satisfaction of the nations. The most significant development in MC327/1 was an acknowledgement that military forces which are only capable of conducting peacekeeping tasks should not be deployed into a civil war zone and given peacekeeping tasks defined in terms of "the containment, moderation and or termination of hostilities between or within states". It is now doctrinally acknowledged that in a conflict zone, where there may be little or no consent for the operation, such tasks can only be accomplished by a force configured for PE. However, having deterred or coerced any opposition, or having enforced peace, the PE force should lower its operational profile to that of a PK force as soon as judged operationally viable, but while retaining the ability to escalate as and when necessary.

As the nations were developing their PSO doctrines bilaterally or collectively in FINABEL and NATO, the WEU was more focused on operational mission and planning profiles. At the NATO North Atlantic Council Meeting in Berlin in June 1996 the WEU agreed to examine and develop 20 hypothetical PSO mission planning profiles. These were to use assets and capabilities which were to be separable but not separate from NATO.

Concurrently, various academic theses have been devised in parallel with military developments which have made valuable contributions to the doctrinal debate. These have included, amongst others "second generations peacekeeping" (1), and "Chapter 6 1/2 Operations" (2). Both these theses also identified that the strategic environment had changed and that the challenges posed by intra-state, rather than inter-state crisis, were generally beyond the competence of traditional peacekeepers and peacekeeping doctrine, as it was then defined. Both were attempts to fill that doctrinal void or "grey area", as it increasingly became known, between peacekeeping doctrine and more traditional war fighting doctrines.

Part II: Doctrinal lessons learnt from recent peace-keeping operations

With the end of the Cold War the nature of PKOs changed. Operations increasingly involved interventions into volatile, high risk, intra-state and uncertain environments - such as Cambodia, Somalia, Bosnia, Rwanda in which a wide spread humanitarian disaster might be either the cause or consequence of conflict. While the causes of such disasters are complex and have their origins in a myriad of economic, cultural or ethical factors, their symptoms are generally defined in terms of human rights abuses or breaches of International Humanitarian law. To redress the symptoms and address the causes of such a complex emergency involves the development of a composite response strategy and doctrine, involving many different military and civilian agencies. Hence the requirement to expose and discuss the new doctrine with a wide range of a civilian agencies such as Save the Children, the ICRC Amnesty International etc. As a consequence the new doctrine defines PSO as multi-functional operations, in acknowledgement

that military forces will be but one of many deployed agencies and possible the one which will be in theatre for the shortest period of time.

Bosnia: Refining PK doctrine to create secure environments

While trying not to be overly Bosnia specific, there are key lessons that can be learned from UNPROFOR. It was in response to an urgent operational requirement to meet the doctrinal needs of the UN Protection Force (UNPROFOR) in the former Yugoslavia, that the British Army produced AFM "WPK." This manual was designed specifically to offer guidance to Armed Forces who were operating in Bosnia and who were attempting to keep the peace in the midst of a civil war and when there was no peace to keep. In acknowledgement that it was overly Bosnia specific, and that doctrinal developments in PSO were likely to be dynamic, AFM "WPK" was issued as an interim edition only. The manual also acknowledged that it makes little sense to produce a purely national doctrine for what are self-evidently multinational operations and on top of which involve a wider group of civilian agencies as well as military forces. In many ways therefore the UK's "WPK" set the scene for subsequent doctrinal developments.

Although widely criticised, UNPROFOR achieved as much as could reasonably be expected, given its limited resources and mandate. While UNPROFOR has been described in some forum, especially by those who did not participate in the operation as a failure, that is certainly not the tactical level view of practitioners. The tactical level view is that UNPROFOR's perceived failures were not due to a lack of military or civilian competence in the field but resulted from insufficient political will and commitment from the international community. In the absence of any coherent policy there was no tactical alternative but to maintain the operation with the hope that there would eventually be some form of peace initiative at the political/strategic level, before the operation lost complete tactical credibility. In the longer term, military actions are no substitute for political initiatives. As a result, UNPROFOR could only put off the inevitable day when an operational commander would have to force the issue at the political level. In mid-1995 UNPROFOR was eventually confronted by what Lieutenant General Rupert Smith, commander UN forces in Bosnia described as "the fork in the road" and with the choice of UNPROFOR either becoming incredible and untenable or switching to peace enforcement. Wisely, the decision was to chose the enforcement route and as a consequence provided fresh impetus to the political process.

Measured against the two truisms that you can not keep the peace unless there is a peace to keep and that you can not fight wars from white painted vehicles, and with the benefit of hindsight, it is now generally acknowledged that UNPROFOR was under-resourced in terms of equipment and Rules of Engagement (ROE), for the achievement of its mission in the circumstances which prevailed at the time in Bosnia. With that in mind it became necessary to re-evaluate the doctrine represented in AFM "WPK". In the manual, the term "wider peacekeeping" was defined as "the wider aspects of peacekeeping operations carried out with the general consent of the parties but in an environment that may be highly volatile". The view now is that this definition stretched traditional peacekeeping doctrine just too far and that PK doctrine, and PK forces which rely on consent, should not be deployed into a civil war involving wide spread human rights abuses because the curtailment of these abuses may risk a general lose of consent which is beyond the ability of the peace-keepers to manage and hence risk the failure of the mission.

These were the circumstances in which UNPROFOR found itself operating and which came to a head in mid 1995. The lesson is that the restriction of human rights abuses, the creation of "safe

areas" and other tasks requiring enforcement can only be accomplished, and should only be attempted by a force capable of over-matching whatever level of opposition it may be offered. This has became a recurring lesson in the conduct of operations into intra-state, failing or failed state where the parties may be ill disciplined, motivated by power and greed and indistinguishable from the rest of the population. In these circumstances, any predictions of the "in-theatre" levels of consent or other conditions may be so problematic as to be worthless. In which case, the judicious course of action would be to deploy with the necessary force levels to achieve the mission irrespective of any opposition. That is to deploy prepared for PE from the outset.

Having generally acknowledged the inadequacies of "WPK" and the other national doctrines of its era, further development commenced with a re-evaluation of all previous UN PK and enforcement operations (as then defined such as the Korean and Gulf Wars), those "small wars" in which many of us had been involved in our respective draw-down of Empire and other national experiences such as that of the British Army in support to the civil power in Northern Ireland. The fundamental question that needed to be answered was, what was so different about modern operations in complex emergencies - (so called "grey zones") that merited a new doctrine? The answer to that question, and to why neither doctrines for PK nor "war fighting" operations were appropriate, was found in a close examination of the desired end-state of these various operations. Inevitably the end-state focused on security issues, the creation of conditions in which civilian agencies could redress the causes of the complex emergency and the creation of a self-sustaining peace, rather than the defeat of a designated enemy. Military actions needed to be designed to create a secure environment and conditions in which others can build a comprehensive and a self-sustaining peace, rather than a superficial termination of conflict by military force. This suggested that what was needed was a doctrine to identify and define a new approach or approaches to PSO, which whilst based on combat capability, relative to any potential opposition, endorsed the judicious and impartial use of force but balanced against the long term requirements of peace-building.

Somalia: Refining Peace Enforcement (PE) doctrine

In the immediate development of military doctrine after the end of the Cold War, there was a general assumption that PE was synonymous with war and therefore war fighting doctrine was sufficient for its execution. In 1992, the Gulf War was widely described as a PE operation and when UNISOM II decided to escalate and target President Aideed, the operation stepped out of peacekeeping, straight over PE and into war fighting mode, and became a party to the conflict. The lesson from UNISOM II was the need to define the grey area between peacekeeping and war so as to offer policy makers a wider range of more appropriate options. In essence to offer a doctrine of impartial PE in which military forces do not become a party to the conflict but use a combination of coercion and inducement to create the conditions in which other diplomatic and humanitarian agencies can build peace.

The lessons of UNOSOM II have been learnt and applied, especially in US military doctrine. US policy impositions, however, with a fixation on the need to minimise casualties and mission creep, have inhibited the application of that doctrine and the conduct of operations. A policy of no casualties and no mission creep can only serve to stymie the conduct of military operations and impede the achievement of the mission. In the longer term, a policy of no risk taking and no initiative can only detract from the military's functional efficacy.

Part III: Elements of current PK doctrine

It is now widely agreed in most military doctrines for PSO that military activities are designed to create the conditions in which diplomatic and aid agencies can more effectively address the symptoms and underlying causes of the problem and that these conditions are best achieved by employing a combination of coercion and inducements or a "stick and carrot approach". To do this effectively requires considerable military control and restraint, and co-ordination with the civilian agencies - they need to tell the military force what the conditions that need to be created. This clearly justifies a comprehensive doctrine distinct from war fighting , while acknowledging that the ability to escalate and use combat remains a prerequisite in the PE planning. The latest UK, US, French, Swedish and NATO and FINABEL doctrines all start by defining a conceptual framework for PSO which makes the distinction between PSO and other more warlike operations, also conducted under Chapter VII of the UN Charter, before offering guidance for the conduct of PSO. As such PE doctrine fills that gap and logically falls into the "grey area" between PK and war.

Consent of the Parties

As in the case of previous peacekeeping studies, PSO considerations were inevitably drawn to the fundamentals of consent, impartiality and their relationship with the application of force. First as stated with such clarity in AFM "WPK", peacekeeping is dependent on the consent of the parties, and the promotion of co-operation and consent is fundamental for success. That view is still extant. However the general view that there is a "rubicon" of consent - as described in AFM "WPK" - is only perceived as being relevant from the perspective of a lightly armed PK force. For a combat capable PSO force, such as I/SFOR, consent is an important consideration but not as a "rubicon" which can not be easily and frequently re-crossed. From a broader PSO force perspective, there is no "rubicon" of consent. Indeed the very ambition of a combat capable PE force should be to lower its operational profile to that of peacekeeping as soon as is appropriate, while retaining its ability to escalate as and when required. And these were the very conditions that IFOR found itself in on deployment to Bosnia in 1995/6. For such a force, a general loss of consent may be viewed as a tactical reverse, but it should not threaten the existence of the mission. However, if the conduct of all PSO is designed to create a self-sustaining peace the promotion of co-operation and consent must remain a long term requirement.

Impartiality

The second most significant consideration concerned whether or not a PE force should be impartial. This was not difficult to ascertain as the long-term requirement to build consent demands an impartial approach to the conduct of operations. However, even if all PSO force actions are in support of an impartial mandate and conducted impartially would they be perceived that way and did it matter if they are not?

Impartiality is not neutrality, which suggests observation and passivity. Impartiality requires a set of principles, generally enshrined in international humanitarian law and/or the mandate, against which the actions of the belligerent parties can be judged and acted upon. Actions will be taken against or in support of any party, depending on its compliance or non compliance with the mandate and not because of who it is. Inevitably positive actions, whether the delivery of aid or the use of force, whether conducted impartially or not, will have consequences which penalise or favour one party more than another. However, PSO activities will inevitably be seen as partial by the parties at some stage of the operation and the force will be accused of being so. So long as

PSO force activities are driven purely by principled and clearly defined impartiality, such accusations can be refuted and the subsequent damage to consent eventually rebuilt.

The only PE operation thus far in which force has been used impartially, rather than merely threatened, as in the case of I/SFOR was the French Operation Tourquoise in Rwanda. While French actions were accused of partiality at the strategic level, the operation was conducted impartially at the tactical level and tactically the operation was a success. While French experiences and lessons learned have been remarkable similar to those of the British and there has been and remains considerable common understanding of the tactical requirements for success it was not until late 1997 that their respective doctrines were aligned. This was not a conceptual misunderstanding but one of language and terminology. What the UK and the other NATO nations define as PE, the French call Restauration de le Paix, while the French categorise limited war (Gulf War) as Imposition de la Paix.

Peace Enforcement

So having restricted PK doctrine to operations where there is a peace to keep, and having identified that PE is different from war and way, it has been possible to define PE and offer guidance for its conduct. The doctrinal approach for PE which is now generally offered is designed to offer commanders the maximum flexibility in the conduct of operations. In simple terms, it offers a wide range of enforcement and consent promoting techniques and suggests the use of enforcement where there is opposition and the use of consent promoting techniques to maintain consent where it already exists, or to build consent where it is uncertain. As such the conduct of operations will rely heavily on information operations and other techniques designed to persuade the warring, or former warring factions, that their best interests lie in peace rather than a return to conflict. When and if one of the warring parties fails to comply with the mandate and it be necessary for the PSO force to use force, the aim would be to re-enforce the peace rather than the physical defeat of the non-complying faction. The concept being to apply the most appropriate technique to grasp and maintain the initiative so as to expand areas of consent at the expense of areas of opposition and to create the greater operation space in which other agencies can function.

IFOR's original concept of operations conformed entirely to this doctrinal model. While there was a peace to keep - Dayton - the history of the conflict in the former Yugoslavia and the painful experiences of UNPROFOR dictated that IFOR should deploy prepared for PE. But having deployed for the worst case scenario the level of compliance by the former warring factions with the terms of the military Annex of Dayton were such, that NATO military commanders were able very quickly to lower their operational profiles to that more akin to PK and switch some of their assets to consent promoting techniques and in support of peace building activities, while retaining the ability to escalate should that be necessary.

Compatibility with peace-building

PSO doctrine requires that military commanders balance the short term advantages which may be gained from the use of enforcement techniques, with the requirements of the other involved diplomatic and aid agencies, and the long term demands of peace. In addition, they must ensure that military efforts to build consent are co-ordinated into a wider multi-agency "hearts and minds" strategy. Military actions are designed to conclude conflict by conciliation rather than a short term and superficial termination of the conflict by force. Assisting the Host Nation establish a stable and self-sustaining peace, not military victory is the ultimate measure of

success in PSO. Military forces may need to conduct combat operations to enforce compliance, but the use of force will be constrained by the long-term requirement to rebuild consent and peace building in general. And the new doctrine acknowledges that while peace building activities will be supported by information operations and Civil Military Co-operation (CIMIC) activities and projects the prime responsibility for peace building rests with other civilian agencies.

Mission Strategy: a product of civil-military co-operation

Prevailing thinking is that the most cost effective use of scarce resources can be achieved by the early development of a multi-agency strategy or mission plan. This should draw together the activities of the various agencies so as to achieve both unity of purpose and effort. This plan will need to develop an entry strategy to co-ordinate the incremental engagement of various agencies into the mission, to define lines of operation, objectives, main effort, exit strategies and co-ordination mechanisms.

It may well be that the main effort does not lie with the military. In the conduct of PSO, military forces must be prepared to be placed in support of a civilian agency or a political 'supremo' who may be referred to as the Head of Mission or possibly High representative. It is the responsibility of this Head of Mission to develop and co-ordinate the mission plan, not the military force commander, although he will make a significant input into its development.

In the context of a UN mandated operation the ‘supremo’ would be a Special Representative of the UN Secretary General (SRSG) while for an OSCE mandated operation a EU High Representative. There is not, however, an agreed institutionalised relationship to co-ordinate the involvement of NATO and the UN, at either the strategic or operational levels. The process which became known in Bosnia as the ‘dual key’ process between the UN and NATO was considered highly unsatisfactory. And of course the involvement of nations in NATO Non-article V operations, be that PSO or otherwise, rests with the nations. Such matters are currently being considered and discussed as part of the ongoing NATO strategic review.

Conclusion

The international which is now represented in many new national doctrine publications is not, however, conclusive. This must remain a dynamic doctrinal area because the doctrine that has been developed, in particular for PE is mainly predictive and apart from Operation Tourquoise, yet to stand the test of operational reality.

While the new doctrinal consensus reflects the broader political, diplomatic and humanitarian context of PSO, much that is stated on co-ordination is as yet mainly an aspiration and not necessarily reflected in current practice. Within operational theatres and at the tactical level Civil-Military Co-ordination (CIMIC) doctrine and techniques are being developed and are relatively well advanced. However, within certain nations, at the political strategic level, government ministries involved in the same PSO often do not plan and conduct operations jointly and consultation with non-government agencies may be non-existent. While NATO doctrine defines success in terms of creating the conditions in which other civilian, government and non-government can more ably redress the causes of the crisis, there is often no mechanism

for consultation with these agencies and, therefore, no reliable means of discovering which conditions need to be created.

Thus, while PK doctrine now acknowledges the need for close co-operation with civilian agencies to determine the conditions for settlement and the strategies to achieve this, these requirements are frustrated by insufficient consultation during policy formulation. Without policy direction to establish strategic and political consultation and co-ordination mechanisms within the nations and NATO, it is unlikely that the international community will make best use of scarce resources, crises will only be partially addressed and effective intervention to prevent the wide spread violation of human rights will remain little more than political rhetoric.

From Conventional Peacekeeping to Multidimensional Field Operations

Emma Shitaka

In 1993, a former Under-Secretary-General for Peacekeeping Operations, Mr Marrack Goulding, put forward the following possible definition of peacekeeping:

> "Field operations established by the United Nations with the consent of the parties concerned, to help control and resolve conflicts between them, under United Nations command and control, at the expense collectively of the member states, and with military and other personnel and equipment provided voluntarily by them, acting impartially between the parties and using force to the minimum extent necessary".[211]

He identified several different kinds of peacekeeping operations carried out by the United Nations, including:

Traditional peacekeeping operations that support peacemaking efforts by creating conditions on the ground which facilitate political negotiations elsewhere. Historically, many traditional peacekeeping operations have dealt with regional conflicts. They were relatively standard operations, small in size and accounted for only a small share of the United Nations budget. Through an impartial presence and inter-positioning, the traditional peacekeeping operation served as an essential channel of communication between conflicting sides, facilitating mutual understanding, dialogue and co-operation.

For these operations to be successful, it was assumed that they had to be based on the consent and co-operation of the parties. Consent and co-operation would, in turn, only be forthcoming if the United Nations remained impartial and did not try to impose solutions onto the parties, whatever the pressures to take sides on legal, moral or political grounds. As these operations were based on the consent of the parties, the use of force in such operations was limited to self-defence.

Preventive deployment of UN troops before a conflict has actually begun, at the request of one of the parties and on its territory only. The main function of the troops would be to monitor and report on developments which could undermine stability and to provide, by their presence, a psychological deterrent to potential aggressors. The only example of UN preventive deployment is the UNPREDEP operation in the former Yugoslav Republic of Macedonia.

Implementation of a comprehensive settlement already agreed upon by the parties. These kind of operations involve a wide range of functions including monitoring or organising of elections, demobilising troops and verifying respect for human rights.

Protection of the delivery of humanitarian relief supplies in conditions of war. The best example of these operations are Somalia and Bosnia and Herzegovina.

Post conflict peace building in a country where the institutions of state have largely collapsed. Under these kind of operations, the United Nations forces would provide a stable environment and assist a country in rebuilding its institutions. The functions of the operation would

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211 Goulding, M. (1993) 'The evolution of UN peacekeeping', International Affairs 69, 3, p. 464.

include humanitarian relief, demobilisation of troops, facilitating national reconciliation and economic rehabilitation.

At the time that Mr. Goulding identified the various types of UN peacekeeping operations, the future for multi-faceted peacekeeping looked bright and he understandably concluded that *“the problem now is often not to persuade the Security Council to set up a peacekeeping operation, but to dissuade it from rushing into doing so when the conditions for success do not yet exist”*.[212] Today, less than five years later, the reverse is true.

Under the multi-faceted operations entrusted to the United Nations in the late eighty’s and early ninety’s, the organisation was required to address the complex and myriad problems of collapsing states, characterised by underlying ethnic, nationalistic and/or religious tensions, and real and potential humanitarian disasters. As a result of the complex nature of the conflicts, the new generation of peacekeeping operations required an unprecedented amount and variety of material and personnel resources, leading to an explosion in the cost of peacekeeping which far out-stripped the costs of the regular budget of the United Nations. For the first time, the operations contained a significant civilian component, including large numbers of civilian police monitors.

The case of the UNPROFOR operation in the former Yugoslavia demonstrated how, in complex situations, operations based on the traditional peacekeeping principles of consent and impartiality ran into serious difficulties. The apparent lack of a clear command and control structure within the different warring factions and the proliferation of local “Mafia” undermined the operational basis of the consent principle and made it difficult, if not impossible, to implement the mandate in a consistent manner. The value of being impartial was also questioned when, by being so, ran the risk of freezing an existing imbalance of power or encouraging the stronger side to take advantage of its privileged militarily stronger position.

The minimum use of force was also questioned when widespread and seemingly irrational violence against civilians, captured vividly by the media, outraged public opinion and generated an emotionally propelled desire to “do something”. The increasing perception that such conflicts required a new set of principles in which there should be less reliance on impartiality, consent and the minimum use of force, and more recourse to the robust use of force in implementing the mandate, led to an endless debate on the use of force that plagued the UNPROFOR operation in 1994 and most of 1995.

This debate was in a large part fuelled by the creation, and subsequent tragic failure, of the safe areas concept and, unfortunately, coincided with the absence of a coherent framework for peace for Bosnia and Herzegovina. As a result, it failed to adequately take into account the question of what the ultimate goal of using force in a peacekeeping operation should be or that the use of force alone could not nullify the underlying psychological, ideological and other causes of the conflict, nor change their perceptions and stereotypes. The focus on military intervention rather than on adopting policies to build and sustain peace had the potential of haphazardly pushing the mission into taking sides without necessarily promoting the goals of the peacekeeping operation.

While the debate on the use of force in a peacekeeping operation was not the only issue to

212 Goulding, M. (1993) ‘The evolution of UN peacekeeping’, International Affairs 69, 3, p. 464

eclipse UNPROFOR's fundamental success in stabilising the situation and mitigating the worst effects of what had already happened and what was happening in Bosnia, it did overshadow those other important elements that are necessary for the success of any peacekeeping operation. Namely, the firm and sustained political will of the international community, the co-operation of the parties, a clear and consistent mandate and the provision of the necessary resources to implement that mandate. One could also add to the list the absence of an ongoing war. All of these factors were missing in Bosnia.

Peacekeeping efforts within Croatia and Bosnia in the aftermath of the UNPROFOR operation have, I believe, taught us some important lessons about our past performance and prospects for future multi-faceted peacekeeping operations. In Bosnia, the international community has chosen to adopt a different approach to resolving the conflict in that country.

The Dayton Agreement establishes a distribution of labour among different actors in Bosnia and Herzegovina. Military enforcement of the agreement has been carried out by IFOR and its successor SFOR. However, it should be recalled that before the transfer of responsibility to IFOR, UNPROFOR implemented and monitored the initial cease-fire in the country. This is a clear demonstration that given the co-operation of the parties and the full backing of the international community, the United Nations was capable of carrying out its mandate.

The elections and human rights issues in the Dayton Agreement were assigned to the OSCE and the Council of Europe while refugee and displaced persons issues remained with the High Commissioner for Refugees (UNHCR). Annex 11 of the Agreement, which deals with the policing responsibilities, was not assigned to any organisation. The United Nations assumed this responsibility by default - no one at Dayton was interested in taking on the task.

Early in the new operation in Bosnia, it was clear that the important civil affairs activities carried out by UNPROFOR could not be replicated by another organisation. Many civil affairs officers in the country possessed vital institutional knowledge. It was decided, therefore, to place both the police element (the IPTF) and the civil affairs element under the authority of the Secretary-General through a United Nations co-ordinator of the UN Mission in Bosnia and Herzegovina (UNMIBH). The co-ordinator, who was also the Special Representative of the Secretary-General, would be the co-ordinating link between the activities of the United Nations elements in Bosnia and the High Representative.

The role assigned to the United Nations in Bosnia has, overall, highlighted the strengths of the organisation. The IPTF is a good example of the United Nation's ability to run unarmed or lightly armed missions with the consent of the parties. The essentially non-threatening United Nations police force encourages co-operation. This has been necessary and important for the training and restructuring activities carried out by the IPTF. These are not activities that can be carried out at gunpoint but must, if they are to succeed, be done on a voluntary basis.

The civil affairs element represents the organisation's strong ability to make available for operations, at short notice, high quality political staff. Many other organisations have great difficulties in recruiting staff, especially when they have to rely completely on seconded staff.

The NATO-led military presence in Bosnia has provided the UNMIBH mission, particularly the IPTF, with a robust environment in which to carry out its mandate aggressively. IPTF has been able to successfully implement a check-point policy and undertake weapons inspections because of the credible back-up force that SFOR provides. To take away the SFOR element

would affect the ability of the mission to function at the limit of its mandate. It would also affect the ability of all other international organisations in Bosnia to implement their mandates.

One of the potential problems that could result from the wide division of labour in Bosnia is that of co-ordination. The High Representative has the responsibility for co-ordination but lacks the means necessary to carry it out effectively. SFOR does not fall under the co-ordination authority of the High Representative and the United Nations mission and agencies fall under the authority of the Secretary-General. Given the strongly guarded independence of actors in the area, the effective co-ordination that the High Representative has been able to achieve has been remarkable.

There is also a lack of unity in the field of human rights monitoring in Bosnia. There are a large number of human rights entities working in Bosnia, including the United Nations and its agencies, and inter-governmental and non-governmental organisations. All of these have their own mandate, priorities and reporting channels. In such an environment, consensus on human rights issues can be difficult to achieve, particularly as the Dayton Agreement has failed to identify a lead organisation to co-ordinate human rights activities.

However, with regard to the strong human rights mandate given to the IPTF in Annex 11, the United Nations has done an admirable job in implementing its mandate. It has initiated a certification process for the police, which is intended to screen applicants for criminal activities and human rights abuses, and has energetically investigated human rights violations committed by local police. As a result of this action, the overall level of human rights violations by police, the most common human rights abuses in Bosnia, has gone down.

In general, the restructuring work carried out by the IPTF goes to the core of the power structure of the old nationalist regimes in Bosnia. The police are gradually being transformed from an organ which protected the state, or the party they identified with, to an instrument of service to citizens. The United Nations' Mission in Bosnia has underlined that the democratisation dynamic that has started must be maintained and become part of a *broader strategy* of change in Bosnia if progress is to be sustained. A broader strategy of change means that the IPTF removal of illegal police check-points must be part of a general freedom of movement policy which, in turn, must be encouraged by economic revitalisation and incentives for displaced persons and refugees to return to their homes. People need to be given a reason to want to cross the inter-entity boundary line - the availability of jobs, housing and other opportunities will, hopefully, provide them with that reason. Refugee returns are also important in a broader and integrated strategy if the risk of ending up with a multi-ethnic police force in an ethnically pure village is to be avoided.

Another example of the need for a broader strategy is in police reform. For reform to be effective and long-lasting, it must be part of a general reform of the judicial and penal systems. Experience has shown that monitoring and training of the local police is not enough if the practical work of a peacekeeping mission is to be transformed into the practical application of accepted human rights principles and their long-term awareness.

Turning to the post-UNPROFOR United Nations role in Croatia, which was based on the 12 November 1995 Basic Agreement on the peaceful reintegration of the region of Eastern Slavonia into Croatia, as with the IPTF in Bosnia, the United Nations assumption of direct responsibility for Eastern Slavonia was in some ways by default. Again, few were willing to

take on a task which many believed was doomed to failure.

In the early days, when considering how best to implement the Basic Agreement, the United Nations realised that while it would be possible to distribute various civilian tasks outlined in the Basic Agreement to other organisations, this ran the risk of reducing the transitional administration to the role of a supervisory co-ordinating body rather than an executive authority. It was also clear that unless the military force was superior to those in UNCRO and UNPROFOR, and had a clear enforcement role with regard to demilitarising the region, it would fall prey to the accusations of inadequacy that had plagued the UNCRO and UNPROFOR missions.

The UNTAES mission ended on 15 January. It is being hailed as one of the greatest successes of the United Nations. Although it is too early to say whether its success is sustainable, many believed that, given the unprecedented international commitment to Bosnia, that conflict had more of a chance of success than the mission in Eastern Slavonia. The preliminary lessons that can already be learned from the UNTAES experience are the following:

First, that the consistent and unified support of the Security Council contributed greatly to the success of the mission. The support of the United States in particular, and the work of two outstanding Transitional Administrators, were also important factors in the mission's success. As a result of this strong support, and in cases of non-compliance by the Croatians, it was possible for the international community to put pressure on them in an effective manner. For example, the United States blocked financial loans for Croatia in the IMF and the World Bank.

Second, a well conceived strategy in implementing a mandate is essential. The reintegration of the local police was recognised as the single most important task of the UNTAES mission if a sustainable reintegration of the population was to be achieved. The gradual draw-down of the military component of UNTAES and a shift of focus to strengthening and making more visible the Transitional Police Force allowed the population to build trust and confidence in the authority of the police and, by extension, the authority of the Croatian government.

Third, a strong and credible military force is essential to ensure compliance by the parties. Although the UNTAES military force was only 5000 strong, it possessed credible means of force and made it clear that it was prepared to use it against any violating party. The NATO backup provided the means to escalate that force if necessary.

Fourth, a clear exit-strategy, linked to mutually reinforcing and interdependent benchmarks allows for a smooth and successful downsizing of a mission.

Fifth, a good combination of carrots and sticks can encourage compliance by the parties. At the start of the mission, sticks were an effective instrument of coercion. Once the military component began to down-size in the second year of the mission, UNTAES lost its credibility to enforce compliance. Carrots became the most effective means of encouraging the parties to co-operate.

Sixth, it is necessary, in some cases, to put in place appropriate successor arrangements (the United Nations civilian police support group, the OSCE mission in Croatia) as early as possible. A continued international monitoring presence provides reassurance to the local

population that their human rights will be protected.

Seventh, a unified civilian and military structure is generally conducive to success. UNTAES was an integrated mission with a short and responsive chain of command. All the activities of the mission were co-ordinated by the Transitional Administrator and fell under his overall authority.

Eighth, the mandate given to UNTAES was clear and precise and the resources provided to the mission were commensurate with its tasks. UNTAES demonstrated that, when the United Nations is given a clear mandate and the necessary resources to carry it out, and when that mandate and those resources are supported by a strong political resolve and a united Security Council, then the United Nations can effectively carry out multidimensional peacekeeping operations.

Recent experiences in the former Yugoslavia, particularly in Eastern Slavonia, have demonstrated that the United Nations can indeed play an important role in multidimensional operations given the right conditions and resources. However, peacekeeping has entered a new phase in which future operations will be asked to achieve even more ambitious objectives. Their goal is not just stability in their area of deployment but transformation of post-conflict societies, and the creation of working democracies where none existed before. In this context, the role of United Nations civilian police, especially in human rights monitoring, has acquired a new importance.

There is emerging consensus within the United Nations and among Member States that the role of the police not only contributes to short-term maintenance of law and order and respect for human rights but also promotes longer term stability by fostering a climate where the influence of the military is diminished and the emergence of a civil leadership is encouraged. This development can reshape the internal dynamics of a post-conflict society in such a way as to significantly strengthen the foundations for lasting peace.

In view of experience and of likely civilian police requirements in future peacekeeping missions, the United Nations is currently considering two broad areas which could benefit from further analysis. The first is how to overcome an acute shortage of police personnel who are trained in accordance with common standards and who are readily available for service with the UN and the second is to gain a greater common understanding on the roles and potential roles of a police presence, both before and after the military component of a peacekeeping operation withdraws.

General observations/recommendations:

- For any peacekeeping, human rights or other mission to be effective, the link between personnel on the ground and political negotiators must be maintained. The sharing of information at all levels is critical in order to avoid a policy vacuum within which the parties can pursue their maximalist goals.

- The prevention of a conflict is clearly more cost effective in human lives and resources. Preventive deployment can deter underlying tensions between and within states from erupting into open conflict. However, in order to prevent a conflict, forces must deploy sufficiently early that latent tensions do not have the opportunity to fester and explode into violence. Unfortunately, if a conflict does not appear imminent, it is difficult to justify

using resources that may appear better spent elsewhere.

- The training of peacekeeping personnel in human rights, particularly civilian police, is essential if we are to make a lasting impact in any peace process. However, rotations of police monitors and other personnel must allow them sufficient time to develop minimum country and area specific expertise to operate effectively.

- Whatever the short-term pressures to relinquish UN responsibilities in peacekeeping to regional organisations or coalitions of member-states, the UN's perceived impartiality and objectivity will ensure that it continues to play a role as a dependable facilitator of peace in conflict situations. The organisation and its many agencies can make a pivotal contribution to multifaceted operations by adopting an integrated approach in addressing the complex problems of today's crisis situations.

A NEW FRONTIER:
The Early Experience and Future of International Human Rights Field Operations

Ian Martin [213]

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CONTENTS

I The Development of Human Rights Field Operations 114

II Towards an Evaluation of Human Rights Field Operations 118

III Mandates 122

IV Implementation 123

V Funding 125

VI Structures 126

VII Conclusion 128

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I THE DEVELOPMENT OF HUMAN RIGHTS FIELD OPERATIONS

When the protection of human rights through the United Nations and other international organisations moved beyond standard-setting into implementation, it still took place mostly in the committee rooms of Geneva, New York and Washington. Country rapporteurs and experts and the thematic procedures of the UN Commission on Human Rights, as well as the Inter-American Commission on Human Rights, began to make short visits to allow for in-country fact-finding and a more direct dialogue with the government concerned. These have become of increasing frequency, and occasionally the UN treaty bodies too have made their own country visits. But in the last six years, human rights has taken to the field in a radically different manner, as substantial human rights field operations have been established in a number of countries, by the UN, by the UN jointly with a regional organisation, or by a regional organisation alone.

The pioneering operation was in **El Salvador**: UN-brokered peace negotiations led to commitments by both government and armed opposition to respect human rights and invite UN verification of their observance: in July 1991 the human rights division of ONUSAL was established, with an international staff of 101, including 42 human rights observers. The huge UN Transitional Administration in **Cambodia**, established in February 1992, initially provided for 10 human rights officers (out of a total UNTAC deployment of some 20,000); this was later increased so that there was one human rights officer in each province and a substantial headquarters and training staff, but the Human Rights Component remained a relatively small one. The Organisation of American States established a small International Civilian Mission under military rule in **Haiti** in September 1992; from February 1993 this was absorbed into a large joint UN/OAS human rights mission (MICIVIH). The UN/OAS budget for MICIVIH provided for 280 international staff: at its peak before its first evacuation in October 1993, it reached around 200, the largest human rights presence in any single country up to that time. This was exceeded in **Guatemala**, where peace negotiations led to a human rights verification mission (MINUGUA) being established from November 1994, with an authorised strength of 245 international staff, including 10 military liaison officers and 60 civilian police observers.

These four human rights field presences had their origins in attempts to negotiate and oversee political transitions: they were part of a new generation of UN peace-operations. They were conceptualised and mounted by the UN's political departments in New York, in virtual isolation from its human rights mechanisms and supporting staff in the Centre for Human Rights in Geneva. In the cases of El Salvador, Haiti and Guatemala, the UN Commission on Human Rights had already mandated special country rapporteurs, representatives or experts: these had no formal relationship with the field operations, and both they and the field mission were left to work out a relationship without any consistent guidance from their respective headquarters in Geneva and New York. Still less was consideration given to any relationship with the Commission's thematic procedures or the treaty bodies.

The advantages of a field presence were quickly apparent, however, to the Geneva human rights milieu. In July 1991, Amnesty International proposed that a UN human rights monitoring presence should be imposed on Iraq. This was taken up by the special rapporteur on Iraq in his February 1992 report to the Commission on Human Rights, and although a presence in Iraq never became feasible, he was allocated staff able to travel more extensively and collect information in the region. The special rapporteur on **former Yugoslavia** was provided with field staff based in the territory of his mandate from March 1993. It rapidly became *de rigueur*

for special country rapporteurs to recommend that they be similarly supported by in-country monitoring.

By the time the proposal to create the post of UN High Commissioner for Human Rights was debated ahead of the 1993 World Conference on Human Rights, the disconnection between the New York initiatives and the Geneva-based system was well-remarked. Bridging that gulf was a major motive which led Amnesty International to advance the most detailed proposal for the post:

> "While some of the most innovative and far-reaching human rights initiatives have been developed in the context of recent UN peace-keeping and peace-building operations, these have tended to be developed in an *ad hoc* and uncoordinated way and with little or no involvement of the Geneva-based human rights bodies...The task of the Special Commissioner would be to maintain an overview of all the UN's human rights activities and their relationship to other program areas; to take initiatives and co-ordinate UN action in response to human rights emergencies; to ensure that appropriate attention is given to human rights concerns in any country of the world; to develop programs in areas which have been neglected or insufficiently developed; to formulate and oversee the human rights components of other UN operations, such as in the area of peace-keeping and peace-building, and to facilitate the involvement of the UN's human rights mechanisms and experts in these activities; and to ensure the integration of human rights issues and concerns in the full range of other UN activities and programs."[214]

The World Conference itself addressed the exclusion of the Centre for Human Rights from the new operations in its Vienna Declaration:

> "The World Conference on Human Rights, recognising the important role of human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms..."[215]

The General Assembly resolution establishing the post of High Commissioner for Human Rights[216] made no explicit reference to peace-keeping and human rights field operations, but gave the HCHR the responsibility "to co-ordinate the human rights promotion and protection activities throughout the UN system", and "to rationalise, adapt, strengthen and streamline the UN machinery in the field of human rights with a view to improving its efficiency and effectiveness".

The first High Commissioner, José Ayala-Lasso, took up his post on 5 April 1994. The next day, genocide was unleashed in **Rwanda**. The High Commissioner visited Rwanda, and called for a special session of the Commission on Human Rights. This mandated a special rapporteur on Rwanda, and requested the High Commissioner "to make the necessary arrangements for the Special Rapporteur to be assisted by a team of human rights field officers". Initially a small team was envisaged, but subsequently the High Commissioner appealed for funding for a team of 21, and during a second visit to Rwanda in late August he agreed with the government that as many as 147 officers would be deployed, corresponding to the 147 communes of the country. The dependence of this Human Rights Field Operation in Rwanda (HRFOR) on voluntary funding (rather than the UN regular or peace-keeping budgets, from which the New York-run operations were funded), together with the lack of Geneva-based systems or experience for

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214 Amnesty International, *World Conference on Human Rights -Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations*, December 1992, p.4-6.

215 *Vienna Declaration and Programme of Action* adopted at the World Conference on Human Rights, 25 June 1993, para.97.

216 A/RES/48/141, 20 December 1993

mounting a large field operation, resulted in deployment being painfully slow. The figure of 147 was never reached: by February 1995 there were 85 officers, and later that year the operation reached a peak of about 130 international staff.

HRFOR was the first large human rights field operation responsible to the High Commissioner in Geneva, rather than to the political or peace-keeping departments in New York. The High Commissioner became personally convinced that the future of human rights lay in the field. In his February 1997 report to the Commission on Human Rights he declared (shortly before his resignation):

> "A human rights field presence, established with the consent of the authorities of the State concerned, is one of the major innovations introduced under the mandate of the High Commissioner for Human Rights in the implementation of the United Nations human rights programme. Experience has proved that the effective implementation of human rights is greatly facilitated by activities in situ. In some countries, the human rights presence has been established as an autonomous project, in others it is part of a broader United Nations involvement as in the case of the United Nations human rights programme for Abkhazia, Georgia. Some operations integrate assistance and monitoring functions, whereas others are mandated exclusively in the area of technical assistance. The flexibility of the human rights field presence is one of its strongest assets. In 1992 there were no human rights field activities; the High Commissioner/Centre for Human Rights now has offices in 11 countries in all regions."[217]

The office of the High Commissioner/Centre for Human Rights (HCHR/CHR) in **Cambodia** is the only field presence whose funding has been fully incorporated in the regular budget of the Centre. The Human Rights Component of UNTAC lobbied for the continuation of its work beyond UNTAC's withdrawal, and this passed to the Centre - after a hiatus, since the Centre had had no involvement during the peace-keeping operation. As of mid-1997, it had an international staff of 17, including those engaged in a judicial mentor programme.

The office of the HCHR/CHR in **Burundi** is intended to be the largest of the Geneva-run field presences, after Rwanda. It began as a technical co-operation effort, intended as "preventive action", but in June 1995 the government agreed to the deployment of 35 human rights monitors. Due to funding delays, this deployment began only in April 1996: by mid-1997, 15 observers had been deployed, with the intention of further expansion towards the agreed 35.

The government of **Zaire** finally signed an agreement in August 1996 accepting a two-person human rights office, the functions of which include monitoring, technical co-operation and training, both for governmental institutions and NGOs; this had been recommended by the Special Rapporteur on Zaire and supported by the Commission on Human Rights. Its future in the Democratic Republic of Congo remains to be determined.

The November 1996 agreement on the **Colombia** office followed a statement by the Chairman of the Commission on Human Rights in April 1996, requesting the High Commissioner to proceed "upon the initiative of the Government of Colombia" to establish an office in Colombia. This was widely seen as an alternative to the imposition of a special country rapporteur. It provides for the office "to observe the human rights situation with a view to advising the Colombian authorities on the formulation and implementation of policies, programmes and measures to promote and protect human rights...and to enable the High

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217 Report of the High Commissioner for Human Rights to the Commission on Human Rights, "Building a partnership for human rights", E/CN.4/1997/98, 24 February 1997. The countries were: Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia (managed together as the Human Rights Field Operation in the former Yugoslavia, HRFOY); Abkhazia (Georgia), Burundi, Cambodia, Colombia, Gaza (Palestine), Rwanda and Zaire.

Commissioner to make analytical reports to the Commission on Human Rights", as well as to advise NGOs and individuals.[218] It is staffed by a Director funded and nominated by the Spanish government, and five human rights professionals, funded by the European Commission through the International Commission of Jurists.

The Human Rights Field Operation in **Former Yugoslavia** is a misnomer, not only because it does not cover all the territory implied, but also because it invites inappropriate comparison of the role of its 12 international staff with larger field operations. Following the Dayton Agreement, the main human rights monitoring mandate for **Bosnia and Herzegovina** was bestowed upon the OSCE, leaving the High Commissioner to define for himself a threefold contribution: conducting human rights training for international personnel, making available human rights experts to the High Representative, and supporting the work of the Special Rapporteur and Expert on Missing Persons.

Two HCHR/CHR international staff are located in **Gaza** as part of a technical co-operation project aimed at developing a national plan of action for human rights under the Palestine National Authority, improving the administration of justice and developing the legal framework for human rights protection, with substantial training activities.

The office in **Abkhazia, Georgia**, consists of a single UN professional, working in tandem with a single OSCE official, but set an important structural precedent when it was decided that the office would report to the High Commissioner through the Head of the UN Mission, UNOMIG.

Meanwhile the case for the more consistent incorporation of human rights components in multi-dimensional UN peace operations was being pressed.[219] Other such operations, including UNAVEM III in **Angola**, UNOMIL in **Liberia** and UNTAES in **Eastern Slavonia**, had human rights officers included in their staffing. UNTAES had failed to establish a human rights unit until the summer of 1997, UNOMIL had three human rights officers, while UNAVEM III had 14 officers in place in early 1997, when a major expansion of the human rights presence (to over 50 officers, nearly half of them UN Volunteers) was recommended for the follow-on operation. Elsewhere, the mandate for human rights monitoring was given to a regional organisation: in addition to OAS participation in the joint OAS/UN mission in **Haiti**, the OSCE became responsible for human rights monitoring in **Bosnia and Herzegovina,** and assumed joint responsibility with the UN in **Abkhazia, Georgia**.

Other UN operations have not been designated as human rights operations and have not operated within a human rights framework, but have carried out activities which had much in common with human rights field work. This applies to civilian operations paving the way for multi-party elections in **Namibia** and **South Africa**. (Many other election monitoring operations have however operated outside any international standards and have failed to provide for the monitoring of human rights relevant to a fair electoral process in the period before the poll; they have not been part of a sustained international effort to contribute to the development of democratic institutions and an active civil society before and after elections.) UN civilian police have a crucial human rights role to play wherever they are deployed, and UN human rights components have benefited from working alongside them, usually with difficulty on both

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218 The Agreement as well as the Statement by the Chairman of the Commission are in UN document E/CN.4/1997/11, 24 January 1997.

219 see Amnesty International, *Peace-Keeping and Human Rights*, January 1994; and Alice Henkin (ed), *Honoring Human Rights and Keeping the Peace: Lessons from El Salvador, Cambodia and Haiti*, Aspen Institute, 1995.

sides in defining their respective roles and reconciling their organisational cultures, but with much to be gained from co-operation and joint action.[220] UN civilian police operations have played major human rights roles in **Mozambique** and **Bosnia and Herzegovina**, where there were no or few UN human rights staff. MINUGUA in Guatemala is unique in incorporating police and military officers fully under the civilian direction of a human rights mission.

UNHCR's increasing emphasis on prevention and repatriation, and growing involvement with the internally displaced, has led it further into human rights monitoring and promotion in the country of origin. As the High Commissioner for Refugees, Sadako Ogata, wrote recently:

> "For many years, UNHCR and its operational partners waited for refugees to cross an international border before providing them with protection and assistance. The subsequent search for solutions to their plight focused primarily on the question of the refugees' physical location: whether they should repatriate to their homeland, integrate in the society where they had found asylum, or move on to a third country and settle down there. The limitations of these traditional solutions, coupled with the growing scale of the refugee problem and the changing nature of the international political and economic order, have prompted UNHCR to develop a new approach to the question of human displacement. This approach is proactive and preventive, rather than reactive. Instead of focusing purely on countries of asylum, it is equally concerned with conditions in actual and potential refugee-producing states. And as well as providing protection and assistance to refugees, it seeks to reinforce the security and freedom enjoyed by several other groups: internally displaced people; refugees who have returned to their own country; war-affected communities and those who are at risk of being uprooted."[221]

This welcome emphasis on human rights protection raises a major question of the respective mandates and roles of the two High Commissioners. In **Tajikistan**, UNHCR mounted what was in effect a human rights field operation to monitor and intervene on behalf of returnees, and Rwanda offers an important case study in the co-operation of a major human rights field operation with substantial UNHCR protection activities. Another UN refugee agency, the UN Relief and Works Agency (UNRWA), quietly played the role of a human monitoring mission to provide some protection to Palestinians in the **Israeli-occupied territories** through its Refugees Affairs Officers and Research Officers; and a weak form of human rights monitoring was established outside any inter-governmental organisation when the governments of Norway, Denmark and Italy, in agreement with Israel and the Palestinians, provided the Temporary International Presence in Hebron in 1994.[222]

II TOWARDS AN EVALUATION OF HUMAN RIGHTS FIELD OPERATIONS

It would be too early to reach any definitive or overall evaluation of even the first generation of human rights field operations, while only El Salvador and Cambodia are concluded. However, it is certainly not too early to regret the absence of on-going evaluation within the UN system which would contribute to an eventual assessment, while in the meantime enabling some clear

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220 see the comments by Diego García-Sayán, "The Experience of ONUSAL in El Salvador", in Alice Henkin (ed.), *Honoring Human Rights and Keeping the Peace: Lessons from El Salvdor, Cambodia and Haiti*, Apsen Institute, 1995, p.35-36; and Lawyers Committee for Human Rights, *Improvising History: a Critical Evaluation of the United Nations Observer Mission in El Salvador*, 1995, p.28-39.

221 Foreword by the United Nations High Commissioner for Refugees to *The State of the World's Refugees 1995*.

222 see two papers by Lynn Welchman, "International Protection and International Diplomacy: Policy Choices for Third-Party States in the Occupied Territories", and "Consensual Intervention: A Case Study on the TIPH", in *International Human Rights Enforcement: The Case of the Occupied Palestinian Territories in the Transitional Period*, The Centre for International Human Rights Enforcement, Jerusalem, March 1996.

lessons to be learned and applied in later phases or operations.[223] An interim evaluation can currently be informed by comparative assessments made outside the UN[224], writings by those who have participated in such operations[225] and external studies by NGOs[226]. Most of the existing literature is focused on the early phases of operations and thus already somewhat outdated; only the studies of El Salvador have been able to assess the completed period of the human rights field presence.

Despite a difficult beginning and some criticisms of its functioning, there appears to be a consensus that ONUSAL in **El Salvador** was a success as well as a pioneer, although its longer- term impact remains to be evaluated. It was part of an overall political strategy and operated within a clear framework, not only of international human rights law but of an agreement negotiated between parties. Its deployment ahead of a cease-fire and comprehensive peace agreement, while not originally envisaged by the UN negotiators, contributed to an improvement in the human rights situation, which in turn helped to create a positive climate for overall agreement. Its legacy in the development of the judicial system, the Human Rights Ombudsman and the National Civilian Police seems also to have been significant. This rationale was explicitly followed in **Guatemala**, where the deployment of MINUGUA from November 1994 similarly is seen to have contributed to the climate in which an overall peace agreement was concluded in December 1996. The success of MINUGUA in a period during which its verification responsibilities have extended into new areas remains to be seen.

The human rights component within UNTAC was much less central to the overall UN operation in **Cambodia**, and had a less clear mandate under the Paris Peace Agreements than the verification mandates of ONUSAL and MINUGUA. The director of the component subsequently characterised it as the "poor cousin" of the operation in both staffing and administrative support.[227] As well as its monitoring during pre-election violence, attention to detention conditions, and extensive human rights training and education, it played an innovative

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[223] The Lessons Learned Unit in DPKO undertakes evaluations of DPKO-managed peacekeeping operations only. The European Commission has commissioned two evaluations of the European Union participation in HRFOR, carried out in mid-1995 (by Roel von Meijenfeldt) and late 1996 (by Ingrid Kircher and Paul LaRose-Edwards).

[224] Alice Henkin (ed.), *Honoring Human Rights and Keeping the Peace: Lessons from El Salvador, Cambodia and Haiti*, Aspen Institute, 1995, is the outcome of a comparative assessment which had the participation of UN human rights directors from the three country operations. It is being extended in 1997 to include experience from Guatemala, Rwanda and Bosnia, as well as later experience from El Salvador, Cambodia and Haiti. See also studies commissioned or supported by interested governments: Stephen Golub, *Strengthening Human Rights Monitoring Missions: an Options Paper prepared for the Office of Transition Initiatives, Bureau for Humanitarian Response, USAID*, December 1995; Paul LaRose-Edwards, *UN Human Rights Operations: Principles and Practice in United Nations Field Operations*, for the Human Rights and Justice Division, Canadian Department of Foreign Affairs, May 1996; Karen Kenny, *Towards Effective Training for Field Human Rights Tasks*, International Human Rights Trust, commissioned by the Department of Foreign Affairs, Dublin, Ireland, July 1996.

[225] in addition to the papers by Diego García-Sayán (El Salvador), Dennis McNamara (Cambodia) and Ian Martin (Haiti) in Alice Henkin (ed.), op.cit., see: William O'Neill, "Human Rights Monitoring vs. Political Expediency: the Experience of the OAS/UN Mission in Haiti", and Reed Brody, "The United Nations and Human Rights in El Salvador's Negotiated Revolution", both in *Harvard Human Rights Journal*, Vol.8, Spring 1995; and William Clarance, "The Human Rights Field Operation in Rwanda: Protective Practice Evolves on the Ground", in *International Peace-Keeping*, Vol.2 No.3, Autumn 1995, and "Field Strategy for Human Rights Protection", in *International Journal of Refugee Law*, Vol.9 No.2, 1997.

[226] see two studies by the Lawyers Committee for Human Rights, *Haiti: Learning the Hard Way - The UN/OAS Human Rights Operation in Haiti 1993-94* and *Improvising History: a Critical Evaluation of the United Nations Observer Mission in El Salvador*, both 1995; African Rights, *Rwanda, "A Waste of Hope": The United Nations Human Rights Field Operation*, March 1995; and Amnesty International, *Rwanda and Burundi: A Call for Action by the International Community*, September 1995.

[227] Dennis McNamara, "UN Human Rights Activities in Cambodia: An Evaluation", in Alice Henkin (ed.), op.cit., p.62.

role in encouraging the growth of national human rights NGOs where none had existed, involving Asian and western human rights NGOs in this task. It secured support for UN human rights work to continue beyond the peace-keeping mandate.

When the UN joined the OAS in deploying the International Civilian Mission in **Haiti** (MICIVIH), it hoped that here too an amelioration of the human rights situation would contribute to the success of negotiations for a return to constitutional government. But these broke down[228], and the mission was twice evacuated before the Security Council authorised military intervention to force the restoration of President Aristide. In its first phase, in 1993, MICIVIH was able to achieve three things: without its presence, human rights abuse would have been worse than it was; many individual victims were aided as a result of its intervention; and where it could not check human rights violations, it drew them to international attention. But its evacuation put its contacts at risk, and it was sent back in early 1994 at a time when the *de facto* authorities gave it zero co-operation and it could do little beyond speak out publicly: nevertheless, its findings were well-publicised internationally and played an important role in the US and UN debates which preceded a tougher policy to oust the military regime. Its third phase under restored constitutional government, still continuing, has focused on monitoring the human rights conditions for successive elections, support for institution-building (the civilian police force, justice system and prisons) and human rights education.

The High Commissioner's first Human Rights Field Operation in **Rwanda** was much criticised. The initial commitment to deploy human rights officers stemmed from the resolution of the Commission of Human Rights in late May 1994. In the immediate aftermath of genocide, effective deployment was both more urgent than in the cases of earlier UN human rights field operations, and more difficult because of the devastation of the country. To these hurdles were added the inexperience of the Centre for Human Rights in mounting a large field operation, the absence of established procedures for logistical support, and the dependence on voluntary funding: whereas the New York operations were funded by assessed contributions through the UN's regular or peace-keeping budgets, the High Commissioner depended on voluntary contributions from governments and his appeals produced promises, many of which were only slowly fulfilled. Recruitment was slow, and the procurement of vehicles and other essential support was even slower, so that the operation was soon being criticised for the inadequacy of its response to an urgent situation. It was November 1994 before offices were open in most prefectures; by February 1995 there were 82 field officers; and from March/April 1995 they were strengthened by the arrival of a contingent of 34 European Union officers, which brought additional logistical support but also fresh managerial difficulties.

Much of the early focus of HRFOR was on investigating the genocide. Although its UN field officers were initially supplemented for this purpose by special teams seconded by governments, it was not well equipped for this task. Once the International Tribunal for Rwanda was established in November 1994, information collected by HRFOR was handed over to it, and the Prosecutor made clear that future investigation for the purposes of prosecution should be done by the Tribunal's investigators. However, there was a hiatus of almost a year before the Tribunal had an effective investigative presence in Rwanda, and for some months

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228 I have argued elsewhere that not only the impact of the human rights mission, but also the political process would have been better served if the Haitian Armed Forces' lack of cooperation and the deteriorating human rights situation after the Governors Island Agreement had been more strongly taken up by the UN and US negotiators and the international community: Ian Martin, "Paper versus Steel: The First Phase of the International Civilian Mission in Haiti", in Alice Henkin (ed.), op.cit., and "Haiti: Mangled Multilateralism", in *Foreign Policy*, No.95, Summer 1994.

after that its field investigators did not have available to them the information collected by HRFOR.

The mandate of HRFOR was extremely broad: to investigate the genocide and violations which had already occurred; to monitor the ongoing human rights situation and maintain a preventive presence; to help re-establish confidence, the return of refugees and displaced persons, and the rebuilding of civic society; to implement programmes of technical co-operation, particularly in the administration of justice; and to report to the High Commissioner and through him to the Special Rapporteur. A dual controversy raged inside and outside the mission over relative priorities, between investigating the past and monitoring the present, and between monitoring and technical co-operation. The view of the first Chief of HRFOR was that:

> "...monitoring in the field, whether humanitarian or human rights, is essentially a bottom-up process, in which the first operational priority is to get field teams out on the ground. This was particularly the case in a highly politicized ground situation of such daunting complexity as post-genocide Rwanda. Only then was it possible for human rights field officer teams to establish relations and interact with the local authorities and other actors, to observe situational dynamics closely and, in consequence, to formulate appropriate pragmatic responses inductively."[229]

The view of the second[230] was that the elements of the mandate were mutually reinforcing, but that HRFOR's objectives and strategy within that mandate needed to be given further definition in order to apply its limited resources effectively and set priorities for the work of staff, paying due regard to complementarities with the roles and capacities of other organisations.

The positive effects of HRFOR's presence were offset by the worsening security situation, as Hutu insurgency penetrated further into Rwanda from the camps in Zaire, with killings of Tutsi civilians and local officials, and killings of unarmed Hutu civilians in the army's counter-insurgency response. Similarly, progress in the creation of a judicial system and some limited amelioration of indescribable prison conditions were overwhelmed by the tens of thousands of persons accused of involvement in the genocide, especially after mass returns of Hutus at the end of 1996. HRFOR became the first human rights field presence to have staff murdered in the course of duty in February 1997, and thereafter its presence outside the capital became severely restricted. However, the second evaluation commissioned by the European Commission found that the large majority of its interlocutors in the Government of Rwanda, human rights NGOs and international agencies were positive about HRFOR's impact.[231]

The HCHR/CHR presence in **Burundi** raises even starker questions regarding the role of a human rights presence in a situation of acute current conflict. Its technical co-operation activities appear naive in the absence of a political context in which respect for human rights could be institutionalised. When a substantial monitoring presence was first agreed to in 1995, it could have been deployed outside the capital and played some role at least in providing reliable information on the killings of civilians by both sides to the conflict, but funding constraints meant that the moment was lost, and the security situation had so deteriorated by the time monitors were deployed that their role could only be a severely limited one.

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229 William Clarance, "The Human Rights Field Operation in Rwanda: Protective Practice Evolves on the Ground", op.cit., p.292.

230 The author. The view summarised here was developed in a paper circulated to the Government of Rwanda and donors entitled "The Strategy and Priorities of HRFOR in 1996".

231 Ingrid Kircher and Paul LaRose-Edwards, *Evaluation of the European Union Contingent to the UN Human Rights Field Operation in Rwanda*, for DG VIII Development (External Relations and ACP Unit) of the European Commission, January 1997, Executive Summary.

Notwithstanding the strong stated commitment in the Dayton Agreement to human rights observance in **Bosnia and Herzegovina**, a central weakness in the implementation of its civilian aspects has been the failure to give a strong human rights monitoring mandate, together with the necessary resources, to a single international organisation able to implement it. It was envisaged that, while an International Police Task Force (IPTF) would be deployed by the UN, the main human rights monitoring role would be played by the OSCE. Two closely-related functions were thus placed under different international organisations. The OSCE was also given the responsibility of supervising the electoral process. The OSCE had little prior experience of mounting a substantial human rights monitoring presence, and appears not to sought advice from international organisations which do have such experience. Its staffing resources were never adequate for an effective monitoring presence throughout Bosnia and Herzegovina: initially it was proposed that it would have about 65 human rights officers, but the actual number has never exceeded 40. In mid-1997 there were 34 human rights posts, in addition to a similar number of staff with responsibility for democratisation activities, separated in the OSCE mission's structure from human rights. Dependence on secondment by governments did not allow it to recruit a strong core of staff with professional human rights experience. Priority was given to its electoral function in the allocation of personnel, and there is a widespread consensus that its human rights monitoring function was in 1996 subordinated to the political determination to proceed with and certify the elections. Meanwhile the most substantial non-military international presence, the UN civilian police of the IPTF, whose mandate is in essence a human rights mandate, has operated largely without professional human rights guidance. The European Community Monitoring Mission, first established in 1991, focuses on political reporting, including reporting on aspects of the human rights situation; its 81 monitors are diplomats, military officers and NCOs, with no specialised capability in human rights investigation and reporting. All this is supposed to be co-ordinated by the High Representative, through periodic meetings of a Human Rights Task Force and a Human Rights Co-ordination Centre established within his Office, but with no senior official with an exclusive human rights responsibility reporting directly to him. The consequence of these arrangements is that there is substantial duplication of first-order reporting of human rights incidents, but further investigation remains weak, as does follow-up with the authorities and public reporting. Much time has to be devoted to efforts at co-ordination, which are only partially successful. The degree of professional human rights experience being applied through the different organisations is seriously inadequate.

In **Angola**, the UN was asked to monitor the Angolan national police, but not explicitly to verify the parties' human rights commitments. The Security Council however welcomed the intention expressed by the Secretary-General to include human rights specialists in the political component of UNAVEM III, and this became the starting-point for a human rights unit which by early 1997 had 14 officers; six of these were employed by AWEPA, the Association of Western European Parliamentarians, with funding from the European Commission and individual EU governments. It has emphasised promotional activities in collaboration with the Government and UNITA, while taking an extremely cautious approach in relation to the investigation of human rights violations. The human rights unit is to become a sizeable component of the follow-on operation, MONUA, mandated by the Security Council at the end of June 1997: it will have 55 officers, including 26 UN Volunteers. In **Eastern Slavonia (Croatia)**, the UN Transitional Administration (UNTAES) established at the beginning of 1996 had a strong human rights mandate and human rights officers were included in its budget, but no human rights unit was established until mid-1997. Both operations were managed by the Department of Peace-keeping Operations (DPKO), and the human rights professionalism

available to them was weak or non-existent. There was no involvement of the HCHR/CHR until early 1997, when it was agreed that the HCHR/CHR should take on the role of giving professional direction and support to these human rights units: the precise organisational arrangements are not yet clear.[232]

From the experience of these missions, three main sets of factors can be seen to be relevant to the performance of different human rights field operations: the clarity of their mandates, the quality of implementation and the funding arrangements.

III MANDATES

The most obviously successful human rights field operations have been those in El Salvador and Guatemala, where the mandate established for each mission was clearest and was related to an overall political strategy on the part of the international community which proved to be feasible. Conversely, the lack of definition of the mandate of HRFOR in Rwanda, and the proliferation of human rights mandates of weakly-co-ordinated international organisations in Bosnia and Herzegovina, have contributed to their difficulties.

This should not however be taken to imply that human rights field operations should be attempted only in the most favourable of conditions. In Haiti, the mandate was clear but the political strategy initially failed: this is not to say that it should not have been attempted. The acceptance of a human rights field presence and its mandate depends upon the government or the parties to a conflict: in Angola, the attitude of the government may have precluded a clear human rights mandate, and it may thus have been necessary to proceed from a modest beginning.

The mandates of previous operations can usefully inform negotiators, and all mandates should be founded upon relevant international human rights standards, especially those by which the state is bound. But each mandate must be shaped according to the specific country situation. In Rwanda, the genocide and scale of internal and external displacement were special factors. In Guatemala, the situation of indigenous people was a central issue. In Haiti, it was right to exclude technical assistance until such time as constitutional government was restored.

In general, however, human rights field operations should be conceived as integrating preventive, monitoring (verification) and assistance (technical co-operation, institution- or capacity-building) functions. This has not been the view of all analysts: a USAID study[233] argued that "attempting to reform a legal system may not be well-suited to transitional bodies such as human rights monitoring missions". Others have suggested, with some justification, that in the case of Rwanda the operation initially attempted to usurp functions properly those of UNDP. But in relation to the administration of justice, there is a complementarity between UNDP's long-term project management capability, the criminal justice expertise of the UN Crime Prevention and Criminal Justice Division, and the capacity of a human rights field operation to make available professional human rights expertise and to utilise its unique outreach to identify needs and be supportive at the local level: this has enabled field operations

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232 but see footnote 32, below.

233 Stephen Golub, op.cit., p.17.

to play an important role in developing justice systems.[234] In an integrated operation, the monitoring identifies needs for training and resources, the technical co-operation ensures that those needs can be addressed, and the monitoring again provides feedback on the effectiveness of technical co-operation projects in improving aspects of the human rights situation to which they are directed. Certainly in a situation where institutions have been destroyed or have never existed, such as post-genocide Rwanda, to point to human rights violations while offering no linkage to assistance is to invite dismissal, and to pursue technical co-operation while ignoring serious on-going violations is naive and unacceptable. As one human rights director wrote of the El Salvador experience:

> "...human rights monitoring and institution-building were inextricably linked. This relationship is, without doubt, the key to an operation of this kind which goes beyond the mere proving and denouncing of violations or of traditional technical assistance programs which often have no relation to practical results or people's daily lives."[235]

Human rights field operations of international organisations will and should always have a limited life, while the task of developing institutions for the protection and promotion of human rights is a long-term one, in which the role of civil society as well as government is crucial. Such operations must consciously seek to avoid displacing indigenous human rights activity, and do all they can to support and encourage it. The extent to which non-governmental organisations can be directly associated in their work will vary, according to the political and security context, and according to different areas of activity. Human rights promotion is usually best implemented by local actors, with international operations playing only a supporting role; while the international and local actors should normally maintain the autonomy of their respective monitoring and investigation. The international operation should plan for the sustainability of human rights protection beyond its own withdrawal; this will be facilitated if a UN human rights presence is not completely withdrawn at the end of a peace-keeping operation, but a limited presence can be sustained under the mandate of the High Commissioner.

IV IMPLEMENTATION

The three human rights field operations launched by the Department of Political Affairs (DPA) - El Salvador, Haiti and Guatemala - were each preceded by planning missions, involving human rights professionals from outside the Secretariat.[236] These contributed significantly to the conceptualising, planning and budgeting for the operations, and could usefully become standard practice where such an operation is envisaged.

Both the speed and quality of recruitment of staff for the operations have been criticised, to different degrees but in all cases. To some extent this is associated with the novelty of the type of operation, and now with the experience of five major UN operations it is possible to see a cadre of human rights field officers developing, able to bring field experience from one operation to another. However, neither New York nor Geneva yet has procedures in place able to evaluate the human rights credentials and field orientation of large numbers of recruits. It is particularly difficult to recruit senior managers with the experience appropriate to such

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[234] For example, in Haiti MICIVIH developed a prison reform project in collaboration with UNDP and the UN Crime Prevention and Criminal Justice Division.

[235] Diego García-Sayán, "The Experience of ONUSAL in El Salvador", in Alice Henkin (ed.), op.cit., p.38.

[236] The report submitted to the Secretary-General by the team of human rights experts on Haiti was published in UN document A/47/908, 24 March 1993.

operations, and the difficulty is exacerbated by the absence of arrangements for rotation between field and headquarters posts, such as exist in a large field agency like UNHCR. So far, no senior officer from the Centre for Human Rights has gone to work in any of the large field operations, and no senior officer who has worked in one of them has subsequently worked in the Centre for Human Rights.[237] While the processing of recruits for the field can be located in any administrative unit, the professional judgement to be applied in the recruitment of human rights field staff, and the capacity actively to search for the best candidates, should be developed in the Centre for Human Rights. Directors of field operations should have the final say in the acceptance of the staff they will manage.

Recruitment of human rights field officers by regional organisations - the OAS for Haiti, the OSCE for Bosnia, the European Commission for Rwanda - has been no more satisfactory, and has been carried out largely without any professional human rights assessment of the qualifications and experience of candidates. The dependence of OSCE recruitment on secondment by governments poses a particular obstacle to identifying appropriate personnel for human rights field work, and the OSCE was resistant to adequate human rights training for its staff in Bosnia. Recruitment by the UN Volunteer Programme has been generally satisfactory, but closer collaboration between the Programme and the Centre for Human Rights, when the latter develops its field recruitment capability, could further improve UNV recruitment for human rights field posts.

The training arrangements for human rights field officers have also been justifiably criticised.[238] Training cannot be separated from the clarity of the mandate of the operation and the development of its own guidance to its officers on how to carry out their work: it is not simply a matter of familiarisation with international human rights standards. In Haiti, the first UN observers were deployed in February 1993 without training, but from May 1993 observers received a 3-week induction course, covering an introduction to the Haitian environment and legal system; the human rights law context of the mission's mandate; techniques of investigation and reporting; special issues such as prison visits, demonstrations and internal displacement; and essential orientation information (including security). Haitian speakers were invited to present the Haitian context, and role play was used to develop practice in interviewing victims, witnesses and authorities. Observers were taught Creole, the local language. A field guidance manual was developed by July 1993. In El Salvador, a methodological guide was not developed until the mission had been in the field for well over a year, and even longer elapsed before field guidance was developed in Rwanda. However, there has begun to be cross-fertilisation across the efforts of different operations, and the Centre for Human Rights has belatedly undertaken a project to develop generic training materials and guidance for human rights field operations.

In November 1996, the High Commissioner entered into an agreement with the Norwegian Resource Bank for Democracy and Human Rights (NORDEM), jointly operated by the Norwegian Institute of Human Rights and the Norwegian Refugee Council, for NORDEM to establish a roster of staff for rapid deployment to support activities of the High Commissioner. The Canadian and other governments are committed to or considering similar stand-by arrangements. These are seen as helping to overcome some of the problems both of rapid recruitment and inadequate training, since those on the roster will undertake pre-training. Such

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237 An official of the Centre for Human Rights was the first head of the post-UNTAC office of the HCHR/CHR in Cambodia, and subsequently returned to the Centre, but not with any responsibility for field operations.

238 Most recently and comprehensively by Karen Kenny, op.cit.

rosters could indeed contribute to the capacity to mount a field operation speedily and effectively, but expectations of them should not be too high: they are certainly not an alternative to the need to develop the direct recruitment and training capacity of the UN. The balance of nationalities within a field operation should not be unduly weighted by such arrangements, the most important training must be mission-specific and undertaken by staff together in-country, and the good management of a field operation requires that national or regional teams should not maintain a separate identity or separate administrative and logistical arrangements within an integrated operation.

Human rights field operations have experienced serious administrative and logistical difficulties impairing their functioning. These were probably most serious at the beginning of HRFOR in Rwanda, since Geneva lacked both experience and established procedures for administering and providing logistical support to a field operation. But MICIVIH in Haiti, administered from New York, also faced acute difficulties. In both cases, logistical support from outside the UN - the OAS in the case of Haiti, and the European Commission in the case of Rwanda - mitigated the UN's deficiencies. Problems of slow recruitment and inadequate logistical support cannot however be separated from the issue of funding.

V FUNDING

There are four current methods of funding UN human rights field operations: funding within a peace-keeping operation mandated by the Security Council; funding as a civilian mission mandated by the General Assembly from the regular budget; funding from the regular budget of the Centre for Human Rights; and funding from voluntary contributions. Currently, human rights posts in Angola, Liberia and Eastern Slavonia are funded within peace-keeping operations mandated by the Security Council; MICIVIH in Haiti and MINUGUA in Guatemala are mandated by the General Assembly and funded from the regular budget; the office of the HCHR/CHR in Cambodia is funded within the regular budget of the Centre for Human Rights; and the operations/presences of the HCHR/CHR in Rwanda, Burundi and elsewhere are funded by voluntary contributions.

Difficulties are associated with each of these. Funding within a peace-keeping operation encounters the resistance of some members of the Security Council to any human rights (as distinct from humanitarian law) mandate flowing from that body, and this may run counter to the appropriate mandate and involvement of the High Commissioner. Funding from the regular budget is most appropriate to a civilian human rights operation, but has become difficult in view of the determination of member states to maintain an absolute ceiling on the regular budget, without a substantial contingency from which one or more sizeable operations can be funded: it is not rational or realistic for a substantial but short-term field presence to be funded by cuts in the core budget of the UN. Thus on 12 March 1996 the Secretary-General addressed a letter to the President of the General Assembly[239] expressing deep concern that the Assembly's request for the continuation of the human rights field operations in Haiti and Guatemala, hitherto funded out of the regular budget, stood in danger of not being secured if requisite financial resources were not provided. He noted that on a number of occasions, for example in his Supplement to an Agenda for Peace[240], he had drawn attention to the need to establish agreed procedures for the financing of "a class of field missions which are neither peace-keeping

239 UN document A/50/891

240 UN document A/50/60

operations nor the kind of recurrent activity which is normally funded out of the regular budget". He pointed out that "the human rights missions whose future is at stake...have been designed in a way that responds to the frequently expressed wish of the Member States that higher priority should be given to preventive and peacemaking activities, which are a less costly remedy than peace-keeping operations".

By far the greatest difficulties are associated with trying to mount and sustain a large human rights field operation on voluntary funding, as in the experience of HRFOR. Pledges in response to his August 1994 appeal encouraged the High Commissioner to mount the operation, but these were slow to be paid over. Under UN financial procedures, commitments can only be entered into once funds to cover them have actually been received. The launching of the operation was bridged by a $3 million loan from the revolving fund managed by the Department of Humanitarian Affairs: repayment of this loan became a major funding hurdle. UN contracts were often issued only from month to month, and in mid-1995, although the operation remained below its intended strength, some staff knew they were on a list for retrenchment. The consequences for morale, efficient management and recruitment of much-needed professionals were obvious. The High Commissioner noted in his reports on HRFOR that:

> "Contributions have been unforeseeable, and have therefore not provided a basis on which sound planning could take place. It has only been possible to give staff contracts of an abnormally short duration, even for a field mission; this has posed difficulties in both recruitment and retention of staff, and the very high turnover experienced has been disruptive of sustained relationships of co-operation with the authorities and other organisations, as well as of the professional standards of the Operation."[241]

Such difficulties have not been confined to the large operation in Rwanda: they have been similarly experienced by the HCHR/CHR operations in Burundi, the former Yugoslavia and elsewhere. While UN Volunteers have a place in human rights field operations and have performed well in Rwanda, as well as in Guatemala, Haiti and elsewhere, the pressure to contain costs has sometime resulted in their use where more experienced human rights professionals, and/or recruits with previous field experience, would have been more appropriate.

In his annual report to the 1996 Commission on Human Rights, the High Commissioner proposed that a human rights fund for field activities be established to ensure that his Office could conduct its work in those countries where such initiatives and co-operation were necessary and welcome, based on a predictable source of funding that allowed for proper planning and management of the operation.[242] One government subsequently made a major contribution which was not earmarked for a particular operation, but in general substantial voluntary contributions have continued to be tied to individual operations. The High Commissioner has felt it necessary, in order to secure funding from the European Commission and individual governments, to resort to a series of arrangements which are unsatisfactory in relation to the good management of integrated operations under his authority.

VI STRUCTURES

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241 UN document E/CN.4/1997/52, 17 March 1997. See also UN documents A/50/743, 13 November 1995, and E/CN.4/1996/111, 2 April 1996.

242 UN document E/CN.4/1996/103

It has already been indicated that a series of different organisational structures have applied to UN human rights field operations or components. Some (El Salvador, Haiti, Guatemala) have primarily been managed by DPA in New York; others (Cambodia, Angola) have been fully part of a peace-keeping operation; while in Rwanda the High Commissioner mounted a human rights field operation alongside, but completely outside, an already-established peace-keeping operation. In October 1996, the Security Council authorised and funded a human rights office in Abkhazia, Georgia, which reports to the High Commissioner through the Head of Mission of UNOMIG.[243] Similar arrangements have been proposed by the Secretary-General for the follow-on operation to UNAVEM III in Angola, MONUA[244], and agreed between DPKO and the High Commissioner for the human rights unit within UNTAES in Eastern Slavonia.

Where the UN has a political mandate, and especially where there is a UN peace operation or political office in the country, the organisational arrangements for human rights operations or components need to meet a number of criteria:

(i) a UN human rights field presence must be part of the overall UN strategy for building peace and accomplishing a political transition;

(ii) the integrity of UN human rights monitoring and reporting must be seen to be independent of political pressures;

(iii) UN activities in-country must be effectively co-ordinated, and close working relationships established between the human rights field presence and others with closely connected mandates, who may be inside (eg CIVPOL) or outside (eg UNDP, UNHCR) the peace-keeping operation;

(iv) a UN human rights field presence must receive professional human rights guidance and support, benefit from the experience of similar operations elsewhere, and be co-ordinated with the different mechanisms of the UN human rights system;

(v) administrative and logistical support to UN operations in the field must be provided in the most efficient and cost-effective manner, with a human rights presence receiving equal priority to other components.

It is increasingly recognised that the High Commissioner should have substantive reporting responsibility and give professional direction to any human rights presence in the field, whether it stands independently of or is within a peace-keeping operation. It is inconsistent with the High Commissioner's mandate for this not to be the case. The current lack of capacity and experience in the Centre for Human Rights in Geneva to support this role must be addressed. At the same time, human rights activities should not be pursued in isolation from wider UN strategies, as has tended to be the case with the High Commissioner's own initiatives, in

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243 China abstained, maintaining that "it is beyond the Security Council's competence to authorize the establishment of the afore-mentioned office".

244 These arrangements were described in the Secretary-General's report (UN document S/1997/115, 7 February 1997, p.10-11) as follows: "The unit would report to the UN High Commissioner for Human Rights through the head of the follow-on mission. The UN High Commissioner for Human Rights would select and train qualified human rights personnel in consultation with UN Headquarters in New York. He would further ensure that the Human Rights Unit received all necessary guidance to enhance its capacity to carry out effective human rights work. The High Commissioner would further support the Unit by providing assistance in formulating, developing and implementing advisory services and technical cooperation projects aimed at strengthening national human rights institutions and the administration of justice."

Rwanda and elsewhere. The High Commissioner should be the link between human rights operations and mechanisms and overall UN political, peace-keeping, humanitarian and development activities: to play this role effectively requires a major strengthening of the High Commissioner's representation in New York. The central recommendation of the Aspen Institute's study, formulated in September 1994 and published and put to Secretariat decision-makers in April 1995, largely holds good two years later:

> "There is a pressing need for greater co-ordination and planning within the UN system concerning human rights field work...
>
> "A specialised unit within the UN system should be established for these purposes. Such a unit should be able to assess missions during and after their service. It should debrief out-going mission staff in order to benefit from their experience and begin building an institutional memory within the system. The unit would develop policies and guidelines for mission operations, and organise pre-deployment field assessment missions.
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> "The unit should be responsible for initiating professional recruitment. It would create pools of competent and trained personnel available on short notice; develop and disseminate codes of conduct, training manuals, and handbooks; and organise special training programs, including induction training. In addition, it would design standard reporting formats; establish administrative structures ready to give logistical support, and establish effective communications."[245]

Administrative and logistical support should be provided from the Field Administration and Logistics Division of DPKO, since the Secretariat should most economically operate a single service for such support to its field operations - subject however to the important condition that the human rights presence should receive equal priority with other UN field presences.

The model agreed for Abkhazia (Georgia), Angola and Eastern Slavonia, whereby the Chief of the human rights presence reports to the High Commissioner through the Head of Mission or Special Representative of the Secretary-General, provides for co-ordination of UN strategy and activities in-country, while ensuring professional human rights direction and support, and affording a substantial degree of independence of the human rights monitoring through reporting to the High Commissioner. (Before the creation of the post of High Commissioner, the Director of the Human Rights Division of ONUSAL reported on the human rights situation direct to the Secretary-General, while operationally responsible to the Chief of Mission.) The involvement of the HCHR/CHR during the peace-keeping phase should ensure that regard is had to the continuation of human rights work after the peace-keeping mandate is terminated. The hiatus that existed between the withdrawal of UNTAC from Cambodia and the establishment of the human rights office there should be avoided. The experience in Rwanda, where a separate human rights agreement between the High Commissioner and the Government helped to ensure that the human rights operation's mandate was unaffected by the withdrawal of an unpopular peace-keeping operation, was unusual but may also have relevance to some other situations in future.

Some rationalisation of the organisational structures for human rights presences in the field should also allow for a rationalisation of public reporting and relationships to other human rights mechanisms. Wherever the UN has a human rights presence with a monitoring/verification mandate, there need to be clear arrangements, understood by the government concerned, for public reporting. As a matter of good human rights practice, such arrangements should always include the prior submission of reports to the government for discussion and response within a reasonable time-frame. The major operations mandated by the

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245 Alice Henkin (ed.), op.cit., p.28-9.

Security Council or the General Assembly have had their reports made public, although not always as promptly or frequently as would have been desirable. There have not however been satisfactory and consistent procedures for the reporting of human rights components within peace-keeping operations (Cambodia, Angola) or the HCHR/CHR's field operations/presences (Rwanda, Burundi). The latter have not had their reports published as formal UN documents, although their information has been made public or semi-public in other ways. Their reporting has been partly inhibited by mandates implying that the public reporting based on their monitoring is the responsibility of the special country rapporteurs. If field operations and special country rapporteurs are to report on the same country, a policy should be established regarding the relationship between the reports of each, especially where a field office of the High Commissioner is explicitly mandated to support the special rapporteur and thus to be his/her main source of information. No-one - including NGOs pressing for more public reporting by UN operations - has yet grasped this nettle, which may call into question whether there should continue to be a special rapporteur on a country where there is a substantial human rights field operation.[246]

VII CONCLUSION

Notwithstanding the difficulties experienced by the early operations, they are in most cases outweighed by their positive contributions: human rights work in the field is indeed the frontier of effective human rights protection and promotion today. The appointment of the second High Commissioner for Human Rights, and a new Secretary-General's commitment to UN reform based on better integration of the work of the UN system, offer a moment when more effective arrangements can and must be made to carry this work forward.

Improved arrangements need to be based on a recognition by the New York departments and UN agencies of the central role of the High Commissioner, and by the High Commissioner of the need to link human rights to overall UN political, peace-keeping, humanitarian and development strategies.

The High Commissioner must be supported by a unit which identifies clearly within the organisational structure the responsibility to plan, support and provide an institutional memory for human rights field work, and personnel who bring human rights field experience to this task. Her New York representation must link human rights, and especially human rights field presences, into the Executive Committees, other Secretariat departments and UN agencies.

Planning missions, involving outside human rights expertise where appropriate, should be undertaken when a major operation is first conceptualised. There should as a matter of routine be periodic evaluations during the life of an operation and when it is concluded. At least senior field staff, and as far as possible all field staff, should be de-briefed. The development of

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246 The arrangements laid down in the Agreement on the establishment of an Office of the UN High Commissioner for Human Rights in Colombia (where there is no special country rapporteur) are of interest in this context: "The High Commissioner shall present publicly to the UN Commission on Human Rights detailed analytical reports on the activities of the Office..., as well as on the human rights situation in Colombia, bearing in mind the climate of violence and internal armed conflict. He shall also make any observations and recommendations he deems necessary. For the discharge of their respective mandates, the High Commissioner shall make the relevant information gathered by the Office available to the various bodies established under human rights treaties to which Colombia is a party, as well as to other UN human rights mechanisms and programmes. The Government may express its views on the above-mentioned High Commissioner's reports and make any observations it deems necessary on their content, and may request the High Commissioner to transmit such observations to the Commission on Human Rights, without prejudice to the right of the Government to address the Commission itself when it deems necessary."

training and field guidance materials, drawing upon those developed in the early and current operations, should be completed as soon as possible and thereafter updated.

Member states should agree upon funding arrangements which allow human rights field operations to be mounted and managed effectively. It is doubtful whether there is any satisfactory alternative to a route to assessed contributions for major operations. Operations should be mounted or continued on the basis of voluntary contributions only if these are delivered up-front and sufficient to cover realistic planning periods.

Administrative and logistical support should be provided from the single Secretariat unit equipped to support field operations, the Field Administration and Logistics Division, on the clear understanding that equal priority attaches to the needs of field operations whatever their managing department. The unhappy experiences of both New York- and Geneva-managed operations should be reviewed to arrive at a clear understanding of the needs of such operations and how they can be more quickly and effectively met in future.

The arrangements agreed for Abkhazia (Georgia), Angola and Eastern Slavonia, whereby the Chief of a human rights unit reports to the High Commissioner through the Head of Mission/SRSG, should become the provisional model for a human rights field presence where there is a peace-keeping operation. The actual experience with these arrangements should be subject to early review.

UN experience of human rights field operations should be available to regional organisations, and drawn upon by them when undertaking human rights mandates in the field.

UNDP's Role in Promoting and Protecting Human Rights in Crisis and Post-Crisis Countries[247]

Colleen Duggan[248]

1. Overview of UNDP Involvement

In recent years, UNDP has been increasingly called upon to assist countries in the transition from crisis to post-crisis situations. During this same period, more than 40 per cent of the official development assistance managed by the United Nations has been dedicated to emergency relief operations resulting from crises whose roots often lie in religious or ethnic cleavages and the social exclusion of sectors of individuals from crucial decision-making processes which will affect their lives and the lives of their children. Clearly, most humanitarian emergencies, particularly those of the human-made variety, are often precipitated by, and are always accompanied by the widespread disregard of fundamental human rights.

By virtue of its large field presence, UNDP country offices are at the forefront of response to complex emergencies. These flashpoint countries not only pose a threat to international, regional or local peace and security; They provoke massive population dislocations and obliterate the results of years of Sustainable Human Development gains by destroying economic infrastructures, decapacitating legitimate political systems, undermining indigenous coping capacities and wreaking havoc upon the physical environment. Where violations of humanitarian and human rights law have been particularly egregious and widespread, chances for renewed nation building and reconciliation among the civilian population become remote.

Any effective development strategy for response to crises and the trauma of their aftermath must be cognizant of the cause and effect linkages mentioned above. By addressing the social, economic, political and at times, cultural human rights related causes of crises, development can often play a crucial preventive role before crisis breaks out. In the same way, an enhanced understanding of the complex interdependence between the strengthening of democratic structures, respect for human rights, civic participation, socio-economic development and peace building can prevent a reoccurrence of conflict. The conclusion is that a human rights based approach to development in countries undergoing or emerging from complex humanitarian emergencies (euphemistically known as "Countries in Special Development Situations" in UNDP) should prioritize initiatives for conflict prevention, recovery, rehabilitation and eventually, reconciliation. The promotion and protection of human rights is at the very heart of such a strategy.

The development problems posed by the complexities of pre-crisis, crisis and post-crisis environments have lead UNDP to reflect upon the impact it can have in Countries in Special Development Situations. In order to tackle the particular challenges of these countries, in

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247 With regard to the promotion and protection of civil and political rights - those of primary concern in a conflict situation - UNDP, as a development agency, concerns itself primarily with human rights capacity building. Although the present conference will focus upon protection issues amidst acute crises, it is hoped that this paper will make a contribution to the British government's efforts to take a human rights-based approach towards its development cooperation policies.

248 Emergency Specialist in UNDP's Emergency Response Division. The views contained within this paper are those of the author and do not necessarily reflect those of the United Nations Development Programme.

1995 UNDP's Executive Board allocated five per cent of core resources towards a new programming arrangement. These resources (approximately US$ 150 million over a five year period) are meant to be catalytic in nature and are earmarked to help coordinate rapid response, promote reintegration and participatory processes, strengthen governance and launch recovery programmes.

In the area of preventive development, UNDP is learning to recognize signs of early warning such as parliamentary crises or discontent in pockets of minorities who are perhaps discriminated against by economic or social policies. Such cases merit immediate development initiatives; Protective mechanisms such as electoral or human rights commissions can be strengthened to backstop the overall national capacity for governance, thus reducing the chance of political instability. The human rights of vulnerable groups and minorities can be specifically addressed within national development strategies in order to guarantee that these groups do not look to alternate sources for protection.

During periods of crisis, UNDP activities are in themselves preventive in that they aim to avert the denial of the right to development. By sustaining livelihoods and seeking to strengthen local coping mechanisms and maintain social services, massive population dislocations, can be minimized or avoided, thereby reducing the scope and duration of the humanitarian emergency. In complex emergencies, the UN Resident Co-ordinator (not always, but most often the UNDP Resident) is often called upon to act as the Humanitarian Co-ordinator. This offers a unique forward-looking opportunity to bridge relief and development activities by ensuring that dependencies are not created and that a country's development capacity for recovery and rehabilitation is not undermined by prolonged relief assistance.

In may cases, governments undergoing or emerging from conflicts have neither the time nor the capacity to plan for the future and to optimize the vastly increased assistance that is associated with impending peace. Strategic Frameworks for Recovery facilitate a holistic approach to relief and development by promoting the primacy of national ownership and complementing domestic resources with international support.

In the aftermath of war, through programmes of training and employment, UNDP affords ex-combatants the opportunity to trade in their weapons and become productive members of society. Area rehabilitation and development schemes are designed to address the social and economic rights of returning ex-combatants, internally displaced persons and returning refugees, by enabling or reinforcing the capacity of receiving communities to reintegrate these new residents. UNDP area development schemes start up in earnest when humanitarian agencies begin to wind down. By aiming at alleviating war-induced deprivation, they can be meaningful instruments of confidence building between estranged groups, thus advancing community stabilization, ethnic or religious accommodation and eventually, reconciliation. The above activities are often preceded by mine action programmes that raise awareness of the danger of landmines and strengthen national capacity for mine removal so that productive agricultural land does not remain idle.

Reconstruction, recovery and reconciliation cannot advance in the absence of basic human security and strong national institutions that protect and guarantee the most fundamental human rights. In most post-conflict societies, governance institutions charged with upholding the rule of law have been polarized and face severe financial and technical difficulties resulting from years of neglect. UNDP is instrumental in supporting countries in democratic

transition by providing necessary assistance for judicial reform, prison administration and demilitarization through the training of civil police forces. The promotion of genuine reconciliation requires supporting countries in their efforts to come to grips with past history of human rights violations, either through investigative or "truth-telling" commissions, depending upon what mechanisms have been decided upon through democratic processes. The development of peaceful methods of conflict resolution, particularly at the local level and the inclusion of all actors in the development process are safeguards against exclusive policies, which often generate conflict. In the final analysis, the presence of a strong civil society that is aware of its human rights and expects its government to promote and protect them, is the greatest guarantee of all against crisis.

2. Addressing Problems of Disconnect and Operability within the United Nations

In the most complex human right scenarios today, the principle dilemma of the UN is how to tackle the problem of disconnect between political, humanitarian, human rights and development objectives. Solving this problem is at the heart of current proposals for UN organizational reform best illustrated in the Secretary General's report "Renewing the United Nations: A Programme for Reform".[249]

Since the end of the Cold War, the UN has been increasingly called upon to intervene in failing or failed States, which fall into essentially three categories:

i) Fractured or disintegrating states such as Somalia;

ii) States whose governments enjoy varying degrees of acceptance and legitimacy in the eyes of the international community, e.g. Afghanistan;

iii) So-called "rogue states" where power has been seized through undemocratic means, e.g. Sierra Leone.

In such states, intervention to end the worst war-related human rights atrocities becomes exceedingly difficult when different UN bodies are operating in function to their differing mandates. During complex humanitarian emergencies, particularly those of a protracted nature, effective conflict management becomes virtually impossible in the absence of ground rules and clear policy directives to guide the multitude of international actors involved (regional Organisations, international financial institutions, UN, NGOs and bilateral cooperants). As is well known, humanitarian assistance is often manipulated by parties to a conflict, an unfortunate occurrence when the targeted violation of the human rights of civilians is being employed as a method of warfare. For relief workers, any kind of human rights conditionality is overruled by the cardinal principles of humanitarianism. An equivalent divergence exists at the political level, where human rights protection often takes a back seat to the delicate negotiations surrounding a cease-fire. In this scenario, guaranteeing the protection of the most basic human rights becomes close to impossible as human rights concerns are eclipsed by what are considered to be more immediate and pressing needs for ending the conflict and the human suffering associated with it. It all seems to make sense. And yet...

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249 UN doc. A/51/950, 14 July 1997.

Ironically, human rights protection is the linchpin to any effective political and humanitarian strategy for responding to, containing, managing or brokering a solution to conflict. There is an indisputable body experience being accumulated on the ground that is proving that the brokering of fragile political agreements at the expense of human rights objectives does not make for sustainable peace. That's not all; as these fragile agreements collapse in on themselves and violations recommence - often with increased virulence - the UN and the international community lose credibility. Each successive attempt to bring the situation under control becomes more difficult.

As conflict is contained or ends and when conditions are finally conducive to the resumption of "normal" development activities, human rights promotion and protection should been seen as the central component for preventing a relapse into conflict - better know as peace building. And even so, in the seemingly less complicated post-conflict environment, one can still note within the UN, an ongoing schizophrenia related to the compatibility of human rights monitoring and verification activities with capacity-building activities. The debate is well known in human rights circles. However, most people, particularly those in the human rights community and a growing number of humanitarian relief and development practitioners (although fewer in this last category) are realizing that the two are interdependent and must be carried out simultaneously. One cannot take precedence over the other.

There is also a growing understanding within the UN system that a belief in the so-called "continuum from relief to development" has done more harm than good. Complex emergencies cannot be neatly sequenced into various phases during which different actors of the UN System pass off the baton and then sit back to watch the rest of the race. Humanitarian assistance is not an effective instrument for response to complex crises when used in isolation. Emergency relief, peacekeeping, diplomacy, human rights and development activities must be carried out simultaneously and must be structured to be mutually reinforcing. The complexities of intrastate conflicts call for a carefully orchestrated, holistic approach which must go well beyond "business as usual" if separate UN entities are not to be played off against one another by parties to a conflict. The first challenge at hand, then, is to ensure the widespread acceptance, first within the UN system and then outside, of all of the above mentioned linkages. The second challenge relates to operability: How to put to into practice multi-faceted, system-wide responses that recognize the primacy of human rights and perceive their protection and promotion as a central and cross-cutting concern.

Within the UN, a number of mechanisms are presently being developed in order to tackle the problems of disconnect and operability outlined above. These mechanisms are the result of hard-learned lessons in the field and are by no means perfect. Still, they do represent significant efforts to address in a meaning way the many problems associated with co-ordination arrangements.

2.1 At the Headquarters Level

2.1.1. Executive Committees

Within the framework of the Secretary General's strategy for reform, four Executive Committees were created in January of 1997 in order to create policy and strengthen decision-making processes in the main sectors of the UN's work - Peace and Security; Humanitarian Affairs; Economic and Social Affairs; Development Operations; and Human Rights. As a

cross cutting issue in the work of the entire UN system, it was decided that the fifth sector, human rights, should be mainstreamed into all aspects of the Organisation's activities. As such, the Office of the High Commissioner for Human Rights has a standing invitation to participate in all of the Executive Committees. UNDP convenes the Executive Committee on Development Operations (now called the Development Group)[250] and participates in the Executive Committees on Peace and Security[251] and Humanitarian Affairs.[252]

The "Ex Coms" act as a critical nexus in the strategic planning processes in each of the concerned UN entities. They provide a forum for heads of entities to consult upon substantive and administrative matters which have implications for other members of the Committee or for the Organisation as a whole. The Ex Coms are intended to be more than a mechanism for information sharing and co-ordination arrangements. Although they endeavour to reduce duplication between entities, it is hoped that synergies between entities will be stimulated, thus sharpening the contributions of all to the overarching objectives of the UN.

2.1.2. Secretary General's Task Force on Relief, Reconstruction and Development

As a forum for information sharing and consensus building, the Task Force concept is receiving renewed attention within the United Nations. The SG's Task Force on Relief, Reconstruction and Development was created in May 1997 with the objective of developing a coordinated and strategic approach for building stability in the Great Lakes Region. The Task Force, under the chairmanship of the Administrator of UNDP, brings together the convenors of the three relevant Executive Committees (mentioned above), in cooperation with the World Bank and with participation from other agencies that wish to do so.

The primary function of the Task Force is to provide a headquarters forum to ensure coordinated action among UN agencies, funds and programmes, and other international organisations, in order to maximize constructive and effective collaboration with the countries of the Great Lakes region, especially the Democratic Republic of Congo, Rwanda and Burundi. Not surprisingly, human rights issues are hotly debated within the Task Force, as they lay at the forefront of dialogue between the Great Lake's governments and the international community. Setbacks in the area of human rights including slow progress being made in the Tribunal in Arusha and the many "false starts" of the human rights investigation team presently in the Democratic Republic of Congo have knock on effects upon progress on other fronts, namely reconstruction and development. Similarly, the system as a whole needs to define a threshold, the point at which human rights violations become so grave as to irreparably undermine humanitarian mandates and thus lead to a decision to suspend operations.

The general sense of malaise resulting from these unresolved issues has prompted the Task Force to begin developing a set of "Principles and Rules of Engagement", the underlying belief being that the UN can begin to make a significant contribution to the Great Lakes region, only when it is in a position to act in concert with a consistency borne out of shared

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250 Comprised of UNDP, UN Fund for Population, UNICEF, Department of Economic and Social Affairs (UNDESA), UNOPS, UNIFEM , UN/AIDS, UN Drug Control Programme and Habitat.

251 Convened by the USG for Political Affairs and including the Department of Political Affairs, Department of Peacekeeping Operations - DPKO, Office for the Coordination of Humanitarian Affairs - OCHA (ex-DHA), UNHCR and UNRWA. UNDP participates regularly.

252 Convened by OCHA and including UNHCR, World Food Programme, UNICEF, DPKO, DPA and UNRWA. UNDP participates regularly.

principles and objectives. The definition of principles of engagement is not in itself a complicated task; Principles include the fundamental tenets of humanitarianism, neutrality and impartiality, in addition to principles laid down in the UN Charter, human rights instruments, the Geneva Conventions and their Additional Protocols and customary international law.

The formulation of Rules of Engagement will prove more problematic since they will in essence forge parameters for what is acceptable behaviour and what are the "lines in the sand" for the Task Force members and for the governments in question. When the "Principles and Rules of Engagement" are system-wide, they should lay the ground for all agencies to speak with one voice when fundamental mandates and norms are compromised or activities are under threat. They will also help individual agencies to predict how other agencies will react to different pressures and threat to both collective and individual mandates.[253]

What remains to be seen is whether these rules, once formulated, will be applied by the separate UN agencies during the course of their operations on the ground. The existence of rules also implies the need for an enforcement mechanism. In addition, the Task Force will have to grapple with the issue of deciding whether these rules should be applied in other regions of the world undergoing similar dilemmas (the precedent having been set), or whether their application should be restricted to the Great Lakes region only.

2.2 At the Field Level

2.2.1 Field Co-ordination arrangements: The Resident Co-ordinator/Humanitarian Co-ordinator System

In existence since 1981, the Resident Co-ordinator System was set-up in order to improve the efficiency and effectiveness of UN operational activities for development at the field level. Bearing in mind the complementarity of the UN system, and the need for a division of labour within the respective spheres of competence of funds, programmes and specialized agencies, the Resident Co-ordinator provides leadership and promotes a multidisciplinary approach to development.

As mentioned earlier, in times of emergency, the Resident Co-ordinator is often called upon to wear a second chapeau, that of Humanitarian Co-ordinator.[254] For such cases, the Inter-Agency Standing Committee - IASC[255] has developed special terms of reference for Humanitarian Co-ordinators, and over the course of the last five years, has hammered out detailed field co-ordination agreements in order to ensure greater linkages between relief and development activities.

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253 Working Draft, Working Group of the Great Lakes Task Force on Relief, Reconstruction and Development, February 1998.

254 Although this is the norm, it is not always the case. In a situation where it would not be viable for the Resident Co-ordinator to carry out humanitarian co-ordination functions, the IASC can take the collective decision to designate the humanitarian co-ordination role to another agency if deemed necessary.

255 The primary UN forum for improving the co-ordination of humanitarian assistance, the Inter-Agency Standing Committee was created by the Economic and Social Council (ECOSOC) in 1992. All UN agencies involved in humanitarian activities participate in addition to the International Committee for the Red Cross and Red Crescent Societies and the International Organisation for Migration. Non-governmental Organisations are invited to participate on an ad-hoc basis.

The primary function of the Humanitarian Co-ordinator is to facilitate and ensure quick, effective, and well-coordinated provision of humanitarian assistance to those seriously affected by the complex emergency in question. The Humanitarian Co-ordinator is directly accountable to the Emergency Relief Co-ordinator (who is also the USG for Humanitarian Affairs). If a Special Representative of the Secretary General (SRSG) is appointed for the country in question, the Humanitarian Co-ordinator will function under the overall authority of the SRSG. In addition to coordinating humanitarian assistance on the ground, the Humanitarian Co-ordinator is also responsible for ensuring the protection of humanitarian mandates in conflict situations, for mobilizing necessary resources (through Consolidated Inter-Agency Appeals), and for disseminating information regarding humanitarian needs and operations to the wider community (through the production of situation reports).

2.2.2 Strategic Frameworks for Recovery and Support to Strategic Planning

In situations of crisis, government co-ordination of external assistance can be sadly lacking, particularly in failed or failing states. In view of this fact, the UN System has been increasingly obliged to itself coordinate complex humanitarian assistance and recovery programmes and somehow bring these initiatives into line with the activities of International Financial Institutions. In such circumstances, the UN has lacked an overall framework for its different interventions. Different planning and resource mobilization mechanisms covering different activities of the UN and its partners all too frequently contain overlaps or gaps, which betray the absence of a unitary approach. With the onslaught of complex emergencies in the early nineties, the UN perceived an urgent need to develop an inclusive agreement for a broad "framework" for international assistance in crisis countries, including inputs from the different elements of the system – humanitarian, political, human rights and development – as well as from the wider donor and NGO community.

In April of 1997, the Administrative Committee on Co-ordination (ACC), under the chairmanship of the Secretary General, endorsed a new approach for peace building entailing the elaboration of "strategic frameworks" for relief and development activities in countries undergoing complex emergencies. The UN thinking behind the concept dovetailed with similar discussions taking place in other forums including the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD). Within the context of the UN Reform, the Department for Political Affairs, as the designated focal point for peace building is in charge of overall leadership for strategic frameworks.

The Strategic Framework is foreseen as an evolving multi-party consensus on an overall plan for United Nations and other multilateral, bilateral and NGO activities. It is hoped that the Framework, together with the political negotiating strategy of the UN system and its partners, will form the foundation of more coherent, system-wide approaches to varying country situations. The Framework is not a blueprint for the disbursement of international assistance under difficult circumstances and it cannot itself be a resource mobilization mechanism, for this would render it partial and thus undermine its primary objective of providing a holistic assessment and plan of action for a given situation. Rather, it is a policy statement or recommendation that should inform the overall programme including any fund-raising instruments prepared for the consideration of donors.

Although much effort is being expended trying to define exactly how strategic frameworks should be structured, in most cases it is agreed that as a minimum, strategic frameworks should:

- make an analysis of the situation and identify the underlying political, economic and social determinants of the crisis;
- discuss the goals to be pursued and the policies that orient the road map towards normalization, rehabilitation and recovery;
- describe the programme responses and operational modalities called for, assessing the political and economic risks and defining the prerequisites of success;
- provide the context and the logic for a rational allocation of resources, domestic and external, destined for relief, rehabilitation and reconstruction;
- identify political factors affecting governance (and by extension, the protection of human rights) and economic management;
- devise exit arrangements for forms of direct support (e.g. peacekeeping and human rights operations, relief assistance) that risk creating dependencies;
- be developed with the participation of the principal stakeholders and reflect a broad consensus between the government (if possible) and major donors.[256]

Seen in this light, it is clear that the *process* for formulating the framework is all important and the product will itself become a living document that will need to be reviewed and reshaped as changes occur over time. As a pilot experience, it has been agreed that the Strategic Framework will be tried in Afghanistan, Somalia and Sierra Leone. Similar strategic planning exercises are being planned for other countries including Georgia, DR Congo, Haiti and Tajikistan.

3. Conclusion

International efforts to expand the protection of human rights during acute crisis do not depend solely upon improved standard-setting and strengthened enforcement. Until the international community, and in particular the UN, devise more preventive and holistic approaches to conflict management which succeed in balancing the converging demands of politics, humanitarianism, military considerations, and post-conflict recovery, avoiding the massive violation of human rights during conflict will remain a difficult goal. Nevertheless, current efforts within the UN system to address problems of disconnect and operability and their relation to the global human rights agenda, give cause for renewed optimism.

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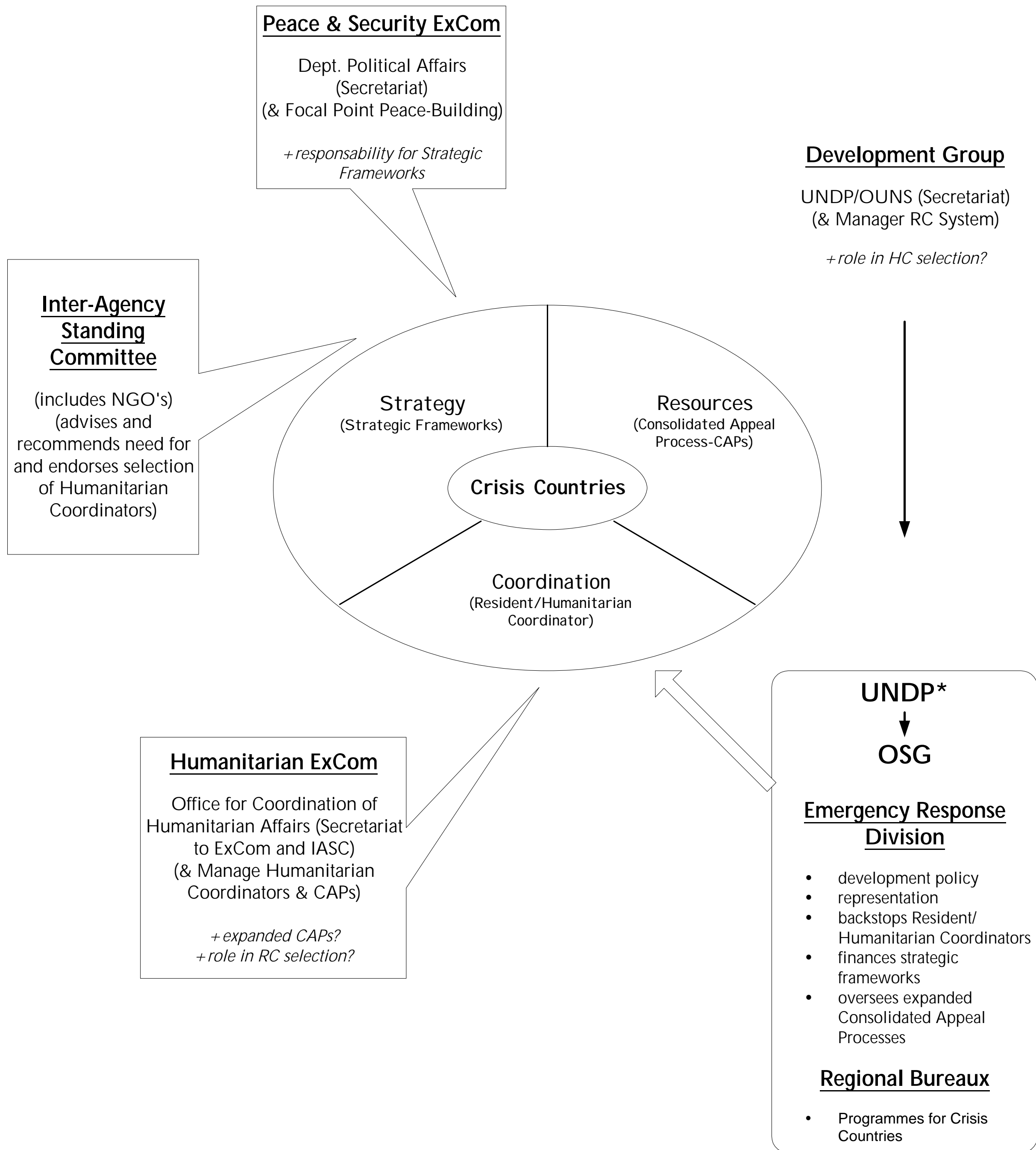
256 Bernt Bernander, "Fine-tuning Response Strategies: UNDP Programmes in Crisis Countries" (Draft), 1998.

CURRENT SITUATION FOR CRISIS COUNTRY MANAGEMENT



Source: Emergency Response Division, UNDP, 1997

Appendix A - List of Participants

Mr Mario Alessi Ambassador Chairman of the Interdepartmental Committee for Human Rights, Ministry of Foreign Affairs Rome, Italy	**Mr James Barbour** OSCE / CoE Department Foreign and Commonwealth Office London, UK
Mr Mikael Barfod European Community Humanitarian Office Brussels, Belgium	**Mr David Bassiouni** Chief of the Inter-Agency Support Branch and Co-ordinator of the Inter-Agency Standing Committee Secretariat Office of Co-ordination of Humanitarian Affairs (OCHA), Geneva, Switzerland
Mr Paul Bentall Global Issues Research Group Foreign and Commonwealth Office London, UK	**Professor Kevin Boyle** Human Rights Centre University of Essex Essex, UK
Ms Helen Browne Development Co-operation Division Ministry of Foreign Affairs Dublin 2, Ireland	**Mr Stephen Evans** OSCE / CoE Department Foreign and Commonwealth Office London, UK
Ms Marika Fahlen Humanitarian Co-ordinator Ministry of Foreign Affairs Stockholm, Sweden	**Professor Geoff Gilbert** Department of Law University of Essex Essex, UK
Professor Guy S Goodwin-Gill Centre for Socio-Legal Studies University of Oxford Oxford, UK	**Ms Ann Grant** African Department, Equatorial Foreign and Commonwealth Office London, UK
Ms Annabel Grant Department for International Development London, UK	**Mr William Gravelink** Office of US Foreign Disaster Assistance USAID Washington , USA

Professor Tom Hadden Centre for International and Comparative Human Rights Law Queen’s University Belfast Belfast, UK	**Professor Françoise Hampson** Department of Law University of Essex Essex, UK
Professor David Harris Department of Law University of Nottingham Nottingham, UK	**Ms Julia Hauserman** Rights and Humanity London, UK
Nick Howen Director Amnesty International International Secretariat London, UK	**Ms Sofia Iqbal** Rights and Humanity London, UK
Ms Ritva Jolkkonen Deputy Director General Ministry of Foreign Affairs of Finland Helsinki, Finland	**Dr Mukesh Kapila** Head, Conflict and Humanitarian Affairs Department Department for International Development London, UK
Ms Marion Kappeyne van de Coppello Co-director, Conflict Management, Prevention and Humanitarian Assistance Ministry of Foreign Affairs The Netherlands	**Ms Karen Kenny** International Human Rights Trust Nottingham, UK
Paul LaRose-Edwards CANADEM Ottawa, Ontario, Canada	**Mr Nick Leader** Overseas Development Institute London, UK
Mr Iain Levine Amnesty International New York, NY, USA	**Ms Ragne Birte Lund** Special Adviser/Ambassador for Humanitarian and Refugee Affairs, Ministry of Foreign Affairs Oslo, Norway
Ms Kate Mackintosh ICTFY The Hague The Netherlands	**Mr Ian Martin** Human Rights Centre University of Essex Essex, UK

Mr Georg Mautner-Markhof Office of the High Commissioner for Human Rights Geneva, Switzerland	**Mr Peter McDermott** Office of Emergency Programmes, UNICEF Geneva, Switzerland
Mr David Mepham Saferworld London, UK	**Mr Peter Meyer** European Commission Brussels, Belgium
Mr Ole E Moesby Ministry of Foreign Affairs Copenhagen, Denmark	**Mrs Rachel Monroe-Blanchette** Medecins sans Frontieres Ottawa, Ontario, Canada
Mr Marc Moquette Senior Policy Adviser Human Rights, Good Governance and Democratisation Department, Ministry of Foreign Affairs The Hague, The Netherlands	**Ms Sally Morphet** Global Issues Research Group Foreign and Commonwealth Office London, UK
Mr Nicholas Morris Director Operational Support Division United Nations High Commissioner for Refugees Geneva, Switzerland	**Mr Ronald Nash** Human Rights Policy Department Foreign and Commonwealth Office London, UK
Mr Gerhard Pfister Head, African Section Division of Humanitarian Aid and SDR Berne, Switzerland	**Mr Peter Platte** Ministry of Foreign Affairs Bonn, Germany
Mr John Rankin OSCE / CoE Department Foreign and Commonwealth Office London, UK	**Ms Aisling Reidy** Human Rights Centre University of Essex Essex, UK
Professor Nigel Rodley Department of Law University of Essex Essex, UK	**Ms Emma Shitakha** Political Affairs Officer, Balkan Desk Europe and Latin America Divisions Department of Peacekeeping Operations New York, NY, USA

Mr Bob Smith Department for International Development London, UK	**Ms Frances Stevenson** Medecins sans Frontieres London, UK
Mr Nicholas Stockton OXFAM Oxford, UK	**Ms Astri Suhrke** Chr. Michelsen Institute Development Studies and Human Rights Fantoft, Norway
Mr Peter van der Vaart UNHCR London, UK	**Dr Anthony Verrier** Department of Government University of Essex Essex, UK
Mr Carlo von Flüe International Committee of the Red Cross Geneva, Switzerland	**Dr Karin von Hippel** The Complex Emergencies Unit Centre for Defence Studies Kings College London London, UK
Ms Margaret Vowles Department for International Development London, UK	**Mr Robert Walker** Emergency Aid Department Department for International Development London, UK
Lt Colonel P Wilkinson, MBE DLW Directorate General of Development and Doctrine Pewsey, Wiltshire	**Mr Roger Wilson** Department for International Development London, UK

The following MA/LLM students from the Human Rights Centre, University of Essex attended the Conference as observers:

Ms Sally Ager-Harris
Ms Georgette Gagnon
Mr Frederic Girard
Ms Natalie Man
Ms Nicole Pinter-Krainer
Ms Marti Romero

Appendix B - Agenda

Conference on The Promotion and Protection of Human Rights in Acute Crisis

London, 11-13 February 1998

Conference Directors:
Dr Mukesh Kapila
Head, Emergency Aid Department, Department for International Development
and
Professor Nigel S Rodley
Department of Law, and Human Rights Centre, University of Essex

General Rapporteur:
Professor Kevin Boyle
Director, Human Rights Centre, University of Essex

The conference will open with a reception, to be held at One Great George Street, on Wednesday 11 February 1998 from 18.30 to 21.00.

Welcome and introduction:

Professor Ivor Crewe, Vice-Chancellor, University of Essex

Opening address:

Rt Hon Clare Short, MP, Secretary of State for International Development

THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN ACUTE CRISIS

AGENDA - day one

Thursday 12 February 1998

09.30-10.00	**Registration**
Session I	**Human rights and humanitarian law in conflict situations** Chair: Professor Tom Hadden
10.00-10.30	International human rights law and machinery for monitoring its implementation in situations of acute crisis Professor Nigel S Rodley
10.30-11.00	International humanitarian law in situations of acute crisis Professor Françoise Hampson
11.00-11.30	Work of the ICRC in armed conflict Mr Carlo von Flüe
11.30-12.30	Questions/answers/discussion
12.30-14.00	LUNCH
Session II	**Protection of displaced persons in situations of armed conflict** Chair: Professor Guy S Goodwin-Gill
14.00-14.30	International refugee law in situations of acute crisis Professor Geoff Gilbert
14.30-15.00	Work of UNHCR in conflict situations Mr Nicholas Morris
15.00-15.30	Questions/answers/discussion
15.30-16.00	Break
Session III	**Multilateral field operations** Chair: Dr Anthony Verrier
16.00-16.30	The human rights implications of multilateral field operations Ms Kate Mackintosh
16.30-17.00	Humanitarian assistance Mr David Bassiouni
17.00-17.30	The role of the military Lt Colonel Philip Wilkinson, MBE
17.30-18.00	Questions/answers/discussion

THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN ACUTE CRISIS

AGENDA - day two

Friday, 13 February 1998

Session IV	**Multilateral field operations (continued)** Chair: Professor David Harris
10.00-10.30	From conventional peacekeeping to multidimensional field operations Ms Emma Shitakha
10.30-11.00	Political and administrative obstacles to the effectiveness of multilateral field operations Mr Ian Martin
11.00-12.00	Questions/answers/discussion
12.00-13.30	Lunch
Session V	**Peacebuilding before, during and after conflict** Chair: Mr Ian Martin
13.30-15.00	General discussion - the experience of participating agencies, NGOs and governments
15.00-15.30	Break
15.30-17.00	General discussion and recommendations
Session VI	**Closure of seminar** Co-Chairs: Dr Mukesh Kapila and Professor Nigel S Rodley
17.00-17.30	Summary of recommendations Professor Kevin Boyle Closing remarks Dr Mukesh Kapila
17.30	Participants depart

Appendix C - Biographies

MR DAVID BASSIOUNI is Chief, Interagency Support Branch Department of Humanitarian Affairs United Nations, Geneva. From 1993 -1997 he was senior policy adviser at UNICEF in the office of Emergency Programmes, and was UNICEF's representative in Somalia before becoming UN Co-ordinator for Humanitarian Assistance for Somalia from March to December 1992. He holds degrees from Khartoum University and Harvard, and was a Senior Parvin Fellow, Woodrow Wilson School of Public and International Affairs, Princeton University.

PROFESSOR KEVIN BOYLE is Professor of Law and director of the Human Rights Centre, University of Essex. From 1986-89 he was director of the NGO Article 19. He has undertaken missions for Amnesty International, including to Somalia. He has written widely on human rights themes and on the Northern Ireland conflict. He is a barrister with extensive experience of pleading cases before the European Commission and Court of Human Rights and is co-counsel in a series of cases before the European Commission and Court of Human Rights arising from the conflict in south-east Turkey. He is Chair of the Development Education Commission, a non-governmental body inquiring into development and human rights education in Britain and Ireland.

PROFESSOR GEOFF GILBERT is Professor of Law in the Human Rights Centre at the University of Essex. He researches and publishes in the fields of refugee law, international criminal law, and minority rights. He has been used as an expert by the Council of Europe on missions to Russia.

PROFESSOR TOM HADDEN is Professor of Law (part time) at Queens University Belfast. He is also a member of the Centre for International and Comparative Human Rights Law, based in the School of Law. Tom Hadden has written extensively on the conflict in Northern Ireland, including *Northern Ireland; the Choice,* 1995 (with Kevin Boyle). He has been a member of the Northern Ireland Standing Advisory Commission on Human Rights and is a regular consultant to the Commission. He is also an expert on the international law on emergencies and director of a database project based at Queens University on states of emergency in the world, supported by the Economic and Social Research Council. He is currently working with support from the European Commission on the development of a European Human rights internet site (EHRIS).

PROFESSOR FRANCOISE J HAMPSON is Professor of Law at the University of Essex and currently Dean of the Law School. She has taught at JSDC, Camberley, the International Institute of Humanitarian Law and the Turku/Abo advanced course on human rights law. She teaches on seminars for UNHCR delegates in the field. She is one of the ICRC's group of experts for the study on customary law. She represented Oxfam and SCF (UK) at some of the preparatory meetings for the revised landmine protocol. She is currently involved in a series of cases arising out of the situation in South- East Turkey before the European Commission and Court of Human Rights, some of which involve military operations. Her fact-finding experience includes Afghanistan, Turkey and three visits to the former Yugoslavia. Her publications are in the fields of international law of armed conflicts and human rights law.

MS KATE MACKINTOSH is an English lawyer, who spent one year with the UN Human Rights Field Operation in Rwanda followed by an LL.M in International Human Rights Law, University of Essex. She is currently working at the International Criminal Tribunal for the Former Yugoslavia.

MR IAN MARTIN is a Fellow of the Human Rights Centre at the University of Essex. He was Secretary General of Amnesty International 1986-92, and Head of the Asia Region of its Research Department 1985-86. From April to December 1993, and again from December 1994 to July 1995, he worked for the United Nations as Director for Human Rights of the UN/OAS International Civilian Mission in Haiti. From October 1995 to September 1996 he was Chief of the UN High Commissioner for Human Rights Field Operation in Rwanda. Since then, he has undertaken consultancies for the UN High Commissioner for Human Rights and the Department of Peace-keeping Operations on the UN's human rights field presences in Angola; Bosnia & Herzegovina, Croatia and the Federal Republic of Yugoslavia; and Rwanda.

MR NICHOLAS MORRIS has been a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) since 1973, and has been Director of the Division of Operational Support at UNHCR Headquarters since 1995. Between 1973 and 1980, he had field assignments in Asia, Europe and Africa (as UNHCR Chief of Mission in Southern Rhodesia for the implementation of the Lancaster House agreement), and served at UNHCR Headquarters. From 1980 until late 1983 he was Chief of the UNHCR Emergency Unit, then UNHCR Representative in the Sudan until 1986, and thereafter Deputy Head of the Africa Bureau at UNHCR Headquarters until the end of 1990. From April to July 1991 he was the Special Envoy of the High Commissioner for the Gulf emergency, then UNHCR Chief of Mission in Pakistan and Special Envoy for the repatriation of Afghan refugees until May 1993. From June 1993 until the end of 1994, he was the UNHCR Special Envoy for the former Yugoslavia

PROFESSOR NIGEL S RODLEY obtained an LLB from the University of Leeds, an LLM from Columbia University an LLM from New York University and a PhD from the University of Essex. He was appointed Assistant Professor of Law at Dalhousie University, Halifax, Nova Scotia, Canada. In 1968-69 he served as an Associate Economic Affairs Officer at United Nations Headquarters in New York, working on legal and institutional aspects of international economic co-operation. From 1969 to 1972, he was Visiting Lecturer in Political Science at the Graduate Faculty of the New School of Social Research (New York City) and, from 1970 to 1972, was also a Research Fellow at the New York University Center for International Studies. Between 1973 and 1990, he became the first Legal Adviser of the International Secretariat of Amnesty International and taught Public International Law at the London School of Economics and Political Science where he spent a year as an Academic Visitor. In 1990, he was appointed Reader in Law at the University of Essex and Professor of Law in 1994. He was Dean of the School of Law from 1992-1995. In March 1993, he was designated Special Rapporteur on Torture by the UN Commission on Human Rights, his first mission which in 1994 permitted him to observe at first hand the work of UNAMIR. He is the author of *The Treatment of Prisoners under International Law* (Clarendon Press/Unesco 1987); and he edited and contributed to *Loose the Bands of Wickedness - International Intervention in Defence of Human Rights* (Brassey's 1992).

MS EMMA SHITAKHA has been since 1996, Political Affairs Officer at the Europe and Latin America Division of the Department of Peace Keeping Operations, United Nations Headquarters, New York. Formerly a member of the Kenyan Ministry of Foreign Affairs and International Development, she served as First Secretary to the country's Permanent Mission to the United Nations (1988-1993). In 1993, she has seconded to UNPROFOR in the former Yugoslavia where she served until 1995.

MR CARLO VON FLUE is a Swiss national born in 1951. He joined the International Committee of the Red Cross (ICRC) in 1983 and has had experience as a field delegate, mainly in the Middle East (Lebanon, Occupied Territories, Yeman, Iraq, Iran, etc). Afterwards, he held various positions and was head of delegation (Jordan, Southern Sudan operations and former Yugoslavia). He was assigned at the ICRC Asia Department for a couple of years and is presently with the Division of International Organisations, which deals with the multilateral relationship of the ICRC with, among others, the United Nations agencies, the regional organisations, the IGOs and Parliamentary groups. M. von Flüe deals in particular with the Non-Governmental Organisations.

LT COLONEL PHILIP WILKINSON, MBE was commissioned from the Royal Military Academy Sandhurst into the Royal Artillery in 1969. He served with 3 Commando and 16 Parachute Brigades prior to Special Forces and commanded 27 Field Regiment in 24 Airmobile Brigade. He has 8 years operational experience in the Far East, Middle East and Europe. For the last 5 years he has been responsible for the development of the UK's military doctrine for Peace Support Operations. He was one of the authors of the Army manual *Wider Peacekeeping*, and is the principal author of the new FCO endorsed, tri-service manual *Peace Support Operations*. He was also the principal author of NATO's new doctrine for Peace Support Operations, which was endorsed by the Military Committee, 21 October 1997. Lt Colonel Wilkinson is a 'Visiting Fellow' at the Centre for Defence Studies at Kings College, London and has had a number of papers published in academic journals.