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A Humanitarian Practitioner's Guide to International Human Rights Law

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CONTENTS

Preface v
Introduction 1

1. International Human Rights Law 5

2. Regional Human Rights Instruments 23

3. International Humanitarian Law 31

4. International Law on Refugees and Internally Displaced Persons 39

5. The Universality and Indivisibility of Human Rights 45

6. A Look to The Future 55

Notes 63

Appendix I: Acronyms 73
Appendix II: Additional Resources on International Law 74
Appendix III: Selected Publications of the Humanitarianism and War Project 76
Appendix IV: About the Author and the Humanitarianism and War Project 78

PREFACE

International law has been thrust to the center of the current humanitarian policy agenda. Belligerents in many of today's armed conflicts have blatantly flouted international legal norms. Yet humanitarian organizations seeking to mount effective operations in such settings often lack basic familiarity with the provisions and protections of applicable international law.

This Occasional Paper responds to a need expressed by such aid organizations themselves, the primary constituency of the Humanitarianism and War Project. Over a year in the making, the monograph has been the subject of discussions among an array of aid groups. The urging and experience of nongovernmental organizations (NGOs) is reflected in this volume, thanks to a series of H&W Project discussions with North American agencies in March 1997 and January and May 1998 and with international NGOs in June 1998. Ongoing discussions with United Nations (UN) organizations and bilateral aid agencies are also reflected in this volume.

Published in the spring of 1999, this guide should serve as a primer for aid agencies, providing a summary of the principal applicable provisions of human rights law and, to a lesser extent, of humanitarian and refugee law. This volume will soon be joined by several others now on the drawing boards. Included are handbooks and training materials being produced by UN organizations such as the Office for the Coordination of Humanitarian Assistance and the UN High Commissioners for Human Rights and for Refugees, by coalitions of NGOs such as the Disasters Emergency Committee in the United Kingdom, and by individual NGOs and the International Committee of the Red Cross.

This guide also joins earlier publications by the Humanitarianism and War Project itself such as *Humanitarian Action in Times of War: A Handbook for Practitioners* (1993) and *Humanitarian Action in the Caucasus: A Guide for Practitioners* (1998). A selected listing of the project's publications, many of them available for direct downloading from the internet, is contained in Appendix III.

This volume is intended to serve as a resource to practitioners and their agencies as they seek to identify the human rights dimensions of their work and explore the use of law and a rights-based approach to their activities. Whereas the title is framed in international human rights law terms, the text also makes essential connections with humanitarian and refugee law. Taken together, these three bodies of law make up the evolving context within which assistance activities are set. Those familiar with the earlier research and publications of the Humanitarianism and War Project are aware that we construe humanitarian action broadly so as to include protection as well as assistance activities. In this instance, the focus is on providing aid practitioners with a better understanding of the relevance of international law, particularly in the human rights area, to their assistance activities.

We are delighted that Bill O'Neill has found time to author this work and to incorporate many comments and suggestions that have been offered by ourselves and other colleagues. He is an international human rights lawyer whose day-to-day work encompasses a range of activities for the UN, governments, and private agencies. Thanks to his personal involvement in activities such as technical assistance, dissemination, and training, as well as investigating and monitoring human rights violations, he brings to his writing the kind of practical experience that our project seeks to marshal and share. During the period in which this manuscript has been evolving, he has worked with practitioners in Bosnia and Herzegovina, Rwanda, Haiti, Sierra Leone, the Central African Republic, Afghanistan, and Abkhazia/Georgia. Further biographical details are provided in Appendix III.

We originally intended to include this volume as a single chapter in a forthcoming monograph, *Protecting Human Rights in Complex Emergencies,* authored by Mark Frohardt, Diane Paul, and myself. We concluded, however, that the material will be useful under separate cover. We hope practitioners will place this volume alongside the second monograph, which reviews the challenges of mounting operational activities in post-Cold War settings where international law is often flouted. A third monograph, *Assistance*

and Protection: The Gender Connection by Julie Mertus, with Judy Benjamin, should find a place on the same shelves—or, preferably, in the same briefcases—when published later in the year. A fourth volume, *Human Rights in Humanitarian Action* by Karen Kenny, is being undertaken in collaboration with the International Human Rights Trust and will appear toward year's end.

Even as a stand-alone volume, *A Humanitarian Practitioner's Guide to International Human Rights Law* faces severe space limitations. In the interest of providing in clear terms the international human rights framework for humanitarian action, we have made sacrifices in the extent to which basic concepts and legal provisions are examined. Our overriding concern has been with utility for the busy practitioner. Appendix II contains further resources for review.

The publication of the *Humanitarian Practitioner's Guide to International Human Rights Law* has been made possible by generous support from the several dozen contributors to the Humanitarianism and War Project listed in Appendix IV. We wish to express particular appreciation for support and encouragement of our work in the human rights area from the Ford Foundation, the Andrew W. Mellon Foundation, and the Government of the Netherlands.

We also wish to thank our colleague Karen Kenny for her comments on an earlier draft of the manuscript. Production of the printed text at the Watson Institute has been assisted by Margareta Levitsky and Kevin Von See Dahl of the Humanitarianism and War Project and by Fred Fullerton, who is an editor with the Institute's publications group.

We welcome comments from readers and users.

Larry Minear, Director
Humanitarianism and War Project
Providence, R.I.
May 1999

INTRODUCTION

The term "human rights" evokes a wide variety of reactions. Many of those working in international development, commercial lending, and diplomatic institutions regard human rights as highly political and confrontational intrusions on their activities. Many in the international assistance community and the military view human rights as a threat to "neutrality" that may undermine access to populations needing assistance or the success of peacekeeping operations. Some governments in Asia, the Middle East, and Africa dismiss the concept of human rights as a western creation that fails to respect local culture and traditions and undermines state sovereignty. Perhaps the most favorable views of human rights are held by the international public, which is appalled by flagrant onslaughts against fundamental human decency and dignity represented by such practices as genocide, ethnic cleansing, and the use of starvation of civilian populations as a weapon of war.

This monograph seeks to demonstrate how international human rights law can equip organizations engaged in providing assistance and protection to civilians caught in conflicts around the world with a framework for carrying out their activities. It does not assume that international law alone will solve their problems of access to civilian populations or hold political authorities accountable. However, it seeks to promote fuller understanding of the existing legal context and recommends concerted efforts by humanitarian actors to encourage belligerents to meet their legal obligations.

This monograph identifies links between human rights, humanitarian law (also known as the law of armed conflict), and refugee law. It does not attempt to present all of the applicable provisions of the law of armed conflicts, an immense topic that has already been the subject of numerous studies.[2] Nor is refugee law treated comprehensively here.[3] Instead, as a primer for practitioners, this monograph attempts to identify areas of convergence among human rights, humanitarian, and refugee law. Certain human rights principles, especially those regarding nondiscrimi-

Box 1

The Human Rights Context of Relief Assistance
The need for relief workers to increase their knowledge and understanding of human rights standards arises from at least two factors: 1) the need to be accountable, and hold others accountable and 2) the corresponding possibilities for more focused and effective advocacy at all levels on humanitarian issues. It is legitimate to see the provision of humanitarian relief as part of a spectrum of human rights activity. But assistance activities have been conducted too often without an analysis of the protection issues that often make such assistance necessary in the first place.

James Darcy[1]

nation and the obligation of states to provide basic services, are particularly germane. Also identified are issues on which applicable law has not evolved as quickly as the facts on the ground.

The growing strength of international human rights law—witness the creation of tribunals to prosecute genocide and other serious crimes in Rwanda and the Former Yugoslavia and recent efforts to create a permanent international criminal court—provide new avenues for humanitarian and human rights practitioners to use international law to help achieve their objectives in the field.

Chapter 1 provides a brief historical background and an introduction to international human rights law. Chapter 2 examines regional human rights instruments. Chapter 3 provides an overview of themes in the laws of armed conflicts that overlap with human rights law and that might aid practitioners facing real-world dilemmas. Chapter 4 reviews the major provisions of international refugee law and provisions affecting persons displaced within countries who do not qualify formally as refugees. Chapter 5 analyzes the issue of whether human rights are universal and indivisible or a construct of western civilization with only

limited applicability and relevance elsewhere.

Chapter 6 identifies issues that will require attention in the future.

Chapter 1

International Human Rights Law

This chapter presents the historical backdrop of international human rights law and examines various provisions relevant to humanitarian activities. Subsequent chapters analyze the evolution of humanitarian and refugee law, each with their own respective histories and application.

Historical Background

The concept of universal human rights conflicts with the traditional understanding of sovereignty. As developed over the course of European history and mirrored in other parts of the world, the modern state came to monopolize the use of force and coercion over the people in its territory. How a state treated its people was originally seen as a matter of domestic politics only; outsiders had no "say." Each state agreed not to interfere in the domestic matters of other sovereign states, and there was no set of higher rules or standards restricting a state's treatment of its nationals. The Treaty of Westphalia in 1648, ending over 100 years of religious wars in Europe, is commonly regarded as the benchmark in enshrining the notion of sovereignty and noninterference among states in their respective domestic affairs.

Yet the walls of sovereignty were never altogether unbreachable. Philosophers as early as Thomas Aquinas in the thirteenth century, the eminent Dutch international jurist Hugo Grotius in the sixteenth century, and Immanuel Kant in the eighteenth century asserted that considerations of humanity created an imperative to aid those suffering from injustice. Britain, Russia, and other Christian nations secured agreements from the non-Christian Ottoman and Chinese empires to respect foreign nationals, reserving the right to intervene to rescue them if endangered.

The first major assault on sovereignty was the effort to end the slave trade. The antislavery movement also highlighted the intrin-

sic links between human rights (the notion that all human beings have inherent rights) and humanitarianism (the notion that human beings should receive assistance). As traffic in slaves from Africa to the Western Hemisphere from the sixteenth through the nineteenth centuries grew, opposition to its increasingly known horrors also increased.

In another foreshadowing of later developments, private citizens in Europe, North America, Latin America, the Caribbean, and Africa itself formed groups to condemn slavery and to pressure governments to end the practice. The Anti-Slavery Society, formed in London in 1846 and now called Anti-Slavery International, is the oldest human rights and humanitarian nongovernmental organization in the world. The effort to end slavery included both public denunciation of the abuses and assistance to the victims. Literacy projects, housing, job training, and medical treatment were all part of the abolitionists' strategy.

Two principles emerged from the international fight to end the slave trade and slavery itself during the nineteenth century. First, all humans are equal and thus discrimination based on race is abhorrent. Second, the state is responsible for insuring nondiscrimination. If a state violates this principle, then outsiders have a duty to denounce and stop it.

The effort to limit the horrors of war is another great human rights and humanitarian achievement of the nineteenth century. The founding of the International Committee of the Red Cross (ICRC) in 1864 and the subsequent codification of the rules of war, which included the outright banning of certain tactics and weapons, also set limits on state behavior. Identifying international standards led to a series of international treaties, which the ICRC disseminates and monitors.

Along with these developments, growing trade, travel, and commerce in the nineteenth century brought many previously isolated cultures and societies into contact with each other. It soon became clear that respect for human dignity is common to the world's cultures and religions. Most fundamental human rights can find roots in practices and beliefs of Hinduism, Buddhism,

Christianity, Islam, Judaism, and traditional religions around the word.

The early to mid-twentieth century saw Western Europe dominating almost all of Africa, huge chunks of Asia, and the Middle East through colonial empires. As many as ten million persons perished in King Leopold II's Congo Free State, either killed outright or through starvation and forced relocation.[1] Turkey committed genocide against Armenians. Stalin deliberately starved millions of Ukrainians and established Soviet gulags. Black Americans lived in legally sanctioned inferior status. The state's treatment of those within its borders remained an essentially domestic matter and protesting voices were rare.

The League of Nations, created in the wake of World War I and the first world organization dedicated to preventing war, was weak and ineffective. Its charter, while mentioning minorities, did not include human rights provisions. Sovereignty and *raison d'état* prevailed over concerns about racial discrimination and the struggle to recognize as equals people living in the vast colonial empires. Yet one institutional product of the period, the International Labor Organization, founded in 1919 and winner of the Nobel Peace Prize, has promoted and protected a wide variety of civil, political, economic, and social rights connected to labor. Its conventions, upon ratification, are legally binding upon states.

World War II and the Nazi program to exterminate Jews changed forever the relationship between sovereignty and human rights. Hitler's attempt to exterminate Jews and the Roma (Gypsies), as well as the systematic murder of Slavs, homosexuals, and the physically and mentally handicapped meant that such acts could never again be viewed as the exclusive preserve of domestic politics. The atrocities committed by the Japanese military during World War II in China, Korea, the Philippines, and Southeast Asia spurred a similar reassessment of the laws of war.[2]

The creation of the United Nations in 1945 represented a major advance in the effort to enshrine human rights in international relations and law. The UN Charter in Article 1(3) states that one of the UN's primary purposes is "promoting and encouraging

respect for human rights." Articles 55 and 56 of the Charter require UN Member States to "take joint and separate action" to promote "universal respect for, and observance of, human rights and fundamental freedoms for all." Yet the Charter also upheld state sovereignty. Article 2 (1) affirms that "[T]he Organization is based on the principle of the sovereign equality of all its members." Article 2 (7) cautions that "Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...."

Box 2: Protection, Assistance, and International Law

Protection means to recognize that individuals have rights and that the authorities who exercise power over those individuals have obligations. Protection means at one and the same time to defend their existence in legal terms and their physical existence. It is to add to the assistance chain a link in the form of juridical responsibility, the only true guarantor of their survival.

François Bouchet-Saulnier
Médecins sans Frontières-France[4]

In the decades since the founding of the United Nations, the promotion of human rights has involved a series of efforts to extend the principle that human rights are a legitimate concern for all, restricting the zone of what remain essentially domestic and internal matters. Such efforts have received particular impetus since the end of the Cold War. During the past decade, as one international legal expert has stated, "The framework of domestic jurisdiction has narrowed. Things that were considered domestic

30 to 40 years ago are now [within] international jurisdiction, and we could act on them."[3] The easing of East-West tensions has brought greater willingness to scrutinize and hold accountable states for the treatment of their own citizens. Humanitarian distress and human rights abuses alike have become grounds for international concern and, on occasion, intervention as well.

The Universal Declaration of Human Rights

Had anyone asked the drafters of the UN Charter in 1945 what was meant by human rights, the answer would have been that it was a matter of personal opinion. The Charter itself never defines the term. It was not until December 10, 1948 when the General Assembly unanimously approved the Universal Declaration of Human Rights (UDHR) that the world for the first time had a working definition of the concept.[4]

The Universal Declaration was drafted with amazing speed, especially when contrasted with later UN experience. Eleanor Roosevelt played a leading role, ably assisted by Canadian diplomat John Humphries. However, the participation and contributions of delegations from Egypt, Lebanon, and Latin America, particularly Panama, are often overlooked, a convenient oversight for those who maintain that the UDHR is a purely North American and European creation.

The UN had fewer than 50 member states when the UDHR came up for a vote; most of Africa and much of Asia were still colonies. Eight states abstained, led by the Soviet Union and some of its puppets (Ukraine and Byelorussia) and satellites (Yugoslavia, Poland), as did South Africa, which was about to erect an apartheid state, and Saudi Arabia. All of these states, except for Saudi Arabia, have since withdrawn their abstentions.

The UDHR is a declaration, not a treaty. States cannot ratify the UDHR as they would a treaty, and there is no mechanism to review or enforce compliance. But many international lawyers maintain that most, if not all, of its provisions have become so widely accepted that the UDHR now reflects customary law and

therefore has achieved the status of binding international law. Some states—Haiti is one example—have incorporated the declaration into their national constitutions or in other ways made it binding domestic law.

The UDHR lists a wide range of rights, both civil and political rights and economic, social, and cultural. Traditional civil and political rights include freedom of expression, assembly, association, and religion, and the rights to a fair trial and to freedom of movement. Prohibition of torture, arbitrary arrest, and that seminal issue, slavery, are enumerated. The UDHR also declares that people have rights to education, housing, social security, work (forming labor unions is included here), medical care, and vacation and leisure time.

Box 3

In a very practical way, the human rights challenges of armed conflict situations, particularly the challenge of survival itself, give expression to the most basic interdependence and indivisibility of human rights. These challenges also bring together organizations focusing on different parts of this spectrum of rights.

Michael McClintock[5]

The Covenants

While agreement on the Universal Declaration was relatively swift, it took much longer to turn the rights affirmed in the UDHR into binding treaty law and to specify their essential content. From 1948 until 1956, UN member-states debated while Cold War

realities hardened. The joint embrace within the UDHR of economic, social, and cultural rights, along with civil and political rights, evaporated as the noncommunist West emphasized the latter and the communist East the former. Finally, each bloc agreed to disagree and eventually two treaties were created, one for each of the two "baskets of rights." In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were opened for ratification. They took effect in 1976 when they were ratified by the necessary number of states.

These two covenants form the backbone of international human rights law. Most UN member states have ratified both; at last count, 131 states had ratified the ICCPR and 136 states had ratified the ICESCR.[6] Only a few states, prominent among them Cuba and Saudi Arabia, have ratified neither. China recently signed and has promised to ratify both the ICESCR and the ICCPR, although it has stated it will assert numerous "reservations" to its ratifications. North Korea recently revoked its ratification of the ICCPR.

In an effort to leave behind residual Cold War baggage, UN High Commissioner for Human Rights Mary Robinson has declared that one of her top priorities is to work to ensure that both baskets of rights are reflected in all UN programs. The separation of rights into two baskets has also been at the heart of tensions between humanitarian and human rights NGOs. The humanitarian NGOs traditionally have concentrated on economic, social, and cultural rights, although often not framing their activities in rights language. Human rights NGOs have tended to concentrate on civil and political rights, to the exclusion of essential human needs. Major strides are now being made, both inside and outside the UN, to avoid simplistic two-basket thinking and to view rights in more integrated and mutually reinforcing ways.[7] During 1998, the fiftieth anniversary year of the UDHR, the United Nations adopted the slogan, "All human rights for all."

In ratifying either covenant, a state pledges to ensure that the rights contained in it are observed. This may involve enacting or

amending domestic law to make it consistent with treaty obligations. Signatories must also provide periodic reports to the covenant treaty bodies, the Human Rights Committee for the ICCPR and the Committee on Economic, Social and Cultural Rights for the ICESCR.

States are primarily responsible for insuring the observance of human rights; traditionally, only states could violate human rights. The view was that while individuals, criminal gangs, and even insurgents or guerrilla groups might violate criminal laws or the laws of armed conflict, they could not violate human rights laws. Major human rights organizations like Amnesty International focused on state behavior only, even in situations of armed conflict. However, the traditional approach has evolved in the last decade and human rights standards are now applied to insurgents and other nonstate actors in some circumstances.[8]

States are also held responsible for violence and violations committed by private actors in their territories if there are grounds to infer that these private actors are acting on behalf of or with the complicity of the state. State tolerance of, or acquiescence in, violations by nonstate actors may also trigger state responsibility. For example, a state that condones or fails to stop repeated instances of domestic violence against women and never prosecutes the perpetrators is implicated in a human rights violation because this failure to prosecute may constitute a violation of equal protection under the law.[9]

Some nonstate actors have declared that they are bound by human rights law. For example, the Sudan People's Liberation Army in the southern Sudan has agreed to observe the Convention on the Rights of the Child. Also, the UN Special Rapporteur on Summary or Arbitrary Executions noted that in 1997 he sent 122 urgent appeals to 44 governments, as well as to the Palestinian Authority and the head of the Taliban Council.[10] When insurgent leaders acknowledge such obligations, often with an eye to scoring international political points, juridical questions about whether such provisions are technically binding on nonstate actors become moot.

The two covenants share that bedrock principle of human rights law first specified in the nineteenth century fight against slavery: nondiscrimination. Article 2 of each covenant states that "[E]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The ICCPR has several features particularly important to human rights and humanitarian practitioners. First, the covenant largely repeats the core civil and political rights specified in the UDHR but adds greater specificity. For example, Article 14 goes into great detail on what constitutes lawful grounds for arrest, rights of detainees, and guarantees required for a fair trial. The presumption of innocence and the right to cross-examine witnesses are guaranteed. Second, the ICCPR defines circumstances in which some rights may be restricted. The articles on freedom of assembly and association stipulate that no restrictions can be placed on these rights, "other than those imposed in conformity with the law and [those] which are necessary in a democratic society in the interests of national security or public safety..." Certain states have interpreted this language very broadly—some observers would say "abusively"—making the absence of greater specificity and safeguards one of the ICCPR's great weaknesses.

Third, article 4 of the ICCPR allows states to "derogate" or suspend certain rights entirely in times of "national emergency" or a "threat to the life of the state." All ICCPR articles apply in times of peace or nonconflict. If there is a conflict or other grave situation, the derogations permitted under article 4 must be as narrowly tailored as possible. For example, the state must notify the UN that it is derogating rights, specify which rights are involved, and end the suspension as soon as possible. Some rights may never be suspended, even in full-blown civil war. These nonderogable rights include the right to life, prohibition on torture and cruel, inhuman or degrading treatment or punishment,

freedom of conscience, and the ban on slavery. Some states have abused the derogation power, a weakness in the ICCPR not present in the law of armed conflict, where no suspensions are ever allowed.

Finally, the ICCPR's First Optional Protocol allows individuals in states that have ratified the ICCPR and protocol to file with the Human Rights Committee a complaint of a violation (a communication, in UN parlance). The individual must first seek relief through all available domestic judicial or administrative procedures or demonstrate that exhausting domestic remedies would be futile or dangerous. The Human Rights Committee, comprised of a rotating membership of 18 people of high repute serving in their individual capacities, has reviewed more than 1,000 cases. Its ICCPR interpretations have produced important jurisprudence for international human rights law.[11]

The ICESCR repeats but adds detail to the economic, social and cultural rights contained in the UDHR. It recognizes that states have varying resources available to guarantee the enumerated rights and calls on them to "insure the progressive realization" of them. In addition, the ICESCR imposes various obligations that have immediate effect, especially the principle of nondiscrimination.[12]

Yet the ability to determine whether a state is devoting maximum available resources to promote the enjoyment of economic, social, and cultural rights is not as clear-cut as if the state were torturing someone or limiting freedom of speech.[13] The ICESCR preamble asserts that individuals have duties toward other individuals and to the community, with responsibility "to strive for the promotion and observance of the rights recognized in the present covenant." Under the ICECSR, individuals are responsible with states for the enjoyment of enumerated rights, although this in no way dilutes the state's responsibility.

The ICESCR includes the rights to work, to just and favorable conditions of employment ("fair wages" and equal pay for equal work), to form trade unions and to strike, to social security and an adequate standard of living, "including adequate food, clothing

and housing, and to continuous improvement of living conditions."[14] Free and compulsory primary education must be available and the state must recognize the right of all to the "highest attainable standard of physical and mental health."

The Committee on Economic, Social and Cultural Rights, like its ICCPR counterpart, reviews periodic reports submitted by governments. It was created by the United Nations Economic and Social Council (ECOSOC), not by the covenant itself. Its members may visit states, if invited. It also is comprised of experts who serve in their individual capacities rather than as government representatives. Members of the committee, for example, have gone to the Dominican Republic to investigate living and working conditions of Haitian and Dominico-Haitian sugar cane cutters on state-owned and private plantations. When these visits revealed serious and systematic covenant violations, the committee ordered the Dominican Republic to stop the abuses. The committee then, in its now-typical fashion, sought to work with the government to identify ways to uphold its treaty obligations, thus combining criticism with an offer to collaborate. It has enjoyed some success with this approach.

The ICESCR has no derogation provision. In a development indicating growing concern about the impact of UN economic sanctions on human rights and humanitarian conditions, the committee issued a statement in December 1997 seeking clarification from the Security Council on whether UN-authorized sanctions might not themselves violate rights articulated in the covenant.

Specialized Human Rights Treaties

Following the two major covenants, the UN has promoted and facilitated the drafting of a series of treaties designed to protect specific groups. The principal ones are the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Racial Discrimination, the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punish-

ment, and the Convention on the Rights of the Child. These treaties are even more specific than the covenants, which were more specific than the UDHR. The conventions on women and children are perhaps of most immediate interest to humanitarian practitioners since they include economic, social, and cultural rights, and are relevant to relief and development activities for populations at risk.

Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the General Assembly in 1979 and took effect in 1981. As of March 1999, 162 countries have ratified.[15] However, the role of women has occupied a special place in the UN system from its early days, and the Committee on the Status of Women predates CEDAW, having met annually for 45 years.

CEDAW observes that despite years of UN declarations and UN agency efforts, discrimination against women continues. Referring to the core human rights principle enunciated in both the UN Charter and the UDHR, the CEDAW preamble declares:

> …discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women on equal terms with men in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity.

The convention's drafters faced squarely the issue of local practices concerning men and women in society and the family.

The existence of such traditional practices and beliefs remains a contentious issue in the debate over whether human rights are truly universal. The CEDAW preamble bluntly asserts that states ratifying this treaty are "[a]ware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women." This realization results in a positive duty upon ratification to eradicate discrimination. Article 1(f) requires states to take "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." The duty not to discriminate extends beyond the actions of state agencies; states must also ensure that "any person, organization or enterprise" does not so discriminate.[16]

In the civil and political realm, CEDAW accords women full legal equality with men, including the ability to enter and enforce contracts and administer property and in all procedures before all courts and tribunals. Article 6 demands that all ratifying states end trafficking and "exploitation of prostitution of women."

CEDAW merges civil and political rights with economic, social, and cultural rights, underscoring that both sets of rights are interdependent and mutually reinforcing. Many of its articles require equal access for women to education (including scholarships, participation in literacy programs and sports and physical education), employment (including free choice of professions), health care, credit, loans, marketing, and participation in the political system and in the cultural life of the state. Of particular interest to aid agencies, the convention recognizes the specific needs of rural women and calls for an enhanced role for rural women in planning and implementing development programs.[17]

Finally, several articles require the state to eliminate discrimination in all matters regarding marriage, the family, and children. One prohibits forced marriages and mandates the state to grant equal rights to men and women concerning the dissolution of a marriage. Child marriages are not to be recognized by a state party: "the betrothal and marriage of a child shall have no legal effect."[18] This provides another instance in which state action is not required

to trigger a human rights violation. Failure to prevent private actors from violating treaty standards is a state violation.

Following the UN treaty model, the convention creates a committee to oversee compliance by ratifying states. The committee has 18 members who serve not as government representatives but as individuals. Perhaps in deference to the controversial and even revolutionary aspect of some provisions, the composition of the committee is to reflect the "representation of the different forms of civilization as well as the principal legal systems."[19] The committee has received scandalously few UN resources and has met less often than any other committee overseeing a human rights treaty. When a second yearly meeting was authorized recently, the committee had difficulty fulfilling its mandate of insuring compliance with the convention's provisions and gauging progress it achieved.

Children

Even before the formation of the United Nations, the international community recognized the need to protect children.[20] The Convention on the Rights of the Child (CRC) was opened for signature on November 20, 1989 and went into effect on September 2, 1990, the fastest-ever ratification of a human rights treaty. Now ratified by every UN member state except the United States and Somalia, the CRC also enjoys the broadest political support of any human rights treaty.

Similar to the treaties already discussed, the CRC begins by restating language from the UN Charter and UDHR on the "dignity and worth of all human beings" and the guarantee of "all rights and freedoms...without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In an approach to local practices that differs from the introductory language of CEDAW, however, the CRC notes that ratifying states take "due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child."

The CRC defines a child as "every human being under the age of 18" unless a law provides for an earlier age of majority.[21] The two fundamental principles of the CRC are nondiscrimination and the "best interests of the child." Echoing ICESCR language, article 5 requires that states promote the economic, social and cultural rights of children "to the maximum extent of their available resources..."

Article 6's brevity underscores its power: "every child has the inherent right to life" and "States Parties shall ensure to the maximum extent possible the survival and development of the child." Those words have particular significance for aid workers seeking to assist refugees from Kosovo or former child soldiers in Sierra Leone.

Like CEDAW, the CRC merges civil and political rights with economic, social, and cultural rights. It includes the rights to life, nationality, expression, association, assembly, and thought, conscience, and religion. States must take all steps to prevent and punish abuse, mistreatment, or exploitation of children, including sexual abuse; trafficking in children is prohibited. States must ensure that children are not tortured or subjected to cruel, inhuman, or degrading treatment or punishment. Arbitrary arrest or detention of children is also prohibited. Children have the right to challenge in court the legality of their arrest or detention and the presumption of innocence must be guaranteed.[22] Special penal systems (juvenile courts, detention centers, judges, social workers, and educators) must treat children who have committed crimes, assuming the child has reached the minimum age established to be criminally responsible.[23] The state must also provide alternatives to institutionalization, such as supervision orders, counseling, community service, and vocational training.

States must also recognize the right of the child to the "highest attainable standard" of health care,[24] to benefit from social security, and to a "standard of living adequate for the child's physical, mental, spiritual, moral and social development."[25] The CRC offers a detailed set of obligations regarding the child's right to an education. It even stipulates the goals of the child's education,

including development of respect for "human rights and fundamental freedoms, ... civilizations different from his or her own, ... and the natural environment."[26] The child also has the right to be a child, to play, enjoy rest and leisure, and to participate in cultural, artistic, and recreational activities.

The CRC prohibits the economic exploitation of children. A contentious issue in many parts of the world, child labor has bedeviled human rights and humanitarian agencies. The representatives of some countries, with dire poverty and low levels of economic development, argue that the earnings of even small children are necessary to the family's economic survival. Some parents agree and willingly participate in the economic exploitation of their own children, although they would not phrase it that way.

The convention is clear on this issue: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."[27] States must set a minimum age for employment, regulate hours and conditions, and establish penalties and sanctions to insure compliance. Above a certain age, child labor is not outlawed, but the CRC prohibits any work that is hazardous or prevents the child from being a child.[28]

The CRC establishes a committee of experts who serve in their individual capacities. It reviews reports by ratifying states detailing implementation measures and problems affecting their ability to fulfill treaty obligations. In an important innovation, the CRC Committee must encourage international cooperation in upholding children's rights. UN agencies such as the United Nations Children's Emergency Fund (UNICEF) may be represented at its sessions, and the committee may seek advice on implementation from outside experts.

The CRC encourages collaboration and cooperation among human rights groups, UN agencies, and humanitarian organizations regarding humanitarian and refugee law. Article 38 requires

ratifying states to "respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child." States also must protect and care for children who are affected by armed conflict consistent with their duty to protect the civilian population in armed conflicts. The CRC is the only example of a human rights instrument directly incorporating obligations found in the laws of armed conflict.[29]

The CRC makes connections to refugee law as well. Whereas children constitute a vulnerable population, refugee children are doubly vulnerable. The convention stipulates that child refugees, considered as such based on relevant international or domestic law, must receive "appropriate protection and humanitarian assistance" in accordance with the CRC and other binding international human rights or humanitarian instruments.[30] States must cooperate with UN or other intergovernmental agencies and with NGOs in protecting and assisting child refugees and in tracing parents and other family members for purposes of family reunification.

Given the spectrum of rights and law, and the obligations imposed on such a wide range of actors, the CRC offers a rich potential resource to the humanitarian practitioner. Moreover, enjoying near-universal ratification, the CRC should become a powerful tool in advancing the realization of human rights for a large and vulnerable portion of the world's population.

Other UN Standards

Over the years, the United Nations has overseen the creation of a host of other human rights standards as basic principles, codes of conduct, guidelines, and rules. Often passed by the General Assembly, these measures do not have the force of law or of treaties duly ratified. Yet they express certain minimum standards of behavior and protection that states should strive to honor. Many are detailed and focus on issues and often elaborate on language and concepts contained in the UDHR and the ICCPR. They are

potentially powerful tools for the humanitarian and human rights practitioner.

Among the most important tools for human rights and humanitarian workers are the Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Standard Minimum Rules for the Administration of Juvenile Justice, and the Basic Principles on the Independence of the Judiciary.

Conclusion

A supportive framework of international human rights law has been developed largely during this century. Aid practitioners who locate their activities within that context will not only reinforce their legitimacy but may also enhance their effectiveness. That framework continues to evolve. As demonstrated most recently by CEDAW and the CRC, the United Nations has become adept at identifying and promulgating human rights treaties and standards. What remains is the challenge of implementing and enforcing these rights, disseminating information about rights and duties, and punishing violations.

Chapter 2

Regional Human Rights Instruments

Beyond universal legal instruments such as the Universal Declaration and the Conventions related to the rights of women and children, human rights are also the subject of regional treaties, commissions, and courts. Europe, Latin America, and Africa have enacted human rights instruments and created regional courts and commissions. The Middle East and Asia remain without such instruments and mechanisms. Humanitarian personnel can use regional human rights treaties and their oversight bodies to provide a locally sanctioned anchor for a rights-based approach to aid and advocacy.

The following summary focuses on the types of rights covered, access to treaty protection mechanisms, and the potential relevance of regional instruments to humanitarian practitioners.

Europe

Europe has the oldest and most effective regional human rights bodies. The European Convention on Human Rights (ECHR), enacted in 1950 and effective beginning in 1953, has been ratified by 40 states. Affording protections only for civil and political rights, the convention allows individuals to petition for individual grievances. Various additional protocols to the ECHR expand the rights covered beyond the traditional ones. Protocol 6 to the convention, ratified by 27 states, calls for abolition of death penalty. A European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has been ratified by 35 states.

In ratifying the ECHR, states accept the jurisdiction of the European Court. The court has issued decisions interpreting ECHR language on freedom of expression, association, the prohibition on torture, and arbitrary arrest. As a result, some states have had to amend their laws and administrative practices, for example,

the United Kingdom with regard to arrest, detention and interrogation procedures in Northern Ireland, and Greece concerning torture and freedom of religion. The court, whose decisions are binding, may award "just satisfaction" or financial compensation to someone whose rights were violated.[1] The court recently held that a parent in Britain who resorted to corporal punishment violated Article 3 of the European Convention, which prohibits torture or inhuman treatment or punishment. The European Court awarded the child £10,000, and Britain now must change its law to forbid such practices.[2]

Because of an ever-growing caseload and long delays between filing and decisions rendered, the European Court has recently changed its operating procedures. Starting November 3, 1998, the court sits in permanent session and all 700 million citizens of the Council of Europe's 40 states will have direct access once they have exhausted all domestic remedies.[3] Forty additional judges have been hired, one from each member state. The previous functions of the European Commission and the court (relating to individual petitions) have been merged into one entity to cut down delays and handle the approximately 5,000 new complaints filed each year.[4]

Bosnia and Herzegovina presents unique challenges and opportunities to the European human rights regime and to humanitarian actors. The General Framework for Peace in Bosnia and Herzegovina, known as the Dayton Agreement, has a highly complex and comprehensive structure to protect human rights. Although Bosnia and Herzegovina is not a party to the European Convention, the convention is given special status by virtue of the Dayton Agreement.[5] Annex 4 to the Dayton Agreement contains the Bosnia and Herzegovina constitution, paragraph two of which states that "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

Training in implementing the ECHR and its protocols has been provided to government officials and international field

officers. The legal instruments have been used to analyze some of the most pressing problems with a human rights dimension, including the right to property, movement, equal access to government benefits, pensions, education, and issues relating to employment discrimination. To understand the dilemmas and propose solutions in Bosnia and Herzegovina, aid workers need to understand the ECHR.

The Americas

The Inter-American system for protecting human rights began with the American Declaration on the Rights and Duties of Man (1948). The American Convention on Human Rights (1969) binds those states that have ratified it.[6] An Additional Protocol to the American Convention, opened for signature in 1988, reinforces certain economic, social, and cultural rights. There is a commission and a court charged with enforcing human rights standards.

The Organization of American States (OAS) created the Inter-American Commission on Human Rights to assess compliance with the American Convention and investigate human rights violations. Headquartered in Washington, D.C., it has seven commissioners who serve in their individual capacities. It may receive complaints from individuals, even from states that have not ratified the convention; in these cases the rights contained in the American Declaration apply. The commission has conducted many on-site investigations in several states, including Chile, Brazil, Mexico, Haiti, and the Dominican Republic. It issues annual reports to the OAS and periodic reports on individual states.

The Inter-American Court sits in San José, Costa Rica and has jurisdiction over individual cases if a state has ratified the convention and has accepted its jurisdiction. The Inter-American Commission or the state concerned must refer cases to the court. Its decisions are binding, but as with every other international human rights mechanism, a judgment cannot easily be enforced on an

unwilling state unless other states that are parties to the treaty insist: for example, by threatening to suspend OAS membership. The court may also order financial compensation for the victim of a human rights violation. In a decision involving a forced disappearance in Honduras for which the state was held responsible, the court ordered and the government paid damages to the family of the disappeared person.

The American Convention contains a broad range of civil and political rights. It restricts the exercise of some rights in the interest of "national security, public safety, or public order, or to protect public health or morals or the rights and freedoms of others." As in the ICCPR, some rights may be derogated in time of national emergency. Although forced disappearances, once a major problem in Argentina, Chile, Uruguay, Colombia, and Peru, are not explicitly prohibited, the Inter-American Court has held that these constituted "radical breaches" of a state's convention obligations.[7]

Weighted heavily toward civil and political rights, the convention's language echoes the ICESCR's, but nevertheless requires states to enact measures to achieve the "full realization of the rights implicit in the economic, social, education, scientific, and cultural standards set forth in the [OAS] Charter." Once the protocol on economic, social and cultural rights is in force, states will be obligated, based on their resources and degree of development, to ensure enjoyment of this basket of rights (work, social security, health care, food, education, and a healthy environment). Also open for signature and ratification is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

The Inter-American system has adopted an expansive interpretation of state involvement in finding a human rights violation. Since states must ensure that everyone is able to enjoy his or her rights, any act or failure to act by a state authority may implicate it in a human rights violation. The Inter-American Court has even found a duty to prosecute those responsible for human rights violations, although the convention does not explicitly provide for this duty.

Africa

The African Charter on Human and People's Rights took effect on October 21, 1986. Fifty-one states have ratified, including Arab and Muslim states like Egypt, Libya, Sudan, Algeria, Tunisia, Morocco, and Mauritania. The charter contains the broadest set of rights of any regional or global human rights instrument. It specifies the rights of nondiscrimination, prohibition of torture, freedom of conscience, religion, association, assembly, expression, and movement.

The African Charter, however, contains extensive "clawback" clauses that allow the states great discretion to limit rights. Perhaps as a result, the charter has no general derogation clause as in the ICCPR and American Convention. One safeguard against undue restrictions on rights mandates the African Commission on Human and People's Rights to "draw inspiration from international law on human and people's rights."[8] Another recognizes other international treaties, reinforcing the notion that the charter cannot restrict a state's otherwise existing human rights obligations.[9] Most African states have a good record in ratifying UN treaties, but the challenge has been in implementation and enforcement.

The charter's economic, social, and cultural rights include the right to self-determination, to development, to dispose of natural resources, and to a satisfactory environment. It picks up on the notion of duties in addition to rights, a theme introduced in the UDHR but virtually ignored in subsequent human rights treaties. It devotes an entire chapter to duties owed by the individual to family and society.

The charter establishes a commission, located in Banjul, The Gambia, whose 11 members serve in their personal capacities.[10] (In its early years, most were senior government officials.) The commission got off to a slow start, plagued by minimal funding, a lack of secretariat personnel, and general disorganization. Only a few states have filed reports. It has received individual complaints but little information exists on their disposition.

In an important innovation, the Commission invited NGOs to

participate in its sessions as observers. More than 30 NGOs have observer status. Major international human rights NGOs like Amnesty International, Human Rights Watch, the Lawyers Committee for Human Rights, and the International Commission of Jurists have participated. The Civil Liberties Organization (Nigeria), the Catholic Commission for Peace and Justice (Zimbabwe), and the Arab Lawyers Union are a few of the African NGOs that have worked with the commission.

The commission has four functions: promotion of human rights, protection of human rights, interpreting the charter, and other tasks assigned by the Organization of African Unity (OAU). The commission has undertaken many promotional activities, but "protection" as the commission understands it is much more difficult and politically sensitive because it involves active investigation of allegations of abuse followed by possible public denunciations.

The emphasis has been on negotiation, not confrontation. Individual complaints may be received, but as elsewhere, only after potentially effective domestic remedies are exhausted. If the complaint involves only an individual, the commission is powerless. If a "series of serious or massive violations of human and people's rights" may be involved, the OAU Assembly of Heads of States and Governments is notified, which in turn may (or may not) request the commission to investigate. The role of the assembly renders the commission much less independent from political pressures and interference than its counterparts in Europe and the Americas.

The charter does not establish an African Court of Human Rights. However, in late 1997 the OAU Assembly announced that states had agreed to establish such a court. It will probably be several years before the court begins work.

The effort in Africa to create regional mechanisms to protect and promote human rights reinforces their universality. The charter's preamble underscores this by stating that African states are "firmly convinced of their duty to provide and protect human and peoples' rights and freedoms taking into account the impor-

tance traditionally attached to these rights and freedoms in Africa." Human rights and aid practitioners can point to an African treaty, created by Africans, and ratified by the great majority of African states, in explaining the legal basis of their activities (for example, nondiscrimination based on sex or race in assistance projects).

In sum, humanitarian practitioners have at their disposal not only the international human rights law described in the previous chapter but also the particular regional instruments reviewed here. They would be well advised to anchor their activities within both frameworks, drawing on each to strengthen and legitimize their work. It is difficult for a state to argue that the humanitarian or human rights practitioner does not understand local "realities" or that he or she is importing "foreign" standards if reference is made to a regional treaty that has been ratified and that articulates the obligation contested by the authorities.

Chapter 3

International Humanitarian Law

Humanitarian action is framed not only by the international and regional human rights instruments reviewed in Chapters 1 and 2. It is also situated within, and derives credibility from, the framework of international humanitarian law. After a brief historical introduction, this chapter reviews selected provisions of the Geneva Conventions of 1949 and the Additional Protocols of 1977 relevant to modern conflicts and to the prevailing patterns of human rights abuses.

Historical Background

The evolution of humanitarian law, or, more precisely, the law of armed conflict, parallels that of human rights law.[1] With roots in the mid-nineteenth century, modern humanitarian law developed through international conventions, treaties, and protocols that established rules of war and banned certain weapons. International conferences were held to draft and promulgate these conventions. The International Committee of the Red Cross, founded in 1864, occupies the preeminent place in monitoring compliance with these conventions and providing assistance to the victims of conflict.

As with human rights law, World War II was a defining event for modern humanitarian law. On August 12, 1949, eight months after the United Nations adopted the UDHR, a Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War offered four conventions for ratification. The core of modern international humanitarian law, the Geneva Conventions, covers, in sequence, the wounded and sick in the armed forces in the field; the wounded, sick, and shipwrecked members of armed forces at sea; treatment of prisoners of war; and protection of civilians in time of war. In effect since 1950, the Geneva Conventions have been ratified by 188 states as of March 1, 1999.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide is also a direct outgrowth of World War II. It went into effect in 1951 and has been ratified by 126 states. It is the only treaty that specifically requires ratifying states to prevent and stop a human rights violation, in this case genocide. It applies at all times, regardless of peace or war. The convention is framed so as to include conspiracy, incitement, attempt to commit, and complicity in committing genocide. In 1994, Clinton

Box 4

"Basing policy around specific instruments of humanitarian law increases the negotiating position of the humanitarian community and the likelihood of unity within that community."

Sue Lautze, Bruce D. Jones, and Mark Duffield[3]

administration officials studiously avoided using the term to describe events in Rwanda in order not to trigger the convention's obligations. Five years later, the administration was quicker to state publicly that there was "evidence" of genocide and that there are "indications that genocide is occurring in Kosovo."[2] The convention's definition of genocide has been adopted by the ad hoc criminal tribunals for the Former Yugoslavia and Rwanda.

The Geneva Conventions

The focus of the Geneva Conventions is mainly on state behavior in international conflicts. The bulk of their provisions do not apply in civil wars or wars of national liberation, precisely the kinds of conflicts that became more common after 1949. Yet each

contains an identical provision, Common Article 3, establishing obligations toward noncombatants, even in the case of a noninternational armed conflict. Some commentators see Common Article 3 as a human rights baseline in armed conflicts, a "treaty in miniature." Common Article 3 requires combatants to treat humanely and without discrimination all those taking no active part in hostilities or those who have laid down their arms or are *hors de combat* because of sickness, wounds, or any other reason. This applies at all time in all places without exception.

In language much stronger than that found in human rights treaties, Common Article 3 prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture"; "hostage-taking; outrages upon personal dignity, in particular humiliating and degrading treatment"; and "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court..."

Common Article 3 of the Geneva Conventions is binding on all the parties to the conflict, whether or not they are states. "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..." Requiring all parties to the conflict to uphold Common Article 3 in no way confers recognition or other legal status because "The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

Common Article 3 is a powerful tool for both the human rights and the humanitarian practitioner.[4] Some of the prohibited acts defined in Common Article 3, such as murder and torture, are defined elsewhere in each convention as "grave breaches" and are international crimes requiring either prosecution or extradition for prosecution.[5]

The Additional Protocols

The Geneva Conventions were shaped in response to, and in the aftermath of, the experience of World War II. Today, however, the overwhelming majority of conflicts are not international

conflicts between states but internal ones. Civilian casualties outnumber military by a ratio of nine to one, with civilians intentionally targeted, used as "shields," raped, and forcibly conscripted. Children have been forced to kill family members and then to join the combatants. Even before the recent wave of genocide and massive human rights and humanitarian law violations in Rwanda, Burundi, Bosnia and Herzegovina, Kosovo, Burma, Sudan, Sri Lanka, Colombia, Guatemala, El Salvador, Liberia, Sierra Leone, Algeria, East Timor, Afghanistan, Cambodia, and Iraq, the limited reach of the Geneva Conventions had been widely acknowledged.

In June 1977, two Additional Protocols to the Geneva Conventions were opened for signature, each taking effect in 1978. Protocol I, which has been ratified by 153 states, details protections for victims of international armed conflicts. Although these obligations existed already, the drafters noted the need "nevertheless to reaffirm and develop the provisions protecting victims of armed conflict and to supplement measures intended to reinforce their application."[6] Protocol I requires the parties to the conflict always to distinguish between the civilian population and combatants, to direct operations only against military objectives, and to "ensure respect for and protection of the civilian population."[7]

Articles 68-71 of Protocol I cover "relief in favor of the civilian population" and establish rules for providing relief to civilian populations and for relief providers to observe in delivering humanitarian assistance. Article 71(3) states that "[o]nly in the case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted." Violations of these articles abound in modern conflict with examples from Afghanistan, Congo, Sierra Leone, Kosovo, Bosnia and Herzegovina, and other parts of the Former Yugoslavia. They demonstrate once again the wide gap between law and practice.

Article 85 defines "grave breaches" of Protocol I that require prosecution or extradition. Commanding officers must insure that their troops obey the conventions and protocols, promote aware-

ness of applicable standards, and punish those who violate these rules.[8] Other articles in Protocol I prohibit attacks on cultural sites, define protection for journalists, outlaw weapons that cause unnecessary or long-term damage or suffering, and require special protection for women, children, refugees, and stateless persons.

Protocol II expands on the earlier attempt to define protections for civilians in noninternational armed conflicts, precisely those who most need protection in today's warfare. It is meant to develop and supplement Common Article 3. As of March 1, 1999, 145 states have ratified Protocol II, which took effect in 1978. The failure of several major powers, including the United States, to ratify Protocol II limits its utility.

Protocol II applies when "dissident armed forces or other organized armed groups...under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations."[9] The ICRC has noted that the conditions of application of Protocol II are stricter than those provided for by Common Article 3. Protocol II does not apply to internal conflicts that do not possess the characteristics defined in Article 1 yet are conflicts nonetheless, in which case Common Article 3 applies.

Nor does Protocol II cover internal disorder, riots, or "isolated and sporadic acts of violence and other acts of a similar nature" that do not rise to the level of an internal armed conflict. In such situations, human rights law would apply, although the various clawback provisions in the ICCPR would allow governments to limit the exercise of certain rights precisely because there may be a "public emergency." Article 4 of the ICCPR allows states to suspend some rights altogether. This middle range of tension or unrest—more than peaceful protests but less than internal armed conflict—provides much room for governments to restrict some human rights unconstrained by either Protocol II or Common Article 3.

Once operative, Protocol II must be applied without any adverse distinction based on "race, color, sex, language, religion, political opinion, national or social origin, wealth, birth or social

status or other similar criteria."[10] This safeguard is similar to the nondiscrimination provisions of many human rights treaties such as the ICCPR and the ECHR. Protocol II also expands the obligation to treat noncombatants humanely as originally defined in Common Article 3 of the Geneva Conventions.

Prohibited at any time and in any place, there is no clawback, derogation, or public emergency escape for a state or insurgent group for such acts as violence to life, health, or well-being, murder, cruel treatment (torture, mutilation or any form of corporal punishment), collective punishments, hostage-taking, terrorism, rape, enforced prostitution, indecent assault, slavery and the slave trade, pillage, and "threats to commit any of the foregoing acts." People detained for acts related to the conflict have clearly enumerated rights.

Since Protocol II does not define "grave breaches," it has remained an open question whether certain violations of it constitute international crimes requiring prosecution or extradition. However, several decisions by the International Criminal Tribunals for the Former Yugoslavia and Rwanda indicate that certain violations of Protocol II have attained the status of international crimes.

Current Challenges to Humanitarian Law

Despite the progress represented by the protocols, the brutality of modern conflicts and their terror tactics outpace efforts to modernize the laws of armed conflict. The growing proliferation of small arms and land mines, the subject of a new treaty initiative, has significantly increased the exposure of civilian noncombatants.

Humanitarian and human rights workers have also been victimized by post-Cold War conflicts. In blatant violation of the laws of armed conflict, combatants have specifically targeted field officers in Burundi, Rwanda, Chechnya, Bosnia, Tajikistan, Abkhazia/Georgia, Afghanistan, Liberia, and El Salvador, to cite several examples. The UN notes that more international civilian

personnel than armed soldiers were killed in UN peacekeeping operations in 1998.[11]

In short, the very nature of modern armed conflicts calls into question the basic assumptions of humanitarian law. When the ICRC was founded in the mid-nineteenth century and in subsequent efforts to codify the laws of war, legal constraints were premised on dealing with professional soldiers who were subject to strict command and control by a defined military hierarchy. Such combatants are now the exception, with groups of ill-trained, undisciplined, highly armed bands of fighters, subject only to their immediate commander, if that, as the norm, or are portrayed as such by leaders keen to evade their command responsibilities.

Such conditions make it difficult for states and the ICRC, the custodian of such law, to disseminate the conventions and protocols and ensure familiarity with and respect for their provisions.[12] In response to this changing environment, the ICRC's "People on War" project is currently seeking to determine the levels of awareness of the laws of war in 15 war-torn societies. The survey will measure the gap between the laws' intent and reality, which may lead to change and refinement of the laws or creation of new tools for reinforcement.[13]

Indeed, the ICRC, the United Nations, other organizations involved in protection and assistance, and governments themselves face a huge challenge in applying the existing law of armed conflict to this radically changed reality.[14]

Chapter 4

International Law on Refugees and Internally Displaced Persons

The third major body of international law applicable to the activities of humanitarian actors concerns refugees and internally displaced persons (IDPs). Whereas the state of law regarding IDPs is less well-established than refugee law, the reality that in the post-Cold War world there are more IDPs than refugees underscores the relevance of both regimes to humanitarian practice.

Refugee Law

Traditionally considered separate from both human rights and humanitarian law, international refugee law contains elements of protection and assistance that are based on rights accorded to those recognized as refugees. The 1951 Convention relating to the Status of Refugees, which took effect in 1954, defines a refugee as any person who "owing to 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..."

This narrow definition is made even narrower by states that, for a variety of reasons, wish to restrict the recognition of refugees. The 1969 Organization of African Unity Convention on Refugees contains a much broader definition, encompassing people fleeing from war, generalized violence, and natural disasters. In fact, African states have mostly shown much greater hospitality to large numbers of refugees than have their much richer counterparts in Europe and North America.

The 1951 Refugee Convention also establishes the fundamental principle of *nonrefoulement*, that is, forbidding states from expelling or returning a "refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threat-

ened on account of his race, religion, nationality, membership of a particular social group or political opinion."[1]

Once an individual has been granted refugee status, the host state has several affirmative obligations. These include a duty not to discriminate among refugees on the grounds of race, religion, or country of origin, and to allow freedom of religion. With certain restrictions, the host state is also expected to respect the rights of refugees to form associations, have access to courts, earn a wage, exercise a "liberal profession," and have access to housing, education, relief, and social security.[2]

The convention excludes from its benefits any person for whom

> there are serious reasons for considering that:
> (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments...;
> (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
> (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.[3]

Application of the exclusion clause has been both difficult and essential, as discussed in a companion monograph.[4] What does "serious reasons for considering" mean? What type of evidence of war crimes or acts contrary to UN principles is necessary and to whom is it to be given? Who decides on whether a given person or group of persons should be denied refugee status? Can the person excluded appeal the decision and, if so, to whom? What happens to the person excluded? What if he or she has accompanying family members?

Despite the lack of clear answers to such questions, the United Nations High Comissioner for Refugees (UNHCR) and UN member states need to identify practical and fair ways of applying the convention's exclusion clause. This would help avoid a repeat

of the situation that prevailed in the Great Lakes region of Africa, and before that on the Thai-Cambodian border, where agencies in their effort to assist genuine refugees ended up helping people responsible for genocide. The legal principle requiring a denial of refugee status to such people exists, but as with other human rights and humanitarian law principles, applying it is a formidable challenge.

Provisions Affecting Internally Displaced Persons

One area in which existing refugee law is not clear involves internally displaced persons. The convention's definition of a refugee requires that such a person "be outside the country of his nationality." Conflicts, particularly of the post-Cold War variety, have uprooted hundreds of thousands of people who, while forced to leave their homes, have not crossed an international border. Legally speaking, such persons are not refugees and fall outside the protections of the 1951 Convention and the formal mandate of UNHCR.

At the specific request of the UN secretary-general, UNHCR has occasionally extended its work beyond refugees to include IDPs. Yet UNHCR has been reluctant to press for a generic extension of its mandate to cover such persons in each crisis situation. At issue have been both the absence of the financial resources for doing so and concerns that activities undertaken by UNHCR in countries of origin might be seen as undermining the right to seek asylum. Some analysts contend that a new convention or treaty covering IDPs is needed; others argue for extending existing laws and institutional mandates to encompass them. The problem is a significant one: UNHCR estimates that there are currently up to 22.7 million refugees and up to 30 million IDPs worldwide.

Recognizing that internally displaced persons were falling through cracks in the UN interagency system, the secretary-general in 1992 created the position of representative for IDPs and appointed Francis Deng to fill it. In the intervening years, Deng

and his associates have undertaken fact-finding missions to 13 countries, published an array of reports, and engaged governments and regional organizations, NGOs and human rights bodies in the issues.

At the April 1998 session of the Human Rights Commission, Deng introduced 30 guiding principles for the treatment of IDPs.[5] He noted that legal principles to protect IDPs exist in human rights, humanitarian, and refugee law but are "too diffused and unfocused to be effective in providing adequate protection and assistance for the internally displaced." The guiding principles "reflect and are consistent with international human rights law and international humanitarian law" and are binding on "all authorities, groups and persons irrespective of their legal status." The commission unanimously adopted a resolution acknowledging the principles and they have subsequently been widely disseminated.

Principle 1 is the familiar injunction against discrimination: "Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in the country." Subsequent principles, which embrace both the civil and political and economic, social, and cultural rights of IDPs, enunciate specific steps to avoid or mitigate displacement. "Ethnic cleansing" is prohibited, as is forcing children to participate in combat. Rights to security of the person and to seek safety are affirmed. Principles 24-27 affirm the right of humanitarian organizations to offer, and the duty of the host political authorities to facilitate, the provision of humanitarian assistance. The need for protection as well as assistance is highlighted throughout. [6]

In sum, the provisions of international refugee law are clear and well-established, although their implementation has not been consistently respected by signatory states. Some of the world's richest states have restricted access to asylum and have adopted exceedingly narrow interpretations of who qualifies as a "refugee." Legal protections for internally displaced persons, an even larger population resulting from the special kind of internal armed

conflicts that have characterized the post-Cold War era, have evolved in recent years although they, too, require wider acceptance and implementation by the international community.

Chapter 5

The Universality and Indivisibility of Human Rights

Earlier chapters have reviewed the framework of international human rights law that provide a context within which humanitarian action takes place. International humanitarian law and law related to refugees and internally displaced persons have also been examined as they affect human rights concerns. This chapter analyzes the universality and indivisibility of human rights. Chapter 6 explores the relevance of international law to the day-to-day activities and dilemmas of humanitarian practitioners.

Regional Viewpoints and the Evolving International Consensus

The international legal framework affirms that human rights are universal and indivisible. The framework is based on the notion that the enumerated basic human rights are the birthright of all persons, whatever geographical or cultural circumstances and whatever local traditions and practices may exist. Equally central is the notion that rights—whether political and civil or economic, social, and cultural—are indivisible, despite the differing priority given to them in different parts of the world. Both notions deserve review.

The main challenge to the notion that human rights are, as the 1948 Universal Declaration's title indicates, "universal" comes principally from some political leaders in Asia and the Middle East. Prime Minister Mohamed Mahathir of Malaysia, Lee Kwan Yew of Singapore, former president Suharto of Indonesia, and virtually the entire senior political leadership in China are the most insistent voices in Asia, arguing that human rights are a western concept ill-suited to their unique societies and cultures. Some political and religious leaders in the Middle East, including the Taliban in Afghanistan, the Saudi royal family, and some Muslim extremists

throughout the region argue similarly that in the conflict that exists between their cultures, religion, and human rights, the latter must yield to the former.

Some political leaders in sub-Saharan Africa have also argued for "African particularity." Presidents Moi of Kenya, Mugabe of Zimbabwe, and the late Mobutu Sese Seko of the former Zaire have maintained that group rights were more important than individual rights for nations seeking to develop their societies. The political democracy championed by the West, they have argued, must await progress on the economic and social fronts. Having adopted the African Charter, however, leaders can hardly assert that Africa was somehow different from the rest of the world.

Latin American leaders have rarely questioned the universality of human rights, although their fidelity to those values over the decades has left much to be desired. North of the border, many in the U.S. have emphasized the importance of civil and political rights while questioning the very existence of economic, social, and cultural "rights."

The most direct and formal challenge to the universality and indivisibility of human rights came in discussions leading up to the 1993 International Conference on Human Rights held in Vienna. In a preparatory conference in Malaysia, Asian delegations adopted a hard-line position calling for recognition of cultural differences and local practices. The Malaysians even floated the idea of reexamining the UDHR on the grounds that it was drafted and adopted when most of the present UN member states were still colonies. The Malaysian delegation also argued that the Declaration did not reflect the world's various cultures.[1]

Despite great resistance from some Asian governments, NGOs fought successfully for the right to lobby delegations on the floor and to make formal statements to the Vienna conference. NGOs from all over the world—but most importantly those from from Asia, the Middle East, and Africa—attended and lent authenticity to the case for the universality of human rights. They pointed to elements in their own cultural and religious traditions consistent with such rights. After stormy debates and all-night drafting

sessions, the conference reasserted the universality of all human rights. At the Fourth World Conference on Women in Beijing in 1995, NGOs played a similar role and achieved a similar outcome with respect to the rights of women.

However important such high-level political and legal victories, practitioners continue to face real difficulties on the ground, some of their own making. Many rights organizations, particularly those from Europe and North America, have supplied ammunition to those who oppose human rights or question their universality and indivisibility. These NGOs have typically focused on civil and political rights excluding other rights. They often have employed confrontational strategies geared to uncover, document, and denounce violations. Their approach reflects their origins in the 1960s and 1970s, largely in response to dictatorial regimes in the former Soviet Union, Eastern Europe, and Latin America. Their overwhelming focus from the outset had been on protecting individual liberties and freedoms, the classical civil and political rights, by exposing violations and thereby hoping to shame violators into changing their behavior.

Geopolitical changes have now altered the landscape. Gone are most of the dictatorial regimes in Eastern Europe and Latin America that had constituted the overwhelming focus of human rights advocacy work for three decades, beginning in the 1960s. Rights violations now flow most often from racial, religious, and ethnic tensions, and frequently involve complex roots expertly manipulated by those holding or seeking power. Addressing exclusively civil and political rights in today's crises is demonstrably insufficient, as is relying solely on the tactic of shaming states into ending abuses.

The View from the United Nations

If civil and political rights and economic, social, and cultural rights are inextricable and mutually dependent, activities undertaken in support of such rights must reflect this reality. Having vowed to correct the imbalance between the two "baskets" of

rights, UN High Commissioner for Human Rights Mary Robinson frequently emphasizes the inseparability of both. At a symposium in Tokyo in January 1998, she observed that

> Freedom of speech and belief are enshrined but also freedom from fear and want. Fair trial and the right to participatory and representative government sit shoulder to shoulder with the right to work, to equal pay for equal work, and the right to education. Both sets of rights proclaimed as 'the highest aspiration of the common people.' All the people. We must be honest, however, and recognize that there has been an imbalance in the promotion at the international level of economic, social and cultural rights and the right to development.[2]

Secretary-General Kofi Annan has mandated the agencies of the UN system to "mainstream" human rights. This approach promises over time to underscore the universality and indivisibility of human rights by righting the previous imbalance between the two baskets of rights. UN agencies whose projects involve food, housing, education, health care, rural development, access to clean, safe water and access to credit are now being seen as working to put flesh on economic, social, and cultural rights. Their relationships with host political authorities and local NGOs, and their expertise in project management and evaluation, could lead to important synergies with their colleagues whose work focus on implementing political and civil rights. As with the implementation of international law, the operationalization of human rights throughout the day-to-day work of the UN system poses formidable challenges.[3]

In implementing the secretary-general's directive, individual UN organizations are examining their mandates and ways of doing business. UNICEF and United Nations Development Programme (UNDP), for example, are adopting rights-based

Box 5

The achievements of the last fifty years are rooted in the universal acceptance of those rights enumerated in the Universal Declaration, and in equally universal abhorrence of practices for which there can be no excuse, in any culture, under any circumstance. Who in this hall—or anywhere in the world—would deny the wickedness of torture? Who would justify the unspeakable practice of 'ethnic cleansing'? Who would defend slavery or stand in support of racial, sexual or religious discrimination? Who would advocate arbitrary or extra-judicial justice?

You may think—'well, such people do exist'—but let us say with one voice: they will not prevail....

Will we say that rights are relative, or that whatever happens within borders shall not be of concern to organizations of sovereign states? No one that I know of can today defend that position. Collectively, we should say no! We will not and we cannot accept a situation where people are brutalized behind national boundaries. For at the end of the 20th century, one thing is clear: a United Nations that will not stand up for human rights is a United Nations that cannot stand up for itself.

UN Secretary-General Kofi Annan[4]

approaches to programming. No longer operating primarily as provider of goods and services, UNICEF now grounds its work on the Convention on the Rights of the Child, which it was instrumental in promoting. UNICEF's Executive Board in 1996 adopted a mission statement affirming that UNICEF "is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behavior towards children."[5]

In mid-1998, the UNDP issued a study on integrating human rights with sustainable development and committed itself to incorporate human rights into all its programs.[6] UNDP created and filled a new position for a senior human rights specialist to review programs, train staff, and ensure that human rights become integral to its work. High Commissioner Robinson recently assigned a senior human rights officer to UNDP for Southern Africa. The appointee has begun to work with UNDP resident coordinators in the region to create, implement, and evaluate projects in governance, human rights, democracy, and the rule of law, with the right to development as a unifying principle.[7]

The World Bank, International Monetary Fund, and the regional development banks, normally preoccupied with economic development and finance, are increasingly concerned with "good governance" and the related problems of corruption and the absence of independent legal systems. The World Bank has moved from a stated reticence in dealing with human rights issues to a belated realization that human rights are essential to sustainable development and financial stability. In a conclusion that would have been unthinkable as recently as five years ago, a recent study by the bank has found "a strong and consistent link between measures of the extent of civil liberties in a country and the performance of World Bank-supported projects."[8]

International NGOs are also adopting a wider variety of strategies to address human rights problems. Public criticism and forceful denunciations still have their place. Yet working with governments and local NGOs to strengthen capacities to promote and protect human rights is becoming more common, and long

overdue. Investigating abuses has helped experts design human rights training programs for police, judges, lawyers, prosecutors, prison officials, and ombuds-officers to address the system's failure to prevent or punish abuses. Human rights education and promotion in the schools and through local NGOs involves the population directly in building national institutions to protect all international human rights. Recent experience also suggests that agencies addressing problems of poverty, disease, and poor housing may receive a more favorable hearing from government officials when later expressing their concerns about civil and political rights.

Local Perspectives and Activities

Local NGO involvement is perhaps the most crucial element in making the case for universality and indivisibility. Local groups often provide the most authentic assessment of whether local culture or practices may differ from universal standards and how best to confront this dilemma. For example, female genital mutilation (FGM) is practiced in large swaths of northeastern and west Africa and in parts of the Middle East. Yet thunderous denunciations from prestigious international human rights organizations have not succeeded in halting a practice that represents a horrific human rights violation by any standard.

Adopting a lower profile, the US-based Fund for Peace sent to the Horn of Africa two human rights experts from the Guyana Human Rights Association experienced in working with local NGOs. They spent six months convening workshops with government officials and NGOs on international human rights standards, including the rights to physical integrity and access to adequate health care. Encouraged by these discussions, which had a practical focus, local women's groups campaigned to educate people on the dangers of FGM and build grassroots support to end it. In Egypt's Nile Valley, several villages have stopped FGM after an eight-year grassroots effort.[9] As in other clashes between local customs and universal standards, local actors are in a much

stronger position to challenge FGM than outsiders.[10]

Even after the Vienna Conference, some Asian political leaders have continued their emphasis on group rights over individual rights and on "stability" over robust debate and dissent. Until the recent Asian economic meltdown, they credited to that emphasis the region's rapid expansion and sought to justify the concomitant limitations on rights such as free expression, association, and assembly accordingly. Yet Kim Dae Jung, recently elected president of South Korea, dismisses the notion of an "Asian approach," arguing that greater freedom, debate, and dissent would further the cause of economic prosperity. Indian economist, philosopher, and recent Nobel Laureate Amartya Sen has noted that there has never been a famine in a country with a democratic form of government and a relatively free press. His statement provides perhaps the most direct and dramatic link between economic and social rights and civil and political rights. Similarly, Filipino sociologist Walden Bello has asserted that authoritarianism is "at odds with real Asian values of solidarity and equity."[11]

Such viewpoints are echoed by innumerable grassroots groups in Asia and elsewhere. Islamic legal experts, women's organizations, and local human rights NGOs argue, for example, that just as the Bible and national constitutions undergo constant reassessment and reinterpretation, so must the Koran.[12] Several Islamic legal scholars and experts in traditional African legal systems are exploring the Islamic and African roots of modern human rights law principles, countering the notion that these are "foreign impositions."[13]

Others see a direct conflict between "tradition" and certain human rights issues, especially those involving women. Yet women's groups in the Islamic world are increasingly calling for a reassessment of their status and an end to a "Muslim system of apartheid."[14] Muslim feminists have long argued, comments a woman lawyer from Algeria, "that it is not the religion, but the male interpretation of the Koran that keeps women oppressed, along with texts that were added in the Middle Ages."[15]

The State of the Debate

The current debate about universality and indivisibility is likely to continue in the years to come. While the directions of the evolving consensus are evident, many issues remain to be resolved. Moreover, at the implementation level, both in domestic law and in the activities of host and international institutions, there is much still to be done.

At the end of the first post-Cold War decade, there is growing support for the proposition that the core principle of all human rights law—nondiscrimination—must be upheld. The freedom to discuss and debate culture, local practices, and changes must be guaranteed; those affected by such discussions must be allowed to participate. As Radikha Coomaraswamy, the UN Special Rapporteur on Violence against Women, has written, "cultural diversity should be celebrated only if those enjoying their cultural attributes are doing so voluntarily."[16] Respect for cultural diversity cannot justify violating core human rights.

Sterile debates about universality and indivisibility are now increasingly giving way to vigorous discussions led by local NGOs on how best to incorporate international human rights standards into their respective societies. It is incumbent on international actors to support and encourage such nongovernmental and governmental efforts, and also to anchor their own international activities more clearly within the evolving and increasingly supportive international legal framework.

Chapter 6

A Look to the Future

The international legal regime underpinning humanitarian action continues to evolve in the face of changes in the nature of modern conflicts and the practices of state and nonstate entities. This concluding chapter examines several promising recent developments and identifies illustrative connections between international law in its various aspects and the activities of humanitarian agencies.

Recent Developments

The treaties and conventions examined earlier offer important tools for rendering protection and assistance to civilian populations. Of particular importance to practitioners are the Convention on the Rights of the Child, the 1977 Additional Protocols to the Geneva Conventions, and the Guiding Principles on Internal Displacement. These are already finding their way into pocket manuals for ready reference by field personnel.

Also relevant, although still in the process of creation, is the new International Criminal Court (ICC). Following numerous preparatory sessions that outlined the jurisdiction, structure, and powers of the ICC, a final meeting in Rome in June and July 1998 completed a treaty that is now open for signature and ratification. It builds on two ad hoc tribunals created by the UN Security Council following the genocide in Rwanda and the Former Yugoslavia, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTFY).[1]

The ad hoc tribunals and the future ICC hold individuals criminally accountable for serious violations of international humanitarian and human rights laws, even in internal conflicts. The ICTR issued historic verdicts in September 1998 finding Jean-Paul Akayesu, the mayor of Taba, Rwanda, guilty of geno-

cide, the first time that an international tribunal has ever convicted anyone of the crime of genocide. The ICTR also accepted a guilty plea from the former Prime Minister of Rwanda, Jean Kambanda. Both were sentenced to life in prison. The ICTR also held in the Akayesu case that rape and sexual violence can constitute genocide and crimes against humanity, another historic and path-breaking finding.

When former Chilean dictator Augusto Pinochet was detained in London on October 17, 1998—at the request of an investigating judge from Spain for the murder, torture, and disappearance of some of the thousands of victims in Chile, including several Spanish citizens—it provided a dramatic demonstration of how far international law has come from an earlier era when sovereignty predominated. The Law Lords in London decided on March 24, 1999 that Pinochet had no sovereign immunity for torture committed after 1988, the year that the United Kingdom ratified the Convention against Torture, which requires all state parties either to prosecute or to extradite those charged with such acts.[2] That a former head of state may be held accountable in a foreign national court for violations of human rights on a different continent committed under his command 10 years ago is a huge step toward putting teeth into the enforcement mechanisms provided for by human rights treaties.

A European diplomat summed up the link between the international tribunals and national prosecutions as follows: "What goes for General Pinochet also goes for all the Mladics and Karadzics who are still in hiding and will be, one day or another, arrested and judged for their crimes."[3] Serious human rights violations like murder, torture, rape, and disappearances have become equivalent to piracy or slavery. They are "crimes against humanity" and their perpetrators should not find refuge from prosecution or punishment anywhere.[4]

Issues for Future Discussion

The evolution of international law, including the creation of

international courts to try individuals accused of genocide, war crimes, and crimes against humanity, has clear implications for the work of humanitarian and human rights staff and agencies. The new instruments do not automatically change the situation on the ground, but they strengthen international law guaranteeing respect for the rights of civilians and for those seeking to assist and protect them.

Since aid officials are likely to witness or obtain evidence of crimes falling within the ICC's jurisdiction, they may be called before the court to testify. Their organizations also may be asked to provide relevant documents. Although the legal strides being made are beyond doubt positive, reliance by such tribunals on humanitarian and human rights organizations could alter the relations of such entities with host states, other parties to a conflict, and local NGOs. Organizations are therefore necessarily thinking through the extent to which within their current mandates, or within revised terms of reference, they will be prepared to cooperate with international or national prosecutions.

In the light of the perceived need for, and of efforts to create, new legal mechanisms, a recurring topic of discussion concerns the adequacy of the existing legal framework to current and future worldwide protection and assistance challenges. Some aid groups have advocated new conventions to clarify such issues as the right of civilians to humanitarian assistance and the obligation of states to provide or facilitate it. Other agencies, including the ICRC, express caution. In their view, new provisions not only require considerable time and energy to put into place but are also likely to water down the force of existing principles. Generally speaking, there is widespread consensus that priority should be given to stepped-up monitoring and implementation of existing international laws rather than to devising new legal instruments.

Whether new treaties emerge or greater efforts are made to enforce existing laws, difficult questions remain. These include the following:

- how far, and based on what criteria, can human rights law cover nonstate actors;

- whether humanitarian law can be fully applied to internal conflicts;
- how can economic, social, and cultural rights be better measured and enforced;
- who will apply the "exclusion" provision in refugee law and what procedures will be applied to guarantee a fair hearing;
- what legal and practical steps can be taken to extend protection to IDPs or to enforce better existing protections;
- whether a system can be created to compensate victims of human rights violations;
- how can the exploding traffic in small arms, the weapons of choice in today's conflicts, be monitored and controlled and arms traffickers be apprehended and prosecuted.

Narrowing the Gap between Law and Practice

During the first decade of the post-Cold War era, the previously discrete fields of human rights, humanitarian, and refugee law have begun to coalesce. This is partly the result of the changing nature of conflicts. Human rights violations are often the root cause of conflicts; violations intensify, prolong conflicts, and create refugee flows and massive internal displacement of people. Assistance to such persons is imperative.

Yet growing congruence in the legal realm has generated a certain tension in the field. Human rights monitors, aid personnel, and refugee officials now literally stumble into each other visiting prisons, government officials, refugee camps, and hospitals. At one point or another they also seek out local NGOs. Mandates overlap and competition for resources and visibility is great.

Assistance providers are more and more aware of the human rights dimensions of their work. Conversely, the growth of UN human rights field operations has increased these contacts. Starting with the United Nations Observer Group in El Salvador (ONUSAL) in 1991, the UN has deployed human rights field operations alone, or as part of peacekeeping operations in Cambodia, Haiti, Rwanda, Guatemala, Bosnia, Burundi, Liberia, Angola,

Colombia, Abkhazia/Georgia, Sierra Leone, the Central African Republic and the Democratic Republic of the Congo.

In recent years, UN human rights field operations have begun to do much more than monitor, investigate, and report on human rights violations. They also seek to engage the authorities in long-term, sustainable projects addressing the root causes of rights violations.[5] Working with the same civilian populations, assistance and protection personnel are required to forge some modus operandi with state and nonstate actors and with each other. The failure to do so can be not only embarrassing but also counterproductive. Greater attention to an effective institutional division of labor is imperative.

The following examples from the experiences of humanitarian agencies demonstrate some of the real-world dilemmas faced by practitioners. Both legal and operational challenges are at issue. Whereas the challenges raised are complex and a variety of international laws may be applicable, decisions of great import often need to be reached quickly and explained clearly. In such circumstances, an understanding of applicable international laws and norms may provide a key element in responding.

- Rebels use civilians as shields to advance on the capital city. The commander of government forces says that next time he will order his troops to fire on the civilian "shields." How should aid and human rights personnel respond to such a statement?

- Aid workers seeking to deliver essential supplies to refugees and IDPs are prevented from doing so by armed men at roadblocks. They wonder whether they should note the names and affiliation of those controlling the roadblock, the date, time, and place of these incidents. If they did, what would they do with the information? On other occasions, those manning the roadblocks demand money or supplies as the price of passage. What should aid workers do?

- Government radio or media are broadcasting or publishing material promoting hatred or violence based on racial, ethnic, or national grounds. International human rights law seeks to balance the right of free speech with the rights of others and prohibits, for example, incitement of genocide or racial hatred.[6] Should assistance and human rights workers advocate closing down the radio station in question?

- Common penal practices in conflict include overcrowded prisons, the use of force by prison guards, and limited or no access of prisoners to family, medical care, and legal counsel. Secret detention centers are forbidden by international law. Prisons must also maintain up-to-date and accurate registers listing of inmates, yet many in conflict areas do not. What should aid workers do if they discover such violations?

- In one instance, prisoners were taken to an empty lot in a city and executed by the militia in charge, the bodies were left in the lot for several days with people afraid to approach the site. Should an aid organization that finally agrees to bury the bodies in a mass grave try to determine the identity of those killed, the manner in which they died, and the cause of death? Should it alert the UN, the regional human rights entity, international or national NGOs, or states to what has happened?

- Once granted refugee status, individuals are entitled to many rights in the host state, at least to the extent enjoyed by legal aliens in the state. Yet host governments often put severe restrictions on refugees that are contrary to international law. Restrictions on movement, employment, and access to education, medical care, and housing are common. To what extent should these restrictions be challenged?

- Although freedom of association and assembly are guaranteed under international human rights law, many states impose

unreasonable restrictions on nongovernmental organizations. Some have onerous registration requirements, prohibitions on renting office space, obtaining telephone lines, or opening bank accounts. Some harass and arrest leaders and members. What would be the best strategy to promote respect for NGO rights?

- Government programs in the areas of economic, social, and cultural rights (e.g., regarding food, housing, medicine, education, and access to credit) favor a particular group or region. Thus women and girls may be denied equal access to relief or development activities. Such discrimination violates the core principle of nondiscrimination established in human rights, humanitarian, and refugee law. To what extent should government practice be challenged and / or offset by international assistance efforts?

- Although the rights of children are specified in international law, gray areas require interpretation. Children may help out on the family farm, with housework, and even function as paid workers in nonhazardous industries. States have laws defining a minimum age of employment. Children should not be working so much that they cannot attend school or enjoy childhood. What if children are routinely kept as domestic servants and forbidden from attending school?

- Development aid pours into a country, whose government receives consistently high marks from international financial institutions and aid agencies for its development policies. Its books are balanced and corruption is minimal. Yet serious human rights violations such as murder, torture, and disappearances are occurring and the development agencies, including World Bank officials, are aware of these abuses. What should such agencies do?

- Some conflicts are becoming "privatized": that is, mercenaries

are hired to conduct the conflict. To what extent are existing international laws binding on mercenaries? What are the responsibilities of those who hire them?

These examples underscore the importance of increased and regular communication between experts in international law and field practitioners. Callous disregard for the law by many belligerents makes it particularly imperative for practitioners to be clear about its applicability and strategic in their approach to the warring parties. That will require enhanced training for all involved in field operations.

Conclusion

A working knowledge of the particulars of the Geneva Conventions may not be immediately helpful to an aid worker stopped at a roadblock by a Kalishnikov-wielding 14 year-old boy who does not know how to read. Nor will the prison warden whose own guards are not paid or fed regularly find the UN Standard Minimum Rules for the Treatment of Prisoners especially compelling. However, the effectiveness and efficiency of humanitarian and human rights activities is enhanced by how much they are firmly grounded in international legal principles and how much those principles are upheld. Although all personnel need not turn into human rights monitors, everyone has a self-interest in understanding and applying human rights, humanitarian, and refugee law in today's conflicts and complex emergencies. Otherwise, the roots of conflicts will remain unaddressed, those responsible for conflicts will go unpunished, emergency relief and development projects will be misguided, and the populations for whom assistance and protection is intended may face even greater risks.

NOTES

Introduction

1. James Darcy, "Human Rights and international legal standards: what do relief workers need to know?" Relief and Rehabilitation Network Paper #19 (London: Overseas Development Institute, 1997).

2. The website of the International Committee of the Red Cross (www.icrc.org) contains the most important commentaries on the Geneva Conventions and Protocols, including those of Jean Pictet. It provides information on the latest developments in the law of armed conflict and has numerous links to other sites.

3. The United Nations High Commissioner for Refugees maintains an excellent website at www.unhcr.ch Among the more comprehensive and accessible studies on refugee law is Guy Goodwin-Gill, *The Refugee in International Law* (Oxford, U.K.: Oxford University Press, 1996). Other resources are provided in Appendix II.

Chapter 1

1. For an excellent study of the Belgian king's systematic campaign of executions, torture, and mutilation in the Congo Free State between the 1870s and the 1920s, see A. Hochschild, *King Leopold's Ghost* (New York: Houghton Mifflin, 1998). Equally compelling is Hochschild's description of the international campaign to expose and end the atrocities. This includes the now-familiar tactics of public denunciations, calls for economic boycotts, and even military intervention.

2. See Iris Chang, *The Rape of Nanking* (New York: Penguin, 1997). Chang also describes the "Nanking Safety Zone" which represented an effort led by international missionaries and a Nazi businessman to declare a portion of Nanking neutral territory. This early "safe area" was partially successful. (See pp. 105-139.)

3. Ambassador Danilo Turk of Slovenia, quoted in Barbara Crossette, "What is a Nation," *The New York Times*, Dec. 26, 1994. The NATO bombing of Kosovo that began in March 1999 also demonstrated, in the view of some observers, that "in much of Europe and North America...human rights matter more than national sovereignty." R.W. Apple, "It's the 21st Century Arriving Early," *New York Times*, April 1, 1999, A14.

4. International law can emerge from "custom" when there is

"evidence of a general practice accepted as law." (Article 38.1b of the Statute of the International Criminal Court of Justice.) By the 1940s, it could have been argued that slavery and piracy were prohibited based on this principle of customary—that is, nonwritten—international law. Today, international jurists argue that customary law prohibits torture, disappearances, and the forced return of refugees to places in which they fear persecution.

5. Michael McClintock, "An Agenda for Human Rights Practitioners," paper prepared by Human Rights Watch for a conference sponsored by the Humanitarianism and War Project, "Assisting and Protecting War Victims: Transatlantic Pespectives on Humanitaian Opeations and Research," May 20-23, 1999.

6. The United States ratified the ICCPR only in 1991, and asserted at the time numerous reservations limiting the Covenant's applicability. For example, the U.S. reserves the right to execute pregnant women and those who were under 18 when they committed a capital crime. Although President Carter signed both covenants in 1976, ratification was subsequently stalled because of significant resistance from President Reagan and Senator Jesse Helms. Helms, who heads the Senate Foreign Relations Committee, refuses any consideration of ratification of the ICESCR. He argues that the rights enumerated in the treaty are not "rights" at all, but rather privileges that accrue from an individual's efforts in a market society.

7. For a review of the current discussions of the interface between the two baskets of rights and the agencies charged with protecting them, see Larry Minear, "Partnerships in Protection: An Overview of Emerging Issues and Work in Progress," background paper for UNHCR Conference on Strengthening Collaboration with Humanitarian and Human Rights NGOs in Support of the International Refugee Protection System, March 11-12, 1999. (Available on the website of the Humanitarianism and War Project, www.brown.edu/Departments/Watson_Institute/H_W) For efforts by the UN system to integrate human rights into its activities, see Karen Kenny, *Human Rights in Humanitarian Action* (Providence, R.I.: Watson Institute, forthcoming).

8. Amnesty International's report on the *Sendero Luminoso* in Peru in the early 1990s marked an expansion of Amnesty's mandate. Human Rights Watch a few years earlier had started to investigate violations of the laws of war by both state armies and insurgent groups.

9. For a thorough analysis of this point, see Radhika Coomaraswamy, UN Special Rapporteur on Violence against Women, "Reinventing

International Law: Women's Rights as Human Rights," Human Rights Program, Harvard Law School (1997).

10. "No Decrease in Violations of Right to Life Special Rapporteur Concludes," UN Press Release, HR/98/19, 26 March 1998.

11. The Human Rights Committee also reviews periodic reports from states on their observation and implementation of the rights found in the ICCPR. The committee also receives "counter" reports from NGOs that provide a picture different from official reports which usually convey a glowing review of state performance. In one session, the Attorney-General from St. Vincent and the Grenadines was forced to admit to the committee, based on information provided by a local NGO, that the law still allowed the imposition of the death penalty for a crime committed when the perpetrator was under the age of 18. This is prohibited by Art. 6 of the ICCPR and the legislature amended the law the following year.

12. International Covenant on Economic, Social and Cultural Rights, article 2.

13. During the 1998 session of the Commission on Human Rights, UN High Commissioner Mary Robinson chaired a roundtable discussion led by Philip Alston, a member of the Committee on Economic, Social and Cultural Rights on developing concrete benchmarks for measuring compliance with the ICESCR.

14. ICESCR, Art. 11.

15. The United States has not ratified the convention.

16. Convention on the Elimination of All Forms of Discrimination against Women, Art. 1(e).

17. Ibid., Art. 14.

18. Ibid., Art. 16(2).

19. Ibid., Art. 17.

20. See, for example, The Geneva Declaration of the Rights of the Child of 1924.

21. Convention on the Rights of the Child, Art. 1.

22. Ibid., Art. 37.

23. Ibid., Art. 40.

24. Ibid., Art. 24 emphasizes lowering infant and child mortality, developing primary health care, combating disease and malnutrition, providing nutritious foods, clean drinking water, and protecting against environmental pollution. The humanitarian and human rights field workers now have solid law to work with in these crucial areas of children's rights.

25. Ibid., Art. 27. The parents have primary responsibility for

assuring this standard "within their abilities and financial capacities," although the state must take appropriate measures within its means to assist parents to implement this right. See Ibid., Art. 27(2-3).

26. Ibid., Art. 29.

27. Ibid., Art. 32.

28. In the case of Haitians and Dominicans of Haitian descent cutting sugar cane, on-site investigations by national and international human rights NGOs showed that young children, even 8-10 year-olds, were involved in the hazardous task of cutting cane for as much as eight hours per day. After reports were published, hearings held by the U.S. Congress and the International Labour Organisation (ILO) expressed concerns and the Dominican government in 1991 issued a decree forbidding anyone under 16 from cutting cane or participating in any way in the sugar cane harvest. Several ILO Conventions limit child labor, or, in defined hazardous labor categories, prohibit it altogether.

29. Art. 38 of the CRC mandates that states refrain from recruiting anyone under 15 into their armed forces and that they try to insure that no one under 15 takes direct part in hostilities. The problem of child soldiers is growing in many conflicts and the committee has devoted much time and effort to this issue. Currently, the committee, member states, and NGOs are leading a campaign to raise the minimum age for recruitment and combat to 18.

30. Ibid., Art. 22.

Chapter 2

1. For more details on the European Convention, the Commission and the Court, see "Europe: The Council of Europe, the CSCE, and the European Community," by Kevin Boyle in *Guide to International Human Rights Practice*, ed. by Hurst Hannum 2nd ed. (Philadelphia: University of Pennsylvania Press, 1992).

2. "Ruling outlaws beating of children by parents," *Irish Times*, Sept. 24, 1998.

3. The European Commission of Human Rights used to sit in Strasbourg, France. Commissioners in their individual capacities received and reviewed applications from individuals or states. In existence for forty years, the Commission received about 1,000 complaints in the early years, of which only about 10 percent were admissible. In many instances, the petitioner had not exhausted potential national remedies. If an application was admissible, the commission investigated and issued its finding.

Although its decisions were not binding, it could refer cases to the European Court of Human Rights, whose decisions are binding on states. Although some states delayed acting, never in 40 years did a state refuse to follow a decision of the court.

4. Nathalie DuBois, "La Cour europeene des droits de l'homme fait peau neuve," *Libération,* 3 November 1998.

5. See M. O'Flaherty and G. Gisvold, eds., *Post-War Protection of Human Rights in Bosnia and Herzegovina* (The Hague: Martinus Nijhoff, 1998). Although the Bosnia and Herzegovina authorities have committed themselves to applying the ECHR in domestic law, the fact that a nonmember state of the European Union and nonstate party to the ECHR has made this commitment is highly unusual.

6. The U. S. has signed but not yet ratified the convention.

7. Inter-American Court of Human Rights, *Velasquez Rodriguez Case*, Judgment of 29 July 1988, Ser. C, No. 4, para. 158.

8. The African Charter on Human and People's Rights, Art. 60.

9. Ibid., Art. 61.

10. See "The African Charter on Human and Peoples' Rights" by Cees Flinterman and Evelyn Ankumah in Hannum, *Supra* , note 1.

Chapter 3

1. Some analysts point to ancient "warrior codes" as precursors of modern laws of war. *See* Michael Ignatieff, *The Warrior's Honor: Ethnic War and Modern Conscience* (New York: Metropolitan Books 1997). The ICRC is sponsoring a major study due for completion in 1999 of the roots in customary law of humanitarian laws and traditions in various parts of the world.

2. Francis X. Clines, "NATO Hunting for Serb Forces: U.S. Reports Signs of 'Genocide'," *New York Times,* March 30, 1999, A1. UN Secretary-General Kofi Annan, who was criticized for failing to act more quickly at the onset of the genocide in early 1994 when he headed the UN's Department of Peacekeeping Operations, has also noted that the ethnic cleansing in Kosovo borders on genocide. See "A Bolder Annan Fears 'Genocide,'" New York Times, April 8, 1999.

3. Sue Lautze, Bruce D. Jones, and Mark Duffield, *Strategic Humanitarian Coordination in the Great Lakes Region 1996-1997: An Independent Study for the [UN] Inter-Agency Standing Committee* (New York: United Nations, 1998) para. 331.

4. For example, while the ICCPR allows the state to suspend fair trial

guarantees in time of national emergencies, Common Article 3 expressly requires that even in an armed conflict, fair trials must be provided.

5. See, for example, Art. 50 of the First Geneva Convention, or Art. 147 of the Fourth Convention.

6. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Preamble.

7. Protocol I, Art. 48.

8. Protocol I, Art. 87.

9. Protocol II, Art. 1.

10. Protocol II, Art. 2. This article also prohibits recruiting children under 15 to participate in combat, a lower age than that currently permitted in the Convention on the Rights of the Child.

11. Barbara Crossette, "Toll of U.N.'s Civilian Workers Overtakes Military Deaths," *The New York Times,* July 28, 1998. The ICRC is currently conducting a "People on War" project to determine the levels of awareness of the laws of war in 15 war-torn societies.

12. For the provisions related to the duty to disseminate and encourage fidelity to international humanitarian law, see Articles 47, 48, 127 and 144, respectively, of Conventions I, II, III and IV; Article 83 of Protocol I and Article 19 of Protocol II.

13. Nora Boustany, "How Would You Change the Rules of War?" The Washington Post, January 20, 1999, A24.

14. The nature of post-Cold War conflict has occasioned in recent years a fundamental probing of the relevance of law and principle to humanitarian action. For a multifaceted review by British analysts, see "The Emperor's New Clothes: Charting the Erosion of Humanitarian Principles," *Disasters* (Special Issue), 22, 4, December 1998. A more wide-ranging review is found in Jonathan Moore, ed., *Hard Choices: Moral Dilemmas in Humanitarian Intervention,* (Lanham, Md., Boulder, Colo., New York, and Oxford, U.K.: Rowman & Littlefield, 1998).

Chapter 4

1. 1951 Refugee Convention, Art. 33; the 1967 Protocol relating to the Status of Refugees updates the definition by removing the post-World War II geographic and time restrictions for meeting the convention's definition.

2. The restrictive language in the convention speaks of "treatment as favorable as possible and, in any event, not less favorable than that

accorded to aliens generally in the same circumstances [as the refugees]."

3. 1951 Refugee Convention, Art. 1(F)

4. Mark Frohardt, Diane Paul, and Larry Minear, *Protecting Human Rights in Complex Emergencies* (Providence, R.I.: Watson Institute, 1999 forthcoming), chapter 3. The Lawyers Committee for Human Rights also has a report scheduled for publication in June 1999.

5. Report of the Secretary-General, UN Doc. E/CN.4/1998/53/Add.2 (11 Feb. 1998).

6. Ibid.

Chapter 5

1. The Malaysian delegation downplayed the subsequent acceptance of the UDHR by seven of the eight states that had abstained in the 1948 General Assembly vote and by new member states upon UN admission. They also overlooked ratification by most Asian states of most human rights treaties.

2. Statement by Mary Robinson, Symposium on Human Rights in the Asia-Pacific Region (UN University, Tokyo, January 27, 1998). Available at www.unhchr.ch/html/menu/2/3/e/980127.html

3. As noted earlier, the Humanitarianism and War Project has joined with the International Human Rights Trust to mount a study that reviews the progress of seven selected UN agencies in integrating human rights into their activities. A report by Karen Kenny entitled *Human Rights in Humanitarian Action* , scheduled for completion in October 1999, will be available on the project's website.

4. Address to the Communications Conference at the Aspen Institute, Aspen, Colorado, October 18, 1997 (SG/SM/6366, October 20, 1997).

5. UNICEF Home Page at www.UNICEF.org

6. "Integrating human rights with sustainable development: A UN policy document,"available at http://magnet.undp.org/docs/policy5.html

7. See "Africa: A Rights-Based Approach to Development," address by Mary Robinson to The Africa Center, London, 9 March 1998, available at http://www.unhchr.ch/news/hc980309.htm

8. "Civil Liberties, Democracy and the Performance of Government Projects," available at http://www.worldbank.org/fandd/english/0398/articles/0140398.html

9. John Lancaster, "Village Gives Up a Painful Ritual," *The Washington Post*, June 21, 1998.

10. For an excellent critique of the "shaming tactic" sometimes used

by international human rights NGOs, *see* Bahey El Din Hassan, "Towards a Consistent Strategy for Human Rights Advocacy in Egypt" (Cairo Institute for Human Rights Studies, 1995). For a review of the legal framework involved in challenging FGM, see Julie Mertus: *Assistance and Protection: The Gender Connection* (Providence, R.I.: Watson Institute, 1999, forthcoming).

11. Maura Leen, "Fifty Years On, Rights are Under New Pressure," *The Irish Times*, March 28, 1998.

12. For a fascinating discussion among leading Islamic scholars and lawyers on this question, *see* Lawyers Committee for Human Rights, Islam and Justice, *Debating the Future of Human Rights in the Middle East and North Africa* (1997).

13. The ICRC has commissioned a study of international humanitarian law by Islamic scholars which is currently in progress. See also Ephraim Isaac, "Humanitarianism Across Religions and Cultures," in Thomas G. Weiss and Larry Minear, *Humanitarianism Across Borders: Sustaining Civilians in Times of War* (Boulder, Colo. and London: Lynne Rienner, 1993).

14. Marlise Simons, "Cry of Muslim Women for Equal Rights is Rising," *The New York Times*, March 9, 1998, A1,6.

15. Ibid.

16. Radikha Coomaraswamy, "Reinventing International Law: Women's Rights as Human Rights," Human Rights Program, Harvard Law School (1997), 25.

Chapter 6

1. For a review of the legal and practical questions posed by the ad hoc tribunals, see two reports by the Lawyers Committee for Human Rights, *The International Criminal Tribunal for the Former Yugoslavia* (1996) and *Prosecuting Genocide in Rwanda: The ICTR and National Trials* (July 1997).

2. Warren Hoge, "Pinochet Faces 33 New Counts in Extradition," *New York Times*, March 28, 1999, A20.

3. David Buchan and James Burns, "A trap for tyrants," *Financial Times*, Oct. 22, 1998, 12.

4. National courts may also have jurisdiction over foreign nationals accused of committing war crimes, genocide, or crimes against humanity outside the borders of the state holding the trial. For example, a military court in Switzerland recently began a trial of a mayor from Rwanda accused of participating in the 1994 genocide who had fled to Switzer-

land. Military courts there have jurisdiction over violations of the Geneva Conventions. See Pierre Hazan, "Un 'génocidaire' rwandais face à la justice suisse," *Libération*, April 14, 1999.

5. For a comprehensive analysis of the new breed of human rights field operations, see The Aspen Institute, *Honoring Human Rights: From Justice to Peace* (Washington, D.C.: Aspen Institute, 1998).

6. Articles 19 and 20 of the ICCPR apply.

Appendix I:

Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council (United Nations)
EU	European Union
FGM	Female genital mutilation
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	Internally displaced person
NGO	Nongovernmental organization
OAS	Organization of American States
OAU	Organization of African Unity
ONUSAL	United Nations Observer Group in El Salvador
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
U.S.	United States

Appendix II:

Additional Resources on International Law

Books and Articles

Best, Geoffrey, *Law and War since 1945* (London: Clarendon Press, 1994

Bouchet-Saulnier, François, *Dictionnaire Pratique du Droit Humanitaire* (Paris: La Découverte, 1998).

Buergenthal, Thomas, *International Human Rights* (St. Paul, Minn.: West Publishing Co., 1995).

Cohen, Roberta, *Human Rights Protection for Internally Displaced Persons* (Washington, D.C.: Refugee Policy Group, 1991).

Cohn, Ilene and Guy Goodwin-Gill, *Child Soldiers: The Role of Children in Armed Conflicts* (Oxford, U.K.: Clarendon Press, 1994).

Council of Europe, *Short Guide to the European Convention on Human Rights* (Strasbourg, France: Council of Europe Press, 1995).

Craven, Mathew, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford, U.K.: Clarendon Press, 1995).

Darcy, James, "Human rights and international legal standards: what do relief workers need to know?" Relief and Rehabilitation Network Paper #19 (London: Overseas Development Institute, 1999).

Goodwin-Gill, Guy, *The Refugee in International Law* (Oxford, U.K.: Clarendon Press, 1996).

Guiding Principles on Internal Displacement (New York: OCHA, 1998).

Kuria, Gibson Kamau , "Human Rights and Democracy in Africa," *The Fletcher Forum of World Affairs* 15 (1991): 131-148.

Meron, Theodor, *Human Rights in Internal Strife: Their International Protection* (Cambridge, U.K.: Grotius Publications, 1987).

Newman, Frank and David Weissbrodt, *International Human Rights: Law, Policy and Process* (Cincinnati, Ohio: Anderson Publishing Co., 1996).

Rogers, A.V.P., *Law on the Battlefield* (Manchester, U.K.: Manchester University Press, 1996).

Simma, Bruno and Philip Alston, "The Sources of Human Rights Law: Custom, *Jus Cogens* and General Principles," *Australian Yearbook of International Law*, 12 (1992): 82-108.

Tomasevski, Katarina, *Women and Human Rights* (London: Zed Books Ltd., 1995).

Welch, Claude and Virginia Leary, eds. *Asian Perspectives on Human Rights* (Boulder, Colo.: Westview Press, 1990).

Websites of Major Organizations

Many human rights organizations, UN agencies, governments, and resource centers have established websites on the internet. Providing recent and detailed information on human rights, humanitarian and refugee issues, these sites usually have links to related sites. Following are some major websites:

Amnesty International: http://www amnesty.org

Human Rights Watch: http://www HRW.org

International Committee of the Red Cross: http://www icrc.org

Lawyers Committee for Human Rights: http://www LCHR.org

United Nations High Commissioner for Human Rights: http://www unhchr.ch

United Nations High Commissioner for Refugees: http://www unhcr.ch

United Nations: http://www un.org

University of Minnesota Human Rights Library: http://www umn.edu/humanrts

APPENDIX III:

SELECTED PUBLICATIONS OF THE HUMANITARIANISM AND WAR PROJECT

Thematic Studies

Relief and Development: The Struggle for Synergy, Occasional Paper # 33, by Ian Smillie. Providence, R.I.: Watson Institute, 1998. (102 pp.)

Political Gain and Civilian Pain: The Humanitarian Impacts of Economic Sanctions, edited by Thomas G. Weiss, David Cortright, George Lopez, and Larry Minear. Lanham, Md.: Rowman & Littlefield, 1997. (277 pp.)

The News Media, Civil War, and Humanitarian Action, by Colin Scott, Larry Minear, and Thomas G. Weiss. Boulder, Colo.: Lynne Rienner, 1996. (123 pp.)

Soldiers to the Rescue: Humanitarian Lessons from Rwanda, by Larry Minear and Philippe Guillot. Paris: Organisation for Economic Co-operation and Development, 1996. (202 pp.) Also published as *Soldats a la Rescousse: Les Leçons Humanitaires des événements du Rwanda*. (218 pp.)

United Nations and Civil Wars, edited by Thomas G. Weiss. Boulder, Colo.: Lynne Rienner, 1995. (235 pp.)

Mercy Under Fire: War and the Global Humanitarian Community, by Larry Minear and Thomas G. Weiss. Boulder, Colo.: Westview, 1995. (260 pp.)

Humanitarian Politics, by Larry Minear and Thomas G. Weiss. New York: Foreign Policy Association, 1995. (72 pp.)

Humanitarianism Across Borders: Sustaining Civilians in Times of War, edited by Thomas G. Weiss and Larry Minear. Boulder, Colo.: Lynne Rienner, 1993. (210 pp.)

Humanitarian Action in Times of War: A Handbook for Practitioners, by Larry Minear and Thomas G. Weiss. Boulder, Colo.: Lynne Rienner, 1993. (107 pp.) Also available in Spanish, *Acción*

Humanitaria en Tiempos de Guerra (117 pp.), and in French, *Action Humanitaire en Temps de Guerre* (122 pp.).

Country and Regional Studies

Humanitarian Action in the Caucasus: A Guide for Practitioners, Occasional Paper #32, by Greg Hansen. Providence, R.I.: Watson Institute, 1998. (97 pp.)

Haiti Held Hostage: International Responses to the Quest for Nationhood 1986-1996, Occasional Paper #23, by Robert Maguire (team leader), Edwige Balutansky, Jacques Fomerand, Larry Minear, William O'Neill, Thomas G. Weiss, and Sarah Zaidi. Providence, R.I.: Watson Institute, 1996. (137 pp.) French edition also available, *Haïti prise en otage: Les Réponses Internationales à la Recherche d'une Identité Nationale de 1986 à 1996.*

Humanitarian Action and Security in Liberia 1989-1994, Occasional Paper #20, by Colin Scott in collaboration with Larry Minear and Thomas G. Weiss. Providence, R.I.: Watson Institute, 1995. (56 pp.)

Humanitarian Action in the Former Yugoslavia: The UN's Role, 1991-1993, Occasional Paper #18, by Larry Minear (team leader), Jeffrey Clark, Roberta Cohen, Dennis Gallagher, Iain Guest, and Thomas G. Weiss. Providence, R.I.: Watson Institute, 1994. (166 pp.)

Humanitarian Challenges in Central America: Lessons from Recent Armed Conflicts, Occasional Paper #14, by Cristina Eguizábal, David Lewis, Larry Minear, Peter Sollis and Thomas G. Weiss. Providence, R.I.: Watson Institute, 1993. (94 pp.) Also published as *Desafios Humanitarias en Centroamérica: Lecciones Aprendidas en los Recientes Conflictos Armados*. San José: Arias Foundation. (80 pp.)

United Nations Coordination of the International Humanitarian Response to the Gulf Crisis, 1990-1992, Occasional Paper #13, by Larry Minear, U. B. P. Chelliah, Jeff Crisp, John Mackinlay, and Thomas G. Weiss. Providence, R.I.: Watson Institute, 1992. (64 pp.)

Appendix IV:

About the Author and The Humanitarianism & War Project

The Author

William G. O'Neill is an international lawyer with a specialty in human rights law. Based in New York City, he was the chief of the UN Human Rights Field Operation in Rwanda in 1997 and served as a consultant to this mission in 1995-96. He was head of the Legal Department of the UN/OAS International Civilian Mission in Haiti (1993-1994). He has worked in Afghanistan/Pakistan, Abkhazia/Georgia, Sierra Leone, Central African Republic, and Bosnia-Herzegovina for the UN, the OSCE, and NGOs. He has conducted training sessions for military, police, human rights and humanitarian workers, and government officials in a variety of human rights and peacekeeping missions. He also designed and has taught a course at the Pearson Peacekeeping Centre in Cornwallis, Nova Scotia, Canada on human rights in peacekeeping operations.

O'Neill has been affiliated with a number of major human rights organizations, including the Lawyers Committee for Human Rights and the National Coalition for Haitian Rights. His academic training includes a bachelor's degree from Haverford College, master's degrees from the London School of Economics and Stanford University, and a J.D. from the New York University School of Law.

The Humanitarianism & War Project

The Humanitarianism & War Project is an independent policy research initiative underwritten by some 50 UN organizations, governments, NGOs, and foundations. Since its inception in 1991, it has conducted thousands of interviews in complex emergencies around the world, producing an array of case studies,

handbooks and training materials, books, articles, and op-eds for a diverse audience of humanitarian practitioners, policy analysts, academics, and the general public.

During its present Phase 3, the project is examining the process of institutional learning and change among humanitarian organizations in the post-Cold War period. Recognizing that humanitarian agencies nowadays are not only in greater demand but are also experiencing greater difficulty in carrying out their tasks, the project is highlighting the innovative practices devised by individual agencies to address specific challenges.

Current research builds on case studies conducted to date in such geographical areas as the Persian Gulf, Central America and the Caribbean, Cambodia, the former Yugoslavia, the Great Lakes Region, and the Caucasus, as well as in such issues as the interface between humanitarian action and peacekeeping and the roles of the media and the military in the humanitarian sphere. Research is tailored to the expressed needs of humanitarian organizations, which constitute the primary constituency of the project, generating materials designed for reflection and training purposes. Findings and recommendations are also being followed with interest to the project's other main constituencies, policymakers and academics.

Project donors include the *governments* of Australia, France, the Netherlands, Sweden, the United Kingdom, and the United States.

Intergovernmental organizations that have contributed to the project are the European Community Humanitarian Office (ECHO), International Organization for Migration, OECD Development Centre, UNDHA/UNDRO, UN-DMTP-DHA, OCHA, UNDP, UNHCR, UNICEF, UNITAR, UN Special Emergency Program for the Horn of Africa, UN Staff College, UN University, UN Volunteers, WFP, and WHO.

NGO contributors are the American Red Cross, CARE-US, Catholic Relief Services, Danish Refugee Council, International Center for Human Rights and Democratic Development (Canada), International Federation of Red Cross and Red Crescent Societies, International Orthodox Christian Charities, International Rescue

Committee, Lutheran World Federation, Lutheran World Relief, Mennonite Central Committee (U.S.), Mennonite Central Committee (Canada), Mercy Corps International, the Nordic Red Cross Societies, Norwegian Refugee Council, Oxfam-UK, Save the Children-UK, Save the Children-US, Trócaire, and World Vision-US.

Generous support has also come from the following *foundations:* the Arias Foundation, Ford Foundation, Fourth Freedom Forum, Gilman Foundation, MacArthur Foundation, McKnight Foundation, Andrew W. Mellon Foundation, Pew Charitable Trusts, Rockefeller Foundation, and the U.S. Institute of Peace.

The project is an activity of Brown University's Watson Institute for International Studies, which was established in 1986 to facilitate analysis of global problems and to develop initiatives to address them. Additional information about the Institute and the Project may be found on the internet at www.brown.edu/Departments/Watson_Institute/H_W