International Assistance to Civilian Populations in Armed Conflicts

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The international law of humanitarian assistance to victims of domestic armed conflicts had been sadly neglected until very recently. The recrudescence of deadly civil strife in the 1960's leading to the decimation of more than two million unarmed men, women and children in Nigeria, Indonesia, Jordan, Pakistan and elsewhere poses a major challenge to international law and to the United Nations. The intolerable level of suffering of civilian populations requires a reexamination of the law and practice of the international community which has so far done little to help the victims of such conflicts. It also requires a consideration of proposals for effective action by the community of nations.

Before considering the legal issues, mention should be made of the erosion of moral standards in an international community one of whose policy goals is reputedly the establishment of a world public order based upon the freedom and dignity of the individual. Incidents that a century ago rocked governments, such as the massacre of Christians in Bulgaria or the slaughter of Armenians in the Ottoman Empire, now do not even provoke an official reaction.

The toleration of atrocities by allies out of alleged respect for a national interest or for the sovereignty of states has now reached dimensions threatening the legitimacy of the international legal order itself. The decline of our civilization may well be measured by reference to the growing gap between professed human ideals solemnly affirmed in international instruments and the growing brutalization of civilians in armed conflicts. It can be measured by reference to the ever more frequent disregard of the unchallenged rule of international law that non-combatants must not be made the object of attacks unrelated to military operations and directed exclusively against them. A number of factors have contributed to this decline.

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First, the modern technology of warfare is not designed to differentiate between civilians and combatants. Aerial bombardments, nuclear weapons, antipersonnel and fragmentation bombs, defoliation, napalm, and sensor devices characteristic of automated warfare, kill and maim all living beings in designated target areas without regard to their combat status.

Second, the concept of total war, the policies of warfare in developing countries, wars of national liberation and guerrilla strategies all call for people's wars which pit men, women and indeed children against technologically superior adversaries. When an entire population wages war, the whole population becomes the enemy, with all the genocidal potentialities of such a conflict. The concept of a military target then becomes increasingly broad.

Third, the ideology of terror and of guerrilla action condones acts designated to horrify, terrorize and galvanize public opinion for political ends in the conduct of popular wars.

Fourth, the media, and particularly television, communicate to home audiences the horror of armed conflict and gradually immunize public opinion to a surfeit of atrocities committed in every part of the world. Shared guilt and vicarious participation of television audiences in violence against enemy towns and villages may induce a psychological urge to avoid responsibility altogether, as well as a feeling of helplessness in the face of the magnitude of the suffering.

Fifth, the moralistic and legalistic condemnation of all warfare coupled with an awareness of its unmitigated horror, has led some to resist attempts to "civilize" war in order to heighten opposition to warfare. The relative neglect of humanitarian law may well be attributable in part to this attitude.

Sixth, the brutal conditions of life in many developing countries and popular attitudes of fatalistic helplessness may condition populations to submit to their destiny without great outcry.

Seventh, ruthless totalitarian regimes, which are sometimes allied to Western governments and which do not hesitate to annihilate potential internal adversaries, are not likely to be more concerned about the fate of hostile civilian populations than about the destiny of their domestic adversaries.

Eighth, political philosophies subserving all humanitarian considerations to "just" political struggles, and which put political construction on humanitarian initiatives, have multiplied the political costs of genuine humanitarian action.

Ninth, the fear of direct involvement in foreign conflicts now
inhibits the offer of humanitarian assistance to civilian populations abroad.

The convergence of these factors and the growing incidence of serious conflicts have created a major challenge requiring a determined response. The legal dimensions of this challenge are concealed behind ambiguous juridical arrangements. They are concealed behind competing legal standards and principles both permitting and prohibiting international action for the protection of civilians in armed conflicts.

I. CONFLICTING LEGAL PRINCIPLES

Balanced sets of principles compete against one another in regulating international humanitarian action in domestic conflicts. Some inhibit and prohibit outside interference while others permit and even require international action. A number of leading principles inhibit international action: individuals are not subjects of international law and bear neither rights nor duties under it; intervention in the domestic affairs of states is inadmissible; competent regional organizations are taking measures which should not be duplicated by international action. Principles which permit international action are no less numerous: rules of traditional international law permitting humanitarian intervention; others authorizing action to protect nationals; obligations under treaties and human rights instruments; and, more recently, recommendations of the United Nations calling for measures in the human rights field and for assistance to civilians in armed conflicts.

A. Legal Barriers to Humanitarian Assistance in Civil Wars

1. The Status of Individuals

The first of the theories inhibiting international humanitarian assistance is closely related to the legal barriers of sovereignty and


4. 4 Id. at 276.

5. 5 Id. at 280.

domestic jurisdiction. Under traditional doctrines of international law, only states are the bearers of rights and duties, while individuals have no claim to the protection of other states or to that of the international community, save as may be otherwise expressly provided for by international conventions and agreements such as the Geneva Red Cross Conventions.\textsuperscript{7} This doctrine is confirmed by the absence of international judicial remedies for individuals in disputes with states. The doctrine developed against the background of humanitarian intervention by European powers in the nineteenth century\textsuperscript{8} and the eradication of slavery and the slave trade by international efforts.\textsuperscript{9} It followed upon international action in the wake of massacres of Bulgars, Serbs, Armenians and Greeks in areas under Ottoman rule.\textsuperscript{10}

The theory that individuals bear neither rights nor duties under international law is becoming a matter of historical interest only. The events of World War II have led to the acceptance of the principle, enshrined in the Charter and judgment of the International Military Tribunal of Nürnberg,\textsuperscript{11} that individuals have both rights and duties directly under international law. Numerous covenants, codes, draft codes, resolutions, declarations and conventions unanimously approved by the United Nations General Assembly clearly affirm the principle that the individual is the bearer of rights and duties under international law, which states are obliged to respect, protect and promote.\textsuperscript{12} The International Conference on Human Rights held in Teheran in 1968 thus proclaimed the need for direct


\textsuperscript{8} 1 Oppenheim, supra note 3, at 280.

\textsuperscript{9} Id. at 584, 664-67.

\textsuperscript{10} See E. Stowell, Intervention in International Law (1927).


international action by every possible means to eradicate gross
denials of human rights under the policy of apartheid.\textsuperscript{13} It also
proclaimed that gross denials of human rights arising from dis-
crimination on grounds of race, religion, belief or expression of
opinion, "outrage the conscience of mankind and endanger the
foundations of freedom, justice and peace in the world."\textsuperscript{14} Moreover,
the International Conference solemnly proclaimed that the Uni-
versal Declaration of Human Rights constitutes an obligation for
the members of the international community.\textsuperscript{15} It weakened remain-
ing doubts as to the binding character of obligations assumed by
states in the Declaration.

2. Sovereignty and Domestic Jurisdiction

The concept of sovereignty as a barrier to humanitarian
assistance has recently been reinforced in United Nations practice.
Article 2(7) of the Charter, provides 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. . . ." Attempts to develop this principle have taken several
forms. The Special Committee on Principles of International Law
Concerning Friendly Relations and Cooperation Among States was
directed to widen the area of agreement that had been established
by the General Assembly in its Declaration on the Inadmissability
of Intervention in the Domestic Affairs of States and the Protection
of Their Independence and Sovereignty,\textsuperscript{16} which was itself grounded
on Article 2(7) of the Charter. In this Declaration, the Assembly
declared that,

No State has the right to intervene, directly or indirectly, for
any reason whatever, in the internal or external affairs of any
other state. Consequently, armed intervention and all other
forms of interference or attempted threats against the person-
ality of the state or against its political, economic and cultural
elements are condemned.\textsuperscript{17}

While the legal status of this resolution has been contested by

\textsuperscript{13} International Conference on Human Rights, The Proclamation of Te-
\textsuperscript{14} Id.
\textsuperscript{15} Id.
see also Onuf, The Principle of Non-Intervention, The U.N. and the Inter-
\textsuperscript{17} G.A. Res. 2131, supra note 16, at 12.
Western powers, it nevertheless expresses a strong resurgence of sentiment in the international community against intervention of any kind by Member States or by the Organization itself in the domestic affairs of Member States. These principles were reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States adopted by the Twenty-Fifth General Assembly.18

3. Regionalism

Another legal barrier that has been raised to bar United Nations intervention of all kinds, including humanitarian intervention, is the concept of regionalism: the claim that a situation, which might otherwise lend itself to United Nations action, is the object of measures taken by a regional organization which has pre-empted jurisdiction and which should alone be permitted to deal with it. This claim has been raised by the United States in the Security Council in connection with the situation in the Dominican Republic.19 The Security Council was discussing a recommendation that the role of the United Nations Observer in the Dominican Republic be enlarged to permit him to investigate alleged violations of human rights. The United States objected that the United Nations Observer had not requested such powers and that the Organization of American States Commission on Human Rights should continue to investigate such human rights cases. Ambassador Stevenson argued against duplication by the United Nations of the effort of the Organization of American States.

In connection with the civil war in Nigeria the Secretary-General of the United Nations expressed support for the actions taken by the Organization of African Unity (OAU) and did not propose that the humanitarian issues be considered by the General Assembly. He stated that he would be guided by decisions of the OAU which was dealing with the situation. He indicated, however, that the United Nations International Children's Emergency Fund (UNICEF), the World Food Program and the International Committee of the Red Cross (ICRC) were facilitating the shipment of food and medical supplies to the stricken people of Biafra.20

The Secretary-General, with the concurrence of the Federal Military Government of Nigeria, appointed a Special Representative to Nigeria on Humanitarian Activities, who reported to him on the

19. 20 U.N. SCOR, 1196th meeting 17 (1965).
relief and humanitarian aspects of the situation. Subsequently, the Representative, in his capacity as Observer and at the request of the Government, travelled throughout the war-affected areas in Nigeria in order to report to the Secretary-General on the situation there and on the behavior of the Federal troops. The OAU also adopted a resolution calling upon all parties to cooperate with a view to ensuring the rapid delivery of humanitarian aid to all in need of it. It did not, however, invite states to make transportation, food and medicine available in adequate quantities for the needs of the civilian population. The Secretary-General was severely criticized for not doing more to protect the civilian population in the secessionist Territory.

A number of doctrines thus act as a brake on humanitarian intervention by the United Nations and by individual states in situations in which civilian populations face decimation. These doctrines express the interest of states in the protection of their freedom of action from outside interference in domestic and in international conflicts. While these doctrines would not perhaps by themselves deter international action in situations in which the vital interests of other states are at stake, they are successful in holding back truly humanitarian involvement. These doctrines therefore reinforce the natural weight of inertia which bears down on government bureaucracies under all systems of government.

Arguments for humanitarian intervention in the form of offers of assistance are more likely to fail when they have to overcome accepted norms of international conduct, bureaucratic immobility, political qualms as well as diplomatic complications. Where the vital interests of a state are not at stake, the effectiveness of norms of international law is enhanced. In areas of humanitarian concern more than in some others, states are likely to abide by the resolutions of international organizations in conflicts in which they are not directly involved. In areas of humanitarian concern, therefore, the significance of United Nations action is pronounced, for such action can call for and permit offers of contributions and assistance in circumstances in which single states may hesitate to come forward. In inertial conditions, relatively weak thrusts of power could have far-reaching effects.

B. United Nations Intervention for the Protection of Human Rights

1. South Africa

It is established United Nations practice that the General Assembly has jurisdiction over situations involving serious breaches of Charter provisions which deal with human rights. Questions pertaining to human rights are not considered to be essentially within the domestic jurisdiction of states since the Assembly has authority to consider all breaches of the Charter. The gross violations of human rights in the Republic of South Africa have provoked energetic responses by the United Nations and by the specialized agencies. These responses have varied widely: from verbal condemnations, the exclusion of South Africa from some of the benefits of U.N. membership, the investigation of complaints, the hearing of witnesses and the receipt of petitions as well as the legitimation of the struggle against apartheid and appeals to all states to provide political and material assistance to the people of South Africa in their legitimate struggle. The General Assembly has also requested the Security Council to take enforcement action under Chapter VII of the Charter to meet the problem of apartheid.

More recently the United Nations has been considering the possibility of establishing judicial machinery for the indictment of South African government officials for crimes under international law committed in the territory of Namibia (South-West Africa).

The jurisdictional barrier of Article 2(7) of the Charter, excluding intervention in matters essentially within the domestic jurisdiction of states, has failed to stem the tide of international action against the practice of apartheid, but it has withstood much more effective attempts to intervene in other situations involving alleged

breaches of human rights. In 1967, in a change in United Nations practice, the Commission on Human Rights of the United Nations was authorized by the Economic and Social Council to make a thorough study of situations which reveal "a consistent pattern of violations" and to report with recommendations thereon to the Economic and Social Council.\footnote{30} At its 1968 session, the Commission on Human Rights declined, however, to take action on the situation in Greece and Haiti which, in the view of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had revealed a consistent pattern of violations.\footnote{31}

2. The Middle East

The United Nations also took action to preserve the human rights of the inhabitants of the territories occupied by Israel as a result of hostilities in the Middle East in 1967. This is a significant instance in which the United Nations acted vigorously to protect civilians in an international armed conflict. The General Assembly, the Security Council, the Commission on Human Rights and the International Conference on Human Rights have all adopted resolutions on this subject.\footnote{32} Both the General Assembly and the Security Council considered that essential and inalienable rights should be respected even during the vicissitudes of war—so far a principle acted upon by the United Nations only in connection with the 1967 war in the Middle East. The principal organs of the U.N. have taken no such action regarding the suffering of civilian populations in the large scale international conflicts in Cambodia, Vietnam and Laos or in the domestic conflicts in Sudan, Indonesia, Nigeria, Chad, Iraq, Yemen, Jordan and Pakistan. The Assembly thus took no public action to assist Vietnamese civilians in Cambodia or to provide help to the families of the more than one million victims of the war in Vietnam.

In the Middle East, however, the Secretary-General acting under
a Security Council resolution dispatched a Special Representative
to report on the situation of the population in areas under Israeli
control, on the measures taken to shelter and to facilitate the return
of those who had fled and on the treatment of prisoners of war and
the protection of civilians. The Secretary-General had informed
his Special Representative that the provisions of the Security Council
resolution under which he was acting might properly be interpreted
as having application to the treatment of Jews in the Arab states. The
Special Representative then sought information on their fate
notwithstanding their status as citizens of the Arab states concerned.
The United Arab Republic objected to this interpretation. A pro-
nected second humanitarian mission to the Middle East did not
materialize because no agreement could be reached on the tasks
of such a mission. The humanitarian resolution passed by the
Assembly also appealed to governments, organizations and indi-
viduals to make special contributions to alleviate the suffering
inflicted on civilians and on prisoners of war as a result of
hostilities. Contributions were made in the form of money, trans-
port, supplies and other facilities.

The humanitarian action of the United Nations in the wake
of the Middle East War was significant from two standpoints. First,
the Security Council made it possible for the Representative of the
Secretary-General to assert his competence to investigate the fate
of civilians in their country of citizenship. Second, the Organization
asserted its authority to request special contributions for the relief
of all populations in the area of war. The United Nations thus set
a precedent which might be applicable also in wars of a noninter-
national character.

3. Pakistan

During the Pakistan civil war in 1971, the Secretary-General
has pursued a policy somewhat bolder than the one he had followed
in the Nigerian civil war. Despite the domestic character of the
conflict, U Thant used his right of initiative to offer assistance.
referring to his great concern about the situation in East Pakistan in light of reports from U.N. personnel in the area. He was mindful of his responsibilities including those governing non-interference in a state's internal affairs. But he also asserted the authority of the U.N. to promote human well-being and humanitarian principles. He felt that the U.N. and its specialized agencies have a most useful role to play, with the consent of governments, in providing emergency assistance for the population of an area afflicted by civil war. One month after his initial appeal, U Thant let it be known that Pakistan had responded to his appeals and had requested assistance from the U.N. family.39 This followed active diplomacy by the Secretary-General and an initial negative response by the Government of Pakistan which had indicated that international assistance, if and when required, would be administered by Pakistan's own relief agencies. The Secretary-General's initiative in this situation confirms the inherent authority of his office with regard to humanitarian assistance to civilian populations in civil wars.

II. THE SIGNIFICANCE OF UNITED NATIONS ACTION

A. Problems Presented by the Humanitarian Intervention of Sovereign States

It is not always easy to appreciate what a United Nations resolution can do to help civilian victims of conflicts that cannot be done by direct diplomacy and relief. Article 2(7) of the Charter, as already noted, prohibits intervention in matters essentially within the domestic jurisdiction of states. On occasions, the mere offer of help has been considered an unfriendly act. Significantly, in the 1930's the United States refused even to protest the open persecution of Jews in Germany, adhering strictly to the doctrine of non-intervention.40 The difficulties caused by this doctrine have created problems also for the International Committee of the Red Cross. Humanitarian assistance is a political weapon highly prized by both government and dissidents in a civil war and a potent force when siege warfare is the technique adopted for overcoming enemy resistance.41 The 1949 Geneva Red Cross Conventions permit intervention by

40. See, S. Friedlander, Pius the Twelfth and the Third Reich (1966); A. Morse, While Six Million Died (1968).
impartial humanitarian bodies, such as the International Committee of the Red Cross, in international and in non-international conflicts alike. The Conventions also oblige parties to ensure respect for their provisions in all circumstances. They stipulate, however, that no action in a non-international conflict shall prejudice the rights or status of parties to such a conflict.

Where impartial humanitarian bodies such as the International Committee of the Red Cross may feel free to offer assistance, sovereign governments with their far greater resources do not believe they have equal freedom, as the lack of an American response to the German persecution of the Jews indicates. Thus, in the absence of a government's invitation for assistance and in the absence of an international instrument providing for such help, a United Nations resolution calling for contributions could be used as a license to tender help. It could supply the diplomatic justification for offers of relief materiel and personnel which might otherwise be construed as inimical intrusions and as attempts to support one of the parties to a non-international conflict. This diplomatic consideration has special relevance for the United States. The United States intervened unilaterally (at first) in the Dominican Republic in 1965, formally to protect its nationals threatened by the armed conflict in that country and to escort them back home. This was the initial explanation given by President Johnson for military operations in the Caribbean which evidently also had other political objectives.42

In another incident, in November 1964, a battalion of Belgian paratroopers was flown in American transport planes from Ascension Island, a British possession, to rescue 1700 civilians, mostly white, held as hostages by Congolese rebels in the Stanleyville region of the Congo. The United States and Belgium reported these activities to the President of the Security Council.43 A group of African and

42. Announcement by President Johnson, August 28, 1965, in N.Y. Times, April 29, 1965, at 14, col. 1:
I've ordered the Secretary of Defense to put the necessary American troops ashore in order to give protection to hundreds of Americans who are still in the Dominican Republic and to escort them safely back to this country. This same assistance will be available to the nationals of other countries, some of whom have already asked for our help.


other states asked for an urgent meeting of the Council to consider the Stanleyville operation which they alleged constituted "an intervention in African affairs, a flagrant violation of the Charter of the United Nations and a threat to the peace and security of the African continent."

The political effects of this action left their mark on United States policy towards Nigeria and in the attitude of some African states. From a legal and diplomatic standpoint the Stanleyville and Dominican Republic operations were not alike. Whereas the Stanleyville operation was explained as a "humanitarian mission," the Dominican affair was justified by reference to another doctrine, the "protection of nationals."

Any movement of United States personnel and equipment to a foreign country necessarily awakens fears and suspicions about American objectives. These were revived in the fall of 1970 when the U.S. sent humanitarian assistance and field hospitals to Jordan during the civil war with Palestinian organizations. Similar fears and concern also arose, for example, during the debate over assistance to the population of East Pakistan in the House Foreign Affairs Subcommittee in May, 1971. Members of Congress were evidently fearful that humanitarian assistance might lead to a more direct involvement of the U.S. in the East Pakistan conflict. In a statement to the Subcommittees this writer argued that assistance through international agencies would not constitute the beginning of yet another foreign involvement. To understand this fear one should recall that humanitarian motives have frequently been invoked over the last 150 years by powerful states to cover crude political designs. Hitler, for example, accounted for his invasion of Poland and Czechoslovakia as acts designed to rescue German minorities.

46. See note 42 supra.
48. Proclamation by Adolf Hitler to the German army, in N.Y. Times, Sept. 1, 1939, at 1, col. 8:
To the defense forces:
The Polish nation refused my efforts for a peaceful regulation of neighborly relations; instead it has appealed to weapons. Germans in Poland are persecuted with a bloody terror and are driven from their homes. The series of border violations, which are unbearable to a great power, prove that the Poles no longer are willing to respect the German frontier. In order to put an end to this frantic activity no other means is left to me now than to meet force with force.
Humanitarian intervention by sovereign states presents, therefore, general problems that are not merely legal but political to the highest degree. Genuine humanitarian intervention should meet at least three requirements: it must be (a) kept free from political objectives, (b) authorized by appropriate international instruments, and (c) impartially carried out by a humanitarian body. To satisfy these requirements, suitable methods for overcoming the political obstacles which exist must be found. Political opposition to humanitarian relief measures call for corresponding political responses. Political opposition to humanitarian relief measures can lead either to the politicization of relief or to its emasculation. The separation of humanitarian and political concerns requires therefore the agreement of concerned states and organizations to its maintenance. The political obstacles to humanitarian relief have proved to be indeed the more formidable ones.49

An attempt to provide for humanitarian intervention in limited circumstances has been made in General Assembly Resolution 2717 (XXV)50 for assistance in natural disasters. This Resolution plainly contemplates the offer of emergency assistance, but it does not, however, provide for assistance to civilian populations in armed conflicts either of an international or of a non-international character. In Resolution 2675(XXV),51 adopted in December, 1970, the General Assembly reaffirmed the principle adopted by the Istanbul Conference of the Red Cross that the provision of international relief to civilian populations in armed conflicts is in conformity with

49. Palmer, Magnitude and Complexity of the Nigerian Problems, 59 Dep't State Bull. 357 (1968); Moore, International Relief Efforts in Nigeria id. at 484; Katzenbach, The Tragedy of Nigeria, id. at 653. For criticism of State Department's policies, see the Ripon Society report, supra note 23. See also Hefring's on Nigerian-Biafran Relief Situation Before the Subcomm. on African Affairs of the Senate Comm. on Foreign Relations, 90th Cong., 2d Sess. (1968).


On July 23, 1971, the Economic and Social Council called for the appointment of a U.N. disaster relief coordinator in a major departure from previous U.N. practice. This action goes a long way towards implementing the recommendations for a U.N. Emergency Assistance Service. The mandate of the Coordinator under the terms of the ECOSOC resolution would not be limited to natural disasters. Action on this resolution will be taken in the 26th General Assembly. Res. 1612[L], U.N. Doc. E/5073.


the humanitarian principles of the Charter. The establishment of machinery for international assistance to these populations was further studied in a significant Report of the Secretary-General on Respect for Human Rights in Armed Conflicts.\textsuperscript{53} This question was also examined by a Conference of Experts called by the ICRC in 1971.\textsuperscript{54} These developments followed the presentation of a proposal made by this writer to the President's Commission for the Observance of Human Rights Year, 1968, and to the Senate Judiciary Subcommittee on Refugees for the establishment of a U.N. Emergency Assistance Service for all disasters.\textsuperscript{55} This proposal was endorsed by the Kennedy Subcommittee and was followed by a policy statement by the Nixon Administration favoring better arrangements for coordinating international assistance for the victims of natural and man-made disasters.\textsuperscript{56}

In connection with the crisis in East Pakistan, the Secretary-General has decided to send a representative to Pakistan as a "focal point" to coordinate and work out the modalities of extending assistance to the civilian population in the East.\textsuperscript{57} This may well mark the beginning of U.N. assistance to civilian populations in the wake of armed conflicts along lines similar to those contemplated in natural disaster situations, implementing in effect some central features of the proposal for the establishment of a U.N. Emergency Assistance Service. Resolution 2675(XXV)\textsuperscript{58} which permits in general terms humanitarian assistance for civilian populations in armed conflicts could help some governments overcome their scruples in coming forward with offers of contributions. It could also provide the formal basis for requests for assistance by governments that may otherwise refrain from turning to other governments for help. Foreign offices could then point to the authorizing text of the United Nations resolution and private aid organi-

\begin{footnotes}
\item[56] Report by President Nixon to Congress, United States Foreign Policy for the 1970's—Building for Peace, 7 Weekly Compilation of Presidential Documents 305, 373 (1971).
\item[57] Press Release of the Secretary-General SG/SM/1478 (May 19, 1971).
\item[58] Note 51, supra.
\end{footnotes}
organizations might also find it easier to secure government cooperation in relief efforts. This resolution is the first of a number of steps contemplated by the U.N. and the ICRC for the development of international law and practice.


The imponderables of elite sensibilities and ideologies have, in the past twenty-five years, contributed to unexpected and far-reaching political changes. The scope and intensity of anti-colonialism and the resulting rise in the United Nations membership from 50 to more than 180 were not generally foreseen in 1950 any more than the emerging isolationism of the United States generated by the Vietnam conflict was foreseen in 1960. Characteristically, both developments were deeply shaped by the perceptions and expectations of relatively small groups. This should be mentioned at a time when projections for the future focus increasingly on objective data of a technological, demographic and economic nature. Such projections often leave out non-objective considerations based upon ideology and expectations.

In the Western world the sensitivity of large classes of society to the brutality of armed conflicts enhanced by television coverage of hostilities may have had a part to play in the intensity of anti-war opposition. Conversely, gross violations of human rights in a large number of countries in all regions of the world have heightened both cynicism about and concern for humane values. These conflicting phenomena have found expression in the generation gap, and in the United States in a renewed interest in the treatment of the Blacks, the Indians, the poor and in the plight of inhabitants of developing countries.

Youthful political leaders with fine antennae for such attitudes, like Prime Minister Palme of Sweden and the Kennedy brothers, have understood and shared the moral concern of the young for refugees, victims of war, the Ibos in Nigeria, the Blacks in South Africa and the population of Vietnam. In Europe the wave of sympathy for the Dubcek experiment, the yearning for a "socialism with a human face," for "participation and imagination" during the May events in Paris were all emotionally related in a Zeitgeist elevating humane concerns above technical exploits and military triumphs. This concern is, however, by no means universal. Relative indifference to the massacre of nearly half a million alleged communists in Indonesia, to the civilian victims in the struggle against
the Kurds in Iraq, Royalists in Yemen and to the events in East Pakistan underscores the less than global nature of this concern.

The domestic character of most situations in which serious violations of human rights have occurred has inhibited United Nations action. The Organization was thus unable to take measures against Greece similar to those taken by the Council of Europe.

Complex procedural advances in human rights protection recommended by the Subcommission on the Prevention of Discrimination against Minorities have gone unnoticed save by the expert few. Continued flagrant violations of human rights in South Africa have demonstrated the ineffectiveness of international consensus in human rights matters. The increasing politicization of the Commission on Human Rights itself and bureaucratic difficulties in handling petitions from victims of persecutions have helped to spread disillusionment with the United Nations. The Organization is increasingly perceived as an inefficient bureaucracy unable either to cope with the world's problems or even to bring assistance and comfort to the few turning to it for help.

U.N. inaction in situations in which compassion and aid are eminently in order may be particularly grave at a time when preoccupation with the human dimension in war as in peace is becoming increasingly felt. Humanitarian issues acquire in this light a significance perhaps not fully perceived by the tough pragmatists of power and resources. Now as never before a United Nations with a human face is required if the Organization is to be looked upon as more than a trade association of government establishments.

Making allowances for the repressive nature of many governments, a strategy for restoring a modicum of prestige to the Organization could conceivably be reconciled with the dominant Members' concern to maintain sovereignty and freedom from outside intervention. Assistance and relief for the victims of armed conflicts and other disasters present a field for action commanding the support of some Member States as well as sparking sentiments of commitment to the continued existence of the Organization itself.

The potential of blueprints for more effective action in this field rests, therefore, in the intense ideological commitment to humane concerns that may yet color developing trends in the foreign policy of great nations. Historical memories of humanitarian passions raised in England by the massacre of Armenians late last

61. See Carey, supra note 24, at 91-92.
century and the influence of these passions on British foreign policy serve as a reminder of the potential significance of such sentiments.62

III. Four Types of Humanitarian Action

It has been said that existing international instruments authorize a dynamic role for impartial humanitarian organizations. It is, therefore, not always apparent why the political limitations operating on the United Nations Secretariat and on the foreign policies of governments should also be replicated in the work of the International Red Cross. The explanation may emerge more plainly from a consideration of the quasi-universal acceptance of the Swiss International Committee of the Red Cross. It is due in part to its relatively consistent policy not to break the consent barrier of governments and to operate strictly within the limits painstakingly hewn out in the Geneva Conventions. The ICRC has generally decided to refrain from embarrassing sovereign states by damaging disclosures and open condemnations of violations of the laws of war and humanity. This policy has enabled it to carry out mercy missions even in Nazi-occupied Europe—missions that would almost certainly have been barred if the Red Cross had publicized all it knew of Nazi practices. It has been less successful, however, in gaining the confidence of Asian communist regimes embattled with the United States or in getting relief through to the civilian victims of the civil war in East Pakistan. In adopting a morality of choosing the lesser evil—often requiring a measure of accommodation with heinous regimes amounting almost to complicity—the ICRC has put its mercy missions above its self-righteousness. Much stands to be lost if the only truly international humanitarian intermediary, which is also the oldest, most universal, and best established, were to jeopardize its access to barbarous systems of government by adopting a morality of principle and of idealism that would threaten the effectiveness of its mercy missions.

Traditional Red Cross policies have required both restraint and self-control from its personnel. They have required silence in the face of accusations that atrocities are hushed up, and silence when silence was the price for doing anything at all. The ICRC has thus at times opened itself to criticism from two perspectives: (1) From those who would adopt a morality of principle and of idealism

exposing and denouncing inhumanity wherever it is encountered;
(2) From those who would adopt a dynamic humanitarian policy
and who, like the Joint Church Aid in Nigeria, disregard political
and legal objections to relief and pursue it at the risk of losing access
to the government side in the conflict.

In addition to such criticism, the restriction on ICRC membership
to Swiss citizens only and the modesty of its resources have led
to another difficult dilemma. It had either greatly to restrict the
scope of its activities or to accept extensive support from a few
wealthy nations at the risk of becoming unduly identified with
them and jeopardizing its neutrality. And it was precisely this
unique role as a neutral, impartial, humanitarian intermediary
with universal access which led to the ICRC's assumption of
responsibility for Red Cross action in armed conflicts both of an
international and non-international character.

The almost universal acceptance of, and respect for, the Red
Cross still make it a valuable instrument for international action
despite unease in some developing countries about alleged Western
domination. The ICRC has, for example, recently prepared impor-
tant studies on the protection of civilian populations,63 secured the
adoption of resolutions at the Red Cross Conferences which paved
the way for subsequent U.N. resolutions64 and convened conferences
of experts for the reaffirmation and development of the laws of
war.65 Side by side with it, a large number of private and religious
relief organizations have established a pattern of international relief
action in addition to programs conducted by UNICEF, the World
Food Program, the Office of the U.N. High Commissioner for
Refugees and other international relief instrumentalities. While
some of the problems faced by civilian populations have fallen
within the competence of agencies dealing with refugees, many have
not. Problems of coordination and cooperation between the numer-
ous international relief instrumentalities have therefore arisen.

63. Reports submitted by ICRC to XXIst International Conference of the
Red Cross (Istanbul 1969): Protection of Victims of Non-International Conflicts
(Geneva, May 1969) D.S. 5a,b; Reaffirmation and Development of Laws and Cus-
toms Applicable in Armed Conflicts (Geneva, May 1969) D.S. 4a, b, c; Implemen-
tation and Dissemination of the Geneva Conventions (Geneva, Apr. 1969) D.S. 5/1

64. Resolution XXVIII of the XXth International Conference of the Red
Cross in Vienna, Protection of Civilian Populations against the Dangers of In-
discriminate Warfare, International Review of Red Cross, June 1970, No. 111,
p. 308-309. The first three principles of the resolution were adopted by the U.N.

65. See note 54 supra.
Other "humanitarian organizations" within the meaning of Article 3 of the Geneva Red Cross Conventions have been able to operate on a more dynamic construction of the terms of the Conventions and to bring relief to non-combatant victims of civil wars notwithstanding objections of recognized governments. In Nigeria these objections centered upon the control of relief and methods of distribution of the kind referred to in Article 23 of the Fourth Geneva Red Cross Convention. Joint Church Aid relief flights to Biafra-controlled territory over the objections of the Federal Military Government in Lagos demonstrated that the operations of ad hoc associations and private relief organizations were relatively immune to many of the long-term political considerations that must be weighed by the ICRC. Relief of this nature, however, is likely to be limited both in extent and in duration. Ad hoc private relief organizations can therefore adopt a dynamic humanitarian policy founded on a broad interpretation of the Red Cross Conventions which permanent humanitarian organizations can ill afford to follow.

The maintenance of moral humanitarian standards in the face of massacres, atrocities and the decimation of civilian populations requires also the exposure and condemnation of such practices. This role can ill be assumed by relief organizations fearful of jeopardizing their own activities. Religious, moral and political leaders may have to undertake the burden of exposing abuses leaving humanitarian relief organizations free to do their own work in silence. Occasionally, trials and investigations may also be appropriate for the enforcement of these standards.

Experience with humanitarian relief in the recent past suggests a fourfold division of international humanitarian concerns reflecting the delicate nature of political considerations in this area:

- Neutral Humanitarianism. This is pursued by the ICRC, as a universally acceptable, neutral intermediary prepared to work with governments of all kinds for humanitarian ends and to refrain from publicizing abuses which might jeopardize humanitarian missions. It does not preclude the ICRC from acting and taking initiatives based on a very broad interpretation of the Geneva Conventions.

- Revolutionary Humanitarianism. This is practiced by private voluntary relief organizations engaged in humanitarian intervention over political and legal objections of governments involved in civil

66. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, supra note 7, art. 23. Strictly speaking, and in the absence of an express agreement to the contrary, this article should apply only to conflicts of an international character. See also id., arts. 2, 3.
strife and which are prepared to be excluded from the government side of such conflicts.

—Moralistic Humanitarianism. This involves leadership, investigation and exposure of massacres and atrocities and other violations of humanitarian instruments leading to the repression of such violations.

—International Humanitarianism. This could be the role of United Nations machinery for managing political objections to relief and for marshalling relief units on a large scale. This is also the role of international agencies such as UNICEF, the League of Red Cross Societies and the Office of the U.N. High Commissioner for Refugees.

Little can be gained from expecting every humanitarian organization to fulfill all these roles simultaneously or from criticizing the Red Cross, for example, for not exposing war crimes. Though the temptation is strong for humanitarians to give expression to their moral outrage as well as to try to help the victims of barbarous acts, the best results can be achieved by keeping these principal roles or concerns separate. There is, therefore, not only room, but a positive need for the continued operation of a multiplicity of humanitarian agencies, some assuming one role, others a combination of different concerns.

The Nigerian civil war episode is rich in lessons about the risks of playing more than one humanitarian role at a time. Thus, attempts by the ICRC to extend relief beyond the limits acceptable to the Nigerian government led to the suspension of its relief flights when an ICRC plane was shot down over Biafra-controlled territory by government aircraft. With the collapse of Biafran resistance, the Lagos government continued to shun the Swiss Committee despite the suspension of flights. The urgency of civilian suffering also led the ICRC to accept considerable support from a small group of Western countries led by the United States, some of which were suspected of harboring political designs in Nigeria. The Committee's vacillating course between neutral humanitarianism and revolutionary humanitarianism exposed it to criticism from all sides and deepened divisions within it. It led to suggestions that the more representative League of Red Cross Societies assume responsibilities also in conflict situations. The division of functions between the League and the Committee had, however, just been decided upon in an agreement between them which provided for a League role primarily in peacetime relief.67

The cost of revolutionary humanitarianism to private relief organizations became apparent soon after the collapse of Biafra when the Lagos government announced that it would have nothing to do with organizations that had continued to fly, over its objections, to Uli Field in Biafra-held territory. Clearly, if all humanitarian organizations had indulged in revolutionary humanitarianism the situation in the aftermath of war would have been even more serious. Nigeria's very hostile reaction to a Papal pronouncement on the dangers of genocide demonstrated the importance of keeping relief and moralistic activities separate. The Quakers, for example, who had kept their relief efforts quiet and shunned publicity and condemnations of all kind, could thus continue to operate effectively.

International humanitarianism through UNICEF succeeded precisely because of that Organization's sensitivity to the attitude of the Government in Lagos. UNICEF's success in Nigeria may have had something to do with its being allowed to resume operations in East Pakistan within weeks of the outbreak of the civil war. International humanitarianism is likely to be particularly responsive to the expectations of receiving states. Revolutionary humanitarianism, on the other hand, responds to the needs of insurgents in rebel-controlled territories, there being no need for "revolutionary" humanitarianism in order to offer assistance to recognized governments. International humanitarianism is also more likely to be susceptible to political pressures within international organizations and to the will of political majorities. It is therefore distinct from revolutionary humanitarianism which can ride roughshod over objections of a diplomatic or juridical character. In complex situations in which political obstacles to relief are numerous, it is likely that these various types of humanitarian activity will take place side by side.

In the 19th century humanitarian concerns received their impetus in Europe and in North America. The establishment of the anti-slavery societies and the work of Christian missionaries provided a background for the beginning of humanitarian intervention policies of the major powers of the Concert of Europe. In this century, the advent of total warfare, of guerrilla warfare and of unparalleled atrocities, committed not only by totalitarian regimes, have dwarfed the work performed by private relief organizations.

If humanitarian traditions are to survive the relative decline

68. R. Coupland, The British Anti-Slavery Movement 151-89, 223-24, 244-50 (2d ed. 1964); R. Coupland, Wilberforce, 398-404, 448, 450-51 (1923); F. Klingberg, The Anti-Slavery Movement in England 131-70 (1926); W. Mathieson, Great Britain and the Slave Trade 1839-1865, at 1, 9-10 (1929).
in the power of Europe and of the Christian churches, they must be adapted to the expectations and cultures of the newly independent states. Impartial humanitarian intervention cannot, in the present age, remain the prerogative of any one race, faith or nation. In assuming a leadership in humanitarian affairs, new states can draw on the great traditions of the Eastern religions and fill a vacant role. While international humanitarian assistance requires facilities and personnel normally available only in relatively developed societies, it is developing countries that usually find themselves in need of such assistance. When disasters strike they are generally poorly equipped to face them without outside help. International humanitarian assistance can frequently lead to a unilateral flow of personnel and supplies across the dividing lines between wealthy societies and developing states which frequently also correspond to racial color lines. Japan is practically the only non-white country with the capability to extend emergency assistance on a large scale to stricken societies.

Assistance from Western states can only exacerbate national pride in countries recently freed from colonial domination and acutely preoccupied by threats to their sovereignty and independence. The intrusion of white men and of foreign teams can be both humiliating and irritating at a time of national distress. Developing societies have moreover grown wary of the activities of some western missionaries who have not infrequently treated local populations as hordes of savages in need of salvation. Missionaries in South Africa, for example, were frequently seen to have given no mean assistance to colonial rulers and entrepreneurs in the name of humanitarian and religious ideals. Moreover, memories of colonial excesses have contributed their share of scepticism about the genuineness of the white man's humanitarian commitments. Africans rapidly learned to distrust any white presence in their midst. This distrust may have contributed to the mixed reception which the ICRC encountered in the Nigerian conflict.

The humanitarian doctrines emanating from Europe were thus tarnished by their very origin and by the record of European powers. They fell, moreover, on some singularly unreceptive cultures many of whom were accustomed to the waging of total wars on tribal enemies. Humanitarianism can appear as a somewhat peculiar notion in societies in which local economic and social conditions as well as the almost total absence of medical care mean widespread disease, high mortality rates and the acceptance of one's destiny in the best of times.
The survival of humanitarian traditions is equally threatened in the United States which is embroiled in counter-insurgency warfare against the NLF in Vietnam. Movements for bringing the war to an end have largely overshadowed the puny efforts to lend effective assistance to the civilian population of Vietnam and to protect it from the ravages of combat and bombing. The will to help threatened populations in other countries is held in check by a fear of new involvements in foreign conflicts and civil wars.

In such an international climate, there is an acute need for leadership in restoring a dimension of compassion to the turbulent politics and merciless natural environment of the Third World. An assumption of moral leadership would do much to heighten the prestige and morale of the countries and organizations involved. Unless leaders from the countries of Asia, Latin America, and Africa assume this role, humanitarian traditions may become the preserve of a shrinking group of political and religious leaders increasingly ineffectual in their activities in other parts of the world.

At this juncture in the history of the community of nations, the governing policy considerations for the development of international humanitarian law and organizations require restatement:

—Humanitarian policies must first be adapted to the expectations and sensibilities of new states and to their fear of intervention in order to make them universally acceptable again.
—Emergency assistance under U.N. auspices requires the consent of Member States receiving such assistance.
—Where political objections to humanitarian relief efforts are evident, political efforts should be made to overcome them, efforts best conducted by a representative international organization to avoid direct Big Power involvement.
—Recognition must be given to the different types of humanitarian concerns and to the need for a multiplicity of humanitarian relief agencies, both public and private.
—Efforts to enhance the role of the United Nations and of other international institutions should not be permitted to jeopardize the activities of existing international humanitarian organizations.
—Effective humanitarian assistance must be pursued by appropriate international agencies to lessen the prospects for a direct involvement of big powers in foreign conflicts.
—Efforts to secure universal acceptance of humanitarian policies should not lead to the erosion of standards set in the
Geneva Red Cross Conventions and in other international instruments.

—No new international organization should be established where existing ones could be adapted or enlarged to perform additional tasks.

There is some evidence that efforts to enhance the United Nations role in emergency assistance is beginning to bear fruit. But assistance to war victims is an area of international concern in which almost everything remains to be done.

**RECENT DEVELOPMENTS IN THE PAKISTAN SITUATION**

*The Situation in East Pakistan.*

The quick succession of tragic events in East Pakistan has left hundreds of thousands of persons dead and injured and has generated an exodus of over nine million refugees to India. After the greatest natural disaster of the century in 1970, a bloody civil war began in March of this year. To deal with the humanitarian problems, the United Nations has undertaken two separate operations, one in East Pakistan, the other in India.

In an unusual and unprecedented form of activity for the United Nations, U Thant initiated a United Nations East Pakistan Relief Operation (UNEPRO) without any supporting resolution from any United Nations organ. He acted because, as he put it, "I felt that my obligations under the Charter must include any humanitarian action which I could take to save the lives of large numbers of human beings." The operations in East Pakistan were launched solely on the basis of President Yahya Khan's acceptance of U Thant's offer of humanitarian assistance by and through the United Nations for the relief of the distressed people of East Pakistan. President Yahya Khan gave his full support for the United Nations operation being set up in such a way as to enable the Secretary General to give contributors and donors the requisite assurances that the relief provided by and through the United Nations was reaching those for whom it was destined, the people of East Pakistan.

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**As this issue was going to press, events in Pakistan resulted in important developments of relevance to this topic; this appendix contains an analysis of those developments.**

69. See note 50 supra.

The agreement between the Secretary General and the Government of Pakistan was finalized by an exchange of letters on November 15 and 16 outlining the "conditions for the effective discharge of the United Nations East Pakistan Relief Operation." \[71\] Two days later however, Paul-Marc Henry, in charge of UNEPRO at headquarters, warned that "the extreme difficulties under which this operation is being carried out" were jeopardizing "the conduct of the operation, its effectiveness and perhaps even the possibility of continuing it." \[72\] Substantial opposition to the operation has developed from the Mukti Bahini, the armed forces of the Bangladesh Government which had declared the independence of East Pakistan. The Bangladesh forces have felt that UNEPRO has unwittingly been made to serve the ends of the West Pakistan "military occupation forces" and of the Razakar militia. Attacks on UNEPRO facilities and personnel have led one week after Paul-Marc Henry's warning to the recall of some UNEPRO personnel from East Pakistan and to the apparent collapse of the operation in the wake of increasing hostilities in the Province. \[73\] The United States has so far contributed $93.3 million to UNEPRO. \[74\] The insurgency in the East is spreading and the Mukti Bahini are reportedly increasingly effective.

**The Situation in India.**

The civil war in East Pakistan has through the summer of 1971 led to an immense tide of refugees to India. According to the Government of India this figure was 9,744,404 as of November, while the Government of Pakistan estimated that the number of persons displaced from East Pakistan was 2,002,623 on September 2. Pursuant to a request from the Indian Government for humanitarian aid, the Secretary General has designated the U.N. High Commissioner for Refugees, Prince Sadruddin Aga Khan, as the focal point for the coordination of assistance from all the organizations and programs of the U.N. system. A general consensus now exists on the need for the voluntary repatriation of refugees to their home. Such repatriation cannot take place however until a return of normalcy in the area. This normalcy could only have followed a political settlement

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71. The terms of this unprecedented agreement are set out in the Secretary General's press release, id.
between the Government of Pakistan and the elected representatives of the people of East Pakistan. Full scale war between India and Pakistan has not changed the situation. In the meantime, the focal point of the United Nations system has concentrated its efforts on emergency relief for the refugees in India and on the promotion of their voluntary repatriation at the earliest possible time. The Consortium of governments interested in India's economic development estimated on October 26th the cost of relief for refugees at $700 million for the year ending in March 1972. The world wide contributions pledged came to over $200 million. It should be pointed out that the High Commissioner's actions in discharging his focal point duties are entirely separate from UNHCR's usual activities and that presumably he is not responsible to the Executive Committee of UNHCR with respect to these activities.

**United Nations Emergency Assistance.**

The near collapse of UNEPRO should not be allowed to cloud the important initiative of the Secretary General and the outstanding work of U.N. personnel in India and in East Pakistan. U. Thant's unchallenged and explicit assertion that the Charter requires the Secretary General to take humanitarian action, without any enabling resolution if need be, to save the lives of human beings in time of civil war is an important development in the authority of the Office of Secretary General under the Charter. It restores the Secretary General's leadership in humanitarian matters which had been found wanting during the Nigerian civil war. The troubles of UNEPRO also point to the necessity during conflicts not of an international character of securing the consent of all parties to the conflict in order to facilitate the functioning of U.N. relief operations. To continue UNEPRO it would have been necessary for the Secretary General to secure not only the agreement of the Government of Pakistan but also that of the Bangladesh insurgents. It should be kept in mind that such a purely humanitarian agreement should not affect either the rights or the status of the parties to the conflict in East Pakistan under the principles outlined in Article 3 of the Fourth Geneva Convention of 1949.

The dimension and élan of Prince Sadruddin Aga Khan's operations in India and of UNEPRO have already in some degree gone

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beyond the measures contemplated in the Economic and Social Council resolution 1612 [LI] adopted in Geneva in July for the appointment of a Disaster Relief Coordinator. The UNHCR focal point in India, UNEPRO and the ECOSOC resolution have already put into effect the United Nations Emergency Assistance Service advocated by this writer along principles reviewed in a Panel of the American Society of International Law.

United Nations emergency assistance is unfortunately likely to be needed again. In light of full scale war between India and Pakistan, of the Mukti Bahini's operations, and following Indian recognition of Bangladesh Independence a renewed United Nations effort to come to the assistance of the civilian population in the area will now probably be again required.