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Human Rights and the Prevention of Humanitarian Emergencies

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ABSTRACT

This paper defines a role for human rights and human rights workers in the discussion of humanitarian emergencies. The approach is to look at how human rights law, monitoring, and information can be useful in two ways: (1) to warn of an impending humanitarian emergency, and (2) as part of efforts to resolve the crisis. Too often scholars and policy-makers assume that human rights issues ought to drop out of the humanitarian picture. This paper shows why human rights are downgraded as imperatives at certain stages of the discussion, and, how using human rights principles and reports can assist in tackling humanitarian emergencies effectively. Clearly human rights violations are important indicators of a potential humanitarian disaster. But the spheres of human rights and humanitarian assistance remain worlds apart. The paper looks in detail at problems faced by human rights personnel in Rwanda, Liberia, Mozambique, and the former Yugoslavia. Clapham looks at how to enhance rapid response at the beginning of a crisis, how to report on human rights, and how to tackle impunity and the legacy of the past. He suggests that the human rights movement is a crucial resource in analysing humanitarian emergencies. United Nations reform opens up new possibilities for integrating human rights work into global efforts to prevent humanitarian emergencies.

I INTRODUCTION

An analysis of the human rights situation has an important part to play in the understanding of any humanitarian emergency. This study suggests that human rights principles and norms can both aid understanding and suggest solutions to the tensions that underlie conflict. In fact, the study will argue that the political problems, which produce humanitarian emergencies, can only be resolved in the long term if the solutions incorporate respect for human rights as a cornerstone of the rebuilding programme. Without respect for these principles, paper-peace-agreements will never be translated into solid structures. The edifice of peace will crumble unless the foundations are fashioned out of the human rights laws that have emerged through recognition of the need to create legal institutions to protect the identity and dignity of groups and individuals. Although the focus of the UNU/WIDER project is the prevention of emergencies, this study shows how human rights work also needs to be built into the international community's responses to emergencies as they unfold. The reason this is so important is that, unless the human rights issues are tackled at their root cause, this year's humanitarian emergency could be next year's human catastrophe.

The approach in this study will be to look at how human rights law and monitoring can be useful instruments in two specific phases. In the first place human rights information can be used to warn of an impending humanitarian emergency. Secondly, human rights instruments can be used as part of efforts to resolve the crisis. Too often it is assumed that human rights issues ought to drop out of the humanitarian picture. This study will attempt to show *why* human rights are downgraded as imperatives at certain stages of the discussion, and, *how* using human rights principles and reports can assist in tackling humanitarian emergencies in an effective way. It is suggested that the human rights movement is a crucial underutilized resource in the context of tackling humanitarian emergencies. The movement is simply waiting to be tapped.

Clearly human rights violations are important indicators of a potential humanitarian disaster. It is a truism to state that human rights reports can provide excellent early warning of impending conflict. It is commonplace to recall that to prevent conflict one needs to tackle the causes of tension—in other words human rights violations. But although these assertions may seem very obvious, the spheres of human rights and humanitarian assistance remain worlds apart. In order to analyse the causes and problems

related to this schism, we will need to enter into the complex institutional landscape of the United Nations and try to discover the points of tension, competition and divergence of interests. It is hoped that an examination of this terrain will enable us to make concrete proposals for better use of human rights information, mechanisms, experts and law.

II FAILING TO CONSIDER THE HUMAN RIGHTS DIMENSION OF HUMANITARIAN EMERGENCIES

Before we examine what sort of human rights information and recommendations could be of use in preventing humanitarian emergencies we might look at the way human rights issues are perceived by those concerned with the construction of global early-warning facilities. The UN Secretariat charged with early warning and peacekeeping has remained compartmentalized in their approach. It is widely accepted that early-warning and preventive diplomacy can be used to avoid the more costly responses of peacekeeping, humanitarian assistance, and reconstruction. Nevertheless the arrangements made so far by the United Nations continue to compartmentalize UN information and tend to restrict analysis according to the UN's mandated activities rather than building a picture of emerging situations. United Nations reports have recommended a conflict prevention unit, which would consolidate internal and external information (Hernandez and Kuyama 1995: vii). They have suggested that an 'early-warning centre' should have access to information available throughout the UN system rather than simply relying on a few departments (Daes 1995: xi). Although these suggestions admit the importance of political indicators, the phrase 'human rights reports' is conspicuously absent. Peacekeeping, humanitarian affairs, political affairs, and human rights remain separate worlds when it comes to information analysis at the UN level, or indeed at the level of individual governments.

It is worth speculating as to why suggestions for a comprehensive early-warning hub within the UN system are likely to remain unacceptable. The answer lies in a convergence of objections from the developed and developing worlds. On the one hand, the big powers are unenthusiastic about sharing their intelligence information with the United Nations. There is a fear of leaks and the objection is that the United Nations is staffed by citizens from many different countries and it would be impossible to safeguard or control this sort of information.[1] More generally the

intelligence agencies are loath to see their power and influence dissipated into a new multinational bureaucracy. There is also the consideration that some intelligence and its sources raise real issues of national security and should never be shared. The result is that there has been little financial or substantive support from the developed world for any kind of United Nations intelligence centre. On the other hand, the developing world is wary, if not downright antagonistic, towards incorporating human rights information into system-wide analyses of the situation in those countries. The fear is that human rights will become part of the conditions imposed in areas such as borrowing, development aid and technical assistance. Furthermore, there is good reason to suppose that human rights issues will be used by political enemies to embarrass and undermine certain governments. Governments therefore point to the restrictive mandates which have been bestowed on the various agencies to argue that human rights is a specialist and discrete activity which should not be mixed up with peacekeeping and humanitarian assistance. At one end of the spectrum of concerns is the fear that human rights reports will be used to justify military intervention. Now that the Security Council has been prepared to authorize military intervention in states such as Iraq, Somalia, Rwanda, Haiti and the former Yugoslavia, the prospect of such interventions is at the forefront of the international agenda. Moreover, in cases such as the former Yugoslavia, Iraq, Haiti, Angola, Sudan, and Libya, sanctions have been authorized in such a way that the removal of these measures can become linked to human rights issues. Most recently, massive force has been used against Yugoslavia even without the express authorization of the Security Council but invoking human rights violations in Kosovo as a justification. Whatever the motives for such international interventions they signal a changing notion of sovereignty and an increasing willingness to take enforcement measures, whether these involve sanctions or the use of force. The majority of states see themselves as potential victims of such measures and are keen to defend an expansive notion of sovereignty.

These factors only partly explain the exclusion of human rights information from the mainstream discussion on impending emergencies. It ought to be possible to distinguish different categories of information without tarring all human rights reports with the same brush. Reports on the human rights situation in countries around the world are issued nearly every day. These reports are produced by international non-governmental organizations as well as by national human rights groups and journalists. The volume of these reports has led to a certain degree of 'attention deficit' from states and intergovernmental bodies. This is perhaps not too surprising. What is more

surprising is that, where inter-governmental bodies have created their own reporting mechanisms to keep them informed of the human rights situation in a country, the same governments dedicate hardly any time to reading, debating and acting on such reports. One example highlights the tragic consequences of this attitude.

The UN Commission on Human Rights has over the years created 'thematic mechanisms' and 'country rapporteurs' which receive information, undertake missions, and write analytical reports with recommendations.[2] One of these mechanisms, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (Mr Bacre Waly Ndiaye), visited Rwanda in April 1993. The danger of the impending genocide was already apparent. In a report dated August 1993 the Special Rapporteur urged the international community, in this case the member states of the UN, to act to protect civilians from massacres. The first of a series of 12 recommendations reads as follows,

> A mechanism for the protection of civilian populations against massacres should immediately be set up, in terms of both prevention ... and monitoring and intervention in cases of violence .... To this end, international teams of human rights observers and a civilian police force might be established, particularly in the high-risk areas; with the agreement of the Rwandese authorities, they would be placed under international supervision. The teams would enjoy the immunities and guarantees necessary in order to perform their function and would be stationed in the country until a national system could effectively take over.[3]

In February 1994 his report was before the UN Commission on Human Rights. It read in part, '… lessons should be drawn from the past, and the vicious cycle of ethnic violence, which has drenched both Burundi and Rwanda in blood must be broken. To this end, the impunity of the perpetrators of the massacres must be definitively brought to an end and preventive measures to avoid the recurrence of such tragedies must be designed'.[4]

The UN member states did nothing concrete to respond to these warnings, either at that six-week session of the UN Commission on Human Rights in February and March of 1994, or indeed through any other mechanism. Hundreds of thousands of Rwandans were then brutally killed in the political and ethnic violence, which erupted following the plane crash that killed the Presidents of Burundi and Rwanda on 6 April 1994. It is a

tragedy that some of this carnage might have been avoided, had government representatives cared to read and act on the Special Rapporteur's report. Diplomatic representatives get consumed with side issues at UN meetings while reports such as these go unread. The list of priorities for these inter-governmental meetings is established months beforehand. As has been pointed out many times, the problem is not that the early warnings do not exist; the problem is that when warnings are dressed as human rights reports, decision-makers capable of mobilizing preventive action remain impervious to a 'human rights analysis'.

The issue is not that decision-makers are deaf to early warnings. According to Ted Gurr, 'Information networks that provide early warning of ecological disasters are better developed than the conflict early-warning programs ... The international community also is predisposed to respond to them' (1996: 130). In this way, according to Gurr, 'Early warning of drought in Southern Africa in spring 1992 prompted a concerted international program of relief and rehabilitation that forestalled significant loss of life'. But human rights information has rarely triggered early action. A recent article by Maria Stavropoulou chronicles the attempts by the UN Secretary-General to provide an early-warning facility in the Secretariat for mass exoduses and gross human rights violations. From 1980 onwards efforts at processing early-warning information were thwarted by lack of cooperation between UN agencies and the failure of political bodies to take any action on the few warnings that were issued (Stavropoulou 1996: 424). Two issues remain constant throughout the last seventeen years of the UN's work on early warning. Human rights information is usually excluded from the frameworks, which are designed to coordinate early-warning information. And secondly, any information gathered through the UN's agencies may in theory be analysed for the purposes of predicting mass exoduses, but not to secure UN emergency operations. The political reasoning among the member states of the UN was outlined above. But the reasons for the failure of the international community to consider human rights reports as tools for averting humanitarian emergencies run even deeper.

At the early stages of an impending humanitarian emergency two sectors will usually be attempting to address the issues and the parties. The political arm may be attempting to mediate or negotiate a peace plan or cease-fire; the humanitarian arm may be negotiating access and assistance. Both arms are wary of embracing human rights issues for fear of alienating their interlocutors and upsetting their chances of securing their respective goals: peace and relief.

In some instances, hidden geopolitical motives of the governments involved will simply override the normative character of human rights and international law (Falk 1993: 31). In other cases a utilitarian philosophy dominates the thinking. The rhetorical response to the advocates of a human rights solution is typically, 'What should one do if the quest for justice and retribution hampers the search for peace, thereby prolonging a war and increasing the number of deaths, the amount of destruction, and the extent of human suffering?' (Anonymous 1996: 250). It is not only the question of justice that gets excluded. Individuals with expertise regarding the international legality of certain agreements and compromises are also locked out. In the context of Bosnia and Herzegovina one negotiator writes:

> Two things emerged clearly during the negotiations: lawyers should give their opinions but should not dominate the negotiating process. The purpose of peace negotiations is to achieve peace. Lawyers are there to assist in that objective, not make it more difficult. Legal perfectionism can lead to disaster in negotiations. Another important lesson learnt during the negotiations is that a short text that the parties can agree on and that can be fleshed out later might make agreement possible, whereas a detailed blueprint can make agreement impossible. This is another instance where legal perfectionism can mean the death of negotiations (Ramcharan 1996: 21)

The answer must surely be that a peace, which respects the quest for justice and human rights will be a lasting peace and the best sort of preventive diplomacy. Short-sighted geopolitical fixes will start to lose their attractiveness once it becomes clear that public opinion will not support suffering and injustice and that the problems are going to continue to surface as long as the causes are not properly dealt with. The human rights community has started to hit out and reassert its role on the moral high ground urging that negotiators are jeopardizing the credibility of their governments and the international organizations they represent (Gaer 1997: 5). Negotiators are being urged to work with human rights organizations to 'develop new strategies to protect human rights, resolving the causes of conflict rather than merely containing them' (Gaer 1997: 5).

A further failure relates to the exclusion of the gender dimension from the analysis of the situation and the proposed solutions. Although the principle of sex equality is well understood, and human rights law and principles are built on the concepts of universality and non-discrimination, the gender dimension of humanitarian emergencies is usually ignored or included as

an afterthought. There are a number of aspects to this issue. Only if a deliberate attempt is made to study the impact on women of the conflict as well as their impact on the conflict can one hope to design solutions, which not only address women but also have prospects for lasting success. Recent conflicts in the former Yugoslavia and Rwanda have demonstrated how rape and sexual abuse are used as instruments of war and in order to demonstrate complete contempt for 'the other'. Where women were the victims of violent human rights abuses, attempts to carry out reporting and bring perpetrators to account will need to consider the special needs of survivors of sexual assaults and the need to have women as part of any monitoring team. Furthermore, arrangements for the protection and care of survivors will need to consider how to ensure that the rapes and assaults are not constantly relived in the quest for truth and justice.

Systematic violence against women has been an important factor leading to mass displacements and humanitarian emergencies as agencies try to provide assistance and protection to large numbers of refugees or internally displaced persons. Attention to reports of attacks on women is important in itself, but it can also serve as an important factor in understanding the evolution of emergencies.

The negotiated settlements to armed conflicts can easily overlook the disproportionate adverse effect on women of land deals, which are related to combatant status or arms exchanges. Furthermore, the design of long-term structural reforms and constitutional guarantees need to consider the impact on women and girls. Development solutions, which favour certain exports or farming practices can entrench the subordinate status of women and deny them access to political decision-making. International instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Declaration on the Elimination of Violence Against Women (1993), are widely accepted and can be useful tools for ensuring that different aspects of the gender dimension are covered in the elaboration of proposals for a lasting peace. It has also been pointed out in the context of Rwanda that a gender analysis will reveal that women are not only the passive victims of conflict, but also sometimes the perpetrators, and they may well be an important force amongst the survivors and a key element in designing rebuilding strategies (Byrne *et al*. 1996: 36). It seems that there is still a tendency amongst international agencies to take a welfarist approach to women when designing development projects, rather than realizing the gender implications of projects in fields such as agriculture, education, water and sanitation (Byrne *et al*. 1996: 48).

III THE POTENTIAL USE OF HUMAN RIGHTS INFORMATION FOR EARLY WARNING

Raimo Väyrynen has used four factors to define a humanitarian emergency: warfare, disease, hunger, and displacement. He considers the human rights dimension relevant, 'but embedded in the four other factors [rather] than an independent defining characteristic' (Väyrynen 2000). In order to understand the potential of human rights information as indicators of these factors developing, or for resolving the causes of each of these factors, we might look at each factor in turn.

A start has been made by one of the UN human rights treaty bodies to list which criteria might be considered as relevant for early warning of tension turning into armed conflict (warfare). The Committee on the Elimination of All Forms of Racial Discrimination has listed the following criteria:

- the lack of adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention;
- inadequate implementation or enforcement mechanisms, including the lack of recourse procedures;
- the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials;
- significant pattern of racial discrimination evidenced in social and economic indicators;
- significant flows of refugees or displaced resulting from a pattern of racial discrimination or encroachment on the lands of minority communities.[5]

These criteria were developed as a response to Secretary-General Boutros-Ghali's suggestion in 1992 that the UN needed to 'consider ways to empower the Secretary-General and the expert human rights bodies to bring massive violations of human rights to the Security Council together with recommendations for action'.[6] At the time there was considerable optimism that the human rights treaty bodies could fulfil this role.[7] Moreover it was considered that the Security Council would play a major role in addressing and resolving conflicts at the early stages. The Committee on the Elimination of Racial Discrimination did issue decisions under its 'early-

warning and urgent procedures' but it remains unclear whether any part of the UN took any further action on them (Stavropoulou 1996: 428). Efforts at early action by other treaty bodies such as the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights have also been disappointing. By 1996 doubts were being raised about the effectiveness of the urgent action procedures being developed by the human rights treaty bodies. The treaty bodies had recognized their inability to analyse such criteria for the purposes of early warning and early action and were suggesting that this function be carried out by the 'thematic mechanisms' of the Commission.[8] (The role of one such mechanism was discussed above in the context of Rwanda.) The reality is that the elaborate system of human rights treaty monitoring established by the United Nations cannot yet be harnessed to provide the sort of analysis that would reliably predict the outbreak of armed conflict or warfare. Nevertheless it is suggested that these same human rights treaties can be essential in attempts to head off armed conflict. Rather than indicators for the international community, they can provide the tools of conflict resolution. The following paragraphs explain how.

Over the past few years, human rights have been used as part of peace agreements in a number of ways. First, human rights norms may be the common denominator on which both sides can agree even in the absence of a cease-fire. This is what happened in the El Salvador peace agreements where the San José human rights agreement was the first agreement to be signed by the parties and the human rights monitors started work even before the cease-fire. In this case, human rights proved the common ground, which enabled the UN mediators to keep the parties talking and to commit them to 'avoid any act which constitutes an attempt upon the life, integrity, security or freedom of the individual', as well as to take steps 'to eliminate any practice involving forced disappearances and abductions'.[9] The parties also agreed to allow the United Nations to establish a verification mission and 'clarify any situation which appears to reveal the systematic practice of human rights violations and, in such cases, to recommend appropriate measures for the elimination of the practice to the party concerned'.

As a result of this diplomatic breakthrough and the deployment of the UN Observer Mission in El Salvador (ONUSAL), the internal human rights situation is considered to have improved to an extent, which opened the way for the signing of the final New York peace accords and the end of the war (García-Sayán 1995: 33; Lawyers Committee for Human Rights 1995: 14). The deployment of civilian human rights monitors to a war zone

was a gamble, which saved a good many lives and demonstrated the ease with which human rights can constitute common ground in a situation of entrenched antagonism. Subsequent agreements added to the original mandate of the Mission so that it later tackled issues such as judicial reform, the creation of a national civilian police force, and retraining the military. In fact part of the proof of the success of this approach is that the parties to the conflict in Guatemala asked for a similar verification mission to be deployed in Guatemala 'even before the signature of the agreement on a firm and lasting peace'.[10]

Second, stressing human rights at the time of the political negotiations can remind the main actors of the international community's resolve to remove the causes of conflict rather than simply eradicating the symptoms from the world's news broadcasts. Unfortunately, few political negotiators are familiar with the logic and obligations of international human rights law. Where human rights represent a point of controversy, rather than something which all sides consider mutually beneficial, the temptation is to eschew human rights talk in favour of retaining the confidence of the negotiators. For example, in the case of Haiti the United Nations and the United States were dealing with the military regime to engineer their withdrawal from power. The Constitutional President (Aristide) was not a party to these discussions and negotiators saw little to be gained by insisting that the military agree to respect the role of the international human rights monitors. It has been suggested that the failure to consider the human rights reports and demonstrate a serious commitment to ending the violations during this sort of political negotiations encouraged the military in Haiti in their repression and cut the negotiators off from their 'best source on the local political reality' (Martin 1994: 87, O'Neill 1995: 119). Downplaying the UN's own human rights reports also highlighted for the military government the splits among the international community and the preference on the part of the negotiators for a solution to the problem rather than determination to tackle the causes of the conflict (Martin 1997: 16).

Third, peace negotiations represent a special opportunity to get agreement on new national institutions, which may be able to resolve some of the conflicts which lie at the heart of the complex emergency. In Guatemala, the Agreement on Identity and Rights of Indigenous Peoples (1995) was signed soon after the first human rights reports were published by the UN Human Rights Verification Mission (MINUGUA) and the human rights approach focuses on discrimination and verification while ensuring that indigenous peoples participate in the creation and design of the new institutional mechanisms of protection (Baranyi 1995: 21).

In other situations international human rights law has been used to rewrite constitutions and bills of rights, thus committing the parties in Bosnia and Herzegovina to 'ensure the highest level of internationally recognized human rights and fundamental freedoms' (Article II.1 of the Constitution, Annex 4 of the Dayton/Paris Peace Agreement on Bosnia) (Szasz 1996). In the case of Bosnia extensive use was made of the European Convention on Human Rights (ECHR) and 18 other human rights treaties even though Bosnia and Herzegovina was not a party to either the ECHR or many of the other treaties listed. In addition the peace agreements established the institutions which are to hear complaints and resolve ongoing disputes over human rights issues. The Agreement and the Constitution, which arises out of it, provide for a complex set of new institutions. These include a Constitutional Court to determine the compatibility of laws with the ECHR and a Human Rights Commission with two parts. The first part of the Commission, a Human Rights Chamber, composed of international human rights lawyers from countries other than Bosnia and its neighbours, is to hear complaints of violations of the ECHR and discrimination. The parties will be bound by the decisions of the Chamber and after five years the international members will be replaced by Bosnians and the Chamber will become a national institution. The second part is an 'ombudsman', who can initiate investigations and hear similar complaints to the Chamber. After five years the post may pass to a Bosnian. In addition the Agreement establishes a Commission for the Real Property of Displaced Persons and Refugees (Property Commission). The Agreement states that refugees and displaced persons 'shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them' (Annex 7, Art. I(1).) Taking a rights-based approach to displacement and housing is an important advance in the thinking in this area. The problem is that the Commission is unlikely to have the resources or enforcement powers necessary to ensure that the individual's property is really restored to him in a habitable state (Amnesty International 1996a: 27).

The General Framework Agreement for Peace in Bosnia and Herzegovina was essentially negotiated as an agreement between three nation-states (even if one delegation could act alternatively as the organ of the Federal Republic of Yugoslavia or the Republika Srpska (Gaeta 1996: 151)). Using human rights treaties that each of these states is a party to, or aspires to become a party to, is to use a language and set of instruments that are potentially a rich source of future cooperation. On the other hand, where the conflict is not going to be tackled through international diplomacy,

because the tensions have no connection to inter-state relations, a different approach will be in order. Nevertheless there may be a place for human rights principles to guide such negotiations. If we take the case of killings in Ganyliel in Sudan, one could point to the fact that the armed political groups involved in the fighting have agreed with the UN Operation Lifeline Sudan to be bound by certain basic principles laid down in human rights treaties. But these signatures currently only represent a willingness to tackle human rights awareness (Amnesty International 1996b: 31). Real solutions will have to be rooted in the cultural context in which these conflicts survive. For example, it is probable that some of the fighting in Ganyliel is linked to cattle raiding between the Dinka and the Nuer. Solutions, which involve the exchange of cattle and tie this to the property of those responsible for the arbitrary killing of civilians may be more successful than other forms of punishment and condemnation. The point is that principles, which demand the protection of civilians, accountability and reparation can be used to tackle the tension which allows conflict to continue and exacerbate humanitarian crises. As more and more crises revolve around the antagonism of factions and groups rather than nation-states, a case can be made for greater reflection regarding the current tools available at the international level for the peaceful resolution of disputes. Liberia, Afghanistan, Burundi and Sudan all present humanitarian agencies with the problem of how to prevent an escalation of the fighting and how to protect the delivery of humanitarian assistance. Familiarization with international standards such as those agreed to in the Sudanese context (Convention on the Rights of the Child, Geneva Conventions of 1949 and their 1977 Additional Protocols) is an important step. If these and other international standards can be used as part of negotiated solutions that are anchored in the social and economic context of the emergency, there may be interesting prospects for preventing armed conflict.

One last example of the use of international human rights and humanitarian law to resolve and prevent warfare has been the threat of war crimes tribunals. Let us take just one example of a threatened tribunal. In July 1996 the Organization of African Unity adopted a resolution in which it warned the Liberian warring faction leaders that a negative assessment of the peace process would lead to a Security Council resolution which would include sanctions and the possibility 'of the setting up of a war crime tribunal to try the leadership of the Liberian warring factions on the gross violation of the human rights of Liberians'. This threat had some resonance in Liberia among the former faction leaders and demonstrates how the concrete nature of international humanitarian law can be used to prevent

warfare and the consequent humanitarian emergency that often follows. Even though it is well known that the international community has failed to bring to justice all those leaders it has indicted for war crimes in the former Yugoslavia and Rwanda, the fact of their indictment and the international ignominy this brings can have important effects. 'In terms of pursuing justice within the former Yugoslavia and Rwanda, those indicted by the tribunal are now branded with a mark of Cain that serves as some measure of retribution, preventing them from travelling abroad and instilling in them the fear of arrest by an adversary or foreign government' (Meron 1997: 7).

Disease and hunger are factors, which can be directly correlated to work done on the rights to health and food. In Väyrynen's typology of complex humanitarian emergencies in 1993-5, disease and hunger are assessed using statistics relating to the mortality rate of children under five and underweight children under five (Väyrynen 2000). The result of combining these factors together with the other two aspects (war and displacement) leads to a classification of five 'strong' complex emergencies: Afghanistan, Mozambique, Angola, Somalia, and Rwanda.

It may be worth considering what sort of contribution the world of human rights can make to tackling disease and hunger in the context of preventing humanitarian emergencies. We can take as a starting point the International Covenant on Economic Social and Cultural Rights of 1966. All the five above-mentioned states are parties to this Covenant and so have concrete legal duties as well as reporting obligations under the Covenant. In addition, there are a further 130 states party to the Covenant who also are obliged under Article 2(1) to:

> … undertake to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The Committee charged with supervision of the Covenant has stated clearly that, in its view:

> … a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state party. Thus, for example, a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic

> shelter and housing, or of the most basic forms of education is, *prima facie,* failing to discharge its obligations under the Covenant.[11]

By shaping the discussion in terms of rights and the international legal obligations of states, we can elevate discussion about tackling hunger and disease to the level of legal imperatives rather than desirable policies.[12] This may be important for the determination of how states prioritize spending and how other states and financial institutions condition their assistance. This may be especially important for countries in crisis such as Somalia and Afghanistan or war-torn societies emerging from conflict such as Rwanda, Angola and Mozambique. But perhaps the biggest effect of reordering discussion around international legal obligations is the empowering effect it can have on grassroots groups and local organizations. By pointing to health and food as internationally protected rights rather than privileges, or paper policies, the authorities can be coaxed into allowing for proper participation in the decision-making process. In countries such as Somalia and Mozambique the importance of the rights discourse is not that it provides a stick with which to beat the government—this makes little sense in such situations. The importance is that national authorities and international actors are bound to adjust their policies in order to realize certain key rights. What the human rights regime has so far failed to do is to 'turn its guns' on those international actors whose policies exacerbate the denial of the rights to health or food in countries experiencing a humanitarian emergency. The challenge is how to hold foreign owners of, say, banana or coffee plantations to account for the fact that their policies are contributing to a denial of basic economic and social rights (Jungk 1999). Furthermore where developed states are forcing local authorities to forego any action on basic economic and social rights, those developed states are in violation of their obligations under the Covenant but they, too, are mostly escaping scot-free.

There are attempts to transform the world of economic and social rights into something that more closely reassembles the world of civil and political rights monitoring (Chapman 1996; Eide 1989; Maastricht Guidelines 1997). Although the UN's human rights bodies, such as the Commission on Human Rights, are supposed to tackle economic and social rights questions, their thematic mechanisms remain skewed in favour of civil and political rights. For many years the Commission had no special rapporteur specifically assigned to economic and social rights (Alston 1997). The situation has now changed with rapporteurs on extreme poverty,

education, food and housing.[13] These rapporteurs could become important early warning.

Similarly the complaints mechanisms in the field of economic and social rights have lagged behind what has been developed for civil and political rights and it was only in the 1990s that we began to see moves to create international avenues for complaint. It will be a long time before the nascent complaints mechanisms now being developed at the regional and international levels produce the sort of results from which meaningful conclusions could be drawn about impending crises. In fact the use of the international complaints procedures will probably reflect ease of access to procedures rather than useful comparative information on violations of economic or social rights and the prospects of a humanitarian emergency. Nevertheless, the perceived problems regarding the quantification of violations of the rights to food and health should not blind us to the utility of using a rights-based approach and the existing human rights procedures to tackling causes of emergencies such as disease and hunger. As already stated, there could be a number of advantages to reorganizing discussions on the prevention of starvation and disease around demands for rights, and for refocusing attention on all economic actors and states to abide by their relevant international legal obligations in this field.[14]

With regard to displacement, the UN Secretariat has in the past attempted to gather information to warn the political bodies of forthcoming mass exoduses (Ramcharan 1991: 103-14). Even though this sort of work is less sensitive than the investigation of human rights violations, the project was abandoned, and the Office for Research and the Collection of Information was dissolved in 1992. Work had started on a set of 'early-warning indicators' but constraints on resources prevented the project from developing into a working early-warning mechanism (Stavropoulou 1996: 424). The role of developing early-warning indicators of refugee flight has been taken on by the UN High Commissioner for Refugees (Centre for Documentation and Research) and through projects based in various universities (Gurr 1996). Again the problem for the United Nations is that the problems go beyond the methodology. There is some apprehension that over-concentration on prevention by the Office of the High Commissioner for Refugees will detract from its mandate to assist refugees, and that the Office will become embroiled in preventing people from exercising their right to flee and their right to seek asylum. However, there are signs that the Office of the High Commissioner for Human Rights may now start to complement the work of the other High Commissioner so that the human rights dimension becomes more apparent in attempts to tackle

displacement. In the words of Mary Robinson, the High Commissioner for Human Rights:

> Let me reiterate that human rights are indeed deeply connected to the problem of refugees for two main reasons: a) their violation is almost always the root cause of refugee flows and b) the problem of refugees, in the long term, can only be properly addressed and resolved through an improvement in the standards of protection of human rights.[15]

To summarize, human rights law and programmes do cut across the causes of humanitarian emergencies as suggested by Väyrynen (2000). But the causes he lists—war, disease, famine and displacement—are not easily analysed in terms of comparative human rights violations in the same way that economists can compare country data (for the indicators used for the econometric investigation into the sources of humanitarian emergencies, see Auvinen and Nafziger 1999).[16] However, rather than looking to human rights law to give us indicators of disasters, we can utilize the law and monitoring procedures to constrain actors whose actions clearly contribute to war, hunger, disease and displacement.

Even if there are some factors relating to humanitarian emergencies, which seem to fall outside the scope of human rights action, new links are now being made. Corruption and financial scandals are now seen as critical factors, which can destabilize the population or even trigger a humanitarian crisis (consider Albania and Zaire in 1997). Foreign commercial interests may fragment society and throw up new power bases outside the influence of the state authority (consider Liberia, Sierra Leone and Angola in 1997) (Reno 2000). There are few human rights standards, which have been drafted so as to relate directly to these fields, and human rights monitors have not really concentrated on these 'extraneous' forces, yet corruption may become one of the key issues for understanding the potential of countries to dissolve into crisis. Corruption may become a key indicator for the possible pre-emption of a humanitarian emergency. However, even if issues such as corruption and human rights law are sometimes seen as separate issues, human rights work on the independence of the judiciary and lawyers is increasingly seen as instrumental in the fight against corruption. On 28 July 1997 Secretary-General Kofi Annan put it in the following way:

> Our human rights field operations are helping build national as well as non-governmental institutions for the promotion and protection

> of human rights. I am pleased and proud to say that we now have more staff working on human rights issues in the field than at Headquarters. All these efforts yield another important dividend: they help to combat crime and corruption, which thrive where laws and civic institutions are weak.[17]

But perhaps the key to better early-warning systems is understanding the nexus between early warning and early action and building better systems (Gurr 1996). Ted Gurr has stressed the difference between 'risk assessment' and 'early warning'. For him, 'Risk assessments are based on the systematic analysis of remote and indeterminate conditions. Early warning requires near-real-time assessment of events that, in a high-risk environment, are likely to accelerate or trigger the rapid escalation of conflict' (Gurr 1996: 137). Gurr has developed four 'risk factors' that are to be used to place minority groups on a high priority 'watch list'. He suggests highlighting those groups who are (i) politically mobilized, (ii) targeted by public policies of discrimination, (iii) living in an autocratic state, and (iv) subjected to government repression. These high-risk factors may help to restrict the early-warning watching brief but the human rights indicators, which would enable one to make this distinction, have still not been developed.

Human rights information about violations in this area is abundant but difficult to use in a comparative way. The problem is that the worst governments will often restrict access to monitors and information. Therefore, comparing data on violations is pretty meaningless. But the problem is not that there is no system for the scientific comparison of emerging human rights developments; the real problem is that the international community does not have the will or the capacity to react even when the warning bells have finished ringing and the writing is clearly on the wall. Where the causes of future emergencies are economic and social, the myopia is especially pronounced. There is a valid case to be made that presenting hunger and disease as 'flagrant violations of human rights' may help to focus the attention of the international community and non-governmental agencies.

IV RAPID RESPONSE

It is a paradox that it has often proved impossible to mobilize political actors to respond to systematic human rights violations where they have not

yet generated a humanitarian emergency, but when the emergency breaks, the situation becomes too dangerous to actually send forces. At the height of the emergency there is often no protection for civilians and humanitarian personnel and no one to ensure some accountability for those committing violations of international humanitarian law, crimes against humanity, and gross violations of human rights.

In the case of Rwanda, this left the human rights organs of the UN to improvise solutions in the face of mounting cries that 'something must be done'. In order to understand the predicament of the human rights community, the case of the Rwandan emergency will be briefly examined.

Following the plane crash of 6 April 1994, in which the Presidents of Rwanda and Burundi were killed, a planned campaign of violence against civilians from the Tutsi minority was unleashed and hundreds of thousands of Tutsi civilians, together with moderate Hutus, were brutally killed as they struggled to find protection in churches and make-shift hiding places. To appreciate the extent to which the massacres were planned one has only to recall the slogans broadcast by the local radio station. '*The grave is only half full. Who will help us fill it?'* The messages broadcast by Radio Télévision Libre des Milles Collines (RTLM) were unambiguous. On the day following the assassination of President Juvénal Habyrimana on 6 April, it even broadcast the names and addresses of the 'cockroaches' (Tutsis) and the 'accomplices' (moderate Hutus) to be killed. In a few hours the *interahamwe* (those who attack together) militia went to work with a transistor in one hand and a machete in another (Médecins sans Frontières 1995: 38).

There was at that time a UN peacekeeping mission (UNAMIR) already in the country with a mandate to monitor the 1993 peace agreement that, by then, was in tatters.[18] Ten Belgian UN peacekeepers from that mission were killed as they tried unsuccessfully to defend Prime Minster Agathe Uwilingiyimana. As a result of the killing, Belgium and a number of other countries withdrew their contingents from the UN peacekeeping mission (UNAMIR) already in Rwanda considering it too dangerous for their nationals. On 21 April, the Security Council reduced the authorized force of UNAMIR from over 2,000 to 270. Four weeks later, on 17 May, the Security Council authorized a newly expanded force to be deployed in stages, but by 22 June the new force had still not been deployed. From April to June the killing of civilians continued at an incredible rate. Most estimates put the death toll at over 500,000.

The rebel Rwandese Patriotic Front eventually succeeded in gaining control of the whole country and the former army and government fled abroad to the neighbouring countries of Kenya, Tanzania, and Zaire. Over one million refugees fled Rwanda and two years later their return continued to constitute a humanitarian crisis. In fact, the presence and influence of the former army and a number of extremist groups among the refugees posed a serious threat to the stability of the region.

In order to understand how to prevent another catastrophe with its attendant humanitarian long-term consequences, it is worth looking at the reasons why no rapid response was forthcoming after the early warnings became current events. The United States Congress had demanded far-reaching new conditions for US approval and participation in peacekeeping operations. This resulted in the signing of Presidential Decision Directive 25 on 4 May 1994. Although the Decision remains classified the State Department issued a document outlining the 'key elements' (US State Department 1994). In a section headed 'Voting for Peace Operations' the memorandum states that,

> … the US will support well-defined peace operations, generally, as a tool to provide finite windows of opportunity to allow combatants to resolve their differences and failed societies to begin to constitute themselves. Peace operations should not be open-ended commitments but instead linked to concrete political solutions; otherwise they normally should not be undertaken.

This imperative mirrored the recommendations of a UN investigation into the killing of UN personnel in Somalia:

> The United Nations should refrain from undertaking further peace enforcement actions within the internal conflicts of states. If the United Nations decides nevertheless to undertake [a] further peace enforcement operation, the mandate should be limited to specific objectives and the use of force would be applied as the ultimate means after all peaceful remedies have been exhausted.[19]

But to really understand the dynamic as to why the 'international community' failed to rapidly respond to this emergency we have to admit that this 'community' does not exist. When states enter the Security Council chambers to discuss possible options they remain primarily preoccupied with their national interests. Consider this thought from a reflective piece

written by a US State Department official involved in the decision-making process at this time,

> … to make the case for intervention requires connecting such action to interests. Yet, the language of interests is largely the language of states, and state interests were hardly engaged by the unfolding tragedy in Rwanda. Indeed, member states and members of the U.S. Mission framed any prospective intervention in the language of obligation. I, for one, viewed the violence as lamentable but could not make the necessary strategic link to justify the deployment of U.S. troops. Simply put, Rwanda activated the language of obligation rather than interests, but to and justify the involvement and possible sacrifice of one's troops generally demands a connection to the language of state interests rather than of international obligations (Barnett 1999: 196).

There is a vacuum at the level of international conscience and response. Member states of the United Nations have so far been unenthusiastic about the idea of a multilateral UN force, which could be deployed at a moment's notice. In his *Agenda for Peace* the Secretary-General had proposed volunteer peace-enforcement units. He later developed the idea stating that,

> The purpose of peace enforcement units (perhaps they should be called 'cease-fire enforcement units') would be to enable the United Nations to deploy troops quickly to enforce a cease-fire by taking coercive action against either party, or both if they violate it (Boutros-Ghali 1993: 94).

These and other proposals have met with hostile reactions ranging from muttering about the expense, to outright opposition by Senator Jesse Helms (of the US Senate Foreign Relations Committee) to the prospect of a standing 'UN army' bankrolled out of 'UN taxes'.

As long as no UN force is readily available, the only option in terms of rapid deployment is to call on national contingents. But governments will not agree to send troops unless it is in their national interest and the prospects of causalities are minimal. In fact, one of the only powers that can provide this kind of rapid deployment is the United States. This is problematic for two reasons. First, there is suspicion of the United States' agenda abroad based on recent experience of activity in Central America carried out under the labels of 'humanitarian assistance' or 'humanitarian intervention'. Second, the national feeling in the US is that the United States should not be used as a sort of 'international rescue'. Consider again

the reflections of the same diplomat from the US State Department discussing the impasse in the face of the Rwandan genocide:

> Some nonpermanent members of the Security Council, however, demanded robust action to protect civilians, couching their arguments in the terms of the 'international community' to refer to a moral order that transcended state boundaries. At that time, however, I feared, that such language was designed to lure the United States into doing the work of and for 'the international community'. Over the course of the year, I became increasingly frustrated by the fact that when a humanitarian nightmare unfolded somewhere in the world, the world looked to the UN, and then the UN looked to the United States. Accordingly, I was suspicious that when other states evoked the 'international community', they were, in fact pointing to the US. New Zealand and Czechoslovakia, which I often referred to as the 'conscience of the Council' in both derision and admiration, supported robust action by the UN and were critical of those members who resisted the intervention temptation. While they were arguing for action, however, they were not volunteering their own troops and were only subtly insinuating that the United States should go first. As some of us at the US Mission would joke about other proposed and existing operations, the international community seemed willing to fight down to the last American (Barnett 1999: 196).

It seems rapid response remains impracticable as long as the states in a position to rapidly deploy are preoccupied with a national political climate, which demands no risk engagement from its national contingents. It is therefore suggested here that one of the solutions which needs to be explored is the possibility of having teams of UN personnel which can be quickly sent to the field to provide a certain dissuasive presence in the face of gross human rights violations. In his *Agenda for Peace* the Secretary-General had proposed volunteer peace-enforcement units (in the nature of a provisional measure under Article 40 of the UN Charter).[20] He later outlined how he envisaged this working:

> An even more radical development can now be envisaged. It happens all too often that the parties to a conflict sign a cease-fire agreement but then fail to respect it. In such situations it is felt that the United Nations should 'do something'. This is a reasonable expectation if the United Nations is to be an effective system of collective security. The purpose of peace enforcement units

> (perhaps they should be called 'cease-fire enforcement units') would be to enable the United Nations to deploy troops quickly to enforce a cease-fire by taking coercive action against either party, or both if they violate it.

Having stressed that the operations would still have to be authorized by the Security Council and would be under the command of the Secretary-General he goes on:

> But the concept goes beyond peacekeeping to the extent that the operation would be deployed without the express consent of the two parties (though its basis would be a cease-fire agreement previously reached between them). UN troops would be authorized to use force to ensure respect for the cease-fire. They would be trained, armed and equipped accordingly; a very rapid response would be essential (Boutros-Ghali 1993: 93-4).

Although the Security Council and the General Assembly have offered little encouragement to the Secretary-General in his appeal for such units, a public debate on this and similar options is underway and may eventually turn the tide of governmental scepticism.[21] Even if military assistance is not developed under UN auspices, it looks likely to become a feature of humanitarian protection and assistance in emergency situations. 'Local forces, host country governments, outside powers, regional organizations and alliances may all have a role in providing such help' (Roberts 1996: 87). From a human rights perspective the tasks will have to go beyond 'cease-fire enforcement' and attempt to respond to the human rights dimension of emergencies. In fact, insisting on a cease-fire before personnel are sent could arguably entrench an abusive or even genocidal party and deny the possibility of removing such a tyranny. A human rights approach will not necessarily revolve around a negotiated settlement or suggest an immediate cease-fire. In any event, human rights advocates will insist that political steps need to be taken at all stages to protect civilians from indiscriminate killings and to bring those responsible to justice.

In the meantime, some steps have been taken by the UN to ensure stand-by arrangements for military personnel. The units are supposed to be ready for departure within 15 to 30 days from the time of the official request.[22] This is a softer option and avoids the impression of giving the Secretary-General a 'UN army', something that had been troubling the member states. Whether the stand-by arrangements will prove satisfactory remains to be seen. The arrangement has been described by UN officials as only as good as a

traveller's cheque that has not been countersigned. When it comes to the crunch, the UN still has to get the second signature and it is of course at this crucial point that national governments prevaricate. From the perspective of humanitarian workers, non-governmental organizations and the local population, a foreign *military* presence may be seen as especially problematic. Abuses and human rights violations committed by outside military personnel in Somalia not only resulted in torture and death for Somali civilians, but have tainted the whole concept of military assistance in humanitarian emergencies. Furthermore the use of military protection by humanitarian workers creates a whole new set of dilemmas and jeopardizes their chances of being seen to be impartial.[23]

But arrangements for stand-by teams of civilians including civilian police are even less developed than the embryonic system for stand-by military armed forces. While member states of the UN are prepared to put hundreds of soldiers at the disposal of the UN for an eventual deployment, arrangements for a police or security force are problematic. First, civilian police are usually already employed in essential tasks. Second, the police are usually responsible to local government, and ministries of foreign affairs or defence will have limited possibilities to commit personnel. Third, in the event of a deployment abroad, someone has to reimburse the local authorities for the cost of the replacement and this is a costly exercise.[24]

It is suggested that the real solution is for a properly trained multinational rapid deployment force (military, police and civilians) which can be sent following a Security Council decision and which is not dependent on the vagaries of national politics. Moreover, it is suggested that the mandate of such a rapid deployment force could go beyond the 'cease-fire enforcement' envisaged by the Secretary-General and cover such human rights tasks as the protection of civilians, reporting serious violations of international humanitarian and human rights law, arresting and surrendering internationally indicted criminals (where an international tribunal exists to issue the indictment), laying the foundations for the establishment of a civilian police force which operates in conformity with international criminal justice standards and helping to establish national procedures to ensure accountability and compensation for the victims of the crisis.[25] This may seem over-ambitious but timely action of this sort could have probably prevented the further deterioration of the situation following the fragile peace agreements in Rwanda, Angola and Liberia (Clapham and Henry 1995). Military, police and civilian personnel would have to be UN

servants and trained as the multinational rapid deployment team and not simply hired out as national contingents.

The necessity of a new approach is increasingly recognized and the idea of personnel being sent to protect civilians is gaining the approval of a number of governments. The experience of the paralysis over Rwanda has left many searching for new solutions. The Indonesian Ambassador at the United Nations put it in the following way:

> What is needed is preventive action: an immediate and convincing UN presence to enforce cease-fires, protect civilians, provide communications, and assess local situations as well as the degree of UN involvement. It would also be necessary to devise a new mixture of civilian, military, police, technical and other elements. Early warning can anticipate and forestall conflicts (Wisnumurti 1996: 73).

In the absence of any sort of rapid deployment to Rwanda in the first half of 1994, either of civilians or military personnel, the pressure to 'do something' was turned on the newly appointed High Commissioner for Human Rights (Clapham 1994). Following a mission to Rwanda and Burundi in May 1994, the High Commissioner suggested that the member states of the Commission on Human Rights immediately hold a special session. The special session went ahead later that month and resulted in the appointment of a special rapporteur and a commitment to mount a human rights field operation.

This represented something of a first for the human rights programme at the United Nations. Monitors would be deployed into the thick of an emergency and would, in theory, through their presence attempt to relieve the distress as well as reduce the number of human rights violations. In August 1994, the special rapporteur for Rwanda outlined the different roles (persuasion, deterrence, prevention and defence), which he foresaw for the monitors (they were later renamed 'field officers' to emphasize the fact that they were not there to simply report violations to the UN offices in Geneva and New York).

The first [persuasion] involves restoring the confidence of the refugees and displaced persons so that they can return with complete peace of mind; the presence of such experts is in itself reassuring in that it can provide them with a guarantee against further massacres. It is also a deterrent in that the new authorities will beware of carrying out reprisals in the presence of such

experts who, in addition, will ascertain the good faith of the authorities and their sincerity in not carrying out reprisals.

Deterrence leads to prevention in that it prevents further violations of human rights by virtue of the presence of United Nations human rights experts who will monitor the return of the refugees, making sure of their safety and helping them to settle in again, with their rights being strictly observed. Finally, defence will purely and simply involve assisting with inquiries in the field in order to determine the facts regarding the various violations of human rights by the parties to the conflict and the perpetrators of massacres and genocide.[26]

The UN proved unprepared and unable to get this multinational civilian team quickly to the field. By December, six months after the war and the massacres were over, the personnel were still not deployed in the field and the operation was 'barely functioning' (Stapleton 1995: 14). The reasons for this failure are different from those, which prevented a military deployment until August. Whereas the reticence about the establishment of a peace-enforcement operation related to the prospect of casualties and the recent memories of the failed policies in Somalia, the delays over the human rights operation simply related to lack of financial backing and inexperience with the logistics and organization of a large field operation on the part of the UN Human Rights Secretariat in Geneva. From the point of view of the rest of the UN system, human rights issues were a luxury, which could wait. Important military and humanitarian relief questions were the priority for them.

As the human rights personnel gradually arrived in Rwanda they were confronted with a society traumatized by the recent genocide and totally lacking any semblance of a functioning legal system. The response designed at the height of the crisis had arrived too late to fulfil its primary functions of prevention and deterrence and was now faced with the conundrum that the victims they had come to protect were now in power.

By November 1994 the Security Council had established the International Criminal Tribunal for Rwanda, which was to prosecute and punish the perpetrators of the genocide, crimes against humanity and war crimes committed during 1994. The exact role of the human rights mission and purpose of their monitoring quickly became further confused as their role with regard to the investigation of the genocide became eclipsed by the work of the tribunal. The Human Rights Field Operation in Rwanda came to encompass a set of complex tasks, which combined investigations into

the genocide with ongoing monitoring and assistance in fields such as the administration of justice and the training of the national local civilian police forces.[27] Their profile became more and more associated with problems relating to the actual human rights situation. This presented further difficulties. The UN had been conspicuously absent during the worst massacres from April to June. And yet, now that some order was returning, young UN monitors were arriving to complain about conditions in detention and the lack of progress in bringing people to justice. The concept of 'monitoring' in this context was baffling to many Rwandans and others (Clarance 1995: 292).

Working in the midst of a humanitarian emergency posed not only logistical and psychological challenges, but also highlighted a number of dilemmas that affect field workers working on the humanitarian fault line. First, how to raise problems of human rights violations with the new authorities without jeopardizing the essential cooperative relationship with the national and local authorities? Second, how to carry out the investigative mandate without interfering with evidence that would be needed to issue the indictments in order to bring to justice those who were to be tried at the international level? Third, how to cooperate with humanitarian agencies who may only have access to certain camps and places of detention precisely because they will not be collecting information on human rights abuses, and, in any event, would not be placing this information in the public domain? Fourth, how to work in close cooperation with the authorities on technical cooperation programmes involving the training of civilian police forces, the establishment of an independent judiciary, assistance in the preparation of dossiers for the prosecution—yet remain able to take a tough stand with these same authorities when there are allegations of serious human rights violations? The debate between humanitarian and human rights agencies' actors on these issues is only now beginning (Médecins sans Frontières 1996).

V EMERGENCY HUMANITARIAN ASSISTANCE AND THE HUMAN RIGHTS DILEMMAS

If we look at the actual delivery of humanitarian assistance from the perspective of the relief workers rather than the human rights monitors, further problems arise. Before turning to some of the human rights principles and initiatives in this field, we should mention the 'central

dilemma' which is haunting organizations involved in the delivery of humanitarian assistance. 'The central dilemma is whether it is possible to supply humanitarian assistance, under the auspices of a governing authority that abuses human rights, without also giving undue assistance to that authority, and hence doing a disservice to the people one is aiming to help' (African Rights 1994: 4). The side-effects of humanitarian assistance are obviously problematic. The humanitarian urge will continue wherever people are suffering and relief is feasible. The challenge is to try to alleviate the undesirable effects of this relief. Relief cannot only offer succour to a party abusing human rights, it can bind international actors into a relationship where they have to abandon their stated commitment to human rights and accountability as 'cooperation with the authorities' and 'maintaining field presence' become the guiding principles.

Bringing relief to besieged towns and offering medical attention and compassion to victims from all sides can be painted as a human rights response. The issue arises whether some of the human rights/humanitarian response in a situation such as that in the former Yugoslavia was mere window-dressing designed to disguise Western unwillingness to resolve the conflict and help the victims of aggression. To let the UN take the strain can arguably delay resolution of the conflict and leaves UN personnel risking their lives to bring relief to the civilian populations. Over 150 UN military personnel were killed in the former Yugoslavia. It also left the UN hostage to demands and threats made by the warring parties. The delivery of food is a human rights question but in the context of this study, it may be more appropriate to look at some of those activities that were specifically billed as 'human rights' and see how human rights work fits in the context of relief for humanitarian emergencies.

The specifically 'human rights' aspects of the response to the events in the former Yugoslavia are complex and involve reporting by a special rapporteur appointed by the UN Commission on Human Rights, a commission of experts, an international tribunal for crimes committed in the former Yugoslavia and various expert missions and field operations. Most of this developed in parallel to the relief work of the UN's protection and relief operation. As an example of how human rights intersected with the UN's relief and protection work, we might briefly look at the mandate of the UN's police monitoring mission in Croatia. It is worth touching on this as an example of how expectations over human rights can become shattered and eventually undermine the credibility of international actors in the field.

In response to the failure of diplomatic efforts to stop the fighting in Croatia, the UN Security Council began in September 1991 by calling on states to implement 'a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia'.[28] The Security Council later believed that a peacekeeping operation (UNPROFOR) would be the best way to encourage the ongoing negotiations. UNPROFOR's mandate began with the establishment of the UNPAs (United Nations protected areas) in Croatia. This area at the time had a Serbian majority (or substantial minority), and the Serb-Croat armed conflict was a problem. The two goals of the UN in the UNPAs were the complete withdrawal of the JNA (Yugoslav People's Army) and the continuing functioning 'on an interim basis' of the local police and authorities ('pending the achievement of an overall political solution to the crisis'). In this context, UNPROFOR was also mandated to protect persons residing in the UNPAs, and to monitor the functioning of the local police to ensure that human rights were not abused. They had an explicit mandate to investigate complaints about the police and report confirmed cases to the Chief of the UN Force.[29]

The mandate in Croatia was expanded several times. In resolution 762 (1992) it was expanded to allow UNPROFOR to undertake monitoring functions in the 'pink zones', which were areas that were controlled by the Yugoslav People's Army (JNA) and populated mainly by Serbs, but which fell outside the UNPAs, as originally defined by the UN. UNPROFOR was also mandated to work in conjunction with the Croatian authorities and European Community monitors in establishing Croatian control in those areas. The mandate was also extended to control the entry of civilians in the UNPAs, as well as to monitor the demilitarization of the Prevalaka Peninsula. Although renewed fighting may, to some extent, have been prevented by the presence of, at one time, 15,839 UNPROFOR personnel in Croatia, their other functions remained unfulfilled. With regards to complaints to UNPROFOR of abuses such as killing, looting and house destruction by both Serbs and Croats, these were hardly publicized and there was little follow-up to the UN protestations to the authorities. Failure to act on such complaints seems only to diminish the standing and morale of the UN.

The UN civilian police (CIVPOL) proved unable to effectively prevent serious violations of human rights in the UNPAs. In fact, the lack of progress in the UNPAs with respect to disarming the Serb forces and ensuring the safe return of civilians, led to Croatian offensives in 1993 whilst Serbian authorities continued to withhold cooperation with the UN, complaining of the UN's inability to protect Serbs in the 'UN protected

areas' (UNPAS). In May and August 1995, the Croatian army took control of western Slavonia and the Krajinas (the former UNPAs). Hundreds of thousands of refugees fled to Serbian controlled areas of Bosnia and to Serbia itself.

The gap between initial expectation and final reality must represent a lesson when designing and promoting the UN's role in such situations. While the UN remained involved in searching for a comprehensive political settlement and its overriding operational aim was the delivery of humanitarian assistance, the political arm seems to have determined they could not afford to get tough over human rights violations in this area. CIVPOL's clear human rights mandate was never given the necessary complementary political support to ensure its effectiveness. Whilst any such operation is obviously predicated on continuing cooperation from the parties on the ground, these civilian aspects of the whole UN operation often seemed overlooked when the international community articulated its demands.

The stated aims of the CIVPOL emerge through their own publicity pamphlet:

> Arson, robbery, murder, theft, sniper fire, suicide and assaults are crimes local communities face each day in the former Yugoslavia. The investigation of these crimes by local police forces is carefully monitored by the United Nations civilian police known as CIVPOL .... Because lawlessness is a by-product of war, which shatters the basic infrastructure of society, international civilian police are needed to assist UNPROFOR in restoring peace to the region. One of CIVPOL's main tasks is to monitor the activities of local police forces to ensure that all civilians are treated equally and fairly regardless of nationality or ethnic background. CIVPOL, which reports to UNPROFOR's Head of Civil Affairs, investigates any complaints that these standards have not been observed and reports any confirmed cases of discrimination or abuse. To perform its tasks, CIVPOL accompanies the local police on their patrols and during the performance of their duties. Wherever possible CIVPOL monitors are located at the same station as the local police force and they have full access to all police premises and facilities. It is not CIVPOL's job to maintain public order in its areas of responsibility. That is up to the local police. Like UN military observers, CIVPOL monitors are unarmed so they are accessible and pose no threat to the people they are trying to help .... In a way the humanitarian

> aspect of CIVPOL's duties plays a major role. CIVPOL has been very successful in finding out the condition of displaced people and refugees as well as the location of missing relatives, although this is often not always good news because, tragically, the war has claimed so many civilian lives .... CIVPOL at times conducts its own investigations independently of the local police, particularly when there is some suspicion about the results of an initial probe.[30]

The conceptualization of what can be done by international actors has been elaborated. Similarly, the importance of guaranteeing rights in the midst of a humanitarian emergency has been recognized. The missing link is the international political support to achieve these goals. The history of the human rights work in the former Yugoslavia has been that political pressure was galvanized to tackle the big issues of peace and elections on the assumption that the human rights issues would then fall into place. In fact property problems continue to stymie the chances for a lasting peace in the former Yugoslavia. In the context of the run up to the national elections in Bosnia and Herzegovina, the Organization for Security and Cooperation in Europe (OSCE) issued a special report on property problems. The recommendations highlight the failure of the international community to focus on property issues and demand the repeal of certain pieces of legislation which cancelled property rights or put impossible pre-conditions on re-occupancy (OSCE 1996: 42). The standards against which these pieces of legislation are judged to be unacceptable are those found in the international human rights instruments such as the European Convention on Human Rights and its first Protocol. These treaties outlaw arbitrary deprivation of property (Prot 1 Art 1) and demand that individuals have access to courts for the determination of their civil rights (Art. 6 ECHR). Over the years, the issue of when the public interest can justify the deprivation of property and the compensation, which is due has been argued before the European Court of Human Rights and some principles have emerged (Gomien *et al*. 1996: 316). As we shall see below, institutions are being set up in Bosnia and Herzegovina to hear complaints based on this international law. What is suggested here is that, even before the end of the emergency, international human rights law may provide the tools to resolve conflicts and diffuse tension. By relying on international principles, one may be able to avoid recourse to national law, which may be tainted with associations with the other party to the conflict. In some cases the national or regional laws will themselves have been designed to deny the other parties access to housing or compensation. International

human rights law may be the only tool that can be used to challenge such discriminatory legislation.

In order to assure effective delivery of humanitarian assistance, one has to first resolve the 'central dilemma' and find a way to execute the delivery while minimizing the pernicious effects of the assistance (feeding soldiers responsible for war crimes against the civilian population, opening up communication lines which are then used to prolong the war, etc.). Second, one will have to address ongoing human rights issues before they rise to the level of new conflicts and a new denial of delivery of humanitarian assistance. For example, in July 1994 the Association of Displaced Persons of Croatia imposed a blockade of all 19 crossing points into or within the UN protected areas. This was to draw attention to the plight of the displaced and to pressure the United Nations to expedite their return to their homes in the UNPAs. The blockade lasted nearly two months. Political promises during an emergency give rise to legitimate human rights expectations which, when thwarted, can disrupt humanitarian assistance just as effectively as military manoeuvres.

VI REPORTING

It is becoming increasingly clear to all those involved in reporting on human rights in the prelude to, and during, humanitarian emergencies that the rumour mill can grind down people's tolerance and good judgement. Tension mounts and eventually the conflict is exacerbated. In some cases new outbreaks of violence can be simply traced to false rumours. Often the propaganda is of the type which paints the enemy as sub-human with no regard for the 'other', thus exacerbating the hostility and destroying any last vestiges of humanity between the fighting factions.

The reporting dilemma is closely limited to the 'central dilemma' outlined above: how to report human rights without either losing the chance to provide assistance, or becoming complicit in human rights abuses. The current practice is that humanitarian agencies often remain silent over the violations that they witness for fear of jeopardizing their programmes. While the imperative of confidentiality is mandatory for organizations such as the International Committee of the Red Cross (ICRC) other organizations have no such restrictions. However, even if silence can become complicity and reinforce the international credibility of the parties, careless reporting can be just as dangerous. There is a real risk that

inexperienced humanitarian workers become pawns in the propaganda war and end up serving as the unwitting harbingers of stories designed to escalate the fighting.

Nevertheless, humanitarian relief organizations have become impatient with the consequences of interpreting neutrality to mean silence in the face of human rights abuses. Although there are few formal channels for reporting on human rights violations, international humanitarian organizations have sometimes organized themselves in the field to complement their relief work with advocacy. In some cases this advocacy has included human rights education for political and civic organizations and 'exposing human rights abuses'.[31] Although not all relief organizations share this approach, there are signs that humanitarian relief organizations are complementing their assistance work with advocacy strategies based on respect for human rights (Darcy 1997). This advocacy is not merely designed to assuage a sense of discomfort over some of the unintended consequences of relief. It may also be part of a commitment to encourage polities, which respect the rights of civil society organizations and of individuals.

So far, hardly any resources have been dedicated to developing a trained cadre of expert human rights investigators who could operate under UN or other authority in the field during emergencies. The Rwanda Human Rights Field Operation represented a first step in this direction and the experience has been a salutary one. It has highlighted the need for proper planning and thinking before the establishment of field operations. It has also thrown into sharp relief the fact that the planning of repatriation, reintegration and the return of displaced persons cannot take place oblivious to the indications of the projected human rights conditions which these returnees are expected to encounter. In the case of internally displaced persons, the gap in the legal and organizational landscape means that there is considerable potential for confusion (Kleine-Ahlbrandt 1996). In the case of the April 1995 Kibeho massacre in Rwanda, this failure to consider the issue of the internally displaced as a human rights issue may have contributed to the failure by the international organizations on the ground to prevent the massacre of hundreds (perhaps thousands) of internally displaced persons as the army closed the camp. There is a good case to be made for better use of information from human rights monitors and for monitors to be used more strategically to assess the prospects of a safe and voluntary return. This is because human rights monitors bring a different perspective in a number of contexts. First, refugee or assistance agencies may have conflicting priorities and mandates when it comes to assessing the viability of return or

even recommending a return. They could therefore be ill-equipped to determine the timing and conditions for a safe return. Second, the perception of impartiality may be a vital factor in persuading people to return. Independent human rights monitors may be in a privileged position in this regard.

At this point we might state some interim guiding principles which are gaining some acceptance by those operating in the field. First, humanitarian agencies share the concern of human rights groups to enhance respect for human rights and humanitarian law (Médecins sans Frontières 1996: 69). Second, lasting solutions have to be built on the principle that violators of human rights will be made accountable. Third, to remain a silent witness in the face of human rights abuses can amount to encouragement and endorsement. Fourth, that 'speaking out' or 'going public' are not the only options for humanitarian agencies; other forms of protest may be similarly effective. The dilemma need not be terms of 'publicity' versus 'silence'. Fifth, for humanitarian workers to be seen and known to be engaging in human rights research or publicity can endanger the safety of the workers, the safety of their locally recruited staff, and the safety of their interlocutors. Sixth, partnerships between the humanitarian field workers and the human rights investigators should be developed so that information can be carefully processed and acted on in ways which reduce the risk to people in the field and enhance the accuracy and credibility of the reporting.

There remain many obstacles to reporting on human rights violations and sharing information in the context of humanitarian emergencies. Despite the arguments outlined above, some humanitarian agencies will want to retain a humanitarian mandate, which is deliberately differentiated from human rights work. For the International Committee of the Red Cross, cooperation with 'warriors and warlords' is essential to the way of working to encourage respect for the laws of war (Ignatieff 1997: 66). Reporting publicly on violations or demanding compliance with human rights norms can confuse the role. In some situations humanitarian workers will be threatened with death should they reveal human rights violations they have witnessed (Minear and Weiss 1993: 35). Nevertheless the fundamental objectives of the laws of war aim to reach out and ensure humanitarian protection of individuals and groups (Abi-Saab 1986: 269). Human rights law is similarly predicated on the need to protect individual dignity and many human rights norms have now achieved the sort of universal acceptance enjoyed by humanitarian law. As human rights law becomes less ideologically loaded, we can expect to see greater reporting on human

rights violations in the context of humanitarian emergencies. Done properly this can only help to prevent conflict and provide indicators for how to achieve a lasting peace.

VII ENDING IMPUNITY

A theme throughout this study has been the necessity to tackle openly accountability for human rights violations as part of the overall plan to build a lasting peace. In the case of the former Yugoslavia, an international criminal tribunal was set up to try to dissuade the perpetrators of human rights violations even as the fighting continued. More usually there have been attempts to ensure accountability at the end of a crisis. In the last twenty years, a number of different types of truth commission have emerged to address this issue in different cultural and political contexts (Hayner 1994).

In the latest post-conflict situations of Bosnia and Herzegovina, Croatia, Liberia, Rwanda, and Burundi, the balance of power is rather different from that which existed at the end of Latin American crises such as those seen in Chile, Uruguay or Brazil. The politics of reconciliation are absent and the demands for justice often drown appeals for forgiveness. In fact, it is often suggested that before victims can consider forgiveness, they need to see evidence of remorse or contrition. Where the perpetrators consider these were not inhuman acts—because the they see the victims as less than human—then simply 'telling the truth' will not suffice. In the cases of the former Yugoslavia and Rwanda, the UN Security Council established international criminal tribunals. This represents a radical departure in terms of the international response to humanitarian emergencies. Both tribunals were set up to deal with international crimes, which had been committed, and with a view to preventing future violations. The slow pace of the tribunals has led to some scepticism as to whether internationally dispensed justice can ever work. The problem has been the lack of cooperation from the authorities where the indicted criminal reside and the fact that there is again a vacuum at the international level. There is no international detective agency to investigate the crimes and collate the evidence, there were no agreed rules and procedures for prosecuting individuals at the international level, and in the context of the negotiated Dayton General Peace Agreement and the deployment of NATO, the big powers decided not to

round up the key leaders indicted by the Yugoslav Tribunal for fear of taking NATO casualties.

But it would be churlish to suggest that the tribunals had no effect on the resolution of the humanitarian emergency. The terms of the international indictments and arrest warrants issued against the Yugoslav leaders prevented them from travelling and paved the way for their exclusion from campaigning or standing in the national elections. These restrictions, coupled with the international opprobrium, may have eventually weakened their support and resulted in the emergence of leaders who will start to build a comprehensive peace. In Rwanda the delays associated with the Tribunal's investigations gave many Rwandans reason to believe that the international community had decided to pass over their problems. However, the prospect of trials, testimony and punishment has reminded those who may be planning another round of violence that the international community has obligations to pursue the perpetrators of genocide and crimes against humanity. More abstractly the work of these two tribunals has reinforced the idea that the laws of war and human rights are enforceable, and that actions in violations of these laws have consequences, even if one is part of an army or following government orders. The proposals for tribunals in Cambodia and Sierra Leone suggest that new models for international criminal justice are emerging. Clearly the international community continues to place considerable faith in tribunals as an essential element in ensuring international peace and security.

The adoption of the Statute of the International Criminal Court in July 1998 means that when this new court is established, it will be able to try individuals for violations of human rights that constitute crimes against humanity, genocide or war crimes. One of the reasons for the establishment of such a court is that it will be able to try individuals in situations where the state has completely broken down or is for some reason unable to try the accused. The Statute provides for the possibility of the Security Council to act under Chapter VII of the UN Charter and refer to the Prosecutor a situation in which one or more of the international crimes in the Statute appears to have been committed. In addition, states-parties may refer a situation to the prosecutor where the conduct occurred on the territory of a state party or where the accused person is a national of a state party. The prosecutor may initiate an investigation in respect of a crime where the conduct occurred on the territory of a state party or the accused person is a national of a state party. As of 1 November 2000, there were over 20 states party to the statute. The statute requires 60 states as parties before it enters into force.

The prospect of an international criminal court and the expectation of international accountability are important factors in the human rights response to humanitarian emergencies. Such international trials would be instrumental in removing criminal officials and politicians from their positions of power and influence. They would also serve as a warning to those who plan acts of aggression, genocide, and crimes against humanity that there are forces, which have the potential to arrest and punish them. But perhaps the most important aspect of using international humanitarian law and institutions to prosecute war criminals is the contribution that such prosecutions can make to a lasting peace and thus prevent another humanitarian emergency. The President of the International Criminal Tribunal for the former Yugoslavia, Judge Antonio Cassese expressed this in his report to the UN General Assembly on 7 November 1995 in the following way:

> If, at the end of a war, torturers and their victims are treated alike, the war's legacy of hatred, resentment and acrimony will not have been snuffed out; rather it will continue to smoulder. The existence of peace in such a climate would be precarious indeed. If, however, the Tribunal as an impartial body continues in its work of bringing to justice at least some of the most egregious offenders, those who have suffered through four years of hellish war will be better able to find the forgiveness required for peace to last (1995: 8-9).

VIII LASTING STRUCTURES

With the advent of multi-dimensional peacekeeping operations has come a commitment to post-conflict peace building. This is a recognition that the surest way to avoid a repetition of the humanitarian emergency (that led to the comprehensive humanitarian operation) is to assist the local authorities and civil society in creating the sort of structures that will reduce tension and conflict by resolving disputes through an independent judiciary and with respect for the rule of law. Furthermore, it is quite clear that a transition to a lasting peace demands that the army be put under civilian control, and, that policing functions be carried out by a properly trained civilian police force. More fundamentally, human rights experts have been employed to assist in the drafting of constitutions and penal laws. This is a welcome development but much of this work has not been as fruitful as first hoped. In Cambodia the 'promise of a constitution that would

guarantee human rights with effective enforcement has not been kept' (Marks 1994: 110). Even in countries where the transition to democracy has been ostensibly smooth, there have been problems in establishing lasting structures, which would guarantee stability and respect for human rights. The case of the role of the UN civilian police in Mozambique is illustrative of the problems one faces on the ground.

The UN's implementation plan for the Mozambique peace process recommended the inclusion of a civilian police component to monitor the 'neutrality of the Mozambican police', subject to the parties' agreement.[32] The subsequent agreement resulted in the deployment of over 1,000 UN civilian police to oversee the retraining and behaviour of the new Mozambican police force. These civilian police had a series of functions designed to assist the Mozambican police in becoming an impartial national civilian force able to keep order in accordance with international standards. Their duties included carrying out regular patrols, often in parallel with Mozambican police. They also visited prisons and police stations and investigated complaints, including complaints of human rights violations.

But the implementation on the ground raised a number of problems. It became clear early on that most of the personnel recruited had had no exposure to international human rights law or the international instruments, which lay at the heart of their mission. The understandable tendency was to impart rules and practices from their own national experience. Furthermore, such an international team consisting of police officers from countries as diverse as Australia, Bangladesh, Botswana, Brazil, Egypt, Ireland, Finland, Jordan, Malaysia, Norway and Sweden came to Mozambique with no common language or operating procedures. More generally it is becoming apparent that introducing experienced police officers to basic rules is a delicate issue. Any police officer working for the UN as a UNCIVPOL must have had at least 'eight years satisfactory police service'. The dynamic on the ground is that police officers want to get on with policing things and are resistant to learning how to inculcate sets of 'foreign' international standards.

The text of one of the basic cards prepared for training purposes by Amnesty International is reproduced below to give an idea of the fundamental norms, which are relevant in this context.

While these basic rules and the accompanying training programmes seem realistic and constructive on paper, the reality has been that the local authorities in Mozambique often failed to cooperate with the UN civilian

police by simply refusing to answer their questions. Moreover, at the end of the mission, the human rights complaints that had been investigated by the civilian police did not result in any disciplinary action by the national authorities (Clapham and Henry 1995: 144).

After ONUMOZ withdrew in January 1995, the national commissions set up under the 1992 General Peace Agreement to monitor the behaviour of the police and the security services were disbanded. The commissions failed to follow up cases submitted to them by CIVPOL that both undermined the impact of CIVPOL on the human rights situation and diminished the UN's credibility.

BASIC RULES OF LAW ENFORCEMENT
prepared by AMNESTY INTERNATIONAL for Mozambique law enforcement officials and ONUMOZ civilian police monitors

June 1994

1. Protect all persons against criminal acts, and especially against violence or threats. Be especially vigilant with vulnerable groups such as children, women, or the elderly.

2. Treat all victims of crime with compassion and respect. In particular protect their safety and privacy.

3. Do not use force or firearms except when strictly necessary and to the minimum extent required under the circumstances.

4. Do not use force or firearms when dispersing unlawful but non-violent assemblies. When dispersing violent assemblies use minimum force.

5. Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.

6. Arrest no person unless there are legal grounds to arrest that person.

7. Ensure all detainees have access promptly after arrest to their family, legal representative and to any necessary medical assistance.

8. All detainees must be treated humanely. Protect all detainees against torture and ill-treatment including whipping and beating.

9. Protect all persons against unlawful, arbitrary or summary execution.

10. Report all breaches of these basic rules to your senior officer or to ONUMOZ civilian police monitors. Ensure steps are taken to investigate these breaches.

Clearly, the reality of changing the behaviour, attitudes and practices of a police force is an uphill task. Beatings and floggings continued in police detention in Mozambique during and after the UN operation. Few people have been prosecuted for these abuses and the police have even opened fire on demonstrators protesting about the high cost of living. The prisons remained seriously overcrowded and riots broke out in protest at the harsh conditions. The problem remains that the international community and the donor governments seem unable to sustain their interest in countries emerging from civil strife and extreme poverty beyond a limited period geared to internationally supervised elections.[33] The national commissions might have become a means of avoiding political interference in the investigation and redress of human rights violations. The chance to build a lasting structure was lost through lack of interest in the national commissions, lack of resources, and the sort of short-sightedness that characterizes much of the international community's approach to the prevention of conflict.

Space does not allow for an evaluation of the full range of the international community's diverse efforts to build lasting structures, which guarantee and protect human rights, but one further issue might be highlighted in this context. As countries emerge from crises, the institutions that control a large proportion of the funds and loans for their recovery are imposing stringent fiscal and other conditions. At this point the human rights imperative often gets lost, overlooked or overridden. The political reforms brokered as part of the peace agreement in El Salvador included a number of institutional changes, such as the creation of a civilian police force. There was also an agreement that there would be land-for-arms swap as part of the settlement with the former armed opposition. In a parallel set of agreements, the government was being asked by the World Bank and the International Monetary Fund to implement economic stabilization and structural adjustment programmes. According to two senior UN officials involved in mediating the political agreements:

> El Salvador now faces a very real dilemma: should it sacrifice economic stabilization to proceed with implementing the peace accords, or should it strictly carry out its stabilization and structural adjustment program, perhaps endangering the peace? Neither path is independently sustainable. There is an overriding need to harmonize the two processes so that they support, rather than counteract, each other' (de Soto and del Castillo 1994: 71).

Clearly the costs of social reforms following a crisis need to be built into the calculations about what sort of financial conditions should be imposed on struggling countries. But the impact of such structural adjustment policies may go beyond restricting the ability of the government to fulfil its obligations under the peace agreement. Some structural adjustment programmes may demand such a drastic governmental reduction in social services that new tensions and centres of power and influence emerge, causing new rounds of destabilization and discrimination.

The burden of such austerity programmes is often absorbed by women as they fill the gap as health carers and providers. The principles and rules of international sex discrimination law are relevant in this context, and, combined with participation by women in the design and execution of programmes, ought to ensure that peace-building programmes do not actually violate women's human rights but rather contribute to the elimination of gender inequality.

So far, the international financial institutions have been unwilling to confront the fact that there are human rights treaties which guarantee non-discrimination and certain economic, social and cultural rights, and that some internationally designed programmes may actually be forcing governments to breach those treaty obligations. The negotiated settlements to armed conflicts can easily overlook the disproportionate adverse effect on women of land deals, which are related to combatant status or arms exchanges. The design of long-term structural reforms and constitutional guarantees needs to consider the impact on women and girls. Development solutions, which favour certain exports or farming practices can entrench the subordinate status of women and deny them access to political decision-making. The international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Declaration on the Elimination of Violence Against Women (1993) are widely accepted, and can be useful tools for ensuring that different aspects of the gender dimension are covered in the elaboration of proposals for a lasting peace.

Furthermore, as specialized agencies of the United Nations, the World Bank and the International Monetary Fund have various obligations towards the rest of the UN system. They should not undermine the political peace agreements being negotiated as part of the plans for a comprehensive peace. And these UN agencies should also ensure that they do not contribute to violations of UN standards on economic, social and cultural rights. The idea that the Bretton Woods institutions should conduct 'human

rights impact assessments' with regard to their programmes and reach out to ensure better participation in the design and execution of their programmes has been advocated in a number of fora (Tomasevski 1995; Türk 1992). There are now signs that the World Bank is prepared to look at the effects of its programmes in the context of the environment and the rights of indigenous peoples. Longer-lasting peace building will require economic policies, which allow for the resources for governments to adjust their national structures related to the administration of justice, the control of the military and the formation of well-trained and properly equipped civilian police forces. Furthermore, as countries emerge from the chaos of conflict, they need to be able to pay for land and property adjustments for the former parties to the conflict, and for the sort of social services, which respect internationally recognized standards of economic, social and cultural rights.

IX SUMMARY

The study has sought to take the reader through a number of stages in any humanitarian emergency and show how human rights issues arise in these different contexts. The story has been one of distrust of human rights in the various contexts. The thesis presented here is that human rights law and monitoring are indispensable tools for preventing and dealing with humanitarian emergencies. At the preventive stage, it was suggested that human rights reports and personnel are often overlooked as resources for predicting emergencies. The reason for this is the politically charged atmosphere which surrounds the human rights debate and the fear that integrating human rights into the humanitarian or security field will lead to unwanted interference in the internal affairs of states. The way forward will be to recognize that human rights reports are increasingly informational in their approach and that much of the ideological sting of the human rights debate has evaporated. The UN Secretary-General Kofi Annan articulated the importance of this constructive approach to human rights:

> There is a new realization that ensuring good governance—including securing human rights and the rule of law, assisting with elections and aiding development policies constitute in themselves preventive action. The weakness of these rights and structures are not only the roots of poverty. They are also the causes of conflict and the impediments to post-conflict reconstruction.[34]

In fact the reforms implemented by Kofi Annan have clearly facilitated the integration of human rights information and policy into other areas of UN activity. In his July 1997 package he explained how he had reorganized the Secretariat's work programme around five core missions of the UN. Four of these core missions now have executive committees that involve the relevant UN departments, programmes and funds. These four committees are: peace and security, economic and social affairs, development cooperation, and humanitarian affairs. The fifth core mission is human rights. This mission does not have an executive committee but is 'designated as cutting across and therefore participating in, each of the other four'.[35] The strengthening of the New York Office of the High Commissioner for Human Rights and the participation of the High Commissioner, Mary Robinson, in these committees represents a most important development in the way in which human rights issues are being dealt with within the parts of the UN secretariat that deal with peace and security issues.

Approaching the problems of human rights in humanitarian emergencies along a timeline related to the breaking of the emergency, we have seen how the current arrangements are inadequate and we have argued for far-reaching changes. As the emergency breaks, it was seen that unless the national interest demands it, the United Nations and the international community do not have the capacity or the will to rapidly deploy personnel to protect civilians or put an end to gross violations of human rights including genocide. Although decisions were taken to send civilian human rights monitors to Rwanda at the height of the emergency, the operation only became operational months after the genocide erupted. One suggestion is for arrangements to be made for teams of UN personnel to be trained and prepared to leave at short notice for emergency situations. These should be UN personnel sent as a multinational mission and not a collection of national contingents dependent on approval from anxious governments.

At the height of a humanitarian emergency relief operation, there are a series of human rights problems facing humanitarian workers. In some cases it may be unconscionable to continue to supply relief when it seemingly leads to the prolongation of the conflict and sustenance for a party which is flouting respect for basic human rights. The guiding human rights principle of ensuring accountability for violations of human rights may be of some help if it is combined with some of the established reporting procedures designed to expose international crimes and bring their perpetrators to justice. More generally, the issue of what humanitarian field workers should do with information relating to human rights

violations is now starting to be discussed. Because this information is so sensitive, this is an area which needs to be handled with skill if it is not to put people in even more danger. This kind of information is useful not only for the purposes of attempting to prevent a recurrence of violations by giving publicity to the established facts, it is also useful for short-term planning as refugees and displaced persons return to what may be a dangerous situation. Properly processed, such information can ameliorate and eventually help to end the conflict. Nevertheless the problem of how to achieve a careful flow of information while retaining access and the cooperation of fighting factions will remain a delicate one.

At all stages of the humanitarian emergency continuum, attention needs to be paid to the position of women and how to address the violence and discrimination which they are faced with. Humanitarian emergencies have disproportionate effects on women as they will be the majority of the refugees and displaced persons and have often been the subject of deliberate campaigns of rape and sexual abuse. Negotiated solutions to conflict should ensure the participation of women and long-term solutions will need to address sex equality as a goal and avoid settlements, which entrench women's disadvantaged status in society.

At the time that the terms of a peace agreement are being drafted and negotiated, human rights standards and verification mechanisms have proved catalytic to forging a final peace agreement. International human rights law can provide the inspiration for solutions that are principled and fair to all sides. The international nature of these standards will in some contexts have to be adapted to make the norms and principles relevant to the context of a particular conflict. But the same international character of the norms may also help to distance the solution from a particular dominant legal system. The universal nature of human rights law means that it can sometimes offer reciprocal rights to the parties that national laws based on citizenship and nationality cannot. Moreover, because international human rights law has been developing to meet the demands of victims from a variety of spheres, it may provide solutions to issues such as language, property or indigenous rights which national constitutions have not yet dealt with.

Recent steps to end impunity have included the creation of international criminal tribunals for the former Yugoslavia and Rwanda. The new international criminal court will have jurisdiction over other countries. The determination of states to bring the perpetrators of gross violations of human rights to justice is present but tempered by short-term aims. It was

suggested that an aggressive policy of bringing the violators of human rights to account is a preventive strategy and a long-term solution to the prospect of continuing cycles of violence. The use of truth commissions to assist national reconciliation after years of turmoil in a country has had mixed results. Where naming names is combined with dismissing the perpetrators, there are better chances of reforms having some effect, and actual reconciliation reaching beyond the catharsis of the truth-telling episode.

The costs of reforms designed to protect human rights and thus eliminate the root causes of conflict are high for countries emerging from emergencies. The international financial institutions have a responsibility to ensure that their demands on fragile governments recognize the importance of such human rights spending as a future investment for a stable economy and a lasting peace. Furthermore, the human rights obligations of states involve duties in the economic and social fields with regard to education, health care and workers' benefits. Shifting the parameters of the adjustment programmes in order to accommodate a discussion of human rights obligations need not mean imposing an ideological/political model of how government should be conducted. Including an appreciation of the human rights recommendations and obligations in the context of post-conflict peace building will ensure that new structures respond to the imperatives of non-discrimination, accountability and the rule of law.

Human rights monitoring is merely a technique for exposing the structural wrongs in society. For too long human rights monitoring has been seen as an ideological battleground rather than part of a methodology for crisis prevention. In fact, used properly, human rights monitoring has the potential to reveal both problems in the economic sphere and deficiencies in democracy. A human rights analysis can highlight shortcomings and even provide a framework for reforms and minimum standards. The links between this sort of work and the prevention of emergencies is becoming more and more apparent. There is no better reminder of this than the work of the late Claude Ake, the Nigerian political economist, who concluded his contribution to this project in the following way:

> Finally, more than anything else, it is democracy which can reduce responsiveness to ethnic appeal and the belligerence of primary group identity affirmation. For in most developing countries where people respond to ethnic ideologies, they do so because state power is privatized, arbitrary and oppressive. In the worst of them, all but a few citizens encounter the state as ruthless tax collectors, boorish

policemen, bullying soldiers, corrupt judges and insensitive officialdom. Everyday, they encounter the state as a maze of regulations through which they have to beg, bribe or cheat their way. In a truly democratic dispensation where there is the rule of law, equal opportunity, accountability of power, a leadership sensitive to social needs because its power depends on consent, and attentive to all interests because every vote counts, primary group identities will be less appealing. In such circumstances humanitarian emergencies are less likely (Ake 1997: 9).

ENDNOTES

1 The General Assembly Resolution 47/120 on 'An Agenda for Peace: Preventive Diplomacy and Related Matters', adopted without a vote on 18 December 1992, contains many of these tensions in its consensus language. Preventive diplomacy is recognized as requiring: confidence building, early warning, and fact-finding but the Assembly goes on to demand a combination of discretion, confidentiality, objectivity and transparency (preambular para 9). (See Hernandez and Kuyama 1995b: 30.) Note the Assembly encouraged the Secretary-General to 'set up an adequate early-warning mechanism for situations which are likely to endanger the maintenance of international peace and security' (Part II para 1).

2 For an up-to-date list, see the UN website: http://www.unhchr.ch/html/menu2/xtraconv.htm.

The thematic experts are as follows: Extrajudicial, summary or arbitrary executions, Asma Jahangir; Torture and other cruel, inhuman or degrading treatment, Nigel Rodley; Intolerance and discrimination based on religion or belief, Abdelfattah Amor; Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, Enriques Bernales Ballesteros; Sale of children, child prostitution and child pornography, Ofelia Calcetas-Santos; Adverse effects of the illicit movement and dumping of toxic waste and dangerous products on the enjoyment of human rights, Fatma Zohra Ksentini; Right to freedom of opinion and expression, Abid Hussein: Contemporary forms of racism, racial discrimination and xenophobia and related intolerance, Maurice Glèlè-Ahanhanzo; Independence of judges and lawyers, Param Cumaraswamy; Elimination of violence against women, Radhika Coomarswamy; Internally displaced persons, Francis Deng; Impact of armed conflict on children, Olara Otunnu; Effects of foreign debt and structural adjustment, Fantu Cheru; Extreme poverty, Anne-Marie Lizin; Right to development, Arjun Sengupta; Adequate housing, Miloon Kothari; Human rights defenders, Hina Jilani; Education, Katerina Tomasevski; Food, Jean Ziegler. We should also mention here the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances. Country rapporteurs include: Afghanistan, Kamal Hossain; Burundi, Marie-Therese Aissata;

Equatorial Guinea, Gustavo Gallòn Giraldo; Iran, Maurice Copithorne; Iraq, Andreas Mavrommatis; Myanmar, Rajsoomer Lallah; Occupied Arab Territories including Palestine, Giorgio Giacomelli; Rwanda, Michel Mousalli; Sudan, Leonardo Franco; Former Yugoslavia, Jiri Dienstbier; Democratic Republic of the Congo, Roberto Garretón. All these 'mechanisms' carry out missions, take up urgent cases, and report to the Commission (in addition some report to the General Assembly). Country experts and representatives which report to the UN Commission on Human Rights in the context of the technical cooperation programme are: Cambodia, Peter Leuprecht; Haiti, Adama Dieng; Somalia, vacant at the time of writing (Mona Rishmawi resigned 10-9-2000).

3 Report of the special rapporteur, Mr B. W. Ndiaye, on his mission to Rwanda from 8 to 17 April 1993 (UN Doc. E/CN.4/7/Add.1/11 August 1993, paras 64 and 65).

4 UN Doc. E/CN.4/1994/7, para 171.

5 First included in a document entitled 'Prevention of Racial Discrimination, including Early-Warning and Urgent Procedures: Working Paper Adopted by the Committee on the Elimination of Racial Discrimination' (UN Doc. CERD/C/1993/Misc.1/Rev.2).

6 Report of the Secretary-General on the work of the organization (UN Doc. A/47/1/1992, para 101).

7 The chairpersons of the human rights treaty bodies, at their fourth meeting, expressed full support for the Secretary-General's concept (UN Doc. A/47/628, para 43).

8 See 'Report of the Meeting of Special Rapporteurs/Representatives Experts and Chairpersons of Working Groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme' (UN Doc. A/CN.4/1997/3/30 September 1996, para 43). See also the report of the independent expert, Philip Alston, to the UN General Assembly on enhancing the long-term effectiveness of the United Nations human rights treaty system (UN Doc. E/CN.4/1997/74). In para 79, he reflects that, 'It is frustrating for a treaty body to have to remain inactive in the face of massive violations and it risks sending a signal of impotence, perhaps disdain and certainly marginality. On the other hand, the invocation of relatively formalist and inflexible procedures seems unlikely to achieve a great deal'. He goes on to endorse the idea that the thematic mechanisms of the Commission would remain responsible for urgent appeals.

9 Article 1 of the San José Agreement on Human Rights, 26 July 1990 (reproduced in UN Doc S/21541, Annex).

10 General Assembly Resolution 48/267/19 September 1994, preambular para 7.

11 General Comment No. 3, 1990 (UN Doc. E/1991/23, Annex III, para 10).

12 See General Comment No. 12, 1999 (UN Doc. E/C.12/1999/5 CESCR/12 May 1999) on the right to adequate food.

13 See note 2 above.

[14] The published material on the International Covenant on Economic, Social and Cultural Rights is conveniently summarized in a selective bibliography contained in UN Doc. E/C.12/1997/L.3/Rev.2/11 March 1997.

[15] Linkage between Human Rights and Refugee Issues' Statement to the Humanitarian Liaison Group Meeting, 26 November 1997, reiterating a point made to the UNHCR Executive Committee on 14 October 1997.

[16] Väyrynen (2000) categorizes complex humanitarian emergencies according to whether people are suffering from all four dimensions of the crisis (war, disease, hunger, and displacement) 'strong' cases, as compared to countries where 'people have severely plagued by war and refugeeism, and either from hunger of disease'. Nafziger and Auvinen (2000) build on this and define a complex humanitarian emergency as a man-made crisis in which large numbers of people are dying, suffering or being displaced from war or massive physical violence, and large numbers of people are victims of disease, hunger, or population displacement. The United States inter-agency paper entitled 'Global Humanitarian Emergencies, 1997' contains the following definition of a complex humanitarian emergency: 'situations in which armed conflict, government repression, and/or natural disasters cause at least 300,000 civilians to depend on international humanitarian assistance'. But the calculation is made by starting with the number of people in need. It is not considered feasible to calculate the number of people who are suffering from armed conflict or government repression so that a meaningful comparison could be made across countries.

[17] Statement at the International Conference on Governance for Sustainable Growth and Equity, 28 July 1997 (SG/SM/6291).

[18] UNAMIR's overall mandate had been to contribute to 'the establishment and maintenance of a climate conducive to the secure installation and subsequent operation of the transitional government' (UN document S/26488/24 September 1993, para 66). The military observers in the UN Observer Mission Uganda-Rwanda (UNOMUR) later came under the command of the UN Assistance Mission in Rwanda (UNAMIR) even though the mandate of that former mission continued in order to ensure that no military assistance reaches Rwanda. Elections were proposed for some time between October and December 1995. The UN's implementation plan had not provided for a human rights component, although the following elements were included in the original mandate of UNAMIR: monitoring the security situation during the final period of the transitional government's mandate leading up to the elections; investigating, at the request of the parties, instances of alleged non-compliance of the peace accords relating to the integration of armed force; providing security for distribution of humanitarian assistance; monitoring the repatriation of Rwandese refugees and the resettlement of displaced persons; and for UN civilian police to assist in the maintenance of public security through the monitoring and verification of the activities of reconstituted gendarmerie and communal police.

The Rwandese government and the Rwandese Patriotic Front had signed a series of protocols in the months leading up to the eventual signing of the Peace Accord on 4 August 1993. Some of the protocols, in particular the 'Protocol relative to the Rule of Law', included provisions for the protection of human rights. Article 15 called for the

establishment of an independent national commission of inquiry responsible for monitoring human rights violations and Article 16 called for the signatories to set up an international commission of inquiry to investigate human rights violations committed during the war.

19 UN Doc S/1994/653/1 June 1994, para 270. The document was already being discussed in the Council in May weeks before it was officially published.

20 An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping (Report of the Secretary-General pursuant to the Statement adopted by the summit meeting of the Security Council on 31 January 1992 (UN Doc. A/47/277 – S/24111, 17 June 1992 at para 44). Article 40 (which is part of Chapter VII of the Charter) reads, 'in order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with the provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or positions of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures'. The Secretary-General stressed that he was not referring to the agreements between the Security Council and member states which Article 43 of the Charter foresees, as he saw this latter issue as a much longer-term project relating to the provision of troops to 'deal with acts of aggression' (at para 44).

21 Most recently see the recommendation of the Independent Working Group on the Future of the United Nations that 'a UN Rapid Reaction Force be established for urgent deployment on the decision of the Security Council' at page 22 of *The United Nations in its Second Half-Century* (copies available from the Ford Foundation). The issue was taken up by the Canadian government at the 50th General Assembly with the launch of their report 'Towards a Rapid Reaction Capability for the United Nations' (September 1995). The Canadian model foresees a 5,000 military and civilian multi-functional force to be rapidly deployed under the control of an operational-level headquarters upon authorization of the Security Council. See also the report commissioned by the Canadian Department of Foreign Affairs (LaRose-Edwards 1996).

22 DPI Press Release (SG/2010/22 June 1994).

23 The issue of whether impartiality should always be the lodestar is a vexed one for humanitarian organizations. Some, such as the ICRC, see impartiality as wrapped up in their operational capacity and see no alternative if they are to carry out their mission of visiting prisoners and providing assistance to the sick and wounded. Other organizations are beginning to question whether impartiality towards a civilian population being used to continue genocide and intimidation is really appropriate as part of any humanitarian mission. Adam Roberts has suggested that 'fairness in exercising judgement (including humanitarian action) may be a better guide to policy than impartiality, and may point in different directions' (1996: 84).

24 The Security Council, in a Presidential Statement, 'encourage[d] states to make available to the United Nations at short notice appropriately trained civilian police, if possible through United Nations standby arrangements' (UN Doc. S/PRST/1997/38/14

July 1997). However, the prospects for the UN getting such police at short notice remain bleak.

25 Compare the Report of the Independent Working Group on the Future of the United Nations, which looks at the question in the broader context and would accord rapid reaction forces the following tasks: 'establish a UN presence; provide security for UN personnel or for evacuations; establish one or more safe areas for the civilian population; limit escalation and assist in ending the violence; provide limited humanitarian assistance in emergency circumstances; assess and report on the situation to the Secretary-General and the Security Council' (page 22 of *The United Nations in its Second Half-Century*).

26 Report of the Special Rapporteur, 12 August 1994 (E/CN.4/1995/12, paras 40-41).

27 (a) To carry out investigations into violations of human rights and humanitarian law including possible acts of genocide. (b) To monitor the ongoing human rights situation, and through their presence help redress existing problems and prevent possible human rights violations from occurring. (c) To cooperate with other international agencies in charge of reestablishing confidence and thus facilitate the return of refugees and displaced persons and the rebuilding of civic society. (d) To implement programmes of technical cooperation in the field of human rights, particularly in the area of administration of justice. (e) To report to the High Commissioner who will make the information available to the Special Rapporteur on the situation of human rights in Rwanda' (HRFOR 1995).

28 Resolution 713 (1991).

29 For the original mandate, see S/23280, para 12 of Annex III: '[T]hey would be co-located with police headquarters in each region and opstina and would accompany the local police on their patrols and in the performance of their other duties. They would investigate any complaints of discrimination or other abuses of human rights and would report to the Chief of the United Nations Force any confirmed cases of discrimination or abuse'.

30 'More than 600 police officers from almost 20 countries' were operating in the three UNPAs, Bosnia and Herzegovina, and the former Yugoslav Republic of Macedonia (leaflet produced by UNPROFOR: 'United Nations Civilian Police').

31 International Non-Governmental Organizations Joint Policy of Operation (Liberia), 17 April 1997.

32 See UN documents S/24892/3 December 1992 and S/26666/1 November 1993, respectively.

33 'Any progress which may have been made in sensitizing the Mozambican police to the human rights aspects of their work has undoubtedly been lost through lack of follow-up training and support' (De Rover and Gallagher 1995: 234).

34 Address to the Danish Foreign Policy Society, 1 September 1997.

[35] 'Renewing the United Nations: A Programme for Reform', Report of the Secretary-General (UN Doc A/51/950/14 July 1997 at para 28).

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