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HUMAN RIGHTS AND HUMANITARIAN INTERVENTION: THE CASE LAW OF THE WORLD COURT

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THIS article briefly canvasses a small number of International Court of Justice cases in which the Court has addressed human rights issues. From this it emerges that the Court has unambiguously accepted that the obligation to respect fundamental human rights is an obligation found in general international law. Questions may, however, remain as to:

(1) whether all the human rights enumerated in the Universal Declaration of Human Rights are equally binding;
(2) whether the content of all the rights may be equally discoverable; and
(3) how far the rights may be protected or implemented apart from such measures as particular human rights treaties may themselves provide. One measure of implementation that is clearly not allowed is unilateral resort to armed force by one State to adjust the human rights situation in another State (the doctrine of humanitarian intervention).

The cases in question are the advisory opinions on *Reservations to the Genocide Convention*[1] and on *Namibia*[2] and the decisions in the contentious cases in *South-West Africa*,[3] *Barcelona Traction*,[4] *US Diplomatic and Consular Staff in Tehran*,[5] and *Military Activities in Nicaragua*.[6] I shall treat the earlier cases, much pored over already, in less detail than the last one.

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1. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* [1951] I.C.J. Rep. 15.
2. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)* [1971] I.C.J. Rep. 6.
3. *South-West Africa Cases (Ethiopia* v. *South Africa*; *Liberia* v. *South Africa) (Second Phase)* [1966] I.C.J. Rep. 6.
4. *Case Concerning the Barcelona Traction, Light and Power Company Limited (Belgium* v. *Spain), Second Phase* [1970] I.C.J. Rep. 3.
5. *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran)* [1980] I.C.J. Rep. 3.
6. *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits* [1986] I.C.J. Rep. 14.

I. THE EARLIER CASES

A. The Reservations *Case*

In the *Reservations* case the main point for the purposes of this article is the Court's observation that "the principles underlying the Convention are principles which are recognised by civilised nations as binding on States, *even without any conventional obligation*".[7] In other words, regardless of participation in the Genocide Convention, the obligation not to commit genocide existed independently under general international law. The observation was important to the thrust of the Court's reasoning. The Court had been asked by the General Assembly whether, *inter alia*, the existence of reservations by one or more States, objected to by other States, could prevent the reserving States from becoming parties to the Convention. The Court's answer in short was: not unless the reservations are incompatible with the object and purpose of the treaty. It stated:

> The complete exclusion from the Convention of one or more States would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles which are its basis. It is inconceivable that the contracting parties readily contemplated that an objection to a minor reservation should produce such a result.[8]

The Court was, thus, seemingly at pains to avoid taking a position whereby limited participation risked undermining the notion that genocide was illegal, "even without any conventional obligation". With the passage of time it is easy to overlook the striking importance of this notion. The advisory opinion was handed down only some two and a half years after the adoption of the Convention by the General Assembly.[9] Moreover, the Convention was itself innovative: the Charter and Judgment of the International Military Tribunal at Nuremberg had recognised genocide as a crime against humanity, which was a crime under international law when committed *in connection with crimes against peace or war crimes*;[10] the Convention required no such limitation. It provided that the crime of genocide could be committed outside the context of international armed conflict, in other words, even in peacetime. The opinion represented a first brave breach by the Court of the doctrine of domestic jurisdiction. In subsequent cases the Court

7. [1951] I.C.J. Rep. 15, 23 (emphasis added).

8. *Idem*, p.24.

9. The Convention was adopted by the UN General Assembly on 9 Dec. 1948: G.A. Res.260A (III). The Court handed down its opinion on 28 May 1951.

10. Art.6, Charter of the International Military Tribunal annexed to the Agreement for the Establishment of an International Military Tribunal, concluded at London, 8 Aug. 1945: 5 U.N.T.S. 251. The judgment of the tribunal (1946) is reproduced in (1947) 41 A.J.I.L. 172.

has confirmed and elaborated on with greater precision what it said in this case about the legal prohibition of genocide.

B. The Barcelona Traction *Case*

The *Barcelona Traction* case concerned a Canadian corporation with subsidiaries operating in Spain, which was sued for bankruptcy in Spanish courts. The company was allegedly owned largely by Belgian shareholders and the issue before the Court was whether Belgium might exercise diplomatic protection of its nationals, who claimed that their interests had been harmed by action of the Spanish courts. It was fundamental to the Court's finding against Belgium's standing to bring a claim against Spain that there was a distinction between what it called bilateral obligations and obligations "towards the international community as a whole". The latter obligations were:

> By their very nature . . . the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes* [paragraph 33].
>
> Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, *as also from the principles and rules concerning the basic rights of the human person*, including protection from slavery and racial discrimination [paragraph 34, emphasis added].

Thus in this 1970 decision the Court articulated the proposition that obligations towards the international community as a whole derive from, *inter alia*, the principles and rules concerning the rights of the human person. It mentioned the prohibitions of slavery and racial discrimination as examples of such principles and rules, but only as examples. Their inclusion may be attributed to the need to give a clear retrospective reference to the earlier *South-West Africa* case (1966), wherein the Court's decision had provoked widespread criticism.[11] Further, as with the reference to genocide, these categories stood out since they are the subject of specific treaties. Indeed, an extensive list of inclusions would have risked adverse interpretation of unintentional omissions of certain principles and rules. None of the separate or dissenting opinions challenged this statement of the Court.[12]

11. [1966] I.C.J. Rep. 6. The Court had held in this case that Ethiopia and Liberia, having no direct interest at stake, had no standing to receive a decision of the court against South Africa, despite the fact that the subject matter of the case related to the human rights provisions of the League of Nations mandate under which South Africa administered South-West Africa (now Namibia).

12. [1970] I.C.J. Rep. 3, 55–357. As explained below, the Court subsequently pointed out that not all States have "the capacity to *protect* the victims of infringements of [human] . . . rights irrespective of their nationality" (para.91, emphasis added). This foreshadows *Nicaragua*.

C. *The* Namibia *Case*

A year later the Court handed down its advisory opinion on *Namibia*. This advisory opinion was sought by the General Assembly precisely because of the unsatisfactory nature of the 1966 decision on South-West Africa, and an expectation that the Court would wish to pronounce on the substance of the problem, something which it had avoided in 1966. The opinion confirmed the view of the UN Security Council that the continued presence of South Africa in Namibia was illegal. The Court stated in its opinion:

> To establish . . . and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter [paragraph 131].

A distinguished commentator has already pointed out the importance of not claiming too much from this statement.[13] For the Court opinion deals only with the sort of discrimination explicitly covered by the relevant UN Charter articles.[14] It is authority, however, for the proposition that there is under the UN Charter a clear legal obligation on governments not to commit such discrimination. As a former President of the Court has put it, this wording "leaves no room for doubt that, in its view, the Charter does impose on the Members of the United Nations legal obligations in the human rights field".[15] The Charter provisions are therefore not just hortatory and programmatic.[16]

D. *The* Tehran Hostages *Case*

The clearest statement on the juridical nature of human rights is to be found in the 1980 judgment in the *Tehran Hostages* case. The Court found that Iran had incurred responsibility towards the United States as a result of the continued detention of United States diplomatic and con-

13. J. P. Humphrey, "The Universal Declaration of Human Rights: Its History, Impact and Juridical Character", in B. J. Ramcharan (Ed.), *Human Rights: Thirty Years After the Universal Declaration* (1978), p.21, 36. Professor Humphrey was the first Director of the UN Division of Human Rights.

14. See e.g. Art.1(3) of the UN Charter, which places among the "purposes" of the UN: "to achieve international co-operation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion"; as well as Arts.55 and 56, by which member States pledge themselves "to take joint and separate action in co-operation with the organisation for the achievement" of certain purposes including the promotion "of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

15. Nagendra Singh, *Enforcement of Human Rights in Peace and War and the Future of Humanity* (1986), p.28.

16. See E. Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter" (1972) 66 A.J.I.L. 350–351.

sular staff in Tehran, mainly in the premises of the United States embassy. In the judgment the Court stated:

> Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights [paragraph 91].

In respect of the plight of diplomatic and consular staff held hostage, the jurisdiction of the Court had been based on the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations.[17] Its jurisdiction in respect of "two private individuals of United States nationality" was based on the Treaty of Amity, Economic Relations, and Consular Rights of 1955 between Iran and the United States.[18] The statement quoted above goes beyond both these instruments and was presumably made pursuant to the Court's finding that Iran had committed "successive and continuing breaches of the obligations laid upon it by . . . the applicable rules of general international law" (paragraph 90). This formulation is itself interesting. The United States, in its memorial, had invoked human rights in the framework of its argument relating to the applicability of the Treaty of Amity. Claiming a violation by Iran of the Treaty's obligation to provide "the most constant protection and security" and "humane and reasonable treatment" to United States nationals, the United States argued that one measure of that standard was represented by international human rights.[19] The Court, on the other hand, referred to principles of human rights in the context of a finding of breaches of general international law.

Neither the separate opinion of Judge Lachs[20] nor the dissenting opinion of Judge Tarazi[21] contested this aspect of the Court's decision. However, Judge Morozov in his dissenting opinion complained that the statement in effect "serves . . . to level at Iran *the unfounded allegation that it has violated the Charter of the United Nations and the Universal Declaration of Human Rights*".[22] In the context in which this opinion is found, the basis of Judge Morozov's objection is not clear. It may be that he doubted the jurisdiction of the Court on a matter (human rights) not covered by the Vienna Conventions and the Treaty of Amity which

17. Vienna Convention on Diplomatic Relations (1961), 500 U.N.T.S. 85; Vienna Convention on Consular Relations (1963), 596 U.N.T.S. 261.
18. Cited at para.77 of the Court's judgment.
19. [1981] *I.C.J. Pleadings, United States Diplomatic and Consular Staff in Tehran*, 179–183.
20. [1980] I.C.J. Rep. 3, 47–50.
21. *Idem*, pp.58–65.
22. *Idem*, p.53.

permitted the unilateral application to the Court[23] or that he felt that responsibility should not be attributed to Iran for the acts of the "militants" who seized control of the embassy and the personnel; or he may have considered that the evidence capable of demonstrating such violations was insufficient or, finally, that the behaviour in question did not amount to violations of the Charter or the Declaration. There appears to be no challenge, however, to the contention that general international law prohibits at least some acts against human beings that are incompatible with the principles of the UN Charter and those of the Universal Declaration of Human Rights.

Thus, the apparently unanimous view of the Court is that the Universal Declaration of Human Rights is a document of sufficient legal status to justify its invocation by the Court in the context of a State's obligations under general international law. This opinion would seem to imply much more than simply the respect which is accorded to a resolution (that is, a recommendation) of the General Assembly. The Court speaks of Iran's violating the "fundamental principles enunciated in the Universal Declaration of Human Rights". It is not clear whether the Court is here distinguishing between *fundamental* principles contained in the Declaration and *other* principles therein. If it is, then it seems to be singling out the prohibition against torture or cruel, inhuman or degrading treatment or punishment and right to liberty and security of the person for specific status. But this would be a strained and unduly narrow interpretation. A more natural interpretation is that the Court was simply stating that the Declaration as a whole propounds fundamental principles recognised by general international law.

E. Conclusions Drawn from the Earlier Cases

So far, the following seems to emerge from the case law (jurisprudence) of the Court:

(a) the human rights clauses of the UN Charter contain binding legal obligations (*Namibia*);
(b) the principles and rules of international law concerning the basic rights of the human person engender obligations *erga omnes* (*Barcelona Traction*);
(c) such obligations may be found in the UN Charter and the Universal Declaration of Human Rights (*Tehran Hostages*);

23. The Court's jurisdiction was based on Art.I common to the Optional Protocol to each Convention Concerning the Compulsory Settlement of Disputes (*supra* n.17) but the jurisdiction is stipulated to concern "disputes arising out of the interpretation or application of" the conventions. It may be that, in Judge Morozov's view, human rights issues were not addressed by the conventions and therefore did not fall within the scope of this provision.

(d) wrongful deprivation of freedom involving physical constraint in conditions of hardship is an example of a breach of such obligations (*Tehran Hostages*);

(e) at least, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment and the right to liberty and security of the person seem to be covered by this latter formulation. The better interpretation would be that the Universal Declaration of Human Rights states fundamental principles, violation of which involves violation of general international law.

II. THE *NICARAGUA* CASE

THE Court's most recent judgment in which it deals with human rights is *Military Activities in Nicaragua*. Its treatment of the issue has been severely criticised from a human rights perspective:[24] either, it is argued, the Court was saying that "there are no human rights obligations apart from treaty or other formal commitments",[25] or it was saying that "regardless of the source of human rights obligations, where there is a convention, the *protection* of those rights takes the *form* of those arrangements provided for in the convention".[26]

I do not think the judgment warrants such a pessimistic reaction. Indeed, I find its approach reasonable, predictable and very much in line with what it has said earlier. The case involved Nicaragua claiming that military activities by the United States, including the mining of Nicaragua's harbour and the support given to the opposition Contras, amounted to unlawful armed intervention against Nicaragua. The thrust of the judgment is that the right of self-defence, individual or collective, does not apply in this case as a legal defence to the accusation.[27]

The central element to be borne in mind is how the question arises at all, namely, the extent to which the United States could invoke Nicaragua's human rights record to justify its military activities. The burden of the Court's message is that the United States could not; and, in the process, it has confirmed the view of those of us who argue that the doctrine

24. F. Tesón, "Le Peuple, c'est moi! The World Court and Human Rights" (1987) 81 A.J.I.L. 173.

25. *Idem*, p.174.

26. *Idem*, p.176.

27. As far as human rights violations by the Contras are concerned (they fall more into the realm of humanitarian law than human rights), the Court finds the Contras' acts not attributable or imputable to the USA (although the USA was rebuked for encouraging violations of common Art.3 of the Geneva Conventions of 12 Aug. 1949 by its production of a CIA manual advocating certain strategies of terror).

of unilateral armed humanitarian intervention has no justification at law.[28]

The point here is that if one reads what the Court says about human rights in the light of its central argument (i.e. that they cannot be invoked to justify armed intervention), one finds that the Court tends to confirm its recognition that human rights principles *are* part of general international law.

First of all, the Court deals with an alleged commitment to the Organisation of American States by Nicaragua to adopt a system of representative democracy, including holding free elections, respecting human rights and so on. The Court took the view that Nicaragua's social and political system was an internal matter (paragraph 258). Of course, it would be possible to make a binding international commitment to establish such a system (paragraph 259), but on the facts Nicaragua had not done so (paragraph 261): it had made a political pledge, not a legal one. Thus, its internal system was a matter of its own domestic jurisdiction (paragraph 263).

Despite this finding, the Court makes a crucial observation. Referring to the specific accusation that Nicaragua had violated human rights, it says:

> This particular point requires to be studied independently of the question of the existence of a "legal commitment" by Nicaragua towards the Organisation of American States to respect these rights; the absence of such a commitment would not mean that Nicaragua could with impunity violate human rights [paragraph 267].

This obviously means that human rights represent a legal obligation flowing from a source other than the specific commitment that had been under discussion. Such a source would include custom or treaty. Unfortunately, the Court makes no direct reference to custom. In the passage directly following the words denying impunity to human rights violations, the Court continues:

> However, where human rights are protected by international conventions, that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves. The political pledge by Nicaragua was made in the context of the Organisation of American States, the organs of which were consequently entitled to monitor its observance . . . [T]he Nicaraguan Government has since 1979 ratified a number of international instruments on human rights, and one of these was the American Convention on Human

28. Protagonists of both sides of the argument may be found in R. B. Lillich (Ed.), *Humanitarian Intervention and the United Nations* (1973). My own views, coinciding with those of the Court, are developed in T. Franck and N. Rodley, "The Law, the United Nations and Bangladesh" (1972) 2 Is. Y.B. Human Rights 142, and T. Franck and N.

> Rights (the Pact of San José, Costa Rica). The mechanisms provided for therein have functioned. The Inter-American Commission on Human Rights in fact took action and compiled two reports (OEA/Ser. L/V/11.53 and 62) following visits by the Commission to Nicaragua at the Government's invitation. Consequently, the Organisation was in a position, if it so wished, to take a decision on the basis of these reports [paragraph 267].

This is the passage that gives rise to the apprehension of the commentator I quoted earlier. Indeed, taken out of context, it could be understood as seeming to confine human rights to the realm of treaty law or at least to confine their protection to that realm where States are parties to human rights treaties.

But, read in context, it may be understood as addressing something else. The Court may be paraphrased as saying:

> Nicaragua allegedly pledged itself to the Organisation of American States legally to respect human rights together with other values. In fact the pledge should be seen as political rather than legal, but this is no obstacle to the Organisation acting: this is because Nicaragua is party to a number of human rights treaties including the Pact of San José. As such it is subject to implementation measures that do not constrain other States. These measures had yielded results (in the form of two reports) that would have permitted the Organisation to act, if they had found serious human rights violations and wished to act on the basis of them. So the United States has nothing to complain about in terms of the opportunities for the Organisation to deal with the human rights situation in Nicaragua.

While it might have been helpful—if only to avoid any misunderstanding—for the Court to reaffirm *expressis verbis* the obligation under general international law to respect fundamental human rights, it seems to me that it implicitly has reaffirmed the obligation. The issue before the Court was not the obligation but its *implementation*. The Court could pronounce on the allegations of violations of the obligation only if they were properly before the Court: they were not. The limited questioned was whether they justified the United States military activities: they did not. Perhaps, if the United States had participated in the proceedings and itself brought a counterclaim against Nicaragua in respect of Nicaragua's human rights performance (if that could have survived the "Connally amendment"), the Court would have had squarely to

Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force" (1973) 67 A.J.I.L. 275. A recent study of the issue adopts the same approach: N. Ronzitti, *Rescuing Nationals Abroad and Intervention on Grounds of Humanity* (1985), Chap.4.

confront the issue.[29] It would indeed be unfortunate if in the future the Court were to say that it would not exercise jurisdiction on a human rights dispute under Article 36 of its Statute in respect of a State that happened to be party to an international human rights treaty with its own implementation mechanism. The effect of that would be for the treaties then to be a shield against authoritative scrutiny that other States could not invoke. I do not believe that this is the Court's line. Rather the Court seems merely to be pointing out the obvious: that international treaties do have implementation machinery of various sorts; this machinery provides, at least, the primary means of securing State compliance with the treaties' provisions; moreover, some international organisations also have available procedures for dealing with human rights disputes whether or not the States in question are parties to the treaties.[30] All these are noted as a means of asserting that the international community is not without some tools to seek to induce compliance with international legal obligations to respect human rights. This is the context which is invoked to mitigate the rigour of the clear prohibition of humanitarian intervention.

It must be acknowledged, however, that this is not the first time the Court has used notably cautious language when dealing with the *protection* of agreed human rights. In *Barcelona Traction*, the Court had referred to regional mechanisms, such as those of the European Convention on Human Rights, for a solution to the problem of enforceability of human rights standards regardless of nationality, noting the

29. The USA boycotted the proceedings (as Iran had done in *Tehran Hostages*), taking the view that the Court had erred in declaring that it had jurisdiction at all. While the Court was at pains to raise *arguendo* defences that the USA might have raised, the analysis may be thought to suffer from the element of artificiality of the exercise.

The "Connally amendment" is the term used to describe the "self-judging" clause of the US acceptance of the compulsory jurisdiction of the Court under Art.36 of its Statute. According to this clause, the declaration does not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the [USA] as determined by the [USA]". Since such restrictions may be invoked on a reciprocal basis, Nicaragua could, had it been the target of a US complaint as to its human rights performance, have argued that this touched on matters essentially within the domestic jurisdiction of Nicaragua as determined by it and was thus removable from the Court's scrutiny. In reaction to the Court's handling of the case, the USA withdrew its acceptance of the Court's compulsory jurisdiction.

30. For example, the jurisdiction of the Inter-American Commission on Human Rights itself, a body which existed before the coming into force of the American Convention on Human Rights (Pact of San José), continues to extend to Organisation of American States members not parties to the Convention. In respect of these countries, it applies the American Declaration of the Rights and Duties of Man rather than the Convention. Examples of UN procedures applicable to all UN members, regardless of treaty participation, are those recently established by the Commission on Human Rights, that is, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on summary or arbitrary executions and the Special Rapporteur on torture: see N. Rodley, "United Nations Action Procedures Against 'Disappearances', Summary or Arbitrary Executions, and Torture' (1986) 8 Human Rights Q. 700.

inter-State complaint procedure under that convention. For, "on the universal level, the instruments which embody human rights do not confer on States the capacity to protect the victims of infringements of such rights, irrespective of their nationality" (paragraph 91). It should be remembered that the Court was speaking before the coming into force of the International Covenant on Civil and Political Rights, which does have an (optional) system of reviewing inter-State and even individual complaints of violations of the Covenant.[31] Accordingly, it was describing the then conventional reality. The Court in *Barcelona Traction* did consider that "human rights . . . include protection against denial of justice" (paragraph 91). If this means that denial of justice is an infringement of human rights as recognised by general international law, and in so far as a denial of justice was central to Belgium's claim, it is difficult to follow the logic of the Court's holding that the claim raised only an issue of bilateral obligations and not one of obligations *erga omnes*. For it had said in paragraph 35, quoted earlier, that "the principles and rules concerning the basic rights of the human person" give rise to obligations *erga omnes*. Probably the Court should be understood as intending to distinguish between the notion of denial of justice—at least in so far as it may cover economic rights—and that of the basic rights of the human person.[32] If so, doubt is left as to whether the socio-economic rights found in the Universal Declaration have the same legal status as (some of) the civil and political rights.

It is also true that the Court in *Nicaragua* elided the sensitive area of enquiry as to the point at which systems of government may inherently violate internationally agreed human rights standards. Some would argue, for example, that a Marxist–Leninist system of government (in so far as the Sandinista government of Nicaragua can be so described) cannot fully respect the free exercise of political rights. In fact there is not yet an authoritative enunciation of the concept of political rights. That the Court avoided an analysis of this issue evidences, I suggest, normal judicial prudence, especially in view of the fact that the central point would remain that the outcome of the enquiry would still have been that the United States was not entitled unilaterally to use armed force to change the situation.

31. According to Art.41 of the Covenant, States parties may make declarations whereby they accept that the Human Rights Committee, established by the Covenant, has the competence to receive complaints of their infringement of the provisions of the Covenant submitted by other States parties having accepted the same burden. Under the Optional Protocol to the Covenant, States parties to it accept the competence of the Committee to receive complaints of such infringements by individuals claiming to be victims of such infringements.

32. The point is developed in my "The Nationalization by Peru of the Holdings of the International Petroleum Company", in N. Rodley and C. N. Ronning (Eds.), *International Law in the Western Hemisphere* (1974), p.112, 121–123.

On this issue, the Court could not have been clearer:

> In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equiping of the Contras. The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States [paragraph 268].

This language unmistakably places the Court in the camp of those who claim that the doctrine of humanitarian intervention is without validity. Under that doctrine a State could rely on an alleged exception to the principle prohibiting unilateral resort to armed force by one State against another, where the purpose of its intervention was to protect persons (other than its own citizens) from serious and widespread violations of their human rights. It has been a doctrine defended in recent years by commentators, rather than by States. The States that might have been expected to invoke it (India, in respect of Bangladesh; Vietnam, in respect of Kampuchea; Tanzania, in respect of Uganda; and the United States itself, in respect of Grenada) have been notably hesitant to do so, at least in their formal legal justifications for their actions.[33]

The Court's confirmation of the inapplicability of the doctrine should not be seen as a setback for human rights. There is nothing in its history to suggest that it was ever more than a rare and arbitrary alleviation of the hapless plight of those who happened to be suffering in a small country where the political interests of a militarily more powerful country conduced to the intervention. The ruling is more a clarification aimed at preventing breaches of international peace and security.

III. CONCLUSION

THE need for increasingly effective measures, within the framework of competent inter-governmental organisations, to protect against grave and systematic human rights violations remains and is indeed underlined by the *Nicaragua* judgment. In recent years there has been an impressive development in the array of inter-governmental machinery available to investigate alleged human rights violations and even intercede on behalf of victims. However, criminal violations of human rights, such

33. Ronzitti, *op. cit. supra* n.28, at pp.92–93 and 108, develops the point in respect of Bangladesh, Uganda and Kampuchea. For the US legal justification of its action in Grenada, see (1984) 78 A.J.I.L. 203–204. Three grounds are cited: 1. a request from the Governor-General of Grenada; 2. regional collective self-defence; and 3. protection of US citizens in Grenada.

as torture, murder and prolonged or permanent abduction (the so-called "disappearance"), continue to be widely reported.[34] If the ban on unilateral humanitarian intervention is to be politically credible, it should be accompanied by more determined inter-governmental action, not necessarily excluding coercive measures, to eliminate such practices.

Under the Court's jurisprudence, accordingly, it appears, first, that fundamental human rights must under general international law be respected; second, that it remains to be confirmed whether *all* the guaranteed rights under the Universal Declaration of Human Rights fall under that law (I suggest that they do, but that the content of some—socio-economic rights, political rights—is not ripe for judicial determination at the universal level); third, that implementation mechanisms established by treaty are a useful means of promoting respect for human rights; fourth, that while they are probably not the only means, the Court's language has left room for some doubt which could be helpfully dispelled at the earliest opportunity; and, finally, that individual States may not use armed force to intervene against other States on the ground of the latter's human rights record or socio-political system.

While human rights lawyers can be well satisfied with this record there is still substantial room for improvement in the field of inter-governmental action to constrain the more grievous practices of human rights violation.

34. See e.g. the annual *Amnesty International Report* and those of the UN Commission on Human Rights procedures referred to *supra* n.30.