PART III

Evolving Norms

Over the tumultuous half-century I have been involved in international humanitarian assistance, there have been, not surprisingly, shifting parameters and standards to help guide our actions. This section offers four important views of both positive and negative adaptation to the harsh realities and challenges of complex humanitarian crises. A focus on the limits of state sovereignty or on education for children in conflict areas has only recently been considered by those providing relief assistance. The need to clearly define—and preserve—humanitarian space is presented here, and it is an essential theme that runs throughout the book. So also in humanitarian work is the need for constant review and analysis; the relevant observations of an experienced scholar, and known skeptic, add leaven to our understanding and appreciation of our noble discipline.

The Limits of Sovereignty

Francis Deng

Displacement in all its manifestations, internal and external, has become a global crisis of grave and escalating magnitude. Since the end of the Cold War, the number of people displaced within the borders of their own countries has soared to an estimated twenty to twenty-five million, and the number of refugees is now estimated at over eleven million. Statistics indicate that although the number of refugees appears to be declining, the internally displaced populations worldwide seem to be increasing, a trend that suggests a correlation: As governments restrict the right of asylum, potential refugees join the ranks of the internally displaced. These are people who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters.[1]

Nearly always, internally displaced persons suffer from conditions of insecurity and destitution, and they are acutely in need of protection and survival services. Whereas refugees have an established system of international protection and assistance, those who are displaced internally fall within the domestic jurisdiction and, therefore, under the sovereignty of the state concerned, without established legal or institutional bases for their protection and assistance.

Displacement is not the disease, but a symptom of a public health epidemic with deep-rooted causes. Treating the symptoms or easing the pain through humanitarian assistance is only a first step toward the challenge of diagnosing the disease and attacking it from its root causes. A comprehensive strategy in response to the crisis of displacement must build on the three phases of the problem—causes, consequences, and solutions. Addressing the causes requires going beyond the mere fact of conflicts, communal violence, or human rights violations to appreciate the even deeper root causes. These are often reflected in the traumas of nation-building, involving crises of identity, historical denial of democratic liberties and fundamental human rights, and the deprivations of poverty and severe underdevelopment. Consequences relate to the humanitarian tragedies that result from violent conflicts, gross violations of human rights, and the sudden and massive displacement they generate. Remedies envisage both a response to the emergency needs of the situation and a search for lasting solutions. In other words, the corresponding themes of response would be prevention, protection and assistance, and a secure process of return or permanent settlement in

another area, rehabilitation, reintegration, and sustainable development. Action at these three phases must aim at balancing sovereignty, responsibility, and international accountability.

Discharging the preventive responsibilities of sovereignty must begin with addressing the root causes of displacement. As Mrs. Sadako Ogata, former UN High Commissioner for Refugees, has correctly observed, "Whether we speak of refugees or of internally displaced persons, it is clear that there will be no end to their plight until the international community has found ways to deal effectively with the root causes of forced displacement, so as to prevent or alleviate conditions before people flee."[2] Recent years have witnessed a strategic shift in the operational principles of the UNHCR. The new approach "is proactive and preventive, rather than reactive. Instead of focusing purely on countries of asylum, it is equally concerned with conditions in actual and potential refugee-producing states. And as well as providing protection and assistance to refugees, it seeks to reinforce the security and freedom enjoyed by several other groups: internally displaced people; refugees who have returned to their own country; war-affected communities and those who are at risk of being uprooted."[3]

Once displacement has occurred, priority then shifts to providing the affected population with protection and assistance. These functions should normally fall under the responsibilities of sovereignty, but in conflict situations the state often lacks the political will to discharge those responsibilities. Involving the international community to fill the vacuum of state responsibility means negotiating access against the obstacles of defensive state sovereignty. As Mrs. Ogata remarked in 1992, "How to secure the protection of the internally displaced and ensure their access to humanitarian assistance is one of the most important challenges facing the international community. Meeting this challenge will require the development of institutional and practical mechanisms."[4] There have since been important developments in both these areas, which will be highlighted in the course of this chapter.

Magnitude of the Crisis

Displacement is generally a consequence of conflict, which, in turn, is a symptom of deeper societal problems. Conflict occurs when two or more parties interact in pursuit of incompatible objectives, which may involve material or immaterial values. Various forms and degrees of conflict are pervasive features of normal life and, for the most part, are negotiated and resolved by the parties or by third-party mediators. Governance is primarily a function of preventing, managing, and resolving conflicts. The kinds of conflicts that generate internal displacement, however, are generally of a

more severe nature, involving deadly violence. As a result of these conflicts, much destruction to life and property is pervasive throughout the world; governments have disintegrated and entire regions have been destabilized, with devastating humanitarian consequences; masses of uprooted populations in the affected countries survive on emergency relief supplies, displaced within their own countries or forced across international borders as refugees.

It is often argued that the internally displaced should be considered and treated like refugees who have not crossed international borders. The analogy is compelling. And yet, the border factor is crucial in legal and institutional terms to qualify one as a refugee who is thereby entitled to receive international protection and assistance. Even more significantly, while the refugee is outside the national framework of conflict and political persecution, the internally displaced, who would be a refugee if he or she had crossed international borders remains trapped within those borders, a potential victim not only of conflict, but also of the persecution emanating from it and alienated from the government that is supposed to be a source of protection and support for citizens.

Overwhelmingly, such persons live in a hostile environment, often deprived of such survival needs as food, shelter, and medicine, frequently subjected to roundups, forced resettlement, arbitrary detentions or arrests, forced conscription, and sexual assaults. Some of the highest mortality rates ever recorded during humanitarian emergencies have come from situations involving internally displaced persons. According to surveys conducted by the U.S. Center for Disease Control, the death rates among internally displaced have been as much as sixty times higher than those of nondisplaced within the same country.[5]

Compounding the crisis is the nature of the conflicts in which the population is often caught up. Internal conflicts are frequently marked by few or no accepted ground rules. These wars, as former UN Secretary-General Boutros Boutros-Ghali observed in his Supplement to an Agenda for Peace, are "often of a religious or ethnic character and often involving unusual violence and cruelty."[6]

They are usually fought not only by regular armies but also by militias and armed civilians with little discipline and with ill-defined chains of command. They are often guerilla wars without clear front lines. Civilians are the main victims and often the main targets. Humanitarian emergencies are commonplace and the combatant authorities, in so far as they can be called authorities, lack the capacity to cope with them. The number of refugees registered with the Office of the United Nations High Commissioner for Refugees (UNHCR) has increased from 13 million at the end of 1987 to 26 million at the end of 1994. The number of internally displaced persons has increased even more dramatically.[7]

"Today's belligerents," a Foreign Policy Association study points out, "are more and more willing to use humanitarian access, life-saving assistance, and even civilians themselves as weapons in their political-military struggles."[8] The challenge posed by the situation of internally displaced persons and refugees is both to allow them to flee from danger and to ensure their right to remain. As Mrs. Ogata observed, "We must prevent refugee flows, not by building barriers or border controls but by defending the right of people to remain in peace in their own homes and their own countries."[9] The mere fact that people are forced to leave their homes to escape from conflict or persecution implies the violation of fundamental human rights, among them "the right to life, liberty and security of person, the right not to be subjected to torture or other degrading treatment, the right to privacy and family life, the right to freedom of movement and residence, and the right not to be subjected to arbitrary exile."[10] Curative prevention, which means securing the right to remain at home in peace, the right to protection and assistance during displacement, and the right to return home safely and reintegrate into a secure life therefore requires ensuring respect for the human rights of every person. This depends on the willingness of states to accept responsibility for their own citizens and the role of the international community "to foster responsibility as well as accountability of states as regards the treatment of their own citizens."[11]

Much has been written and said about the need for early warning and preventive measures. It is also increasingly acknowledged that most conflicts that have resulted in gruesome humanitarian tragedies have not been the result of lack of early warning, but rather because of lack of the political will on the part of the international community to act in appropriate time. As the former UN Secretary-General Boutros Boutros-Ghali noted in his Supplement to an Agenda for Peace, "Experience has shown that the greatest obstacle to success in these endeavors is not, as is widely supposed, lack of information, analytical capacity or ideas for the United Nations initiative. Success is often blocked at the outset by the reluctance of one or other of the parties to accept United Nations help."[12]

Early warning and prevention essentially mean understanding the sources of potential conflicts and addressing them in time to abort their explosion into violent confrontation. Once a conflict has actually broken out, there is then the immediate need to address its humanitarian consequences while also seeking an end to the hostilities by addressing the issues that led to the conflict in the first place. The success of the effort means restoring peace and creating conducive conditions for reconstruction and development. These are essentially functions of governance that normally fall within the purview of domestic jurisdiction and therefore national sovereignty.

Although the response of governments to displacement generated by natural causes may sometimes be grossly inadequate, on the whole it is sympathetic and supportive of the victims. Likewise, displacement caused by interstate conflicts generally elicits supportive responses from the government of the affected population. In contrast, response to a displacement caused by internal conflicts, communal violence, and systematic violations of human rights is nearly always complicated by the cleavages involved. These cleavages often take the form of an identity crisis, whether based on race, ethnicity, religion, culture, or class. What this means is that the government or any other controlling authority concerned and the affected population identify themselves in divisive terms that undermine solidarity and support. The government or the controlling authority, rather than view the victim population as citizens for whom there is a moral and legal duty to protect and assist, tend to see them as enemies, or part of the enemy, with whom they are at war. In such a situation, which reflects a national identity crisis, the victim population falls into a vacuum of the moral and legal responsibility normally associated with sovereignty. It is to fill this vacuum that the international community is often called upon to step in and provide the needed protection and assistance.

It must be noted, however, that although this notion of identity crisis is pervasive, the degree varies from country to country. And so does the response of governments and other controlling authorities. There are situations of ethnic conflict in which the government still identifies the victim population as their people to whom they indeed provide food and medical supplies, sometimes in cooperation with rebel forces with whom the affected population is ethnically identified. Unfortunately, this appears to be the exception; the pattern is tragically one of denial of solidarity with the victim population on the basis of exclusive identity symbols.

The Challenge of Sovereignty

There are two aspects to the challenges posed by internal conflicts for sovereignty. One is to establish and apply an effective system of conflict prevention, management and resolution; the other is to provide protection and assistance to those affected by conflict. In both cases, the state may not be capable or willing to provide adequate solutions or remedies, especially because the government is nearly always a party to the conflict. And because it is partisan, the government often acts as a barrier to access by the international community to provide protection and assistance to the needy and to help in the search for peace. Such resistance to outside involvement is justified by the invocation of national sovereignty.

Since its inception, sovereignty has developed through several overlapping phases, which may not be neatly delineated historically, but which nonetheless signify an evolution. The first, represented by the Treaty of Westphalia in 1648, is the initial phase when the sovereign reigned supreme domestically and in relations with the outside world. The second, following World War II, marks the erosion of sovereignty with the development of democratic values and institutions internally and with international accountability on the basis of human rights and humanitarian standards. With the greater promotion of these values following the end of the Cold War, the third phase emerged as a reactive assertion of sovereignty by governments whose domestic performance renders them vulnerable to international scrutiny. The fourth is the current pragmatic attempt at reconciling state sovereignty with responsibility.

Genesis of Sovereignty

Sovereignty in legal and political theory was initially conceived in Europe as an instrument of authoritative control by the monarch over feudal princes in the construction of modern territorial states. It was believed that instability and disorder, seen as obstacles to a stable society, could only be overcome by viable governments capable of establishing firm and effective control over territory and populations.[13] The sovereign, as the lawmaker, was considered to be above the law. Indeed, law, according to the "command theory" of the leading positivist jurist, John Austin, is "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him."[14] Law is thus considered the command of the sovereign who is habitually obeyed by his subjects. The power of the sovereign is supposedly not limited by justice or any ideas of good and bad, right or wrong.[15] "For Austin … any legal limit on the highest lawmaking power was an absurdity and an impossibility."[16] Even in contemporary literature, it is still argued that "sovereignty is a characteristic of power that relegates its holder to a place above the law. A sovereign is immune from law and only subject to self-imposed restrictions."[17] Although the form of government might vary from monarchy to aristocracy or democracy, it is considered essential that governments maintain order through an effective exercise of sovereignty.

On the other hand, the basic proposition of international human rights law is that "to qualify for the name of government, a government … has to meet certain standards, all of which involve restraints on the use of power; no torture; no brutalization; no seizure of property; no state terror; no discrimination on the basis of race, religion, or sex; no prevention of people leaving a particular country, and so on."[18] The limits of the "tyrannical" concept of sovereignty postulates three major

premises: (a) "'humanity'—is the *raison d'etre* of any legal system"; (b) "the international system … since the Peace of Westphalia, has not been fulfilling what should be its primary function, namely, the protection and development of the human dignity of the individual": (c) "any proposed 'new world order' should be structured so as to maximize benefits not for States but for individuals living within the States, all the way from freedom of speech and elections, on the one hand, to freedom from hunger and the right to education on the other hand."[19]

These principles impose on the international community a correlative responsibility for their enforcement. Herein lies the paradox of the international order. That paradox was indeed inherent in the settlement of Westphalia, from which time "sovereignty created both the territorial state and the international system."[20]

Erosion of Sovereignty

The post–World War II era represents the second phase of the erosion of sovereignty. The application of the right to self-determination, which provided the basis for the process of decolonization, expanded the process of erosion. One of the effective measures in contravention of the narrow concepts of absolute sovereignty was that of international sanctions against South Africa. It was undoubtedly the combination of internal and external pressures that eventually culminated in the collapse of apartheid. The increasing internalization of the human rights agenda and the wave of democratization that is sweeping the world are among the contemporary challenges to sovereignty.

The demands for democratic values, institutions, and practices have devolved the classic notion of sovereign will and authority to the people who are increasingly intolerant of the dictatorship of unaccountable government. More and more, it is recognized that it is the will of the people, democratically invested in the leaders they elect freely or otherwise accept as their representatives, that entitle authorities to value and uphold the sovereignty of a nation. As Michael Reisman has written,

> It should not take a great deal of imagination to grasp what an awful violation of the integrity of the self it is when men with guns evict your government, dismiss your law, kill and destroy wantonly and control you and those you love by intimidation and terror. When that happens, all other human rights that depend on the lawful institutions of government become matters for the discretion of the dictators. And when that happens, those rights cease. Military coups are terrible violations of the political rights of all the members of the collectivity, and they invariably bring in their wake the violation of all other rights. Violations of the right to popular government are not secondary or less important. They are very, very serious human rights violations.[2]

In the context of international intervention in Haiti, Reisman argues that "in modern international law, what counts is the sovereignty of the people and not a metaphysical abstraction called the state. If the de jure government, which was elected by the people, wants military assistance, how is its sovereignty violated? And if the purpose of the coercion is to reinstate a de jure government elected in a free and fair election after it was ousted by a renegade military, whose sovereignty is being violated? The military's?"[22]

The area of humanitarian intervention has witnessed the greatest erosion of sovereignty, mostly with the consent of the states, but at times through forceful enforcement. Nevertheless, mechanisms and procedures of implementation of the wide array of human rights and humanitarian standards remain undeveloped and grossly inadequate.

Reassertion of Sovereignty

The more the international community has been assertive, the more vulnerably governments have reacted defensively against erosion of state sovereignty. This indeed marks the third phase of the evolution of sovereignty. Governments that are threatened by the erosion of narrow concepts of sovereignty and are defensively trying to reassert it use the argument of cultural relativity and characterize the universality concept as a Western ploy for interfering in the internal affairs of other countries.

Even among the supporters of a more liberal interpretation of sovereignty, its erosion has been viewed with ambivalence. Former United Nations Secretary-General Javier Perez de Cuellar, while acknowledging "what is probably an irresistible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents," added the questions, "Does intervention not call into question one of the cardinal principles of international law, one diametrically opposed to it, namely, the obligation of non-interference in the internal affairs of the States?"[23] In his 1991 annual report, he wrote, "The case for not impinging on the sovereignty, territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection."[24]

In place of exclusionary notions of sovereignty, de Cuellar called for a "higher degree of cooperation and a combination of common sense and compassion," arguing that "we need not impale

ourselves on the horns of a dilemma between respect for sovereignty and the protection of human rights. … What is involved is not the right of intervention but the collective obligation of States to bring relief and redress in human rights emergencies."[25]

Reconciling Sovereignty with Responsibility

Reconciling sovereignty with responsibility, the fourth phase of the evolution, has become the operative principle. Former Secretary-General Boutros Boutros-Ghali, in *An Agenda for Peace*, wrote that "the time of absolute and exclusive sovereignty … has passed"; that "its theory was never matched by reality"; and that it is necessary for leaders of states "to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world."[26]

In another context, Boutros-Ghali elaborated his views on sovereignty by highlighting the need to rethink the concept in contemporary global context, "not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function." Boutros-Ghali goes on to postulate an intriguing concept of universal sovereignty of individuals and peoples: "Underlying the rights of the individual and the rights of the peoples is a dimension of universal sovereignty that resides in all humanity and provides all peoples with legitimate involvement in issues affecting the world as a whole. It is a sense that increasingly finds expression in the gradual expansion of international law."[27]

Living up to the responsibilities of sovereignty becomes in effect the best guarantee for sovereignty. As one observer commented, "Governments could best avoid intervention by meeting their obligations not only to other states, but also to their own citizens. If they failed, they might invite intervention."[28]

This was indeed the point made by the Secretary-General of the Organization of African Unity, Salim Ahmed Salim, in his bold proposals for an OAU mechanism for conflict prevention and resolution. "If the OAU, first through the Secretary-General and then the Bureau of the Summit, is to play the lead role in any African conflict," he said, "it should be enabled to intervene swiftly, otherwise it cannot be ensured that whoever (apart from African regional organizations) acts will do so in accordance with African interests."[29]

Criticizing the tendency to respond only to worst-case scenarios, Salim emphasized the need for preemptive intervention: "Preemptive involvement should be permitted even in situations where tensions evolve to such a pitch that it becomes apparent that a conflict is in the making." He even suggested that the OAU should take the lead in transcending the traditional view of sovereignty,

building on the African values of kinship, solidarity and the notion that "every African is his brother' s keeper." Considering that "our borders are at best artificial," Salim argued, "we in Africa need to use our own cultural and social relationships to interpret the principle of non-interference in such a way that we are enabled to apply it to our advantage in conflict prevention and resolution."[30]

It is most significant that the Security Council, in its continued examination of the Secretary-General's report, An Agenda for Peace, "[noted] with concern the incidents of humanitarian crises, including mass displacements of population becoming or aggravating threats to international peace and security and concluded that under certain circumstances, there may be a close relationship between acute needs for humanitarian assistance and threats to international peace and security, which trigger international involvement."[31]

The crisis of internal displacement fits into this model in that it combines human rights with humanitarian concerns, and protection with assistance. Internal displacement is also a challenge to sovereignty in that providing the citizens with physical security and their basic survival needs are among the prerequisites for legitimacy and therefore recognizable sovereignty in the framework of international relations. These are among the principles that have guided the implementation of my mandate as Representative of the Secretary-General for Internally Displaced Persons.

The normative principles of my dialogue with governments are built on the premise that national sovereignty carries with it responsibility for the security and welfare of the citizens. When a state lacks the capacity to ensure the protection and welfare of its people, it is expected to call on the international community to supplement its efforts. The essence of the state responsibility, however, is accountability, both domestically and internationally. If states fail to live up to their obligations toward their citizens with the result that large numbers of people fall victim, their physical and social integrity violated or threatened and their very survival endangered, then the international community has the commensurate responsibility to hold the states accountable and obtain access to provide the needed protection and assistance and help in the search for remedies to the conditions that had caused the violent confrontation in order to restore a just and lasting peace.

International Responses

The plight of the internally displaced has begun to receive significant attention from the international community. Because of the magnitude of the crisis, the inadequacy of the response system, and the urgent need for international remedies, a number of nongovernmental organizations, supported by concerned governments, urged the Commission on Human Rights to take action. Concerted action began with the consideration by the Commission of a report prepared by the Secretariat on the

subject of internal displacement.[32] It was then that the Commission requested the Secretary-General to appoint a representative to study the problems. The study was to cover the root causes of internal displacement, the relevant international legal standards, the mechanisms for their enforcement, and any additional measures the United Nations might take to improve the situation of the internally displaced. In preparing the study, I undertook field visits to five countries and engaged in a dialogue with the governments. Since then, in-depth studies of the legal and institutional dimensions of international protection and assistance for the internally displaced, and dialogue with governments have been the core activities of the mandate. As we shall see in the following sections, these have brought about a number of tangible results.

Institutional Arrangements

On the issue of institutional arrangements, it is widely acknowledged that there is a gap in the coverage because there is no one organization, or collection of organizations, mandated to take responsibility for the internally displaced. At the same time, there is no political will to create a new organization with that mandate. Nor is it likely that an existing institution will be mandated to assume full responsibility for the internally displaced. Under the present circumstances, the residual option is that of a collaborative arrangement among a wide variety of agencies and organizations whose mandates and activities are relevant to the problems of internal displacement.[33]

Correlative to the increased involvement of various agencies and organizations is the urgent need for coordination or a central point to assign institutional responsibility in emergency situations. In the last few years some institutional progress has been made in this area. There now exist coordinating mechanisms that promise to bring coherence into the international system. The focal points in these structural arrangements are the Emergency Relief Coordinator (designed as the reference point in the United Nations system for requests for assistance and protection for internally displaced persons), and the Inter-Agency Standing Committee, its working group. A similar coordinating structure is reflected at the field level through the Resident Representatives of UNDP or, in cases of complex emergencies, the Resident Coordinators or Humanitarian Coordinators who chair Disaster Management Teams (DMTs) composed of UN operational agencies and sometimes NGOs and coordinate humanitarian assistance for internally displaced persons.

The High Commissioner for Refugees has observed that the success of international involvement will depend on three key factors: "The first is a well structured division of work, on which coordination must proceed among organizations and institutions with the required expertise and ability to avoid duplication of efforts and fill gaps instead, the second is the ability of the

international effort to mobilize and develop local capacities and responsibilities. The third … is their firm foundation in common and consistent human rights standards."[34]

Nor should the institutional challenge be seen merely in the context of the displacement that has already occurred. Human rights violations are a major factor in causing displacement as well as an obstacle to safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical, both for prevention and for the solution of refugee and internally displaced persons problems. If the increasing problem of internal displacement is to be contained and reduced, preventive strategies are critical.

United Nations human rights bodies have an important role to play in this regard. Preventive measures currently relied upon include dialogue with governments, urgent appeals, public statements, emergency meetings, the deployment of human rights field staff, machinery for the protection of minorities, and the extension of technical assistance. Commission reports addressing the root causes of mass exoduses also exemplify efforts at prevention. Human rights treaty bodies, moreover, have been requested to examine measures they might take to prevent human rights violations, and several have adopted emergency procedures and undertaken missions to countries for preventative purposes. The establishment of the post of United Nations High Commissioner for Human Rights has added momentum to the development of preventative strategies. Human rights field staff deployed under her auspices are playing a valuable preventative role. Human rights advisory services and education projects are valuable tools for the promotion of human rights and prevention of violations.

All of these measures, however, are at an early stage of development and human rights bodies should be encouraged to increase their capacities for prevention. Mechanisms for minority protection in particular need to be strengthened, since many displaced persons are members of minority groups who have been subjected to forcible expulsion, resettlement, and other persecution because of their ethnic or other origin. Promising initiatives include the adoption by the United Nations of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the establishment of a working group by the Submission on Prevention of Discrimination and Protection of Minorities to develop strategies for minority protection and to prevent conflict.

At the national level, promotion and protection of human rights through the establishment of effective national institutions to monitor and promote them is the safest guarantee against involuntary displacement. My country mission reports as Representative of the Secretary-General have emphasized the importance of supporting preventative techniques aimed at empowering the

population at the grassroots level. Very often, local communities have built up effective strategies for mitigating the impact of displacement. The coping strategies that displaced populations themselves have developed should be carefully examined by NGOs and international agencies, because such mechanisms are essential elements of prevention and protection.

Irrespective of the level at which preventive strategies are pursued, efforts must be made to ensure that they do not interfere with the freedom of movement. There is a need to reconcile strategies that encourage people to remain within their own countries with those that safeguard the right to leave and seek asylum from persecution. Under no circumstances should the desire to forestall large-scale populations displacements take precedence over assuring the security of displaced populations.

The Quest for Strategy

In virtually all dialogues with the governments and relevant actors, effort is made to link the immediate challenges of protection and assistance with the need to find lasting solutions, which in time draws attention to the causes generating the conflict that triggered displacement. This is, of course, a sensitive area in which reactions from governments are mixed. There are those who claim that it is outside the mandate of the Representative and those who acknowledge the need for peace as the real solution to the humanitarian tragedies of war. Objectively, there is no way the circular link between war, its human tragedies, and the need for solutions that address the root causes can be avoided.

In view of these anomalies and uncertainties, there is still a need for developing a strategy that would address effectively and comprehensively the crisis of internal displacement, both generically and contextually. As argued at the outset of this chapter, such a strategy should approach the displacement problem in its three manifest phases: causes, consequences, and remedies. The corresponding responses would be to develop measures for preempting and preceding displacement, to provide adequate means of protection and relief assistance during displacement, and to seek durable solutions through voluntary and safe return, resettlement, rehabilitation, reconstruction, and self-reliant development.

Ultimately, because conflict is at the core of displacement, emphasis needs to be placed on conflict prevention, management, and resolution in that order of priority. It should also be acknowledged that not only is displacement a consequence and, therefore, a symptom of conflict, but conflict itself is a symptom of deeper societal ills, generally rooted in ethnic, religious, and cultural diversities, disparities, and gross inequities or injustices. It is in the fertile soil of understandable and justified grievances that the virus of violence incubates and eventually explodes. Unless checked in

time, this can turn into a chronic condition in the body politic and, as recent developments have shown, can be even terminal to the survival of nations.

Among the characteristics of the soil in which the virus incubates are poverty, scarcity of resources, maldistribution of the little there is, politics repressive of legitimate demands, gross violations of human rights and fundamental liberties, and a sense of hopelessness and despair. Under those conditions, governments or dominant authorities become perceived as tantamount to foreign bodies, implanted into a resistant body politic that is eventually forced to reject them.

To the extent that conflict represents a symptomatic warning of underlying and potentially more serious problems, it can play a positive role if constructively responded to. Indeed, the upsurge in violent conflicts following the end of the Cold War indicates that many latent conflicts were repressed through the awesome power of the bipolar control mechanisms of the two superpowers, driven not so much by the ideals of right and wrong as by ideological alignments and strategic considerations. Repressive, unrepresentative governments and regimes were backed and supported by the superpowers because of their strategic or ideological stand with little or no regard to their domestic legitimacy. With the withdrawal of this support following the end of the Cold War, governments or regimes with the propensity to repress, oppress, and plunder became exposed to internal and external scrutiny and a more determined opposition that they can no longer contain, because they lack the capacity to exercise effective and decisive control over the situation.

This chaotic and often tragic conflict situation paradoxically offers countries and the international community the opportunity to review the normative and operational principles governing domestic jurisdiction and international relations. Foremost of these should be the stipulation of the normative standards of responsibility associated with sovereignty. Rather than a means of barricading governments and regimes against international scrutiny, sovereignty should be recast in response to its contemporary challenges as embodying the will of the people, represented by those they choose through free and fair elections or otherwise accept as their legitimate representatives. Sovereignty must also be viewed as an instrument for ensuring the protection and welfare of all those under its jurisdiction.

A concept that provides the core for formulating such a normative framework remains the human dignity of the individual and the group within the domestic jurisdiction. This concept is provided for in the charter of the United Nations, the International Bill of Rights, and all the human rights and humanitarian principles enunciated in many legally and morally binding documents, including now the Guiding Principles on Internal Displacement. Rather than a means of barricading governments and regimes against international scrutiny, sovereignty should be normatively postulated as an

embodiment of the democratic will of the people and a tool for ensuring the protection and welfare of all those under domestic jurisdiction. The incorporation and embodiment of these human rights and humanitarian norms into the Guiding Principles on Internal Displacement is both a preventive and curative prescription. Governments and other custodians of national sovereignty should see the standards not only as a guide, but also as a yardstick for evaluating their own performance.

Conflict prevention, management, and resolution clearly pose paradoxical challenges for both change and stability. The gross inequities of the status quo need to be scrutinized and moderated, if not eliminated. But preserving a legal order that is protective of and responsive to reasonable standards of human dignity must be seen as an overriding goal. It is with these normative principles in mind that governments and the international community are called upon to address the mounting crisis of international displacement, to prevent it by addressing its root causes, to respond to its human rights and humanitarian tragedies when they occur, and to strive to end it by creating appropriate conditions for safe return or alternative resettlement and restoring normal life in the community and the nation at large.

In conclusion, it should be reiterated that the international community has made considerable progress in responding to displacement, in particular with the development of the normative framework, in the form of the Guiding Principles, and enhancements of institutional arrangements at both the international and regional levels. However, much more remains to be done to give these legal and institutional developments meaningful impact on the ground, and above all, to make governments more responsive to the responsibilities of sovereignty for protecting and assisting their own citizens or else risk undermining their legitimacy both domestically and internationally. The glass is half-full, but that implies that it is also half-empty.

The Child Protection Viewpoint

Alec Wargo

I offer personal, field-based perspectives on the often fraught relationship between education[1] and child protection in armed conflict. This personal perspective, garnered from years working in the protection field, will remove us from the world of guidelines and policies and return us to the flesh-and-bone realities around the globe, where students, their teachers, and their communities often find themselves in the midst of armed conflict.

When Education Protects

At the start of my career in child protection with UNHCR in Central Africa, I was only "theoretically" aware of the role of education in protecting children from harm and abuse during conflict and post-conflict situations, and that education personnel could serve as a linchpin in a community's ability to protect its children.[2] Perhaps I still held a somewhat jaded American view of education as sets of buildings with teachers who tried to fill our heads with bits of information in order to pass a series of exams that would place us later in life into a particular skill or field. Sometimes school challenged us, often it bored us, but it was always there, taken for granted.

It was only after I began to work in refugee camps in the early 1990s, and later with UN Peacekeeping in the field, that I began to truly realize that education—when children do have access to it—is at the heart of many efforts at documenting violations perpetrated against children during wartime. It is also, on many occasions, the primary interface for a human rights worker—the locus and the focus of child rights monitors and advocates' efforts to protect children from violence and abuse in times of utter chaos. This can be broken down into three categories of interest for the protection advocate: (1) education as an alert and as a bridge to response, (2) education and protection from recruitment, and (3) education and rehabilitation and reintegration.

Education as an Alert and a Bridge to Response

Rights advocates who monitor and advocate for protection of children have long recognized that alerts from affected communities are the most efficient way to identify violations against their children. In many cases it is the educationalist who alerts us to these grave violations. In many places, education authorities and teachers are among the most highly respected community members,

and education itself has high value and prestige. Common practice has been that education personnel are often trained in the rights children have to freedom from harm, often a simplified version of the Convention on the Rights of the Child (CRC) and/or aspects of the Refugee Convention or other applicable legal instruments. The training is done with the expectation that it forms a base upon which action for proactive protection of children's rights can be grounded. This is a worthy exercise and has resulted in a number of interesting dialogues with education and community leaders in affected locales. Many of these dialogues have centered on the ability of the child to partake in decisions of his or her life choices, and, of course, a considerable amount of dialogue has been on the rights of girls and women in their societies.

Let us assume for the purposes of this chapter that child rights and their protection in wartime, especially against grave rights violations, are more or less agreed upon across time and cultures. The question then becomes how can we translate this knowledge, this "rights-based" approach, into action that responds to those violations? This action can be difficult, and sometimes almost impossible, in most conflict situations. When a violation has occurred, protection staff are asked by children's families or community leaders to undertake specific interventions. In the large majority of cases, these interventions fall into one of two general categories of action: (1) corrective response and /or (2) accountability response.

For example, in 2002, while serving as a child protection adviser to the UN peacekeeping mission to the Congo (MONUC), I was approached through the local Catholic Bishop about a case brought to his attention by a group of teachers in a village some three days distant. The case concerned an impoverished single mother's only child, a fifteen-year-old boy who had been excelling against all odds at school. A rebel group active in the area had forcibly abducted him while on his way to school some weeks earlier. The immediate request was to remedy the situation: to assist in finding and advocating for the release of the boy as soon as possible. It was felt that an accountability response was not practicable at the time, because the rebel group in question was in complete control of the area and there were no NGO or UN staff based in the vicinity to prevent repercussions against the family.

In another example, from a similarly isolated community, a rebel soldier had raped an eight-year-old girl in front of her home. The headmaster of the community's primary school brought the case to the attention of a local human rights group, and subsequently the members of that group passed it on to me. In this case, the parents sought both a response to the girl's condition and an accountability

response. The girl, along with her mother, was referred to a rape response center for treatment, HIV screening, and psychosocial recovery. The soldier was later tried for the crime, found guilty, and sentenced by a military court.

Teachers and education administrators can, and do, serve as protection alerts with human rights and child rights agencies. However, the crucial factor is whether or not that educator is not only aware of the violations and the child rights perspective but also alert to the need for both a response to and, in some cases, a remedy for those violations. In my experience, these protection alerts can only work if educators are linked meaningfully to advocates and actors who can assist them in accessing services and/or an accountability response. Additionally, a large majority of violations in wartime happen far from major cities and towns, where these actors are normally based. Most might assume that national or provincial education authorities serve as a link from the village to the central or provincial level. But, alas, education authorities are the first to suffer rupture when state control is lost and are often sorely underresourced in conflict-affected states.

The outlook would be bleak if we took such a restrictive view of "education." However, in most cases educationalists do succeed in making these links from farflung regions. When we reexamine these links from the deep field to urban centers, it becomes clear that when we step back and take a broader view of the "education establishment," it is much larger than most would realize. When we take into account the nontraditional education actors in these countries, we see that communities of faith, NGOs, and civil society are all highly active actors in a network of educational activities, both traditional and nontraditional.

The educational establishment should be viewed not only as the remnants of a Western-influenced Ministry of Education apparatus, but also as the communities of faith, as well as local and international NGOs and UN partners that offer one of the most resilient and widespread monitoring and alert mechanisms available to child-protection actors today. These education networks are also one of the best organized and widespread "bridges" to response. While in many places these networks are engaged as major partners for community-based protection, they are unfortunately not always utilized in a systematic fashion by the international community, including the UN system and donors. More must be done to support and more deeply engage this wider educational establishment as a key partner in protection response.

Education and Protection from Recruitment

Though much has been written about how education can serve as a preventative measure against everything from domestic abuse to gender-based violence, most of my personal experience with

prevention of grave violations against children in times of conflict centers around the recruitment of children. It is estimated that approximately 250,000 children, boys and girls, serve as child soldiers around the world at any given time, and their identification and release continues to be a major field of activity for UN, NGO, and civil-society actors.[3]

Educational staff are instrumental in alerting communities to the fact that underage recruitment is a violation of children's rights and can result in untold harm. They are also often an essential first line of defense in preventing recruitment. Schoolgoing children are much less likely to be recruited than those children who are not undertaking some kind of formal or informal education. Why are children who go to school much less likely to be recruited on the whole? Most analyses suggest that children who have access to school, in the large majority of conflict situations where there is no state-guaranteed access to primary or secondary education, are often from less vulnerable families. These are families who have the wherewithal to resist or avoid situations where their children might be directly exposed to armed actors. Their children generally spend the large part of their days in a structured environment, and the link between educationalist community and family can be quite strong. These families, when they do receive warning of impending danger, are often able to move away or use other coping mechanisms to reduce the risk of recruitment of their children.

More vulnerable families either have no means to move or are so destitute that movement would expose them to the direct risk of starvation, or other dangers equal to or greater than the threat of recruitment. Therefore, when we examine the risk of recruitment for school-going children, we appreciate that they are often less vulnerable socially and economically, are able to be alerted through educationalist/community/family lines of communication of impending troubles more readily and, when subject to danger, are often able to move to safety.

School often serves as a community's barometer for trouble, and educationalists are often among the persons in the community consulted on how best to avoid danger. For example, in the South Kivu province of the Democratic Republic of the Congo (DRC), in 2002–2003, the Congolese armed group *Rassemblement Congolaise pour la Democratie-Goma* (RCD-G) began to move its recruitment and training centers farther from urban areas to the isolated island of Idjwi in the middle of Lake Kivu to avoid human rights scrutiny of its child recruitment. The first message I received as the MONUC child protection officer of those recruitments was sent through a human rights worker from a group of teachers on the island. Though the teachers had sent many of their students to the relative safety of the provincial capital of Bukavu to avoid this fate, many children from inaccessible

areas were forcibly taken to the island, and a large number of families who could not afford to move from the area or send their children away were recruited. Most were not enrolled in school at the time of their recruitment.

In similar circumstances we ran into hundreds of children, some as young as ten years of age, associated with the *Conseil National pour la Defense de la Democratie/Forces pour la Defense de la Democratie* (CNDD-FDD) rebel group of Burundi, which had migrated from their training camps on the Burundi border with Tanzania to the Uvira/Fizi area of the DRC, where the group maintained a rear base. Most had spent at most only one to two years in primary school and recounted how the CNDD-FDD targeted them for recruitment because "they had nothing else to do." Most of the children came from broken or extremely poor households with no means to send them to school. Many were forced to work to support the family from the age of eight or nine years old. Almost none of them could read or write.

This socioeconomic argument is important to appreciate fully the direct relationship between access to education and the consequent access to protection from grave abuses. Indeed, the other end of this reality is that vulnerable children with no access to schooling sometimes seek out armed groups for various reasons. It is largely true that most child soldiers are unwilling or forced recruits. However, I have run into a not inconsiderable number of child recruits who willingly "volunteered" to fight with armed forces or groups.[4] In my experience speaking with hundreds of these child soldiers over the years, only a very few were enrolled in school at the time of their recruitment. As mentioned earlier, many stated that they had "nothing to do" and were often in dire economic straits or had suffered estrangement from their parents or caregivers. The deceptive offers of a monthly salary (rarely, if ever, paid) or the chance to feed themselves through pillage or extortion was attractive; and lacking any other alternative, many did "volunteer."

Unfortunately, it took these children little time to realize that their decision was not in their best interest—and months or years of suffering, exposure, and disappointment followed. Many lamented never going to school or not being able to finish school, and the promise of schooling under child demobilization programs led more than one child soldier to walk considerable distances to the nearest UN office or outpost to seek release. Making education, formal and informal, more widely available in communities at risk for underage recruitment should be more seriously considered. Education has a worth as a sign of opportunity and status among children in conflict-affected communities, and that value can, and must, be more deftly employed to prevent underage recruitment in the future.

Rehabilitation and Reintegration

In the area of children affected by armed conflict, the advancement of an educational response for children separated or demobilized from armed forces and groups is probably the most developed to date. Most children desire either formal or informal education or skills training upon release from armed groups, although access remains slow and patchy. The high value most former child soldiers place on education is an end or good in itself, but especially for the older children, it also forms part of their desire to "bring something back home" to their families and communities. My experience speaking with demobilized child soldiers about their next steps has always centered on aspects of what they can now do to become productive members of their family and society.

For the former child soldier returning to his or her community, well-structured education programs can mean a lifeline to "normalcy," a future and, in many cases, a hoped-for wage. The structure and community integrated aspect of these programs, if undertaken properly, can provide a good grounding for efforts to prevent re-recruitment or other abuses, either during the conflict or in the post-conflict phase. These challenges are now even more complex when we consider that the numbers of children demobilized *during* a conflict or immediate post-conflict phase are rising relative to those demobilized only after the conflict has come to a halt and stability has returned. This trend for release of children during conflict is welcome but it comes with its own problems and challenges. Chief among these is the re-recruitment of children who have been reintegrated, in some instances on multiple occasions, back into their communities. Education, the structure and alert functions for protection advocates and actors, remains of high value for successful reintegration and protection of children demobilized while conflict continues.

Educationalists also play a key role in managing the fears and expectations of communities who receive demobilized child soldiers. While many parents and communities naturally welcome their sons and daughters back with open arms, some armed groups use children against their own communities and this can cause deep-seated distrust and fear. The UN and its NGO partners have gone a long way to involve community members, including educational staff, in perceiving former child combatants primarily as victims and to convince fearful parents and neighbors that it is a child's right to benefit from reintegration assistance and that this cannot be done without the active acceptance and participation of the community itself. Alas, each situation is unique, and the work of educationalists and their partners in war-torn communities is different depending on the circumstances prevailing prior to or during release. This only points out that much research and analysis are required to further strengthen this approach.

To some extent, victims of sexual violence follow similar trajectories during their reintegration, though often their interface with education is concealed or is purposefully blurred to prevent the labeling of these boys and girls as sexual victims. This is not to say that educationalists do not undertake or have the potential to lend their support to these children. Indeed, in a number of circumstances known to me, these staff members have been a crucial support to these children and their families.

When Education Fails to Protect

Education is at the forefront in preventing, or responding to, abuses against children in wartime. However, in modern warfare there is a palpable trend in which the educational personnel themselves, and/or the buildings in which that education takes place, become the objects of abuse or play a role in the abuse of children.

Attacks Against Schools

Most rights monitors would identify the 1990s as the watershed epoch, when attacks against schools gained the notice of child protection staff. We saw this in the activities of the Lord's Resistance Army (LRA) in northern Uganda and in southern Sudan, during the Rwandan genocide, and certainly in Liberia and Sierra Leone. We currently witness these attacks in places as varied as Nepal, Afghanistan, Pakistan, the DRC, Somalia, Palestine, and southern Thailand, as well as in the Syrian conflict.

It is easy to oversimplify the commonalities of these attacks. Some were related to wider crimes, such as the genocide in Rwanda, where children and educated men and women, including teachers, were brutally murdered by gangs, many times in schools and churches. The perpetrators were intent on the destruction of a minority community and its perceived sympathizers or, later on, in revenge killings against those who were presumed complicit in the killings due to their ethnic affiliation. It is here that we find education personnel complicit in killings based on ethnic identity. Similar stories were recounted to me when I served as human rights officer with the Organization for Security and Cooperation (OSCE) mission in postwar Bosnia. Sadly, the very pillars of a community, who can give voice to protection and reconciliation, can also stoke the embers of ethnic hatred. This is a constant danger in societies in conflict where ethnic identity is a key factor, and the educational system, in both its personnel and as a packaged set of ideals and perceptions of the world, often stand at the very heart of it.

There are other instances when education and identity politics have led to massive rights violations and where schools themselves have become a central battleground. I think of the recent conflict in Nepal and the politicization of Nepali education, which will haunt that country for some time to come. During that insurgency, the Maoist youth wing concentrated its recruitment efforts on rural schools throughout the country, abducting whole schools for days of Maoist "cultural" programs. These programs funneled healthy recruits as young as fifteen years of age to fighting units and struck fear into the hearts of teachers and education administrators—who had no choice but to look on or risk harm to themselves and others.

In the post-conflict phase in Nepal, the Maoist youth continue to engage in violent acts, both in schools and in their communities. Currently other political parties have followed suit and created their own youth wings, the largest of which is the Communist Party of Nepal–United Marxist-Leninist (CPN-UML). These youth wings are nominally under the control of the parties, and continue to be a source of interfactional violent acts and killings. Their presence and propagation in schools across the country remain of deep concern to those assisting the peace process in Nepal.

Likewise, in southern Thailand, identity politics in the traditionally Malay areas has taken on a violent character. The instruction of Thai language and culture has become a lighting rod for local resistance by armed actors. Students and teachers in these schools, many of them of Malay identity, have been killed in shootings, bombings, and other attacks by armed groups. More worrisome is the effort on the part of Thai authorities to protect these schools by sending military forces to guard them. Though it may be well intentioned, one must question the wisdom of deploying military personnel into schools, effectively making them targets and removing the civilian nature that such centers of learning must display.

Increasingly, there are also the depressing ideological battles fought over the very fundamentals of education. The questions of what can be taught and who can attend school have generated some of the most gruesome attacks against schools and students in recent history. The worst example of this is the current situation prevailing in the insurgent-controlled areas of Afghanistan, and the neighboring border areas of Pakistan, where the Taliban and their allies have wreaked havoc. The crux of the battle concerns two types of ideological issues: (1) are girls fit to attend school at all, especially in the company of boys? and (2) should children be taught anything beyond Taliban-approved interpretations of religious texts? It has now become commonplace for the Taliban or associated leaders to leave "night letters" threatening attacks on schools if they do not cease allowing girls to attend school or alter the school curriculum to reflect their conservative interpretation for educating young people. Girls' schools in particular have been attacked with bombs, poison gas, and

a barrage of threats, and there is little one can do in the more isolated areas until some semblance of security prevails. Add to this the depressing fact that a significant number of madrasas in the border areas appear to be training children to undertake armed conflict as fighters or, worse, as suicide bombers.

Finally, the wholesale attack on schools in the Syrian conflict is extreme. Since the popular uprising against the regime there, schools have variously been used by government forces as bases, machine gun emplacements, detention centers and even places where adults and children are subjected to torture. Many children I met while taking testimonies on abuses against children in that conflict had not been able to attend school for over a year. Teachers as well stated that schools in areas that the government had identified as antiregime were targeted, as were teachers. Many stated that they had witnessed government forces burning or looting schools for what they described as reprisal for perceived sympathy with political change. This reminds us that international efforts to protect schools and students during armed conflict are in their infancy and that much more focus has to be brought to this crucial area.

Infiltration of Education by Armed Groups

When we survey the challenges presented when armed groups attack schools and the difficulties these acts present for protection of education, they pale in comparison to the infiltration of education by armed groups. This does not refer to the abduction or harassment of students and teachers described earlier, but the much more pernicious infiltration of education by armed group cadres and their sympathizers. The latest example of this is the *Palipehutu–Forces Nationales pour la Liberation* (FNL) in Burundi, which, in the period prior to the final peace settlement, demonstrated its hold over sympathizers in the educational establishment, resulting in teachers actively recruiting children for the FNL. It is believed that the recruitment was aimed at securing these FNL sympathizers a demobilization package, which, in turn was promised to the children, although children have been purposely excluded from such schemes in the peace process. Many of these children were exposed to militarized camps for fairly long stretches of time, up to two years, before the FNL agreed to their disqualification. We can also not discount the fact that, if the FNL had not come to an agreement with the government of Burundi, these children would have had a very real chance of taking up arms.

Similarly, in the Congolese refugee camps in Rwanda in the latter half of the 1990s and until quite recently, teachers and community leaders in those camps, sympathetic to Rwandan-backed rebel groups operating in the Kivu provinces of the DRC, actively recruited children to fight the Congolese government forces. As the child-protection focal point for UNHCR at the time, I was

amazed that our data showed that an entire portion of the camps' population (boys aged from thirteen to early adulthood) had effectively disappeared. We knew from the data and corroborating evidence that the boys had been sent for military training or other support roles to either the RCD-G, the Banyamulenge (an ethnic Tutsi group residing in the mountains of South Kivu Province of the DRC) forces, or, latterly, the *Congres National Pour la Defense du Peuple* (CNDP). In this instance, teachers and community leaders were either complicit or were too frightened to give evidence. This recruitment is a worry in a number of refugee camps, where similar pressures exist, and more must be done to monitor and halt such practices.

Finally, testimonies from community members and students in Syria point to a disturbing trend of government intelligence personnel utilizing teachers or school administrators to gather evidence from school children on their political beliefs and attitudes and beliefs of their parents, with sometimes dangerous consequences for those parents. Utilizing trusted educational personnel to gather intelligence is a new and worrisome trend in some anti-insurgency efforts around the world.

The Missing Children

Children missing due to recruitment, either "voluntary" or forced, are a much smaller number than the very real problem of the thousands of children, the most vulnerable, who will never have the opportunity to go to school. In most "failed" or "failing" states, the number of out-of-school children can reach 50 percent and more in the most isolated and poor regions, where conflict usually flourishes. These are the children whom the education establishment certainly fails to protect.

We have shown that education can work as an effective monitor and alert for human rights workers and as a bridge to response. But that very same system falls absolutely flat for these "missing" children, because education never sees their faces. It was not surprising, then, that the majority of the children whom I interviewed upon release from one armed group or another recount how they were not able to attend school; how their impoverished parents were powerless to flee or to bribe their children's recruiters to allow their children to remain; and who are also unable or unaware of the alert function that many educationalists can play. In any case, many of these families live days away from the nearest school or do not feel they are able to share their problems with unfamiliar persons.

If education is to protect all children, and the CRC, the most widely adopted piece of international legislation, states that it should, then the international community must do much more to find ways to expand the education safety net during times of conflict. This could be achieved through the establishment of a range of formal to informal educational outreach and community sensitization

programs. It should most certainly be prioritized in failed and failing states that are in crisis or conflict.

When Education Itself Needs Protection

From the perspective of the Office of the Special Representative for Children and Armed Conflict (SRSG-CAC), one overwhelming question has to be addressed that is of a different nature from the technical discussions on how to ameliorate the condition or respond to violations against children: How do we stop these attacks? How do we break the cycle of violence against children and their teachers in classrooms during conflict?

Former Special Representative Radhika Coomaraswamy has noted the "changing nature of conflict." And, unfortunately, its trajectory is not favorable to children. In the past children were considered peripheral to the conflict. Now they are often at its very center. Though many experts on this matter may argue why and exactly when this phenomenon of targeting of children and education first appeared, it is undeniable that it is now a fact and that these attacks are not abating. In fact, they are becoming more commonplace.

Again, what to do? One word: accountability. Ninety percent of the armed actors cited in the Secretary General's Annual Report on children and armed conflict are nonstate actors. Some of these nonstate actors have proxies that represent their interests on the sidelines of UN events such as the Human Rights Council and the Committee on the Rights of the Child. But the weight of the UN's state-oriented system is generally not sufficient to engender compliance by these parties.

Security Council Engagement

It was with this in mind that the former SRSG-CAC, Olara Otunnu, began a process in 1999 of engagement with reporting to the UN Security Council, positioning children and armed conflict directly on its peace and security agenda. This was the first "thematic" protection mandate to be entertained by the Council in such a way. Things progressed slowly at first, with Annual Reports of the Secretary General speaking of a vague set of violations against children in times of conflict but without a systematized information gathering network to backstop claims of abuse.

The next breakthrough came in 2001 with Security Council Resolution (SCR) 1379 asking the Secretary General to prepare an annual list of parties to armed conflict who recruited and used children under the age of eighteen years in armed conflict, the "list of shame." After this point the

Secretary General also began to call, in a more focused way, for compliance and, when lacking progress, for the possibility of the Council using its power to take measures, including sanctions, against groups and individuals who recruit children.

Actual compliance, however, was slow. This was, first, because the UN system was slow to engage in a concerted campaign in a unified fashion. Second, the information available to the Security Council at the time did not meet the rigorous requirements usually associated with the application of sanctions. Third, compliance work lacked a recognized and agreed format. This was rectified over the next two Resolutions agreed upon by the Council. SCR 1539 of 2004 established the concept of a concrete timebound "action plan" to halt the recruitment and use of children. These action plans called upon the UN country teams to engage with both state and nonstate actors to agree to a set of measurable and timebound activities to prevent recruitment, release children associated with those groups and verify compliance. Failing this, the Security Council reiterated its intention to consider the use of measures, including sanctions, against violating parties. At the same time the Council asked the SRSG-CAC to develop a system-wide plan to strengthen monitoring and reporting on grave violations against children in times of conflict. This was aimed at establishing a more solid basis of information in which the Council might deliberate before exercising its power.

Information Is Power

The Secretary General's plan to provide "timely accurate, reliable and objective information" to the Security Council was unveiled in his report (S/2005/72) of 2005. The plan is important because it defines the way in which reliable information should be collected, verified, and packaged for the Security Council and also identified the six grave violations—including recruitment and attacks on schools—enumerated earlier in this chapter. It also reiterated a call for action plans and an intention to utilize all tools at its disposal to engender compliance among parties engaged in grave violations against children in armed conflict. Most importantly, it also set in place a Working Group of the Security Council that would deliberate throughout the year on specialized reports of children affected by armed conflict, in situations listed in the Secretary General's Annual Report, and make recommendations to the parties concerned, as well as to the Council sanctions committees.

This plan, as set forth by the Secretary General and endorsed by the Security Council, resulted in the first systematic monitoring, reporting and verification mechanisms on child protection. It identified headquarters responsibilities, but it also mandated UN country teams to put in place task forces to undertake systematic monitoring and reporting at the country level. Since that time, the Office of the SRSG-CAC has worked to mainstream monitoring and reporting throughout the UN

system and technically backstop the work of UN country task forces on the design and implementation of action plans. It should be noted, however, that though the Council endorsed the monitoring of six grave violations, including attacks on schools, the action plans remained limited to the halt of recruitment and use of children as soldiers. Both monitoring and reporting (MRM) and the implementation of action plans advanced slowly but have now accelerated to the point where knowledge and expertise on MRM and the design and implementation of action plans to halt recruitment and use are widespread.

At the same time, the Council recognized the need to respond, with a recommendation to parties on the other five grave violations listed in SCR 1612. The crucial lesson learned was that more could be expected of the Security Council Working Group regarding concrete recommendations when more in-depth analysis of the violations were available to them. Information is power, and it can and should be used by protection actors to great effect with this mechanism.

However, with a few notable exceptions, the information available on attacks against schools is largely spotty or absent in the Secretary General's reports on country situations to the Working Group. Circumstantial evidence suggests that protection partners have not spent as much time examining the issue and empowering their partners to report and make suggestions on how to better protect schools and students during armed conflict. Without the information and analysis needed, attacks against schools and students and the power of the Security Council to compel parties to respect and protect education in conflict will remain woefully underdeveloped. Other violations have similarly languished, but advances *have* been made that might prove useful for partners wishing to strengthen the protection of education in conflict through this mechanism.

In July 2011, in its Resolution 1998, the Security Council expanded the listing criteria to include those parties to conflict who perpetrate or threaten to perpetrate attacks against schools or school personnel. This is important for the additional attention and focus it will generate for country teams dealing with attacks against schools and students, and it will also result in mandatory action plans to cover this violation. Much work remains to be done, both at headquarters and in the field, in response to these new challenges for protection, and it must include reaching out in a more concerted way to UNESCO, educationalists, and human rights partners in the field.

As stated earlier, it is expected that, when violations are identified, country teams can suggest Security Council interventions as well as actions the parties should take under applicable national and international law. For genuine protection of education and students in armed conflict to become a reality on the ground, UN specialized agencies and their partners must sustain efforts at better monitoring and reporting on attacks against education. Additionally, joint MRM task forces should

utilize monitoring and reporting on attacks on education to strengthen their advocacy and recommendations to the Security Council Working Group on Children and Armed Conflict (CAAC). Information is power. Its efficient delivery to those who can hold violators accountable is an opportunity that we can no longer afford to ignore.

Conclusion

I wish to reiterate that more can be done to protect education from attack in all its manifestations, to improve the ability of education to protect children, and to strengthen MRM to protect education in armed conflict.

With this in mind, I would make the following recommendations to the UN system, protection partners, educationalists and donors:

Education is a key stabilizer and must be a part of any emergency planning in conflict prone or conflict-affected areas. Education's role in protecting children from abuse and harm through either direct action or alerts to protection personnel cannot be overstated.

Protection should be seen as a crucial part of education in conflict-affected countries, and funding and training for protection should be built into any programs for these states.

SCR 1612 and 1998-mandated monitoring and reporting can serve to better protect education during conflict, and UNESCO, educational agencies, and NGOs involved in education can and should join country task forces to better monitor attacks on education and to advocate with the Council on appropriate actions as well as action plan engagement with concerned armed forces and groups.

Education outreach for vulnerable communities pre- and post-conflict is an important protection tool. Donors and agencies planning for child protection must seek to ensure broader coverage of disadvantaged communities.

Preserving Humanitarian Space in Long-Term Conflict

Peter Hansen

With very few exceptions, it has been considered self-evident among those in the humanitarian community that to achieve a reasonable measure of success humanitarian action in conflict zones should be predicated upon notions of neutrality and impartiality. In recent years, particularly following the outbreak of numerous local and regional armed conflicts in places such as Angola, Afghanistan, the Balkans, Iraq, Sierra Leone, Burundi, Ethiopia and Eritrea, Chechnya, Colombia, and East Timor, an increasing number of observers have challenged this traditional presumption of humanitarian action, arguing that "humanitarian actors are deeply involved in the political sphere."[1]

For anyone familiar with the humanitarian imperative that has come to define so much of what the United Nations (UN) has stood for since its founding, the implications of this challenge are great. If humanitarian space is purposefully compromised by assuming a political character, the risk of that space collapsing altogether becomes all too real. Some have suggested that the attack on UN headquarters in Baghdad in August 2003 was the result of "a dangerous blurring of the lines between humanitarian and political action" and "the consequent erosion of the core humanitarian principles of neutrality, impartiality and independence" of the UN humanitarian mission.[2] This line of thought maintains that the gradual erosion of humanitarian space in Iraq has been the result of the "choices made" (i.e., policy choices) by the international community through the UN since 1991, beginning with years of hard-hitting sanctions imposed by the Security Council, followed by "the lack of a clear UN mandate" in the aftermath of the US invasion and occupation of Iraq in 2003.[3] The conceptual dilemma it presents is something that would seem to require the careful consideration of all who find themselves on the front-line of humanitarian action in conflict zones, particularly at this critical juncture in the history of the humanitarian enterprise.

This chapter examines what is meant by the concept of humanitarian space, and how such space is best maintained in conflict zones while taking into account divergent views on the subject. To this end, I explore how the largest humanitarian actor in the Middle East—the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)—has struggled to maintain its humanitarian space in a particularly volatile conflict zone for over five decades.

Humanitarian Space: Principles, Challenges, and UNRWA's Experience

In his 1995 Annual Report, former Secretary-General Boutros Boutros-Ghali noted that "safeguarding both the concept and the reality of 'humanitarian space' remains one of the most significant challenges facing the humanitarian community."[4] But what exactly is meant by the term humanitarian space? It has been variously described, *inter alia*, as follows:

> "Humanitarian space is more than a physical area; it is a concept in and through which impartiality and non-partisanship govern the whole of humanitarian action … in moral terms"'"; [it is] "a space that is not delimited, that is made up of tolerance and respect for each and every individual once they are wounded or captive, and displaced persons or refugees, no matter to which side they belong."[5]

> "If we assume that war and violence are extensions of the political, then we understand the traditional description of humanitarian space as an area separate from the political."[6]

> "Humanitarian space is a dynamic term. Far from being like a walled room of fixed dimensions, humanitarian space … expands or contracts depending on circumstances. It may be circumscribed— or expanded—by the actions of political and military authorities; it also may be enlarged—or contracted—by humanitarian actors themselves. In short, humanitarian space is neither durable nor transferable but elastic."[7]

> "Humanitarian space is that space where humanitarian assistance is provided on the basis of need and is delivered with impartiality. Humanitarian space is 'owned' by humanitarian agencies and actors and extends from their inherent values of independence and impartiality. Military forces must minimize any movement into 'humanitarian space.' Any such movement serves to blur the distinction between humanitarian and military actors."[8]

It is apparent from the preceding characterizations that humanitarian space is based upon two central assumptions. First, it exists simultaneously on both a physical and moral plane. Accordingly, medical relief convoys and hospitals are as much a part of humanitarian space as the awareness by military and paramilitary actors that refugee camps must be respected as violence-free civilian areas. Second, humanitarian space is predicated on the need to maintain designated areas that are neutral and impartial within larger spaces that are inherently political. For example, in the heat of a military conflict between two or more combatants, the provision of medical aid to civilians and other noncombatants in designated health clinics must be protected and respected as inviolable by all parties. Historically, especially over the course of the twentieth century, the concept of humanitarian space has evolved in response to the increasing level of violence experienced by and directed towards civilians and other noncombatants in times of war. In answer to the need to provide protection and assistance to such vulnerable populations in conflict zones, neutral and humanitarian institutions such as the International Committee of the Red Cross (ICRC) and the UN were

established, and the international community promulgated an extensive body of international humanitarian law,[9] central tenets of which have been the concepts of humanitarian action and humanitarian space. In the context of the Arab-Israeli conflict, UNRWA has maintained a humanitarian space over its fifty-three-year history that is unique in the UN system. From focusing in its very early years on refugee reintegration activities, UNRWA has developed into a multifaceted organization that provides essential education, health, relief and social services, and microcredit to more than four million Palestine refugees throughout its areas of operations. In addition, the vast majority of the over 300,000 agency staff are Palestinian refugees themselves, which itself uniquely marks the humanitarian space that UNRWA occupies.

Because of the highly volatile and prolonged nature of the conflict in which it operates, UNRWA has been compelled to maintain its humanitarian space in a wide variety of "conflict" situations, including periods of war (1956, 1967, 1973, and 1982), periods of limited and prolonged occupation (1950–1966, 1967–present in the West Bank and Gaza Strip; 1982–2000 in Lebanon) and periods of insurrection or closure (1970 in Jordan; 1987–93, 2000–present in the West Bank and Gaza Strip). In each of these periods, UNRWA has faced numerous challenges to its humanitarian space, including: threats to the physical safety and security of its staff and beneficiaries; the detention without charge or trial of its staff; curtailment of the freedom of movement of its vehicles, goods, and staff; the misuse, damage, and/or demolition of its installations and premises; and the damage and/or destruction of refugee shelters.

While UNRWA has exerted great efforts to maintain its humanitarian space over the years, the period since September 2000—the month in which the current intifada in the Occupied Palestinian Territory (OPT) began—has presented some of the most difficult challenges in its history. Limitations enforced on UNRWA's humanitarian space have been numerous, and have included severe access restrictions and armed attacks on its personnel and installations.

Many of these limitations on UNRWA's humanitarian space have contravened applicable principles of international law, including the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations, the Fourth Geneva Convention and the 1967 bilateral exchange of letters between UNRWA and the Government of the State of Israel (known as the Comay-Michelmore Agreement).

In addition to the Arab-Israeli conflict, armed conflicts in other regions in recent years have given rise to a debate as to whether humanitarian action must be neutral and impartial in order to be effective in meeting its goals. According to Weiss, a number of developments in the 1990s—including "the complete disregard for international humanitarian law" in conflict zones, "the direct

targeting of civilians and relief personnel," and "the protracted nature of many so-called emergencies that in fact last for decades"—has split the humanitarian community into two groups.[10] On the one hand are the traditionalists who "believe that humanitarian action can and should be strictly insulated from politics," and on the other are the "political humanitarians, who believe that political and humanitarian action cannot and should not be disassociated."[11] This split has been exacerbated by the international community's increasing willingness to deal with humanitarian crises as threats to international peace and security, most particularly in high profile cases, allowing for the simultaneous and at times combined deployment of military and humanitarian personnel in conflict zones.[12] This incremental integration of the military with the humanitarian witnessed in recent years has brought into sharp relief the dilemmas of humanitarian action and the maintenance of humanitarian space in the contemporary period, and "carries crucial policy and institutional implications for the humanitarian enterprise."[13]

A good example of a conflict that captured the essence of the debate and the resulting dilemma is the war in Kosovo. For the traditionalists, the widespread reference to that war as "humanitarian" was regarded as a particularly striking, if not offensive, oxymoron. As noted by one traditionalist,

> How can a war—essentially something that causes destruction, losses and unspeakable suffering—be 'humanitarian'? Even if the motives are of a humanitarian nature—defending the basic rights of any human being—war itself cannot be 'humanitarian.' This most inappropriate libel … has been very detrimental to the humanitarian concept itself, and to humanitarian action as such. The 'merging' of military and humanitarian operations has been facilitated by this gross contradiction in terms, and the ensuing confusion has grown exponentially.[14]

For the "political humanitarians," such "confusion" was a welcome development. In their view, the simultaneous bombardment of Serb forces along with the provision of relief assistance to Kosovar refugees made it possible to stop even greater atrocities before they took place, thereby saving more lives as well as bringing about conditions for a relatively quick political settlement. In this sense, the resort to force was the lesser of two evils, and one that better served the ultimate objectives of humanitarian action.

To the traditionalists, because humanitarian space is neutral and impartial, its proper maintenance depends upon its separation from the political and violent. Because such space is viewed as finite, traditionalists hold that if it is increased there is necessarily less space available for the political /violent and vice versa.[15] Warner has noted that this "zero-sum" relationship has particular

"implications for the occupation of a bounded area,"[16] such as during a state of belligerent occupation. For example, if a legal aid center run by a humanitarian agency is raided and shut down by an occupying power, or the protection afforded to refugee camps is violated by military or paramilitary actors, the total area of political/violent space has increased at the direct expense of the humanitarian space formerly maintained by the humanitarian actor. Such has been the case on a number of occasions where UNRWA installations in the OPT, schools and health clinics among them, have been forcibly commandeered by Israeli military forces for use in military operations, or when both the Israeli military and Palestinian militants violated the humanitarian space of the refugee camps in the OPT by conducting armed activities in them.[16]

For political humanitarians, on the other hand, humanitarian space and the political/violent do not operate in a zero-sum context. They argue that the expansion of humanitarian space allows for the parties to the conflict to avoid having to reach a swift political settlement, ultimately resulting in greater civilian suffering. As Warner notes:

> The recent rise in interest in humanitarian affairs is an abnegation of responsibility by those in power. That is, instead of admitting that civil wars or outbreaks of violence … are very political activities, these outbreaks are termed humanitarian crises in order to avoid hard decisions about what to do … In this sense, upholding humanitarian principles is a *political* move that may undercut the ethical basis of the [humanitarian] organization's activities [emphasis added].[17]

The maintenance of humanitarian space is therefore seen by political humanitarians as an act that effectively shifts "attention away from the politics at the heart" of a conflict, thereby allowing it to continue interminably while humanitarian agencies scramble for limited budgets to dole out "Band-Aid" operations on an ostensibly "temporary" basis.[18] UNRWA has been subjected to such criticism over the years by both parties to the conflict.

On one hand, Israelis and other supporters of Israel have accused the UNRWA of "keeping the refugee issue alive" by reaffirming Palestine refugee identity and rights, thereby rendering a political settlement of the problem in their view far more difficult to achieve. On the other hand, some Arabs and Palestinians have accused the UNRWA (as well as other international organizations) of providing a "humanitarian cover" for the Israeli occupation, thereby relieving Israel of its humanitarian obligations under international law and enabling what in law is meant only as a temporary condition to remain prolonged and without a final political settlement.

Is the divide between traditionalist and political humanitarian approaches unbridgeable? Is there a more nuanced and less polarized way to approach the maintenance of humanitarian space in conflict

zones? It would seem that "humanitarians cannot deny political realties,"[19] and that political actors in a conflict must acknowledge that they too have a vested interest in opening and helping to maintain humanitarian space that is neutral and impartial. As noted by Mary Anderson, the key factor that must be accepted by all humanitarian actors is that, irrespective of motives, the aid they provide has multiple political impacts and can either exacerbate or ease the conflicts amid which they work.[20] For instance, "to the extent that international aid agencies assume responsibility for civilian survival in war zones, the aid they provide can serve to release whatever internal resources exist for the pursuit of the conflict."[21] In this way, it can be said that humanitarian aid carries with it certain "substitution effects."[22] As noted above, in the context of UNRWA's work, the Agency has been accused by the Palestinians that its vast array of humanitarian and human development aid has effectively underwritten the Israeli occupation, relieving the occupying power of the tremendous financial burden of administering the occupation and enabling it to divert precious resources toward consolidating its military control over the OPT. Similarly, international aid can have "legitimization effects," in the sense that the recipients of such aid may regard the fact of their receiving it as a legitimization of their political cause or struggle. This is particularly true if the recipients are a distinct group belonging to or overlapping with a party to the conflict. Again, in the UNRWA context, it is widely known that the Palestine refugees consider the Agency not merely as an international aid agency providing for their essential needs, but also as the physical/institutional embodiment of the international community's commitment to their welfare. In this way, UNRWA can be said to be perceived by its beneficiaries as "humanitarian plus" in both its role and identity.

Humanitarian aid can also have certain "distribution effects," essentially referring to the divisions that necessarily result among people in a conflict zone when aid is provided to one group to the exclusion of others. As a humanitarian actor charged with the task of assisting the Palestine refugees in areas that include considerable numbers of Palestinians who are nonrefugees (in the UNRWA definition of the term), UNRWA has come under the criticism that its humanitarian aid has actually increased divisions among the Palestinians and done relatively little to assist a large sector of the Palestinian population that, in many cases, is as needy as the Palestine refugees themselves.

Although Anderson's analysis treats politics as forming an integral part of the role of humanitarian actors, adopting it is not inimical to the core principles of humanitarian space as neutral and impartial. On the contrary, this approach actually demands that neutrality and impartiality continue to form the cornerstone upon which humanitarian space is maintained. Neutrality, in this sense, cannot be understood merely as not taking sides in hostilities or engaging in controversies of a

political or ideological nature, as defined by the ICRC, for instance.[23] Rather, neutrality should be the principle by which a humanitarian actor provides assistance in conflict situations where such assistance is objectively required, having no regard to the dictates or political positions of the parties to the conflict. Neutrality cannot mean equidistance between the parties to the conflict, and a humanitarian actor must position himself based on an ethical compass of justice and fairness. Likewise, impartiality must be understood as making no other discrimination in the provision of humanitarian aid other than on the basis of need, giving priority to those most needy. In this sense, identification or sympathy with race, religion, nationality, and other such characteristics must have no bearing on the provision of aid. In essence then, the efficient and effective humanitarian actor must continually act, and be seen to be acting, as making a good faith effort to remain neutral and impartial in situations that are inherently political. This is not an easy task, by any objective account, but it seems to be one that is required if humanitarian space is to be maintained in a world where the tragic effects of war and conflict are increasingly being borne by civilians. As noted by Weiss:

> In today's world, humanitarians must ask themselves how to weigh the political consequences of their action or inaction; and politicians must ask themselves how to gauge the humanitarian costs of their action or inaction. The calculations are tortuous, and the mathematics far from exact. However, there is no longer any need to ask whether politics and humanitarian action intersect. The real question is how this intersection can be managed to ensure more humanized politics and more effective humanitarian action. To this end, humanitarians should be neither blindly principled nor blindly pragmatic.[24]

In addition to the effects of resource transfers on conflict zones listed earlier, Anderson identifies a number of "implicit ethical messages" in humanitarian activity that also affect conflict. One of these messages is the idea of "impunity" of humanitarian staff who control scarce resources, such as vehicles and fuel, and sometimes "use them for [their] own pleasure without accountability to the people for whom the resources were intended, even when their needs are great."[25] Another such message is the idea of valuing lives differently,[26] highlighted when international aid agencies furnish expatriate staff with supplemental "hazard" pay for serving in particularly harsh duty stations, while failing or being unable to extend similar benefits to local staff. While humanitarian action carries with it a number of other implicit ethical messages, these few examples highlight the difficulty inherent in maintaining humanitarian space without attracting criticism from those who are affected by it. Like many other humanitarian actors, UNRWA has faced criticisms of an ethical nature while seeking to maintain its humanitarian space. For example, funding constraints have prevented

UNRWA from extending "hazard pay" to its area staff on a continuous basis, though expatriate staff receive the same.

As noted earlier, humanitarian space is elastic and its contours are continually defined by the parties to the conflict and the humanitarian actors involved in the situation. Special attention must be given to those occasions where a political actor's perceptions impel it to limit humanitarian space to the point where the continued maintenance of that space becomes virtually untenable. Such cases often occur where a party to the conflict enjoys a preponderance of power in a given conflict zone, such that any limitation of humanitarian space by that party is justified under the doctrine of "military necessity" or "national security." Resort to "security" interests provides the disproportionately powerful party to the conflict with a discretion that effectively trumps the efforts of the humanitarian actor to maintain humanitarian space. This problem is compounded by two factors. First, the notion of "military necessity" or "national security" is itself so nebulous as to allow the claimant very wide latitude vis-à-vis the humanitarian actor. Second, the claimant enjoys such overwhelming control over the physical space in which the humanitarian actor operates, that there is usually little that the latter can do to actually reverse developments on the ground. In the OPT, the Israeli authorities often state that the restrictions on UNRWA's humanitarian space are necessary due to considerations of military security or are justified under Israel's inherent right of self-defense. One of the bases upon which this claim is advanced is the Comay-Michelmore Agreement, which requires the government of Israel to "facilitate the task of UNRWA to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security." At no time have the Israeli authorities and UNRWA been able to agree on the scope or application of the language relating to "military security." While UNRWA has taken the position that the term can only be construed narrowly in the specific emergency context of the immediate postwar period in June 1967, and is in any event not applicable by virtue of Article 103 of the UN Charter,[27] Israel has taken the position that the term continues to apply to its operations in the OPT, more than 5 decades after the close of the 1967 hostilities, and has traditionally construed it very liberally. This has resulted in greater limitations on humanitarian space in the OPT than UNRWA believes are reasonably necessary.

When one party to the conflict is so powerful as to enjoy overwhelming control over the physical space in which the humanitarian actor operates, it is useful to consider the options available to maintain humanitarian space. One of the more obvious options is for the humanitarian actor to engage the powerful party in negotiations/discussions on issues of concern, including reference to relevant provisions of international law, status agreements which the humanitarian actor may have

with the powerful party, and general appeals to the humanitarian imperative and practicalities. Here, skills of persuasion and diplomacy must be employed in convincing the powerful party that the maintenance of humanitarian space in the conflict zone is ultimately in its own interests, not only military, political, and economic, but moral as well.

When such negotiations/discussions are exhausted, another mechanism that is available is to attempt to persuade the powerful party to cease its limitations on humanitarian space through public pronouncements, either in the media or otherwise. This has been put to good use in many conflict zones in defense of human rights and protection of civilian persons and refugees, among many others. It is a widely accepted form of conflict management and moral suasion that can, if employed properly, be utilized to great effect. This is particularly so in the current information age, where sources of information are unprecedented and knowledge can be transferred around the world, quite literally, at the click of a button. What must be stressed, however, is that publicity must not be used in a frivolous manner nor resolved to in haste. As in negotiations, good judgment is required in making the decision to "go public" and reticence in doing so is generally to be advised, if only for the sake of maintaining credibility and guarding against any backlash that may result from alienating the powerful party to the conflict. Should publicity fail to render a result, however, the humanitarian actor may look to regional and ultimately international intervention to help maintain its humanitarian space. The increasing number of times the international community has resorted to the use of sanctions and even military force since the early 1990s is well documented. Suffice it to say, that both the Security Council and regional bodies, such as NATO, have been employed in various conflict zones around the world in the name of humanitarian assistance, which itself has increasingly allowed the concept of "humanitarian intervention" to be debated by policy makers, academics, and commentators alike. Of course, humanitarian intervention is a matter that only states—and then only a very limited number of states at that—may initiate, but there have been precedents where humanitarian actors have played a central role in the intervention effort once underway. Examples include the UNHCR's role in repatriating and providing humanitarian aid to refugees in Iraq, Bosnia-Herzegovina, Kosovo, East Timor, and Afghanistan.

For its part, UNRWA has not accepted limitations on its operations and has sought to engage the parties to the conflict in a dialog, at times resorting to publicity in an effort to maintain its humanitarian space. Thus, it has continued to make representations to the Israeli authorities at all levels, including meetings with the Israeli Ministries of Foreign Affairs and Defence, to have constraints on UNRWA's humanitarian space removed or alleviated. As a matter of policy, UNRWA has agreed, without prejudice to its positions of principle under international law, to consider

pragmatic solutions that attempt to meet legitimate Israeli security concerns, while easing the movement of its staff members and other such restrictions on its humanitarian space. On other, far more limited occasions, UNRWA has issued public statements on the situation of the refugees (for instance with regard to the demolition of refugee shelters) casting light on the practices of various parties to the conflict and calling upon them to change their behavior. Finally, on an even more limited number of occasions, UNRWA has relied for support of its humanitarian activities on the international community through the General Assembly and the Security Council, albeit not through economic sanctions and military force, but through the reaffirmation of the need to support UNRWA in ensuring "the safety of civilians" in the OPT and calling on all parties to "respect the universally accepted norms of international humanitarian law" as stated for example in Security Council Resolution 1405 of 19 April 2003. Overall, UNRWA's efforts to engage the Israelis on these issues has been unrelenting and principled in its commitment to core humanitarian values. Nevertheless, the responses of the Israeli government have been grossly inadequate to address these issues. According to a November 2003 status report issued by the Task Force on Project Implementation in the OPT, the "multiple assurances" given by the Israeli government that "humanitarian aid will be fully facilitated … contrast dramatically with the facts on the ground," and the "operational environment" has "deteriorated to a degree which many donors consider both unmanageable and unacceptable."

Nevertheless, very serious limitations continue to be imposed on UNRWA's humanitarian space in the OPT, primarily, though not exclusively, by the occupying power. Israeli soldiers throughout the OPT have on many occasions failed to show respect for UNRWA personnel, their vehicles, or their identification cards, as required under international law. On-duty staff members also have been verbally abused, physically assaulted, threatened at gunpoint, and shot at. Since March 2002, eight UNRWA staff members have been shot and killed by Israeli troops, and agency ambulances have been shot at by Israeli soldiers. In addition, there have been many instances where UNRWA installations, particularly schools, have been shot at by Israeli troops, resulting in a number of deaths of and numerous injuries to both school staff and pupils. For their part, the Israeli authorities insist that such shooting incidents occur only because Palestinian militants fire on Israeli positions and settlements from within UNRWA school compounds. While there have been a very limited number of such incidents at the beginning of the current intifada, UNRWA moved to provide twenty-four-hour unarmed guards for all of its facilities and called on the Palestinian Authority for greater police protection. In addition to violating UNRWA's privileges and immunities, even the search and inspection procedures imposed by the Israeli authorities on agency staff in the OPT can pose a threat to their safety and well-being. Such was the case in the Gaza Strip where UNRWA staff and vehicles

are required to be searched prior to being allowed to enter the Al Mawasi area. Accessibility to health service installations in the OPT has been hindered for both patients and staff, including those being transported in ambulances and requiring critical care.

In the face of such seemingly overwhelming obstacles, the humanitarian actor must make every effort to engage parties to a conflict that resort to "military necessity" and "national security" grounds on their own terms. As noted, the humanitarian actor must challenge, wherever reasonable, the logic upon which such claims are based. An effort must be made to convince the disproportionately powerful party that its "security" may not reasonably be under threat and that its overall national interests may in fact be better served by helping maintain humanitarian space intact. Such efforts require a good understanding of basic international humanitarian law doctrine such as military necessity and proportionality, and a willingness to engage the political actor on these terms. They also require an acknowledgment on the part of the humanitarian actor that the neutrality and impartiality of the space it aims to maintain sometimes depends on actively engaging with political players, and that given the balance of power on the ground, their efforts may often produce little or no results. Such are some of the pitfalls of maintaining humanitarian space in conflict zones that have been marked by protracted political disputes.

UNRWA's efforts in actively defending and maintaining its humanitarian space in the OPT have encompassed a wide array of activities and programs. Foremost among them has been its Refugee Affairs Officer (RAO) Program initiated during the intifada of 1987–1993. Following the request of the Secretary-General to enhance its "general assistance" capacity in the OPT, the RAO program was launched in 1988 to facilitate UNRWA operations in the difficult circumstances of the intifada and to provide a degree of passive protection to the refugee and nonrefugee population of the OPT. The program included a "legal aid scheme" run by UNRWA for the benefit of the refugees. Following the conclusion of the Declaration of Principles of Interim Self-Government Arrangements (DOP) in 1993, the RAO program was phased out.

In 2001, UNRWA launched the Operations Support Officer (OSO) Program to reinforce its existing operations in the OPT and to help deal with the increasingly severe access restrictions faced by the UNRWA. Like the RAO program before it, the OSO program aims to maintain the humanitarian space in which UNRWA operates. It has accomplished this by, *inter alia*, helping to facilitate access of staff members and UNRWA vehicles, reporting on the developing humanitarian crisis in the OPT, and in monitoring and inspecting all UNRWA installations on a regular basis to ensure that they are not being used for any unauthorized or improper purposes.

Another important policy of UNRWA that has helped it maintain its humanitarian space has been the standard requirement of its staff to remain at arms length from all activity, particularly political, that may call into question the neutrality and impartiality of its humanitarian mission. Among other things, agency staff have been instructed to conduct themselves in accordance with established principles and practices of the UN and of the need to refrain from engaging in any activity that is incompatible with their status as independent and impartial UN civil servants. In particular, staff have been informed that they must be scrupulous about the protection of UNRWA installations against any kind of abuse or unauthorized use which may reflect negatively on the agency's position as an independent and neutral body of the UN, including ensuring that political meetings are not held in UNRWA installations, that posters of a political nature are not affixed to the premises, and that UNRWA property, including vehicles, is not in any way used for any purpose unconnected with UNRWA operations. UNRWA staff have been informed that any misuse of their position will—in addition to creating legitimate apprehensions in host countries, in the occupying power, and in donor states, regarding the confidence to be reposed in the agency—result in disciplinary measures being taken against the staff member, including the possibility of dismissal. Although these statements of UNRWA's commitment to neutrality and impartiality have been accepted by its staff, some criticism has been levied by staff members and the wider Palestinian community accusing the agency of attempting to infringe upon the right to free speech of its staff members. This is demonstrative of the tension that exists in the process of maintaining humanitarian space not only in the OPT, but in any conflict zone where local staff strongly identify with one or the other party to the conflict.

What of the future of humanitarian space? Lincoln Chen has noted that "the ultimate shape" of humanitarian space "is being contested by public policies and action on-the-ground," and "will be determined, in part, by new issues, new ideas and new players."[28] One such idea is the concept of comprehensive "human security" which he identifies as having "four basic principles": first, that human security is "people-centered," as opposed to state-centered; second, human security comprehensively promotes freedom "from both violence and poverty"; third, human security is strategically based on protection from the state and empowerment at the grassroots level; and fourth, human security is interdependent in the sense that the security of one can never be achieved at the expense of another.[29] The idea of comprehensive human security meshes neatly with global developments on every score, from the social-scientific to the political, from the economic to the technological.

As noted earlier, the information age has played a significant role in helping expand and maintain humanitarian space in conflict zones. All signs indicate that the role of media and information in this

regard will only intensify as technology and access to it develops. A good example of the use of technology and information to expand and maintain humanitarian space are the specialty websites devoted to the topic of humanitarian intervention and activism, such as the OCHA-run Relief-Web. This is in addition, of course, to the growing body of academic and specialty journals on humanitarian action, refugees, and other such subjects with a humanitarian focus. For its part, UNRWA has its own website and has regularly made use of the media (through press releases, interviews, and periodic newspaper articles) to help promote its mission among its stakeholders and the international community at large, all of which has enhanced its ability to maintain its humanitarian space.

In conclusion, it can be said that the decade since the end of the Cold War has been an immense challenge for all humanitarian actors. The marked increase in interstate and intrastate conflict, low-intensity conflict, and the rapid proliferation of nonstate actors in conflict situations has caused untold suffering to innocent civilians around the world. These events have posed considerable challenges to the maintenance of humanitarian space in conflict zones. The humanitarian community today has to tread a fine line while adhering to principles of neutrality and impartiality in areas that are inherently political and usually violent. While UNRWA is unique in the UN System by virtue of its organizational status, beneficiary base, and evolution of its mandate, it has faced and continues to face the same challenges in maintaining its humanitarian space that all humanitarian actors now have to deal with. UNRWA's experience with multiple conflict situations, in the OPT in particular, provides a useful example for other humanitarian actors to follow. It goes without saying that the contours of humanitarian space will continue to be shaped by those who are actually engaged in the activity of humanitarian intervention—states, multilateral organizations, and civil society actors. As such, new measures to promote the idea of humanitarianism all over the world, most particularly in conflict zones, should be developed in a manner that highlights the great importance of the values that lie at the core of humanitarian action and space, including neutrality and impartiality, but also encompassing core principles of justice, fairness, equality, and liberty.

Humanitarian Action in a New Barbarian Age

David Rieff

If the hope for human progress and for a better world can be said to rest on anything, it rests on the great documents of international law that have been promulgated since the end of the Second World War. These include, first and foremost, the United Nations Charter and the Universal Declaration of Human Rights. But while these documents offer a global vision of what the world might become if humanity is lucky, they remain more hope than reality. In contrast, the corpus of international humanitarian law, that is, the rules governing armed conflict, have actually proved its utility again and again over the course of the past half-century. The four Geneva Conventions and their Additional Protocols, the Genocide Convention, and, more recently, such initiatives as the Rome Treaty banning landmines, are no mere pious sentiments. They have saved innumerable human lives. Think, for example, of the fact that since the adoption of the international treaty that banned the use of poison gas as a weapon of war, gas, so ubiquitous in the trenches of the Western Front during World War I, has probably only been used a handful of times since. Norms, it seems, can sometimes influence realities.

That said, it would be a misreading of history, and, perhaps, a culpable exercise in self-flattery as well, to make a fetish of the law and imagine that realities will invariably or inevitably migrate toward norms. Despite the more grandiose claims of human rights activists, as well as of distinguished philosophers such as Jürgen Habermas, the record is more mixed: Over the course of the past half-century, there are examples where they have and examples where they have not. The full legal emancipation of African Americans in the US civil rights movement of the 1950s, 1960s, and 1970s is an example of a law-based reform or, to put it differently, a normative transformation that did end up transforming American social reality even though at least a significant minority and possibly even a majority of Americans were against such decisions as *Brown v. Board of Education* when they were first handed down. And yet, in contrast, normative changes related to the status and treatment of children encapsulated in the UN Convention on the Rights of the Child have had limited impact outside the developed world despite the best efforts of many dedicated activists and political figures.

In other words, the record is mixed. Those who believe that human progress is inevitable often describe this as a matter of "two steps forward, one step back," as the former head of Human Rights

Watch, Aryeh Neier, did in his history of the human rights movement. This is not to say that no progress has been made or that it is unreasonable to expect that more will be made in the future. To the contrary, even among those of us for whom the Classical Greek vision of history as cyclical seems to conform better to the realities of our sad world than the Christian, Marxist, or, indeed, liberal expectation that progress in the moral order of the world is as bound to take place as progress in scientific understanding, would hardly want to do away with the notion of progress altogether. As the great liberal realist, Raymond Aron, once put it, "if one is not [an advocate of progress], what is left?" Humanity, he added, had no hope for survival "outside of reason and science."[1]

Aron's conclusion in large measure amounted to insisting that one had to be optimistic in spite of what one knew—"despite the twentieth century, I remain an advocate of progress," was the way he put it. This is not to be confused with the more self-congratulatory fables that have captured the imagination of far too many decent people in the contemporary world, and that revolve around the notion that a "revolution of moral concern"—the phrase is that of the Canadian writer and erstwhile politician, Michael Ignatieff—began in the aftermath of World War II, gave rise to the United Nations system as well as to the transformation of both the concept of state sovereignty and the reach of international law. For those who believe in its reality, this revolution has no downside, no tragic element to it (unlike all previous revolutions in human history, whether economic, like the Industrial Revolution, or political, like the American Revolution). Instead, it promises to usher in a better world in which the worst human cruelties and historical tragedies—another World War I, Shoah, or Gulag Archipelago—will not be permitted to unfold and whose perpetrators will not enjoy the impunity that they have throughout most, if not all, of human history.

Aron was not an optimist. Nor, lest it be forgotten, were the founders of the United Nations. To the contrary, many of them had been soldiers and all of them anguished observers of the most terrible war the world had ever known. They were idealists, not utopians, and steely idealists at that. But if an Eleanor Roosevelt or a Gladwyn Jebb viewed the nascent world body as a means of preventing the kind of descent into the inferno that the Nazi experience had revealed to be a constant human possibility rather than as a means of inducing any ideal world order, their successors gradually became more optimistic. A document like Secretary General Boutros Boutros-Ghali's 1991 "An Agenda for Peace" described a world that really might be perfectible. And the final documents that accompanied the decade-long extravaganzas of UN conferences of the 1990s, culminating in the formulation of the so-called Millennium Development Goals, had a similarly utopian tinge to them. Poverty would be halved by a date certain; States that abused their own populations would be forced to desist because the Westphalian order, with its culture of impunity,

was fading and we were entering the age of rights. War would be limited in scope, with limitations on what weapons could be employed when and where, steadily expanding protections for noncombatants, property, and cultural and religious sites growing in scope.

This would happen, activists often argued, because of the transformation and expansion of legal norms and the campaigning of civil society groups. The context for the change would be the UN, which was viewed (and, indeed, for all its faults continues to be viewed in this way by many people throughout the world) as the sole legitimate authority for international rules that could apply to all of humankind. The fact that the UN was an institution without much real power and that the term civil society is so nebulous as to be more a sociopolitical Rorschach blot for campaigners and activists than a term that has any real specific gravity passed largely unnoticed during the 1990s—that "silly season" of the inflated expectations. (Otherwise, why is Human Rights Watch, which has no democratic accountability, viewed as an emblematic institution of civil society while the US National Rifle Association, with four million members, is viewed as something else?)

Instead, there was the very real expectation that the world was becoming a more civilized place. Again, why the same decade that witnessed the Balkan catastrophe and the Rwandan genocide could interpret itself as a period of enormous promise is a question for psychiatrists, not political analysts. But that optimism was real. And the creation of the International Criminal Court, which was heralded as the first institution that promised to genuinely promise an end to impunity for war criminals, served as the capstone for these generous and well-intended expectations of decent people around the world.

As Undersecretary General for Peacekeeping, Kofi Annan had presided over the two worst failures of the United Nations during the first post–Cold War decade. But as Secretary General, Annan not only acknowledged the UN's failures—however belatedly, and, in the case of Rwanda, not until 2004 on the eve of the tenth anniversary of the genocide, and then only quite ambivalently—but made the UN Secretariat a bully pulpit for this "revolution of moral concern" and for individual human rights as finally "trumping" state sovereignty. Annan's UN was a place in which international law, above all international humanitarian law—that is, the laws of war—was viewed as the essential component for building a more decent world order. And in speech after speech and document after document, UN officials from the Secretary General himself on down emphasized the need for States to comply with the obligations they had under the various international treaties and conventions to which they had signed on. The problem, UN officials repeated, was no longer one of first principles; the transformation of the normative environment had seen to that. Rather, the question was now one of making these norms binding—in short, of enforcement.

In retrospect, this approach begged at least as many questions as it answered. To begin with, there was the uncomfortable matter of why, if the norms were so terrific, the reality of the world was so dire? But at least that objection could be answered by saying that just as it had taken a great deal of time and struggle and false starts to get the norms right, so it would take a long period before effective modalities of enforcement were arrived at. And activists could point to studies ranging from the report on UN peacekeeping by the former Algerian foreign minister, Lakhdar Brahimi, to the Canadian government-sponsored document on humanitarian intervention, "The Responsibility to Protect," as examples of serious efforts to think about implementing the new norms and of, in effect, institutionalizing and reifying that "revolution of moral concern."

More difficult was the issue of what possible motivation could impel States to act out of essentially altruistic motives, which, however much they had been weakened by the realities of globalization, were still the fundamental constitutive elements of world order. That is, why would great powers intervene to prevent genocide in places of little economic or geostrategic significance to themselves except very rarely and inconsistently? One did not have to be a Kissingerian realist, or the reincarnation of Lord Palmerston, to conclude that States had never behaved in this way in the past. For all of history until the post–World War II era, the conduct of States had largely been determined by interests, rather than ideals. The question was what, if anything, had changed? Was Ignatieff's idealist template of the human rights revolution of the second half of the twentieth century really that compelling? Or, as the British diplomat Robert Cooper argues in an influential book, *The Breaking of Nations: Order and Chaos in the Twenty-First Century*, did the fact that a successful global economy required a rules-based order really imply a commitment to a human rights rule as well?

On the face of things, that appeared unlikely. Africa, where most of the crises that might require so-called humanitarian intervention were occurring, was by the turn of the millennium almost irrelevant to the world economy except for certain key resources like oil that could be extracted even during civil wars and famines. At a generous estimate, it accounted for some 3 percent of world trade. The Balkans, East Timor, Haiti: they were similarly marginal in geoeconomic terms. This reality, which is as undeniable as its elaboration is unpalatable, tends to confirm Ignatieff's thesis, not Cooper's. At the very least, it threw the debate back into the context of morality. And if the 1990s had proved anything, it was that where morality was concerned the so-called international community was highly selective in its commitments. The British might decide to do something about their ex-colony, Sierra Leone, but even the highly interventionist Blair government was at pains to point out that its deployment was not to be construed as the first of many. There would be no British

troops sent to Zimbabwe on human rights grounds although the tyranny of Robert Mugabe was almost as destructive to its own people as the Revolutionary United Front had been in Sierra Leone (the Mugabe government simply used hunger and internal displacement as its principle weapons, rather than the mutilations that were the monstrous hallmark of the Revolutionary United Front). The Clinton administration made the same point after the United States–led war in Kosovo in 1999.

Of course, had the great powers been willing to give the UN a standing force and the authority to deploy it, as the UN's own Sir Brian Urquhart had once suggested, the dilemma might not have been so acute. But the great powers found a weak UN exactly to their liking, while, in much of the developing world, the critique of absolute state sovereignty that Kofi Annan had pursued was viewed as a way of legitimizing neocolonialism rather than guaranteeing or helping to secure people's human rights. Inevitably, instead of being narrowed, the gap between the new norms of international humanitarian law and realities on the ground began to widen. The fact that some humanitarian interventions, notably the one in Kosovo, were undertaken without UN approval only increased skepticism in the developing world about possible hidden agendas in the revolution of moral concern.

Perhaps, had the September 11 attacks not taken place, some consensus might have been arrived at. Possible, but not likely. While the attacks on the World Trade Center and the Pentagon did transform the landscape of international relations, many of the contradictions between norms and realities that September 11 put in such sharp relief were already part of the geostrategic landscape. It is just that, like icebergs in the North Atlantic, they lay largely submerged and out of view.

So many factors militated against norms becoming reality. First and foremost, the UN had no real power to set the agenda anywhere except where the great powers had no great interest in setting one themselves. Thus, before September 11, the UN view on Tajikistan carried some weight, but once the US decided to invade Afghanistan the UN was relegated to the sidelines. Second, there was no appetite in the rich world for the kind of redistributive justice that would have begun to address the underlying inequities that were at the root of so many so-called humanitarian or human rights crises. The refusal of the European Union nations to radically overhaul their policies of massively subsidizing their own agricultural sector was one illustration of this. The comparative failure of the debt relief movement to sway Washington in any truly significant way was another. Third, despite what Third World intellectuals might imagine, there was no appetite in Western Europe, Japan, or the United States, to "recolonize" the world. The logic of Secretary General Annan's speeches might sometimes seem to imply endless wars of altruism, but neither Washington nor Brussels was prepared to make any such commitment or to facilitate and subsidize a UN force that would.

The September 11 attacks only exacerbated these trends. But they exacerbated them to a remarkable degree. Confronted by terrorism, whether or not it was appropriate to call the necessary response to it a "war" as the Bush administration did, it was the politics of that most profound and essential interest—existential security—that was at the fore of policymakers' calculations, not elective wars in the name of humanitarianism and human rights. At the same time, much as had been the case during the Cold War, States threatened by terrorism were not only immediately engaged in curtailing domestic civil liberties but tended to be more willing to overlook human rights violations, even on a massive scale, by States that might play a strategic role in the antiterrorist campaign.

The American government's volte-face on Uzbekistan—surely one of the most abusive regimes on the face of the earth—because the Karimov dictatorship had facilitated US operations during the invasion of Afghanistan was a case in point. In fairness, human rights concerns have always been ignored—as much if not more so in Europe as in the United States—when major commercial interests were at stake, as the case of China has demonstrated all too vividly. It is true that, during the so-called Arab Spring, the French government proved itself to be willing to take the lead in the international intervention to overthrow the Gaddafi dictatorship in Libya, with which it had strong commercial ties. But the Western response to the Arab Spring generally is something of an outlier, and are best understood as Western governments believing change in the Arab Middle East is inevitable and, for once, attempting to help shape events rather than react to them.

Senior UN officials are perfectly well aware of these trends. But since it has little real power (to use Joseph Nye's categories, it has no hard power and only a small amount of soft power), and since its legitimacy is derived so importantly from its commitment to the primacy of international law, the world organization was hard-pressed to shift gears to somehow respond to or at least accommodate these new realities. Perhaps, had it done so, it would have destroyed its own raison d'etre. But by not adjusting, the UN found itself wrong-footed by the new world disorder that the rise of Islamic terrorism and the international response to that terrorism had brought into being. In effect, it believed it could remain a noncombatant in that struggle. But neither the terrorists, nor, for that matter, the Bush administration were prepared to concede the UN the right to maintain such a stance.

Sergio Vieira de Mello was without question the most brilliant UN diplomat of his generation, a throwback, in terms of charisma, dedication, intelligence, and drive, to such figures as Folke Bernadotte and Brian Urquhart. But when he reluctantly accepted Secretary General Annan's plea to becoming the UN's special representative in Baghdad after the overthrow of Saddam Hussein, de Mello never seems to have imagined that the anti-US insurgents and terrorists would view the UN as aligned with the US invasion. In a sense, he was right: Institutionally, the UN had opposed the war.

As de Mello saw it, he was trying to help the Iraqi people, not serve the US occupation authorities. As the UN report on his death concluded, neither de Mello nor his colleagues seem to have fully taken in the fact that to the Iraqi guerrillas, the UN was just as much the enemy as the US was. And de Mello was not so much wrong—what else could he have done? To have hunkered down in a bunker, as the Americans did, would have been to betray everything the UN and he personally stood for—as overtaken by a colder world. Faithful to his ideals, he died for his belief in the UN, which, whether one shares it or not, ennobles his sacrifice. But it is by no means clear that those ideals can be held on to.

The ways in which the United States has turned the international order on its head in the aftermath of September 11 are obvious. By eschewing any serious commitment to the multilateralism that lies at the heart of international law, the future of any viable world system, however embryonic, in any usable time frame, is open to question. But terrorism also throws that future into question. For terrorism, by definition, challenges the state's monopoly on force, which must lie at the heart of any international system worthy of the name. It also deforms, if it does not negate entirely, the soldier-civilian distinction that lies at the heart of international humanitarian law. To be sure, that distinction was already under threat from the revolution in military technology of the last decade. A guerrilla force cannot fight a modern army equipped with night vision equipment (this has deprived guerrilla forces of their strongest traditional advantage, the night), thermal imaging, GPS, smart weapons, drones, and satellites. Or, rather, it cannot fight such an army while obeying the laws of war. To the contrary, it must employ perfidy, pretending until the moment it attacks that its fighters are noncombatants, and it must employ terror, because while it cannot hope to challenge a modern army on the battlefield, it can hope to demoralize that modern army's citizens back home.

The idea that guerrilla forces would simply bow to the superior technology of modern armies from developed countries is as utopian as the expectation that war itself has been superseded. An American judge once remarked famously that the US Constitution was not a suicide pact. By the same token, for the guerrilla fighter, neither are the laws of war. And from Gaza to Iraq, the force of that reality is becoming pOf course, where this leaves an international system (a sounder concept than international community) that is law-based is very much an open question. And it is hard not to feel that, notwithstanding the Arab Spring, and the success of democratization in Burma, that a new barbarian age is upon us. One of the first victims of that age was Sergio Vieira de Mello. He will, of course, not be the last.