

## HUMANITARIAN INTERVENTION: A UNITED NATIONS TASK

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Let us give the world cause to say: These were dedicated men. They did not pose and postpone but strove humbly and honestly to lighten the afflictions that weigh so heavily on mankind.

Ed. Hambro,  
25th Anniversary of  
the United Nations,  
October 14, 1970.

The Congo: November, 1964. Rebels under the leadership of Gbenye made massive arrests of foreigners, particularly Belgians and Americans. The captives included women and children. The rebels considered them hostages; they were humiliated, deprived of decent living conditions and faced the threat of immediate execution.<sup>1</sup> By November 24 all peaceful means of freeing the captives had been exhausted without success.<sup>2</sup> With the agreement of the official Congolese government and the logistic support of the United States and the United Kingdom, Belgian paratroopers executed a three-day rescue operation in Stanleyville and Paulis.<sup>3</sup> Approximately 1600 were evacuated. Official notice of the oper-

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The Editorial Board acknowledges certain deficiencies in the footnotes accompanying this article but due to publication deadlines and inaccessibility of materials, complete citations were impossible. The information contained in the footnotes, however, is sufficient to indicate the location of authorities cited. Quotations originally appearing in French have been translated by A.F. Menke, Editorial Board member.

1. Conference held by Baron P. Nothomb, former consul of Belgium in Stanleyville, at the Belgian Royal Institute for International Relations, Dec. 27, 1964. Text in 18 *CHRON. POL. ÉTR.* 488 (1965).

2. Declaration of Belgian Foreign Minister P. H. Spaak before the U.N. Security Council, Dec. 11, 1964, U.N. Doc. S/PV 1173 at 2-22 (1964). The Belgian authorities contacted the U.N., the OAU, the ICRC, African heads of governments and even the head of the rebels, Gbenye. The Congolese government mentioned its approval in a letter from Prime Minister Tsjembe to U Thant, dated Nov. 24, 1964, U.N. Doc. S/6060 (1964).

3. The United Kingdom gave permission to use the logistic facilities on the island of Ascension, while the United States provided the planes necessary for the transportation of men and material.

ation was given to the United Nations Security Council on the day it was begun.<sup>4</sup> It was not until December that the question was taken up by the Security Council on the request of 22 member nations<sup>5</sup> and the Congolese government itself.<sup>6</sup>

Nigeria: 1964. Starvation, lack of medical care and every variety of human suffering were rampant as the Biafran secession struggle raged. The International Committee of the Red Cross (ICRC), willing and able to provide assistance, was thwarted by the persistent refusal of Lagos and the Biafran authorities to accept deliveries of food and medicine. Unprotected relief flights were easy prey for air and ground fire, so the air lift was halted for several weeks because it was simply too dangerous to continue. It is still impossible to estimate how many innocent lives were lost.<sup>7</sup>

East Pakistan: 1970. A cataclysmic natural disaster took the lives of half a million people; the extent of material losses remains unknown. The characteristic difficulties of organizing a coordinated relief action were compounded by the friction of Indo-Pakistani relations and the internal tensions of East Pakistan itself. Millions suffered while the question of an air lift from Central Pakistan over Indian territory went unanswered.<sup>8</sup> The anticipatory drama was even more intense at the end of 1971 when the chaos in East Pakistan resulted in the creation of an independent Bangla Desh and the exodus of homeless millions. Local authorities forced a halt to the activities of the United Nations East Pakistan Relief Operation (UNEPRO), a move which benefitted no one but caused only greater suffering.<sup>9</sup>

The pattern is apparent: in each of these human crises people were in dire need of humanitarian aid, and in each a sovereign was able to prevent or at least severely limit the availability of assistance. Among the reasons for these failures are the inability to act immediately and to conserve that time which is being measured

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4. Letter from the Permanent Representative of Belgium to the President of the Security Council, U.N. Doc. S/6063 (1964); Letter from the Permanent Representative of the United States to the President of the Security Council, U.N. Doc. S/6062 (1964).

5. U.N. Doc. S/6076 (1964); U.N. Doc. S/6076/Add. 1-5 (1964).

6. U.N. Doc. S/6096 (1964).

7. See De Standaard, Sept. 25, 1969, at 7 in which mention was made of a million and a half dead and a thousand victims per day.

8. U.N. Doc. E/4994 (1970); see U.N. Press Release, G.A. Res. 4400, at 141 (1970).

9. See Gottlieb, *The United Nations and Emergency Humanitarian Assistance in India-Pakistan*, 66 AM. J. INT'L L. 362 (1972).

in human suffering, and the lack of energy of the organizations from which one should expect determination and action.

The U.N. Security Council did not condemn Belgium, the United States or the United Kingdom. While it might be argued that the thesis of humanitarian intervention was thereby endorsed,<sup>10</sup> there was certainly no sign of unanimous approval of the operation.<sup>11</sup> It is important to note, in this respect, that much of subsequent valid criticism of certain military aspects of the intervention would have been avoided had the action been conducted under some international or by an international organization itself. The need for U.N. support was even more urgent in the Biafran affair where the absence of support by an international organ rendered the spontaneous offers of assistance largely ineffectual. The U.N. concealed itself behind the internal affairs of a member state clause,<sup>12</sup> professing belief in the competence of a regional instrument, the Organization for African Unity.<sup>13</sup>

The Pakistan and Bangla Desh issues were the subject of dramatic but fruitless sessions of the Security Council and the General Assembly.<sup>14</sup> While debate insufferably followed debate, UNEPRO was forced to abandon its humanitarian efforts for lack of the support necessary to force the receiving state's cooperation. Once more the governments in conflict retained the ultimate power to decide whether innocent human beings would live or die, a matter which should be the province of the collective conscience of mankind.

## I. THE CONCEPT OF HUMANITARIAN INTERVENTION

In the exercise of its fundamental rights a sovereign state en-

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10. The Resolution of the Security Council of Dec. 30, 1964, [U.N. Doc. S/6129 (1965)] is limited to recalling the principle of non-intervention in internal affairs of nations and requesting the Organization for African Unity to do all it can to bring about national reconciliation.

11. Several countries, i.e. Ghana, Mali, Burundi, Soviet Union, clearly condemned the intervention as being non-humanitarian in nature. They did not, however, oppose the legality, as such, of humanitarian interventions.

12. U.N. CHARTER art. 2, para. 7.

13. Introduction to the Annual Report of the Secretary-General on the Work of the Organization, June 16, 1968, to June 15, 1969, 24 U.N. GAOR Supp. 1A; U.N. Doc. A/7601/Add.1 at 205 (1969); Press Conference of Secretary-General U Thant, Jan. 4, 1970, in Dakar, Senegal, 7 U.N. MONTHLY CHRONICLE 34 (No. 2, 1970), Press Conference of Secretary-General U Thant, *id.* at 38.

14. This was emphasized in a speech made by Pakistanese Foreign Minister A. Bhutto before the Security Council on December 15, 1971. U.N. Doc. S/PV. 1614/Add.1 (1971).

counters a number of limitations which may be, and typically are, the consequences of freely accepted obligations or of enforced restrictions. They also result from certain transcendent norms, which concern the state's subjects directly and constitute a supreme law based on universal morality and the human conscience.<sup>15</sup> Any violation of this imperative common law of mankind is a direct crime against humanity.<sup>16</sup> Each breach should provoke a human solidarity aimed at the protection of fundamental human rights through the most universal mechanisms possible while avoiding the intervention of domestic mechanisms.

A humanitarian intervention is an act performed for the purpose of forcing a sovereign to respect fundamental human rights in the exercise of its sovereign prerogatives.<sup>17</sup> It is an attempt to compel a state to act or to refrain from acting, and may eventually be backed up by the use of force.<sup>18</sup> If the premise is accepted that sovereignty may be curtailed in the case of abuse of its prerogatives, then it is necessary to formulate certain minimum conditions under which such a limitation is permissible and to establish a precise procedure to insure strict respect of these conditions. Any action to restore legality must itself be founded in legality, and any intervention in the domestic realm of a state, even if lawfully undertaken, must be executed with the greatest caution.

## II. THE PERMISSIBLE CHARACTER OF A HUMANITARIAN INTERVENTION

The concept of humanitarian intervention seems to have its genesis in the evolution of the modern Turkish state during the 19th Century. On behalf of humanity and in defense of moral dignity the barbaric religious persecution of Christians was ended through a joint action decided by England, France and Russia and

15. Aroneanu, *La guerre internationale d'intervention pour cause d'humanité*, 19 REV. INT. D. PÉN. 173 (1948).

16. Rougier, *La théorie de l'intervention d'humanité*, 17 GEN. D. INT'L PUBL. 468, 471 (1910); Stowell, *La Théorie et la pratique de l'intervention*, 40 REC. COURS ACAD. D. INT. 91, 138 (No. 2, 1932).

17. VAN BOGAERT, *BEGINSELEN VAN HET VOLKENRECHT (PRINCIPLES OF INTERNATIONAL LAW)* 73 (1958); Aroneanu, *supra* note 15 at 176; Rougier, *supra* note 16, at 472; Stowell, *supra* note 16, at 92; L. CAVERÉ, *LE DROIT INTERNATIONAL PUBLIC POSITIF* 631 (3d ed. 1969); Fawcett, *Intervention in International Law*, 103 REC. COURS ACAD. D. INT'L 343 (No. 2, 1961).

18. Potter, *L'intervention en droit international moderne*, 32 REC. COURS ACAD. INT'L 607, 623 (No. 2, 1930).

set forth in the Treaty of London of July 6, 1827.<sup>19</sup> A more identifiable intervention for humanitarian motives was the French military mission to Syria in 1860 which, in combination with diplomatic pressure exerted by some of the major powers, forced the Turkish sovereign to reorganize the internal structure of the Empire. This undoubtedly was an infringement of the domestic affairs principle.

The Berlin Treaty of July 13, 1878 confirmed the right of intervention to protect the residents of the European parts of the Turkish Empire and guaranteed adherence to a set of minimum standards, including religious freedom.<sup>20</sup> These provisions were invoked in the case of the so-called Armenian massacre in 1896.<sup>21</sup> Other 19th Century interventions were undertaken on behalf of the people of Macedonia,<sup>22</sup> and the political prisoners in the Kingdom of the Two Sicilies,<sup>23</sup> as well as in Bulgaria and Bosnia-Herzegovina<sup>24</sup> and by the United States in support of the Cuban uprising against Spain.<sup>25</sup> One might also cite the intervention on behalf of the Israelites in Romania and Russia and the diplomatic note of the Protecting European Powers to the Sultan of Morocco imposing the duty

to abolish torture in his empire, that is, corporal punishment subjecting the victim to mutilation or slow death and *to observe in the future the laws of humanity* [italics added].<sup>26</sup>

In the 19th and early 20th centuries several interventions were initiated which sought, although not exclusively, to assure the humanitarian character of the exercise of sovereign power. But since World War I the Congo case is the isolated example, although Aroneanu considers World War II the "first international humanitarian intervention war."<sup>27</sup> It remains an open question,

19. Rougier, *supra* note 16, at 473.

20. Treaty Between Great Britain, Germany, Austria, France, Italy, Russia, and Turkey for the Settlement of Affairs in the East, signed at Berlin, July 13, 1878. 2 AM. J. INT'L L. 401 (Supp. 1908).

21. CHARMITANT, TABLEAU OFFICIEL DES MASSACRES D'ARMENIE, 114 (1896); MANSTAM, LE SORT DE L'EMPIRE OTTOMAN 187 (1917).

22. Rougier, *L'intervention de l'Europe dans la question de Macedonie*, 13 REV. GEN. D. INT'L PUBL. 178 (1906).

23. VAN BOGAERT, *supra* note 17, at 73.

24. Rolin-Jacquemyns, 8 REV. D. INT'L ET LEG. COMP. 675 (1876).

25. de Lapradelle, *Chronique sur les affaires de Cuba*, 1 REV. D. PUBL. ET SC. POL. EN FRANCE ET A L'ETRANGER 74 (1900).

26. Rougier, *La question de l'abolition des supplices et l'intervention europeene*, 17 REV. GEN. D. INT'L PUBL. 98 (1910).

27. Aroneanu, *supra* note 15, at 200.

then, whether practice proves that humanitarian intervention has a valid basis in customary international law.<sup>28</sup>

The principles of equal sovereignty of all states and the correlative duty of nonintervention in domestic affairs are, of course, cornerstones of international relations. The rights to independence and freedom from intervention are basics of the law of nations and are among the first to be included in important declarations.<sup>29</sup> Those who advocate absolute nonintervention leave rebellion, internal strife and uprisings to the exclusive competence of the sovereign, which is solely responsible for law and order within its territory.<sup>30</sup> Strong arguments may be made in support of this view, among them the danger of subverting the humanitarian character of an intervention in order to obtain, or justify, an influential position within the political, economic or military domain of the receiving country. Such a possibility instills in small countries a realistic fear for their security and independence. Further, the value of any humanitarian mechanism which might actually lead to more suffering and a greater number of victims is questionable.

On the other hand, serious doubts exist concerning any theory of total sovereignty unlimited by certain obligatory standards which, even if not elements of substantive international law, surely form part of a transnational universal morality. Does it serve justice to allow a sovereign the benefit of an unrestricted right to independence when it uses that very right to perform acts which conflict with generally accepted principles of humanity and constitute crimes against mankind?

Abuse of a generally recognized right can lead to its suppression and the removal of a state's immunity.<sup>31</sup> Reason and justice dictate that the behavior of individuals who act on behalf of and with the authority of a sovereign state should be subject to higher rules than those which govern individuals not bearing such responsibilities. Reason and justice equally impose a duty upon

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28. Winfield, *The Grounds of Intervention in International Law*, 5 BRIT. Y.B. INT'L L. 149, 162 (1924); Potter, *supra* note 18, at 653; FANCHILLE, TRAITÉ DE DROIT INTERNATIONAL PUBLIC 307 (1921).

29. See The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. Doc. A/RES/2625, 7 U.N. MONTHLY CHRONICLE 99 (No. 10, 1970).

30. E. STOWELL, INTERVENTION 58 (1921).

31. See 1 HYDE, INTERNATIONAL LAW 118 (1945); Potter, *supra* note 18, at 648; Stowell, *supra* note 16, at 95.

other states to remove the veil of domestic jurisdiction when necessary for the protection of individuals, whether nationals or aliens, whose fundamental human rights are denied. When a sovereign proves itself unable or unwilling to properly exercise its police power or other prerogatives which attach to its status, the community of states itself must intervene to end this *detournement de souverainete*<sup>32</sup> and restore human rights. The right to intervene is not limited to a prejudiced state, but is rather the duty of the community of mankind, an *actio popularis*.<sup>33</sup>

"The one whose liberty to do wrong has been abolished is one fortunately vanquished," wrote Thomas Aquinas.<sup>34</sup> While these arguments have convinced several authors of the legality of humanitarian intervention,<sup>35</sup> the inherent conflict of the sovereignty principle with the concept of permissible intervention necessitates precise delineation of the circumstances and conditions under which interference with sovereign rights is justifiable and feasible.

### III. CONDITIONS ESTABLISHING THE PERMISSIBLE CHARACTER OF HUMANITARIAN INTERVENTION

Given the delicacy required when dealing with the concept of intervention, and the dangers of generalization, it seems wisest to discuss only strict humanitarian intervention,<sup>36</sup> that is, in case of maltreatment of individuals in peace or in war, through repeated or permanent attitudes, acts or omissions, which constitute a negation of the human rights recognized by all civilized nations as the fundamentals of human dignity: the rights to life, food and medical care, for example.

#### A. Breach of Customary Minimum Rules

Any limitation of the rule of sovereign independence is acceptable only if clear subordination to a higher legal principle can

32. Rougier, *supra* note 16, at 495.

33. I HYDE, *supra* note 31, at 21-22; Stowell, *supra* note 16, at 148.

34. Epître 5, *Ad. Marcellinum*.

35. E.g., L. CAVARE, *LE DROIT INTERNATIONAL PUBLIC POSITIF* 632 (3rd ed. 1969); GROTIUS, *De iure belli ac pacis*, Bk. II, chp. XX, XL; I OPPENHEIM, *INTERNATIONAL LAW* 312 (8th ed., Lauterpacht 1958); WODSE, *INTERNATIONAL LAW* 19 (1860); Graham, *Humanitarian Intervention*, 22 MICH. L. REV. 327 (1924).

36. Such intervention would include, but is not limited to cases of persecution based on political grounds, oppression of minorities, or lack of objective justice.

be proven. Such higher principles are those of humanitarian law as expressed in certain widely accepted conventions. It is not necessary that a state have expressed its willingness to consider itself bound because their universal compulsory character leaves no doubt that all of these *traitéslois* codify customary minimum rules known to all sovereigns. The Universal Declaration of Human Rights,<sup>37</sup> the Two Covenants,<sup>38</sup> the 1949 Geneva Conventions<sup>39</sup> and the Genocide Convention<sup>40</sup> sufficiently state the duties of any sovereign and the rights of any individual. Further definition is probably forthcoming. The Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts has prepared two draft Additional Protocols to the Geneva Conventions of 1949, which will probably be submitted to a diplomatic conference early in 1974.<sup>41</sup> The fact that over 75 nations took part in the Conference, together with a number of international governmental and non-governmental institutions, is indicative of the global concern over humanitarian rules in the light of recent experience.<sup>42</sup>

Any intervention must be based upon specific and recognized legal norms to be invoked by the intervening authority. Such norms are found in the conventions; it is neither necessary nor sufficient that a rule of domestic legislation be violated. The

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37. G.A. Res. 217A, U.N. Doc. A/810 (1948).

38. International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR, U.N. Doc. A/6316 (1966).

39. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, [1955] 3 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, [1955] 3 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85, Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, [1955] 3 U.S.T. 3317, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, [1955] 3 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

40. Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 A, U.N. Doc. A/810 (1948).

41. International Committee of the Red Cross, Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, May 3-June 3, 1972) 2 vols. (1972); see specifically *id.*, *Questionnaire Concerning Measures Intended to Reinforce the Implementation of the Geneva Conventions of August 12, 1949—Replies Sent by Governments*.

42. *Id.*



breach must be of a certain qualitative and quantitative gravity.<sup>43</sup> Whether the breach is committed by the state itself, or merely ordered or approved by it, the state's responsibility for a violation of a customary humanitarian rule must be proven.<sup>44</sup> Passivity in the case of a violation by an individual may equally bring about state responsibility where knowledge can be demonstrated.

### B. *Procedural Prerequisites*

Whenever the use of intervening force is threatened the prospect of abuse is real unless it is foreclosed by reliable safeguards. To minimize this risk, a precise procedure must be established and rigidly adhered to. It would consist of several distinct, formal steps:

1. Filing of a complaint, setting forth the alleged facts and the humanitarian law relied upon. This avoids inconsiderate action, which can be the starting point of self-interested attempts to influence the domestic affairs of a state. Even where the proposed action is based upon well known facts established by accepted and objective bodies or techniques (for example the ICRC or U.N. observers), the requirement of a complaint is an indispensable protective device.

2. Publication of the complaint and the specifics of the contemplated intervention, not only to the state accused but also to the other members of the international community. Notice to the accused state is necessary so that it may respond to the complaint and have a reasonable opportunity to correct the violation. It is not the breach itself, but rather the refusal to restore legality which triggers the right to intervene.<sup>45</sup> Another state might well have an interest sufficiently direct to give it a right of co-intervention.

The ultimate goal of enforcing universal humanitarian norms justifies general publication among the community of nations. Even if only one state actually carries out the intervention, its action must be on behalf of the "humanitas," without self-interest or expectation of national political, economic or military gain. Publication means thorough scrutiny by the community of nations, a strong incentive to scrupulously disinterested action.

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43. Direct or indirect forms of Genocide (*e.g.* cases of individual violations) might eventually also lead to intervention. It should, however, take another form and not consist of a physical or field intervention.

44. Rougier, *supra* note 16, at 512.

45. Stowell, *supra* note 16, at 111.

3. Reasonable opportunity to restore human rights. Since it is the refusal of redress which gives the right to intervene, the state must be allowed a reasonable time to restore legality. Specific time limits will, of course, depend upon the particular circumstances of each case, such as the magnitude of the breach, the reversibility of its effects and the difficulty of correction. To posit a rough general rule: the greater the damages caused by the illegal practice, the more rapidly the illegality must be terminated.

4. Exhaustion of all peaceful means. No force may be exercised for humanitarian purposes without positive proof that all available and reasonably effective means of restoring human rights have been exhausted without fair indication of impending successful results. Diplomatic channels as well as international and regional organizations should be utilized, or at least explored for possible use in light of the factual situation. Only when it is certain that no method short of force will produce the necessary result can force be employed. Military action in any less drastic circumstances is unacceptable.<sup>46</sup>

5. Notification of imminent armed intervention. This precautionary mechanism would insure that force would never be brought to bear until no other alternative was available.

While it is imperative that these five steps be completed, the urgency of a situation may be so great that immediate action is required. The procedure is such that its performance consumes time in inverse proportion to the need for humanitarian assistance. A major human crisis is readily discernible so that the documentation of facts concerning it for purposes of complaint preparation can be accomplished rapidly. The greater the suffering, the less information will probably be necessary to make a valid case for intervention. Similarly, a reasonable opportunity to correct a very grave situation is a shorter period of time than that which would be reasonable for the correction of a less serious condition. Peaceful means of alleviating suffering on a large scale are rapidly exhausted because they are rapidly attempted where the need is great, and only immediate results can be considered successful. The procedural pace will be controlled by, and responsive to, the circumstances of each case.

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46. In the Stanleyville case, Foreign Minister Spaak carefully indicated that all steps for a peaceful settlement had failed at the time of the intervention, U.N. Doc. S/PV. 1173 at 6 (1964).

### C. *The Intervening Authority*

A humanitarian intervention can only be rationalized if it is undertaken by an authority acting within the scope of its competence. Since the goals of a humanitarian action are to further the general interest of mankind and to preserve universal morality, individual interventions should be avoided to prevent perversion of these purposes. Stowell would limit the acting states to those not having a direct interest in the case.<sup>47</sup> This might avoid suspicion, as well as reducing the incentive to overreaction and abuse of power. Procedural devices, such as those outlined above, would be of great value in minimizing these risks. A humanitarian operation is an international police action,<sup>48</sup> at a time when the international community is organized into a series of organizations aiming at peace, security and justice, the duty to enforce respect for human dignity logically rests on them as possessors of the potential political, legal and even military power to act.

An intervention by a multinational organization guarantees the strength of international support free from the pursuit of national interests or political goals. Further, optimal protection of human rights can only be obtained through a collective channel. Any humanitarian action performed or endorsed by an international organization, even if imperfect and subject to political criticism, annuls the major arguments against intervention. It may be said, then, that such an intervention is permissible under international law if: (1) initiated for the protection of highest human values by ending a grave breach of humanitarian law; (2) executed in strict compliance with a formal procedure designed to guarantee the rights of accused nations; and (3) performed by a neutral international organization, or by a state under the direction and control of such an organization.

## IV. THE ROLE OF THE UNITED NATIONS IN HUMANITARIAN INTERVENTIONS

The necessity of an absolute distinction between political and humanitarian motives is clear. International social solidarity, manifested in internationally decided actions and sanctions to compel compliance with humanitarian law, is the surest guarantor of human rights. An individual action, even by a powerful sovereign,

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47. Rougier, *supra* note 16, at 502; Stowell, *supra* note 16, at 144.

48. Rougier, *supra* note 16, at 499.

cannot have the precise impact of marshalled international solidarity because

in the absence of an international organization, solidly built upon one clear law, it is to be feared that the spirit of domination which finds itself in this noble institution, that of the desire to protect all human beings, would be a facile pretext for well camouflaged victories.<sup>49</sup>

It is up to the international community, and to the United Nations as its agent, to be the public prosecutor of violations of humanitarian law and the principles embodied in the Charter.

The function of the United Nations itself is not primarily relief action, although the aid provided through UNDP, UNICEF, the High Commissioner for Refugees and the World Food Program is substantial. Whenever the Red Cross has been called upon, prompt action has followed, either by the ICRC, the national committees or the Red Cross League. F.A.O., W.H.O. and other specialized agencies can and will render assistance without danger of interference in the domestic affairs of the receiving state. Such aid would continue to be provided principally by these international, non-governmental national and specialized U.N. agencies which have proven their dedication and efficiency.

Humanitarian assistance must be offered in time of war and of peace, in international as well as internal crises. The United Nations for its part must insure that direct aid to human beings cannot be thwarted by irresponsible sovereigns. The Nigerian civil war demonstrates the impotence of relief organizations in the face of politically or militarily motivated refusals of assistance. Any challenge to such recalcitrance would defeat the purpose of these organizations, since absolute neutrality and the refusal to employ force are essential to the accomplishment of their tasks. The political and military power to compel sovereign acceptance of aid lies in the hands of the United Nations. When a situation demands the protection of a relief effort the U.N. must have the capability and the courage to back the Red Cross or any other humanitarian organization in the field with forceful intervention.

Those directly involved with the performance of relief missions are well aware of the need for a "humanitarian policeman:"

One will say: there is the International Red Cross and the W.H.O. Yes, but they are often paralyzed through the failure of the combatants to open the trail in a region trodden by

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49. Aroneanu, *supra* note 15, at 187.

guerillas and insurgents. Amid the combat and disorder the doctors and nurses are precious; but they are even more so if accompanied by the police. The W.H.O. was not created for interventions of war or insurrection; the most efficacious organization can be none other than the Health Service of the armed forces of the U.N.<sup>50</sup>

Collective action in view of providing vital aid is assured of broad support among all who respect basic human rights because

[i]t in no way affects the legality of intervention; it reinforces on the other hand the impression that this action really constitutes an intervention and does not serve to conceal an unwarranted incursion.<sup>51</sup>

Authority for humanitarian initiative by the United Nations itself may be found in the U.N. Charter<sup>52</sup> and the Red Cross Conventions.<sup>53</sup> The 1949 Geneva Conventions not only provide for the control of such interventions through the Protecting Power scheme,<sup>54</sup> but also permit entrustment of the duties incumbent on the Protecting Power to an international organization upon the agreement of the parties in armed conflict.<sup>55</sup> This device has been reexamined recently in the Geneva Expert Conference of May, 1972.<sup>56</sup> Many experts, advocating a certain automatism in the appointment of a supervisory body which would eliminate the need for the express consent of the parties to the conflict, proposed to assign the task to a permanent organ to be created within the U.N.<sup>57</sup> A new specialized organ, a *U.N. High Commissioner for Humanitarian Law* or a *U.N. Disaster Relief Controller* could

50. Nomerot—Dumaine, *Il faut que les forces armées de l'Onu possèdent un état-major médical permanent*, 16 LA PRESSE MÉDICALE 944 (1965).

51. Stowell, *supra* note 16, at 137.

52. U.N. CHARTER chs. VII, IX.

53. Conventions cited note 40 *supra*.

54. (1) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, art. 8 [1955] 3 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; (2) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, art. 8, [1955] 3 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; (3) Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, art. 8 [1955] 3 U.S.T. 3317, T.I.A.S. No. 3364, 75 U.N.T.S. 135; (4) Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, art. 9, [1955] 3 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

55. *Id.*, citing each convention by its parenthetical number: (1) art. 10, (2) art. 10, (3) art. 10, (4) art. 11.

56. International Committee of the Red Cross, *supra* note 41.

57. *Id.*, *Report of Commission IV*, at pts. 4.54, 4.57, 4.63.

indeed be established whereby the total mechanism of the Charter would remain available for application in the event an intervention becomes necessary.<sup>58</sup>

The Geneva Conventions permit military protection of medical units and their activities.<sup>59</sup> This protective role need not be assumed by the relief unit itself, but could be undertaken by a *United Nations Relief Protection Force*. A humanitarian mission could thus be conducted with the support of an accompanying armed force when required to make the mission possible.<sup>60</sup> The U.N. Charter permits such activity.<sup>61</sup> Preservation of peace and security, as well as the protection of fundamental human rights, are among the principle goals of the Organization. To these ends measures may be taken either by the Security Council within the limits of chapter VII,<sup>62</sup> or by the General Assembly as, for example, when invoking the Uniting for Peace Resolution clause.<sup>63</sup> Further, protection of a humanitarian organization unable to accomplish its mission for security reasons is already one of the essential duties of the U.N.<sup>64</sup>

The modalities of humanitarian intervention raise no major legal difficulties. In conformity with the procedure outlined above a *Commission of Inquiry* could be created to assure objective fact-finding. The Division of Human Rights would be responsible for its composition, while a *High Commissioner for Humanitarian Law* would preside over it. Members could be appointed according to the system used in the Permanent Court of Arbitration, each member nation submitting a list of eligible persons to the Secretary General's Office. In this way the preferences of each of the parties to a conflict could be taken into account, hopefully leading

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58. De Beco, *Les Missions humanitaires et le secours d'urgence en temps de guerre*, 13 ANN. D. INT'L MÉDIC. 42, 46 (1966).

59. E.g., Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, art. 22 [1955] 3 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; and see LES CONVENTIONS DE GENEVE DU 12 AOÛT 1949, 223 et seq. (J.S. Pictet ed., le Convention 1952).

60. R. de Geouffre de la Pradelle, *La Croix Rouge et la leçon de Stanleyville*, LE MONDE, Dec. 25, 1964, at 5.

61. U.N. CHARTER arts. 55(c), 57, in conjunction with ch. VII.

62. U.N. CHARTER ch. VII.

63. 5 U.N. GAOR Supp. 20, at 10, U.N. Doc. A/1775 (1950); Woolsey, *Editorial Comment, The "Uniting for Peace" Resolution of the United Nations*, 45 AM. J. INT'L L. 129 (1951).

64. See, e.g., 1 OPPENHEIM, *supra* note 35, at 313, 320; *Missions humanitaires et Nations Unies*, 12 ANN. D. INT'L MED. 71, 73 (1965).

to greater confidence in the system. In addition to conducting inquiries, the Commission could eventually exercise a control function over the application of humanitarian rules.

In cases of more or less straightforward military intervention (for example, air protection of relief flights or troop protection of civilian evacuations) U.N. peacekeeping units or police forces, which have performed successfully in several difficult circumstances, could be utilized in various capacities as suggested by past experience. In cases where more complex humanitarian considerations are involved, the nature of the intervention would justify the creation of a separate police body: *United Nations Relief Protection Force*. The composition of such a force would present little difficulty; several states have already expressed willingness to keep armed forces and logistic units at the disposal of the U.N. on a permanent basis.<sup>65</sup> The choice of component nationalities can therefore be made in such a way that partisan interference is avoided, thereby neutralizing arguments of humanitarian neocolonialism. The various national contingents can be made up of regular draftees, remaining in their home countries and constituting an *ad hoc* stand by force. The whole mechanism would be set in motion by the Security Council or the General Assembly according to the existing rules.

The only technical obstacle might be the creation of a permanent mixed medical-military staff committee responsible for the operative functioning of these units. While all attempts to actualize articles 46 and 47 of the Charter have failed,<sup>66</sup> the idea of a *Humanitarian Staff Committee* might well be realized. The substance is different and humanitarian issues generally elicit a more positive response than military questions, so the chances of Security Council unanimity are greater. This special staff could be placed within the office of the Secretariat since article 97 imposes no limit on the size of the Secretariat staff.<sup>67</sup> Several proposals have been tendered for the creation of such an organ.<sup>68</sup>

The political chances of inducing a positive United Nations commitment to protective intervention will depend on the nerve

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65. *E.g.*, the Scandinavian countries; see also BOWETT, UNITED NATIONS FORCES 313-330 (1964); Guerisse, Jacquemin, Kellens, *Les Forces Armées de l'ONU face à leur mission sanitaire et humanitaire*, 11 ANN. D. INT'L MÉDIC. 16, 33 (1964).

66. U.N. CHARTER arts. 46, 47.

67. *Id.* art. 97.

68. De Beco, *supra* note 58, at 50 *et seq.*; see also Proposals by the International Commission of Jurists in 21 BULL. DE LA COMM'N INT'L JUR. (1964).

and perseverance of a few influential nations within the U.N.; not the big powers, but those governments whose internationally minded policies and non-alignment in conflict situations have gained them the ear of East and West. Recurring humanitarian crises have made evident the necessity of a Humanitarian Assistance Treaty clearly stating the rights and duties of states and international organizations relative to humanitarian relief and protective intervention. As an absolute minimum solution for the present, and hopefully only the initial step, the General Assembly should make a formal declaration in this respect.

## V. CONCLUSION

On several occasions former Secretary-General U Thant has expressed concern over the chilling disregard for humanitarian principles which the world has witnessed in recent years. During the Biafran crisis he distinguished the human issues from the political and military questions:

I would like to stress once again, in the name of the most fundamental humanitarian principles, that the urgent need is not only for larger shipments of relief supplies but also the enlisting of the full and wholehearted cooperation of those in positions of responsibility and authority in regard to the facilities for the movement and distribution of supplies.<sup>69</sup>

It is not clear whether U Thant was referring exclusively to the responsibilities and authority of the U.N. in these matters. Nevertheless, it seems that the only chance for wider acceptance of the concept of humanitarian intervention in international law lies within the grasp of the United Nations. The line between such interventions and those tainted with political, economic or military motives will always be difficult to draw unless the action is initiated by a neutral universal organization.

Humanitarian intervention involves a number of legal, political and technical problems. No organization other than the U.N. is in a better position to detect breaches or evaluate facts in light of the existing legal rules, to observe and inquire, to take diplomatic, political or military action. In cases of direct intervention, as well as in cases of protection of relief organizations, the member nations of the U.N. have a profound responsibility to mankind and the duty to realize the letter and the spirit of the Charter.

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69. Speech by Secretary-General U Thant regarding the role of the United Nations, Sept. 12, 1969, 6 U.N. MONTHLY CHRONICLE 54, 56 (No. 9, 1969).