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UN Human Rights Operations: Principles & Practice in United Nations Field Operations

by
Paul LaRose-Edwards

for the
**Human Rights and Justice Division
Canadian Department of Foreign Affairs**

**Ottawa, Canada
May 1996**

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PREFACE

This study was commissioned by the Canadian Department of Foreign Affairs, Division of Human Rights and Justice. The purpose was to provide the Department and interested Canadians with a comprehensive overview of human rights in UN field operations. It was felt that there was a need for a modicum of theory and fundamental principles so as to clarify the moral, ethical and legal grounds for such UN activity. The study however, concentrates on operational imperatives and practices. Sometimes this will consist of commenting on present practice by the UN or others. At other times, there is a need to recommend procedures or practices to meet gaps in the application of human rights in UN field operations.

This will not be a history of past operations, for this has been done far more comprehensively in five key works. The first two which started many of us thinking more seriously about the issue, are *The Lost Agenda: Human Rights and UN Field Operations* by Human Rights Watch 1993, and, *Peace-Keeping and Human Rights* by Amnesty International, January 1994 (including several early drafts). The three other major works which have taken us forward again in understanding what happened in the field are: *Honoring Human Rights and Keeping the Peace* by the Aspen Institute 1995; *Haiti: Learning the Hard Way: The UN/OAS Human Rights Monitoring Operation in Haiti 1993-94*, Lawyers Committee for Human Rights, 1995; and, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, 1995. All five are essential readings.

This study has gone through a number of drafts, and has benefitted enormously from literally hundreds of individuals who were kind enough to meet with me, or send me, their comments or pertinent information. I would like to particularly thank a number of individuals who generously spent an inordinate amount of time reviewing my drafts and suggested a myriad of changes or additions. I hope that I have reflected their comments properly, or where disagreeing, made my position clearer and perhaps more persuasive:

Salman Ahmed, Piera Barzanó, Oma Ben-Naftali, Rachel Brett, Andrew Clapham, Adele Dion, Lucie Edwards, Steve Golub, Stephanie Grant, Robin Hay, Ralph Hazelton, Paul Hunt, Ross Hynes, Karen Kenny, Ingrid Kircher, MGen(ret'd) LaRose, Andrew McAlister, Mike McClintock, Gail Miller, Bill O'Neill, Manfred Nowak, Marco Sassòli, Aracelly Santana, Peter Splinter, Bert Theuermann, Francesc Vendrell, Rob Weiner, Steven Wolfson, and Neill Wright. I would also like to thank the Norwegian government which commissioned an extensive assessment of my draft by the Norwegian Institute of Human Rights (Asbjørn Eide, Njål Høstmælingen, Hege Araldsen, Kristin Høgdahl, Marit Mæhlum, and others).

This study is very much an initial foray into an extremely complex issue, that got more complex by the day. I hope that readers will send in critical comments, and additional material or readings that I should look at and include in subsequent versions. You can contact me at:

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Thanks,

Paul LaRose-Edwards
Ottawa, May 1996

Additional copies of this study and the accompanying paper, *Human Rights Standby: Canadian standby arrangements to enhance UN rapid reaction in the field of human rights and democracy*, pp. 19, can be requested from:

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executive summary

This executive summary is a synopsis of chapters and their key recommendations.
The full set of recommendations can be found in Annex I.

PART 1 - WHY human rights in UN field operations

□ Chapter 1 - Introduction: Human Rights in Complex Emergencies

The increase in ethnic conflict and complex emergencies is provoking a re-assessment of the objectives and modes of operation of UN field operations. This change in the ethical, legal and operational imperatives facing UN field operations has resulted in a greater role for human rights and the emergence of distinct human rights operations (HROs). It is recommended that every UN field operation automatically include senior human rights staff, and that every major UN field operation have a distinct human rights operation (HRO), eg. a human rights division (*Recommendation #1*).

□ Chapter 2 - Operational Imperative

The causal relationship of human rights violations is inherent in conflict situations, from their initiation and escalation, to their long term resolution. It is recommended that the UN give priority to human rights as a fundamental factor in understanding complex emergencies, and that human rights operations (HROs) be seen as an additional UN tool for the strategic analysis of causes, and the devising of solutions for such conflicts (*Recommendation #2*). The UN needs to consider human rights intelligence and human rights operations, as key contributors to operational and tactical decisions by all components of a UN field operation, including military peace-keepers, CIVPOL, and political negotiators (*Recommendation #3*).

The operational benefit from addressing underlying human rights issues is enhanced success in peace-keeping, peace-making, or other UN field operations. It is recommended that UN member states and senior UN officials clearly set out UN human rights field policy, and state unequivocally that UN action in promoting and protecting human rights will be even handed and consistent so as to be impartial and neutral (*Recommendation #5*).

□ Chapter 3 - Legal Imperative

All international human rights law, and the law of armed conflict, bind the UN on how it mandates and conducts field operations (*Recommendation #7*), and bind the conduct of all UN field personnel (*Recommendation #8*). The UN needs an ombuds mechanism to receive and act upon allegations of violations by UN personnel of both international human rights law and the law of armed conflict (*Recommendation #9*).

PART 2 - WHO does human rights in UN field operations

□ Chapter 4 - UN Human Rights Operations

It is recommended that human rights operations be an integral component of any larger UN field operation, and that they report directly to the head of operation (*Recommendation #10*). In doing so,

UN member states should provide HROs with detailed mandates so as to provide full legitimacy and authorization for the various activities of the HRO, and signal clearly the political will of member states to support substantive human rights promotion and protection by all components of the larger UN field operation (*Recommendation #11*).

As senior UN human rights 'defender', the High Commissioner for Human Rights should actively advocate for the inclusion of human rights into the mandate and structure of all UN field operations, e.g. peacekeeping operations. In particular the HCHR should press for the creation of HROs with comprehensive mandates, and then subsequently monitor HROs and other UN field operations and advocate for re-focused or increased human rights activity where necessary (*Recommendation #13*).

There needs to be a single UN HQ office of primary responsibility for human rights operations, that would either carry out, or directly delegate and oversee, such activities as planning, budgeting, staffing, administration, logistics, financial oversight, and lessons learned (*Recommendation #15*). In the field, HROs need a small core of experienced human rights field experts who are able to manage the larger HRO staff of supplementary specialists and ancillary support staff (*Recommendation #18*).

□ Chapter 5 - UN Human Rights Partners

It is recommended that all components of UN field operations be mandated and trained to play appropriate roles in human rights promotion and protection (*Recommendations #21,22-24,27*). An HRO should take advantage of the capacities and skills of other UN operation components such as CIVPOL or military peace-keepers (*Recommendations #25,28*). Similar to the HCHR, UN human rights entities such as treaty bodies, special rapporteurs, independent experts, working groups, or other ad hoc UN human rights bodies, can play a role in advising an HRO, and in monitoring that HROs' actions (*Recommendation #30*).

As well, HROs should be aware of the operation area activities of relevant human rights NGOs, the ICRC, and humanitarian agencies, so as to better coordinate HRO activities with those potential field partners (*Recommendations #29,31*). In addition, HROs need to be aware of media potential to help or hinder, and formulate a media policy (*Recommendation #34*). Optimally, HROs will use local partners, both government and civil society, to inform HRO activities, and where possible use local partners as implementing agents (*Recommendation #36*). In a larger sense, the UN should look to regional organizations to play a field role through both their own independent field operations and in conjunction with the UN (*Recommendation #32*).

□ Chapter 6 - Staffing and Standby Arrangements

The UN office of primary responsibility for mounting HROs must create clear in-depth staffing guidelines addressing issues such as recruitment criteria, rosters, selection, terms of engagement, field deployment, evaluations, etc (*Recommendation #40*). It should retain control of all substantive aspects of staffing particularly the selection, training, and management of HRO staff (*Recommendation #41*).

Similar to military peace-keeping standby arrangements it is recommended that Canada and other governments consider funding the creation and maintenance of national human rights standby mechanisms as a resource for the UN and other regional bodies, and that they model them upon the Norwegian Resource Bank for Democracy and Human Rights (NORDEM) (*Recommendation #42*). Canada should join with Norway to work with other evolving national and regional human rights standby mechanisms, to create procedures to inform and coordinate, and avoid unnecessary competition and duplication (*Recommendation #43*). To avoid national imbalances, 20% of 'national' human rights standby rosters created by developed countries should be composed of experts from economically developing countries, and when deploying a 'national' team, 10% to 40% should be experts from economically developing countries (*Recommendations #44, 45*).

□ Chapter 7 - Early Warning and Protection

More thought must be put into what is actually done with human rights early warning both in the traditional sense of protecting human rights, and as a tactical tool for other UN field operation components such as military peace-keepers. Therefore, it is recommended that all UN operation components be more aware of how to use human rights intelligence and early warning to inform tactical decisions and actions (*Recommendation #48*). To enhance human rights protection, those UN operation components need to be aware of the spectrum of options available to them in responding to human rights violations or the threat of violations (*Recommendation #49*).

□ Chapter 8 - Monitoring: Witnessing, Recording, Reporting, Investigating

The UN should develop standing operating procedures for UN field operations in all aspects of human rights monitoring including witnessing, investigating, recording, and reporting (*Recommendation #53*). To operationalize these procedures, it is recommended that appropriate staff of all UN field operation components be trained on what violations to look for, and how to report them (*Recommendation #54*).

□ Chapter 9 - Human Rights Reconstruction

Reconstruction must be comprehensive and strategically designed to build sustainable local capacity to protect human rights. It is recommended that HROs have a human rights institution and capacity building program premised upon local input and planned handover to local control of relevant HRO functions. As a corollary, HROs should encourage and facilitate human rights programming by other UN agencies that will remain in country long term (*Recommendation #57*). In keeping with ultimate local control, it is recommended that the UN not take a position on amnesties for human rights violations, and that such decisions be left solely up to the societies attempting to reconcile and rehabilitate themselves (*Recommendation #56*).

□ Chapter 10 - Operational Guidelines and Procedures

It is recommended that the Secretary-General set out UN doctrine on human rights in UN field operations (*Recommendation #63*). The Department of Political Affairs or the Centre for Human Rights should have the responsibility, in collaboration with the other, for the compilation of past HROs' standing operating procedures (SOPs), and the creation of model SOPs for all stages of an HRO including advance missions, deployment, and field operations (*Recommendation #64*). Similarly, the UN needs an HRO lessons learned mechanism to collect operational data, analyse that data, and recommends ways to improve doctrine, training, organization, and procedures (*Recommendation #65*).

□ Chapter 11 - Logistics and Training

It is recommended that logistics and administration procedures for HROs be developed that meet field requirements and constraints, similar to those devised or being devised by other parts of the UN such as DPKO or UNHCR, (*Recommendation #66*).

Training is critical, and it is recommended that like military peace-keepers, that extensive generic training on human rights field skills be provided to potential HRO personnel, and that operation specific training be provided both immediately prior to deployment, and in the field (*Recommendations #71, 72*). For other UN staff, it is recommended that all UN field operation personnel receive a minimum of one day training on the human rights facets of UN field operations. Operation components and individuals such as military, CIVPOL, or political affairs officers, with the potential to be more directly involved in UN human rights field activity, will need substantially more training (*Recommendation #74*).

Glossary of Acronyms

ASG Assistant-Secretary-General	NATO North Atlantic Treaty Organisation
CAT Convention Against Torture	NGO Non-Governmental Organization
CEDAW Convention on the Elimination of Discrimination Against Women	OAS Organization of American States
CERD Convention on the Elimination of Racial Discrimination	OAU Organization of African Unity
CHR UN Commission on Human Rights	ONUSAL UN Observer Mission in El Salvador
CIVPOL UN Civilian Police	OSCE Organization for Security and Cooperation in Europe
CMOC Civilian-Military Operations Centre	PKF peace-keeping force
CSCE renamed the OSCE	PKO peace-keeping operation
DAM UN Department of Administration and Management	PMSS Personnel Management Support Service of FALD/DPKO
DHA UN Department of Humanitarian Affairs	PPC Pearson Peacekeeping Centre
DPA UN Department of Political Affairs	SC Security Council
DPKO UN Department of Peace-Keeping Operations	SOP Standing Operating Procedure
ECOSOC UN Economic and Social Committee	SRSG Special Representative of the Secretary- General
EU European Union	TAT UN Training Assistance Team
FALD UN Field Administration & Logistics Division	TCN Troop Contributing Nation
GA General Assembly	UNAMIR UN Peace-Keeping Mission to Rwanda
HCHR High Commissioner for Human Rights	UNAVEM UN Peace-Keeping Mission to Angola
HCNM High Commissioner on National Minorities	UNCPCJB UN Crime Prevention and Criminal Justice Branch
HRFOR Human Rights Field Operation in Rwanda	UNDP United Nations Development Program
HRO human rights operation	UNHCR UN High Commissioner for Refugees
ICCPR International Convention on Civil and Political Rights	UNITAF United States-led Unified Task Force to Somalia
ICESCR International Convention on Economic, Social, and Cultural Rights	UNITAR UN Institute for Training and Research
ICRC International Commission of the Red Cross	UNMIBH UN Mission in Bosnia and Herzegovina
ICTY International Criminal Tribunal for the former Yugoslavia	UNNY United Nations New York
IFOR Implementation Force (multilateral military force in former Yugoslavia)	UNOMIL UN Observer Mission in Liberia
IGO Inter-Governmental Organization	UNOMSA UN Observer Mission in South Africa
IPTF International Police Task Force (ex- Yugoslavia)	UNOSOM UN Peace-Keeping Mission to Somalia
IHL International Humanitarian Law	UNOVER UN Operation to Verify the Referendum (Eritrea)
MICIVIH International Civilian Mission in Haiti (joint UN/OAS)	UNPROFOR UN Protection Force to the Former Yugoslavia
MINUGA UN Mission in Guatemala	UNTAC UN Transitional Authority in Cambodia
MSF Médecins Sans Frontières	UNTAG UN Transition Assistance Group to Namibia
NAM Non Alignment Movement	UNV UN Volunteers
	USG Under-Secretary-General
	WFP World Food Program

Chapter 1 Introduction: Human Rights in Complex Emergencies

1.1 UN Field Operations

The fundamental premise of this study is that human rights underpin, and help determine, the outcome of any UN field operation. The broad objective of this study is to look at how the UN and its field operations deal with human rights violations in complex emergencies. A primary focus of the study will be the concept and practice of UN human rights operations (HROs).

This study does not pretend to be able to canvass the full range of potential international human rights actions to help prevent, or respond to, complex emergencies. It is largely restricted to looking at how the UN does or should deal with human rights in the field context of complex emergencies. Inevitably of course, there will be some overlapping analysis of the earlier actions that the UN could or should have taken, such as in the area of early warning and preventive field action. There will also be some overlapping analysis of the long term field follow-up actions that the UN should take, such as human rights capacity building for sustainable peace and sustainable human rights protection. Both that long term human rights development, and early warning and preventative action, have obvious implications for, and usually are components of, HROs.

The phrase **human rights operation (HRO)** has been used in this study as a generic term for any large or functionally substantial UN human rights field operation. Such human rights operations (HROs) are conducted in the field, and are of relatively long duration. As such they can be differentiated from a broad variety of UN human rights 'missions' which consist of individuals or teams sent out from headquarters, eg. from the office of the High Commissioner for Human Rights or from the Centre for Human Rights. Such 'missions' are of relatively short duration, often days or weeks, and normally would have a narrowly defined task. However in the past some HROs such as MICIVIH have been referred to as 'missions', 'human rights field missions', etc., and a degree of confusion has developed as to terminology. It is suggested that the term 'operation', drawing upon its use in 'peace-keeping operations', connotes an activity that is of relatively long duration, whose operational roles are substantial, and which takes place in the field. Many of these distinctions are admittedly arbitrary, but until such time as the UN or the human rights community selects a common term, and to avoid confusion, HRO has been used throughout this study.

An HRO can either stand alone, or be an integral component of a larger UN field operation. That larger UN field operation may consist of a number of sub-components such as a military peace-keeping operation, a humanitarian operation, a CIVPOL operation, or a human rights operation. There have been five clearly identifiable UN HROs to date: El Salvador, Cambodia, Haiti, Rwanda, and Guatemala.¹

In El Salvador (the human rights division of ONUSAL), in Haiti (MICIVIH), and in Guatemala (the human rights division of MINUGUA), the human rights field operations were the vanguard of larger and more comprehensive UN field operations. In El Salvador and Guatemala, they were incorporated into the larger UN field operation, while MICIVIH retained operational independence from UNMIH albeit under the authority of the Special Envoy. In Cambodia the Human Rights Component was a part of the UN Transitional Authority in Cambodia (UNTAC) but did not play a vanguard role. In Rwanda, the Human Rights Field Operation in Rwanda (HRFOR) was a stand alone operation albeit alongside the UN Peace-Keeping Mission to Rwanda (UNAMIR).

Just these five HROs makes it obvious that so far there are no set operational models. As will be discussed throughout the study, there are a myriad of different potential functions and objectives for HROs. The potential configuration or make-up of HROs to meet those goals are even more varied. It cannot be overemphasized, that particularly in these early days of evolving models of UN HROs, that no option should be dismissed out of hand. Every UN operation is distinct and requires distinct personnel and resources, and only time and operational experience will determine common or standard HRO characteristics and components.

These five HROs also make it obvious that there have been some glaring failures in how the UN has been mounting human rights operations. In an important study done for USAID, Steve Golub lists a number of shortcomings of HROs that he refers to as human rights monitoring missions (HRMM). These include:

- “ a lack of donor coordination among agencies and governments concerned with HRMMs;

¹ There have also been human rights activities within other UN operations such as UNTAG, UNAVEM III, UNOMIL, UNOVER, UNRWA and UNOMSA, but they have been relatively small compared to the larger UN operation, and did not have a distinct character or presence within or alongside the larger UN operation. Similarly the field offices of the Centre for Human Rights in the former Yugoslavia, set up to service the Special Rapporteur and the Expert on missing persons, while given a number of tasks such as fact-finding, reporting, and recommending, was under-resourced and relatively minimal compared to both the extent of the human rights situation and the size of the much larger UN operation(s). It was more of field mission of the Centre despite the fact that it developed a degree of permanency. And finally, specialized agencies particularly UNHCR, mount large operations that are truly 'human rights' in character but have unique focuses such as refugees and merit separate classification and treatment.

- inadequate training for monitors, particularly in that training has focused too much on legal formalities and too little on practical realities and the special problems facing women;
- UN bureaucratic procedures that include poor recruitment practices, counterproductive work rules and hand-to-mouth financial arrangements;
- an absence of intra-UN cooperation, ranging from poor New York back-up for human rights divisions of peace-keeping operations;
- delays in launching HRMMs, leading to loss of mission credibility and significant cuts in the effective operating durations of missions;
- constraints regarding availability of funds to assess needs and plan missions;
- the absence of institutional memory and a coordinating body for HRMMs, contributing to a failure to learn lessons and improve procedures from one mission to the next;
- the quality of mission leadership, which has not been a problem in most instances, but which remains a crucial consideration to bear in mind;
- the selection and nature of monitors, which has been mixed and which needs to rely more on practical country experience, activist human rights backgrounds and specialized skills (such as forensics) and less on academic legal training;
- rapid staff turnover among United Nations Volunteers acting as monitors;
- the selection and nature of police and military members of HRMMs by their home governments, which leads to some lacking appropriate orientation and skills;
- the lack of human rights training for peace-keeping personnel who are not HRMs; and
- inadequate debriefing procedures for monitors at the close of their service.²

His observations are correct, and he also points out some inherent limitations for HROs regardless of how well they are fielded. However, Golub feels there is substantial potential for HROs in the long run and sets out a number of options for USAID to help in strengthening future HROs. This study is even more optimistic about the potential for HROs, and the ability of the UN and committed individuals to build upon the successes of these early prototypical HROs. This study is equally optimistic about the ability of the UN and individuals to overcome the failures of past HROs. However, before proceeding to look at repeating successes and suggesting options for overcoming failures, it is important to more fully establish the basis for HROs in the first place.

Until recently and perhaps even now, most individuals did not subscribe to the importance of human rights. Certainly most do not readily agree with this study's position that there is an absolute need to deal with human rights in UN field operations if there are to be any durable solutions, particularly for complex emergencies. Therefore, the first part of the study will set out the rationale or *why* human rights should be a part of UN field operations, before moving to *what* it means in operational terms.

² Stephen Golub, *Strengthening Human Rights Monitoring Missions: an options paper prepared for the Office of Transition Initiatives Bureau for Humanitarian Response, USAID, December 1995.*

There are moral, ethical, and legal imperatives for dealing with human rights in complex emergencies. Many of these imperatives come from existing legal and moral obligations incumbent upon the UN as the unique universal organization for the world community. In addition, there are a number of relatively 'new' operational imperatives which re-validate the incorporation of human rights into UN field operations.

One manifestation of this changing set of imperatives, is the reduced number of classic style peace-keeping³ operations and the growth in the number and size of complex emergencies that the UN must deal with. There is no need here to examine why these emergencies or conflicts have become more complex, or even whether they in fact have become more complex. Perhaps we have only started to understand the complexity of international conflicts that previously were 'simplified' by the pressures of real politic or cold war politics, combined with a strong reluctance to look beyond the veil of state sovereignty⁴.

Along with this changing face of UN imperatives and challenges, is an increased understanding of the linkage between human rights and the achievement of peace and security. There is a growing imperative to deal with human rights if the UN wants to be successful in the broad range of peace-keeping, conflict resolution, or prevention activities.

1.2 The Imperatives

Moral and ethical

Political leadership and political decision-making devoid of moral and ethical standards are antithetical to peace and security. And, as almost every human rights activist knows, human rights equals politics. To de-link human rights from the politics of any situation is patently impossible. Ignoring human rights in addressing the politics of any situation is of course quite common, but does not change the linkage with human rights. Failure to factor in the human rights elements of a conflict invariably creates an underlying instability for narrow political

³ *Peace-keeping* has become a variable term, reflecting the tension between its traditional definition, ie. interpositional military forces between consenting parties, and new variations such as "inducement operations" where Daniels and Hays argue for coercive operations akin to Ch.VII operations. This study uses peace-keeping in its broadest sense so as to include peace-making, peace-enforcement, peace-building, et al., and possibly involving CIVPOL and civilian personnel in addition to the military. The study also uses the more inclusive term *UN field operations* for situations where a UN operation is not predominantly a military peace-keeping operation and includes, or consist entirely of entities such as a human rights operation, a humanitarian assistance operation, a CIVPOL operation, or any variation of the above.

⁴ see Kofi Annan, *Peace Operations and the United Nations: Preparing for the Next Century*, to be published by the International Peace Academy circa May 1996, for a discourse on how classic state consent now must be increasingly replaced by 'constructive' consent often obtained through new post cold war forms of coercively induced agreement by parties to a conflict for a UN peace-keeping operation, eg. for "societies bordering on anarchy, the old dictum of 'consent of the parties' will be neither right or wrong; it will be, quite simply, irrelevant." p.6 *ibid*.

'solutions'. It is suggested that the rather ambivalent attitude towards human rights by many UN political negotiators and UN decision makers, often member states themselves, has been the result of an unawareness of how human rights underpin everything the UN stands for and is trying to achieve.

Somalia was a case in point. It appears as if most of the senior UN officials in the operation and at UN headquarters in New York, saw human rights issues as an impediment to political negotiations. This attitude was not particularly different from attitudes in other peace-keeping operations, and most certainly reflected and was driven by the attitude of most member states. As in other UN operations, this was not necessarily indicative that UN officials were opposed to human rights per se, or took human rights violations lightly. Rather, they just felt that there was little linkage between politics and human rights, and that human rights did not play a major role in achieving peace. Morality and ethics were seen as precious in their own right, but not terribly important when dealing with the 'real' issues.

Legal

The UN Charter contains both the legal basis for human rights activity by the UN, and the political contradictions such as the '*essentially domestic jurisdiction*' clawback of Art. 2(7). Like any set of principles, the Charter is subject to interpretation both through subsequent written agreements and through customary practice. As will be seen in Chapter 3 on the legal imperative, there has been a proliferation of legal agreements since 1945 that spell out with increasing clarity the human rights and duties of individuals, governments, and the UN.

Most of the legal duties are found in the International Bill of Rights and other human rights treaties, others are found or repeated in the Law of Armed Conflict. Some norms have become universally binding regardless of whether a particular treaty has been ratified or not. Rape, extra-judicial executions, disappearances, and torture are just some of the human rights violations that have gained such universal legal condemnation.

At a minimum, these universally binding human rights norms bind the UN, all its member states, and all parties to an armed conflict. Is the world prepared to silently witness acts of ethnic cleansing in Bosnia, ethnic massacres in Rwanda, or death squads in El Salvador? Especially when a UN operation is present in the country the answer of course is, a tentative "not really". Moral imperatives may encourage us to include international human rights in UN field operations, and legal imperatives may legally bind us to do so. However the bottom line in UN practice is that even the combination of moral and legal imperatives have hardly ever proven sufficient to result in rapid and effective response by the world community.

Fortunately, there are emerging operational imperatives that make it worth the while of UN member states to monitor violations and protect human rights. Particularly where there are UN field operations, member states and senior UN personnel are becoming increasingly cognizant of the operational pay-offs to taking human rights action.

Operational

In the new world of 1990's peace-keeping, most emergencies were recognized to be complex, and directly or indirectly affected us all. Loosened from cold war constraints and facilitated by the increasing spread of military weapons, the days of relatively quiet 'Cyprus-style' operations are long gone. In this new world of increased ethnic conflict and civil wars, human rights violations have a much greater operational impact.

Human rights violations are increasingly understood to be a major cause of those complex emergencies. Equally, the promotion and protection of human rights is a critical factor in the prevention or resolution of those emergencies. Ignoring human rights violations usually worsens a conflict, causing a downwards spiral of violations and counter-violations that threaten, and at times block, success in achieving any kind of peace-keeping or peace-making objective. **This need to take human rights seriously to achieve lasting peace and security is the operational human rights imperative.**

For the majority who still subscribe to power politics, it is this operational imperative that will convince them to operationalize the ethical and legal imperatives, and is of such importance as to merit extended discussion in Chapter 2 following. The study in Chapter 3 will return to look at the legal norms that guide the UN in meeting those far more persuasive operational imperatives.

1.3 Renewed UN Mandate for Human Rights Operations

Formal mandate remains a critical issue in the evolution of human rights action within a UN operation. Mandate will be assessed in Chapter 4 on human rights operations, and in Chapter 5 on the human rights partners. Suffice at this point to say that until recently, the role of human rights in UN field operations was minimal. Invariably the UN's inherent human rights mandate has been beaten back by Art. 2(7), ie. non-interference in matters which are *essentially* within the domestic jurisdiction of any state. Cold war power politics abetted an expansive determination of Art. 2(7) and a legion of similar treaty claw-back sections and phrases. Only recently have some states begun to recognize that human rights protections are an integral part of international peace and security, and that phrases such as 'essentially within the domestic jurisdiction' should be interpreted restrictively. It is promising that the recent Vienna Declaration of the World Conference on Human Rights recognized that the "protection of all human rights is a legitimate concern of the international community."⁵

A very recent and forceful example of a renewed mandate for human rights operations is contained in the Dayton Accords and other international negotiations concerning both Bosnia and Herzegovina, and the rest of the former Yugoslavia. For years the international

⁵ Part 1, para 4, *Vienna Declaration and Programme of Action*, adopted 25 June 1993, UN-Doc. A/CONF.157/23 of 12 July 1993.

community has been largely paying lip service to human rights in the region in an attempt to broker real-politick and military solutions. Ancillary activities such as the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, were innovative but were kept on the margins by UN member states and local parties to the conflict. Faced with a failure to achieve durable peace in this way, the human rights operational imperative was renewed. The burgeoning human rights activity in the region by the international community is not only long overdue, but will contain important lessons on how human rights can play out in future international operations elsewhere⁶.

Since this change of attitude by states is both recent and tentative, those in UN headquarters and those in UN field operations demand clarity of instruction if they are to move against their 'learned' predisposition to downplay human rights. Traditional UN instructions or guidelines have invariably given passing mention of human rights in such a way that the specific language and tenor of those instructions made it obvious that human rights were not to be allowed to get in the way of the real issues, eg. negotiated settlements.

What is needed is a standard practice of automatically placing human rights into the goals, mandate, structure, and rules of engagement of UN field operations. "It may strengthen the negotiating position of the United Nations to define standard elements necessary for the human rights fieldwork, although additional aspects of the terms of reference may be specific to each country situation."⁷ Moving one step further, it would strengthen the negotiating position of the UN even more if it established a doctrine that every UN field operation, because of the very nature of the UN, would automatically included a distinct human rights operation. The function and size of the HRO would reflect the nature of the particular conflict or complex emergency.

The counter argument is that quite often a lot of fancy diplomatic footwork, tantamount to both blackmail and downright deception, is necessary to get various member states to go along with the idea of some UN human rights field activity. It is argued that attempts to make HROs automatic would be counter productive. Similarly it is argued that UN and its negotiators should not press, and perhaps not even, ask for clear human rights guarantees and a definable human rights component of any proposed UN field operation. Human rights should be camouflaged and brought in the 'back door'.

This type of UN self censorship and diplomatic obfuscation can only bolster the perception that human rights is not a legitimate role for UN field operations. Even more importantly as the history of UN field operations shows, there usually little gain in getting approval for human rights in field operations by convincing some states that a UN human rights presence will be cosmetic. Invariably and logically, those same states then make it difficult for human rights activity to be other than cosmetic. Their favoured tactic to minimize human rights in UN

⁶ See the Report on the *International Round Table on Human Rights in Bosnia and Herzegovina, Vienna 4-5 March 1996*, Austrian Federal Ministry for Foreign Affairs, pp.167, this provides an excellent overview of human rights activity in BH.

⁷ p. 19, *Honoring Human Rights and Keeping the Peace: lessons from El Salvador, Cambodia, and Haiti*, Alice Henkin ed., The Aspen Institute, 1995.

operations has been the denial of sufficient resources and staff for HROs or other human rights field activity.

Fortunately human rights has become sufficiently mainstream that all UN member states have to give them at least nominal assent. Arguably some of the diplomatic ploys in the UN in the past to camouflage human rights have become counter-productive. Perhaps human rights in the UN have become sufficiently legitimate that every single UN field operation must be presumed to require a human rights component.

Recommendation #1

It is recommended that all UN field operations automatically include senior human rights staff or advisors, and that every major UN field operation have a distinct human rights operation (HRO), eg. a human rights division.

Chapter 2 - Operational Imperative

Human rights are increasingly recognized as one of several critical causal factors in conflict. Depending on whether they are protected or violated, human rights contain an operational imperative that can have either a causal impact or a preventive impact on conflict. UN operations can harness this operational imperative to help achieve durable peace as occurred in El Salvador. Alternatively, UN operations as in Somalia or Cambodia, can marginalize human rights and run the real risk that ongoing human rights violations will impair or totally negate UN efforts.

UN field operations now range across a wide spectrum from monitoring cease-fires, helping to implement peace agreements, delivering humanitarian assistance, to peace enforcement. As most effectively evidenced by the early years of the ex-Yugoslavia crisis, "human rights protection is essential to the success of any such operation".⁸ In addition to the operational imperatives, "as long as the UN avoids tackling these [human rights] issues effectively, it is seriously damaging its own credibility and thereby its capacity to undertake peace-keeping and peace-building operations in other contexts and countries in the future."⁹

In this chapter, section one will first look at the causal relationship of human rights violations and conflict, and then extrapolate this cause and effect relationship to the conduct of UN operations. Section two will review some of the real strategic and tactical benefits for the UN, and in particular a UN operation, in taking human rights seriously. Section three will look at the related danger of confusing impartiality with unquestioned inaction in the face of human rights violations. Section four will look at the operational imperative of rapid reaction to forestall or minimize conflict, while section five discusses the inevitable long term aspects of the operational imperative.

⁸ p.2 of summary of *Peace-keeping and Human Rights*, Amnesty International, IOR/40/01/94, January 1994. This AI study which builds upon seminal papers by Andrew Clapham and Meg Henry, includes AI's 15-point program for implementing human rights in international peace-keeping operations.

⁹ *ibid.*

2.1 Causation and Escalation

Ongoing systemic human rights violations, as opposed to random violations akin to common criminality, can cause further violations and worsen conflict. Avoiding or reducing human rights violations can serve to de-escalate a conflict.

This is not to imply that conflict can be explained simply in terms of human rights, for they are but one of many factors or root causes of conflict, particularly of 'complex emergencies'. The term complex emergencies now common in UN discourse, refers to conflict situations that threaten societies, states, or regions. Its use has largely evolved in the post cold war period, and this timing is indicative. Cold war alignments and power politics served to mask the many factors that underlay both internal and international conflicts. Cold war ideology gave many states and individuals a way in which to rationalise away unpalatable truths including the abuse of human rights by political allies.

It is now broadly accepted that in these complex emergencies, particularly ethnic conflicts, that human rights violations often figure large as one of the causal factors in the process leading to conflict. In referring to recent ethnic conflicts, UNHCR's 1993 Report makes it clear that "tensions arising from unresolved political, ethnic, religious or nationality disputes led to human rights abuses which became increasingly violent. Left unchecked, this process frequently develops into armed conflicts..."¹⁰

When the state or the international community does not wish or is incapable of protecting in whole or in part the security and other human rights of individuals and groups, those individuals and groups will look to alternate sources of protection. Those alternate sources are invariably found within relatively coherent ethnic or social grouping. This gives rise to a security dilemma¹¹, where the steps taken to enhance a group's security will be perceived as a threat to adjacent groups who react in a similar fashion, which in turn provides an increased threat to the first group. This is simply a variation of the cold war arms race, and is equally self defeating and far less stable. Fear of retaliation engenders pre-emptive strikes and human rights violations.

In a similar process, human rights violations worsen existing armed conflicts. There is a downward spiral of violations and reprisals which not only exacerbate the day to day conflict, but make long term reconciliation and peace increasingly difficult to achieve. Silence on the part of the UN about past or ongoing violations merely serves to confirm the fear of the victims that the international community will not protect them. Fear of violations engenders self defence and creates the security dilemma that drives escalation. This whole cycle also opens the door to what has been referred to as 'conflict entrepreneurs', who capitalize on such insecurities to foster increased conflict in the anticipation of gaining personal power or profit.

¹⁰ p.121, *The State of the World's Refugees 1993: The Challenge of Protection*, United Nations High Commissioner for Refugees, Penguin Books

¹¹ For a useful study of these issues, see *Ethnic Conflict and International Security*, Michael E. Brown Ed., Princeton University Press, 1993, pp.276, in particular the chapters by Jack Snyder and Barry Posen.

Violations, unless addressed early and openly, also start to take on mythic qualities. This is where independent and unbiased monitoring by an HRO could play a particularly important role. The ability to discern the truth rapidly disappears as time passes, and the saying that truth is the first casualty of war is nowhere more evident than in virulent civil wars. The former Special Rapporteur on the Former Yugoslavia, Tadeusz Mazowiecki, stated forcefully that "there is ... a great deal of disinformation, rumour and propaganda which, on investigation by objective international monitors, has been disproven. The dissemination of such falsehoods only serves to dehumanize the enemy, deepen the persecution complex, fuel the flames of ethnic hatred and, ultimately, prolong the conflict."¹²

A better understanding of the "continuum between human rights abuses and increasing violence which, unless broken, in many cases leads to armed conflict,"¹³ will lead to a better understanding of the operational imperative for UN operations to take human rights seriously. The operational imperative for UN field operations to deal with human rights has commensurate operational pay-offs including increased effectiveness in almost all aspects of a UN field operation, including strategic and tactical peace-keeping operations.

2.2 Strategic and Tactical Benefits

In a perfect world, the goal of protecting the innocent and the vulnerable would provide sufficient grounds for UN field operations to protect human rights. None of us should be so sanguine as to expect an argument to win many debates in the Security Council or the General Assembly. It is often more persuasive to argue the strategic and tactical benefits that accrue to a UN operation by protecting the rights of others.

Despite the increased recognition of human rights causality and that "human rights abuses often play a critical part in fuelling armed conflict and aggravating humanitarian crises, they have been given a low priority by officials who oversee UN field operations. ...The cost of this inattention to human rights is anything but academic. It can be measured in damaged credibility, operational missteps and impaired effectiveness."¹⁴

Determining the true cause of any particular conflict has important strategic and tactical implications. If the UN does not know what is driving the conflict, then it seems fairly likely that the ways in which the UN decides to address it will be less than effective. In situations where human rights are not only a causal factor, but a key causal factor, a failure to be informed of past and present human rights violations will fatally flaw any UN response. This is not to imply that even a full understanding the human rights issues is sufficient to understand the underlying causes of any conflict. Human rights is but one factor, albeit a critical factor.

¹² SR report to the GA, A/47/666, 17 Nov 1994, para 5.

¹³ p.1, Rachel Brett, Discussion paper on *Ways of Improving the Implementation of Human Rights and Humanitarian Law*, Geneva Quaker Office, 10 January 1994.

¹⁴ p.1 *Human Rights and UN Field Operations*, Human Rights Watch, op.cit.

Similarly, human rights experts do not inherently have any particular competence to identify much less understand all of the causes of any conflict. They do however have one key perspective on conflict. If they start to correctly identify the human rights parameters of a particular conflict, they can add significantly to the larger understanding of its causes and solutions.

Recommendation #2

It is recommended that as human rights are a fundamental factor in complex emergencies, that a UN operation should include human rights staff or a human rights operation (HRO) as additional tools for the strategic analysis of causes, and the devising of solutions for, that complex emergency.

Haiti appears to be one of the many examples where a greater attention to human rights by the political negotiators would have been more productive. Ian Martin the Director of Human Rights in MICIVIH observed that "The United Nations/OAS and the United States were dealing directly with the Haitian Armed Forces at times when its continuing serious human rights violations, and its failure to respect the terms of reference accepted in February [1993], had been clearly reported by the Mission. Yet these seem never to have been made an issue in the negotiations, up to and including Governors Island. ...the negotiators believed that the best hope for respect for human rights lay in the success of their negotiations. These, they argued, would not be aided by a tough line on human rights when the military were being coaxed into accepting the transition. But the Missions's work would have been better served if the lack of cooperation by the Haitian Armed Forces had been strongly taken up at the outset; arguably, so would the political process, which ultimately foundered on the military's perception of the weakness of the international community."¹⁵ (Emphasis added)

The former Yugoslavia is perhaps a more notorious example of the UN failing to insist on substantive human rights protection as a precondition for participation in peace talks.¹⁶ "The endless peace negotiations ...conferred legitimacy on Serbian forces -- the main perpetrators of 'ethnic cleansing' -- as it helped them to stave off more forceful international intervention"¹⁷ The former Yugoslavia seems living proof that attempting to build peace upon the narrow premise of power politics is self-defeating, and that forceful inclusion of human rights protection as a determinant of UN actions could only have had better results.

¹⁵ p. 109-10, Ian Martin, *Paper versus Steel: The First Phase of the International Civilian Mission in Haiti*, in Aspen/Henkin ed., op.cit.

¹⁶ The Commission on Human Rights' Special Rapporteur Tadeusz Mazowiecki on the human rights situation in the territory of the Former Yugoslavia, after innumerable comprehensive and forceful reports, finally resigned in the face of continued lack of support by UN member states to substantively address human rights in the context of the negotiations and peace-keeping efforts.

¹⁷ p. 3, *Human Rights and UN Field Operations*, Human Rights Watch, op.cit.

Recommendation #3

It is recommended that the UN consider human rights intelligence and human rights operations, as key contributors to operational and tactical decisions by all components of a UN field operation, including military peace-keepers, CIVPOL, and political negotiators.

There are very real strategic and tactical benefits to UN operation doing everything in their power to avoid such a spiral of violation and counter violation. Keeping a conflict within acceptable behavioural bounds not only means that the UN will probably not have to be there for as long as it otherwise might, but also that UN field staff will be less at risk over the medium and long term.

The increased ferocity of fighting and hate as human rights violations increase, lowers personal and group inhibitions against using violence by appearing to legitimize such violence. Even implicit signals from the UN that individuals and leaders are not accountable for human rights violations, will hasten the break down of that mix of moral, ethical, and legal norms of behaviour. In the face of human rights violations, apparent inaction and unconcern by the UN, particularly UN field personnel, will imply continued impunity.

An increased level and degree of violence threatens the security of all, including UN personnel. Those with the guns find it easier to ignore both local rule of law and the international 'rules' of civilized behaviour. UN peace-keeping forces and other operation members will no longer be seen as inherently immune, and they and their resources start to become targets.

On the other hand, one cannot ignore the chance that monitoring human rights violations and taking action on them will increase short term dangers to UN staff such as human rights monitors, military peace-keepers, or CIVPOL. Also, UN human rights action can complicate the day-to-day negotiations of the political arm of a field operation. However, it is highly debatable as to whether short term security threats and temporary suspension of negotiations, are not more than counterbalanced by enhanced security and political concessions and solutions over the long term.

However, more than intuition and faith is required in this regard, particularly for military commanders concerned about their troops or for political negotiators trying desperately to achieve even temporary cease-fires and peace. There is a need for research and analysis of success stories resulting from human rights having been given a major policy and tactical role. In an equal and opposite sense, there is a need to look at the failures where particular human rights action were not effective.

An interesting operational analogy is made by Human Rights Watch when it applies the term blackmail to the UN agreeing to ignore human rights to secure various operational goals such as allowing relief convoys to pass. Certainly CIVPOL and others should identify easily with the position that "the necessity of succumbing to such blackmail would be vastly diminished if the UN made clear as a matter of principal that it will not bargain away its duty to criticize publicly gross abuses of human rights -- much as the world now largely accepts that one does

not bargain with terrorists.”¹⁸ The same general methods and principles developed nationally to successfully deal with blackmailers, hostage holders, or terrorist bombers would seem to apply.

Recommendation #4

It is recommended that the UN identify and analyse concrete political and tactical field successes and failures where human rights had a major policy or tactical contribution.

2.3 Impartiality

The UN must strive for impartiality¹⁹ in the area of human rights. Impartiality connotes fairness and justice, and *what is to be strived for is absolute objectivity, not un-questioned inaction*. The UN must not freeze into inaction through a fear of upsetting some, or at times all, of the parties to a conflict. Deliberate inaction however might well be the optimum UN ‘action’. That apparent contradiction underlines the truism that inaction through deliberate abdication of responsibility is a decision in itself.

Operational impartiality is not gained by ignoring human rights violations by parties to the conflict. The aggrieved party views silence as tacit complicity and partiality. The violators see it as tacit acceptance or simple UN weakness.

The UN and many member states, sometimes in single minded attempts to broker cease-fires, can be quick to jettison human rights issues. Some see the UN’s misguided interpretation of neutrality and failure to stand up for human rights standards, being evidenced by the UN either “assigning blame with a broad brush to all parties (thus obfuscating responsibility) or by avoiding the topic altogether.”²⁰ In fact, relatively even-handed justice or other tangible responses to violations, would slowly gain the UN grudging respect for impartiality and principled behaviour. As an operational example, the ICRC has been very successful in developing a reputation for impartiality and action. This has enhanced, not diminished, their operational capacity.

This need for impartial action is particularly important in complex emergencies such as Somalia where there is a complete breakdown of civil authority. In such a situation, a UN operation by default becomes the effective authority in all or part of the country. As the de facto national authority, certain unavoidable duties accrue to the UN including the need to operate

¹⁸ p. 6, *Human Rights and UN Field Operations*, Human Rights Watch, op.cit.

¹⁹ The term impartiality is preferable to neutrality. Although the two are supposedly synonymous, neutrality often has the subtle connotation of refusing to get involved in a dispute, ie. claiming not to choose sides as a subterfuge for not wanting to get pulled into a dispute even on the side of an obvious victim.

²⁰ p. 6, *Human Rights and UN Field Operations*, Human Rights Watch, op.cit.

some sort of security and justice system to protect fundamental human rights and establish the rule of law.

In doing so, the UN must anticipate and not be deterred by accusations of bias and unacceptable intrusion into sovereign affairs. In this regard, it is instructive to look at some of the mechanisms created under what is now called the OSCE (Organization for Security and Cooperation in Europe). Under certain instances, the Moscow Mechanism allows for a mission to be sent to a country on the agreement of six of the member states **without** the consent of the state. Even more intrusive into domestic sovereignty has been the creation of the OSCE's High Commissioner on National Minorities (HCNM) with a clear mandate to involve himself in 'internal' disputes, and his evolving practice of publishing his activities and recommendations. His conflict prevention role is enhanced in this way "since one of the problems in relation to minorities is lack of impartial information, which increases fear and uncertainty. By publishing his recommendations, the HCNM may do much to ease tensions both within the minority communities themselves and between the government of the host state [being investigated] and that of the [ethnic] 'mother country'."²¹

Objectively promoting and protecting human rights will inevitably result in vociferous claims of partiality. The more active the UN is in protecting rights, by arresting violators or publicly criticizing violators, the more adamant will be those claims of partiality. The UN must be prepared for such false claims by those who are blinded by hate or fear, or by those with vested interests and attempting to avoid being the object of UN action. The UN, in particular its field staff, should have a strategy on how to respond to such claims when they arise. Inter alia, this could include making sure their facts are well founded, and ensuring that UN actions are consistent vis-à-vis one party or the other.

It is important to advertise what UN impartiality is all about. Individuals and parties to a conflict will be less surprised and less prone to claims of partiality, if they are forewarned about how the UN will respond to human rights violations. The present operation of the Hague tribunals for both ex-Yugoslavia and Rwanda, are putting military and civilian leaders on notice that they can be brought to account for gross violations. At a much lower level, clearly and forcefully notifying parties to a conflict that they will be accountable for violations and that the UN will wherever possible take appropriate action, will reduce subsequent claims of partiality. Hopefully and probably, clear enunciation of a strong UN human rights policy of taking action will reduce human rights violations. As in any legal system, deterrence is directly proportional to the likelihood of being caught and punished.

Recommendation #5

It is recommended that UN member states and senior UN officials clearly set out UN human rights field policy, and state unequivocally that UN action in promoting and protecting human rights will be evenhanded and consistent so as to be impartial and neutral.

²¹ p.47, Rachel Brett, *Is More Better?, An exploration of the CSCE Human Dimension Mechanism and its relationship to other systems for the promotion and protection of human rights*, Human Rights Centre, University of Essex, 1994.

The importance of the UN quickly and unequivocally responding to human rights violations does not infer that all parts of the UN can or should play the same role. In particular, as will be discussed further in section 5.6, human rights operations (HROs) like other parts of the UN must adopt operational strategies that will most effectively achieve their goals.

The Lawyers Committee for Human Rights observed that “in the search for a political solution to a conflict such as El Salvador’s, it may be advantageous to abstain from publicizing certain facts if this is likely to secure the cooperation of the offending party.”²² For example, when does an HRO publicly criticize past violations and when does it remain silent in exchange for greater future human rights protection? Strategic silence about violations raises a “dichotomy [that] has marked each successive UN peacekeeping operation in recent years, from Cambodia to El Salvador and Haiti.,” and “may be the most difficult dilemma facing the UN as it plans future human rights verification missions.”²³ It is suggested that part of the solution lies in different parts of the UN playing different yet complementary roles.²⁴

2.4 Human Rights Rapid Reaction

If Rwanda has taught us nothing else, it is that at times there is a need, and a substantial payoff, for a UN capacity to be able to react more rapidly in deploying human rights operations. This is not to imply that a rapidly deployed Rwandan human rights operation, even if deployed months in advance of the June 6th death of the presidents, would necessarily have prevented the outbreak of genocide. However at a minimum, a correctly configured²⁵ rapid reaction HRO deploying within weeks of June 6th, would have served to mitigate the genocide and subsequent retribution, and would have accelerated moves to achieve reconciliation and reconstruction.

The actions that a Rwandan rapid reaction HRO could have taken are numerous. They could have had an impact on actions taken by some of the ruling élite, some of the government forces, the RPF, the populace at large, and not least of all, UN negotiators and military. UN responses, both political/strategic and tactical, probably would have been quite different if states and other decision makers had been informed by UN human rights field experts providing relevant up-to-date human rights intelligence.

²² p.24, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

²³ p.25, *ibid.*

²⁴ For example, see the discussion of the High Commissioner for Human Rights’ role in section 4.3, and the role of UN treaty bodies, special rapporteurs, workings groups, and other ad hoc bodies, in section 5.6.

²⁵ It must always be remember that human rights operations are extremely varied in their configuration and functions, and success is predicated upon correctly setting each individual HRO mandate and providing the resources including personnel to do the job.

A rapid reaction HRO could have had an impact on the number of internally displaced and refugees. It could have enhanced UN tactics to achieve a sense of security amongst Rwandans so as to reduce the numbers of displaced persons or hasten their return home. The present almost insurmountable barriers to Rwandan reconciliation and rehabilitation would still have been formidable, but with reduced killings and reduced refugee flows, the barriers would have been more resolvable.

There are a number of inherent problems in the UN reacting rapidly to human rights violations even where this involves merely statements or quiet diplomacy. The impediments are even greater for the actual deployment of UN human rights experts, or a substantive and long term operation. The political will of member states, as well as that of the parties to a conflict, will remain the largest barrier to rapid reaction.

In Rwanda, the UN's failure to respond rapidly²⁶ in the area of human rights stemmed in part from an inability to quickly identify sufficient appropriate human rights experts that could rapidly deploy to the field. This was combined with serious UN shortcomings in the provision of administrative and logistics support for even the small number of human rights personnel deployed. These issues will be dealt with in Chapters Six and Eleven respectively.

2.5 Durable Solutions

While human rights can be crucial for the tactical success of day-to-day field operations, they are particularly critical at the strategic level in achieving durable solutions. Quite apart from the inherent value of durable solutions, one of the pressing operational imperatives for any sizable UN operation is how to stand down and go home.

Most certainly in these times of looming UN bankruptcy and fiscal restraint, the reality is that the UN can ill afford large extended field operations. The withdrawal of large UN operations, in particular costly military peace-keeping operations and humanitarian assistance operations, is truly an operational imperative. This has led the UN in the past to opt for narrowly based cease-fires in the often futile hope that the UN could quickly leave and things would somehow sort themselves out. This wishful thinking has invariably resulted in the UN having to return to deal with a situation that has become more intractable and more costly for the UN to help resolve.

In his Agenda for Peace, UN Secretary-General Boutros-Ghali clearly enunciated that "Peacemaking and peace-keeping operations, to be truly successful, must come to include

²⁶ A planned program of genocide was set in motion immediately following the April 6th 1994 plane crash and deaths of Presidents Habyarimana and Ntaryamira. Within 5 days the extent of the genocide was being well enough reported to establish the need for the UN to take immediate action. It was 2 months before the first two UN human rights monitors arrived, another 2 months until two more arrived, and by November (7 months into the crisis) there were only 40 monitors out of a promised 147 (a number never reached even at the peak of the EU team presence in early 1995).

comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people."²⁷ The long term process of peace-building must be premised upon human rights promotion and protection if it is to be sustainable.

Rwanda presently has a classic example of where a real or perceived lack of human rights protection is a barrier to durable solutions. On one hand, Hutu refugees particularly in Zaire, are afraid to return home for fear of Tutsi retaliation. Granted there is a large degree of physical and psychological coercion by exiled Hutu military and political leaders so that their mobile power base, the Hutu refugees, do not leave them. However, they play upon the palpable fear of those refugees who perhaps logically, expect the new Tutsi government to retaliate. Conversely in Rwanda itself, the surviving and returned Tutsi remain fearful of future violation by the still majority Hutu, and tend to react quickly and harshly against perceived threats. This fear-counter-fear permeates the Rwandan situation. The confidence building role of the UN field operation is critical for reaching a stage at which the parties to the genocide can reconcile themselves to the past and reconstruct their society. Rwandan history has shown, as with the Tutsi diaspora culminating with their return over 20 years later, that refugee and other such problems do not simply disappear with time.

More investigation needs to be done into the human rights aspects of what UNRISD calls rebuilding wartorn societies, and hopefully their study²⁸ of the same name will address this aspect. Their planned approach however, contains lessons for how human rights must be applied in the context of UN field operations. They talk about the lack of instant fixes, for such crises have been long in the making and will be long in their resolution. One needs to look at a continuum of human rights activity running from early warning, to preventive action, to monitoring & protection, to reconciliation & reconstruction.²⁹ Their study methodology also relies heavily on local involvement, as a critical component of identifying and implementing solutions.

Cease-fires, corridors of tranquillity, safe areas, etc. are all short term peace solutions that may be skilfully negotiated in the absence of any human rights agenda, but will only endure and spread if the windows of opportunity that they provide are used to advance human rights protection and promotion as the premise for durable peace and reconstruction. Chapter 9 on human rights reconstruction, will examine many of the human rights components of long term or sustainable peace.

²⁷ Agenda for Peace, Report of the UN Secretary-General, 17 June 1992, para 55

²⁸ UN Research Institute for Social Development, *Rebuilding Wartorn Societies*, Geneva. See also UN doc A/50/345 containing the report and recommendations of the International Colloquium on Post-Conflict Reconstruction Strategies chaired by former USG Anstee.

²⁹ The UN Secretary-General is considering appointing an Assistant-Secretary-General as the focal point for post-conflict peace building activities. The individual being considered has been involved in injecting human rights into UN field operations in the past, so this augurs well for human rights in UN peace building activities.

It is becoming clearer that while durable peace requires sustained human rights development assistance, that such long term programs must start in the here and now. In other words, a UN operation does not have the luxury of being able to focus on military solutions. UN operations should continue on from human rights development assistance that might have predated its deployment, and must be a part of human rights development assistance programs that will continue after its departure. Only in this way can a UN operation truly contribute to durable peace and increase odds of it going home to stay.

Recommendation #6

It is recommended that the UN field operations doctrine consider human rights operations (HROs) and human rights development assistance as fundamental building blocks in achieving durable peace.

Chapter 3 - Legal Imperative

This is not a detailed examination of either international human rights law, or the law of armed conflict³⁰. The purpose is merely to review both categories of rights and duties in outlining the legal imperative and legal parameters for human rights in UN field operations.

3.1 International Human Rights Law

Various international human rights laws apply in any conflict situation or complex emergency for all of the standard reasons. States have binding legal obligations under all international human rights treaties which they have signed and ratified. Even where countries have not ratified such treaties, there are parts of some of the more important treaties, declarations, or resolutions, that have become binding on all countries through international customary law, ie. widespread practice by states and their stated policy that they perceive those norms as legally binding on them. Most of these same laws bind the UN for three reasons.

First of all, legally binding universal norms apply not only to the state(s) where a particular conflict is occurring, but also impose obligations reference that conflict on all other UN member states and by extension the UN. Secondly, those international legal norms created within a UN fora that a particular country in question has ratified, bind them as well as imposing obligations on other states that have ratified those norms and the UN per se as the 'sponsor'. Thirdly and largely ignored, national contingents and individuals on loan to the UN remain firmly bound, logically and legally, by their home state's international legal obligations.

Thus the UN itself has certain obligations to protect and promote the rights of individuals or particular group of peoples. These obligations are commensurately greater in the face of gross and systemic violations, particularly where a government is failing in its obligations to protect human rights or is actually a party to violations. UN obligations become particularly imperative where there is a UN field operation, and become absolute when the UN becomes the de facto authority in all or part of the operation area.

³⁰ Various titles: the law of armed conflict, the law of war, international humanitarian law, etc., this body of international norms includes the Geneva Conventions (Law of Geneva), the Hague Conventions (Law of the Hague), and the more recent Law of New York. This study will use the 'law of armed conflict' to refer to all of the above.

Amnesty International argues quite cogently that there are legal obligations that there be no international 'silent witnessing'. "All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive."³¹

There are particular human rights standards and instruments that have quite direct applicability to, and impact upon, UN field operations in complex emergencies. The core of international human rights is the International Bill of Human Rights consisting of:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights & Optional Protocol.

Other key human rights conventions of particular relevance to UN field operations include the:

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention relating to the Status of Refugees
- Protocol relating to the Status of Refugees
- Convention on the Elimination of Discrimination Against Women
- Convention on the Rights of the Child

A number of documents have been promulgated by UN organs and UN sponsored bodies. These are not international agreements binding upon states in the way that international treaties are. Nevertheless they are directly applicable to the conduct of parties to a conflict, and provide HROs and other UN field staff with quasi-official evaluation criteria and standards. At a minimum, they have the force of UN policy or doctrine so as to bind UN staff and presumably peace-keeping troops or CIVPOL. These policy or doctrinal documents include³²:

- Standard Minimum Rules for the Treatment of Prisoners³³
- Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners³⁴

³¹ point #2, *Peace-keeping and Human Rights*, Amnesty International, IOR/40/01/94, January 1994.

³² Some other relevant UN sources include: Declaration on the human rights of individuals who are not nationals of the country in which they live; Guidelines on the role of prosecutors; Basic principles on the role of lawyers; Declaration of basic principles of justice for victims of crime and abuse of power.

³³ ECOSOC Resolution 663C (XXIV), 31 July 1957, ECOSOC Resolution 2076 (LXII) 13 May 1977.

³⁴ ECOSOC Resolution 1984/47, 25 May 1984, endorsed by GA Res. 39/118 14 Dec. 1984.

- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment³⁵
- Code of Conduct for Law Enforcement Officials³⁶
- Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials³⁷
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials³⁸
- Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions³⁹
- Basic Principles on the Independence of the Judiciary⁴⁰
- Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary⁴¹
- UN Criminal Justice Standards for Peace-keeping Police⁴²
- UN Civilian Police Handbook⁴³
- UN Military Observers Handbook⁴⁴

Finally, there is one instrument and an allied resolution that are immediately relevant to UN field operations, and reflect the overlap of human rights law and the law of armed conflict:

- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity⁴⁵

³⁵ General Assembly Resolution 43/173, 9 December 1988

³⁶ General Assembly Res. 34/169 17 December 1979

³⁷ General Assembly Res. 24 May 1989

³⁸ Adopted by the 8th UN Congress on the Prevention of Crime and Treatment of Offenders (1990) and welcomed by GA Res 45/121 of 18 Dec. 1990.

³⁹ ECOSOC Res. 1989/65 of 24 May 1989. Note: there is also a UN Manual on these Principles

⁴⁰ Seventh UN Congress on the Prevention of Crimes and the Treatment of Offenders, endorsed by GA Res. 40/32 of 29 November 1985 and welcomed by GA Res. 40/146 of 13 December 1985

⁴¹ ECOSOC Resolution 1989/60, 24 May 1989, endorsed by GA Res. 44/165 15 Dec. 1989.

⁴² This is not a legal document, but a short handbook of basic norms and rules to be applied by UN troops in the field. It was elaborated by the UN Crime Prevention and Criminal Justice Branch in cooperation with CIVPOL of UNPROFOR and UNTAC and published with the financial support of Canada in February 1994. It has been translated into French, Spanish, Arabic, and Serbo-Croat.

⁴³ This is not a legal document, but a handbook produced by the Training Unit of the Department of Peace-Keeping Operations, October 1995.

⁴⁴ This is not a legal document, but a handbook produced by the Training Unit of the Department of Peace-Keeping Operations, July 1995.

⁴⁵ GA Res. 2391, XXIII, 26 Nov. 1968, entry into force 11 Nov. 1970.

- Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity⁴⁶.

While human rights law and the law of armed conflict, as in this study, are still treated separately, their gradual overlapping over time is no more evident than in UN field operations in situations of armed conflict.

3.2 Law of Armed Conflict

The codification of the law of armed conflict began roughly in the 1860's, and for a long time was seen to run separately but in parallel with human rights law. It was obvious that human rights or humanitarianism provided the fundamental theme or rationale for its development. Just as the different strands of the law of armed conflict expanded and overlapped, so too the whole body of the law of armed conflict has expanded and overlapped with similarly expanding international human rights law. This has particular relevance for UN field operations.

The international law of armed conflict brings together the three streams or categories of normative behaviour for situations of armed hostility. The Law of The Hague is a collection of treaties⁴⁷ regulating the conduct of hostilities. It attempts to strike a balance between military necessity and humane war fighting if that is not too much of an oxymoron. It deals with such issues as the use of chemical weapons, explosive bullets, and other weapons or tactics that cause 'unnecessary' suffering during armed conflict.

The Law of Geneva refers to the rules on the treatment of non combatants. Codified in 1949 in the four Geneva Conventions, they deal with (I) the wounded and sick in the field, (II) the wounded, sick and shipwrecked at sea, (III) prisoners of war, and (IV) civilians in the hands of the enemy. Additional Protocol I of 1977 reaffirms and develops the protection of victims of international armed conflicts while Additional Protocol II of 1977 reaffirms and develops the protection of victims of non-international armed conflicts as already laid down in Art.3 common to the Four Geneva Conventions. Both 1977 Protocols integrate rules of the Hague Law into the Law of Geneva.

⁴⁶ General Assembly res. 3074 (XXVIII), 3 December 1973

⁴⁷ There are roughly 28 treaties regulating the conduct of hostilities (Law of The Hague) including the Hague Conventions per se. They can be roughly divided into 5 categories: General/Land, Sea, Air, Neutrality, and Weapons. For a compilation see, *International Law Concerning the Conduct of Hostilities: Collection of Hague Conventions and Some Other Treaties*, International Committee of the Red Cross, Geneva, 1989, pp. 201.

And finally, the Law of New York (UN) refers to more recent issues such as war criminals and atomic warfare. While the merger of the three strands⁴⁸ has been a constant evolution, General Assembly Resolution 2444 (Dec. 1968) speeded up their amalgamation along with the clear indication that their common theme was that of protecting human rights in armed conflicts.

It is increasingly academic to differentiate between the fundamentals that underpin the laws of Geneva, The Hague, and New York. They may deal with different aspects of the law of armed conflict, but their driving force and focus, the protection of human rights in armed conflict situations, are identical. So too, there is not a lot of benefit in trying to differentiate between the fundamentals that underpin both international human rights law, and the law of armed conflict⁴⁹. Arguably the law of armed conflict increasingly will be seen as a specialized subset of international human rights law. However, that debate can certainly wait and will probably be more illuminated by others as they proceed to analyse field experience such as in the former Yugoslavia or Rwanda, where human rights people and law of armed conflict people worked concurrently if not always hand in hand.

However, it is interesting to look at the utilitarian theme that is generally ascribed to the law of armed conflict, that of preventing unnecessary suffering during armed conflict. This explains much of the convergence of first the Hague, Geneva, and New York laws, and their convergence with international human rights law. Torturing prisoners for intelligence or using biological weapons, could well be necessary to win an armed conflict. Yet such actions have become illegal, and the reason is that the world has decided that there are certain standards of behaviour that are unacceptable in any armed situation. In other words, there are a whole range of basic protections for individuals that cannot be derogated from in any situation of armed conflict, and a rare few that can only be derogated from in extreme cases. This is much akin to human rights terminology such as fundamental rights and limited derogations to those fundamental rights. The issue of derogation however, does remain a major differentiation between the law of armed conflict and international human rights law.

Even assuming a fundamental commonality between international human rights law and the law of armed conflict, ie. protecting individual's rights, international human rights law provides substantial scope for derogation. International human rights law has the added weakness of a less than strenuous identification of which rights are both universal and fundamental so as to be non derogable in any situation. This is particularly so at the edges of 'fundamental rights', as rights start to incur a social or cultural determinate as to their interpretation and applicability. For example, is whipping an acceptable judicial punishment?, can parents hit children?, or can states use the death penalty? The law of armed conflict on the other hand is

⁴⁸ Two useful books that bring some of the strands together, see an academic analysis by Fritz Kalshoven, *Constraints on the Waging of War*, ICRC, Geneva, 2nd Ed. 1991, pp. 175, and for a field commander's handbook with recommendations for action and behaviour see Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC 1987, pp. 257.

⁴⁹ For a short introduction into some of the logic of this convergence see Asbjørn Eide, *The laws of war and human rights - Differences and convergences*, pp. 675-97, in *Studies and essays on international law of armed conflict and Red Cross principles*, C. Swinarski ed., ICRC, Geneva 1984, Martinus Nijhoff Publishers.

almost totally non-derogable. To paraphrase the Nuremberg Tribunal ruling in the Krupp trial, the essence of war is that someone will lose, and those drafting the laws of war knew that and designed those laws specifically for the ultimate emergency of war in which there would be no further grounds for derogation.

This largely un-derogable nature of the law of armed conflict, makes it particularly useful for protecting human rights in conflict situations. As such, UN human rights operations and others attempting to protect human rights in conflict situations as invariably exist in complex emergencies, should look to the laws of armed conflict. Suffice it to say that in most UN field operations, particularly peace-keeping operations, both international human rights law and the law of armed conflict do apply. The fact that they often overlap is a plus not an impediment to their application, as they complement and support each other, and practitioners can select from whatever category provides the best legal tool for any particular situation.

Much akin to the discussion as to whether the law of armed conflict is binding on the UN and its field operations, so too there has been discussion about the difference between international and internal conflicts. The law of armed conflict was largely codified in a period when the concept of state sovereignty was fairly sacrosanct. As a result, the whole tenor and terminology of the laws pertain almost solely to hostilities between independent states. There is of course the 1949 Geneva Conventions' common Art.3 which sets out minimum rules for internal armed conflicts. Those already minimum rules were further restricted since the state in question in effect made the determination as to whether there was such an armed conflict.⁵⁰

In a step forward, common Art.3 was developed and supplemented by the 1977 Additional Protocol II⁵¹ (APII). To date, APII has received 134 state ratifications⁵², and it makes some important but tentative efforts to widen the definition of internal armed conflict and the material field of application (Art.1). Unfortunately clawback clauses in both Art.1 and Art.3 managed to retain substantial de facto state determination or impact on whether an internal state conflict falls under APII. At the time of their creation both initiatives, common Art.3 and APII, were major steps forward. But now respectively 46 and 18 years later, they are far from sufficient. Their application remains largely in the political arena, so that it is possible for states such as Turkey to deny that they are involved in an internal armed conflict, while at the same time claiming the right to derogate from human rights treaties on the grounds of public emergency⁵³.

⁵⁰ Even the mere "classification of whether there is an armed conflict at all, and if so, what manner of armed conflict is within the almost exclusive decision of the government concerned." p.2 Rachel Brett, *Discussion Paper on ways of improving the implementation of human rights and humanitarian law*, January 1994, Quaker Office to the UN in Geneva. Brett recommends the creation of an independent body to make such determinations, both vis-à-vis international conflict but most importantly vis-à-vis internal conflicts.

⁵¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

⁵² It appears that Protocol II has only been applied four times: El Salvador, the Philippines, Colombia, and Chechnya.

⁵³ It has been proposed by R.Brett and F.Hampson that a state that derogates from its human rights obligations should not be able to deny the applicability of at least common Art.3.

At a minimum, there is a need for some mechanism, be it an independent determining body or precise treaty terminology, that makes it almost impossible for states to hide or deny the existence of internal armed conflicts broadly defined.

It makes no sense that different rules apply for armed conflict between states, as opposed to internal wars. If anything, internal or civil wars can incur far more serious human rights violations and are in far more need of international protection of human rights in armed conflict as often best set out in the law of armed conflict.⁵⁴ That states and thus international law continue to differentiate between the two, is a reflection of international politics and the difficulty of changing international law. It is not indicative of any fundamental difference between human rights entitlements in internal armed conflicts and human rights entitlements in 'inter-state' armed conflicts.

Even in the absence of an identifiable guerrilla or armed opposition, "there is growing support for the view that even without separate warring sides, violence in a contested political situation may trigger customary law of armed conflict governing non-international armed conflicts."⁵⁵ Thus in the situation like Haiti under the more repressive periods of the military dictatorship, the use of force by a government to violently repress its citizens should bring it under the law of armed conflict. Equally, the tactics of the Tamil LTTE in Sri Lanka or the Sendero Luminoso in Peru, patently deserve to be judged by the law of armed conflict as well as international human rights law.

3.3 Binding on UN Field Operations

A fair amount of legal debate has gone on as to whether the UN is bound by international law. The traditional legal niceties such as the legal standing of the UN to be a party to treaties, or the inapplicability to the UN of various provisions of various treaties, will continue to provide substantial scope for ongoing debate and academic writings. Such debate, focussing on the traditional grounds for the binding nature of international law, is missing the point. The reality of the UN's unique international character establishes a prima facie case, that the UN is bound by universal law and UN sponsored international law. The onus should be upon those arguing otherwise to prove the contrary.

⁵⁴ A possible counter argument is that international human rights law ostensibly applies internally already, so what additional protection could the law of armed conflict provide? A partial answer is that governments and armed opposition groups will use a state of national emergency as a rationale for derogating from normal human rights standards, but the law of armed conflict has been deliberately crafted to protect human rights in armed conflict per se with almost no scope for derogation. Invariably the law of armed conflict is a better tool to protect human rights during armed conflict, assuming of course that a de facto armed conflict is recognized as a de jure armed conflict.

⁵⁵ Lawyers Committee for Human Rights, *Protect or Obey: The United States Army versus Captain Lawrence Rockwood*, New York, May 1995, p. 5

Most certainly, all UN sponsored international human rights law is perforce binding upon that same body. For example, all UN treaties having been adopted by the General Assembly must be binding on the UN. Any other conclusion has to raise serious doubts as to the role and character of the world's ultimate body. Inter alia, it must be "axiomatic that UN personnel should comply with the United Nations' own basic standards."⁵⁶

Much of the law of armed conflict either predates the UN or was negotiated outside of UN auspices. However again, the unique universal character of the UN must mean that the UN is the recipient of international commitments by legitimate universal bodies such as the League of Nations and the variety of international congresses and conferences that evolved the law of armed conflict of Geneva and the Hague. The law of New York is of recent vintage and conducted under the auspices of the UN and thus more obviously binding. As a corollary, the UN is bound indirectly where troops and other national contingents or individuals such as CIVPOL, are provided by states who have ratified the relevant treaties.

For all of the above and even without Art. 89⁵⁷ of Protocol I of the Geneva Conventions, the UN would have a duty to promote the law of armed conflict. Particularly in peace-keeping operations, the UN should "play a preventive role, particularly by monitoring the activities of military or paramilitary forces operating in sectors in which UN forces are deployed."⁵⁸ Surely the "primary responsibility at the operational level for ensuring implementation of and respect for IHL [international humanitarian law] by PKF [peace-keeping forces] devolves upon the UN."⁵⁹

At a minimum, "it is now imperative that the UN explicitly state in some appropriate form that it considers itself bound by the Geneva Conventions and their Protocols."⁶⁰ Furthermore, Amnesty International and many other commentators feel strongly that "the UN should state in an equally explicit manner that the UN itself, and all forces and other personnel acting under a UN mandate, are bound by UN standards in human rights, the administration of justice, and law enforcement and human rights."⁶¹

It is important to remember that components of UN field operations, particularly military and CIVPOL, are placed in difficult situations which increase the possibility of human rights violations by UN personnel themselves. Somalia more so than many other UN field operations, proved to be particularly complex and combative. UN troops were sorely pushed, and some responded inappropriately and at times illegally. Unfortunately the UN has no machinery to officially investigate alleged wrongdoings by its agents in the field, and Canada has been one

⁵⁶ p.140, Clapham & Henry, in Aspen/Henkin ed., op.cit.

⁵⁷ Art. 89 Protocol I specifically calls for unilateral and multilateral action by states in co-operation with the UN.

⁵⁸ Umesh Palwankar, *Applicability of international humanitarian law to United Nations peace-keeping forces*, International Review of the Red Cross, May-June 1993, No. 294, p.234

⁵⁹ Palwankar, op cit., p.238

⁶⁰ p.32, *Peace-keeping and Human Rights*, Amnesty International, IOR/40/01/94, January 1994.

⁶¹ p.33, *ibid.*

of the few countries to actively investigate, prosecute, and substantively punish Canadian military personnel for human rights violations in Somalia.

In July 1993, African Rights published a report entitled *Somalia: Human Rights Abuses by the United Nations Forces*. They made serious allegations about what were prima facie human rights violations and law of armed conflict violations by UN troops, and an underlying lack of accountability. "It is extremely difficult for Somalis to obtain any recourse for abuses or losses suffered at the hands of the UNOSOM [and UNITAF] forces. UNOSOM [and UNITAF have] no mechanism for dealing with complaints or disputes. Instead, cases are left up to the individual military detachments, whose policies vary."⁶²

African Rights agrees that UN forces were "often operating in extremely difficult conditions and under considerable dangers. ...There is also no doubt that the SNA militia headed by General Aidid is contemptuous of basic human rights. This, however, cannot justify abuses of rights in response. Such abuses are not merely a crime; they are a blunder. UNOSOM has lost the moral high ground."⁶³

Part of the reason for the excesses of Somalia stems from the gradual evolution of peace-keeping operations from relatively benign inter-positional operations to what has been alternately styled peace-making or peace-enforcement. This evolution of operations has occurred with little evolution of doctrine and operating procedures. "In enforcement situations, especially where the national government and state institutions have collapsed, international peacekeeping soldiers may increasingly be given what are essentially civilian law enforcement and policing tasks, as in Somalia. While they may be involved in open combat situations, responding to armed attacks, the guidelines on the defensive use of force and riot control should be the same as those that regulate police forces. However, without proper training, advice, and human rights supervision to provide this kind of orientation, it is quite predictable that troops will act and react in the military combat mode in which they are trained."⁶⁴

Apart from aspect of codes of conduct and operating procedures in Chapter 10, this study will not revisit this issue. This should not be interpreted as minimizing the importance of human rights to the very conduct of UN field staff. In particular, armed UN forces and their commanders both military and civilian, must operate clearly within the law of armed conflict and human rights law. The UN needs to operationalize its internal obligations, including the creation of some ombuds or other avenue of redress for those alleging human rights violations by UN staff and agents.

⁶² *Somalia: Human Rights Abuses by the United Nations Forces*, African Rights, London UK, July 1993, p.16. The report goes on to state on page 30 that "The Canadian government deserves full credit for its willingness to treat allegations of homicide by its soldiers with the seriousness that the charges warrant. No other government contributing soldiers to UNITAF or UNOSOM has shown comparable concern for accountability."

⁶³ op. cit. p. 33

⁶⁴ p. 139, Clapham & Henry, in Aspen/Henkin ed., op.cit.

More problematic is the punishment of UN military themselves, as this will run into the issue of national military jurisdictions. Initially and immediately, the onus must be on national military establishments to take appropriate action. In the long term, "There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violation of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards."⁶⁵

Recommendation #7

It is recommended that there be a UN resolution declaring that all UN sponsored international human rights law, and the law of armed conflict, bind the UN on how it mandates and conducts field operations.

Recommendation #8

It is recommended that UN field doctrine clearly elaborate on how international human rights law and the law of armed conflict bind the conduct of all UN field personnel or their agents, including peace-keeping forces.

Recommendation #9

It is recommended that the UN create an ombuds office with a field branch in every major UN field operation, to receive and act upon allegations of violations by UN personnel of both international human rights law and the law of armed conflict.

⁶⁵ point #13, *Peace-keeping and Human Rights*, Amnesty International, IOR/40/01/94, January 1994.

Chapter 4 - UN Human Rights Operations

The optimum situation for almost any UN field operation is to have human rights field experts on staff. This is even more essential for UN operations dealing with complex emergencies, and invariably they would benefit from an identifiable human rights field component or operation (HRO). The assumption is that where there is a complex emergency requiring UN intervention, that the time has long passed for a minimalist graduated UN human rights response.

Complex emergencies invariably require a relatively large and comprehensive UN strategy. Of course that UN strategy should recognize the moral and legal imperatives of addressing human rights. However often more persuasive, are the broad operational payoffs from protecting and promoting human rights. That operational imperative⁶⁶ for dealing with human rights contains potential benefits for a broad range of UN field activities ranging from military peace-keeping tactics, to cease-fires, to sustainable peace and the withdrawal of UN operations. Creating a UN human rights operation (HRO) will usually be the most effective way to operationalize a UN operations' human rights objectives.

The phrase **human rights operation (HRO)** has been used in this study as a generic term for any large or functionally substantial UN human rights field operation. Such human rights operations (HROs) are conducted in the field, and are of relatively long duration. As such they can be differentiated from a broad variety of UN human rights 'missions' which consist of individuals or teams sent out from headquarters, eg. from the office of the High Commissioner for Human Rights or from the Centre for Human Rights. Such 'missions' are of relatively short duration, often days or weeks, and normally would have a narrowly defined task. However in the past some HROs such as MICIVIH have been referred to as 'missions', 'human rights field missions', etc., and a degree of confusion has developed as to terminology. It is suggested that the term 'operation', drawing upon its use in 'peace-keeping operations', connotes an activity that is of relatively long duration, whose operational roles are substantial, and which takes place in the field. Many of these distinctions are admittedly arbitrary, but until such time as the UN or the human rights community selects a common term, and to avoid confusion, HRO has been used throughout this study.

⁶⁶ See Chapter 2.

An HRO can either stand alone, or be an integral component of a larger UN field operation. That larger UN field operation may consist of a number of sub-components such as a military peace-keeping operation, a humanitarian operation, a CIVPOL operation, or a human rights operation. There have been five clearly identifiable UN HROs to date: El Salvador, Cambodia, Haiti, Rwanda, and Guatemala.⁶⁷

This chapter will look at the salient aspects of HROs. In doing so, it will identify some important issues and lessons learned from past HROs without going into extensive detail with regards to those operations, as this has been well done in other writings.⁶⁸ First the roles (section one) and then mandates (section two) of HROs will be discussed, although they will be elaborated upon in Chapters seven through eleven. Those more specific details of what an HRO would do have been left to later since many of those tasks are also applicable to the various HRO partners as will be identified in Chapter Five.

Then section three will look at the unique universal mandate of the High Commission for Human Rights and how that mandate which transcends the UN is critical with regards UN HROs, but logically should stop short of actually running them. This leads into section four which will examine the need for a UN office of primary responsibility for HROs. And finally, section five will look at the staffing composition of HROs.

4.1 Role

UN human rights operations should be merely one part of the UN's response to human rights violations. Most certainly UN HROs are merely one component of a much broader set of international human rights initiatives, concurrent with varying degrees of human rights activity by local society. In other words, there will be action by international NGOs, donor states acting individually or in multilateral groupings other than the UN, local government, local NGOs and civil society, and so on. It is important to emphasise this larger constellation of human rights activity, so that it is understood that a UN HRO is not expected, nor should it arrogate to itself, the sole or even the primary responsibility for human rights in the country or region.

Most certainly, there are a number of activities and roles that are better carried out by others. For example, often it is more appropriate for others to undertake certain tasks, such as local NGOs undertaking public education. Equally, certain activities can be done more effectively by others, such as international NGOs publicising violations and actively advocating for action

⁶⁷ See footnote #1

⁶⁸ eg. *The Lost Agenda: Human Rights and UN Field Operations* by Human Rights Watch 1993; *Peace-Keeping and Human Rights* by Amnesty International January 1994; *Honoring Human Rights and Keeping the Peace* by the Aspen Institute 1995; *Haiti: Learning the Hard Way, the UN/OAS human rights monitoring operation in Haiti 1993-94* by the Lawyers Committee for Human Rights, 1995; *Improvising History: a Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

such as tribunals or sanctions. Invariably most activities can be undertaken more cost effectively by others, especially NGOs. That division of human rights tasks to those best placed to achieve them will be discussed later in this chapter and in Chapter 5 on human rights field partners. Meanwhile, this discussion of the role and responsibility of HROs should be viewed in the context of that larger human rights constellation and field partnerships.

A UN HRO has roughly two primary roles. The first which we can loosely style as the **operation role**, consists of HRO staff themselves carrying out human rights promotion and protection tasks that require particular human rights expertise. This would include technical knowledge of international human rights standards and procedures, operational skills on how to monitor and at times implement such standards, and political acumen on how to achieve the most in that country's particular political/cultural context. A key operational role would include investigations, possibly ranging all of the way from interviewing alleged victims or witnesses, to forensic investigations of massacres. Each operation will face different degrees and types of human rights violations, and will have different mandates. Part three of the study looking at the *how* of working on human rights in field operations, particularly chapters seven through nine, will overview many of these activities that an HRO might be expected to conduct.

The second HRO primary role can be styled as a **cooperation/coordination role**, where an HRO works with and through its field partners. A human rights operation will never be as large as it could or should be. The UN has scarce resources⁶⁹ and often limited political will, so that the size of HROs will reflect that reality. For these reasons, but more importantly to optimize the use of UN field capacity to maximize human rights, an HRO must understand both the role and the potential of UN and other field partners such as the military, CIVPOL,⁷⁰ or local government and NGOs. Chapter 5 following, will examine who those partners are, and their potential.

HRO staff must motivate, liaise with, work through, and facilitate the work of all of those partners. This involves a degree of cooperation and coordination that is extremely difficult to implement in the absence of any formal control by an HRO over what those partners actually do. HRO staff could usefully consult with the Department of Humanitarian Affairs on how they attempt, without any delegated control powers, to effect their humanitarian assistance coordination mandate.⁷¹

⁶⁹ Golub tentatively recommends the establishment of "a fund upon which the Secretary-General could draw to launch assessment and planning missions and to undertake other preparatory activity in reasonable anticipation of receiving approval to launch an [HRO]". p.45, Golub op. cit. Not only valuable in its own right to enhance UN rapid reaction to early warnings, such a capacity would allow the SG to more effectively put the issue of a possible HRO on the political agenda.

⁷⁰ CIVPOL has particular skills for various human rights task, eg. forensic investigations, and individual CIVPOL often will be on staff with an HRO, in addition to the UN CIVPOL operation itself providing a potentially key human rights field partner.

⁷¹ In 1991 the UN Secretariat Department of Humanitarian Affairs (DHA) was given the mandate of "coordinating and facilitating" UN humanitarian assistance, and even more problematically, NGO and bilateral humanitarian assistance. What they were not given was the ability to coordinate by command. GA Res 46/182 Dec. 17 1991 (Strengthening of the Co-ordination of Humanitarian Emergency Assistance of the United Nations)

Because of the sensitive nature of human rights even within the larger UN field operation, HRO staff must be particularly adept in using informal lines of communication. For example, to enhance early warning and other intelligence gathering, an HRO needs to access the human rights intelligence of the other parts of the UN operations such as the military peace-keeping operation or the humanitarian operation. Quite apart from information gathering, invariably an HRO needs to quietly convince much larger operation components such as the military, that they can and should take human rights action in certain situations, and facilitate the work of the HRO. At all times, the HRO must work to put human rights into the political agenda of senior UN operation personnel, in particular the SRSG and the SRSG's staff. In these and other attempts to work through other UN operation partners, the HRO must prove that they understand and respect the operational objectives of those partners and that they will not unnecessarily complicate the attainment of those objectives. Also, the HRO must continually motivate their partners not least of all by regularly reporting back on results of those partners' 'human rights' actions, or follow up action taken by the HRO.

Of course the corollary to this cooperation/coordination role within the larger UN operation, is a similar role vis-à-vis all of the non-UN human rights field partners. An HRO can help in the coordination of potential partners ranging from the ICRC and human rights NGOs, through international aid agencies, to local authorities and civil society. The next chapter on human rights field partners will examine this partnership and its much more problematic coordination.

4.2 Mandate

A successful HRO has three prerequisites: first a reasonable chance of success; second, the necessary financial and personnel resources; and three, a clear mandate actively backed up by UN and member states' political will.

The first criteria, a reasonable chance of success, depends initially on the political and security situation in a country, the latter largely determined by the de facto authorities be it government or guerillas. The threshold requirement is that the parties to the conflict be prepared to tolerate the presence of an HRO even if they are not immediately ready to cooperate with it. The temptation for the UN to deploy an HRO despite the absence of such a minimum condition may merely provide a repressive regime with a public relations payoff, and in a worse case scenario will put HRO staff at great risk, and the local populace at greater risk.

Decisions must also be taken as to whether that threshold criteria, that an HRO presence will be tolerated by the parties to the conflict, is sufficient. The attitudes and receptivity of the parties in the country are an essential determinant of both HRO and larger UN operation success. A number of factors, including the degree of violations and the vulnerability of groups such as children, must be considered. This study can only highlight this extremely important issue, for the identification of factors for consideration and how to aggregate and assess them, is as complicated as it is important.

The second criteria for HRO success, sufficient resources, is fairly straightforward even if getting them is not. Funding is either provided or it is not. During these times of worldwide fiscal constraint and threatened UN bankruptcy, funding is not an inconsequential issue. It makes absolutely no sense for HROs to be expected to fundraise in addition to their complex operation tasks. The situation faced by the Human Rights Field Operation for Rwanda (HRFOR) is a case in point. The need for the head of HRFOR to regularly leave Rwanda to go around cap in hand for funds is absurd. There is no obvious need why politically approved UN HROs should then have to seek funding. This would not be satisfactory for military peace-keeping operations, nor should it be satisfactory for HROs. However, this is part of the politics of the larger UN human rights funding debate, and this study will largely leave this issue aside. However, one partial solution is the use of human rights standby arrangements, and this will be discussed in Chapter 6.

The third criteria, United Nations and thus member states' political will, is fundamental. It is naive and foolish for states to blame the "UN" or UN staff for failures. For better or for worse, the UN is run by what are often less than *united nations*. The political will of member states, particularly the powerful states, is the political will of the UN. This political will translates directly into the initial mandate, sufficient resources, and pressure on the parties to the conflict to acquiesce to an HRO and to cooperate with it. As such, political will remains critical throughout the duration of a UN field operation.

There are two ways in which human rights can be injected into a UN field operation. One is by placing human rights formally into the mandate and structure of a UN field operation. The other is to allow sufficient flexibility for UN field staff to address human rights without a formal mandate. Unfortunately while the latter makes it easier for passage in UN political forums, such an implied mandate puts the operational field staff in rather difficult and, at times, untenable positions as they attempt to do what is expected without any formal authority.

Even when there is a formal human rights mandate as well as an HRO, all of the same arguments apply to the need for that mandate to be spelled out in detail. Again, a formal yet sketchy human rights mandate is a lot easier to get passed, but will leave HRO staff unclear as to their authority to act. However, regardless of the final mandate issued, at the outset of any HRO "its mandate and terms of reference should be thoroughly studied and discussed by mission staff. A collective [HRO] interpretation of the mandate should be developed, as well as clear guidelines for its implementation."⁷²

Even more important, an HRO needs a detailed mandate to facilitate its dealings with the rest of the UN field operation, with UN headquarters, and with the parties to the conflict. A detailed mandate serves to legitimize the actions by both the HRO and other potential UN human rights field partners, and is key to reassuring those partners as to the legitimacy of they themselves dealing with human rights. As will be discussed in the next chapter, this is particularly true for UN military or CIVPOL. Inter alia, their lack of human rights expertise

⁷² p.151, *Improvising History: a Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

and at times lack of sensitivity to human rights, will make them and other operation partners doubly reticent to 'fill in the gaps' of the mandate and take human rights action. In a slightly different sense, the political component of any UN field operation will always be tempted to turn a blind eye to human rights violations in an attempt to broker short term gains such as cease-fires or elections. Clear and detailed mandates will enable the HRO to stiffen the human rights resolve of negotiators and the rest of the UN field operation.

A related issue is the organizational location of HROs. Should they be integral to any larger UN field operation (eg. UNTAC, ONUSAL, MINUGUA), or should they operate independently albeit in parallel (eg. MICIVIH, HRFOR). In ONUSAL where the HRO was integral, "The widely held perception that the importance of human rights was downgraded once a cease-fire went into effect has led some to ask whether the human rights component of an integrated UN mission should perhaps enjoy structural autonomy from the rest of the mission. Yet this might well doom the division to irrelevance."⁷³ One of the key issues is the ability to pressure both the UN and the local authorities from within. If the HRO is located outside of the larger UN field mission, the HRO could very well be perceived as just another NGO to be humoured and largely ignored.

In Haiti "MICIVIH's separation from the larger process of negotiations leading toward a political settlement had the advantage of giving the operation a considerable degree of autonomy. It was able to carry out its work and publish its findings in a timely fashion. The disadvantage of this autonomy, however, was that the mission was marginalized, and its reports on the human rights situation were largely ignored... .. The marginal standing of the mission was not lost on the [Haitian] military..."⁷⁴ Similarly, it was felt by many that HRFOR in Rwanda, lost far more than it gained by operating outside of UNAMIR.

The High Commissioner for Human Rights and other UN human rights mechanisms such as rapporteurs or ad hoc committees, can and should play a major independent role in monitoring both the human rights country situation in general, and the work of the UN and the HRO specifically (see sections 4.4 and 4.5 below). This would remove some of the pressure for HROs to be autonomous, and thus it makes more sense that HROs be an integral part of any larger UN field operation. In this way they can influence and work with the rest of the UN field operation from the inside, something an autonomous HRO, as MICIVIH and HRFOR found out, is hard to do from 'the outside'. The caveat of course is that "the human rights component should be granted as much autonomy as possible in order to avoid the suggestion of political censorship or manipulation."⁷⁵

Recommendation #10

It is recommended that human rights operations be an integral component of any larger UN field operation, and that they report directly to the head of operation.

⁷³ p.20, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

⁷⁴ pp. 97-8, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

⁷⁵ p.22, *Improvising History*, op cit.

A detailed mandate is less important for the purely internal functioning of an HRO. Far more critical in this regard is the selection of the head of the HRO and senior HRO staff. They will effectively determine an HRO's vision and drive. Assuming proper selection and training, and this has not always been the case, HRO staff should know what needs to be done and how to go about it. Having said this, a detailed mandate is useful when an HRO finds it necessary to point to formal authorization in order to take high profile and politically sensitive action such as reporting publicly on senior human rights violators.

The HRO also has to deal with parties to the conflict, some of whom may actively subvert any human rights agreement. Clear human rights mandates that set out the operational obligations of the parties to the HRO, especially by the de facto government(s), help limit the potential for parties to adhere merely to the letter and not the spirit of the agreement. The difference between ONUSAL and MICIVIH is a case in point. The written operational powers of both HROs were substantially the same, but their practical application were dramatically different as the Haitian military worked consistently to defeat the spirit of the mandated powers. This ranged all the way from arresting or harassing those meeting with MICIVIH, to delaying the hook-up of telephone lines in order to hamper MICIVIH's communication capacity.

Recommendation #11

It is recommended that UN member states provide HROs with detailed mandates so as to provide full legitimacy and authorization for the various activities of the HRO, and signal clearly the political will of member states to support substantive human rights promotion and protection by all components of the larger UN field operation.

It should be noted though, that merely having a strong and detailed mandate, will not have much long term benefit if UN member states do not continue to provide political and resource backing. If the parties to the conflict perceive world pressure waning, then they will be emboldened in blocking the substantive work of an HRO. The conduct of the Haitian military regime, as best evidenced by the events leading up to the incident of the USS Harlan County, is a perfect example, for "much more serious than the deficiencies of the [MICIVIH] mandate itself was the failure of the Haitian military to comply with the mission's terms of reference. This was compounded by the apparent reluctance of UN headquarters in New York to give the mission its full support when problems of this sort arose."⁷⁶ Read 'UN headquarters' as including member states and senior UN officials.

It is essential that even strong human rights mandates be continually buttressed by member states' political pressure. It must be assumed that parties to a conflict will at one time or another be reluctant to comply with their human rights obligations. The UN and member states must have already thought about their possible response to such non-compliance, so that they have developed contingency plans on how they are going to quickly and effectively pressure

⁷⁶ p. 25, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

non compliant parties. Even quietly informing the parties far in advance that there are such contingency plans, will send a message that in itself could preclude non-compliance.

Recommendation #12

It is recommended that UN member states and senior UN officials be fully cognizant of the need for their political support for an HROs to be consistent throughout its deployment.

In procedural terms, UN mandated human rights field activities require the consent of the state concerned. State consent of course can be effectively overridden by the Security Council's various powers and political weight. Even the General Assembly has a degree of moral suasion that can overcome a state's reticence. Also, the 'state sovereignty' shield for governments is being progressively qualified by requirements for their real legitimacy (eg. responsible, representative, and capable government). As with the military regime in Haiti, or the gross and systemic human rights violations in Rwanda, the UN will be increasingly pressured to quietly yet forcefully impose UN field operations and HROs upon reluctant governments.

As with the creation of most peace-keeping mandates, the Security Council was initially seen to have the primary authority to mandate HROs or put human rights mandates into peace-keeping or other UN field operations. However the General Assembly, as it has in Haiti and Guatemala, has also demonstrated the will to mandate an HRO. In Rwanda, the High Commissioner for Human Rights acting under the aegis of the Commission on Human Rights, set up that human rights operation. As it sits now, if the HRO and its mandate is seen as relating to the maintenance of international peace and security, then ostensibly it falls to the Security Council to take action.⁷⁷ Otherwise, both the GA and the HCHR could create an HRO. It is theoretically possible but does not appear likely that any other part of the UN is about to attempt to develop a similar authority.

Regardless of which part of the UN authorizes an HRO, the GA has the final say on whether the HRO is funded out of the normal UN budget. There is always the weaker option as occurred in Rwanda, where the operation was funded through voluntary contributions. The political 'weight' of the authorizing body, along with the type of funding provided, will reflect the political will and interest of member states, and thus the UN, towards any particular HRO and that country situation.

⁷⁷ In the case of MINUGUA, DPA had hoped that it would be dealt with by the Security Council as relating to international peace and security, but this was blocked by various NAM countries.

4.3 The High Commissioner for Human Rights

As the senior UN human rights 'advocate', the High Commissioner for Human Rights⁷⁸ has a unique universal role that transcends the UN itself. As set out first and foremost in the High Commissioner's mandate, "the promotion and protection of all human rights is a legitimate concern of the international community" and the HCHR is mandated to "promote the universal respect for and observance of all human rights"⁷⁹. With this universal role in mind, the HCHR can and must play two central roles vis-à-vis UN human rights operations.

The first consists of independently monitoring UN field operations, both human rights operation and others such as peace-keeping operations. This is a direct extension of the core role of the HCHR as the UN's conscience and primary advocate for human rights. The second role is as a senior advisor to, and facilitator of UN HROs. This role derives from the HCHR's and the Centre's role as a UN focus of excellence and expertise in human rights. No UN human rights activity, much less any UN HRO, should presume to move forward without having consulted the HCHR, the senior UN human rights advocate, for advice and expertise.

Neither of these two roles, monitoring HROs or advising HROs, implies any need to actually mount HROs. In fact, too close an involvement in the actual operational management of an HRO would present a conflict of interest and impede the High Commissioner's primary and critically important role in monitoring UN HROs.

It should be noted that the term HRO as defined at the beginning of this chapter, refers to relatively substantial field operations, so these comments would not apply to human rights missions by individuals or small teams to carry out a specific tasks, eg. an HCHR sponsored mission to monitor how a UN field operation deals with human rights violations. Similarly, these comments would not apply to missions by country specific or special rapporteurs (SRs) where the HCHR and the Centre for Human Rights provide them with substantive field support (eg. SR Tadeusz Mazowiecki in the former Yugoslavia⁸⁰, or SR van der Stoep in Iraq).

4.3.1 Monitoring UN field operations

It is useful to compare the HCHR's role in the international community, to the overarching monitoring and advocacy role of national human rights institutions⁸¹ such as human rights

⁷⁸ The study uses the term High Commissioner for Human Rights as a convenient umbrella for the UN Centre for Human Rights which reports directly to, and is an arm of, the HCHR.

⁷⁹ para. 3(a), GA Res. 48/141, 20 December 1993.

⁸⁰ For an excellent study on this and other recent developments by the Centre, see Karen E. Kenny, *Formal and informal Innovations in the United Nations Protection of Human Rights: The Special Rapporteur on the Former Yugoslavia*, *Austrian Journal of Public and International Law* 48, 19-77 (1995).

⁸¹ For an examination of these principles and operating procedures, see *National Human Rights Institutions: Manual*, Human Rights Unit, Commonwealth Secretariat, January 1993, pp. 148, and also articles by Brian Burdekin and John Hatchard in *National Human Rights Institutions in the*

commissions and ombuds. As with such national mechanisms, it is inherent in the HCHR's operating principles that he "should be vigorous and fearless in his investigations and genuinely independent from the institutions of government he is investigating" for this "is as vital and fundamental to a sophisticated and mature system of justice as the principle of judicial independence."⁸²

Continuing that analogy and the operating principles underlying it, effective national human rights commissions or ombuds are funded by government, but are at arms length from government. They can thus play a role that would be highly flawed if they were intimately involved in the functioning of that government's human rights protection mechanisms such as the judiciary or the police. The United Nations' High Commissioner for Human Rights, by not actually managing the HRO component of a UN field operation, can retain the independence required to play that critical oversight role on how the HRO and the larger UN field operation are dealing with human rights.

Such judicial independence normally would require an arms-length relationship from the Security Council, the General Assembly, and the UN Secretariat. This is clearly not the case, for the HCHR and the Centre for Human Rights are an integral part of the UN bureaucracy and ultimately report to some of the very entities (eg. HRC, ECOSOC, GA) and the countries, they are tasked with monitoring. This poses a fundamental contradiction which may never be resolved but which if handled properly, can result in a creative tension.

As an 'in-house' player, the HCHR has access to countries and senior UN staff that might otherwise be denied. Therefore the HCHR has a privileged platform from which to lobby for human rights. However, there are real dangers if the HCHR becomes too enmeshed into aspects of the UN bureaucracy and unnecessarily hostage to member states. For example, if the HCHR and the Centre attempt to play a major field operation role by running HROs, they will have to seek dramatically increased funding from within the UN or from member states⁸³, and do so on a regular basis.

Traditionally the best and easiest way for various member states to restrict UN human rights action is to deny funding, and of course this was but one of the reasons for some of the failures of HRFOR (Human Rights Field Operation Rwanda). The less the High Commissioner and the Centre for Human Rights need to mount field operations, the less they have to beg for funding. The less they have to beg for funding, the more they can resist unwarranted influence over their core activities and primary advocacy role, including advocating for HROs in the first place.

Commonwealth: Directory, Survey, and Analysis, Human Rights Unit, Commonwealth Secretariat, February 1992 pp. 126.

⁸² Ridges, Jim, Papua New Guinea Ombudsman, *Political Realities of Setting Up and Maintaining A Viable National Institution*, in *National Human Rights Institutions: Manual*, op.cit., p.116.

⁸³ As they are presently seeking a reported \$25 million voluntary fund for field operations.

Achieving the very authorization of a HRO could benefit immensely from a High Commissioner who is sufficiently apart from the system to pressure various entities such as member states, DPA, or the Secretary-General, to take action. As Rwanda has so clearly shown, there often is no lack of early warning. The major failings of the UN often stem from a lack of political will on the part of member states to respond to early warnings. The High Commissioner unencumbered by the burden of seeking resources for, and the mounting of HROs, can more effectively advocate for HROs with genuine mandates. HCHR pressure on member states to create stronger HROs would not be weakened by any perception that the HCHR or the Centre stands to gain resources or profile.

Once created, HROs would continue to benefit from an active and independent High Commissioner for Human Rights. There will be times when an HRO is not capable of taking, or not willing to take, strong action. This may be because they have not been given the mandate or the resources to do so. Or, there will be times when senior staff in an HRO are overly conservative in implementing their mandate, or are being overruled by their UN operation colleagues and superiors, eg. the SRSG. At those times the UN needs a 'higher authority' that can take issue with how the HRO is functioning, and advocate for re-focussed or increased activity. Such a higher UN authority needs to have independent stature and resources, and perforce, the HCHR has been given that very mandate and is uniquely placed to carry it out.

Recommendation #13

It is recommended that the High Commissioner for Human Rights actively advocate for the inclusion of human rights into the mandate and structure of all UN field operations, eg. peacekeeping operations. In particular the HCHR should press for the creation an HRO and comprehensive mandates for that HRO. The HCHR would subsequently, and independently, monitor HROs and other UN field operations and advocate for re-focussed or increased human rights activity where necessary.

4.3.2 Senior advisor and facilitator for HROs

The expertise and contacts of the HCHR and the Centre for Human Rights makes it imperative that they play key roles as advisors and facilitators to DPA or others mounting human rights operations. This consultative role for the HCHR should be both mandatory and fixed operational procedure.

At the political/strategic level, the HCHR should be brought in to advise on negotiations leading to the creation of UN field operations. In particular, the HCHR must be part of internal UN debate concerning the human rights mandate of a UN field operation generally, as well as the the advisability of, and mandate for, an HRO component. The High Commissioner should be part of task forces or other groupings that gather to strategize on these issues.

At the operational level the HCHR, including the Centre, should be involved in the actual creation of the HRO. For example, this could range from consultations on the formulation of operational goals and procedures, to the provision of expertise and input into HRO staffing. At times, it would be useful to loan Centre personnel to UN field operations. The High Commissioner's and Centre's consultative and input role should occur right from the beginning of any human rights field mechanism⁸⁴ or HRO, and continue throughout the duration of the operation. The HRO and the UN headquarters office of primary responsibility for mounting HROs such as the Department of Political Affairs, must treat this HCHR advisory role as substantive, not perfunctory. In fact, there should be a mandatory requirement to seek the advice of the HCHR.

Recommendation #14

It is recommended that the High Commissioner for Human Rights and the Centre for Human Rights have a mandated role to advise, and facilitate where appropriate, those mounting UN human rights operations.

For both roles, monitoring and advising an HRO, the HCHR needs to have formal access to HRO operations. While the HCHR and the Centre would be expected to keep the SRSG or field operation head informed of their field activities, this would not include any formal reporting obligation towards the SRSG nor infer that the SRSG had authority over the HCHR's activities in the operation area.

In a broader sense, the High Commissioner's mandate includes a key role "To coordinate the human rights promotion and protection activities throughout the United Nations system"⁸⁵. There are a multitude of UN agencies and other UN bodies dealing with human rights issues or programs that can impact on a UN field operation. Invariably an HRO does not have the standing nor the capacity to coordinate all of these other UN activity centres. The HCHR on the other hand does, and should, coordinate all of these UN human rights activity centres.

Coordinating UN activities in human rights is a difficult task much akin to DHA's role in the coordination of all UN humanitarian activity. Like DHA, the HCHR has not been given the power to control or direct the rest of the UN in the human rights field. The High Commissioner has only been given the duty to coordinate. When attempting to coordinate through moral suasion, one must be seen as strictly neutral with no hidden agendas such as a desire to enlarge one's operational scope at the expense of others. Having their own HROs would lend credence to any perception that the HCHR and the Centre were attempting to expand their own operational 'turf' as opposed to being an 'honest broker' or coordinator.

As will be discussed in the next section, it appears that the optimum location for a UN HQ office of primary responsibility for HROs should be in UNNY. This however complicates the

⁸⁴ The HCHR and the Centre should play a similar role in the human rights activity of any part of the UN.

⁸⁵ para. 4(i), GA Res. 48/141, 20 December 1993.

operational links between the HCHR and a New York based office of primary responsibility. This is compounded by the fact that the Commission for Human Rights and its special procedures including various rapporteurs, and human rights treaty bodies, are located in Geneva. This is only partly mitigated by the fact that they often are only present in Geneva for limited periods during the year. The staff of the Centre service those bodies and have been tasked with the function of advocating and liaising for them with the UNNY Secretariat and others in New York through the Centre's UNNY office. In the past this office has been small and under-resourced. If as recommended UNNY become the focal point for creating and managing all future HROs, eg. by DPA, the Centre's UNNY unit will need to play a major role as headquarters liaison for the HCHR and other part of the UN's Geneva base human rights community. The recent strengthening of the unit⁸⁶, will not be sufficient and it will require further staff and resources.

4.4 UN HQ Office of Primary Responsibility for HROs

Any human rights operation will involve a multitude of UN agencies and numerous parts of the of UN secretariat. However, for UN coherence and optimum operations effectiveness, there must be a single headquarters office of primary responsibility for fielding HROs. It would either carry out, or directly delegate and oversee, activities such as planning, budgeting, staffing, administration, logistics, financial oversight, and lessons learned. UN military peace-keeping has long struggled with this issue, and in recent years DPKO has taken dramatic steps forward in its ability to mount military peace-keeping operations⁸⁷ by creating DPKO capacity or ensuring that it had control or oversight over all of these areas of operations support responsibility. UN agencies such as UNHCR have also learned the same lesson and within UNHCR have centralized field operational support and emergency administration support functions.

Recommendation #15

It is recommended that there be a single UN HQ office of primary responsibility for human rights operations, that would either carry out, or directly delegate and oversee, such activities as planning, budgeting, staffing, administration, logistics, financial oversight, and lessons learned.

In deciding where such a UN HQ office of primary responsibility should be located, it is instructive to look at which parts of the UN have been an office of responsibility for HROs in the past, and examine how well they have carried out that function.

⁸⁶ Including making the post of head of the unit a D2 level position.

⁸⁷ See LaRose-Edwards, *United Nations Internal Impediments to Peace-keeping Rapid Reaction*, study for the Peacekeeping Division, Department of Foreign Affairs, Ottawa, Canada, April 1995.

The quantum leap in the evolution of UN human rights operations (HROs) occurred in the context of the Central American peace process and in specific the Salvadorean peace process initiated in May 1989.⁸⁸ At the beginning of 1990, Secretary-General Pérez de Cuéllar was asked to get more involved in the Salvadorean process, and dispatched Alvaro de Soto as his Personal Representative along with Francesc Vendrell as Deputy Personal Representative. The first stage was the Geneva agreement of April 4 1990, and then more importantly for our purposes, the San José Agreement on Human Rights of 26 July 1990. That agreement resulted in the creation of the UN Observer Mission in El Salvador (ONUSAL) with a broad mandate to verify and investigate the human rights situation in El Salvador. ONUSAL's human rights division⁸⁹ was set up in July 1991 under the direction of first Philippe Texier and then Diego García Sayán, both reporting to Iqbal Riza as Chief of Mission.

There were a multitude of people involved in the evolution of this first substantive HRO. However a very small number were in fact instrumental in acting as a UN HQ office of responsibility for pulling the operation together and in providing HQ support it once it was deployed. On the UN HQ side, both Alvaro de Soto and his deputy Francesc Vendrell were critical in putting human rights first and foremost on the UN agenda and in negotiating the human rights mandate for ONUSAL. In the field, Texier, Sayán, and Riza were the key individuals in developing field procedures and standards to effect the Agreements.

With clear support by the Secretary-General and participation from his staff (Alvaro de Soto was at the time Special Assistant to the SG), the UNNY Secretariat office of primary responsibility for ONUSAL's human rights division was split between what was to become DPKO and DPA. For a number of reasons, that responsibility has gravitated almost completely to DPA. This is not to imply that DPKO does not feel that it has a role in this area⁹⁰, but it sees its human rights contribution as restricted to possible human rights tasks for UN military and CIVPOL. However there does remain a key HRO support role for DPKO's Field Administration Logistics Division (DPKO/FALD). This DPKO involvement is rather unique in that FALD has been tasked with supporting all UN Secretariat field operations, and finds itself in DPKO largely because military and CIVPOL deployments have made up most of the Secretariat's field operations.

⁸⁸ For a comprehensive account see Christopher C. Coleman, *The Salvadorean Peace Inquiry: A Preliminary Inquiry*, Research Report, Norwegian Institute of International Affairs, Nr. 173 December 1993. For the human rights aspect see the HRW report *The Lost Agenda* op.cit., or Garcia-Sayan in Aspen/Henkin *Honoring Human Rights and Keeping the Peace* op.cit., and *Improvising History: a Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

⁸⁹ The two other Divisions, Military and Political, became operation about 6 months later in February 1992.

⁹⁰ In fact there are some individuals in DPKO who are not only ambivalent, but at times actively opposed to human rights actions which they see as unnecessarily interfering with their goals, eg. brokering cease-fires and other 'military' solutions. These individuals appear to be a decreasing minority as the benefits of human rights protection become obvious in the search for durable peace.

Subsequent HROs in Cambodia, Haiti, and Guatemala built upon the El Salvador model albeit in an ad hoc way, with DPA being the office of primary responsibility. Senior DPA staff have made it quite clear that they are happy to remain the office of primary responsibility for human rights field operations.⁹¹ The exception to this DPA leadership has been the HRO in Rwanda, which was created and managed by the High Commission for Human Rights (HCHR) and the Centre for Human Rights.⁹²

The Human Rights Field Operation in Rwanda (HRFOR) raised and at the same time largely refuted the advisability of any imminent shifting of responsibility for HROs away from DPA, and certainly not outside of UNNY⁹³. The Rwandan crisis demonstrated quite conclusively that the High Commissioner for Human Rights and the Centre for Human Rights, were not particularly adept at mounting a large field operation⁹⁴ nor even in getting others to help them⁹⁵. There were belated moves by the HCHR and the Centre in late 1995, over a year after HRFOR's inception, to draw upon expertise and help from other parts of the UN. However, there continue to be numerous signals from both long term staff and senior newcomers to HRFOR, that the HCHR/Centre's ability to deploy future HROs has not improved appreciably, and will not improve over the short to medium term.

Both the High Commissioner and the Centre must take a much higher profile role where there is a UN field operation, without going so far as to mount their own HRO. Even senior staff within the Centre and the office of the High Commissioner have cautioned against the Centre attempting to create a field operations capacity, not least of all because of the lack of a field operations culture in the Centre. The same argument would hold for the office of the High

⁹¹ It is also indicative that in early 1995 the Electoral Assistance Division moved from DPKO to DPA.

⁹² Another possible exception was in the Former Yugoslavia which was not a full blown HRO but more of a support mechanism for a Special Rapporteur. The *Special Rapporteur on the human rights situation in the former Yugoslavia* was authorized by the Commission on Human Rights (CHR Res 1992/S-2/1) and the GA (Res. 46/242 25 Aug. 1992) to set up a field operation that by June 1995 had 9 professional staff, 5 local staff, and 4 regional offices. This was a dramatic departure for the CHR and augurs well for increased resources for special rapporteurs (It was repeated in March 1993 for the Special Rapporteur for Iraq). In light of the immensity of the situation facing the UN in the former Yugoslavia, that field operation was not nearly of the same category of UN response as has occurred in Cambodia, El Salvador, Haiti, and Guatemala. One would hope that special rapporteurs in the future will consistently have such field capacity when appropriate, but that is different from what this study refers to as a Human Rights Operation (HRO).

⁹³ Probably in light of events surrounding Rwanda, the Secretary-General's recently expressed view is that all UN secretariat field operations should be conducted from UN headquarters in New York.

⁹⁴ See p. 20, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit., when talking about the Expert Mission put together by DPA to plan the Haitian HRO, "It is frankly inconceivable that a team of this quality would have been assembled - and so speedily - at the initiative of the Centre for Human Rights."

⁹⁵ A number of contacts within UNHCR and the Centre for Human Rights talked about UNHCR individuals having been prepared and having offered to assist the Centre in the mounting of the Rwanda field operation, but that such assistance was almost totally ignored. Some in the Centre mentioned being just too busy to be able to ask for help from UNHCR just 5 minutes walk away.

Commissioner although some of his staff initially suggested the creation of a field operations unit set up apart from the Centre and reporting directly to the High Commissioner. It appears that they have since reconsidered that option and agree that such an option faces both political and operational impediments. Just the difficulty of starting up yet another UN field operations responsibility centre, combined with the obvious likelihood of duplication, appears to be sufficient grounds to rule out such an option.

These conclusions as to the inadvisability of the HCHR attempting to develop HRO support capacity, does not at all negate the fundamental importance of the HCHR and the Centre to future HROs. Their suggested role was discussed in the previous section. However, this leaves the outstanding question as to who should be the UN's primary office of responsibility for mounting HROs?

Certainly for the time being, DPA should remain that office of primary responsibility for mounting and administering human rights field operations. Not only have they been successfully operating as the HQ office of primary responsibility for four of the past five HROs, they are conveniently co-located with the Department of Peace-Keeping Operations. The close links between DPA and DPKO will enhance the coordination of human rights operations with military peace-keeping operations and CIVPOL operations.

In addition, DPA can easily delegate various taskings to New York Secretariat based units such as FALD which in turn can achieve substantial economy of scale and purpose as it already would be servicing many UN operation components, in particular military peace-keepers. For example, a common HQ facility such as FALD is much better placed to furnish communications equipment for an HRO. Common sourcing will ensure that such communications equipment is compatible with any larger UN operation and often speed its provision, as they are able to shift resources/equipment from elsewhere in the UN system or operation so as to avoid time consuming and costly efforts to purchase new equipment. Equally, DPA links with DHA which is also co-located in New York will facilitate coordination with humanitarian operations, although direct contact with agencies like UNHCR, UNDP and WFP will be extremely important.

Recommendation #16

It is recommended that the Department of Political Affairs be tasked as the UN Headquarters office of primary responsibility for mounting and administering human rights operations (HROs).

There would be benefits in DPA itself creating a specific division to act as the focus for human rights operations. Failure to clearly mandate a new or existing part of DPA to take overall responsibility for HROs has a number of management and organizational drawbacks. It also gives the impression that there is an operational vacuum, and naturally other parts of the UN will move to fill it. For example, and as discussed below in 4.6 and 6.1, Personnel Management Support Service (PMSS/FALD/DPKO) has been properly delegated and is filling parts of the HQ staffing function for HROs. PMSS could easily move beyond its competency

in an attempt to play the controlling role in the selection and assessment of HRO human rights personnel. An identifiable DPA human rights operations division would 'warn off' such temptations, and would provide a fixed home for UN expertise in mounting HROs. It would clarify roles within the UN so that other parts of the UN do not duplicate substantive roles in the creation and deployment of HROs.

However, DPA creating a human rights operations division might offend both inter-UN turf sensibilities and result in open opposition from some member states. It might be necessary in the short term for DPA to expand and consolidate its present role without moving to create a formal human rights field operation division. Once more human rights operations have taken place, the practical implications for member states will become more apparent. Many member states probably see HROs and other UN human rights field activities as ill defined and open ended issues that could well rebound and threaten their interests. They need to be reassured that the benefits outweigh the costs.

In light of El Salvador, Haiti, and now Guatemala, one would assume that some Latin American members would give both tacit and for some, active support for increased institutionalization of UN human rights operations. There of course are several states who remain leery of any human rights initiative, but for various reasons they have been prepared to allow the El Salvador, Haiti, and Guatemala operations to go forward. Despite the fact that all those three past HROs took place in rather special situations, there now has been sufficient successful precedence in Latin America so as to increase the likelihood of regional states backing future HROs in the Americas.

The human rights experience of UNTAC in Cambodia was a much more qualified success. And, it is the unique HRO experience in Asia and South-East Asia. As a number of member states from those regions have a rather automatically negative responses to UN human rights initiatives, there is probably a need for some additional and hopefully more obvious HRO successes in their regions before they will readily acquiesce to the further institutionalization of UN HROs.

The African region has undergone a contradictory set of experiences⁹⁶. Although not totally analogous, the UN operations for first Namibia's and then South Africa's transition to democracy were very successful. There were also some human rights components to the UN operation in Mozambique (UNOMOZ) with qualified successes. Less obvious results have

⁹⁶ For greater detail on African operations see *Peace-keeping and Human Rights in Africa and Europe* by Andrew Clapham and Meg Henry. There are several unpublished versions, and a shortened version in *Honoring Human Rights and Keeping the Peace*, Aspen Institute, A. Henkin ed., pp.129-160, op.cit. See also *Peace-Keeping and Human Rights*, Amnesty International Jan. 1994

come from the quasi human rights mandates for the Angola verification mission (UNAVEM II)⁹⁷, the observer mission in Liberia (UNOMIL), and the mission for Western Sahara (MINURSO).

The only fully fledged UN human rights operation in Africa has been Rwanda. The first year of the human rights field operation in Rwanda (HRFOR) went particularly badly, and recent improvements have not yet served to change the broad perception that it has been a failed operation. Most African member states are less inclined to actively oppose UN human rights initiatives, but as with Asian members, it might be necessary to wait for a couple of clearly successful African UN HROs before DPA expands or institutionalizes its role as HQ office of primary responsibility for HROs.

A number of the permanent missions in New York that are supportive of initiatives in this area, are apprehensive of attempting at this time to get supportive resolutions through the General Assembly. This is despite the fact that senior officials within the Secretary-General's office are reportedly in favour of a General Assembly resolution that in general terms supports the concept and practice of human rights in field operations.

4.5 HRO Composition

It is quite obvious that most HRO successes have depended on getting the right individuals with the right skills, both at UN headquarters and in the field. Moves to institutionalise those successes will in large part depend on the ability to continue to draw in the right individuals and provide them with sufficient authority and resources.

The critical function of staffing will be dealt with more expansively in Chapter 6. In this and other areas, DPA or an HRO itself, will have to carefully decide as to what aspects they can 'contract out' to either other parts of the UN such as Personnel Management and Support Services (PMSS) of DPKO, or to outside bodies such as NGOs or countries. The latter option refers to some form of standby arrangements of individuals or teams from countries or regional bodies such as the European Union. This will also be covered in Chapter 6.

Discussion about the appropriate role for PMSS or standby arrangements, is part of the larger debate on the need for an identifiable responsibility centre. As the office of primary responsibility for an HRO, DPA would deal with substantive operational and management issues. In other words, DPA as the office of primary responsibility has been tasked by the Secretary General to mount an HRO, and ostensibly has the human rights and political expertise to carry out that task. As such, they must retain control of substantive decisions.

⁹⁷ UNAVEM III has a clearer human rights mandate with a small human rights unit. Security Council Res. 1008 7 Aug. 1995 has just extended the mandate of the operation and authorized the SG to increase the strength of the human rights unit, and it is too early to know if UNAVEM III will have a noticeable impact on human rights.

However, there are general UN administrative tasks that often are best 'contracted' out to centralized UN specialists. For example, PMSS could handle the technical side of personnel administration. However, beyond some narrow or technical administrative functions, the very sensitivity and operational complexity of HROs militates against a greater delegation of staffing functions. PMSS has sometimes undertaken greater roles vis-à-vis other civilians in UN field operations, but this is not as appropriate reference human rights specialist. The control of DPA or any other UN primary office of responsibility for HROs, must extend much further along the staffing and management process.

Recommendation #17

It is recommended that in light of the political sensitivity and complexity of HROs, that DPA or other UN office of primary responsibility for HROs, retain greater control of the functions of staffing, training, and field administration, than is normally the case for civilians in other UN field operations.

4.5.1 Central core of human rights specialists

It is essential that the head of an HRO and core HRO human rights specialists are well versed in international human rights protection and promotion. They must understand the multitude of political, cultural, and operational hurdles both in the target country and within the larger UN operation. They must have the vision and the viable strategies to overcome them. They have a huge job, but there are three reasons why most HROs must and can operate with a small core of well trained human rights field specialists

First, and as the next chapter will show, there are a large number of potential human rights field partners such as UN military or CIVPOL, who with proper preparation and coordination, can play a major role in the promotion and protection of human rights in field operations. UN resources will often just not allow for massive HROs, especially when other UN staff are present in the field and perfectly capable of undertaking a multiplicity of human rights tasks.

Secondly, there are a number of specialists in related fields who do not need to be human rights experts per se, but are important supplementary specialists (eg. CIVPOL, prosecutors, victim therapists) to the human rights core staff. Similarly, there is a need for skills such as administration, logistics, and security, which can be provided by ancillaries to the core and supplementary specialists.

Thirdly, it is difficult to find the right human rights people on short notice. It makes much more sense to have a small core of talented and knowledgeable human rights staff who can effectively draw together and direct the full HRO as well as play a coordinating role within the even larger group of human rights field partners that make up most UN field operations. As noted by a senior MICIVIH official, even core activities of the HRO are best done by "a

smaller, more mobile staff with the right qualifications. 'It would be better,' he said, 'to have 50 active investigators than 250 people who only observe.'⁹⁸

Any division between core human rights specialists, supplementary specialists in related fields, and ancillary support specialists, is not a hard and fast one. It is useful however to quickly list some of the skills or tasks that could fall under the latter two categories. This will help to quantify the underlying premise of this section; that one does not need an especially large core group of traditional human rights specialists. An HRO can be composed of a number of professions with related and operationally important skills, but without human rights expertise per se.

Recommendation #18

It is recommended that HROs have a small core of experienced human rights field experts who are able to manage the larger HRO staff of supplementary specialists and ancillary support staff.

4.5.2 Supplementary specialists in related fields

There are innumerable professionals or specialists who have skills that are of immediate usefulness in achieving the goals and objectives of an HRO. Often they can and should be attached to the central core of human rights specialists that provide the central guidance and leadership for the HRO. At other times, they can be on loan from other UN agencies or partners such as CIVPOL. These related specialities include:

- fact finding, information corroboration, analysis (statistical reporting)
- criminal investigation, forensic, and prosecution
- treatment/counselling of victims, eg. torture, rape, children
- specialists on local political and legal system
- mediation, negotiation, conflict resolution
- media, public relations, public education
- trainers: - training/building local capacity, eg. judiciary, police, military, NGOs.
- training UN personnel

The content of these related specialities is relatively self evident, but the training speciality or role perhaps is not. The largest component of HRO training should be focussed on preparing the local population to take over human rights promotion and protection. The partial list above of those to be trained, ie. judiciary, police, military, NGOs, are just some of the target sectors. However, there is also an important role for the HRO to ensure the training of UN personnel and other international players in the operation area. This would include peace-keepers, CIVPOL, and UN civilian staff where appropriate.

⁹⁸ p. 44, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

4.5.3 Ancillary support specialists

More peripheral, are those specialists who are important to the day-to-day 'non-human rights' operational functions of an HRO. This includes such skills or specialities as:

- logistics and administration (finances, offices, accommodation, transportation)
- communications (radios, computers, communications links)
- specialists on identifying, recruiting, training, and assessing local interpreters
- local interpreters
- security: security for operation team (international staff, locally hired staff, office premises, documents both written and computer); evacuation plans, long term security for locally hired staff
- liaison with other UN operation components, and very importantly, with the local government and community.

4.5.4 Leadership and management

Management skills are often forgotten in the rush to find strong human rights specialists, and it is both understandable and obvious that human rights experts are not necessarily competent managers. However, senior HRO staff will face the normal demands of running any large group of individuals, compounded by the ever complex UN bureaucratic environment. Not only must senior HRO staff be selected with this in mind, but HRO management techniques must reflect the varied use of many of the above mention supplementary and ancillary support specialists

One of the EU human rights observers in Rwanda attached to HRFOR commented that "Any operation of this kind needs from the beginning to establish strong management structures, clear guidelines of communication and information flow, clearly defined roles and responsibilities, a well defined chain of command and thoroughly developed methodologies of work. Most problems of [HRFOR] stem from deficient systems and structures."⁹⁹

Perhaps more important but much harder to define is the need for leadership. This is particularly so for the head of an HRO who must demonstrate inordinate leadership skills. Such intangibles as motivation and morale are critical if he or she hopes to maximize the output of a disparate group of strong minded specialists, to address a complex and dynamic human rights situation, while operating within UN bureaucratic confines.

Equally, as will be seen in the next chapter on UN and non-UN field partners, central management of that broader collection of 'resources' or players is at times an even larger

⁹⁹ see p. 23 Annex H in Roel von Meijenfeldt, *At the Frontlines for Human Rights, Evaluation of the European Union participation in the Human Rights Field Operation in Rwanda of the UN High Commissioner for Human Rights, Oct. 1995.*

management task. It is certainly more problematic because of the voluntary nature of their cooperation. Add to this the information coming from peace-keepers, CIVPOL, NGOs both local and international, UN agencies such as UNCHR, local government, etc., and one starts to envisage the administrative and managements skills required by an HRO.

Recommendation #19

It is recommended that HROs develop clear operational and management techniques to reflect the varied nature of HRO staff and the 'management' requirements of dealing with, and working through, other UN field partners.

Recommendation #20

It is recommended that HROs select sufficient senior staff with the management capacity to handle the unique organizational demands of a UN HRO.

Chapter 5 - Human Rights Operation Field Partners

Quite apart from UN human rights operations (HROs), HRO field partners are those other UN and non-UN organizations and individuals in the field area that can and should play a human rights role. The operational importance of human rights field partners in large part stems from the fact that the UN has scarce resources. This is compounded by relatively strong political opposition by certain members states and senior UN civil servants to enhanced UN human rights field capacity. For the foreseeable future, this translates into two inevitable UN operation scenarios: one, an under-resourced UN human rights operation; two, no UN human rights operation at all.

In the first scenario, where there is a fully fledged HRO, its strength and resources will never be completely sufficient for the tasks at hand. Any human rights field operation must understand both the potential and the roles of other UN and non-UN field partners. The HRO's capacity will be dramatically multiplied through the actions of those partners. ONUSAL was one of the most human rights oriented UN operations to date, and in fact the human rights component of the UN operation was deployed six months before the rest of the operation. However, at the approximate height of ONUSAL, the human rights division had approximately 65 staff, the military division had 370, and the police division had 320. While these numbers varied over the course of the operation, the theme was not substantially different, inasmuch as the human rights 'experts' were consistently outnumbered at least 10 to 1. In most other UN field operations that ratio is even greater. The obvious conclusion is that if an HRO wants to extend its operational reach, it will be well advised to actively involve the rest of the UN operation partners as well as appropriate non-UN field partners.

The second scenario is where it has not been possible to create an HRO either along side or as part of the larger UN operation. In this scenario, the role of the human rights partners is even more critical, for there is no HRO to undertake core human rights tasks, including the coordination of the partners. The lack of an HRO does not serve to lessen the legal or moral imperatives for UN field operations to deal with human rights. If anything it places a greater human rights onus on those UN field partners present.

Central to any discussion of human rights field partners, is the clarification of 'appropriate roles' for those partners. What constitutes 'appropriate' is both dynamic and operation specific. If as set out above there is no identifiable UN HRO, the appropriate roles for other UN entities present in the operation area, are measurably higher. The more serious the extent and degree of human rights violations, the greater the appropriate roles. In the face of widespread ethnic

cleansing combined with disappearances, it is not appropriate for a military peace-keeping force to argue that they don't do human rights. Also, the appropriate human rights roles for field partners is dynamic, in that each operation evolves and appropriate roles will come and go, eg. as ethnic cleansing rises and falls. Therefore each operation will have unique human rights requirements depending on a wide set of variables, including the presence or absence of a UN HRO.

This chapter will attempt to set out some of the options or appropriate roles for the various field partners. To date there has been a reluctance for many of these partners to get into human rights activity, so they have not always developed their own ideas of what they should be doing. It is incumbent upon field partners such as CIVPOL and military peace-keepers, to understand the principles behind their human rights roles, and to help evolve appropriate human rights practices. They, better than anyone, can help to turn theory and good intentions into human rights operating procedures and best practices that 'fit' with their skills, capacity, and other operation tasks.

It is also incumbent for member states, the Secretary-General, and senior UN staff, to clarify the human rights obligations and mandates of those partners. This is particularly important where certain partners are not fully aware of the moral, legal, and operational imperatives of human rights. Formal human rights mandates for all UN field components will be the best tool to engender action in the field.

5.1 Mandate

Mandate is as important an issue for the human rights field partners as it is for an HRO. In fact, it is probably more important for the partners as they are not nearly as conversant with human rights, in particular with what they need or should do. As a result, they have an even stronger requirement for clarity of UN policy, political direction, doctrine, and operational specifics.

Senior peace-keeping officials in DPKO have voiced strong concerns about the need for a clear mandate for human rights action by themselves or other UN operation components. They also call for explicit agreement by the host government. This reinforces an earlier statement by Under-Secretary-General for Peace-Keeping Operations Kofi Annan in a 3 March 1995 letter to the High Commissioner for Human Rights Ayala Lasso. In that letter he responded very positively to the HCHR's proposal for joint consultations concerning human rights training for peace-keeping personnel. He qualified his support by calling for case-by-case determination of such common endeavours for several reasons including:

“The most important of these principles is that human rights activities should be included in peace-keeping operations only when the mandate given by the Security Council or the General Assembly specifically so provides. Furthermore, in those missions where the mandate does include a human rights element, usually in a multi-disciplinary operation, account must be taken

of the wider policies of that operation. This may require a carefully calibrated approach, for example where **over-zealous pursuit of the human rights mandate could have a negative bearing on the cooperation of the parties on which the overall success of the peace-keeping operation may depend.**" (Emphasis added)

Such qualified support is common throughout the UN, and is of course best resolved by detailed written mandates. Unfortunately, attempts to get such detailed authorization is almost impossible. Sometimes it is because member states or the parties to the conflict do in fact oppose such human rights action. More often, as evidenced by DPA's activities over the past 5 years, countries are happy for the UN to quietly take human rights action as long as the member states are not asked to publicly go into too much detail as to what a human rights mandate includes. ONUSAL was an exception to this, and in part this explains the greater success of ONUSAL as opposed to other HROs.

This situation is not about to change quickly. This lack of specific human rights mandate is particularly problematic for those parts of the UN or UN operations which are not fully aware of the broad range of practical applications of those unwritten UN human rights mandates. Often the mere mention of human rights conjures up visions of very vocal and tenacious human rights advocates like Amnesty International or Médecins sans Frontières, or international human rights tribunals and massive armed intervention to protect victims and incarcerate violators. Unaware of the multitude of other applications and gradations of human rights promotion and protection, many in UN headquarters and in UN field operations are not immediately aware of what their role is, and often see human rights as unnecessarily complicating their job.

In fact as is outlined below, their options are often both critical to advancing human rights, and a comfortable fit with what they already perceive as their main field objectives. It should be noted that frequently many UN field components are already carrying out human rights related work but have not recognized it as such. Certainly most military peace-keepers or CIVPOL, once the practical human rights options are laid out for them, recognize that much of what they do already is part and parcel of human rights protection and promotion.

Such human rights awareness, both of human rights per se and their option in protecting them, varies greatly. Depending on the cultural and training background of individuals and national contingents, such human rights awareness can range from abysmal to quite good, albeit often fragmented and culturally specific. For example, those measuring high on human rights awareness might be conversant with women's rights in their own country, but not so conversant about the operation country context nor what to do about it, if anything. Therefore, a common theme for all partners is the need for clearer human rights mandates combined with training on how to operationalize their human rights roles in particular operation country contexts.

Recommendation #21

It is recommended that all components of UN field operations be mandated and trained to play appropriate roles in human rights promotion and protection.

5.2 UN Operation Head and Senior Political Staff

The UN operation head, usually the Special Representative of the Secretary General¹⁰⁰, their senior political staff, and other UN political negotiators, should play a critical human rights role. They are the individuals who can most effectively put human rights on the operational and negotiating agenda. Or, they can keep it off.

Quite properly, the SRSG controls the functioning of the UN field operation, and most certainly has a major impact on the resources allocated to an HRO that is a sub-component of the larger UN operation. If the SRSG feels that the HRO is peripheral to the operation's main objectives, then there are a myriad of ways in which the HRO can be starved of staff and resources. In addition, the rest of the UN operation will very quickly pick up those signals, and cooperation and assistance to the HRO will almost certainly disappear. This is particularly true for components such as the military or CIVPOL who to date have been predisposed to downgrade human rights operational imperatives and objectives.

UNTAC in Cambodia appears to have been a case in point, for "In both staffing and administrative support, the Human Rights Component was generally the 'poor cousin' ... a direct reflection of the more passive, less operational role that many senior members of UNTAC believed was appropriate for the Component." In addition, "The UNTAC Human Rights Component worked closely with and depended upon other components, particularly the military, civilian police, and civil administration. ...the senior staff of these components ...clearly had little interest in [human rights]. This was obviously a major impediment for the human rights operation and led to friction within UNTAC, particularly with the Military and Civil Administration Components."¹⁰¹

Thus it is quite obvious that even with a clear HRO mandate, the operational freedom and authority of the HRO director will be determined largely by the status and authority delegate from the SRSG. This appears to be both logical and necessary both for the operational cohesion of the full UN operation, and for the effective integration of human rights throughout the UN operation. Therefore, member states and the relevant UN bodies mandating HROs, must make certain that the SRSG is fully aware of the political importance of human rights and UN human rights principles, and is supportive of the operational needs of the HRO.

Failure to do so could dramatically limit the impact of an HRO. This appear to have happened in Haiti. Colin Granderson the Head of MICIVIH felt that UN/OAS Special Envoy Caputo "didn't see that human rights violations had a political component" and allowed US Special Representative Pezzullo convince him "to soft-pedal human rights with the military in hopes of winning concessions".¹⁰²

¹⁰⁰ Here and elsewhere, reference to the SRSG recognizes that he or she may carry a different title, and SRSG is used as a generic term to refer to the overall field commander of a UN field operation.

¹⁰¹ p. 63, McNamara, op.cit.

¹⁰² His comments and its negative impact on MICIVIH's ability to carry out its tasks is reported on p.70, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

A worse case scenario was HRFOR in Rwanda. There, HRFOR was an add-on to the UN operation, and even a year later had not become closely connected with the activities of the SRSG and UNAMIR. This disconnect was particularly evident during the first six months of HRFOR, and resulted for a number of reasons. Not least of all, HRFOR initially was ill organized and unclear as to what it was doing. This along with a number of other operational failures served to diminish its standing amongst other UN and non-UN players. Also, HRFOR was the first foray of the High Commissioner for Human Rights into substantive field operations, and a number of other UN departments and agencies were not readily prepared to allow the HCHR to simply take over areas that they had previously been running or coordinating, especially as HRFOR appeared to be incompetent. In addition, it was unclear what the reporting obligation of HRFOR was to the SRSG.

A recent promising development following the Dayton Accords is the dramatic increase in prominence given to human rights by the UN's mission in Bosnia and Herzegovina (UNMIBH). Out of UNMIBH's approximately 49 civil affairs officers, there will be a human rights coordination officer at the Civil Affairs Headquarters and a human rights officer in each of the regional headquarters.¹⁰³

Present UN field operation philosophy is that the SRSG will have overall political leadership, and the UNDP Resident Coordinator will have a coordinating role in development activities. While UNDP Resident Coordinators are no longer assumed to be the prime candidates to be the SRSG, they are seen as logical Deputy SRSGs (Haiti, Angola). The military component will be headed by a Force Commander and a sizable CIVPOL component may well have its own head. Both would report to the SRSG. Add to this mix the Department of Humanitarian Affairs which has a coordinating role for humanitarian assistance. Human rights as a cross-sectoral issue, relates to all four activities (political, military/CIVPOL, humanitarian, development), and effective coordination of human rights across all four requires some very careful thought. The SRSG must retain overall UN field operation control and command. The question is, to whom should the SRSG delegate the coordination of all human rights field activities, and how should such coordination be effected.

However regardless of how this is resolved, an SRSG will remain one of the most critical, if not the most critical, human rights field partner for the HRO. The bottom line in any substantial UN field operation, is that an HRO's field superior probably will be the SRSG. The SRSG is the key to the UN political agenda and activities in the operation area.

Recommendation #22

It is recommended that an SRSG and their political staff be fully briefed on their human rights obligations and role, as well as on the options available to them in carrying out their human rights role.

¹⁰³ UNMIBH Status Report on the UN Mission's Human Rights Activities, p.89, International Round Table Report, Austrian Foreign Ministry, op.cit.

Recommendation #23

It is recommended that where there is an HRO, that the SRSG and their political staff be fully briefed on the specific human rights mandate of the HRO.

5.3 Civilian Police (CIVPOL)

CIVPOL have the potential to be an invaluable partner for HROs. For example, they are almost always the largest and best trained pool of case investigators. Many CIVPOL arrive in operation with extensive investigatory and forensic skills. Usually they are geographically dispersed in small detachments in local communities. Working closely with the local authorities, they are often the first to become aware of many human rights problems. Increasingly HROs include CIVPOL as part of their own staff in addition to drawing upon the skills of any CIVPOL in the larger UN operation. With MICIVIH in Haiti, it was felt that "each regional office should ideally have two people with police backgrounds."¹⁰⁴

However, CIVPOL contingents or individuals have widely varying backgrounds and capacity. Some CIVPOL have little or no forensic skills and their approach to policing is almost antithetical to protecting human rights. At times, CIVPOL contingents have actually come from countries where they aided or abetted human rights violations. Great attention must be paid to training or re-training these CIVPOL so that they can carry out their immediate CIVPOL tasks and with time play a role in the area of human rights. There is a need for competent, trained, and motivated CIVPOL with specific training in human rights particularly as it pertains to the country of deployment, and language skills to communicate with the national police and population.

It is important that HRO personnel understand the potential of CIVPOL. El Salvador was an interesting case where "the Human Rights Division [initially] was marked by a sort of fundamentalist "purism" and was suspicious about a possible "invasion" by police officials who it feared might be opposed to human rights"¹⁰⁵ This trepidation probably worked both ways between CIVPOL and the human rights people, and was worsened by unclear operating procedures and lines of authority within ONUSAL. However, by "1993 the Human Rights Division gradually managed to grow stronger, with the bulk of its on-the-ground workers being police observers coordinated by juridical or human rights observers"¹⁰⁶.

Investigative¹⁰⁷ capacity is critically important for many HROs, and invariably it will continue to make more sense to 'modify' CIVPOL criminal investigative experts rather than train human

¹⁰⁴ p. 36, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

¹⁰⁵ p.35, Diego García-Sayán, op.cit.

¹⁰⁶ p.36 Diego García-Sayán, op.cit.

¹⁰⁷ It is important to remember the distinction between monitoring and investigating, or between investigating and intelligence gathering. As such, there may not always be a need for an operation to have an investigatory mandate or capacity.

rights experts as full fledged investigators. This 'modification' of CIVPOL experts would include training then on investigating in a different set of cultural and political conditions, sensitivity training and 'cultural interpretation' when interviewing, and relevant international human rights standards and mechanisms such as tribunals.

Recommendation #24

It is recommended that all UN CIVPOL be fully briefed on their human rights role, the functions of the HRO if there is one, and the options available to CIVPOL in carrying out their human rights role.

Recommendation #25

It is recommended that an HRO take advantage of the particular capacity and skills of UN CIVPOL, including at times the investigation of alleged violations, or the gathering of human rights intelligence.

Recommendation #26

It is recommended that HROs with an investigative mandate, include serving or retired CIVPOL investigatory experts as part of their investigation staff, and that these experts receive training to adapt their skills to UN human rights investigations.

CIVPOL also have major potential for the training of local police and other security forces. This will be discussed further in section 9.2.1 below.

5.4 UN Military

UN presence in most complex emergencies, and most certainly in every peace-keeping operation, is predominantly military. A human rights role has not been one of the functions they have usually anticipated or trained for. However, their overwhelming operation-wide presence and predilection to defend, are the strongest arguments in favour of them having a human rights role. This has been borne out in a number of different situations where the military themselves initiated action as they were not prepared to stand by and merely watch human rights violations occurring. This is particularly true for those contingents from countries with strong domestic human rights protections and traditions.

In Haiti for example, the US military initially had a hands-off policy. Fairly early on they decided that they were not prepared to watch people being beaten and certainly not being killed. The US military promulgated new rules of engagement which allowed them to arrest violators. Highlighting the problems and ad hoc evolution of military roles in this regard, the UN and US commanders were not very systematic in arresting violators, and then were not clear on what

was to be done with those arrested. The Rockwood¹⁰⁸ case from Haiti also raised but did not resolve some key issues, including whether obligations by individual military to protect human rights can or should override superior orders.

A much different situation occurred in Srebrenica in July 1995, as Bosnia Serbs troops under Ratko Mladic captured the UN 'safe area' manned by 450 lightly armed Dutch peace-keepers. Despite a formal inquiry by the Dutch Defence Ministry, events are far from clear apart from the fact that the Serbs were allowed to come in and separate out military age men from the population and ship them off with no foreign observers. Many have not been heard from since. There is also evidence of torture and killing by Serbs elsewhere in the safe area. There is no clear evidence that the Dutch peace-keepers knew of such happenings at the time, but the question outstanding is, should they have anticipated and been more watchful for such human rights violations? The Dutch are feeling rather traumatized by this event, and along with the Rockwood case, it is evidence of an evolving expectation that military peace-keepers will undertake substantial human rights action as required.

This evolving role stems in part from the fact that at least in peace-keeping operations, the military and invariably they alone, have the armed capacity to step in to halt or minimize human rights violations. In worse case human rights scenarios, and where there is sufficient UN member states' political will particularly by troop contributing nations, UN military have the ultimate role in human rights protection through armed intervention. To date such a role is relatively infrequent, but will inevitably grow over the long term as member states and their militaries become less uncomfortable with such a role, and public pressure increases for them to take such action.

Far less dramatic, and much more common, is the observing and reporting of human rights violations. The operation area spread and relatively large number of military present, makes their participation in observing and reporting particularly appropriate. This requires quite specific training for the military, witness the outstanding question for the Netherlands, ie. why were their troops in Srebrenica not sufficiently trained to anticipate and attempt to defend against Bosnia Serb violations.

Quite apart from observing and reporting, one of the military's advantages in assessing violations is their greater understanding of where command responsibility lies for violations carried out by troops of opposing parties. Frequently they also have quite unique skills such

¹⁰⁸ US v. Capt. Rockwood: a Captain Lawrence Rockwood, was a US Army counter-intelligence officer with the 10th Mountain Division, part of the US led UN Multinational Force (MNF) to Haiti. He and his unit deployed 19 September 1994, and a week later he unilaterally inspected the National Penitentiary in Port-au-Prince. He had attempted to get approval for his action or get another part of the UN operation to address ongoing and threatened violations. He was charged on five counts including failing to show up for the night shift at the MNF compound; unauthorized leaving of the infirmary to which he was sent after the failed inspection; disrespect and disobedience to his superior officer; and conduct unbecoming an officer and a gentleman. He was found guilty and sentenced to dishonourable discharge and forfeiture of pay.

as crater analysis and crack-thump¹⁰⁹ training which allows them to conclude with greater certainty what is being fired, from where, by whom, and with what intent. These are important skills for investigating and assessing the targeting of civilians and other violations of either human rights law or the law of armed conflict.

Even the many militaries that are positively inclined towards human rights need specific training on their role, obligations, options, and specific training to more effectively achieve their human rights objectives. Other militaries are less supportive, and "At least one country, for example, barred briefings on the Geneva Conventions for the personnel it dispatch to UNTAC."¹¹⁰ For those militaries, human rights training is even more imperative.

Recommendation #27

It is recommended that the Force Commander and all military peace-keepers be fully briefed on their human rights role, the functions of the HRO if there is one, and the options available to UN military in carrying out their human rights role.

Recommendation #28

It is recommended that where relevant, that an HRO take advantage of particular capacities and skills of UN military peace-keepers including human rights monitoring, assessing command responsibility for violations, assessing combat activity such as shelling or sniper fire, and various degrees of military intervention to protect potential victims.

Similar to CIVPOL, UN military also have major potential for the training of their local counterparts, ie. local militaries. This will be discussed further in section 9.2.1 below.

5.5 International Human Rights NGOs and the ICRC

International human rights NGOs have traditionally concentrated on reporting on human rights violations. Many have developed extensive information networks, and refined procedures to carry out investigative missions and publicise the results of their investigations. This task remains critically important, although the UN and in particular an HRO invariably needs to develop its own intelligence gathering capacity albeit drawing upon international NGO intelligence¹¹¹.

¹⁰⁹ Live fire training where trainees hear the crack of the weapon being fired and the thump of it hitting, and thus learn to identify types of weapons, trajectories, etc.

¹¹⁰ p.40, Golub, op.cit.

¹¹¹ In most field operations there is a need for a rapid UN human rights intelligence gather capacity which is perceived as 'trustworthy' since it is an in-house operation. In this way, the HRO and the larger UN field operation can respond quickly to evolving human rights situations.

International human rights NGOs have been relatively less involved in the carrying out of field programs such as judicial or military training, capacity building for local NGOs, public education, etc. For some such as AI, this is because they see themselves as having primarily a monitoring and advocacy role. For others, it is in large part due to a lack of funding, inasmuch as field operations are relatively costly and most international human rights NGOs just do not have the financial ability to mount extensive field operations. Many of those international NGOs have substantial expertise and the ability to deliver such programs if they were funded. There is a need for a symbiotic relationship between those with the funds (UN, bilateral donors, etc) and those NGOs capable of delivering cost effective programs with a practical impact. This is very much akin to the relationship of the UN and many bilateral donors, with international humanitarian NGOs such as the International Rescue Committee, the Norwegian and Danish Refugee Councils, CARE, Oxfam, etc.

The ICRC is a rather unique partner which has long played a major role in conflict situations. As an independent non governmental humanitarian organization, it defines its role as bringing protection and assistance to the victims of international and internal armed conflict and disturbances. Apart from its traditional role monitoring the application of the law of armed conflict, the ICRC has been forced by events to enlarge its activities to include major food relief operations. This humanitarian assistance role, while a clear part of the ICRC's mandate, is an activity that a number of other organizations also carry out effectively. A more difficult tasks for others to successfully implement, is the ICRC's mandates in promoting and monitoring the application of the law of armed conflict, protection, family reunification, and prison monitoring. This 'market niche' remains the major enduring strength and effectiveness of the ICRC.

Particularly in its prison and law of armed conflict activities, the ICRC has always operated with the utmost confidentiality, and depends largely on behind the scenes negotiations. This strategy has been extremely successful in the past, and logically will not be changed for the foreseeable future. However as a result, there are many tasks which the ICRC cannot easily fill, such as public advocacy. Others, such as an HRO or NGOs, are better placed to fill those gaps. Also, ICRC secrecy while a strength, will continue to cause a certain amount of tension where their roles overlap with an HRO or other human rights partners, but with whom ICRC usually will not share confidential information, nor publicly work together.

There can and should be close cooperation between the ICRC and any HRO. In Haiti, the Civilian Mission (MICIVIH) and the ICRC talked early and often, and arrived at a mutually acceptable division of labour. Less successful was the lack of coordination between the ICRC and the Human Rights Field Operation in Rwanda (HRFOR).

Broadly speaking, in Rwanda there was a fair amount of duplication in the prisons between the HRFOR and the ICRC. In large part this was because many of the early HRFOR monitors¹¹² were not all that conversant with the role of the ICRC and had arrived with very little if any

¹¹² The human rights monitors that arrived later from the European Union, tended to be more experienced and had received operation specific training before deployment, and the ICRC found them to be more amenable to coordination and cooperation.

preparation as to what their role would be generally, much less any specific guidance on dealing with prisons and prisoners¹¹³. The ICRC on the other hand appears to have been a little overprotective of what they saw as their area of operation, in particular as they had been working in Rwandan prisons since 1969. The ICRC felt that prison conditions were of ICRC concern, and that the human rights monitors should restrict themselves to verifying the ability of prisoners to access the justice system and get their cases heard. Since the ICRC traditionally operates in a very confidential way, there are good reasons why the HRFOR could assume that ICRC would not provide them with prison information they needed, and that HRFOR needed to be prepared to go public on various issues inasmuch as the ICRC largely eschews such an approach.

The Human Rights Centre and the ICRC are presently trying to work out a memorandum of understanding for HRFOR, but the negotiations have appeared to have slowed down without any resolution. Achieving such understandings will take time, and these are issues that every HRO must deal with, and for which doctrine needs to be developed.

In what is probably a natural evolution, the ICRC may need to look at varying its policy on the sharing of information. Assuming that it becomes confident in the capacity of UN HROs to deal properly with extremely confidential information, they could choose to provide information to the operation which in turn would not have to duplicate the activities of the ICRC. Defence mechanisms can be developed. For example, an HRO could decide based upon inside information from the ICRC, that it needed to make substantive and highly critical public comments on prison conditions. The HRO could have made a commitment that prior to any such action, that they would conduct their own investigation so that they could with all honesty say that they were acting upon their own information and the ICRC position would not be compromised.

Recommendation #29

It is recommended that HROs be fully aware of the operation area activities of relevant human rights NGOs and the ICRC so as to better coordinate the activities of the HRO with those potential field partners.

5.6 Treaty Bodies, Special Rapporteurs, Working Groups, & Ad Hoc Bodies

UN human rights treaty bodies have an ongoing independent role to play in any situation, whether or not there is an HRO. Along with the treaty bodies, the Commission on Human Rights as well as its parent bodies (ECOSOC, 3rd Committee, GA), have over time created a number of permanent and quasi-permanent special procedures and reporting mechanisms that are both country specific and thematic. Some of the thematic mechanisms are particularly

¹¹³ One of the worse cases occurred in Gitarama prison where the UN human rights monitors handed out a questionnaire (duplicating many of the questions on a previous ICRC questionnaire) and then had the questionnaires collected by the prison officials.

relevant to UN field operations¹¹⁴, and will often result in short field missions of their own. Country rapporteurs, as happened with the Special Rapporteur for the Former Yugoslavia, could evolve a quasi-permanent field presence.

There are real advantages to having such independent UN mandated individuals or teams, even if their field presence is periodic. Those individuals or teams in many ways can go beyond the mandate of an HRO, and in particular they can and should be much more forceful in their public statements, ranging from publicly available albeit formal reports, to press releases. This creates a symbiotic relationship between them and the HRO, each playing the roles it is particularly suited for.

For example on the aspect of public statement, there are two good reasons for a distinct role for special rapporteurs or others. First of all there is the benefit of such action in itself, eg. independent, explicit, and public assessments. This would be combined with independent advice to the HRO and other UN field partners such as the SRSG.

Secondly, if there is governmental or other opposition to public reports on human rights violations, the HRO can work to ensure that it is perceived as operationally separate from the actions of those *independent UN experts*. This is not at all duplicitous, since such independent experts truly are independent of the HRO. This HRO stance also does not imply at all that the HRO disagrees with the actions or findings of those experts. The HRO is merely adopting a fairly common *distancing* tactic to retain working relations with warring parties or even other parts of a UN operation that might well see the statements by international human rights tribunals¹¹⁵ or special rapporteurs as naive and inflammatory. Such very public and hopefully resonant statements by rapporteurs and others will by comparison make the HRO more acceptable to the local parties to the conflict, and at times increase their willingness to work with the HRO. At other times, such independent experts will act as a type of lightning rod for governments' and others' reactions to criticism about violations. Once their public anger is vented, they can often recognize the validity of such criticism and allow other human rights players, such as the HRO, to address the very same issues.

The role played by Pedro Nikken, the Independent Expert on El Salvador mandated by the Commission on Human Rights, is an excellent example. His reports were "straightforward and hard-hitting". "His practical recommendations on justice sector reform have been echoed in the reports of the human rights division as well as those of the Truth Commission and the Joint

¹¹⁴ Eg. Special Rapporteurs on: Internally Displaced Persons; Summary or Arbitrary Executions; Torture; Violence Against Women, & Working Groups on: Enforced or Involuntary Disappearances; Arbitrary Detention.

¹¹⁵ A case in point were the indictments on grounds of genocide, war crimes, and crimes against humanity, of Bosnian Serb leader Radovan Karadzic and his military chief Ratko Mladic, first announced as being under investigation, and then formally indicted July 25 1995 along with Milan Martić and 21 other Bosnian and Croatian Serbs. The first reaction of many political and military senior staff was that this was going to uselessly complicate their lives and possibly even put UN lives at danger.

Group.”¹¹⁶ Consistently recognized as correct in his assessments and recommendations, his strong advocacy resulted in the El Salvadorean government preventing his visits to the country and arranging to end his mandate. Until that point, it appears as if he took ample opportunity to work with, and advise, ONUSAL and others. His strong advocacy absorbed much of the government’s ‘anger’, enabling the UN and various other human rights initiatives to more quietly go about their business and attract less government opposition. It will be useful to hear from Pedro Nikken and others as to how much his very public advocacy did in fact act as a ‘shield’, and ‘legitimize’ the human rights activity of ONUSAL, the Truth Commission, and others.

Recommendation #30

It is recommended that UN human rights entities such as treaty bodies, special rapporteurs, independent experts, working groups, or other ad hoc UN human rights bodies, play an independent role in advising HROs on the human rights situation in relevant countries, and in monitoring HROs’ actions to address those situations.

In February 1993, the Security Council resolved that “an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991”. They subsequently created a co-located tribunal for Rwanda with a common prosecutor and appeal mechanism. This is a dramatic departure for the UN, and indications are that these two unique precedents will over time become far more common, if not institutionalised, in the form of an International Criminal Court.

The UN’s International Law Commission for many years has been developing and refining its Draft Statute for an International Criminal Court (ICC) along with a draft Code of Crimes Against Peace and Security of Mankind. In 1994 the UNGA’s 6th Committee reviewed the draft statute for the ICC and created an ad hoc working group. In 1995 the 6th Committee in response to the report of the working group, moved the process forward by creating a preparatory committee with a view to a possible 1997 conference to negotiate an international agreement for the ICC.

Sceptics as to the efficacy of tribunals or the ICC refer to the apparent lack of deterrence by the tribunal for the former Yugoslavia. Deterrence is directly proportional to the likelihood of punishment, so that as with any emerging judicial system, the deterrent effect of the present tribunals will largely be in the future. Deterrence will come as military and political leaders start to become aware of the slowly increasing ‘long arm’ of international human rights law. It is important that some thought be given as to the relationship between HROs and tribunals or an ICC.

¹¹⁶ p.57, *Improvising History*, Lawyers Committee Report on ONUSAL Dec. 1995. op.cit.

5.7 Humanitarian Assistance Agencies

Humanitarian assistance agencies by name and by predilection should be natural HRO human rights partners. This includes UN agencies such as UNHCR, UNDP and UNICEF, and NGOs such as MSF, Oxfam, Care, and Radde Barne. The very nature of their task deals with quite distinct and crucial human rights issues such as the right to food, shelter, refugees, and security of the person.

The economic and social rights that these humanitarian agencies are attempting to protect, highlights the fact that most HROs have tended to focus on civil and political rights. Sustainable peace and security demands that both sets of rights be protected, and their symbiotic relationship makes progress on one dependent on progress on the other. This indivisible link between civil & political rights, and economic & social & cultural rights, has been thoroughly elaborated and accepted in international debate and need not be repeated here. Suffice it to say that while there may be a rough division of labour between an HRO and humanitarian agencies, there is ample scope for coordination and cooperation.

The wide dispersment of humanitarian agencies throughout the operation area and the fact that they are usually very close to the people they are helping, makes them a primary source of human rights intelligence. As with other sources of human rights information, this relationship has to be thought out and dealt with carefully so that the main role of any particular humanitarian agency is not unnecessarily compromised. Some senior UNHCR officials referred to a growing debate on this within UNHCR, as the reporting of human rights violations is an uneasy and at times unwelcome corollary to their humanitarian relief activity.

It should also be noted that often humanitarian agencies are already present in the operation area when an HRO is being designed, and thus can provide invaluable advice and assistance both to planning missions and to the HRO as it deploys. It is also important that the HRO be aware of the capacity and location of humanitarian agencies, so that related humanitarian problems that HRO staff come across can be forwarded to and dealt with by the appropriate humanitarian agencies. This might range all of the way from warning agencies of incipient refugee flows, to seeking humanitarian assistance for individuals in hiding because of human rights threats.

Recommendation #31

It is recommended that HROs be fully aware of the activities of relevant humanitarian agencies in the operation area so as to better coordinate the activities of the HRO with those potential field partners.

5.8 Regional Organizations

The very size and 'distance' of the UN has caused many to argue in favour of an increased role for regional organizations in conflict resolution and field operations. Regional organizations will certainly have a role to play in UN HROs both as potentially key advisors, and at times as operational partners. Haiti is the best example to date of a regional organization, in that case the Organization of American States (OAS), working in conjunction with the UN and DPA to mount a joint International Civilian Mission (MICIVIH). Certainly in principle, the decision to have an integrated operation between the OAS and the UN was a very good one. In practice, and very understandably in light of the newness of the whole concept, there were some complications.

In advance of MICIVIH, the OAS had 18 observers on the ground led by the Coordinator, Colin Granderson. His effectiveness resulted in his remaining as head of the new joint MICIVIH composed of UN observers and additional OAS observers. While there has been some concern stated about the uneven quality of the OAS observers, all reports are that collaboration between OAS and UN personnel went well. Different criteria for recruitment, staff rules and conditions, and different logistics, did however create problems that should be relatively easy to overcome in such future joint operations¹¹⁷.

The European Union human rights monitoring role in Rwanda was a relative success, but did not involve a regional organization dealing with a conflict in its own region so is not informative in that regard.¹¹⁸ That type of initiative will be reviewed in chapter six on Standby Arrangements.

On a less positive note, the Rwandan crisis provided evidence of the Organization of African Unity's (OAU) difficulties in the area of conflict resolution, and its inability to address African regional human rights violations even when they reached, or perhaps because they had reached, genocidal levels. In the Rwandan crisis, the OAU and African countries took very ambivalent stances. On one hand, they were extremely concerned about developments in Rwanda, and both the OAU and countries like Nigeria pushed hard for an expanded UNAMIR with a stronger mandate. At the same time African countries refrained from using, and at times in UN and Security Council debate they actively blocked the use of, strong explicit language criticising human rights violations in Rwanda, eg. use of the term genocide.

That type of ambivalence within the OAU as in some other regional bodies, stems not from a total lack of concern. It is just that the level of concern is weaker than political reluctance to intervene in the affairs of a fellow regional state or set a precedence that might rebound on themselves. It is indicative to look at paragraph 14 of the OAU's statement on the creation a new OAU mechanism for conflict resolution:

¹¹⁷ See related discussion in 6.2 on standby arrangements

¹¹⁸ The EU human rights mission to Rwanda (HRFOR) is reviewed in chapter six on Standby Arrangements.

14. The *Mechanism* will be guided by the objectives and principles of the *OAU Charter*; in particular, the **sovereign equality** of Members States, **non-interference in the internal affairs** of States, the respect of the **sovereignty** and territorial integrity of Member States, their inalienable right to independent existence, the peaceful settlement of disputes as well as the inviolability of borders inherited from colonialism. It will also function on the basis of the **consent and the cooperation of the parties** to a conflict.¹¹⁹ (emphasis added)

This reluctance to intervene in what is claimed to be the internal affairs of fellow regional states will continue to hobble efforts of the OAU and other bodies like ASEAN, to play constructive roles in their regional crises. Fortunately there are periodic episodes such as the 1994 intervention in Lesotho by South Africa, Zimbabwe and Botswana, to restore democratic government. It showed the possibilities when the fundamentals of democracy and human rights are not overridden by governments unsure of their own legitimacy or of their own ability to sustain regional or international scrutiny.

Then there is the double sided factor of 'local knowledge'. Culturally and geographically fellow regional states are initially better placed to understand the issues and help identify the solutions for such local crises. The flip side is that such proximity often results in real or perceived partiality either because neighbours favour a particular party to the dispute or because they have a national vested interest in the outcome. Nevertheless, the hope is that cultural affinity, awareness, and unbiased concern, can with time outweigh such conflicts of interest.

Finally there is the question of operational capacity. A human rights field operation is a complex and difficult process to conduct. It requires trained individuals who can operate both on the ground and at the regional organizations' headquarters. It is clear that most regional organizations do not have this operational capacity yet. Developing this expertise should be a long term objective. The UN, particularly as it wishes to have regions replace, or at least help the UN in many regional crises, can play an active role in their capacity building.

The UN should provide space on every UN HRO for the relevant regional organization's observer/trainee. Similarly back at UN headquarters, another regional observer/trainee would also undergo on the job training by being assigned to a variety of tasks through which they will learn the operational requirements of mounting HROs. The expectation would be that they would take their learned skills back to their regional organization to train and educate others. There is also the possibility of UN custom designed regional training courses for individuals drawn from regional organizations, national governments, and the regional non governmental

¹¹⁹ See the "Declaration of the Assembly of Heads of State and Government on the Establishment Within the OAU of a Mechanism for Conflict Prevention, Management and Resolution", Cairo Declaration AHG/Dec.13(XXIX) of 30 June 1993.

sector. Graduates would provide additional regional capacity in human rights early warning and protection¹²⁰.

Recommendation #32

It is recommended that the UN look to regional organizations to play a role in promoting and protecting human rights through both their own independent field operations and in conjunction with the UN.

Recommendation #33

It is recommended that the UN play a role in strengthening the capacity of regional organizations to mount HROs independently and in conjunction with the UN.

5.9 Media

The media have a variety of roles in promoting and protecting human rights. Perhaps the most important is their impact on public awareness, followed closely by being a vehicle for public pressure. "One of the essential aspects of maintaining the credibility of [a human rights] operation is to ensure that its findings and activities are regularly and frequently reported and widely disseminated internationally as well as within the country itself."¹²¹ As the UN does not always have the resources or the capacity to do so, the media provides a partial solution.

The UN is notorious for turning out reports that are tabled and then largely disappear into what the average lay person sees as a homogenous morass of identical looking documents with long titles and complex identification numbers. Equally, the UN publicity mechanism including UNDPI (Dept. of Public Information), as it did with MICIVIH in Haiti, often fails to effectively carry out its own publicity. In that situation, MICIVIH took to issuing frequent press releases in Haiti and in French. The UN system proved incapable of giving them wider distribution, so a US based NGO undertook to translate MICIVIH press releases into English and distribute them to the international media. In the same vein, MICIVIH produced both a report on the Haitian justice system¹²², and a report on the execution of Antoine Izmerly. For

¹²⁰ In a related sense, the Norwegian Refugee Council in February 1996 initiated training for Africans as part of NRC's humanitarian standby mechanism (for description see p.7, LaRose-Edwards, *Human Rights Standby: Canadian standby arrangements to enhance UN rapid reaction in the field of human rights and democracy*, paper for Canadian Foreign Affairs, May 1966)

¹²¹ p. 238, Clapham & Henry, in Aspen/Henkin ed., op.cit

¹²² Unpublished UN Document, *Analysis of the Haitian Justice System with Recommendations to Improve the Administration of Justice in Haiti: A Report by the Working Group on the Haitian Justice System of the OAS/UN International Civilian Mission to Haiti*, March 17, 1994.

no apparent reason, these official documents were never published even though they did receive limited circulation.

In Cambodia (UNTAC) the Human Rights Component saw the media as a “key aspect of effective human rights intervention and corrective action”, and “undertook its own media relations, using staff with extensive experience in this area. The result was extremely helpful media coverage of crucial human rights issues in most instances. Like most offending regimes, the Cambodian authorities were highly sensitive to adverse media coverage in this area, which local journalists were usually unwilling to undertake.”¹²³

HROs must have a conscious media strategy, and this includes having specific staff trained¹²⁴ on working with the media. It is not sufficient to rely on the media capacity of the larger UN operation, as there is a need for unique judgement and sensitivity towards human rights issues. For example, in Haiti MICIVIH found it had some difficulty with UN spokespersons who were unclear on the political intricacies of human rights, and were not always very effective in getting the right message across. There is a need to understand both the media objectives of the HRO, the reporting and ‘business’ needs of the media, and the international and operation country environment.

The role of the media in conflicts generally, and UN field operation specifically, warrants serious study. The complexity of human rights issues and the extreme importance of the media in furthering public awareness and public censure makes it doubly important that HROs and other human rights operations understand the role of the media. The media themselves need to have a better understanding of their role. Publicity, and this invariably means media coverage, has a bearing on human rights issues running all of the way from stiffening the resolve of the UN and member states to take action, to deterring potential violators, to furthering understanding and reconciliation.

Recommendation #34

It is recommended that HROs be fully aware of the potential of the media to help or hinder their efforts, and that HROs formulate a clear policy on working with the media.

A corollary to working with the media, is the need by the UN to counter situations like *Radio Milles Collines* in Rwanda, where a local radio station openly and actively incited genocide. Similarly in the Former Yugoslavia, the UN’s Special Rapporteur Tadeusz Mazowiecki reported that “Rumours and disinformation are not only widespread, they are a crucial element of the present situation in the former Yugoslavia, greatly contributing to ethnic hatred and fuelling the desire for revenge that is one of the main causes of the atrocities which occur. With rare exceptions, the national media in all of the countries visited tend to present news

¹²³ pp. 76-7, McNamara, in Henkin/Aspen op cit

¹²⁴ Reflecting the importance of the media partner, the Canadian Pearson Peacekeeping Centre has developed a complete two week course on the media in peace-keeping.

concerning the conflict and human rights violations in a manner that can only be described as distorted. Consequently, the general public has no access to reliable, objective sources of information. Among the international press, there is a tendency to emphasize the most sensationalist aspects of the situation, thus reinforcing the distrust and tension which prolong the conflict."¹²⁵

Future UN operations will increasingly involve the establishment of UN radio or television stations to provide impartial and credible information in order to build confidence and prevent conflict resulting from rumours and mis-information. They will provide an important resource for HROs, and some thought needs to be put into deciding how an HRO would make use of such UN media capacity. In addition, UN 'jamming' of hate media such as *Radio Mille Collines* will raise issues of censorship that an HRO should be prepared to help arbitrate and resolve. The related issue of training or facilitating the local media in properly carrying out their role in a democratic society will be dealt with in Chapter Nine looking at human rights reconstruction.

5.10 Bilateral and Multilateral Human Rights Assistance Donors

The development of human rights promotion and protection costs money. Human rights development and reconstruction assistance is an essential element of dealing with human rights in complex emergencies, particularly to achieve a sustainable human rights environment. In this context, bilateral aid donors can play an inordinately important role. This is because invariably such bilateral donors, particularly in the aggregate, have far more resources than comparable UN programs. In the same vein, non-UN multilateral donors such as the European Union, can also have the same level of funding and impact. This high level of bilateral or non-UN multilateral human rights development assistance funding is excellent, but can pose problems if not coordinated with other international donors as well as with local governmental and non governmental activity.

Large bilateral or non-UN multilateral human rights development programs operating in isolation can inadvertently skew a nation's human rights development. At times they can negatively impact on other areas of human rights reconstruction, eg. drawing most of the qualified local people away from low paying state attorney positions to highly paid magistrates jobs, or out of NGOs into government, etc. At other times, an imbalance can even limit the success of the very area being targeted by the donor, since it cannot rely on other parts of the 'human rights' system, eg. well trained police loosing respect for an underfunded and undeveloped judicial system, so that they, the police, revert to vigilante justice rather than trust to the vagaries of their judicial system.

¹²⁵ Para 47, E/CN/4/1992/S-1/9 28 Aug. 1992

In Haiti, the US largely through USAID has come to dominate the judicial reform arena through the sheer weight of money it has put into its programs. It was essential for MICIVIH to be aware of what USAID and the other two major donors, Canada and France, were doing. MICIVIH attempted to work as a coordinator of international judicial assistance programs, and bring together those three donors as well as UNDP, UN-Genève, UN-Vienna, and UNICEF. MICIVIH drew up a list of programs and presented it to the Haitian Ministry of Justice. Unfortunately the effort to coordinate the international judicial aid program was not very successful. The US was the preponderant player, and they made it quite clear that they would do things their own way. The result has been a degree of lopsided human rights development in Haiti.

Donors need to understand the importance of coordination in enhancing their combined efforts. This includes coordination between bilateral donors, UN human rights aid programs (eg. UNDP, UN Centre for Human Rights, UNICEF, UN Crime Prevention Branch, etc.), other multilateral programs, and local government & NGOs. This is not to suggest that any single agency assumes a controlling role, but that some agency take the lead in convening donor meetings, and play that 'diplomatic' function of encouraging an attitude of openness and compromise.

The United Nations Development Program (UNDP), the UN's largest technical cooperation agency, has both immense potential in the area of human rights development assistance, but is moving quickly to mount programs in this sector. However its progress has been haphazard. In El Salvador, UNDP was tasked with a variety reconstructions tasks, but "little forethought was put into UNDP's role in implementing the peace accords or its relationship to ONUSAL" so that "Rivalries and coordination problems arose immediately between UNDP and ONUSAL, a dynamic which continued to plague the mission."¹²⁶ Fortunately this dynamic has been dramatically reversed in neighbouring Guatemala where UNDP and MINUGUA have a joint human rights development assistance program.

As the UNDP exercise shows, HROs need to have thought about their strategy in dealing with both bilateral and multilateral donors, and approach them quite early on if only to attempt to influence those donor programs before they are cast in concrete. At times the HRO will not be the most appropriate body to attempt to coordinate international human rights assistance. The High Commissioner for Human Rights should already have a broad overview of international activities in the country, and the HCHR may be best placed to coordinate at the UN HQ level.

There are also a number of other large UN players such as UNDP itself that are increasing their human rights development programming, and in certain country contexts they may be best placed to coordinate UN and perhaps bilateral assistance. There is a certain logic in a UN agency playing the coordinator role, but it is also conceivable that because of their unique knowledge and experience in working in a certain country, that a particular donor country or non-UN multilateral donor play that central role. And finally not to preclude local solutions,

¹²⁶ p.x, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

there may be situations where the local government or NGO community can be the coordinator, although they invariably lack the resources and capacity¹²⁷ to do so.

Regardless of which agency ends up taking the lead in coordinating, HROs should be prepared to play a role. In anticipation of this, HROs should develop a strategic assessments of what human rights development assistance is needed. Subsequently and if no other player in the mission area is doing so, then HROs should attempt to play a lead coordination facilitation role. At a minimum, an HRO must be aware of bilateral and multilateral human rights aid programs so that the HRO does not duplicate what is being done by others.

Recommendation #35

It is recommended that HROs be aware of bilateral and multilateral aid programs that impact on human rights reconstruction and capacity building, and where appropriate that the HRO in the field and perhaps the HCHR at the UN HQ level, play a role in helping to coordinating such human rights development assistance.

5.11 Local National Human Rights Partners

This topic, quite at variance with the fact that it appears as if buried at the tail end of this chapter, is of fundamental importance. Local or indigenous human rights partners are critical in the short term and absolutely essential in the long term.

There is always the very real danger of focussing on the international response to emergencies and ignoring the role of the local populace, their institutions and mechanisms. This goes far beyond the tailoring of international action to the factors on the ground, be they political, economic, cultural, or social. At issue is truly sustainable human rights protection, where the drive for protection and human rights improvement comes from the people themselves and their governments.

In the short term the local partners provide that indispensable admixture of local knowledge and direction, that can allow UN human rights field operations to more effectively plan out their strategies. Where possible, local involvement in HRO program implementation can more effectively implement certain activities such as public education. Perhaps more importantly, local involvement is a key component of human rights capacity building. In the long term, the UN will and should leave. In the long term, creating or strengthening local capability to defend human rights is the only way to create sustainable human rights protection, and by extension, sustainable peace.

¹²⁷ Local capacity to absorb human rights development assistance is also an aspect that uncoordinated donor programs can exacerbate by overtaxing local capacity to absorb assistance in one human rights sector while not sufficiently funding available capacity in another.

Recommendation #36

It is recommended that HROs use local partners, both government and civil society, to inform HRO activities, and where possible use local partners as agents for implementing HRO programs.

Working with and through local partners is easier said than done. Unfortunately in most emergencies, factors have acted to weaken even what few human rights mechanism, procedures, and supportive attitudes that existed prior to the conflict. In other words, it is often hard to find large numbers of government people, lawyers/judiciary, NGOs, or other individuals, that are knowledgeable and competent in the protection of human rights. In addition, it often happens that many of the good human rights people have been intimidated or hampered through persecution and harassment. Almost as debilitating is the almost total lack of financial resources for human rights protection and promotion that are available to local NGOs or supportive government officials,.

In addition, outsiders invariably underestimate the capacity of existing local organization and individuals, often because their ways of operating appear 'foreign' and less effective. We need to constantly relearn the lesson that local solutions and locally designed and driven programs usually have more impact, invariably are more sustainable, and almost always are more cost effective.

It must be a conscious effort of any HRO to involve local partners (existing or fostered) with the objective of them taking over national human rights promotion and protection. Right from the beginning an HRO should have determined exit dates and plans for that progressive handover. These timings and plans will evolve as the local situation changes, and as local partners themselves provide guidance on timings and handover stages.

A guiding reality is that the UN is a stop gap measure to provide time for a society to regain control of its destiny. With time and help, local partners can become increasingly effective partners for the HRO. With time and help, local partners can increasingly replace the HRO and other international human rights field partners, as the primary defender of human rights. As an aside, it should be noted that elections are an important milestone in the transition, but HROs should not see elections as an end in themselves as was partly the case in Cambodia. An HRO must attempt to achieve an adequate handover to a functioning system that can effectively protect human rights. Democratic elections are a necessary but not always a sufficient component of such a functioning system.

An HRO can also play a key role in building a cohesive and cooperative local human rights community. Invariably the biggest divide lies between government and civil society, particularly NGOs. An HRO, particularly as it is an arm of the UN and governments, is often well placed to calm governmental worries and facilitate at least communication, and hopefully mutual respect, between governmental and non governmental actors.

Recommendation #37

It is recommended that HROs actively build up the capacity of local human rights partners, both government and civil society, so as to enable the HRO to hand over its responsibilities to the local society and leave.

5.12 Human Rights Coordination

In any large operation, worsened in crisis driven field operations, there is 'stovepipe' control. In other words, the natural lines of command and control are up down, and human rights partners in the operational area have to work hard to coordinate themselves. Even within the UN operation per se, and certainly not within the larger operation area context, there is no suggestion much less likelihood that a single agency, UN or other, can assume a controlling role. Human rights coordination requires that some agency take the lead in convening meetings, and play that 'diplomatic' function of encouraging an attitude of openness and compromise. Failure of human rights partners to coordinate themselves will at best result in duplication, mis-coordination, and loss of opportunity. At worse it will result in serious mistakes and failures.

Having said that, there are worse-case situations where attempts to coordinate are perhaps not worth the effort. This can arise where there are not sufficient resources for an HRO or other body to undertake a coordinating role. More likely, it is because the personalities and goals of individuals and organizations are too disparate to allow for easy coordination. Often some key players can be just too bloody minded and power hungry to delegate any of their narrow control and 'sovereignty'. They have little concern for maximizing the benefits for their clients, the individuals and society in crisis. In those cases, there is often little recourse but to accept that there will be duplication, mis-coordination, loss of opportunity, mistakes and failures.

Fortunately in most situations there is sufficient good will and altruism to enable at least a modicum of coordination. At a minimum, this coordination must be attempted amongst all UN components or agencies present in the operation area. If there is an HRO, it inherently is the primary human rights responsibility centre of a UN operation. That HRO logically would play a critical role in involving and coordinating all of components of the UN operation per se, eg. CIVPOL and military peace-keepers. There will also be a number of UN agencies etc. that are active in the operation area but that are not part of the UN operation per se, eg. UNHCR, UNICEF, WFP, UNDP, and the HCHR. An HRO must not presume to take the lead human rights coordination role for all UN human rights related activity in the operation area, but must actively look to facilitate and perhaps fill such a role unless some other UN entity is better placed and prepared to take the lead coordinating role.

Human rights coordination within the UN operation itself is particularly difficult when human rights have not been an integral part of the mandate and planning of a UN operation. When human rights are an add-on, they invariably continue to receive low priority from many of the operation partners who look to the operation mandate for the ordering of their priorities. Until

quite recently in the former Yugoslavia, the abiding theme has been that human rights is somebody else's problem. In such a situation, not only is coordination difficult, but there is not all that much human rights effort to be coordinated.

Even when human rights is central to the UN operation, coordination is a problem. In ONUSAL "differences were particularly acute between the Police Division and the Human Rights Division and sometimes reached the point where the two divisions were carrying out parallel investigations or verifications."¹²⁸ This situation occurred in part because the Human Rights Division which was created first, was not too sure if it wanted to be overwhelmed by too many police who might prove to be unsympathetic to human rights. Another reason was the lack of clear lines of authority in and between the two divisions. Both issues were resolved with time, and the Human Rights Division ended up having a large contingent of police on its own staff for investigations.

In MICIVIH and UNTAC, there appears to have been a disjoint between the HRO and the rest of the UN operation, in particular the political negotiators. By and large, the findings and recommendations of both HROs ranged from being partly, to being fully ignored by other parts of the UN operation.

Recommendation #38

It is recommended that an HRO mandate, and field directives by the SRSG, make it clear to all UN operation components that the HRO is the coordination facilitator for all the UN operation's human rights activities, but that this does not lessen the human rights mandate and obligations of other UN operation components, eg. CIVPOL and military peace-keepers.

Broader operation area coordination of other UN and non-UN human rights partners is often just as important as the internal coordination of the UN operation, but invariably far more problematic. A lengthy list of international human rights activities and players, combined with a variety of local partners such as civil society, local NGOs, and local government, complicate the goal of coordination. They all have different status, goals, capacity, and procedures.

There is no 'international' edict that gives any agency the lead in coordinating the human rights activity of all the operation area actors, both UN and non-UN, both international and local. However, in situations where there is an absence of any other obvious candidate, there is a certain logic to the HRO playing a lead coordination facilitating role albeit without any ability to direct. As DHA has found in the area of humanitarian assistance¹²⁹, carrying out

¹²⁸ p. 35 ,García-Sayán, *The Experience of ONUSAL in El Salvador*, in *Honoring Human Rights and Keeping the Peace*, op. cit.

¹²⁹ GA Res 46/182 Dec. 17 1991 (Strengthening of the Co-ordination of Humanitarian Emergency Assistance of the United Nations) mandated the "coordinating and facilitating" of UN emergency response. It gave the UN Secretariat Department of Humanitarian Affairs (DHA) the job of humanitarian coordination certainly within the UN and to a lesser but no less important extent

coordination without control is very difficult but no less important because of it. DHA has had some real successes and some real failures, so future HROs should actively approach DHA for lessons learned on how to conduct such informal coordination.

Some interesting approaches are being developed in the Bosnia and Herzegovina context following on from the Dayton Accords. The Office of the High Representative, which is roughly analogous to the SRSG¹³⁰ in most normal UN operations, is giving human rights a long needed and extremely high profile. First of all High Representative Bildt has created a Human Rights Task Force (HRTF) which met first in Brussels on January 26 1996, and since then has held regular meetings in Brussels and Sarajevo. Comprised of participants from various intergovernmental and governmental organizations, it serves to bring together relevant organizations and facilitate the exchange of information. At the behest of the HRTF, the High Representative has created a Human Rights Coordination Centre (HRCC) within his office, and it is tasked to:

- “-Create a central repository of human rights reporting concerning Bosnia and Herzegovina;
- Assist with coordination of the activities of organisations involved in implementing and monitoring implementation of the human rights provisions of the peace agreement;
- Identify gaps and duplication in human rights monitoring and protection efforts and suggest methods for resolving such problems;
- Prepare periodic assessments by the High Representative relating to implementation of the human rights provisions of the peace agreement; and
- Support the work of the Human Rights Task Force and refer issues requiring joint efforts to the HRTF.”¹³¹

The HRTF, the HRCC, and the wide variety of human rights activities now suddenly taking place in the former Yugoslavia, will provide some invaluable lessons on more effectively protecting and promoting human rights. At this point it is too early to tell how these mechanisms will evolve and their impact, but there are several factors that will come into play and will inform the actions of future SRSGs and HROs.

First there have to be willing partners to coordinate, and international human rights agencies that operate in the field, have to put more thought into developing effective field coordination mechanisms and procedures. Then, HRO staff need to be aware of how they can play different roles in such coordination, both within the UN operation, and at the broader operation area level for UN and non-UN partners. This requires specific training on how to approach and carrying out such a sensitive and ‘diplomatic’ role. There are tricks to getting others to acquiesce to even minimal information sharing, and substantial skills are required to engender

with regards NGO and bilateral humanitarian assistance. What they were not given was the ability to coordinate by command.

¹³⁰ there is of course a UN SRSG for UNMIBH.

¹³¹ p.69, International Round Table, Austrian Foreign Ministry, op.cit.

effective coordination. Few UN components or agencies even when so directed, and almost no non-UN actors, will agree to be coordinated by those they see as incompetent and thus wasting their scarce time. And no one will go along with being coordinated by those who interpret coordination as the power to control.

Recommendation #39

It is recommended that HROs understand fully their potential human rights coordinating roles, and that appropriate staff be trained on how to achieve this role requiring diplomacy, persuasion, and effective coordination.

Chapter 6 - Staffing and Standby Arrangements

6.1 Staffing: Recruitment and Personnel Management

The whole process of UN human rights operation recruitment and personnel management has taken place in such an ad hoc way as to defy any discernable pattern¹³². There are examples where recruiting and personnel management were so flawed, that the very essence of the operation was put at risk. Even in the more successful HROs like ONUSAL in El Salvador, there was substantial administrative confusion.

Luckily in both ONUSAL and other HROs, there were some inspired personnel selections which resulted in either a strong functioning operation, or at least parts of the human rights operation. No single UN office of primary responsibility has been accountable for all staff selection for any single HRO, much less be the office of primary responsibility for staffing all HROs. Therefore it has been rather serendipitous that some UN responsibility centres skilfully selected the right people, and other UN responsibility centres accidentally hired the right people. Conversely, a number of not so competent staff, and downright dangerous staff, were not screened out. It is important that the UN establish an office of primary responsibility for this crucial task, and that standards be developed to make recruitment less arbitrary.

In UNTAC and ONUSAL, there were few people recruited with a human rights background. In ONUSAL some were pulled from the Vicaria de la Solidaridad. The ONUSAL director for human rights had little say in recruitment, and many were political staff from UNNY or had been observers in the elections in Nicaragua. Having said this, most report that ONUSAL's human rights division performed well.

Haiti was the first HRO to successfully select most of its staff from those with a human rights background. This was largely because of the personal commitment of Ian Martin the director for human rights and despite only tentative support from the UN Office of Human Resource Management. It is a bit early to judge MINUGUA, but it appears as if it is attempting to

¹³² Like the UN, member states that put forward the names of their nationals or put together teams such as the OAS in Haiti or the EU in Rwanda, have done so in an ad hoc way. Some were very comprehensive in the creation of clear criteria and the conducting of comprehensive interviews. Others merely acted as a mail box for names.

follow the Haitian precedence of selecting those with human rights experience. Unfortunately, UN budget restrictions have forced DPA to rely increasingly upon UN Volunteers (UNVs). "The financial benefits of UNVs are great, as they cost approximately one third of a regular UN recruit... However, from some discussions, it seems that there may be a danger of human rights being seen as an area where good intentions and goodwill somehow substitute for professional standards."¹³³

The UN Human Rights Field Operation in Rwanda (HRFOR) has been held up as one of the less successful efforts in fielding enough of the right people, so much so as to be characterised as a waste of time, energy, money, and hope.¹³⁴ Fortunately many individuals and organizations are carefully scrutinizing Rwanda and the other HROs for lessons learned, and the common refrain is that there needs to be some central UN human rights clearinghouse for the requisite skills in recruitment and personnel management.

Having said this, DPA is evolving an ad hoc expertise in staffing, lately in conjunction with Personnel Management and Support Service (PMSS) of FALD/DPKO. Stemming from UN experience in peace-keeping operations, PMSS has evolved a role where it deals with the civilian side of all UN field operations.¹³⁵ Because of the crucial differences between headquarters staffing and field staffing, PMSS was delegated responsibility for all civilian field staff by the Office of Human Resources Management/DAM, which itself retained authority for all civilian headquarters staff. In November 1994 PMSS was made responsible for field civilian administrative matters, and then in May 1995 was additionally tasked with recruitment and staffing. This latter responsibility, centralized civilian recruitment and staffing, is both promising and potentially troubling.

As evidenced in an internal PMSS draft document of July 1995, the attitude and goals of PMSS are excellent. They express a desire to be service oriented towards field staff, and furthermore wish to delegate appropriate authority to operations through being "committed to the principle that decentralized and flatter organizational structures ensure better performance, control, and accountability". They also recognise that with just 11 professional and 30 general service personnel, that they are understaffed and need a doubling of staff to achieve many of their goals. The administrative and staff support functions for all civilian field staff are relatively straight forward, and quite logically should be centralised in PMSS. More problematic are in areas that they refer to as Mission Planning & Staffing, and, Briefing & Training.

PMSS talks of "carefully planning the organizational structures of missions and staffing each mission with the best available candidates", and the "practical and moral imperative to provide

¹³³ p.48, Karen Kenny, *Towards Effective Human Rights Training for International Field Missions*, first draft paper 1.0, April 1996. This is part of the Irish Government's Human Rights Training Project.

¹³⁴ See *Rwanda, "A Waste of Hope", The United Nations Human Rights Field Operation, African Rights*, 31 March 1995, pp.61

¹³⁵ For a good report on civilian personnel of PKOs, see the Joint Inspection Unit's *Staffing of the United Nations Peace-Keeping and Related Missions (Civilian Component)*, UN Doc. A/48/421, 19 October 1993.

thorough briefing and training to each and every individual". They have done a good job of identifying many of the gaps in fielding UN civilians, and certainly they are bringing a professionalism to their task that is heartening. The only problem, and it is a major one, is the rather unique character and demands of HROs.

HRFOR in Rwanda has been testimony that desire, enthusiasm, and dedication, are not sufficient if individuals either do not have the prerequisite knowledge or are not properly trained and prepared for what are extremely sensitive and complex tasks. For example, the UN has had some success in using UN Volunteers (UNVs) for civilian positions in many other fields operations, and PMSS is finalizing a global memorandum of understanding (GMOU) with the UN Volunteers Programme (UNV) on the use of UNVs in peace-keeping and related operations. The feeling is that this is a cost effective source of dedicated personnel. However, a common theme in discussions with those who have worked in HROs, is that a similar approach for staffing HROs is fraught with dangers.

One issue is that of a rapid turnover of UN Volunteers (UNVs), however this and UNV bureaucracy can be partly mitigated, eg. by mandatory longer term contracts. More problematic is the fact that the UNV program "lacks the contacts and knowledge of human rights to enable it to make uniformly good selections", and this has resulted in "erratic quality of UN Volunteers".¹³⁶ Unfortunately, the critical nature of HRO work makes having staff of 'erratic' quality counter-productive for the HRO itself, and potentially dangerous for local HRO partners such as local NGOs, individuals, and supportive government officials.

The complexity and high political stakes involved in human rights field activity demands personnel with strong 'diplomatic', 'political', and 'cultural' skills, all of which must be married with human rights expertise. The advance team of experts sent to Haiti to advise on the creation of MICIVIH stressed the need to recruit "formidable" human rights individuals with "language proficiency, maturity and ability to cope with stress, cultural sensibility, good judgement in situations of political sensitivity and willingness to live under difficult conditions."¹³⁷ Human rights operations demand professionalism, and must be staffed by human rights field professionals.¹³⁸

Similarly drawing from the ONUSAL experience, hiring HRO staff "demands a thorough screening to ensure that applicants have qualifications and characteristics that **do not appear on a curriculum vitae**: the ability to work under stress and in a group; a commitment to accurate reporting and political impartiality; sensitivity to racist, nationalistic or sexist attitudes; a non-confrontational personality; and a commitment to promote reconciliation and

¹³⁶ p.37, Golub, op.cit.

¹³⁷ p.28, UN Doc. A/47/908, March 27 1993, Report of the Secretary-General on *The Situation of Democracy and Human Rights in Haiti*.

¹³⁸ See also Roel von Meijenfeldt who sets out a Profile of Human Rights Field Officers (HRFO), annex C, *At the Frontlines for Human Rights*, Evaluation of the European Union participation in the Human Rights Field Operation in Rwanda of the UN High Commissioner for Human Rights, Oct. 1995.

consensus."¹³⁹ (emphasis added). That thorough screening of applicants is essential, and must be done by individuals who understand these nuances and the specific demands of the HRO position(s) being filled.

It is essential that PMSS and any other UN administrative support units for UN field operations, do not take unto themselves tasks that must be left to those conceptualizing and managing HROs. This report recommends that DPA be the office of primary responsibility for HROs, and thus DPA and the particular HRO's head and senior staff should also be the office of primary responsibility for staffing. They are the right individuals to design the substantive structure of the operation, make the final selection of staff, and determine what and how staff are to be trained. In Haiti, MICIVIH with DPA backing, sent several staff back to headquarters to play a role in selecting staff. Apparently this was not well received by some at UN headquarters, but such a process must become standing operating procedure. In other words, those about to head the HRO, and subsequently those in the field, must be involved in selecting the staff they need. Only when they cannot play this lead role, should PMSS or some other part of the UN be delegated by them to do so.

This is not to dismiss the obvious value in centralizing administration and support functions for UN field operations, and PMSS/FALD is clearly evolving such a critical function. PMSS recognizes that it does not have subject matter expertise in areas such as human rights or electoral assistance, and is proposing a regularized Selection Committee mechanism to address this. They have already drafted Terms of Reference for a Selection Committee, and quite clearly it is envisaged that subject matter experts would be a part of such selection committees. Once again, the high stakes and complexity involved in HROs makes it important that the human rights experts on such selection committees be drawn from the UN human rights office of primary responsibility for particular HROs and from the HROs themselves, and that they effectively have a veto on those being selected. Even if PMSS assumes responsibility for the physical maintenance of the process of selecting and administrating HRO staff, and this makes lots of sense, they must not control the substantive screening or selection of HRO staff.

Assuming DPA or the HCHR remain the de facto offices of primary responsibility for HROs, they and those they select to head operations, must be the final arbiters of who is selected. They need to set out clear and in-depth staffing guidelines, procedures, and data bases. This need to address a number of aspects of staffing including recruitment criteria, rosters, interviews, selection, terms of engagement, grounds for dismissal, salaries, personnel equipment supplied, deployment, field redeployment, promotions, evaluation of individuals, etc.

A number of past operation members have mentioned that regardless of how well one improves the selection process, there will always be members that are not very effective in the field. There has to be a clear dismissal process that achieves the dual goals of getting rid of the inappropriate, but doing so in an open and fair way that does not unnecessarily hurt those being dismissed, and reassures those remaining on staff that this is not an arbitrary process.

¹³⁹ p.48, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

Recommendation #40

It is recommended that DPA or other UN office of primary responsibility for mounting an HRO, create clear and in-depth guidelines for staffing HROs including procedures, and data bases. These should address issues such as recruitment criteria, rosters, interviewing, selection, terms of engagement, grounds for dismissal, salaries, personnel equipment supplied, deployment, field redeployment, promotions, evaluation of individuals, etc.

Recommendation #41

It is recommended that DPA or other UN office of primary responsibility for mounting an HRO, retain control of all substantive aspects of staffing including in particular the selection, training, and substantive management of HRO staff.

Many times when the UN needs professional human rights field staff, it needs them immediately. Sometimes this results from an unforeseen yet rapidly evolving crisis to which the UN, as will be discussed in the next chapter, must be prepared to react rapidly. More often it results from a failure to respond to early warnings, and finally requires the same type of rapid reaction. In past HROs such in El Salvador, Cambodia, Haiti, and now Guatemala, the UN structures should have easily anticipated those operations so as to provide themselves with relatively substantial lead time to design and staff them. However even where HROs were anticipated and followed on from lengthy political negotiations, the political decisions to create them was left to the last minute. There then was a sudden rush to identify and deploy personnel.

For example, there was roughly 2-5 months¹⁴⁰ lead up time to the MICIVIH human rights operation, and much more if one keeps in mind periodic attempts by the international community to resolve the Haitian situation from October 1991 onwards. Despite substantial warning on the need to identify a roster of individuals for an eventual Haitian human rights operation, Ian Martin the MICIVIH Director for Human Rights reported that the "Mission's experience indicates the dual constraints on a rapid deployment - the inherent difficulty of finding a large number of people with human rights experience and/or legal training, appropriate language skills, and willingness to live in difficult conditions, who are available to travel almost immediately - and the weaknesses of the recruitment systems of the organizations in identifying and processing them."¹⁴¹

¹⁴⁰ A September 1992 agreement with the government for the deployment of an 18 member OAS human rights team led to the December 1992 proposal for an enlarged UN/OAS operation. In January 1993, exiled President Aristide wrote to the UN Secretary-General officially requesting the deployment of a joint OAS/UN HRO. The de facto Haitian government of President Bazin agreed in principle, and on February 9th signed a written agreement. The OAS moved quickly to deploy 40 observers by February 14th and another 30 by April 30th 1993. The UN had 11 in by the end of April, 29 more by June, and another 59 by September.

¹⁴¹ p.92, Ian Martin, in Aspen/Henkin op.cit.

When rapid human rights field staffing is required, the UN of course will never have sufficient or appropriate UN staff available for immediate reassignment. There are various internal steps that can be taken by the UN to resolve the need to rapidly find large numbers of human rights professional. However, the option with the most potential in the short to medium term, is the establishment of human rights standby arrangements.

6.2 Standby Arrangements: rapid skills, and rapid deployment

The human rights standby option is akin to the relatively well established rapid reaction standby mechanisms and procedures as used in UN military peacekeeping, and more recently in UN humanitarian assistance. Standby mechanisms vary, but commonly consist of national units or rosters of individuals that are on standby to deploy on UN operations. First evolved and refined in the military peace-keeping context, there has been a recent evolution of humanitarian assistance standby arrangements as perhaps best evidenced by the Norwegian NORTEAM, NORSTAFF, and NOREPS mechanisms. More recently as will be reviewed below, Norway has also created NORDEM, the Norwegian Resource Bank for Democracy and Human Rights.

While there are substantial advantages to the UN¹⁴² being able to draw upon national standby resources, there are also inherent problems. In most cases, the inherent problems stem from the fact that only the financially richer nations can afford to take initiatives in this regard. The study will look at some of these pro and cons, and then look at several examples of where standby arrangements have been created or used.

6.2.1 Pros and cons of national human rights standby arrangements

In any context, 'buying into' a UN activity carries some negative implications¹⁴³ including that of undue influence by the 'richer' states. This is especially true in the area of human rights where many Western states have acted to further their objectives by making funds or seconded

¹⁴² This discussion focuses largely on national human rights standby arrangements with the UN. It should be remembered that such a standby capacity very easily lends itself to similar standby capacity for a variety of other intergovernmental organizations such as the OAS, OAU, OSCE, Commonwealth, and Francophonie.

¹⁴³ See Karen E. Kenny, *Formal and informal Innovations in the United Nations Protection of Human Rights: The Special Rapporteur on the Former Yugoslavia*, *Austrian Journal of Public and International Law* 48, 19-77 (1995) for a good discussion of this, particularly pp. 56-9.

staff¹⁴⁴ available to the UN: This is especially problematic when governments are motivated by a desire to control or at least heavily influence particular UN programs.

“Buying in’ is slightly less problematic when donors are seeking a degree of highly visible and positive press for their contributions to international humanitarian or human rights endeavours. Politicians argue that being able to show their public where their tax money is going, only serves to increase public support for national contributions to UN operations. Like the services packages concept evolved by UNHCR and discussed below, countries or organizations like the EU are sometimes more likely to supporting distinct UN human rights operations that can be presented to their press, and thus their electorate, as tangible national endeavours¹⁴⁵.

To address both the need for national public relations opportunities and the desire by some governments to keep a string on contributions, tied aid may be a necessary evil. In fact, such increased donor support will remain key as long as member states continue to provide relatively few internal resources for UN human rights programs, activities, and operations.

However, as with services packages and the use of national military contingents, the UN can retain control of agendas and operations by developing sufficiently comprehensive operational procedures, reporting procedures, and field headquarters capacity. It seems feasible for countries to send distinct sub-teams of human rights experts, without compromising UN control. It is essential of course that they be under full UN command and control.

Criteria needs to be developed as to the type of individuals that countries or regional organizations could send on their teams or on an individual basis. The UN-EU agreement on staffing HRFOR established at least the principle of UN approval of individuals even if it was not really exercised in that instance. In the same vein, the UN can also set out standards for general and operation specific training; how fast and in what state of preparation they would be expected to deploy; their reporting relationship to a UN human rights headquarters; and as a cautionary measure, their prior agreement to withdraw individuals or teams from the operation and the country immediately upon being formally requested to do so.

UN military peace-keeping standby arrangements can provide some precedence in defending against a skewing of UN priorities and goals by donor nations. It is useful to extrapolate from peace-keeping and other UN experience particularly in providing humanitarian assistance, to see how one can create memorandums of understanding, standing operating procedures, etc. What human rights standby arrangements and deployment procedures are needed to achieve acceptable HROs composed of various national or regional components? Having said this,

¹⁴⁴ This is not to say that less wealthy but politically powerful states such as India do not do the same. It is common for all states to lobby to have their officials and nationals hired by key parts of the UN such as the UN Human Rights Centre. It is just that it is easier for richer states, who can simply offer to provide a ‘free’ staff member.

¹⁴⁵ “The presence of the contingent of [EU] HRFOs provides excellent visibility for the European Union” p.85, Roel von Meijenfeldt, *At the Frontline for Human Rights: Final Report and Evaluation of European Union participation in the Human Rights Field Operation in Rwanda*, Oct. 1995

human rights is not like providing water supplies, or food supplies, or interpositional troops. UN human rights experts or monitors with highly visible 'national' identities could entail serious local resentment and political problems, and sometimes may have to be refused by the UN out of hand.

In the long term the optimum staffing arrangement will have the UN identifying, selecting, and hiring all the members of a human rights operation. In the same vein, normally the optimum standby arrangement would be that states provide a number of individuals as opposed to pre-formed teams, and those individuals would be dispersed throughout the human rights operation as determined by the operation director or head. However there are several reasons why pre-formed teams could usefully be provided broadly similar to the EU initiative in Rwanda.

Particularly in rapid reaction, there is little time for individuals to get to know one another in the field. They have to be functional as soon as they are deployed, the very essence of rapid reaction. Teams that have a commonality of training and approach inherently will be effective faster. Teams that have actually trained or worked together, will be even that much more effective in the short term. Therefore, pre-formed national or 'EU' type teams will enhance rapid reaction field effectiveness.

A less laudable but often still powerful argument as we have seen above, is that the funding state or organization wants an identifiable grouping that it can point to as coming from them. That of course is one of the rationale for "services packages" as discussed below. The alternative may be no rapid reaction human rights operation at all.

For those and other reasons, the UN in the short and medium term may be faced with a number of states offering human rights teams. Of course, what is not acceptable is for donors to expect to retain some form of operational control. There are a number of mechanisms or procedures to prevent such abuses. Some have been mentioned above, such as ultimate UN control over hiring and firing. Other solutions include donor agreements which require fixed long term funding agreements for teams so that the UN need not worry as to whether teams or individuals on "loan" will be suddenly withdrawn. This is particularly important if human rights operations are to have any continuity and ability to carry out long term personnel management and planning.

Another idea would be to have a 'homogenization clause'. Standby arrangements and deployment agreements would contain a clause stating that within 2 to 4 months after initial deployment, that the UN would have the option of incrementally homogenizing all national units. In the case of a rapid reaction human rights operation, this would roughly coincide with the redeployment of the rapid reaction operation either home or into a steady state human rights operation with a long term UN mandate.

The homogenization process would involve the gradual breaking up of national units and the blending of individuals into new operation groupings. Such internal transfers would address not only the need to move away from national groupings, but also would allow the operation head to more effectively allocate individual skills and capacity to best achieve operation objectives. If done properly, such changes need not overly weaken immediate operations, and

should positively affect medium and long term operations. Of course, the timing and degree of homogenization would reflect that balance between the positive impact of homogenization, and the added pressures such homogenization would put on what are invariably overstretched operations in the midst of turbulent and threatening events.

Regardless of whether one is talking about individuals or teams, there is a need for rosters of available experts. When the emergency arrives there is no time to put out an appeal for applicants, screen candidates, and classify them as to skills and capacity. Creating rosters along with generic training, can and should be done in advance if there is to be any hope of rapid reaction.

A UN roster has the advantage of real or perceived neutrality. Also, a central roster would have a single set of criteria or measurements so that all candidates ostensibly would be judged on that common scale. Of course, it is both difficult and costly for the UN to have such a central registry. Most certainly, screening interviews are essential, and the cost of the UN doing this could prove to be very high. In addition, national rosters tend to be more cost effective and more manageable in part because they regularly need to be updated, including periodic efforts to search out and screen new candidates.

However, even if it is premature for both financial and political reasons to have a central UN roster, there are some minimum steps that the UN should take. The UN should set out common criteria and classifications for all national rosters. In addition, they could regularly review those other rosters so as to assure themselves and others that there are common baselines and standards for potential candidates. It would be essential to have a roving UN team that could verify national rosters and as discussed below, verify their training standards. When resources allow, that same team could carry out screening for those countries wishing to furnish human rights personnel but who do not have the capacity to create their own roster. Just as this is done by DPKO for troops contributing nations, so DPA or other office of primary responsibility for HROs should undertake these 'oversight' tasks.

Training for personnel is an issue unto itself and is the subject of a section in Chapter 11. However, and much as with military standby arrangements, human rights training for field operations is one of the underlying rationales for national standby arrangements. In the short to medium term, any centralized UN human rights training capacity will not be provided with sufficient resources to carry out much training itself of actual or potential field personnel.¹⁴⁶ This training gap can be partly filled in the short to medium term by training within national standby mechanisms, some of which has already started.¹⁴⁷

¹⁴⁶ Witness the history of the establishment of the training unit of DPKO, which still remains under resourced.

¹⁴⁷ The Canadian Pearson Peacekeeping Centre is presently developing a two week course on human rights in peacekeeping which is slated for its first delivery in August 1996 (it has already developed a half day module on human rights in peacekeeping which has been put into two of its recent courses), and the European University Centre for Peace Studies at Stadtschlaining Austria has a three week Peace-Keeping and Peace-Building Training Program where participants can elect in the third week to focus on human rights.

6.2.2 NORDEM and related Norwegian civilian standby initiatives

In 1991 Norway started to evolve civilian standby relations with the UN and other multilateral bodies. This started with humanitarian standby assistance and in 1993 was elaborated into the creation of a Norwegian Resource Bank for Democracy and Human Rights (NORDEM)¹⁴⁸.

On the humanitarian assistance side, the Norwegian Refugee Council (NRC) responded to requests from UNHCR in 1991 to assist with the Kurdish refugees of northern Iraq. This successful collaboration was institutionalized through the creation of an NRC Standby Force called NORSTAFF. Subsequently the NRC developed an emergency standby force for rapid deployment called NORTEAM. The NORSTAFF mechanism also precipitated the larger Norwegian initiative entitled NOREPS which is an umbrella mechanism of the Norwegian Ministry of Foreign Affairs. It includes a broad range of Norwegian products and supplies available in 24 hours, and a similarly broad range of personnel available in 72 hours. NORSTAFF, NORTEAM, and now NORDEM, are part of the larger NOREPS mechanism.

NORDEM was created in 1993 with a view to replicating Norway's humanitarian standby mechanism NORSTAFF. This Norwegian Resource Bank for Democracy and Human Rights (NORDEM) has created an overall roster of approximately 180 experts¹⁴⁹, 100 of which are available as soon as their work situation will allow (average 2 months notice), while 80 experts¹⁵⁰ are designated as the NORDEM Stand-by Force and are available for much more rapid deployment (1-3 weeks notice). To date NORDEM has responded to over 60 requests and deployed personnel to over 20 countries. While personnel invariably join existing teams or operations (UN, OSCE, etc.), the great majority of staff put into the field have been funded in whole or in part by the Norwegian Ministry for Foreign Affairs (MFA).

The Norwegian MFA provides NIHR with annual core funding for maintaining the roster. In 1995 the MFA provided a further US \$1.7 million¹⁵¹ to NIHR to deploy NORDEM personnel. While NIHR selects and prepares the individuals from the NORDEM roster, actual deployment administration is contracted out to the Norwegian Refugee Council as part of their larger

¹⁴⁸ For greater details on NORDEM and a proposal for Canada to create a similar mechanism, see Paul LaRose-Edwards, *Human Rights Standby: Canadian standby arrangements to enhance UN rapid reaction in the field of human rights and democracy*, pp.19, Human Rights and Justice Division, Department of Foreign Affairs, Ottawa, May 1996

¹⁴⁹ In 12 areas of expertise: elections, democratic organizations, news media, conflict resolution, minority protection, constitutional and legal guarantees, independent judiciary, equal rights, local administration, good governance and political accountability, political pluralism, and human rights education.

¹⁵⁰ mostly investigators, human rights monitors, and election observers

¹⁵¹ Norwegian MFA deployment contributions were approximately US\$600,000 in 1993, \$900,000 in 1994, and it is anticipated that for 1996 that it will be \$1.7 million.

NORSTAFF/NORTEAM and regular NRC deployment mechanisms (eg. logistics, equipment, and personnel administration).

Individuals on the NORDEM roster have received advanced training and screening. Employers of those agreeing to be on 1-3 week standby are asked to sign an agreement that individuals can deploy on short notice for short operations and get their job back upon their return. All individuals deployed receive their regular Norwegian salaries¹⁵² plus additional costs¹⁵³ they incur. Initial NORDEM criteria set a minimum age of 26 but it is felt that 30 years is a more realistic minimum with an optimum age range of 40-50, as most of the NORDEM tasks require personnel with substantial life skills. Interpersonal skills have consistently proven to be one of the most important field skills needed by NORDEM personnel¹⁵⁴.

NORDEM should be used as the model for other national human rights standby mechanisms. First of all, it appears as if NORDEM has done an excellent job in evolving a functional and effective system. Secondly, there are several benefits from other countries or regions creating similar and complementary mechanisms. Since such mechanisms are there to help the UN, similar national mechanisms will avoid confusion and facilitate the ability of UN or other bodies to access and deal with those various national mechanisms. Secondly, common national mechanisms will facilitate coordination and cooperation between those mechanisms.

Recommendation #42

It is recommended that Canada and other governments consider funding the creation and maintenance of national human rights standby mechanisms as a resource for the UN and other regional bodies, and that they model them upon the Norwegian Resource Bank for Democracy and Human Rights (NORDEM) so as to facilitate inter-agency coordination and cooperation.

¹⁵² If individuals are paid by the UN directly, their salaries are topped up by NORDEM if they are less than their normal salaries in Norway.

¹⁵³ eg. per diems equal to 75% of the Norwegian government's per diem scales for the country in question.

¹⁵⁴ Several NORSTAFF and NORDEM staff voiced concern about using young UN Volunteers (UNVs) on human rights or humanitarian operations, feeling that for the same overall cost it was preferable to deploy fewer experienced and thus more individually 'expensive' personnel, as opposed to opting for more numerous 'cheaper' UNV type personnel.

6.2.3 European Union human rights contingent for Rwanda

Faced with a not very successful UN Human Rights Field Operation in Rwanda (HRFOR), the European Union decided to contribute their own team of human rights observers¹⁵⁵. The contingent of EU Contributed Observers was initially envisaged as a stand alone operation along the lines of their operation to monitor the South African elections. The Netherlands¹⁵⁶ in particular queried the need for an independent EU team, and was not even supportive of a EU component for HRFOR. The European Commission compromised with the contingent being part of HRFOR but with various operational reservations.

The early progress of HRFOR had not been all that impressive and many hoped that the EU contingent would vitalize HRFOR. Most agree that the EU contingent was more experienced and had greater expertise, so that tensions were bound to occur. The EU contingent coordinator's formal chain of command was through the Chief of HRFOR to the HCHR. However the EU coordinator, particularly at the beginning, tended to operate relatively independently and the contacts with Brussels went beyond mere administrative and logistics dealings.

The EU team retained separate insignia¹⁵⁷, separate radio frequencies, and there were computer compatibility problems with the rest of HRFOR. In principle the EU observers were to be paid at UN rates, but they ended up being paid more than the UN monitors and this also caused some friction. In addition it sounds as if some of the EU contingent had felt superior to the UN team proper, and did not hide it very well. Also at times it appeared that the EU was retaining a degree of distance from the rest of HRFOR partly for European media profile. Positive publicity about EU efforts per se were perceived to be more likely if the EU component was distinct and almost separate.

In the later stages of the joint UN-EU human rights operation, it appears as if the EU component became more cooperative and the UN component less so. It was reported that in an effort to enforce UN Centre for Human Rights control of HRFOR, that the EU component was pushed to focus solely on monitoring roles. EU staff were reportedly forced out of other functions such as human rights promotional activities, especially advisory services. It is fair to say that for the whole time, and for a variety of reasons, that UN-EU relations were strained

¹⁵⁵ It appears that as early as October 1994, well before the EU initiative, the US had considered offering ex Peace Corp volunteers as human rights monitors. All had worked in Rwanda and many spoke Kinyarwanda. At least one US based international NGO had been informally approach to train them. The US would have payed for their deployment. The idea never reached fruition, probably in part because such a massive US presence, when there were only 5 UN human rights monitors on the ground at the time, would have sent the wrong message. However, one wonders whether Rwandan victims would have worried much about political correctness and would have preferred increased UN human rights presence of any kind.

¹⁵⁶ On principle the Netherlands government did not put forward any nationals for the EU team. They did however put forward about ten names to the UN Human Rights Centre. Like Canada and others, they carried out a paper screening but assumed incorrectly that interviewing and substantive screening would be carried out by the UN Centre.

¹⁵⁷ eg., EU vehicles carried a UN and an EU logo.

at HRFOR HQ in Kigali. It should be noted however, that in many parts of the field operation, both UN and EU staff worked together well.

Concerning staff selection, the EU contingent's process included two critical stages that were almost totally lacking from that used by the Centre for Human Rights in creating their part of HRFOR. First of all the EU created and applied a profile¹⁵⁸ of the kinds of skills and persons they needed. It focussed more on practical experience as opposed to academic qualifications. Secondly they interviewed a "short list" of candidates and in light of these interviews accepted some and rejected others.

The High Commissioner for Human Rights (HCHR) had nominal control on who was hired inasmuch as the EU identified candidates, interviewed them, selected who they wanted and passed those names on the HCHR for approval. At the peak of the EU operation, the EU provided 34 observers and 6 technical staff. They started deploying in March 15 1995 with a view to a 5 months presence. This was extended for another 1½ months to 1 October 1995. This of course did not really amount to rapid reaction inasmuch as the Rwanda crisis had begun 11 months earlier and they had started to create the contingent at least 3 months prior to deployment. However the EU could have deployed much more quickly if they had already carried out much of the searching, interviewing, and generic training stages.

The cost to the EU up to 1 October 1995 has been 5 million ECU (approximately US \$6.34 million¹⁵⁹), and this covered all salaries and deployment costs including equipment leases, accommodation, offices, etc. The EU is completing a lessons learned exercise which will have particularly important lessons for future operations. Inter alia, the European Commission staff tasked with the staffing and logistics were severely stretch despite them contracting out of as much as possible to a large German commercial firm¹⁶⁰ that provided lease equipment, etc. Certainly one of the lessons learned will be that there is a need for a dedicated HQ team of at least 4 to just provide the administrative and logistics support from home base. It will be interesting to see if the EU will put a financial figure to their internal staff time, and how much this would add to the \$6.3 million.

The EU experience with the UN Human Rights Centre has not been all that smooth, and they only reluctantly extended the Rwandan contingent past 1 October 1995. In February 1996 there was a souring of relations between the EU and the UN contingents, and it appears as if the EU team will be withdrawn by mid 1996. In addition, the request for help in creating a Burundi human rights operation was met with much more caution. The EU will pay the costs

¹⁵⁸ For a short profile of 'human rights field officers', see Annex C, Roel von Meijenfheldt, *At the Frontline for Human Rights: Final Report and Evaluation of European Union participation in the Human Rights Field Operation in Rwanda*, Oct. 1995.

¹⁵⁹ It is reported that HRFOR costs not counting the EU component, up to 12 July 1995, was US\$ 7,517,000. As the peak HRFOR staffing in June 1995 was 119 (UN 88 and EU 31), it would appear on the face of it that the UN side of the operation has been much less expensive per person than the EU component. Far less quantifiable is the impact of UN staff proper versus EU staff.

¹⁶⁰ Deutsche Gesellschaft für Technische Zusammenarbeit GmGH (GTZ)

of the UN sending in a 5 person preparatory group that will mount a planning mission and report back on what is needed. Beyond that the EU has made no commitment.

While the EU Rwandan experience has had pluses and minuses, it appears that they are prepared to repeat the experiment, and that at a minimum that it would "be useful to set-up a data-base (human resource base) with the particulars of the HRFOs [human rights field officers] together with their availability and capacity for similar missions elsewhere."¹⁶¹ (emphasis added) In addition, there could well be a need for "a European facility to assist the Commission with the selection, training and debriefing of human rights officers."¹⁶²

As mentioned, the European Union paid all of their own costs. There are some inherent dangers in this ability of richer states to buy in. Quite apart from the issue of "western" dominance of human rights operations, there is the issue of operation cohesion and morale as touched upon above. This and some other important pros and cons of national standby arrangements has been discussed at greater length in section 6.2.1 above.

6.2.4 Other national and UN initiatives

Apart from military or CIVPOL standby arrangements, and as mention in the NORSTAFF context above, there have been broadly similar developments in the area of humanitarian assistance standby arrangements. Some of these have stemmed from UNHCR's evolution of the concept of humanitarian services packages most recently used to address the massive and pressing refugee demands of the Rwanda crisis¹⁶³. Broadly speaking, UNHCR put out requests for various services such as providing water at the Goma refugee camp or running the Kigali airport including air traffic control, security, and maintenance. Countries or organizations then selected which services package they wanted to undertake.

The advantage for UNHCR was that a country or organization would run and pay for a particular services package. One of the advantages for donors was that rather than just give money or have their nationals spread throughout a UNHCR activity, they were able to have a concentrated national profile. This ability to garner increased public recognition particularly back home, was attractive to the politicians and other national decision makers. Without overstating it, there is a benefit in the public seeing some of their aid money going to their own national teams which reassures them as to their larger financial contributions.

UNHCR has been pleased with their innovation, and plan to refine it in several ways. First of all, the services packages were too large, which made it difficult for some potential donors to "buy in". Secondly, they found they needed to be much more explicit on what any particular

¹⁶¹ p. 86, Roel von Meijenfheldt, *At the Frontline for Human Rights*, op.cit.

¹⁶² p.87, Meijenfheldt, op.cit.

¹⁶³ see LaRose-Edwards, *The Rwandan Crisis of April 1994: The Lessons Learned*, (Nov. 1994) and, *UN Internal Impediments to Peace-Keeping Rapid Reaction*, (April 1995), discussion papers for the Canadian Department of Foreign Affairs.

services package was, as donors often had quite different interpretations. Several times foreign teams arrived on related packages, and found that they both had assumed that they were to be responsible for certain tasks.

Quite apart from service packages, UNHCR followed closely by a number of other UN agencies, has evolved standby arrangements with organizations like the Norwegian Refugee Council, to contract them to undertake a whole range of services. These services run the gamut from providing individuals, to undertaking large contracts similar to service packages.

Like Norway, Canada and a number of other governments¹⁶⁴ such as Ireland and the US have started to get interested in civilian standby arrangements. Canada has a long history in military peacekeeping standby, and is starting to evolve a similar mechanism for CIVPOL standby which will be managed by the Royal Canadian Mounted Police. Elections Canada and Foreign Affairs have also developed ad hoc registers and mechanisms for election monitoring. Until recently there had been plans to regularize those efforts through the creation of a form of elections standby mechanism managed by Elections Canada. Various parts of Foreign Affairs are also interested in civilian standby arrangements for a variety of other spheres, in particular human rights.

This study and a companion paper on a proposed Canadian human rights standby arrangement¹⁶⁵ were commissioned by the Division of Human Rights and Justice with a view to providing a basis for policy discussion. As with most other governments, the issue of financing will provide the biggest barrier to the creation of civilian standby arrangements such as a Canadian resource bank for democracy and human rights. No single Canadian NGO or consortium has indicated that they are able to shoulder the costs of creating and maintain rosters, much undertake training and eventual field deployment of human rights professionals. They argue that civilian standby mechanisms are an extension of Canadian foreign policy, and like foreign aid, logically should be funded by government.

Ireland is also toying with the issue of civilian standby. In early 1995 the Irish government initiated a review of foreign policy which included a major focus on human rights. This included a Human Rights Training Project (H RTP) directed by Karen Kenny and Brian McKeown.¹⁶⁶ The project is looking at the selection and training of potential human rights field personnel including monitors, who then would be available to the UN. The stated aim of the Irish government initiative is to develop a roster (Rapid Response Register). It is anticipated that the larger 'standby mechanism' will include training courses, standing operational procedures, briefing documents, lessons learned mechanisms, etc.

¹⁶⁴ Argentina has talked about creating a civilian group of 'white helmets', although it is not clear what this would entail.

¹⁶⁵ Paul LaRose-Edwards, *Human Rights Standby: Canadian standby arrangement to enhance UN rapid reaction in the field of human rights and democracy*, pp.19, Human Rights and Justice Division, Department of Foreign Affairs, Ottawa, May 1996

¹⁶⁶ Karen Kenny was the UN Centre's team leader of the initial HRFOR operation in Rwanda, and Brian McKeon was the coordinator of the EU component of HRFOR.

The United States' Agency for International Development (USAID) commissioned Steve Golub to produce a report on options for USAID in strengthening the human rights monitoring capacity of the international community generally, and the UN specifically. The recommendations focus on strengthening some parts of the UN dealing with human rights operations; the creation of a small contingency fund for the UN to undertake preparatory activity in reasonable anticipation of an human rights operation being created: and support for some form of 'service' and/or standby capacity by an independent NGO(s). That organization(s) would undertake rostering, pre-certifying individuals, preparing training materials, recruiting, debriefing personnel, and possibly deploying teams of up to 30 members, albeit under UN auspices and control. It is not clear whether this standby capacity would be composed of all or mostly US members, or whether it would be 'international' in composition.

Elsewhere in the international human rights community, it has been suggested that there is a need "To establish an operational and international human rights organisation (NGO) which would provide expertise, human resources administrative support necessary to provide, if necessary at short notice, qualified and trained human rights monitors, investigators, prosecutors, trainers and administrators for field assignments, at the request of the UN or other appropriate bodies."¹⁶⁷ While such an international NGO might evolve over time, finding funding for such an initiative will prove almost insurmountable in the short term. It appears more likely that there will be a growth of NORDEM type initiatives at the national and possibly at the regional level. Certainly consensus is building in Canada as it already has in Norway, that civilian standby arrangements like military peace-keeping standby arrangements, are an extension of foreign policy. Such extensions of foreign policy are appropriately funded by government, and anyway, it does not look as if anyone else can afford it.

It is promising to see an increasing number of initiatives in this field and the potential of numerous NORDEMs in the not too distant future. However, while having a large number of national standby arrangements is positive, there are a number of attendant problems. Competition to have one's standby arrangement used, as well as confusion on how the different national, regional, and NGO standby arrangements are called upon, can create innumerable misunderstandings. "It is therefore incumbent on someone (a consortium or the UN) to regulate the market in some way - not to stifle it, but to achieve the right balance between supply and demand."¹⁶⁸

Assuming that Canada does move to create a Canadian human rights standby capacity, it should join with Norway and other countries or regions setting up similar mechanisms, to create some inter-agency cooperation procedures. Such mechanisms would serve to maximize everyone's contribution, inter alia by lessening duplication and facilitating synergy of effort. In other words, the combined efforts of two or more agencies often would have a greater effect than them acting individually.

At a minimum such a 'mechanism' would consist of designated contact personnel who would regularly inform others of their agency's activities, and provide a dedicated access point for

¹⁶⁷ Dennis McNamara, unpublished draft proposal.

¹⁶⁸ Michael Alford, UNHCR Geneva, correspondence with the author.

other agencies. It is likely that ad hoc information sharing and working relations between such national mechanisms as NORDEM and a 'CANADEM', would evolve into more structured coordination processes akin to an umbrella group (called INTERDEM?). This does not imply the creation of an independent secretariat, but rather it would consist of ways to 'network' relevant staff in the different agencies for purposes of information sharing, lessons learned exercises, joint strategic planning, and possible joint operations. For example, 'INTERDEM' could refer to heads of agencies meeting annually for strategic planning, trainers from various agencies meeting to share training skills, or personnel managers from various agencies sharing ideas through the Internet on how to better identify and administer roster members.

Recommendation #43

It is recommended that Canada join with Norway to work with other evolving national and regional human rights and democracy standby mechanisms, to create procedures to inform and coordinate, and avoid unnecessary competition and duplication.

This still leaves the concern that such standby arrangements by Norway, Canada, or other countries with the money to do likewise, would amount to 'northern' interference. A partial solution would be for countries to commit themselves to having 20% of their roster composed of human rights experts from economically developing countries. They would identify appropriate candidates, and provide them with the same training and preparation as is provided for 'nationals' on the roster. Some argue that this 20% is too low. However, the financial implications of training and preparing 20% is such as to militate against a greater percentage.

A variation on that solution could build upon a recent initiative by the Norwegian Refugee Council (NRC) to create an African Standby Force as a component of its NORSTAFF. In Zimbabwe in February 1996, NRC identified and trained the first 40 of a 100 person African Standby Force in the area of humanitarian assistance rapid reaction. This force will be administered from a Continental Mobilizing Focal Point in eastern/central Africa. NRC's initiative may well foreshadow various countries facilitating the creation of an African resource bank for democracy and human rights (AFDEM?), even possible a Latin American resource bank (LADEM?) or similar Asian and Middle-East human rights standby mechanisms. All of the national (eg. NORDEM) and regional resource banks for democracy and human rights would form a constellation of support mechanisms for UN and regional multilateral organizations. All of this is perhaps a bit too utopian for the time being, so NORDEM and others countries creating national human rights standby mechanisms should initially consider the option in the previous paragraph.

Recommendation #44

It is recommended that 20% of 'national' human rights standby rosters created by developed countries be composed of experts from economically developing countries.

If deploying a 'national' team albeit under UN control, 'southern' members selected from the roster would be an integral part of the 'national' team. However, the percentage of 'southern members' would reflect the uniqueness of each operation. There will be a variety of factors such as the proportion of sponsoring country nationals in the overall UN operation; the representation of 'southern' experts through other mechanisms (eg. hired directly by UN); the political environment of the operation country possibly requiring a large or small proportion of 'southern' members of the UN operation; and not least of all, the specific skills required (eg. forensic investigatory skills), etc. These and other factors will have a bearing on the proportion of 'southern' members of a nationally sponsored team. Therefore, that 20% proportion will vary, and sponsoring countries should commit themselves to a range running from a minimum of 10% for an operation to somewhere like in 'ex-Yugoslavia', to a maximum of 40% for an operation in a country situation like Rwanda.

Recommendation #45

It is recommended that where a developed country deploys a 'national' team of human rights experts, that 10% to 40% consist of experts from economically developing countries.

Such a 'twenty-ten-forty' (20% roster, 10% to 40% deployment) innovation would partly address the obvious concerns about 'northern' human rights imperialism. It would also help to train and provide field experience for 'southern' human rights experts. This would increase the human rights resource base of those countries and regional organizations such as the OAU. With time, this would allow 'southern' countries or regional organizations to field their own human rights teams. Canada should actively encourage them to do so, and look at ways of providing them with resources to match their political will. This is a similar process to NORSTAFF's creation of an African Stand-by Force as mentioned above.

Recommendation #46

It is recommended that apart from a 'ten-twenty-forty' policy on incorporating experts from economically developing countries into developed countries' human rights standby mechanisms, that developing countries and their regional organizations be encouraged to create their own human rights standby mechanisms.

Chapter 7 - Early Warning and Protection

Monitoring human rights violations as a strategic alert mechanism is important in the traditional strategic sense of early warning, so as to inform the international community as to the need for action ranging from diplomacy to mounting UN field operations. Human rights intelligence gathering is also important as a tactical alert mechanism during UN field operations, for example to inform a UN peace-keeping force as to the need to deploy to a village threatened with ethnic cleansing.

Once human rights information is gathered and synthesised, it must be analysed with a view to taking concrete action both to prevent human rights violations per se, and to help attain other field operation objectives, both tactical and strategic. Fortunately the last couple of decades have witnessed the increased capacity of both international and national NGOs to monitor human rights violations and set off the initial alarm bells. Unfortunately the in-house capacity of the UN to verify those NGO reports, or carry out independent UN monitoring, has not increased nearly as much. There has been even less growth in the ability of the UN to synthesize and analyse reports of human rights violations, although one should not ignore the strong capacity of some specialized UN agencies such as UNHCR or UNICEF to analyse abuses pertaining to their mandate.

In the broader sense however, UN human rights analysis has been starved of funds and personnel. In large part this is a reflection of the unwillingness of many UN member states to fund such intrusive human rights activity. Quite obviously, the less the UN independently corroborates alleged human rights violations, the less pressure there is for member states to take concrete action. Member states limiting UN monitoring and analysis serves to pre-empt situations where UN analysis would make it patently obvious that UN action was required.

Fortunately it is becoming increasingly apparent that this strategy of turning a blind eye to alleged human rights violations, does not always shield member states from having to eventually take action. It merely postpones inevitable UN intervention, and can present the UN with a much more complex emergency worsened by previous UN inaction. Preventive action, ranging from preventive diplomacy to preventive troop deployment, has become one of the main themes of UN discussion. Inter alia, fiscal responsibility calls for the use of relatively cheaper preventive actions rather than delaying until failed states and wartorn societies require massive injections of UN peace-keepers, humanitarian aid, and reconstruction assistance.

UN field operations can play a major role in gathering or verifying human rights information for UN strategic decisions. UN operations can also contribute to the assessment of that human

rights intelligence. More immediately, they need that same human rights intelligence so as to inform their own tactical decisions. While this task can be carried out by advisers to the SRSG or a Force Commander, there are obvious benefits to having an human rights operation (HRO) that encompasses a wide variety of human rights professionals who can provide a better and more coherent collection and analysis capacity.

7.1 Central Collection and Analysis of Information

The HRO should play the central role in a UN operation in the collection of human rights intelligence from a variety of sources, UN and other. The HRO should also play a large role in the analysis of this information, particularly where it is being used to inform the day-to-day operation of the HRO itself, and the larger UN field operation. However, such activity, particularly the intelligence gathering function, requires extensive staff resources.

Fortunately there are many UN field partners that can play a major information gathering role. UN military and CIVPOL in particular because of their numbers and geographical dispersion, can be key information partners if they are prepared and motivated to do so. UNDP because of its long term presence in most countries, invariably has an extensive network of 'on the ground' informants, and know the country better than any other UN body. As with peacekeepers and CIVPOL, UNDP needs to be motivated and mandated to play a human rights information gathering role, as they have long seen their mandate as limited to traditional development work. Recently as evidenced by their human rights programming in Guatemala and elsewhere, UNDP has begun to broaden its mandate in recognition of the linkages between development and human rights.

Then there are other UN bodies such as UNHCR that already carry out extensive information gathering to inform and direct their own operations, or DHA's Humanitarian Early Warning System (HEWS). Sharing such human rights information however can be problematic.

Often for good reason, UN sectors and agencies jealously guard their sources of human rights information. At other times, natural bureaucratic divisions within a UN field operation or within the UN proper, militate against the easy sharing of information. To press for formal exchanges of information will not be very successful, although recent moves by DPA-DPKO-DHA in New York to increase and systematize cooperation is heartening. Usually such formal cooperation and sharing, particularly of human rights intelligence, will not be voluntary. Imposed sharing, even by the UN Secretary-General or other senior UN staff, will often only drive human rights information gathering underground. Even more problematic is the exchange of information between UN and non-UN sources such as NGOs or national government agencies. A much more effective strategy is the use of informal links.

HRO staff must be particularly adept in developing and using such informal lines of communication. Accessing the human rights intelligence or potential of other parts of a peacekeeping or humanitarian operation, or non-UN sources, requires a guarantee by the HRO that they will make appropriate use of such information and that they will not 'burn' their sources.

Release of information as to where the information was obtained might severely damage the sources' ability to carry out their primary functions, their ability to gather further intelligence, or even the sources' position within their parent organization. Just the release by the HRO of a piece of intelligence itself might compromise the source. It would be obvious for example that only UNHCR or the ICRC was present in location "x", and only they could have passed on the information. In reverse, it might damage the UN if it were known that they were using information gathered by certain member countries' intelligence agencies.

If the HRO can open up and nurture such informal contacts, the flood of information could prove staggering. There are large numbers of UN and non-UN field staff who would be relieved, and even anxious, to pass on intelligence to an HRO rather than see their internal reports on human rights violations gathering dust in their respective HQs. Equally, many HQs will also be relieved, but will not want to officially know, that such information is getting to the right place so as to further human rights protection.

Recommendation #47

It is recommended an HRO develop the skills and strategy to play a key role in encouraging, receiving, analysing, and disseminating human rights intelligence.

7.2 Tactical and Strategic Nature of Human Rights Intelligence

The UN traditionally uses human rights intelligence in the protection of human rights per se, eg. resolutions criticising violations, mandating HROs, funding human rights capacity building, etc. What is less recognized, is the usefulness of human rights intelligence to the other tactical and strategic objectives of the UN and its field operations.

Premising military peace-keeping strategy on the assumption that the parties are merely trying to capture a strategic hill top town rather than the real knowledge that they are out to ethnically cleanse that town, can only hamper the development of appropriate peace-keeping tactics. Another example is UN negotiators carrying out mediation. If they proceed on the assumption that two opposing leaders are not in full control of the troops who are raping and torturing, rather than on an actual situation of systemic violations that are centrally planned and condoned, they invariably will negotiate a charade that will not endure.

Human rights violations are indicative of the parties' commitment to peace and the resolution of the conflict. Systemic violations are a sign of centrally planned or condoned violence. Random violations are possibly a sign of a lack of central control or troop discipline. These and other patterns of violations are indicative of the fundamental causes of the conflict.

More work needs to be done in identifying how human rights intelligence can successfully inform UN operations in areas other than human rights per se, eg. political or military peace-keeping objectives. This will not only benefit those non-human rights objectives, but will have

the effect of legitimizing human rights in the eyes of those UN sectors or individuals. In other words, military peace-keepers who have benefitted from human rights intelligence to do their traditional peace-keeping tasks, will be far more inclined to play a role in human rights monitoring and protection. UN negotiators who have achieved greater success through premising part of their actions on human rights intelligence, will become more aware of those human rights linkages and be more prepared to factor human rights into their political goals and procedures.

Recommendation #48

It is recommended that all UN operation components, such as military peace-keepers, be more aware of how to use human rights intelligence and early warning to inform their tactical decisions and actions.

7.3 Human Rights Protection

It is a truism that the collection and analysis of human rights violations is useless unless something is done with it. Like any justice system, it is also almost as important that something must be seen to be done with it. Often the most problematic issue to be dealt with is the type and degree of protection action to be taken by an HRO and the larger UN field operation. At times local authorities are unwilling or unable to protect human rights, and might even be carrying out violations of human rights. Can the UN, or does the UN even want to, put in enough resources to fully protect human rights? As in ex-Yugoslavia or Somalia, the answer is often no, and the human rights operation and its partners must constantly make operational decisions in order to achieve what is possible with limited resources and political will.

An HRO has a restricted range of tools that can possibly protect human rights. Many of them are directed at, or work through others, who have greater legal, greater political, and certainly greater physical capacity to protect human rights, eg. local officials including local police, UN member states, senior UN staff, or UN military. HRO tools to influence others include HRO field reports and the public dissemination of early warning human rights intelligence, eg. press releases. MICIVIH, particularly as the situation in Haiti got worse, actively used strongly worded press releases to attempt to precipitate human rights protection. They were largely ignored, underscoring the fundamental importance of political will amongst UN members states, the UN bureaucracy, and the parties to the conflict.

That lack of political will of course is a recurring theme, and once again it must be emphasised that human rights must be fully integrated into the mainstream of UN political action. For example, reports of HROs should be a key resource, informing SRSGs in their dealings with the government. Those same reports should provide critical input into the deliberations of the SC, the GA, and other UN political forums. The High Commissioner for Human Rights will be a critical ally in the effort to integrate HROs into UN field operations and for HROs to influence UN political decision makers. Inter alia, the High Commissioner can lobby for HRO reports to be circulated and for HRO analysis to be incorporated into senior decision making within a UN operation, within the UN Secretariat, and within UN political forums.

Other HRO early warning tools include the translation of public information into the local language(s), or feedback to military peace-keepers, CIVPOL, and others who are providing human rights information so as to assure them that their efforts are both important and are being acted upon.

In deciding what is operationally possible or appropriate, human rights issues regularly compete with what often appear to be conflicting UN operation objectives. There is a constant danger that other operational objectives are too easily allowed to override even the raising of human rights violations in negotiations, much less active intervention to protect individuals and groups. There are two partial solutions to this.

The first partial solution is the education of all UN operation staff as to appropriate and effective operational responses. There is a whole spectrum of actions that can have an effect on the protection of human rights. In the past, particularly field partners like the military or political negotiators, saw human rights action as rather black and white. In fact, the spectrum of responses includes a myriad of human rights protection options that can be woven into military and political operations.¹⁶⁹

Recommendation #49

It is recommended that all UN field operation components be aware of the spectrum of options available to them in responding to human rights violations or the threat of violations.

The second partial solution as set out in the next section, is the setting of automatic and at times obligatory responses premised upon the legal obligations of the UN and its member states.

7.4 Automatic and Obligatory

It is inevitable and perhaps understandable that when human rights violations are reported, there is usually some pressing political or military objective that appears more critical. At the political level, UN member states themselves are reticent to take action so as to show solidarity with allies and friends being critiqued, or to avoid setting precedence and run the danger of being targeted themselves at some latter time. At the tactical level, components of the larger UN operation which are pursuing non human rights objectives, feel that raising human rights will only serve to deny them their primary objectives.

While HROs are extremely important, their abilities are limited particularly in the face of active and even armed opposition from local government or rebel groups. There is the danger that HROs "may be seen as a panacea where the unfortunate reality of endemic human rights violations can only be addressed by more forceful interventions, be they military, economic,

¹⁶⁹ See the roles of different UN field partners in Chapter Five.

political or diplomatic."¹⁷⁰ One way of avoiding political grid-lock and stiffening UN resolve, is to set out various thresholds or triggers that call for a range of mandatory as well as optional responses.

This of course involves a devolution of decision making and power to UN officials, particularly field staff. As many national politicians know, advance delegation of such power to their officials in anticipation of tough situations, often protects politicians from having to take those hard decisions during times when it is politically hard, if not impossible, to do the right thing. In national jurisdictions, strong functioning justice systems find it essential to set out, in advance, clear human rights norms and a range of sanctions for their abrogation. Usually only then can decision makers remain relatively true to their principles despite the winds of political pressure, compromise, and rationalization.

Such automatic and obligatory actions also would allow UN member states and UN staff, to partially placate those they may be negotiating or dealing with. They are in the position to say that they had no option but to take certain action, eg. it is fixed UN policy to carry out an investigation; or appoint a special rapporteur; or detain the perpetrator; or use force; and so on.

Those thresholds need to be carefully thought out, and explicit trigger terminology like *large scale massacres* is probably better than terms like *genocide*. It is best to avoid terms which are either hard to define or quantify, or have been tied up in narrow legal definitions with criteria that are almost impossible to meet. Thresholds will also vary depending on whether there is a UN operation in a country. The onus on the UN to take action is greater if a UN peace-keeping force is the de facto national civil authority as it was for a period of time in Somalia, Haiti, and Cambodia.

The formal setting out of concrete thresholds for action at the strategic level within the Security Council or General Assembly, particularly where such action would be automatic and obligatory, is particularly problematic. There will be strong opposition by many member states. It more likely that progress in this regard will occur through case by case evolution, slowly building up customary UN practice.

More probable in the short to medium term, is the setting out of automatic and obligatory trigger mechanisms at the tactical level. This will slowly occur as the political and operational benefits of setting out automatic human rights thresholds to precipitate mandatory UN action become more obvious. This will be hastened by increasing pressure from within UN operations by various national 'teams', peace-keepers and others, who refuse to remain inactive in the face of egregious human rights violations regardless of a specific operation's mandates.

Recommendation #50

It is recommended that the UN evolve a number of automatic responses by UN field operations to particularly egregious human rights violations.

¹⁷⁰ p.15, Golub, op.cit.

Chapter 8 Monitoring: Witnessing, Investigating, and Reporting

Monitoring is popularly perceived as being the entire composition of UN human rights field activity. Referring to operations such as HRFOR as being human rights monitoring missions tends to reinforce this narrow stereotypical perception as to what human rights in the field is all about. As this and other studies have show, the scope for UN human rights field activity and the specific potential human rights functions of a human rights operation (HRO) and its UN field partners are huge.

Nevertheless, monitoring remains a key function of most UN operations. By and large, monitoring functions can be divided into a number of standard sub-functions including witnessing, investigating, and reporting. This chapter will look at how an operation's monitoring mandate is initially defined by formal operational mandates and then modified by field constraints both political and physical. It will then look at the increasing relevance, how, and to what degree, that wide range of UN HRO field partners such as military or CIVPOL should be involved in the monitoring process. And finally, it will look at the need for increased training in monitoring skills for all types of 'monitors', from observers to forensic specialists. Finally, the chapter will look at the end part of effective monitoring, the need to remember that it must be translated into increased human rights protection.

8.1 Mandate and Constraints

Monitoring human rights violations is usually high profile and thus immensely political. As such, the monitoring mandate for an HRO and any larger UN operation will initially be facilitated by or circumscribed by formal mandate. The monitoring mandate for ONUSAL as set out in the San José Agreement on Human Rights has been the most comprehensive to date. It has ended up being used as a type of monitoring operations template for the HROs in Haiti (MICIVIH) and Guatemala (MINUGUA). It is useful to look at the first 6 of the operation's mandated powers:

- "14. The Mission's mandate shall include the following powers:
- a. To verify the observance of human rights in El Salvador;
 - b. To receive communications from any individual, group of individuals or body in El Salvador, containing reports of human rights violations;

- c. To visit any place or establishment freely and without prior notice;
- d. To hold its meetings freely anywhere in the national territory;
- e. To interview freely and privately any individual, group of individuals or members of bodies or institutions;
- f. To collect by any means it deems appropriate such information as it considers relevant.¹⁷¹

On the face of it these powers are comprehensive, but putting them into effect was limited by a number of operational constraints. As in other HROs, those constraints were both internal and external to the HRO and the UN operation itself.

The more problematic constraints are the external ones, the political and physical realities in the operational area. Just how freely can an HRO and the UN meet with groups and individuals?, or do those individuals become targets for victimization and even death merely by meeting with UN staff? What do you do if, as happens in MICIVIH, the government limits your access to detention centres, prisons, military barracks, and police stations, despite the agreed upon terms of reference? Formal written agreements or mandates are far from conclusive, and it is instructive to compare their application in both MICIVIH and ONUSAL.

To a large extent, the wording of the mandate for MICIVIH was modelled on that of ONUSAL. The Haitian military regime did insist on qualifying some of the proposed operation mandates, but on the face of it the operational powers of MICIVIH were substantially the same as ONUSAL. The attitude of the Haitian military regime however was not. They soon made it clear that they were not about to honour the letter or the spirit of the human rights agreements.

In El Salvador on the other hand, the two parties to the conflict had something to gain from negotiating and honouring most of the human rights agreements. As a result, ONUSAL was relatively successful, while "The problems the International Civilian Mission [MICIVIH] would experience arose less from weaknesses in the terms of reference, as drafted or as amended to secure [the Haitian government's] acquiescence, than from the absence of any good faith commitment to supporting their application in practice"¹⁷² by the Haitian armed forces. This was compounded by a failure of senior UN or OAS officials to denunciate Haitian government obstruction, and thus the military regime was emboldened and able to consistently hamper MICIVIH activities.

The Cambodia UN field operation was another example of political constraints that served to minimize the impact of monitoring. "UNTAC's human rights activities were thus undertaken against a background of low-level conflict, a failure to disarm any of the Cambodian factions,

¹⁷¹ San José Agreement on Human Rights, 26 July 1990, between the government and the FMLN; this was one of the early agreements of the El Salvadorean Peace Process, but is clearly the major human rights document of that process.

¹⁷² p.87, Ian Martin, *Paper versus Steel: The First Phase of the International Civilian Mission in Haiti*, in Henkin/Aspen, op.cit.

and with extremely limited influence on the basic institutions and structures needed to safeguard the rule of law."¹⁷³ In such a situation, it becomes debatable whether monitoring and reporting are an optimum use of UN resources, or whether scarce resources might be better spent to promote human rights in some other less traditional ways.

Quite apart from local political constraints, there are physical security constraints for both UN staff and local citizens. Even assuming clear and pressing legal mandates and moral grounds for action, there are times when the physical safety of those involved may militate against active field investigations. The balance between taking action and not taking action is hard to codify with even extensive SOPs (standing operating procedures) or mandates. This reinforces the argument for using experienced staff with extensive life skills who are better prepared to take those field decisions. The reality is that a fair amount of discretion must be assigned to those in the field.¹⁷⁴

Security of local witnesses or sources is particularly important in the investigative component of monitoring. It is far too easy to put the physical and economic well being of locals at risk from retribution from the very human rights violators being investigated. Protecting witnesses goes beyond acquiescing where possible to demands by witnesses for confidentiality. The UN and its agents owe a duty of care to individuals who are unaware of the full implication of being publicly identified. Protecting witnesses spills over into how information is recorded and secured¹⁷⁵, and who such information is passed on to, eg. the media or local authorities. In an even larger sense, issues such as location of HRO offices to enhance security of locals coming to the offices, hiring of locally engaged staff to ensure that they are not 'moles', and proper use of computers and files to secure sensitive information, are all issues that must be dealt with by HROs immediately upon deployment. An abiding principle of any human rights investigator must be, to do no harm.

Recommendation #51

It is recommended that the security of local individuals, including protection of witnesses, other local sources of human rights information, and security of HRO records, be an essential part of all monitoring and reporting procedures.

¹⁷³ p. 59, Dennis McNamara, *UN Human Rights Activities in Cambodia: An Evaluation*, in Henkin/Aspen, op.cit.. Dennis McNamara was the Director of the Human Rights Component of the United Nations Transitional Authority in Cambodia (UNTAC).

¹⁷⁴ Sample scenario: a two person human rights monitoring team, 500 metres away a group of civilians have been detained, and some have been shot. There is the reasonable likelihood that further civilians will be killed by the 20 armed troops who have confiscated the UN team's radio. Duty dictates an attempt to stop further killings and an immediate investigation before evidence is removed or tampered with. Common sense dictates that their lives are at risk and probably they should withdraw for assistance with at least a partial knowledge of events.

¹⁷⁵ An unresolved problem is what happens to case dossiers, files, and other HRO or other UN field 'archives' once an operation is over. What is kept, who keeps them, who has access to them, who can dispose of them?

Far less problematic, and far more amenable to resolution, are the UN's internal constraints on effective monitoring. For example, does an HRO have sufficient staff with sufficient resources to fully observe human rights or even receive and process a possible flood of communications? How can other UN field partners help, and how can this be coordinated?

8.2 Field Partners and SOPs

Many 'monitoring' activities can and will be carried out by the UN operations' human rights 'specialists', largely located in the HRO if there is one. However the broad range of UN partners as set out in Chapter 5 above will also feed into this monitoring. In particular, both CIVPOL and the military often provide particularly numerous, widespread, and logical 'monitoring' partners. They will dramatically enlarge the ambit of an HRO's monitoring scope, and clear communications channels and mechanisms are needed to enhance this cooperative monitoring. Appropriate taskings will vary for different human rights field partners and for different operations, so standing operating procedures (SOPs) and reporting channels need to be customized to avoid duplication and to maximize UN field capacity.

For example it is important within the larger UN operation to clarify who is undertaking particular investigations. Separate UN investigatory responsibility centres need to cooperate and share information. In ONUSAL, there were problems with the division of labour between the HRO and CIVPOL. Particularly in the first year of the operation, there were several instances where duplicate parallel investigations were being conducted. Such cooperation and coordination within a UN operation will benefit from common standing operating procedures (SOPs) and open lines of communication. Operational links with 'monitors' outside of the UN operation proper, eg. UN tribunals, NGOs, etc., would also benefit from some common procedures and regular communications, albeit tailored to reflect their different functions, issues of confidentiality, and the need for operational 'distance' to avoid conflicts of interest.

However, despite the potential for involving a wide range of 'partners', there is still a need for a centralized staff capacity "to systematize information coming in from regional offices, to provide guidance to those offices and to address queries and difficult cases" and there is probably the need to create "a special investigations unit to deal with complex cases, or cases affecting more than one region."¹⁷⁶

Recommendation #52

It is recommended that HROs create a central information gathering and investigation support capacity, including where necessary a special investigations unit to deal with complex cases.

¹⁷⁶ p.154, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

It goes without saying that HRO staff themselves would benefit internally from clear SOPs on how to conduct and report the results of monitoring. However, SOPs are particularly important in enabling other UN human rights field partners such as the military or CIVPOL to effectively feed into and assist HRO monitoring functions. For example, because of both numbers and dispersement, it is far more likely that military peace-keepers and CIVPOL will witness violations. It is important to encourage them in reporting those violations by ensuring that they know what an HRO or other human rights bodies need to be informed about, and in what format, so that information can be easily processed.

There are a number of ways of streamlining monitoring procedures, and several HROs have evolved ad hoc mechanisms in specific aspects of monitoring. In addition, it is important to provide training on what to look for and how to respond. Various HROs have developed ad hoc training and checklists on what to look for in particular situations. For example, MICIVIH developed 'guidelines/suggested methodology for evaluating the judicial system'. MICIVIH also developed uniform methodological guidelines for investigators, refining procedures already identified and designated by ONUSAL as 'active verification'. This active verification involved four stages: one the receipt of complaints; two the investigation or inquiry proper; three corroboration of facts and recommendations; and four the use of HRO good offices.¹⁷⁷

It is important that such ad hoc procedures¹⁷⁸ and training become standard for all HROs, with the UN office of primary responsibility for HROs constantly refining and improving model SOPs in light of lessons learned from each operation. Such operational guidelines or SOPs are needed for all aspects of monitoring, including witnessing, investigating, recording, and reporting. They would enhance both functional effectiveness and the important perception of justice being done.

Local and international perception requires "reasoned and transparent procedures for the gathering, assessment and presentation of information. Operational procedures respecting international standards of due process and standard rules of evidence are necessary, perhaps culled from the general principles referred to in Article 38 of the Statute of the International Court of Justice. In fact, access to the target territory may well be more likely to be granted where such procedures are demonstrably part of the field operation on offer. States charged with human rights violations will not be anxious to accommodate an enterprise which does not have such procedures..."¹⁷⁹

In developing UN principles and procedures for monitoring, it would be useful to look to expertise that exists in related jurisdictions such as national policing or national human rights

¹⁷⁷ See p. 48, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

¹⁷⁸ For a useful basic guide for aspects of monitoring see pp.113-143, English and Stapleton, *The Human Rights Handbook: a practical guide to monitoring human rights*, Human Rights Centre, University of Essex, October 1995.

¹⁷⁹ See Karen E. Kenny, *Formal and informal Innovations in the United Nations Protection of Human Rights: The Special Rapporteur on the Former Yugoslavia*, *Austrian Journal of Public and International Law* 48, 19-77 (1995) p.61

commissions, ombuds, etc. The operating principles of successful national human rights mechanisms include issues such as independence, adequate resources, accessibility, and remedial powers. These are all applicable to UN operations. Similarly, lessons can be drawn from multilateral bodies such as the European Human Rights Commission and Court. Together they have developed particularly strong skills in fact-finding and on-site visits, as well as the need to understand the particular country and the issues being examined so as to avoid superficial assessments and incorrect conclusions.

Recommendation #53

It is recommended that the UN develop standing operating procedures (SOPs) for UN field operations in all aspects of human rights monitoring including witnessing, investigating, recording, and reporting.

However, there is a need for caution in standardizing monitoring procedures at the expense of sufficient operational flexibility to meet the demands of particular situations. This of course applies to all operational aspects of HROs and human rights activity by the larger UN operation. It has been demonstrated repeatedly that merely the knowledge of international human rights law or human rights procedures is insufficient in the absence of common sense and intuitiveness on how to proceed in complex situations. The often complex and always dynamic human nature component of effective human rights activity make its essential that human rights field professionals retain sufficient flexibility to alter standard procedures when and as required. The SOPs themselves must incorporate sufficient flexibility for human rights field operators to vary those SOPs when and as necessary.

Also, SOPs and other mechanisms to enhance field cooperation or coordination, as with any human endeavour, are not sufficient in themselves. They are dependent on the "establishment of good working relations based on a commitment to cooperate and coordinate in order to avoid inefficiency and duplication". This works best where it has been built upon a "clear division of labour based on comparative advantages."¹⁸⁰ All of this invariably proceeds from professionalism on the part of all concerned, and like all professionals they inevitably require training.

¹⁸⁰ p.26 conclusions and recommendations of the working group on protecting human rights: monitoring and reporting, in the report on the International Round Table on Human Rights in Bosnia and Herzegovina, Austrian Foreign Ministry, op.cit.

8.3 Professional Training

Human rights monitoring is a highly complex task requiring complex profession skills. Such skills can be learned on the job but UN operations will be effective that much more quickly if they are staffed with individuals who already have receive appropriate training and are merely refining their training by on the job experience. In addition, "Failure to dedicate the time necessary to training will not only decrease the efficacy of monitoring efforts, but could endanger lives."¹⁸¹

For example, witnessing is far from straight forward passive observation. First of all, it is important that 'monitors' be trained on what violations they are looking for, eg. what is a violation, and which violations are more prevalent in any particular field situation. This is particularly important for those like UN military who understandably are not well versed in human rights violations yet play a major observation role. Secondly, witnessing needs to be relatively proactive inasmuch as most violators will go to great lengths to hide what they are doing. Proactive monitoring options include such things as random patrols, spot visits to prisons or detention centres, or investigative human rights intelligence gathering. Again, all 'monitors' need to be trained on how violations will be hidden, and the options available for uncovering them. An HRO should provide, or facilitate the delivery of, field training for its UN operation partners both on specific skills and on an awareness of their monitoring options.

Investigating human rights violations can be extremely technical, and forensic investigation particularly so. There is an important differences between intelligence gathering and investigatory work, even if they are points on a 'monitoring' continuum. That difference is a reflection of the purpose to which the 'monitoring' will be put. Investigatory work increasingly refers to the collection of evidence for use in trial or quasi-trial proceedings. Evidence that will stand up in court requires professional investigatory techniques, as often held by CIVPOL personnel. Intelligence gathering on the other hand is meant to inform decision makers and needs to satisfy their requirements which normally are less demanding for individual culpability but require additional evidence of systemic violations upon which to premise political or operational decisions.

Forensic investigatory skills are complex enough, that it is often best to bring in relevant CIVPOL personnel who have already received such training and experience in their home policing. Less demanding investigatory skills can be usefully taught to untrained CIVPOL, human rights staff and others UN operations staff that need to carry out human rights investigations. Similarly, human rights intelligence gathering is a skill that lends itself to the training of human rights officers, and other UN field staff, tasked with providing decision makers with political and operational input.

¹⁸¹ p.30 *ibid.*

Recording will also benefit from training and SOPs such as standard written forms and a common policy on the use of other formats such as videos or photos. Again, training is required for all, including experience investigators, as it is important that information be recorded in a common format so that it is easily aggregated for analysis as well as being easily retrieved and understood by other users. With time and whenever appropriate, recording SOPs should be common to all UN operations so that each operation does not unnecessarily evolve its own version. This will allow personnel to move from operation to operation without having to learn a new recording protocol. Often just as important, it will allow for regional or universal aggregation of statistics for easier comparative analysis.

Recommendation #54

It is recommended that appropriate staff of all UN field operation components (ie. CIVPOL, military, HROs) be trained on what violations to be looking for, how to look for them, and how to report them. The HRO should play a key role in ensuring that such training take place.

8.4 Monitoring for Effect

There is need for caution in confusing objectives such as widespread human rights observing, or even conclusive human rights investigations, with effectiveness in dealing with those human rights violations. Quite apart from competency in witnessing, investigating and reporting human rights violations, "monitoring must ultimately lead to redress of human rights violations..."¹⁸². Therefore, any UN human rights monitoring activity must anticipate how to translate their results into effective protection, and this includes the "development of clear and effective strategies to respond to non-compliance of the parties [to human rights agreements or accords] and to concrete human rights violations...An international presence - be it civilian or military - must never become 'silent witness' to human rights violations."¹⁸³

Effective monitoring requires the rapid forwarding of the results of observations or investigations to the appropriate end users and in user friendly format. Quite apart from the procedural advantages of recording in a common format, reporting objectives will benefit from those reports being sent to a common UN responsibility centre. That centre would be tasked with collating human rights intelligence or reports, and forwarding appropriate information to the relevant parts of the UN. Common recording protocols and the use of computerized data processing will dramatically increase the ability to centralize such information, and subsequently enhance the accessibility and use of such information. Logically an HRO could

¹⁸² p.29, *ibid.*

¹⁸³ Austrian Ambassador Albert Rohan, Chair of the International Round Table on Human Rights in Bosnia and Herzegovina, see p.26, International Round Table Report, Austrian Foreign Ministry, *op.cit.*

act as the central clearing house in the field, and the High Commissioner for Human Rights and the Centre for Human Rights could act as the clearing house for UN headquarters.

The more politically sensitive aspect of reporting within the UN involves informing senior UN bodies such as the Security Council and the General Assembly; informing senior UN staff including the field operation head (eg. SRSG); informing local government; and informing the public both locally and internationally. The HRO should have strong input into decisions on if and when such 'political' reporting should take place. Usually the HRO will be delegated the overall responsibility for preparing the reports. It is important that the HRO head or the SRSG actively undertake public reporting albeit conditioned by the human rights operational implications of what is reported as well as when and how.

In particular, relations with the local authorities can be particularly sensitive. On human rights issues, it is logical that the larger UN operation normally be represented by the HRO, who would liaise regularly with local government to raise human rights cases and make recommendations for government action. In doing so, it should be remembered that an over rigid focus on the timing and content of HRO public reports could jeopardize the advancement of human rights objectives. When issues are taken forward by the SRSG or other senior UN operation staff, they should only do so after receiving a full briefing from the HRO.

Equally problematic is the political and moral pressuring of member states and senior UN HQ staff. An HRO or its human rights field partners such as the military or CIVPOL, are not in the optimum position to exert such pressure. The High Commissioner for Human Rights on the other hand is particularly well placed and mandated to pressure member states and senior UN HQ staff, so as to "play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world..."¹⁸⁴

Monitoring for effect will always be full of grey areas and political dangers. Diplomacy and circumspection on the part of HROs and other UN operations staff will always be essential. However, they must never lose sight of their goal of protecting human rights, and it is incumbent upon them to innovatively press for action on the violations being monitored.

¹⁸⁴ para 4(f), GA Res. 48/141, 20 December 1993.

Chapter 9 - Human Rights Reconstruction

The ultimate goal of any human rights operation (HRO) must be to facilitate the creation of self sustainable human rights environments. This includes actual and perceived security of individuals and groups, functioning judicial systems, and a civil society aware of its human rights and how to defend them. This is part of the larger issue of post-conflict reconstruction¹⁸⁵ or rebuilding wartorn societies¹⁸⁶.

It is a fundamental truism that human rights reconstruction and sustainable human rights environments must come from, and be driven by, the local society itself. Broad popular involvement is the touch stone of sustainable human rights protection, and provides the legitimacy for governmental human rights structures, laws, and procedures.

Nevertheless, HROs and the larger international human rights community can play an important role in facilitating both reconciliation and human rights reconstruction. Because internal national social dynamics and politics are crucial to this process, HRO personnel need to be particularly knowledgeable about the causes of the local conflict and local human rights violations. Because human rights reconstruction is extremely long term, HROs must combine local knowledge with an ability to think strategically on how to proceed.

This chapter will look at some of the options open to HROs and others from the international human rights community to first create the foundations for, and then undertake human rights capacity and institution building.

¹⁸⁵ See UN Doc A/50/345 containing the report and recommendations of the International Colloquium on Post-Conflict Reconstruction Strategies as well as UN Doc A/50/332, report of the SG on UN support to new or restored democracies.

¹⁸⁶ See the study being conducted by the UN Research Institute for Social Development on *Rebuilding Wartorn Societies*, Geneva, inter alia it is extremely positive that they see those societies themselves as the key component of rebuilding and are conducting the study in a participatory manner with several wartorn societies as active contributing partners.

9.1 The Foundations

There are several important precursors to reconstruction including setting the record of past abuses straight, achieving a modicum of justice for past violations, and creating a national desire for reconciliation upon which society can start to rebuild its values, institutions, and human rights defence mechanisms.

An issue is a broad based public recognition and understanding of what has happened so that society as a whole can reconcile itself to the past, reaffirm that they share a common destiny, and move on. Sometimes reconciliation can merge into forgiveness, but this far from essential. In situations like Rwanda or the former Yugoslavia, forgiveness may not be possible. However, be it forgiveness or reconciliation, there is a potentially crucial role for an HRO in helping to establish what truly happened.

Perception is a large part of the whole process, and it is important that objective observers attempt to clarify past human rights violations. The truism that truth is the first casualty of war is particularly evident where there have been gross violations of human rights. Parties to conflicts invariably attempt to portray their opponents as the more egregious violators of human rights. Equally, some parties to the conflicts will have been better able to hide their violations, often through further violations such as the 'disappearance' of torture victims. Invariably the record needs to be, and needs to be seen as having been, set straight.

Where possible, this setting the record straight is best done by the society itself which will then have 'ownership' in the results. For example, 'truth commissions' or other national mechanisms can be part of larger peace processes. Effective national mechanisms will draw much of their strength from the fact that they have been arrived at through some process of negotiation between the parties to the conflict. Alternately, where national mechanisms are unilaterally set up by one party to the conflict, it is unlikely that they will be truly unbiased, and even more unlikely that they will be perceived as unbiased.

A recent example of a negotiated national mechanism was the El Salvadorean Truth Commission created as part of the San José Agreement. Working concurrently with, but not part of, ONUSAL and its human rights division, the Truth Commission's mandate was to investigate any act of violence during the previous twelve years that was brought to their attention. With a very short time mandate,¹⁸⁷ it examined many of the more notorious cases and came up with a number of recommendations for judicial reform. There was no intention or possibility that it would be a comprehensive examination of the past, but like test cases in supreme courts, it established an attitude and approach for the reconstruction that was to follow. In the words of Diego García-Sayán the former Director of the Human Rights Division of ONUSAL, "The Truth Commission's accomplishment was to reclaim Salvadoran's sense of their own recent history, and to provide facts to clear the way to the future"¹⁸⁸.

¹⁸⁷ Initially six months, but received one extension.

¹⁸⁸ p. 33, García-Sayán, *op.cit.*

The Truth Commission's recommendations¹⁸⁹ had several themes. One was overcoming the overwhelming centralization of judicial power in the Supreme Court, which had facilitated manipulation of the justice system. It therefore recommended the creation of an independent National Council of the Judiciary whose mandate would include the appointment and monitoring of judges. Another theme was the reinforcement of judicial due process, and it called for the invalidation of extrajudicial confessions, the presumption of innocence, enforced maximum time-limits for judicial detention, more effective remedies of habeas corpus and amparo, and reform of the system of administrative detention. A third theme was the increased professionalism of the judiciary, including improved training and improved salaries for judges to enhance their independence.

Quite apart from issues of justice and confidence building, 'truth' mechanisms also meet another critical requirement for human rights institution building, ie. the identification of individual human rights violators. In other words, if one is going to create or strengthen such institutions as the military, the police, or the judiciary, there is a need to ensure that those who have violated human rights in the past are either excluded from positions where they can violate human rights, or are rehabilitated. Rehabilitation is the recognition that there are degrees of culpability for past abuses, and that many individuals who have been pulled into the insidious downwards spiral of human rights violations,¹⁹⁰ are eminently capable of being rehabilitate. Rehabilitation is also a recognition that wholesale firing of security forces, armies, or government departments, is not always political or functionally feasible.

Even when it is politically possible, there are many times when there are just not enough qualified people to replace those involved in past violations. For example, recent efforts to create a new Haitian police force have recognized that they need the skills of both the existing police and Haitian military. However at a minimum, there must be mechanisms to identify and preclude the worst abusers from future public service, particularly police and military. It should be noted that if such "mechanisms are not established in the negotiated accords, it is highly unlikely that they can be created following the settlement."¹⁹¹ A good example of this was a creative solution for the need to cleanse the El Salvadorean military. The Peace Accords created an Ad Hoc Commission "to review the records of military officers with a mandate to recommend dismissal of those associated with human rights abuses, corruption or incompetence."¹⁹² It came up with a list of 103 officers for discharge or transfer. The government did not fully comply with their commitment to act, but it was a partial answer.

¹⁸⁹ *From Madness to Hope: The 12-year war in El Salvador*, Report of the Commission on the Truth for El Salvador, UN Doc. S/25500, 1 April 1993.

¹⁹⁰ For an good video in this regard see *Your Neighbours Son*, produced by Amnesty International (Danish Section) and a Danish/Swedish consortium, that looks at how young men were incrementally transformed into military torturers during the Greek military regime of 1967-74.

¹⁹¹ p.12, *Haiti: Human Rights and Efforts to Restore Democracy*, Washington Office on Latin America, 7 June 1993.

¹⁹² p.31, *Human Rights and UN Field Operations*, Human Rights Watch, op.cit.

The caveat that national 'truth commissions' or other mechanisms be unbiased, and be seen to be unbiased, is difficult to achieve. Thus in many situations, there is a particularly important role for the international human rights community in helping to set the record straight. Often this is best done by the UN since it will be perceived, particularly by the government, as being more neutral. However this UN role in helping to establish what happened in the past should not always be left up to an HRO or the larger UN operation. At times it is best done by an 'independent' UN mechanism, eg. created and authorized by the High Commissioner for Human Rights or the UN Commission on Human Rights.

Recommendation #55

It is recommended that, where there has been a history of egregious human rights violations with little investigation or accountability for those violations, the mandate of an HRO should include the capacity to help identify those responsible.

The issue of amnesties¹⁹³ for human rights violations is fundamentally in opposition to justice and accountability. However, amnesties are a legitimate option for societies attempting to achieve some form of reconciliation. Reconciliation is primarily a political and moral process, where legal redress and justice become secondary. Having said that, blanket amnesties for particularly egregious violations such as torture, rape, and extrajudicial executions, are arguably doomed to failure in any effort to build a basis for reconciliation. Nevertheless, issues of amnesties must be solely the decision of societies themselves, and the UN appears to have little or no standing to advocate amnesties.

At a minimum, the UN and an HRO must "refrain from initiating or proposing any broad amnesty laws or other mechanisms that are incompatible with the obligation of states to investigate human rights violations and offer some recourse to their victims."¹⁹⁴ There are even a number of international norms¹⁹⁵ that make it unacceptable and possibly even illegal for the UN to call for amnesties.

Quite apart from the apparent lack of legal and moral standing of the UN to advocate amnesties, there is the operational contradiction in doing so. "It was the issue of amnesty that brought the contradictions between the human rights and political dimensions of the UN/OAS

¹⁹³ For a good discussion of this issue, see pp. 142-148, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

¹⁹⁴ p.158, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

¹⁹⁵ Art.2 International Covenant on Civil and Political Rights; Art.18(1) Declaration on the Protection of all Persons from Enforced Disappearance; The Principles for Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions; Part II Art.60 & 62 Vienna Declaration on Human Rights; and decisions of the Inter-American Commission on Human Rights. Note that Geneva Conventions Additional Protocol II Art.6(5) calls for amnesties but only for participation in armed conflict, not for human rights violations.

operation in Haiti most sharply into focus. Accountability for past violations was more fundamental to securing a climate of respect for human rights than any other issue; at the same time, amnesty was the most powerful bargaining chip available to the UN and US negotiators in their dealing with the military.¹⁹⁶ The long term impact of the UN choosing to back an amnesty for the Haitian military will not be clear for some time, but all indications are that it may amount to a short term UN gain at the expense of Haitian community based reconciliation and stability.

Reconciliation initiatives by outsiders can only work if they engender some kind of popular involvement in a process that has everything to do with the hearts and feelings of society, and very little to do with legalities. The process of defining and agreeing to amnesties is so much a part of the reconciliation process, that outside 'direction', as opposed to advice on options and process, strikes at the very validity and purpose of that 'popular' process.

Most recently, South Africa has set up a Truth and Reconciliation Commission which some have referred to as a moral project. It is premised on the belief that justice for all concerning events during the apartheid years is impossible. There are just not enough South African legal resources to achieve that end, and most believe that even to attempt to get justice for all, would split South African society apart. It has taken the South African government and many national interest groups two years to create their own 'solution' or version of a truth commission.¹⁹⁷ Its progress over its two year mandate will depend on South African political leadership and society's sense of morality and justice. What is obvious is that if it works, that it is because South Africans devised it, and South Africans accepted it. A successful South African truth commission model will inform, but not dictate, reconciliation processes in other societies.

Recommendation #56

It is recommended that the UN and its field operations not take a position on amnesties for human rights violations, and that such decisions be left solely up to the societies attempting to reconcile and rehabilitate themselves.

¹⁹⁶ p.142, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

¹⁹⁷ The Truth and Reconciliation Commission, 17 members headed by Archbishop Tutu, has two years to deal with the 1960-1993 apartheid era, and will largely function through 3 committees: committee on human rights (hearing from victims of murder, abduction, torture, and severe ill-treatment); committee on reparations (mostly symbolic reparations to victims and dependents); amnesty committee (pardons and immunity to those who fully disclose what they did, were motivated by political objectives, and were in line with the policy of the government or anti-apartheid forces).

9.2 Capacity and Institution Building

Just as difficult as establishing an atmosphere of reconciliation, is the next stage of human rights capacity and institution building. Like reconciliation, building a human rights 'friendly' environment and enhancing the capacity of national players to work effectively within it, is relatively easy to sketch out and incredibly difficult to effect.

The title *capacity and institution building* can give the false impression that this is a mechanistic process where the UN and other outsiders can put money into creating or strengthening institutions, and then teach government and civil society the skills to use them. This structural approach tends to obscure the essential need for behavioural changes, and behaviour changes can take generations.

Even though an HRO will be in a country for a very short time, it must understand its role in that long term human rights evolution. Inter alia, an HRO must consciously involve local human rights actors, and gradually hand most HRO human rights functions back to local society.¹⁹⁸ In addition, an HRO must recognize that its field presence is also extremely short reference other parts of the UN, and thus should work closely with those UN actors and other international organizations or agencies present in the country. For example, MINUGUA has evolved a joint human rights institutional strengthening project with UNDP. MINUGUA recognizes that UNDP will be in country long after it has departed, and has encouraged UNDP to expand its traditional role in Guatemala. They have sent up a joint MINUGUA/UNDP Support Unit "to promote technical and financial cooperation programmes in the human rights protection area, to promote coordinated approaches between all 'actors' and avoid duplication and overlap in programme activities."¹⁹⁹

Recommendation #57

It is recommended that HROs have a human rights institution and capacity building program premised upon local input and planned handover to local control of relevant HRO functions. As a corollary, HROs should encourage and facilitate human rights programming by other UN agencies that will remain in country long term.

Human rights reconstruction and the building of a human rights environment, is inherently the final responsibility of local society. International involvement, always a moral responsibility and often a legal responsibility, does however raise legitimate expectations on the part of that local society. While an HRO's presence might be relatively transitory, it is important that the UN provide long term support for long term reconstruction. This requires ongoing moral, political, and financial commitment.

¹⁹⁸ See section 5.10 for an expanded discussion on the role of local national human rights partners

¹⁹⁹ p.5 para 6, *Summary of Programme Activities and Financial Needs of The Trust Fund for Support to the Guatemalan Peace Process*, MINUGUA, Guatemala City, June 1995.

Failure to do so can result in a loss of belief in the UN and the international system in general, and international human rights protection specifically. This is not to infer that the UN and member states have an open ended commitment once they agree to get involved. Local responsibility, including the fair allocation of national financial resources to protecting human rights, always exists and grows with the strengthening of society and its government. Any other approach would exonerate local society from its responsibilities, and act as an impediment to UN member states agreeing to get involved in the first instance in fear of 'mission creep' or that they were signing a financial 'blank cheque'.

But despite the inherent responsibility of local society for its human rights development, like economic development, most societies recovering from a crisis will lack sufficient financial resources and expertise. The UN and thus the HRO can play important roles in a number of key human rights areas including:

- police, prison guards, and the military;
- legal reform, judicial system, legal aid & other judicial access tools;
- human rights commissions, ombuds;
- civil society.

9.2.1 Police, prison guards, and the military

The security forces including police, prison guards and often the military, are particularly politically sensitive topics since they traditionally are part of the human rights problem. For the very same reason, they are equally critical to human rights capacity building as part of the human rights solution.

Human rights reconstruction is largely about behavioural changes, and this is particularly true for security forces. The "heart of the problem of the police and the army lies not fundamentally in a lack of professionalism, but rather in the general absence of any notion for any practice of respect for human rights."²⁰⁰ HROs should focus on changing attitudes and encouraging security forces to create standing operating procedures and mechanisms that serve to protect human rights.

Incentives are critical to this behavioural change. Security forces need to see and believe that key rewards such as status, promotions, and pay are linked to protecting human rights. Less effective but still important are the negative incentives such as demotions, financial penalties, firing, and ultimately prison, which are linked to human rights violations or the failure to protect them.

²⁰⁰ p.76 Goldenberger, Jean, & Manigat, *Haiti: Attentat à l'espérance*, Editions de l'Institut Culturel Karl Levesque, unpublished manuscript, reported in *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit., p.114.

Recommendation #58

It is recommended that for security forces' human rights capacity building, that HROs focus on changing attitudes and instituting human rights protection mechanisms, as opposed to general professional development.

For example, ONUSAL was involved in the supervision of the creation of the new National Civilian Police Force (PNC). The goal of creating a police force with a radically different philosophy and membership, as well as cutting police links to the armed forces, went far beyond the traditional scope of UN institution building. ONUSAL was part of PNC training and standards setting, and one significant success was the creation of National Civilian Police Guide to Norms and Procedures. This guide served as the basis for a number of police courses at all levels of the PNC. This in-depth involvement in police reform and capacity building has been partly replicated in Haiti²⁰¹ under MICIVIH and UNMIH.

ONUSAL's human rights division was also involved in the reform of the El Salvadorean military, including the preparation of and distribution of 20,000 copies of a book entitled *Military Doctrine and Army/Society Relations*. More problematic was the outcome of the Ad-Hoc Commission agreed to under the Accords, where three independent Salvadoreans carried out a 3 month investigation and came up with confidential list of 103 officers to be removed or transferred. The military's response to this was slow but relatively complete, and the impact on the military has been undeniable. While full blown public inquiries and courts martial would have achieved greater justice, given the situation "the Ad Hoc Commission represented a creative answer to the need for a cleansing of the military...that the Commission's members did such a thorough job demonstrates that review commissions per se can be effective instruments for change where judicial power is weak or corrupt."²⁰²

There is of course the danger that the precedence of such 'soft' options become automatic, losing sight of the inhumanity of gross human rights violations. The point of departure for reconstruction must remain an attempt to achieve full justice, even if the UN and societies must often have recourse to trade offs and compromises.

The experience of MICIVIH in Haiti highlighted another issue, the need for reforms of related security and judicial mechanisms and institutions to proceed roughly in step. The Haitian police were seen as a key target for reform and a large amount of UN and donor resources were put into police restructuring and training. The result has been for the police to move far ahead of the broader judicial system, eg. prosecutors, judges, justice ministry. The danger is that police will quickly lose confidence in the capacity of the rest of the system to effectively prosecute those they think are guilty. The police could very easily 'forget' much of their training and

²⁰¹ In Haiti, the US Justice Department's ICITAP program has taken the lead role in police recruitment and training, and MICIVIH with its far fewer resources has been limited to sporadic training sessions at the academy.

²⁰² p.33, *Human Rights and UN Field Operations*, Human Rights Watch, op cit.

undertake vigilante justice, as happened with the new police in El Salvador.²⁰³ Similarly in Somalia, donors were reluctant to put monies into prison infrastructure, which not only perpetuated violations of prisoners rights, but engendered a sense of frustration by the police who needed a functioning prison system.

In security force reform, the HRO should give priority to involving and using relevant UN field partners, eg. CIVPOL in the training and monitoring of police. Various CIVPOL operations already conduct general police training, but an HRO can play a role in encouraging them to increase the human rights component of that training. Where CIVPOL are uncertain as to how this should be done, or lack the resources to do so, an HRO can quickly step in to advise and facilitate. Similarly, UN military should be involved when and where appropriate to imbue local militaries with new attitudes to the law of armed conflict, human rights, and their role in civil society. Particularly in the context of military or para-military organizations (eg. most police forces), training by fellow military or para-military is particularly effective. Invariably they are far more open to training by colleagues even if these colleagues are distinctly foreign, and commensurately they are less open to training by civilians, even if these civilians are compatriots.

Recommendation #59

It is recommended that HROs actively involve appropriate UN CIVPOL and military peace-keepers in human rights awareness and human rights capacity building for police, prison guards, the military, and other security forces.

9.2.2 Legal reform, judicial system, legal aid & other judicial access tools

Human rights legal capacity building includes creating both a legal basis for those attempting to protect human rights or redress violations, and sufficient legal procedures and mechanisms to do so. Enhancing the capacity of the judicial system includes changing judicial attitudes, and building judicial capacity to effectively interpret and apply human rights laws.

As an example, ONUSAL had a mandate to "offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law"²⁰⁴ The HRO recognized that most senior courts, including the Supreme Court, were unprepared to find against those responsible for grave violations of human rights, and quietly lobbied for their removal. In the interim,

²⁰³ See the recent report on such policing issues by the Washington Office on Latin America, *Demilitarizing Public Order*, Nov. 1995.

²⁰⁴ UN document S/21541, 16 August 1990, p.5

ONUSAL instigated judicial training in human rights for middle and lower level judiciary.²⁰⁵ In July 1994 the legislature elected a new Supreme Court.

Haiti is another example of an HRO attempting to effect capacity building in consultation with the local authorities. Bill O'Neill as Head of the Legal Department of MICIVIH, headed a working group analysing the Haitian justice system²⁰⁶. This study resulted from a discussion with the then Haitian Minister of Justice Guy François Malary²⁰⁷, who had wanted to carry out a survey with a view to reform, but did not have the government resources to do so. The resultant HRO study was the only known national survey of the Haitian justice system, and it recommended approximately 40 reforms. An underlying theme of the report was that a functioning civil society was impossible without a functioning judicial system, and that human rights violations are a litmus test of both.

MICIVIH was also looking to enhance informal justice mechanisms, such as indigenous restorative justice systems, that had worked well in the past and might provide fertile ground for capacity building. The MICIVIH report on the Haitian justice system talked about the informal system of justice used by the majority of rural Haitians. MICIVIH felt that it appeared to be functioning well, and was probably deserving of support and integration into a new formal justice system.

Informally, HRO staff particularly those with legal backgrounds, can through regular informal contact with judges, lawyers, justice ministry people, etc. conduct 'informal' training while monitoring progress in formal judicial training. As always, the selection of innovative, qualified, and 'diplomatic' HRO staff will be fundamental in effecting such informal, but no less important, training.

In tandem with law reform and steps to enhance the judicial system, is the need for legal aid and other tools to allow individuals to effectively access those legal protection mechanisms. While legal and judicial reform obviously depend on government action, legal aid and other tools to access human rights law are often best left to the non-governmental sector. This can include the creation of bar councils, legal aid NGOs, etc.

²⁰⁵ Another reportedly successful exercise in judicial capacity building in the context of a UN field operation, was the training of Rwandan judges and lawyers by the Citizens' Network (coalition of European NGOs).

²⁰⁶ Unpublished UN Document, *Analysis of the Haitian Justice System with Recommendations to Improve the Administration of Justice in Haiti: A Report by the Working Group on the Haitian Justice System of the OAS/UN International Civilian Mission to Haiti*, March 17, 1994.

²⁰⁷ The dangers involved in such action was dramatically highlighted when Minister Malary was assassinated 14 Oct. 1993, soon after the UN military mission chose not to debark from the *Harlan County* and the day before MICIVIH evacuated Haiti. A further aspect of this innovative study was that it was completed by MICIVIH while in exile.

Recommendation #60

It is recommended that HROs have an active program of institution and capacity building in the areas of legal reform, judicial systems, legal aid, and other judicial access tools

9.2.3 Human rights commissions, ombuds

National human rights institutions such as human rights commissions or ombuds, provide an important guarantee against violations by governments. Increasing numbers of them are also starting to deal with abuses by private sector bodies and individuals within society at large. If properly constituted, such commissions or ombuds are neither an arm of government, nor are they an NGO. They thus can have the force of official authority without all of the political limits of being a direct government agent.

Usually premised upon an entrenched charter or bill of human rights, they carry out promotion and protection measures intended to deal with both individual and systemic human rights violations. Such institutions provide additional safeguards for when the traditional means of protecting human rights such as the courts, administrative tribunals, public inquiries, and elected officials, are either insufficient or not suitable. For example, "Ombudsmen can play a role in investigating violations of human rights as defined in international standards, interceding with the competent national authorities, referral of matters to prosecuting authorities and follow-up of cases through the criminal justice system to see that they are conducted in accordance with international standards for fair trial."²⁰⁸

While there are innumerable models for such institutions, they must have a number of crucial characteristics if they are to function properly²⁰⁹. Created by government statute, such institutions must nevertheless be relatively independent from government and must be provided with adequate resources. They need to be easily accessible to the public, and have extensive powers of investigation. Their remedial powers can be quite varied, but at a minimum they need to have the freedom to make public the results of their investigations.

An HRO can play a key role in helping jurisdictions to devise the appropriate national human rights institution(s) for their particular needs. Ensuring that the fundamental criteria have been met, will ensure that the institution(s) created will be both effective and sustainable.

Recommendation #61

It is recommended that HROs have an active program of institution and capacity building for national human rights institutions, such as commissions or ombuds.

²⁰⁸ p.40, *Peace-keeping and Human Rights*, Amnesty International, IOR/40/01/94, January 1994.

²⁰⁹ See *National Human Rights Institution: Manual*, Human Rights Unit, Commonwealth Secretariat, London UK, 1993, pp.148.

9.2.4 Civil society

Civil society is the primary engine for driving human rights protection. The strengthening of that civil society, often through its NGOs, is one of the most effective strategies to enable a UN operation to complete its objectives and leave. The ways in which NGOs and other civil organizations can be active partners in achieving the objectives of an HRO, has been dealt with in Chapter five on human rights partners.

What merits repeating here is the ultimate strategic objective, eg. sustainable human rights protection, and a UN and HRO tactical objective, eg. to withdraw leaving a functional human rights environment. Right from the beginning of an HRO, a "detailed plan for withdrawal should be an integral part of mission planning, especially with regard to providing continuity and ensuring skill transfer to domestic institutions."²¹⁰ HRO staff need to be fully aware of the 'human rights' individuals and organizations in the country, how to best defend them, how to facilitate their work, and how to hand over to them. These 'human rights' individuals and organizations are to be found in both the governmental and non governmental sectors.

The field presence of an HRO invariably raises the hopes of local individuals and organizations, and indirectly encourages them to report violations and dissent openly. If the initial promises of international support and protection do not materialize, much as happened in the first phase of MICIVIH, then repressive regimes or guerilla groups become emboldened. Assuming their actions will either be ignored or tacitly approved, they invariably renew, if not increase, their repression. For example, in the first phase of MICIVIH the "evacuation of the Mission was felt by Haitians to signal their abandonment by the international community, and it left at risk all those known to have been in contact with the observers" when "a wave of intensified repression was launched by the military".²¹¹

In ONUSAL, the HRO was heavily criticised by El Salvadorean and international NGOs for not putting enough effort into its relationship with NGOs. It did however achieve a degree of belated success in passing on skills to El Salvadorean civil society through the running of training/educational workshops, seeking international financial support for human rights programs, and publishing materials for local NGOs.

Using international NGOs is one of the more effective avenues for the UN to set about strengthening local civil society. Usually a number of international NGOs already have strong contracts in the country in question, and have already identified and are working with the more effective local partners. For example in Haiti, the US based National Coalition for Haitian Refugees organized a series of training sessions for representatives of Haitian grass-roots organizations, and MICIVIH has piggybacked on that training. As part of the sessions, MICIVIH provided speakers, including an operations staff member, to describes MICIVIH's mandate and operations. MICIVIH also provided materials such as illustrated Créole versions

²¹⁰ p.153, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

²¹¹ p.97, Ian Martin, *Paper versus Steel: The First Phase of the International Civilian Mission in Haiti*, in *Honoring Human Rights and Keeping the Peace*, Aspen Institute, op.cit.

of the Universal Declaration of Human Rights, other key human rights documents in Créole, and Créole posters illustrating specific rights.

Media are a rather unique and important piece of civil society, and of the larger human rights promotion and protection puzzle. They often need a greater awareness of what their role is in promoting and protecting human rights, the skills and resources to do it, and legislated defences to allow them to play their role. HROs can build or facilitate the building of media capacity in some of these areas.

Investigative journalism and the skills of publishing or producing and transmitting over radio and television are skills that can be relatively easily taught. Less amenable to capacity building by an HRO is the provision of resources to function, or defending against government and private censorship or other impediments to media freedom of expression.²¹² Avenues for stifling media dissent include spurious libel charges, restrictions based on threats to national security or public order, or cutting off of supplies of imported newsprint. These are important issues for HRO and will require innovative approaches.²¹³

Human rights capacity building for civil society can draw HROs into the political arena between government and NGOs, opposition groups, and media. Therefore HROs must proceed with caution, but proceed they must. A strong human rights ethic and professionalism amongst key civil society components, will provide the most effective long term pressure for government to meet its human rights obligations. To avoid unnecessarily antagonizing the government yet facilitate the strengthening of civil society, HROs need to be innovative on their programming and on using others such as international NGOs as proxies.

Recommendation #62

It is recommended that an HRO facilitate the building of civil society's human rights capacity, this being the most effective strategy for long term human rights protection.

²¹² For a full listing of limits to freedom of expression and legal defences against such unreasonable censorship, see Sandra Colliver, *The Article 19 Freedom of Expression Manual*, August 1993, Article 19, London UK. pp. 284.

²¹³ A related but separate topic is the need for media capacity within both an HRO and the larger UN operation, and this is dealt with in chapter 5.

Chapter 10 Doctrine, Operational Procedures, Lessons Learned Mechanism

Doctrine combined with comprehensive written operational procedures, both of which are regularly debated and revised in light of lessons learned in the field, are critically important in efforts to improve UN operational effectiveness and accountability. UN human rights operations have evolved without such clarity of purpose, and it is important that the UN set about to resolve these gaps.

In a hierarchical sense, doctrine or policy ranks first, with operations procedures spelling out the detailed operational application of that doctrine. In reality, individuals evolving new roles and procedures in the field, create the need for doctrine to unify and 'legitimize' such operational practices. What evolves is more of a symbiotic relationship where field experiences inform doctrine which in turn guides the codification or revision of set operational procedures. Lessons learned from past operations, if acted upon, provide a critical and ongoing link to reality for both doctrine and operational procedures.

This chapter will examine all three, proceeding from doctrine through operational procedures, to lessons learned mechanism.

10.1 Doctrine

There is little official doctrine or set of principles on the role of human rights in UN field operations. This is not surprising inasmuch as a number of UN member states would strongly resist attempts in either the Security Council or the General Assembly to clarify the principles underlying the UN's human rights duties and roles in UN field operations.

In part this UN resistance is driven by some member states whose opposition to human rights is deep-seated and unlikely to change in the near future. On the other hand, there is a sizable minority of states whose reticence stems more from a fear of unknown implications rather than any concrete concerns. Often the best way of resolving such fears is through continued gradual and ad hoc, yet concrete, operationalization of international human rights norms in a variety of UN operations.

Therefore, as with UN peace-keeping in the past, it is understandable that UN doctrine for human rights activity by UN field operations generally, and HROs specifically, is lagging behind UN practice. So far this has been an effective tactic by those espousing greater UN human rights action in UN field operations. The problem of course is that UN civil servants are put in rather untenable positions inasmuch as they are expected to take innovative steps without clear authorization to do so. Getting too far ahead of unwritten doctrine can result in severe reprimands from states and superiors, while failure to take fast and coherent action on human rights violations such as in Rwanda, can result in public criticism of what is perceived as 'yet another UN human rights failure'.

Perhaps the UN has reached the limit of the usefulness of moving this particular human rights agenda forward quietly and without doctrine. The down sides of unclear human rights doctrine and mandates for UN field operations may now outweigh the advantages of evolution through stealth. "There is a growing number of precedents for human rights work being officially conducted within the context of UN peacekeeping but these measures have been elaborated in ad hoc ways, illustrating a conceptual and political gap that needs to be bridged before the United Nations can adequately address the human rights aspects of conflict and postconflict situations."²¹⁴

This gap is increasingly serious as a lack of written principles and guidelines makes it difficult to have consistency of human rights purpose and goals from operation to operation. Furthermore, in the past 5 years human rights in field operations have evolved dramatically in their operational application, including the evolution of distinct human rights operations (HROs). It appears that some degree of doctrine is now required to allow UN staff to continue to develop the scope and practice of human rights in UN operations. In other words, it is hard to codify lessons from past operations and improve future human rights operational activity if nobody in the UN is consistently and coherently setting them down in doctrine and model operational procedures.

A further evolution that is getting mired in this uncertainty, is the human rights role for HRO's UN operational partners such as CIVPOL and military peace-keepers. Military peace-keepers are particularly reticent to take on human rights roles without clear doctrine. Many peace-keepers have voiced a desire to play a larger human rights role, but senior commanders aware of the political pitfalls have held back. It is incumbent on the UN to clarify human rights doctrine for peace-keepers and other HRO operational partners.

Usually one would expect UN member states to set out such UN doctrine themselves. Some have argued for a Security Council or General Assembly resolution specifically on human rights in peace-keeping and other field operations. Others feel that such a step is premature as it would attract sufficient opposition from a few states whose active opposition would prevent any satisfactory official doctrine or policy. They argue that no doctrine is better than flawed doctrine.

²¹⁴ p. 132, Andrew Clapham and Meg Henry, *Peacekeeping and Human Rights in Africa and Europe*, in Aspen/Henkin ed., op.cit.

It thus makes much more sense that the Secretary-General set out UN doctrine on human rights in field operations. There is no contradiction in this as the Secretary-General fills that political grey area between member states as political masters, and UN staff as civil servants. As with the Agenda for Peace, the SG as the senior UN 'politician' has set out doctrine in the past, and will be expected to do so again in the future. The SG is the logical centre of responsibility to set out doctrine that will serve to reassure those UN staff looking for guidance and legitimization for human rights in UN field operations.

Recommendation #63

It is recommended that the Secretary-General set out UN doctrine on human rights in UN field operations.

10.2 Operational Procedures

Operational guidelines and standing operating procedures (SOPs) for recurring operational activities are necessary for any complex operation. Elaborating policy, they serve to put order and coherency into related operational activities being carried out by individuals who left to their own designs would devise quite diverse ways of operating. While many of those diverse options might be effective in their own right, they could well contradict each other as well as working at cross purposes with larger operational goals.

A lack of written standing operational procedures complicates the interchange of staff from within the operation, from other operations, or that are newly hired. Such individuals would be continually learning new ways of operating. In the same vein, a lack of SOPs hampers interoperability with outside organizations, eg. between an HRO and CIVPOL, or between a UN operation and NGOs.

These truisms are particularly applicable to HROs which draw together personnel from a wide variety of backgrounds, often complicated by a relatively rapid turnover of those personnel. HRO personnel are expected to deal with complex human rights issues, in complex emergency situations, on behalf of an equally complex and at times Byzantine organization, the UN.

Standing operating procedures (SOPs) tend to refer to a broad range of pre-designed written models of operational guidelines or procedures. It is important to remember that model SOPs must be customized as necessary to fit the demands of each operation. SOPs are not meant to control operations but are merely a tool for operational effectiveness, so HROs must have the ability to change SOPs to fit their operational dynamics.

The biggest benefit of developing model HRO SOPs is that even where an operation decides to customize various SOPs, they will be saved from re-inventing the basic wheel. In most cases they will adopt model SOPs without any change. Apart from saving time, model SOPs will save HROs from repeating some of the mistakes of previous HROs, assuming of course that model SOPs have been refined in light of successes and failures. A further rationale for model

SOPs is that since most will only incur minor customization, incoming personnel that have served on other HROs will orient themselves and become operationally effective that much more rapidly.

Model SOPs can be usefully developed for various operational aspects of almost all HRO activities. For example, SOPs can be developed for the very first stage of any HRO, the pre-mission reconnaissance. The Department of Political Affairs (DPA) has evolved an ad-hoc practice of sending an advance team which should include the designated head of the HRO and their senior staff. They are in the field for 2-3 weeks and then return to UN headquarters to spend another 2-3 weeks drafting their report. The advance team comes up with detailed recommendations as to the structure and the work of the future HRO. Ad hoc check lists have been created for what they need to be looking at when in the field, and what issues their report should cover.

There then needs to be detailed SOPs for both the deployment and the conduct of the HRO in mission. There do not appear to be even ad hoc SOPs for the deployment stage of HROs. More promising are the evolving SOPs for the conduct of HROs once in the field. Quite understandably, as it was effectively the first HRO, the ONUSAL human rights division belatedly produced its operational manual only 18 months after it had deployed. Their relatively brief and incomplete methodological guide provided personnel with some minimal standard criteria and procedures. It dealt with admissibility of evidence, investigations, closing cases, and greater definition of various rights and violations.

The MICIVIH manual, building upon the ONUSAL manual and the experience of ONUSAL and UNTAC personnel, was produced much more quickly and was much more detailed. This 80 page Manuel d'Haiti, completed in July 1993, dealt with mandate, operation priorities, guidance on investigation and reporting, advising asylum-seekers, and, dealing with media, NGOs, and local authorities. Their SOPs for investigations or what they term 'active verification'²¹⁵ are noteworthy. The MICIVIH manual has been further refined and tailored by the HRO component of MINUGUA in Guatemala, and includes some innovated new sections such as the section on institution building.

What is needed is a full and official set of model HRO SOPs which can be adapted to the particular needs of specific HROs, and which are regularly refined in light of the growing knowledge of 'best practices' and procedures. At a minimum, there is a need for a central compilation of past HRO procedures so as to provide an authoritative and easily accessible bank of options from which others can draw.

DPA is presently the logical responsibility centre to bring together the SOPs from previous HROs, having effectively run four of the first five. Also, the HCHR and the Centre for Human Rights have run an HRO, and in June and October of 1995 they indicated they were planning to initiate a \$200,000 project to assemble the past heads of all human rights operations

²¹⁵ See section 8.2 *Field Partners and SOPs* above.

with a view to creating a manual for field operations²¹⁶. They envisage that part of this project would create a roster of potential field staff, and institutions around the world would be tasked to carry out some of their initial training.

To a degree it is irrelevant whether the Centre, or DPA, take the lead in creating such model SOPs, although both need to collaborate. However, if DPA is designated as the primary office of responsibility for future HROs, then it makes sense that they take the lead on this project. At any rate, as we move into the fifth year of UN HROs, somebody at the UN has to take the initiative.

Recommendation #64

It is recommended that Department of Political Affairs or the Centre for Human Rights take the responsibility, in collaboration with the other, for the compilation of past HROs standing operating procedures (SOPs), and the creation of model SOPs for all stages of an HRO including advance missions, deployment, and field operations.

Proven principles and procedures can be drawn from the SOPs of related field operations, both UN and non-UN. This is particularly true for those HRO field activities that are generic in nature, as opposed to involving human rights issues per se. Such sources of proven procedures can be drawn from such bodies as military peace-keeping, CIVPOL operations, DHA (eg. its rapid reaction unit), UNHCR, and the many non-UN organizations that run field operations.

For SOPs dealing with substantive human rights issues, HROs can usefully draw on expertise from other human rights entities for ideas on guidelines and procedures to deal with issues such as human rights investigations, or protecting sources of information. Relevant agencies or bodies to consult would include UN treaty bodies, the Centre for Human Rights, and NGOs such as Amnesty International or Human Rights Watch.

It goes without saying that the rationale and value of model SOPs for HROs, as set out above, apply equally to HRO field partners such as CIVPOL and military peace-keepers. In addition, most of those partners are not aware of their human rights options, and SOPs will serve to further clarify what they can and should do. Hopefully those partners will become that much more comfortable with their human rights roles.

codes of conduct

Much like SOPs, codes of conduct provide important guidance for members of an HRO, or for other UN members of a larger UN field operation for when they are dealing with human

²¹⁶ In April 1996, the Norwegian Institute of Human Rights, at the behest of the High Commissioner for Human Rights, started to produce a manual for human rights monitoring and investigation, which will assist the preparation of stand-by forces, volunteers, and experts, doing short-term assignments for the HCHR and others in the UN.

rights issues. Codes of conduct go far beyond operational procedures, since they deal with normative standards of behaviour, and attempt to codify the desired impact of UN human rights field professionals. In this regard, the UN's Joint Inspection Unit has recommended that "a specific code of conduct should be prepared and distributed to all missions; that staff should be well briefed regarding their behaviour and in case of misconduct and abuse disciplinary measures should be promptly taken."²¹⁷

The HRO component of MINUGUA in Guatemala has built upon ad hoc guidelines in other HROs, particularly from MICIVIH, to produce their own code of conduct for MINUGUA staff. There are a number of excellent codes of conduct in related fields²¹⁸ that could be drawn upon to further improve the various ad hoc HRO codes of conduct. Existing ad hoc HRO codes of conduct should be distributed for public discussion with a view to creating a model code of conduct for HRO staff, as well as for HRO field partners such as peace-keepers or CIVPOL, for when they are dealing with human rights issues.

10.3 Lessons Learned Mechanism

While there has been some cross fertilization between HROs, and some precedence setting by previous HROs, this has been extremely ad hoc and decentralized. Work spent on developing HRO procedures and mechanisms has often been duplicated, and many experiences and lessons learned have been lost to the UN as individuals ended their assignments and returned home without having their input or suggestions recorded.

There is a pressing need for a human rights in UN operations lessons learned mechanism. That mechanism should be largely designed and coordinated by a lessons learned unit, logically located in the office of primary responsibility for UN HROs. That lessons learned unit would devise an integrated system for collecting HRO operational data and conducting analysis of that data. It would then recommend ways to improve doctrine, training, organization, and procedures, and would publicise those recommendations. Not only will this provide much needed continuity from operation to operation, but will serve to stimulate public debate on the evolution of HRO procedures and practice.

Such a process must not impose too great a burden on either field staff or those leaving the operation, otherwise they will just not do it. Equally, any UN lessons learned unit will inevitably have scarce resources, so that their lessons learned mechanism must be quite streamlined. One of the keys to data collection will be the design of post operational reports to be completed both by individuals leaving the operation, and by specific key office holders

²¹⁷ p.19, UN Doc. A/48/421, 19 October 1993, Joint Inspection Unit, *Staffing of the United Nations Peace-Keeping and Related Missions (Civilian Component)*

²¹⁸ One excellent model is the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief*, IFRC, Geneva 1994, pp.13

both during and at the end of operations. These report forms must be user friendly since invariably many individuals will have to fill out such a report in isolation, ie. without an attendant interviewer. An aspect to be considered is pre-formatted computer report forms for rapid completion, transferral, and incorporation into a data bank.

Another key to effective lessons learned reports is a pre-deployment briefing for those individuals expected to provide post mission reports. They need to know what information will be requested at the end of their deployment, and in what format they will need to provide it. This will allow them to collect thoughts, relevant material, and even start to formulate recommendations as the operation progresses.

There should also be an independent reporting system available to any individual (in the field or post operation) who wishes to pass along an idea for study and consideration. Senior and other key staff should be actively and intensively debriefed at the end of their field contract so as to elicit candid comments on lessons learned

It should be emphasised that any UN unit or centre of responsibility for lessons learned will not have the resources to conduct all the necessary analysis, but will rather take the first step in identifying the key issues and coming up with some initial recommendations. Their next task will be to widely disseminate both the data and those initial recommendation, so as to facilitate public discussion and more refined recommendations. A lessons learned unit would also have the task of tracking recurring issues that infer that those issues are not only common to various human rights operations, but are symptomatic of inherent flaws so as to merit more in-depth analysis.

Finally, the lessons learned unit will be tasked with bringing together key recommendations that have arisen in public debate, and ensuring that they are presented to key UN decision makers for the improvement of existing or future human rights operations.

Recommendation #65

It is recommended that the UN create a human rights field operations lessons learned unit and mechanism, which would collect operational data, conduct analysis of that data, and recommend ways to improve doctrine, training, organization, and procedures for HROs.

Chapter 11 - Logistics and Training

Logistics and training are often the forgotten themes; logistics because it is seen as peripheral to the substantive tasks at hand; and training because it is often not thought of until a crisis presents itself. We can learn much from the Rwandan HRFOR experience. The logistics of that human rights operation (HRO) was so lacking as to dramatically impair the capacity of HRFOR, and at times make it a source of derision by other UN as well as non-UN personnel. The lack of training for HRFOR staff compounded the wide variation in individual ability, and gave rise to some serious mistakes by individual HRFOR personnel, tarnishing the whole HRO.

Both the logistics and training failures were eminently preventable, and other parts of the UN can provide examples on how to do better. In this chapter, the logistics section will briefly look at the administrative, communications, and logistics needs of human rights operations, and impediments within the UN system. The training section will focus on how to better prepare HRO members, as well as the many other UN field partners as elaborated in Chapter five.

11.1 Logistics and Administration

The debate over the issue of political will for HROs has been dealt with in several other parts of this study. That debate will not be revisited here except to note that adequate logistics and administration support, particularly in the field where costs and complexity rise exponentially, depends on finances. The financial ability to afford sufficient HRO logistics and administration is tightly linked to the political will of member states to provide such resources. Witness the situation of HRFOR where the High Commissioner for Human Rights was forced to solicit voluntary contributions, and the subsequent negative impact on HRFOR logistics and administrative support. However even assuming that member states provide sufficient resources, there are a number of other factors that need to be resolved.

Until recently all UN Secretariat field operations activities were expected to operate under the same administrative and operational rules as the rest of the UN Secretariat. These rules were devised for static headquarters style bureaucracies, and are not at all appropriate for dynamic field operations. Elsewhere in the UN specialized agencies such as UNHCR, which regularly mount large field operations, have varied their admin procedures to address the fundamental difference between field and 'headquarters'. Within the UN Secretariat structure, DPKO particularly in the last 5 years, has started to evolve a field support 'attitude' and capacity in response to the rising demands by troop contributing nations and their militaries in the field. The creation in April 1993 of a 7 day 24 hour DPKO Situation Centre, is one of the more

obvious changes. A similar evolution of UNHQ attitude towards HROs has barely started, and needs to be accelerated and set out in logistics/admin standing operating procedures (SOPs).

Recommendation #66

It is recommended that logistics and administration procedures for HROs be developed that meet field requirements and constraints, similar to procedures devised or being devised by other parts of the UN such as DPKO or UNHCR.

Such logistics and administrative procedures need to cover a broad range of possible stages and types HROs. For example DPA, or whichever part of the UN becomes the primary responsibility centre for HROs, needs to develop a survey mission handbook which will provide a comprehensive guide to designing the start-up stage of an HRO. This will allow the HRO head and several senior staff, who hopefully are identified early on and are part of the survey mission team, to have a check list for what they need to determine in their survey mission. The survey mission handbook should address the financial aspects of mounting an HRO, and should include a standardized framework for projected costs reflecting past HRO costs.

Recommendation #67

It is recommended that the UN develop an HRO survey mission handbook.

Very early on in the planning and deployment of an HRO, there is invariably a need to: book aircraft; procure and transport equipment and supplies; enter into contracts for services; recruit personnel; construct or rent accommodation; and so on. Quite apart from the survey mission handbook, there should be fixed SOPs and checklists for likely tasks in deploying an HRO. The invariably need for rapid reaction in the fielding of HROs makes it imperative that these logistics and administration tools be ready in advance.

Recommendation #68

It is recommended that to enhance HRO rapid reaction, that the UN develop HRO deployment checklists and SOPs for standard field operation start-up tasks.

In the field there will always be a tension between the needs of field staff, and the financial accountability needs of the UN. In the field the Chief Administrative Officer (CAO) is often the most senior 'permanent' UN staffer, ie. is a long term UN civil servant and owes both career and primary loyalty to the UN system. It is normal and logical that the CAO has the primary fiduciary role in field operations. Under the CAO, the Chief Procurement Officer (CPO), the Chief Finance Officer (CFO), and the Civilian Personnel Officer (CivPersOff) are delegated financial/administrative authority that is crucial to the functioning of the operation.

There are examples where the financial and administrative "tail" has been wagging the operational human rights "dog". Some of the problems have stemmed from incompetency on

the UN admin and finance side. However, a large number of perceived failures come from misunderstandings by both sides as to what the other's needs are. To a degree the operations side of any field operation must be cognizant of the accountability and time requirements of the UN system. The UN system like any large system, must and will have some inherent functional constraints that must be learned if one is to operate within it.

Commenting on non-UN personnel brought in to staff ONUSAL, the Lawyers Committee noted that "these functionaries cannot be expected to know UN administrative procedures.", and that "Future missions should seriously consider how best to integrate and make effective use of non-UN functionaries."²¹⁹ Clearly the onus is on the UN to consciously train or educate incoming staff as to the UN administrative field procedures that are *essential* to effectively function within the UN system. The word essential imposes further demands on the UN.

UN rules for many field operations must change dramatically. Financial/administrative officers for example have to understand the complexity and speed at which operations shift and change their goals and needs. They must have a better awareness of local operational demands and constraints. In turn, the UN system must allow them to minimize the standard financial reporting needs of the system. There must be looser financial procedures for CAOs and their staff, particularly in the start-up phase of human rights operations. A related study by the UN's Field Administration and Logistics Division, showed that 75% of UN headquarters procurement for peace-keeping operations involved materiel costing between \$1,000 and \$70,000. Delegation to the field for such amounts would reduce the load of an already stretched HQ procurement capacity, reduce delays, and more effectively meet operational requirements.

Quite apart for a need for greater freedom for operations' CAOs and their immediate staff, there is a need to delegate financial authority, and the operational flexibility that goes with it, to HRO operations staff. "Financial authority and accountability should be commensurate with responsibility at each level."²²⁰ One possible example to follow would be that taken by UNHCR which has highly developed procedures for Emergency Response Teams, with concise and easily used field expenditure authorization tools such as ABODs (Administrative Budget and Obligation Document) and ELOIs (Emergency Letters of Instruction).

Recommendation #69

It is recommended that financial and administration officers for HROs be trained to meet the operational demands of the HRO while at the same time meeting essential UN accountability procedures. UN HQs must delegate them sufficient financial authority and procedural flexibility, including the authority to further sub-delegate to operations staff.

²¹⁹ p.17, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

²²⁰ p.25, E/AC.51/1994/3 14 March 1994 PROGRAMME QUESTIONS: EVALUATION, Progress report on the in-depth evaluation of peace-keeping: start-up phase, Report of the Secretary-General

Appropriate equipment and supplies are imperative for the effective functioning of HROs. Logistics is a key component of any phase of any UN field operation. It involves getting what the 'customer' needs, to the right place at the right time and for the right cost. It includes procurement, goods in/out inspection, warehouse management, and inventory control. UN procurement is particularly problematic because the recent exponential growth in UN field operations (eg. peace-keeping, human rights) and the pressures this has put on UN secretariat support capacity. In 1994, the UN's High-Level Expert Procurement Group produced a very forceful report which noted that the system remains "firmly stuck in a time warp in organizational, procedural and process terms."²²¹ They felt that the Secretariat procurement process "had also suffered the classic compartmentalization of functions where over the passage of time each and every manager with a vested interest in keeping his job tried to build an empire around himself. Each empire was solely interested in itself and not in its duty to the whole."²²²

The Group came up with a number of recommendations including a strong call for delegation down to the lowest practical level. Failure to do so "prevents the efficient...and timely actioning of User needs." For example, "consideration should be given to greater imprest purchase orders without order paperwork (just receipts) for the one off needs at Sector level. A figure of up to \$5,000 should be made available which may appear inconsistent with accountability but at present the United Nations is concerned about protecting cents but are actually wasting and losing millions of dollars."²²³

HRO should look at using contingency contracting arrangements, for many outside civilian contractors or NGOs can, more quickly and more cheaply, pull in the right combination of staff and resources from a much larger logistics pool.²²⁴ There might even some role for having reserve stocks of basic equipment, including "start-up kits" maintained for immediate shipment. In the area of coordination, another possible option is the Integrated Logistics Support Program which has been initiated both within the Secretariat and in a number of peace-keeping operations. The idea is that military and civilian field components can identify some common logistics support services.

Recommendation #70

It is recommended that HRO logistics procedures be streamlined and enhanced by increased delegation at all levels of the field operation, along with possible contingency contracting arrangements.

²²¹ paras 2-3, High-Level Expert Procurement Group, Procurement Study, Report December 1994.

²²² *ibid*, para 6.

²²³ *ibid*, para 15.

²²⁴ This is already increasingly common for UN humanitarian operations, and the EU used a German firm to provide logistics support for its contingent to HRFOR.

11.2 Training

In complex emergency situations requiring the involvement of UN operations, the importance of appropriate training for all field personnel can never be over-estimated. Various UN field operation components or agencies already undergo relatively extensive training. Military peace-keepers in particular receive substantial training for peace-keeping operations, and are rapidly evolving even more peace-keeping specific training ²²⁵ in recognition that general combat training alone is not sufficient. Various UN specialized agencies such as UNHCR have also developed training for its field personnel, and continue to enlarge and refine this training.

Unfortunately there has been a belated recognition that there is a similar need for substantial training for human rights operation (HRO) personnel. Some recent operations have highlighted the potential for wasted effort, and even harmful action, by human rights officers who are not trained for field operations. Even more belated is the recognition that others in UN operations like political affairs officers, military or CIVPOL, need human rights operations training as well. So far "there is very little evidence that the issue of training with respect to human rights and criminal justice principles is being taken seriously by Member States or by the UN." ²²⁶

The potential tasks for HROs and HRO field partners are both numerous and extremely complicated. They require in-depth skills and knowledge of a variety of issues including international human rights law and the law of armed conflict, how the UN and its field operations function, and the social, legal, and political situation in the operation area. The increasing complexity of HROs and their tasks, demands a broad variety of personnel with an even broader variety of skills. This in turn requires enhanced skills on how to manage such diverse teams and coordinate with human rights field partners both UN and non-UN.

Training is an essential tool in developing such skills. Simply putting people into field positions and expecting them to pick up skills as they go along, is a legitimate method of developing skilled personnel. However, such an approach is never sufficient in any profession, and becomes particularly problematic in situations of human rights violations where mistakes can have tragic and irreversible impact.

11.2.1 Past HRO training

The type of and degree of training received by personnel for past UN HROs has varied widely. For both UNTAC and ONUSAL, training for human rights personnel appears to have been almost non-existent. Similarly, the earlier UN personnel on HRFOR received no training, and the European Union training for the personnel it selected for HRFOR consisted of one to two

²²⁵ For a discussion of some of these evolving military training requirements see pp. 50-61, LaRose-Edwards, Dangerfield & Weekes, *Non-Traditional Military Training for Canadian Military in Preparation for Peacekeeping*, Report and Recommendations for the Commission of Inquiry Into the Deployment of Canadian Forces to Somalia, Ottawa, December 1995.

²²⁶ p.45, *Peace-keeping and Human Rights*, Amnesty International, IOR/40/01/94, January 1994.

days briefing in Brussels prior to deployment. In the same vein, the first human rights training for CIVPOL and civil affairs personnel of UNPROFOR took place in Zagreb 7-16 July 1995. This was 3 ½ years into that operation, and was a reflection of the low priority given to human rights by UNPROFOR. The first 16 months of HRFOR and all of UNTAC witnessed little human rights training, and this tended to deal primarily with the content of international human rights legal norms. Little if any time was spend on the more critical need for training on the practical implementation of international promotion and protection standards.

Subsequent HROs have slowly increased the training provided to incoming personnel, as well as occasional upgrade or refresher training in the field. OAS selected personnel for MICIVIH received little or no training prior to deployment, and received only a couple of brief sessions upon arrival in Haiti. However, the UN selected personnel for MICIVIH, at least after the arrival of Ian Martin as head, received a comprehensive three week course²²⁷ developed with the assistance of various NGOs. It included sessions on the UN and key aspects of the field operation (security, medical orientation, etc.), and sessions on Haitian history, economy, society, and Créole language training. It then went on to deal with mission mandate and policy, relevant human rights instruments, relevant Haitian law, and finally, techniques of observation, interviewing, and reporting.

The Dayton Accords for Bosnia and Herzegovina is the most recent attempt by intergovernmental organizations to mount a field operation with a major human rights component. Early indications are that there is confusion and a degree of competition as to who is responsible for different human rights operational tasks. This is reflected in confusion as to who is conducting human rights training, what human rights training is needed, and for which personnel, eg. human rights officers, individuals and units in the IPTF IFOR, etc.

The ad hoc nature and confusion of previous human rights training for both HROs and various UN field components such as military peace-keepers, CIVPOL, and political affairs officers is not surprising. Until recently, little coordinated effort has been made look at overall human rights training requirements, when such training should occur, and who should be responsible for either carrying it out or ensuring that it happens.

11.2.2 Training requirements

As to the amount of training required for field operations, it is useful to look at military training for UN field operations. Their deployment, often quite rapid, into confused and sometimes hostile environments, demands a degree of professionalism that requires substantive training and preparation. Increasingly there is a feeling that civilian 'peacekeepers' such as humanitarian operations or HROs, require the same degree of training as military peace-keepers.

²²⁷ In 1993 and in close collaboration with CIVPOL, MICIVIH developed a 5 day condensed version of their 3 week course for CIVPOL.

The comparison with military training should not be extended overly far, since military recruits start with relatively few relevant skill, and undergo extensive and expensive training (measured in months and years as opposed to days or weeks) both on initial recruitment and throughout their careers. Most of the time, individuals identified for HROs will already have a high degree of relevant expertise. However, UN operational demands and the inevitable need to operate in quite disparate foreign cultural and political environments, places very new and unique skill demands on those deploying as UN human rights personnel. The present practice of sending in human rights experts with little or no additional training for field operations, is quite unacceptable. Most military peace-keepers would not put up with this, and neither should civilian 'peace-keepers' or 'peace-makers'.

As to the content of training for HROs and their field partners, it is useful to examine this under the rubrics of generic training, and operation specific training²²⁸. **Generic training** deals with skills that are common to all or most HROs, and thus can be provided well in advance of, and without any extensive knowledge of, any specific operational theatre. The second type, **operation specific training**, builds upon or refines generic training to meet a specific operation's socio-political environment and unique operational demands.

11.2.2.1 generic training

Perhaps the strongest argument in favour of generic training is that "urgency and crisis are almost hallmarks of the context in which human rights field missions are deployed"²²⁹ When a crisis arises, there is simply not enough time to conduct all of the training that is required to deploy military or civilians into a field situation.

Generic training ensures that there is a basic standard of operational preparedness. There is substantial generic human rights operational training that can be carried out far in advance and without any firm idea of where any individual or HRO would be deployed. This includes such topics as international human rights and humanitarian law; UN HRO doctrine and standing operating procedures; monitoring, reporting, and investigative procedures; media and public relations; mediation and more active intervention; UN field logistics and administration; critical incident stress management; security; and not least of all, a knowledge of potential human rights field partners such as CIVPOL, military peace-keepers, ICRC, NGOs, etc.

Similar to military training, generic training allows the trainers and others to assess the abilities and capacity of particular individuals undergoing that training. This is particularly important in the absence of sufficient relevant field experience to assess candidates for an HRO. Training should include a number of 'field' scenarios or exercises, not only as an optimum training vehicle for many field skills, but as a means to evaluate the trainees' reactions, judgement, and decision making capacity in a quasi-operational context. Where possible, much of this

²²⁸ For a more comprehensive assessment of training needs see Karen Kenny, *Towards effective Human Rights Training for International Field Missions*, first draft paper 1.0, April 1996. This is part of the Irish Governments Human Rights Training Project.

²²⁹ p.9, Kenny, *ibid.*

information should be part of central personnel data bases so as to facilitate the rapid identification of appropriate individuals as UN HROs or other human rights operations arise.

Some individual trainees might discover that they are not prepared to undertake the type of tasks envisaged, or to accept the basic living conditions found in many field operations. As a result some will withdraw their names from consideration for HROs. Most others having gained a better appreciation of what may be required from them if they are mobilized, will become effective just that much faster when they receive operation specific training and are actually deployed.

Recommendation #71

It is recommended that like military peace-keepers, that extensive generic training on human rights field skills be provided to potential HRO personnel prior to being selected for any particular HRO.

11.2.2.2 operation specific training

It is obvious that teams or individuals selected for a particular human rights operation will need country specific training in order to tailor their generic skills for the situation they will actually face. Some of this can occur in a pre-deployment phase, but there are advantages in much of the training occurring in the operation area. This can take place both upon arrival (induction training), and through periodic refresher or upgrade training.

Often this operation specific training will consist of generic training which has been customized for a particular operational context. Therefore many of the same areas of training as covered in generic training will be covered here, albeit often in abbreviated form as individuals should already be grounded in the theory and a variety of operational options.

The driving rationale for 'customized' operation specific training, is the unique political, social, legal and cultural context of the operation, eg. the regional or country in which an operation is taking place. However, there is also a need for operation specific training as to the local 'international' environment, eg. operation mandate, other operation components, other international players present such as international NGOs and UN agencies, how they interact, etc.

Customized training for the country of operation can range from the immediately obvious such as working in the local language, to how to address and work with traditional leaders. Other less immediately obvious customization includes training to operate within or alongside a

national legal system. In what Kenny refers to as subsidiarity²³⁰, there is a need to allow for, and facilitate, the local justice system's protection of human rights.

For example, an HRO might be alerted to a particular human rights abuse allegation. Quite apart from any internal HRO recording, investigating or reporting procedures, it is incumbent upon the HRO to attempt to ensure that the local officials are aware of the allegations, and that they have an opportunity to follow up the allegations. The strategies or guidelines for doing so can often be problematic, particularly where local authorities have been implicated in perpetrating or allowing violations in the past. Quite apart from a conscious strategy to involve the local justice system and facilitate its improvement through working, to "monitor the effectiveness of domestic remedies, in the light of international human rights law, training must impart knowledge of how the domestic legal system, institutions, procedures and remedies, are intended to work in practice, so that failings in that practice can be accurately identified, and recommendations made for their appropriate solution in consultation with local partners."²³¹

Any human rights operation training must concentrate on the practical or operational, as opposed to the legal or theoretical. However, this is particularly important for operation specific training. For example, the primary challenges for most human rights field investigations include getting the facts straight, assessing the credibility of witnesses, confirming information through third parties if possible, and documenting the investigation. Assessing how a rape, murder, or ethnic cleansing relates to the International Covenant on Civil and Political Rights is secondary at best. For this reason alone, human rights operations training must draw extensively from the experience of former or serving HRO personnel, and draw upon HRO lessons learned.

Recommendation #72

It is recommended that like military peace-keepers, that extensive operation specific training be provided to HRO staff both immediately prior to deployment, and in the field.

Recommendation #73

It is recommended that training for HROs be primarily focussed on the practical or operational, as opposed to the legal or theoretical.

There are two categories of people to train. One category includes core human rights experts, often present in the field in a distinct HRO. Less obvious and often ignored, is the second category which includes the UN human rights field partners such as civil affairs officers, the military, or CIVPOL. Failure to train these and other HRO partners will serve to minimise

²³⁰ Kenny borrows the term from the law of the EU in that matters not in the exclusive competence of the EU may be acted upon "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by Member States". See discussion on HROs exhausting local remedies in Kenny, *ibid* pp.19-21.

²³¹ p. 20, Kenny, *ibid*.

both their independent capacity to promote and protect human rights, and their capacity to enhance and extend the efforts of the HRO.

Recommendation #74

It is recommended that all UN field operation personnel receive a minimum of one day training on the human rights facets of UN field operations. Operation components such as military, CIVPOL, or political affairs officers, with the potential to be more directly involved in UN human rights field activity, will need substantially more human rights training.

In training human rights field partners, there are normally two broad types of training; recognition and reaction. The first, recognition training, is what to look for. For example, they need specific training so that they are aware of vulnerable sectors of the population such as the particular plight of the elderly, children, displaced persons, women, etc. Only with such recognition training will they really be able to effectively monitor for human rights violations. The second type of training, reaction training, is the broad rubric for setting the options on what they can do once they have identified human rights violations, and the relevant skills ranging from effective reporting to possible active intervention.

As a final note, the choice of individuals for a particular HRO, standby HRO rosters, standby military units, etc. will dictate where the training gaps are. Each training session needs to be customized to produce the required qualified individuals. However, "it should not be the function of training to replace what ought to have been minimum criteria for selection."²³² Also, it does not appear to be self evident that training must be carried out by qualified trainers. The complexity of human rights invariably makes it imperative that trainers be human rights experts in their own right. However, there has been a tendency to confuse human rights expertise with the ability to teach. Teaching is a professional skill that can be taught, and professional human rights trainers are critical for effective training. This is particularly so when an audience such as military or political affairs officers harbour a degree of scepticism about the actionability of human rights.

The remaining question is, who should be responsible for carrying out such training, or ensuring that such training has taken place?

11.2.3 UN and national training

Over the long term, the UN will increasingly have the capacity to provide a fair amount of the training necessary for HRO personnel and HRO field partners. However in the short to medium term, DPA, the HCHR, and other potential UN centres of responsibility for such training, lack sufficient resources to do so. This is not meant as a criticism, any more than it

²³² p.28, Kenney, *ibid.*

is a criticism to reflect on the fact that the Department of Peace-Keeping Operations (DPKO) and the UN provide very little of the training required by UN military peace-keepers or CIVPOL. Simply put, the training needs are substantial, and the resources provided by member states to the UN to do so are minimal.

However, and again similar to the role of the training unit of DPKO, the UN should play a facilitating role for others to conduct training. For example, the UN should bring together human rights training curriculum and materials and where useful, produce UN training materials that draw from the best. Where resources permit, the UN should also take part in training carried out by others, including the suggesting of course content. Similarly, the UN should provide human rights field training experts who would 'train the trainers'. Those outside trainers in turn would be expected to conduct the training for operational personnel. This is a cost effective approach inasmuch as there are relatively few trainers to train, but an enormous amount of civilian and military personnel to train.

Human rights field training should incorporate lessons learned from past successes and failures. Past members of human rights operations have enormous potential both for lessons learned mechanisms, and for training. Since the UN logically should be the centre of responsibility for a lessons learned mechanism, and in keeping with a facilitation role reference human rights training being conducted by others, the UN should concurrently facilitate the involvement of former human rights field personnel in outside training courses.

Since the UN presently does not have the capacity to provide training for even in-house UN personnel, the UN should look to outside governmental and non-governmental agencies to carry out such training. A number of independent organizations are already focussing on providing such training, or developing training materials. For example, the Canadian based Pearson Peacekeeping Centre, which carries out training for civilians and military, is presently developing a two week course on human rights in peacekeeping. Its' first delivery will be in August 1996. The PPC has already developed a half day module on human rights in peacekeeping which has been put into many of its other courses. Also, the European University Centre for Peace Studies at Stadtschlaining Austria, has a three week Peace-Keeping and Peace-Building Training Program where participants can elect in the third week to focus on human rights.

Similarly, the UN should look to outside assistance in devising training materials. For example, the Norwegian Institute of Human Rights has started to produce a manual for human rights monitoring and investigation. It is being designed to assist in the preparation of standby forces, volunteers, and experts doing short term assignments for the HCHR and others in the UN. Similarly in 1995, English and Stapleton put together a *Practical Guide to monitoring human rights* for the University of Essex Human Rights Centre.

The examples above are merely a few of the independent non governmental initiatives taking place around the world. The UN should actively foster such initiatives through encouragement, content expertise, and involvement in actual training. Similarly, the UN should act as a clearing house for information on who is doing what. It makes sense the this be done by the HCHR or any future office of primary responsibility for human rights operations such as DPA.

On the governmental side, the Irish government has initiated a review of its role in the whole field of human rights operations. Part of their review is a Human Rights Training Project which includes a policy paper by Karen Kenny entitled *Towards Effective Human Rights Training for International Field Missions*,²³³ and the Irish government is seriously considering playing a lead in providing such training.

Also from the governmental side, and in a much larger sense than just meeting a training gap, is the idea of national human rights standby arrangements as discussed fully in section 6.2 above. It is largely due to a lack of sufficient trained individuals that Norway initiated NORDEM,²³⁴ in which training is a key component of screening and preparing those on that roster. Canada and other nations are actively considering NORDEM like initiatives. Faced with a lack of UN resources to comprehensively undertake human rights field training, those nations should undertake to assess what operation specific human rights training the UN will or will not be providing. They then need to find ways to ensure that their nationals and possibly others, are provided with whatever essential human rights field training is required.

However, this does not infer that the UN can abdicate its training responsibility reference such national training mechanisms, standby or other. Common training standards and criteria will play a critical role in ensuring that individuals and teams trained by outside organizations and states, meet basic UN skill levels. Quite apart from issues of competency, such a UN oversight role will help to ensure that individuals and teams are field compatible. In other words, individuals will have a common understanding of principles and procedures, so that upon deployment they will be able to more rapidly coalesce into a functioning team, or work in tandem with other human rights field partners.

Obviously the UN in cooperation with non-UN bodies, needs to initiate the creation of common training standards and criteria. In the same vein, there is a need for a roving UN team with a mandate to monitor both human rights standby arrangements and training standards.

Recommendation #75

It is recommended that the UN actively encourage outside organizations and various governments to provide human rights field training, and that the UN play a central coordinating and facilitating role.

See Annex II for a model course outline from which to derive both generic training and mission specific training.

²³³ Kenny, *ibid.*

²³⁴ See section 6.2.2 for details on NORDEM and training of Africans for NORSTAFF.

Chapter 12 Conclusion: Political Will and Operational Professionalism

Human Rights Imperative

United Nations field operations have become increasingly common and increasingly complex. In light of Somalia, Rwanda, and Yugoslavia, they certainly need to become more effective.

In the attempt to evolve better ways to handle complex emergencies, it is increasingly evident that human rights is both a causal factor, and one of the keys for effective solutions. Quite apart from the UN's human rights legal and moral imperatives, ignoring human rights threatens and at times can totally preclude success in UN operations.

The operational imperative of human rights for UN peace-keeping, peace-making, or other field operations, can no longer be denied. Whether this operational imperative will be acted upon depends upon political will and operational professionalism.

Political Will

The political will of UN member states is central to the evolution of human rights in UN field operations. It is incumbent upon those member states who do understand the fundamental importance of human rights to UN operations, to convince the others. Traditional arguments based on legal and moral imperatives or duties have not proven to be very persuasive. Hopefully the operational benefits or imperatives of mandating UN operations to deal with human rights will be more compelling. Concurrently, member states taking a lead in this issue, can provide additional support through such mechanisms as human rights standby mechanisms.

The political will of senior UN bureaucrats is almost as important as the political will of states. Some individuals need to be convinced of the operational imperatives, and perhaps are not clear on the legal duties of the UN. More problematic is the organizational infighting which to a degree is natural to any large organization. However, the level of internal UN politics should not be allowed to threaten core UN human rights values and institutions, or undermine mechanisms such as the nascent concept of human rights operations.

The recommendation that the UN designate a single UN office of primary responsibility for human rights operations, addresses just one manifestation of this UN turf fighting. That and other such decisions should not be decided by attrition or default. Member states and the

Secretary-General should strategically decide which office of the UN is best suited to run human rights operations. One ramification of taking an early and effective decision on this, will be to dramatically enhance UN efforts to professionalize its mounting of human rights operations.

Operational Professionalism

Human rights are both immensely complicated and inherently political. Therefore it comes as no surprise that human rights action by UN field operations generally, and human rights operations specifically, are just as complicated and political. Add in the logistical complications of running UN field operations, and it is understandable that there have been a number of limited human rights operation successes and at least one qualified failure.

Limited successes and failures are partly excused by the groundbreaking nature of these early human rights operations. We no longer have this excuse, and in fact, enhancing human rights operational professionalism will be far easier to resolve than the lack of political will. There are innumerable dedicated individuals in this field, and they are working hard to help evolve 'best practices'. This is not to infer that they always work harmoniously. Because they feel passionately about their human rights vocation, they sometimes fail to understand the need to compromise both with each other and the UN system.

The call goes out to human rights activists in this field to work harder at achieving common purpose both amongst themselves, and with supportive UN member states and bureaucrats. Infighting amongst those working at professionalizing human rights in UN field operations can only play into the hands of those who wish, or expect, such endeavours to fail.

The Way Forward

Various individuals inside and outside of the UN have worked long and hard to put human rights into UN field operations. Despite inevitable 'start-up' mistakes, there is no contradiction in the observation that the first generation of human rights operations has been particularly innovative and successful.

It is important that the momentum and strategic vision of that first generation not dissipate. Now is the time to learn from past mistakes and successes, and move on to the next generation. However, it is only through a combination of political will and operational professionalism, that human rights principles will be fully operationalized and integrated into UN field practice.

RECOMMENDATIONS

Recommendation #1

It is recommended that all UN field operations automatically include senior human rights staff or advisors, and that every major UN field operation have a distinct human rights operation (HRO), eg. a human rights division.

see p.8

Recommendation #2

It is recommended that as human rights are a fundamental factor in complex emergencies, that a UN operation should include human rights staff or a human rights operation (HRO) as additional tools for the strategic analysis of causes, and the devising of solutions for, that complex emergency.

p.12

Recommendation #3

It is recommended that the UN consider human rights intelligence and human rights operations, as key contributors to operational and tactical decisions by all components of a UN field operation, including military peace-keepers, CIVPOL, and political negotiators.

p.13

Recommendation #4

It is recommended that the UN identify and analyse concrete political and tactical field successes and failures where human rights had a major policy or tactical contribution.

p.14

Recommendation #5

It is recommended that UN member states and senior UN officials clearly set out UN human rights field policy, and state unequivocally that UN action in promoting and protecting human rights will be evenhanded and consistent so as to be impartial and neutral.

p.15

Recommendation #6

It is recommended that the UN field operations doctrine consider human rights operations (HROs) and human rights development assistance as fundamental building blocks in achieving durable peace.

p.19

Recommendation #7

It is recommended that there be a UN resolution declaring that all UN sponsored international human rights law, and the law of armed conflict, bind the UN on how it mandates and conducts field operations.

p.30

Recommendation #8

It is recommended that UN field doctrine clearly elaborate on how international human rights law and the law of armed conflict bind the conduct of all UN field personnel or their agents, including peace-keeping forces.

p.30

Recommendation #9

It is recommended that the UN create an ombuds office with a field branch in every major UN field operation, to receive and act upon allegations of violations by UN personnel of both international human rights law and the law of armed conflict.

p.30

Recommendation #10

It is recommended that human rights operations be an integral component of any larger UN field operation, and that they report directly to the head of operation.

p.36

Recommendation #11

It is recommended that UN member states provide HROs with detailed mandates so as to provide full legitimacy and authorization for the various activities of the HRO, and signal clearly the political will of member states to support substantive human rights promotion and protection by all components of the larger UN field operation.

p.37

Recommendation #12

It is recommended that UN member states and senior UN officials be fully cognizant of the need for their political support for an HROs to be consistent throughout its deployment.

p.38

Recommendation #13

It is recommended that the High Commissioner for Human Rights actively advocate for the inclusion of human rights into the mandate and structure of all UN field operations, eg. peacekeeping operations. In particular the HCHR should press for the creation an HRO and comprehensive mandates for that HRO. The HCHR would subsequently, and independently, monitor HROs and other UN field operations and advocate for re-focussed or increased human rights activity where necessary.

p.41

Recommendation #14

It is recommended that the High Commissioner for Human Rights and the Centre for Human Rights have a mandated role to advise, and facilitate where appropriate, those mounting UN human rights operations.

p.42

Recommendation #15

It is recommended that there be a single UN HQ office of primary responsibility for human rights operations, that would either carry out, or directly delegate and oversee, such activities as planning, budgeting, staffing, administration, logistics, financial oversight, and lessons learned.

p.43

Recommendation #16

It is recommended that the Department of Political Affairs be tasked as the UN Headquarters office of primary responsibility for mounting and administering human rights operations (HROs).

p.46

Recommendation #17

It is recommended that in light of the political sensitivity and complexity of HROs, that DPA or other UN office of primary responsibility for HROs, retain greater control of the functions of staffing, training, and field administration, than is normally the case for civilians in other UN field operations.

p.49

Recommendation #18

It is recommended that HROs have a small core of experienced human rights field experts who are able to manage the larger HRO staff of supplementary specialists and ancillary support staff.

p.50

Recommendation #19

It is recommended that HROs develop clear operational and management techniques to reflect the varied nature of HRO staff and the 'management' requirements of dealing with, and working through, other UN field partners.

p.52

Recommendation #20

It is recommended that HROs select sufficient senior staff with the management capacity to handle the unique organizational demands of a UN HRO.

p.52

Recommendation #21

It is recommended that all components of UN field operations be mandated and trained to play appropriate roles in human rights promotion and protection.

p.55

Recommendation #22

It is recommended that an SRSG and their political staff be fully briefed on their human rights obligations and role, as well as on the options available to them in carrying out their human rights role.

p.57

Recommendation #23

It is recommended that where there is an HRO, that the SRSG and their political staff be fully briefed on the specific human rights mandate of the HRO.

p.58

Recommendation #24

It is recommended that all UN CIVPOL be fully briefed on their human rights role, the functions of the HRO if there is one, and the options available to CIVPOL in carrying out their human rights role.

p.59

Recommendation #25

It is recommended that an HRO take advantage of the particular capacity and skills of UN CIVPOL, including at times the investigation of alleged violations, or the gathering of human rights intelligence.

p.59

Recommendation #26

It is recommended that HROs with an investigative mandate, include serving or retired CIVPOL investigatory experts as part of their investigation staff, and that these experts receive training to adapt their skills to UN human rights investigations.

p.59

Recommendation #27

It is recommended that the Force Commander and all military peace-keepers be fully briefed on their human rights role, the functions of the HRO if there is one, and the options available to UN military in carrying out their human rights role.

p.61

Recommendation #28

It is recommended that where relevant, that an HRO take advantage of particular capacities and skills of UN military peace-keepers including human rights monitoring, assessing command responsibility for violations, assessing combat activity such as shelling or sniper fire, and various degrees of military intervention to protect potential victims.

p.61

Recommendation #29

It is recommended that HROs be fully aware of the operation area activities of relevant human rights NGOs and the ICRC so as to better coordinate the activities of the HRO with those potential field partners.

p.63

Recommendation #30

It is recommended that UN human rights entities such as treaty bodies, special rapporteurs, independent experts, working groups, or other ad hoc UN human rights bodies, play an independent role in advising HROs on the human rights situation in relevant countries, and in monitoring HROs' actions to address those situations.

p.65

Recommendation #31

It is recommended that HROs be fully aware of the activities of relevant humanitarian agencies in the operation area so as to better coordinate the activities of the HRO with those potential field partners.

p.66

Recommendation #32

It is recommended that the UN look to regional organizations to play a role in promoting and protecting human rights through both their own independent field operations and in conjunction with the UN.

p.69

Recommendation #33

It is recommended that the UN play a role in strengthening the capacity of regional organizations to mount HROs independently and in conjunction with the UN.

p.69

Recommendation #34

It is recommended that HROs be fully aware of the potential of the media to help or hinder their efforts, and that HROs formulate a clear policy on working with the media.

p.70

Recommendation #35

It is recommended that HROs be aware of bilateral and multilateral aid programs that impact on human rights reconstruction and capacity building, and where appropriate that the HRO in the field and perhaps the HCHR at the UN HQ level, play a role in helping to coordinating such human rights development assistance.

p.73

Recommendation #36

It is recommended that HROs use local partners, both government and civil society, to inform HRO activities, and where possible use local partners as agents for implementing HRO programs.

p.74

Recommendation #37

It is recommended that HROs actively build up the capacity of local human rights partners, both government and civil society, so as to enable the HRO to hand over its responsibilities to the local society and leave.

p.75

Recommendation #38

It is recommended that an HRO mandate, and field directives by the SRSG, make it clear to all UN operation components that the HRO is the coordination facilitator for all the UN operation's human rights activities, but that this does not lessen the human rights mandate and obligations of other UN operation components, eg. CIVPOL and military peace-keepers.

p.76

Recommendation #39

It is recommended that HROs understand fully their potential human rights coordinating roles, and that appropriate staff be trained on how to achieve this role requiring diplomacy, persuasion, and effective coordination.

p.78

Recommendation #40

It is recommended that DPA or other UN office of primary responsibility for mounting an HRO, create clear and in-depth guidelines for staffing HROs including procedures, and data bases. These should address issues such as recruitment criteria, rosters, interviewing, selection, terms of engagement, grounds for dismissal, salaries, personnel equipment supplied, deployment, field redeployment, promotions, evaluation of individuals, etc.

p.83

Recommendation #41

It is recommended that DPA or other UN office of primary responsibility for mounting an HRO, retain control of all substantive aspects of staffing including in particular the selection, training, and substantive management of HRO staff.

p.83

Recommendation #42

It is recommended that Canada and other governments consider funding the creation and maintenance of national human rights standby mechanisms as a resource for the UN and other regional bodies, and that they model them upon the Norwegian Resource Bank for Democracy and Human Rights (NORDEM) so as to facilitate inter-agency coordination and cooperation.

p.89

Recommendation #43

It is recommended that Canada join with Norway to work with other evolving national and regional human rights and democracy standby mechanisms, to create procedures to inform and coordinate, and avoid unnecessary competition and duplication.

p.95

Recommendation #44

It is recommended that 20% of 'national' human rights standby rosters created by developed countries be composed of experts from economically developing countries.

p.95

Recommendation #45

It is recommended that where developed country deploys a 'national' team of human rights experts, that 10% to 40% consist of experts from economically developing countries.

p.96

Recommendation #46

It is recommended that apart from a 'ten-twenty-forty' policy on incorporating experts from economically developing countries into developed countries' human rights standby mechanisms, that developing countries and their regional organizations be encouraged to create their own human rights standby mechanisms.

p.96

Recommendation #47

It is recommended an HRO develop the skills and strategy to play a key role in encouraging, receiving, analysing, and disseminating human rights intelligence.

p.99

Recommendation #48

It is recommended that all UN operation components, such as military peace-keepers, be more aware of how to use human rights intelligence and early warning to inform their tactical decisions and actions.

p.100

Recommendation #49

It is recommended that all UN field operation components be aware of the spectrum of options available to them in responding to human rights violations or the threat of violations.

p.101

Recommendation #50

It is recommended that the UN evolve a number of automatic responses by UN field operations to particularly egregious human rights violations.

p.102

Recommendation #51

It is recommended that the security of local individuals, including protection of witnesses, other local sources of human rights information, and security of HRO records, be an essential part of all monitoring and reporting procedures.

p.105

Recommendation #52

It is recommended that HROs create a central information gathering and investigation support capacity, including where necessary a special investigations unit to deal with complex cases.

p.106

Recommendation #53

It is recommended that the UN develop standing operating procedures (SOPs) for UN field operations in all aspects of human rights monitoring including witnessing, investigating, recording, and reporting.

p.108

Recommendation #54

It is recommended that appropriate staff of all UN field operation components (ie. CIVPOL, military, HROs) be trained on what violations to be looking for, how to look for them, and how to report them. The HRO should play a key role in ensuring that such training take place.

p.110

Recommendation #55

It is recommended that, where there has been a history of egregious human rights violations with little investigation or accountability for those violations, the mandate of an HRO should include the capacity to help identify those responsible.

p.116

Recommendation #56

It is recommended that the UN and its field operations not take a position on amnesties for human rights violations, and that such decisions be left solely up to the societies attempting to reconcile and rehabilitate themselves.

p.117

Recommendation #57

It is recommended that HROs have a human rights institution and capacity building program premised upon local input and planned handover to local control of relevant HRO functions. As a corollary, HROs should encourage and facilitate human rights programming by other UN agencies that will remain in country long term.

p.118

Recommendation #58

It is recommended that for security forces' human rights capacity building, that HROs focus on changing attitudes and instituting human rights protection mechanisms, as opposed to general professional development.

p.120

Recommendation #59

It is recommended that HROs actively involve appropriate UN CIVPOL and military peacekeepers in human rights awareness and human rights capacity building for police, prison guards, the military, and other security forces.

p.121

Recommendation #60

It is recommended that HROs have an active program of institution and capacity building in the areas of legal reform, judicial systems, legal aid, and other judicial access tools

p.123

Recommendation #61

It is recommended that HROs have an active program of institution and capacity building for national human rights institutions, such as commissions or ombuds.

p.123

Recommendation #62

It is recommended that an HRO facilitate the building of civil society's human rights capacity, this being the most effective strategy for long term human rights protection.
p.125

Recommendation #63

It is recommended that the Secretary-General set out UN doctrine on human rights in UN field operations.
p.129

Recommendation #64

It is recommended that Department of Political Affairs or the Centre for Human Rights take the responsibility, in collaboration with the other, for the compilation of past HROs standing operating procedures (SOPs), and the creation of model SOPs for all stages of an HRO including advance missions, deployment, and field operations.
p.131

Recommendation #65

It is recommended that the UN create a human rights field operations lessons learned unit and mechanism, which would collect operational data, conduct analysis of that data, and recommend ways to improve doctrine, training, organization, and procedures for HROs.
p.133

Recommendation #66

It is recommended that logistics and administration procedures for HROs be developed that meet field requirements and constraints, similar to procedures devised or being devised by other parts of the UN such as DPKO or UNHCR.
p.136

Recommendation #67

It is recommended that the UN develop an HRO survey mission handbook.
p.136

Recommendation #68

It is recommended that to enhance HRO rapid reaction, that the UN develop HRO deployment checklists and SOPs for standard field operation start-up tasks.
p.136

Recommendation #69

It is recommended that financial and administration officers for HROs be trained to meet the operational demands of the HRO while at the same time meeting essential UN accountability procedures. UN HQs must delegate them sufficient financial authority and procedural flexibility, including the authority to further sub-delegate to operations staff.
p.137

Recommendation #70

It is recommended that HRO logistics procedures be streamlined and enhanced by increased delegation at all levels of the field operation, along with possible contingency contracting arrangements.

p.138

Recommendation #71

It is recommended that like military peace-keepers, that extensive generic training on human rights field skills be provided to potential HRO personnel prior to being selected for any particular HRO.

p.142

Recommendation #72

It is recommended that like military peace-keepers, that extensive operation specific training be provided to HRO staff both immediately prior to deployment, and in the field.

p.143

Recommendation #73

It is recommended that training for HROs be primarily focussed on the practical or operational, as opposed to the legal or theoretical.

p.143

Recommendation #74

It is recommended that all UN field operation personnel receive a minimum of one day training on the human rights facets of UN field operations. Operation components such as military, CIVPOL, or political affairs officers, with the potential to be more directly involved in UN human rights field activity, will need substantially more human rights training.

p.144

Recommendation #75

It is recommended that the UN actively encourage outside organizations and various governments to provide human rights field training, and that the UN play a central coordinating and facilitating role.

p.146

HUMAN RIGHTS AND UN FIELD OPERATIONS DRAFT MODEL COURSE OUTLINE

[This outline must be tailored for the training needs of participants]

PART 1 INTRODUCTION

The course introduction will set out the legal and moral obligations for all UN staff in field operations, be they human rights monitors, military peace-keepers, CIVPOL, humanitarian or other UN operation member. In depth coverage of international human rights legal instruments or procedures will be dealt with in the section on skills, and will depend on the time available and participant's requirements. The introduction will also set out the operational benefits of incorporating human rights into the mandate and functioning of UN field operations.

The introduction will stress that the operational application of human rights in field operations is at an early stage in its evolution. Course participants particularly those who have been on peace-keeping operations, will be encouraged throughout the course to play an active role in defining human rights in field operations generally, and their particular role specifically. The whole tenor of the course should be that of participatory learning

1.1 International Human Rights Law & Law of Armed Conflict

A brief overview of key international instruments. It will show how they are applicable as international law binding the UN, binding ratifying states, and portions binding as customary law eg. genocide. Mention will be made of possible national policies and practices which provide additional guidance to national contingents or individuals provided by their country for UN operations.

1.2 International Human Rights Structures

This section will briefly outline parts of the international human rights environment or community such as:

- UN ECOSOC & the Commission on Human Rights,
- High Commissioner for Human Rights & the Centre for Human Rights,
- treaty bodies, and special procedures (special rapporteurs, working groups, etc.)
- specialized agencies, eg. UNHCR, UNCPCJB
- Secretariat, DPA, DPKO, DHA

- non-UN regional organizations,
- national governments and institutions,
- NGOs, both international and local

1.3 Previous UN Field Operations With Human Rights Operations¹ Or Components

- El Salvador, ONUSAL
- Cambodia, UNTAC
- Haiti MICIVIH
- Guatemala MINUGUA
- Rwanda HRFOR
- ex-Yugoslavia: Special Rapporteur, Tribunal, Dayton Accords, ...
- & possibly: Mozambique (ONUMOZ), Western Sahara (MINURSO), Angola (UNAVEM III), Iraq (UNIKOM), Liberia (UNOMIL), South Africa (UNOMSA), Namibia (UNTAG) Somalia (UNOSOM, UNITAF)

1.4 Operation Mandates and Rules of Engagement

- the inherent human rights component of UN operational mandates based on UN standards and doctrine codified in the Charter and key UN instruments, eg. the International Bill of Rights
- explicit or tacit inclusion of human rights objectives into operation mandates and ROEs
- the tension between military, political, humanitarian, and human rights objectives

PART 2 HUMAN RIGHTS FIELD PARTNERS and THEIR COORDINATION

2.1 Human Rights Field Partners

This part will detail why any particular component or individual in a UN field operation has a human rights role, and generally what that role should be. The recurring theme is that even with a UN human rights operation in place, other UN field components retain a major responsibility and provide a major resource for the HRO. This overview will also inform participants as to the role of others and how they fit together. The particular partners covered will include:

- UN human rights operation (see footnote 1)
- High Commissioner for Human Rights and Centre for Human Rights
- other UN human rights experts (rapporteurs, tribunals, commissions of experts, etc.)
- human rights NGOs and the ICRC
- CIVPOL
- military
- humanitarian aid agencies
- media
- local partners, including government, NGOs, civil society

¹ A Human Rights Operation (HRO) can stand alone, or part of a larger UN field operation, eg. a peace-keeping operation. There have been 5 to date: El Salvador, Cambodia, Haiti, Rwanda, Guatemala. In El Salvador, Haiti, and Guatemala, the HRO was the vanguard of a larger and more comprehensive UN presence. In Cambodia it was an integral part of UNTAC from the beginning. In Rwanda, HRFOR was a stand alone operation albeit along side UNAMIR.

2.2 Their Coordination

This portion will have participants looking at some of the possible ways in which the variety of partners and their roles outlined in the previous section could be coordinated. The optimum solution is for it to be carried out by a human rights operation, but the course will also look at how it can be done in the absence of such a centre of responsibility in the field

2.2.1 Past UN field operations

- where there was a human rights operation (ONUSAL, UNTAC, MICIVIH, HRFOR, MINUGUA)
- other UN operations with smaller human rights components (eg. UNPROFOR, ONUMOZ, UNAVEM III, UNTAG)

2.2.2 An optimum coordination model

- following on from the previous section, this theoretical construct will draw upon past operations and input from the course participants as to what would have worked best from their particular operational perspective. The theme should be that every UN operation is different, and that any coordination model will have to be adapted to local circumstances.

2.2.3 Where there is no human rights operation or other formal focus of human rights responsibility

- in such a situation the duty of other UN field operation components will in fact be greater.
- how should they proceed both individually and in coordination to ensure that the key human rights issues are being dealt with
- how should those in the field ask for human rights help or advice, both from within and without the theatre of operations

2.2.4 Coordination Mechanisms or tools

- liaison staff
- meetings and cross-briefings
- information sheets, sitreps
- feedback especially from an HRO back to military, CIVPOL, and others sending in intelligence and initiating first line response
- early warning human rights intelligence

PART 3 HUMAN RIGHTS FIELD SKILLS

Part 3 will introduce many of the skills required for various human rights tasks. Each section must be customised (or omitted) to meet audience needs and time constraints. This skills training is possibly the most critical part of the course. Once individuals are convinced as to their obligations and roles, they will need these tools to actually carry out their tasks. The more practical the course, the more participants will end up implementing human rights promotion and protection.

3.1 International Human Rights Law and Law of Armed Conflict

Normally this section should be relatively short so as not to intimidate or tranquillize

- international human rights structures/mechanism
- international human rights instruments and their implementation
- law of armed conflict
- regional human rights instruments/procedures
- the operation country's constitution, human rights laws and practices

3.2 Observing

- what to look for
- use of sources, and their protection
- prison visits
- demonstrations

3.3 Reporting and Recording

- key elements including who, why, where, when,...

3.4 Investigation

- how to carry out investigations, basic forensic training
- how not to destroy evidence

3.5 Mediation and Negotiation (passive intervention)

- how and when to intervene with local authorities (military, police, justice, hospitals, etc.)

3.6 Active Intervention

- triggered by violations so severe that they are prima facie gross violations of international legal norms and as such require intervention by UN personnel.

3.7 Local Cultural & Legal & Political Environment

- understanding the written and unwritten rules of behaviour of the local society
- understanding the political dynamics of the society

3.8 Media Relations

- the why, how and when of going public
- a UN radio station?

3.9 Public Relations

- making sure that the public are kept informed of how human rights are being dealt with
- operational codes of conduct, eg. ranging from transparency, to speeding or rudeness

3.10 Local Cultural & Political & Legal Environment

- understanding the written and unwritten rules of behaviour of the local society
- understanding the political dynamics of the society

3.11 Team Management

- working as a team member
- managing staff

3.12 Field Logistics & Administration

- the technicalities and standing operating procedures for running a UN field operation
- administration: General: premises, equipment & supplies, security, communications, transport & travel, file management.
Personnel: recruitment, personnel admin, training/development
Finance: budgeting, banking, accounts
- radio communications
- medical precautions

3.13 Post Trauma Stress Management

- how to identify it and deal with it personally
- how to deal with in others, particularly co-workers.

3.14 Security

- of sources and witnesses
- of information (files, computers, communication medium)
- of self and co-workers, eg:
 - ▶ protection of locally engaged staff
 - ▶ coordination with military and others for warnings of mines, fighting, etc.
 - ▶ plans on how to deal with being taken hostage, being attacked, or having to evacuate (eg. emergency codes, kit always ready for flight,...)

3.15 Victim Support

- apart from reporting and at times curtailing human rights violations, what is one's role in helping individual victims through medical and psychological assistance, legal assistance, individual protection, referral, etc.
- in particular how should one deal with traumatised child or rape victims/witnesses

3.16 Skill Sharing Within UN Operations

- lessons learned within HRO staff, and for incoming operation augmentees
- in addition to skill training from human rights specialists, human rights operation staff can learn significant skills from other UN operation partners. For example:
 - ▶ forensic skills from CIVPOL
 - ▶ weapons knowledge/recognition from the military for both personal safety (threat assessment) and for investigations (crater analysis, crack-thump training, ...)
- How can this skills training be implemented in the field?

3.17 Limits on Capacity or Influence

Operational limits faced by various operation partners and individuals, and how to deal with such limits:

- hand over to others in the UN operation or other international actors eg. HRO for investigations, ICRC for prisoners, UNHCR for refugees, etc.
- hand over to locals (both governmental and non-governments). They are often the best placed to take action, and delegation to them serves to increase local capacity and their confidence in finding their own solutions.
- the dilemma of the impossible, ie. sometimes there is nothing that you can do and you must move beyond the dilemma and sense of hopelessness, and achieve the possible.
- how to avoid raising unrealistic expectations amongst victims and those at risk, amongst others in the operation area, and broadly in the international community.

3.18 Language training

- languages
- interpreter: identification, selection, protecting, and working through interpreters

PART 4 FOLLOW UP AND CONCLUSION

4 Training

Most courses will be training only a very small percentage of those that will deploy to UN field operations, and as such the participants often will end up leading teams or units. They need to understand the need for, and how to train or arrange training for those deploying with them. Teach them the who, what, by whom, and how to get help to carrying out training in:

- general advance training
- operation specific or pre-operation training
- in-operation training

Equally, field training is difficult, so coaching skills are just as important if not more so, and will be touched upon here and in the section on the management of personnel.

5 CONCLUSION

The course should close on the note that everyone in a UN field operation has some degree of responsibility for and benefit in dealing with serious violations of international human rights norms. This should be coupled with the message that common sense and a sense of justice is sufficient to initiate steps to implement one's obligation to act. Finally, they should be encouraged to undergo further training or approach human rights experts for those additional skills that will enable them to promote and protect human rights more effectively.

ANNEX 1 - CODE OF CONDUCT

ANNEX 2 - AIDE MEMOIRE for Human Rights in UN Field Operations. An approximately 4 page pamphlet in durable form (eg. plasticized paper) with some key components of the course to act as a reminder and guide for those in a field operation as to their roles and how to carry them out.

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