HUMAN RIGHTS AND INTERNAL CONFLICTS: TRENDS AND RECENT DEVELOPMENTS

DAVID P. FORSYTHE*

This Article focuses on rights at issue in internal conflicts of a serious—viz., exceptional—nature. It is thus concerned with the right of individuals to be protected and assisted in situations of internal armed conflict and other internal situations such as political troubles and tensions. In addressing this subject, reference will be made to both human rights in general and human rights in armed conflict, for both impinge on individuals in internal conflicts.

It is certainly true that human rights in general and human rights in armed conflict have "evolved along entirely different and totally separate lines. . . ."[1] Since 1945, human rights in general have been developed mostly through the United Nations and certain regional organizations. Whereas human rights in armed conflict have been developed over the past 125 years with the International Committee of the Red Cross (ICRC) as a stimulus and facilitator.[2] This bifurcated history is reflected in the traditional language used to refer to these two bodies of law. Some commentators have said that "human rights" pertains only to the general law and simultaneously refer to rules for victims of armed conflict as humanitarian or Red Cross law.[3] Yet it is increasingly clear that the two bodies of law share a common concern and similar values; the two can even apply to the same situations. As an ICRC official has recently written:

---

* Professor of Political Science, University of Nebraska, Lincoln; B.A., Wake Forest University 1964; M.A., Princeton University 1966; Ph.D., Princeton University 1968. Professor Forsythe is the author of HUMAN RIGHTS AND WORLD POLITICS: ETHICS, LAW, AND POWER (1982), and several other books, as well as 22 articles on human rights, the Red Cross and international relations.

1. Schindler, *The International Committee of the Red Cross and Human Rights*, INTERNATIONAL REVIEW OF THE RED CROSS [hereinafter REVIEW], 5 (No. 208, 1979).

2. Those who write on human rights in general and those who write on human rights in armed conflict generally do not seek to integrate the two literatures. For a rare effort at synthesis in addition to *Id.*, see this author's HUMAN RIGHTS AND WORLD POLITICS, forthcoming.

3. This traditional distinction is explored in Jacques Moreillon, *The Fundamental Principles of the Red Cross, Peace and Human Rights*, REVIEW, *supra* note 1, at 171-183 (No. 217, 1980).

> The convergence of international humanitarian law and human rights shows that war and peace, civil wars and international conflicts, international law and internal law, all have increasingly overlapping areas. It follows that the law of war and the law of peace, international law and internal law, the scopes of which were at first clearly distinct, are today often applicable at the same time side by side. Thus, the Geneva Conventions and the human rights conventions may often be applied in cumulative fashion.[4]

Against the background of human rights in general and human rights in armed conflict, this Article will explore the following questions: (1) what are modern political trends concerning internal conflict; (2) what are modern legal trends regarding individual rights in these conflicts; and, (3) what do very recent events tell us about the politics and law of human rights in internal conflict.

I. POLITICAL TRENDS

It is not an overstatement to say that no one knows precisely what an internal conflict is, as that term is used in this Article. At what point does domestic politics become exceptional political tension? At one end of the scale it is difficult to distinguish exceptional conflict from normal domestic politics, since all politics deals with conflict. At the other end of the spectrum, it is equally difficult to distinguish civil war from international war. At what point does foreign involvement in a basically national conflict transform into a basically international one, as opposed to an internal conflict? Whether one thinks about historical conflict in Vietnam or recent conflict in El Salvador, precise definitions are elusive.

Nevertheless, a trend is evident: in modern world politics, internal conflict of an exceptional nature is prevalent. Definitions and terms vary. Events may be referred to as civil wars, national emergencies, situations of martial law, domestic instability, riots, rebellions, insurgencies, terrorism, local uprisings, domestic violence, and so on almost ad infinitum. Despite this varying terminology, it is clear that we are witnessing in the modern world exceptional internal politics short of full-blown international war. A quick glimpse of certain political trends makes this obvious.

According to one view on the matter, "[i]n the 1960's some type of violent civil conflict was experienced by 114 of the world's

4. REVIEW, *supra* note 1, at 9.

121 largest countries and colonies. Since World War II, violent attempts to overthrow governments have been more common than elections in many parts of the world."[5]

Others have tried to summarize the trend toward more deadly internal conflicts:

> Luard. . . speculates that civil wars have become perhaps the most common of all types of international military activity and estimates they are almost twice as common in the post-world II period as in the period between the world wars.
>
> Not only are civil wars commonplace nowadays; they are also lethal. Taylor and Hudson. . . attribute over one million deaths to domestic violence between 1948 and 1967. Gurr. . . notes that ten of the world's thirteen most deadly conflicts in the past 160 years have been civil wars and rebellions. . . .
>
> Also noteworthy are the indicators Small and Singer provide of the severity of civil wars. The number of lives lost in civil violence . . .shows an alarming growth especially since World War II. Small and Singer note an ominous indicator of this trend: 13 of the first 15 most severe civil wars were found in the twentieth century, [and] eight of those 13 were fought since 1946". . . Some of the most deadly civil wars, in short, are the most recent.[6]

If one looks at the more dramatic end of the scale of situations of internal conflict, it can be seen that a number of recent conflicts comprise to civil wars. In other words, without regard to the labels put on the situation by those with vested interests, for example the government or other fighting party, it can be said that a number of armed conflicts derived from fundamental issues which were originally internal rather than international. According to one source, the list of such situations from just 1967 to 1975 is comprised of 22 such countries.[7]

---

5. D. PIRAGES, MANAGING POLITICAL CONFLICT 1 (1976).

6. C. KEGLEY, JR. & E. WITTKOPF, WORLD POLITICS 371-72 (1981) [hereinafter ciited as KEGLEY & WITTKOPF].

7. F. BEER, PEACE AGAINST WAR 35 (1981). The chart has been abridged and slightly altered.

Zaire, 1967	Sri Lanka, 1971
Zimbabwe, 1967-	Jordan, 1971
S. Yemen, 1968	N. Vietnam, 1972-73
Chad, 1968-72	Burrundi, 1972
N. Ireland, 1969	Palestine, from 1947
Cambodia, 1970-	Iraq, from 1945
Sudan, 1970-75	Cyprus, 1974
Philippines, 1970-76	Lebanon, 1975-6

If one looks at the less dramatic end of the scale, that is, at those situations of internal conflict of an exceptional nature closest to normal domestic politics, we get some idea of the over-all situation from the ICRC. According to that source, between only 1973 and 1978 the ICRC made prison visits "on the occasion of internal disturbances or tensions . . . in many countries and territories."[8]

To review the political trend under discussion, one can say that even if definitions are unclear, the political trend is clear. If one conceives of internal conflict as comprising a range of situations running from internal tension through internal trouble to internal war, it can clearly be found that internal conflict is a prevalent part of contemporary world politics. There is apparently no evidence indicating that past developments will not continue into the future. On the contrary, most students of internal conflict believe that the varying degrees of internal conflict as a form of politics will be highly salient in the future.[9]

This political trend means, *inter alia*, that human rights will be jeopardized to an exceptional extent. As one source put it, "most civil wars and revolutions have been savage in their destructiveness, a property that appears to be a characteristic of internal wars."[10] Internal conflict implies that there will be civilian casualties, that there will be terror and torture (or that there will be private and state terror), that there will be exceptional detention as well as attacks on prisons, and that food supplies and medical services will be disrupted. In sum, human rights will be in jeopardy.

	Jordan, 1970	E. Timor, 1975-
	Guinea, 1979	Angola, 1975-
	Pakistan, 1971	W. Sahara, 1975-

8. REVIEW, *supra* note 1, at 213-14 (No. 205, 1978).

Africa:	Angola (Portuguese), Burundi, Cameroon, Congo (Brazzaville). Ethiopia, French Territories of the Afars and Issas, Gambia, Liberia, Mauritania, Mozambique (Portuguese), Rhodesia/Zimbabwe, Rwanda, South Africa, Togo, Uganda, Zambia.
Asia:	Indonesia, Malaysia, Phillipines, Singapore, Sri Lanka, Thailand.
Europe:	Northern Ireland, Portugal, Spain.
Middle East:	Arab Republic of Yemen.
Latin America:	Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

9. *See e.g.*, R. SIVARD, WORLD MILITARY AND SOCIAL EXPENDITURES 9 (1980).
10. KEGLEY & WITTKOPF, *supra* note 6, at 372.

That condition necessarily raises the question, what international laws and organizations are at work to protect individual rights in these situations of internal conflict?

II. LEGAL TRENDS

Much has been written about the international law of internal conflict during the past decade. Most of this writing has been concerned with civil war and emergencies threatening the life of the nation.[11] Very little has been written on internal troubles and tensions.[12] There is even less writing which focuses on the organizations which deal with internal conflict, largely because most organizations that deal with internal conflict do so as part of a larger concern. These larger concerns address themselves to human rights in general, human rights in a region, and human rights in political conflict.[13] From all of this literature regarding internal conflict, one can eventually conclude three basic things about international law and organization: (1) the law is terribly complex; (2) much of the law has not led to adjudication but rather serves as general guidelines for political and military policy-makers; and, (3) because the law is complex and backed by a weak system of control, and because of the depth of feeling generated by internal conflict as noted in the preceding section of this Article, human rights are not securely protected in these situations.

In assessing the evidence in support of this over-view, it is useful to break international law down into its two relevant components: The law of human rights in armed conflict and the law of human rights in general.

A. The Law of Human Rights in Armed Conflict

As indicated in the opening pages of this Article, one of the bodies of international law regulating internal conflict is the law of human rights in armed conflict. This Article will not trace the

11. *See e.g.*, LAW AND CIVIL WAR IN THE MODERN WORLD (J. Moore, ed., 1974).

12. The terminology "troubles and tensions" is taken both from law and from the usage of the ICRC. It is not so generally employed as other terms. The ICRC has attempted to specify meanings; see the ICRC's ANNUAL REPORT [hereinafter ANNUAL REPORT] 42 (1978).

13. A short bibliography on the most crucial organizations might look as follows, in alphabetical order: J. BOND, THE RULES OF RIOT (1974); D. FORSYTHE, HUMANITARIAN POLITICS (1977); E. LARSEN, A FLAME IN BARBED WIRE (1979); A. ROBERTSON, HUMAN RIGHTS IN EUROPE (2nd. ed., 1977); A. SCHREIBER, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (1970). This Article deals with organizations mentioned in the law. Thus it does not treat important, purely NGOs such as Amnesty International.

evolution of that law here;[14] for present purposes it suffices to note the following.

In 1949 Common Article 3 was approved as part of the four Geneva Conventions of that year.[15] This Article, containing no definition of its material scope of application, regulated internal war for the first time in treaty form. It is questionable whether there is a customary law of internal war.[16] In any event, from 1949 until 1977 Common Article 3 was the only treaty provision in all of international law which dealt specifically with the legal regulation of internal war. If there are significant cases adjudicated in international or national law based on this Article, they remain a well kept secret. While some attention has been given by policy makers to the Article, Common Article 3 has been less than fully effective.[17]

In 1977 two additional Protocols were added to the 1949 Geneva Conventions.[18] Three features of these Protocols are especially important for the subject at hand.

First, some situations — seen by a number of parties as internal — are legally defined as international. According to Protocol I, Article 1(4):

> . . .armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. . .

are international armed conflicts. The meaning of this language is

14. A short and standard treatment is by J. PICTET, LE DROIT HUMANITAIRE ET LA PROTECTION DES VICTIMES DE LA GUERRE (1973).

15. Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, dated at Geneva, Aug. 12, 1949 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Convention for the Amerlioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, dated at Geneva, Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, dated at Geneva, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, dated at Geneva, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

16. See the argument in support of the proposition in Antonio Cassese, *The Spanish Civil War and the Development of Customary Law Concerning Internal Armed Conflicts*, in CURRENT PROBLEMS OF INTERNATIONAL LAW (Cassese ed. 1975).

17. *See* Forsythe, *Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflicts*, 72 AM. J. INT'L L. 272 (1978), and its incorporation into G. VON GLAHN, LAW AMONG NATIONS 608 (4th ed. 1981).

18. U.N. Doc. A/32/144 (1977). The text of Protocol I and Protocol II is *reprinted in* 72 AM. J. INT'L L. 457 (1978) and 16 I.L.M. 1391 (1977).

that, for example, if the people of the Republic of South Africa attempt by armed conflict to fight against the Botha government which is a racist regime, that struggle is depicted as international rather than internal.[19]

Second, some situations which are definitely internal armed conflicts are more extensively regulated. According to Protocol II, Article 1(1), its rules apply to armed conflicts

> which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

This Protocol II contains 28 Articles emphasizing humane treatment for fighters, protection and assistance to the wounded, sick, and shipwrecked, and protection and assistance to the civilian population.

Third, some situations which are seen by some parties as being appropriately regulated by realistic international law, are defined as outside the scope of Protocol II. According to Protocol II, Article 1(2): "This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts." This language leaves great room for debate over the relationship between Protocol II and Common Article 3.[20]

Without going into a detailed examination of the law of human rights in armed conflict, one can already see that this body of law is currently based on a view of political reality which has four components: international wars, Protocol II situations, Common Article 3 situations, and internal disturbances and tensions.[21]

Furthermore, one can see that in order to apply these rules to the letter of the law, one would have to make difficult and controversial decisions. One could not lightly presume that there would

19. For an extended treatment of this key provision of the law see Forsythe, "*The 1974 Diplomatic Conference on Humanitarian Law: Some Observations*, 69 AM. J. INT'L L. 77 (1975).

20. *See* Forsythe, *supra* note 17. The new Protocol states that it does not change the field of application of Common Article 3.

21. 1) International Wars, including wars of national liberation (anti-racism, anti-occupation); 2) Protocol II situations, overlapping with, but perhaps not coterminous with, Common Article 3 situations; 3) Common Article 3 situations, which include probably some situations not covered by Protocol II; 4) Internal Disturbances and Tensions, et. al., which are not regulated by this body of international law.

be a consensus on answers to difficult questions.[22] Suffice it to say that the complexity of the structure of the law and the complexity of the language of the law give rise to numerous difficulties.

The problems are compounded by the fact that neither Common Article 3 nor Protocol II provides an automatic process for the authoritative resolution of disputes. While Protocol II represents a step forward because it confirms the validity of legal regulation of internal war and provides more detailed rules about human rights, it does not satisfactorily address the question of *who* decides *what* the rules require. Law is not only a question of *what* (substantive rules), but also of *who* (procedural rules). With regard to who decides, Protocol II provides no advance beyond Common Article 3.[23]

In sum to this point, while that body of law known as human rights in armed conflict attempts to regulate internal armed conflict, and while Protocol II of 1977 makes important strides in specifying and thus promoting the rights to be protected in those situations, there exist obvious problems of application and enforcement. Consequently this Article will look at recent developments since 1977 with regard to this law on human rights. For now one would be on safe ground in concluding tentatively that the technicalities of Protocol II do not assure the guaranteed protection of human rights. Governments and other parties have ample leeway to avoid applying the law and meeting its *prima facie* requirements.[24]

B. The Law of Human Rights in General

Human rights in general, as a body of law, can also pertain to

22. If armed conflict occurs, is the current regime in Vietnam racist because it tries to force out ethnic Chinese, or is an African regime racist because it forces out Indians; how much territory has to be controlled, and for how long, to establish that military opposition to a government is sustained and concerted, and what exactly constitutes implementation of Protocol II?

23. *See* Forsythe, *Three Sessions of Legislating Humanitarian Law,* 11 INT'L LAW. 131 (1977).

24. Of course under international treaty law states are not bound unless they give their explicit consent. My point here is that even when states give their initial and general consent to be bound by the law, the law is vague enough and without automatic adjudication so that states still can wiggle out of what they have apparently consented to in general. How to bind non-state parties in an internal war has long been a problem in an international law intended primarily for states. There is much literature on the subject, which has not provided sure guidelines for a political solution. Much current law simply endorses the process whereby a non-state party declares its intention to act under the law. If a non-state refuses to do so, at least under the principles of treaty law it remains difficult to understand how such a party could be obligated to the law by others. One can at least argue that the non-state party is obligated to make such a declaration under customary legal principles.

internal conflict. It applies when a State is bound by parts of that law and does not seek to suspend or supercede that law. Hence, in situations of internal troubles and tensions, which are said to be part of "normal" domestic politics, the State is bound by the general human rights provisions to which it is a Party. This Article will not concern itself with the protection of human rights beyond national emergencies.[25]

1. *Substantive Provisions*. Under three important human rights Conventions that comprise an important part of human rights in general, special laws apply when a State, party to any of those Conventions, declares a public emergency threatening the life of the nation. In the United Nations Covenant on Civil and Political Rights (1966),[26] the European Convention on Human Rights (1950),[27] and the American Convention on Human Rights (1969),[28] a similar Article exits. In the UN Convention it is Article 4; in the European, Article 15; and in the American, Article 27. The basic format is that, in declared national emergencies, States may derogate from certain of their more general obligations. But some individual rights remain inviolable, for example, the right to life, the right to freedom from torture and degrading treatment, the right to freedom from slavery and forced labor, just to name a few.

It is possible, and indeed it has transpired, that a State would declare a national emergency but not invoke Common Article 3 (or in the future Protocol II). This situation would leave the emergency clauses from general human rights law as the major international human rights provisions applying to the situation. There are two well known examples where this situation has occurred: in the United Kingdom (Northern Ireland) and in Greece under the junta. Hence internal troubles and tensions, if not kept under general human rights provisions, may be regulated by the emergency clauses of the above mentioned general human rights conventions.

It is also possible, but it is not clear that it has yet transpired, that a State would declare a national emergency and also an inter-

25. *See, e.g.*, the articles in HUMAN RIGHTS QUARTERLY, formerly UNIVERSAL HUMAN RIGHTS.

26. Annex to G.A. RES. 2200, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966).

27. 213 U.N.T.S. 221, Europ.T.S. 5.

28. O.A.S. Official Records OEA/Ser. K/XVI/1.1, Doc. 65, Rev. 1, Corr. 1, January 7, 1970, 9 I.L.M. 101 (1970), 65 AM. J. INT'L L. 679 (1971) [hereinafter cited as Official Records].

nal armed conflict falling under Common Article 3 and/or Protocol II. In such a situation, both the emergency provisions of general human rights law and the relevant parts of the law of human rights in armed conflict would apply. It is possible to project, for example, that the Duarte government in El Salvador, being bound by both the American Convention on Human Rights and Protocol II, might find itself in a situation involving both Article 27 of the former and Protocol II and Common Article 3 of the Geneva Conventions. Whether the specific rules of emergency law and, of the Geneva Conventions applicable in internal war are mutually consistent is a question best addressed in another, more technical Article.

2. *Procedural Provisions*. As suggested previously, it is not only the *what* of international rules but also the *who* of procedural decision-making that is of importance in the protection of human rights.

With regard to emergency clauses, *legally* speaking there is not much to analyze under the UN Political Convention and the American Convention. As is well-known, the UN Political Convention is supervised or controlled by a Human Rights Committee rather than by obligatory adjudication. This Committee of individuals, whose ultimate sanction is negative publicity, is still at the stage of reviewing State reports and has not yet proceeded to the stage of trying to control State behavior in emergencies under Article 4 or otherwise.[29]

The American Convention has only recently come into legal force. While it is controlled by both the Inter-American Commission on Human Rights[30] and by a newly created Court, the newness of the legal situation does not permit analysis of protecting human rights under the Treaty. It is common knowledge, however, that the Commission has long been active with regard to protecting human rights in internal conflict.[31] More recently its scathing reports on the violation of human rights by the Somoza government in Nicaragua, in a situation eventually and widely recognized as an internal war, drew considerable attention from interested parties.[32]

29. Ramcharan, *The Emerging Jurisprudence of the Human Rights Committee*, 6 DALHOUSIE L. J. 7 (1980).

30. Official Records, *supra* note 28.

31. *See e.g.*, A. SCHREIBER *supra* note 13.

32. The New York Times reported much attention to a state of war in Nicaragua by other Latin states. N. Y. Times, June 6, 1979 at 16.

In other situations of internal conflict the Commission has been active notwithstanding the previous absence of a precise regional treaty on human rights in force in the Americas.[33]

The European Convention and its emergency clause have received considerable attention under a complicated system of control involving the European Commission on Human Rights, the European Court of Human Rights, and the European Council of Ministers.[34] So much has been written about the European situation that this Article will note only the most fundamental points relevant to the present subject of national emergencies.

When European States have declared national emergencies, they have not been prone to simultaneously recognizing the applicability of Common Article 3. This approach was true of the British in Northern Ireland and the Greek junta. Additionally, when states have declared a national emergency, such declarations and related claims have been scrutinized by the Commission, and at least once by the Court, at the instigation sometimes of other states[35] This is in contradiction to most other human rights treaties[36] where States have been noticeably reluctant to petition other States. Finally the European system for the protection of human rights has been extant long enough (since 1953) and has been used frequently enough, that it has promoted a body of case law which covers considerable details of national emergencies, and has been utilized by the Commission and Court. Progress to date includes important rulings of what constitutes torture and degrading treatment in some emergency situations.[37]

While major problems still remain, demonstrated by the Greek junta's withdrawal from the Convention and the British government's refusal to provide relevant documents to the Commission, the European system of regional protection of human rights has nevertheless shown itself tenacious in supervising internal conflict, in both the form of national emergencies and other human rights situations.[38].

---

33. *See also* L. LEBLANC, THE OAS AND THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (1977).

34. *See* A. ROBERTSON, *supra* note 13.

35. *E.g.*, Denmark v. Greece, the Republic of Ireland vs. the United Kingdom.

36. *E.g.*, the United Nations Convention on Racial Discrimination — where states have been noticeably reluctant to petition other states.

37. O'Boyle, *Torture and Emergency Powers under the European Convention on Human Rights*, 71 AM. J. INT'L L. 674 (1977).

38. *See also* Mower, *The Implementation of Human Rights Through European Community Institutions*, UNIVERSAL HUM. RTS, 43-60 (1980).

Much remains to be written about protection of human rights and internal conflict under the United Nations, American, and European Conventions. It must be observed that especially under the UN Political Covenant in force only since 1976, one cannot point to major accomplishments concerning internal conflict, although the Covenant has only been in force since 1976. Likewise, and particularly given the nature of politics in Latin America,[39] one cannot be too sure how the American Convention will fare in the Latin American situation. Such speculations bring us to the question of analyzing recent developments concerning human rights in internal conflicts.

III. RECENT DEVELOPMENTS

It has been iterated thus far that world politics is currently characterized *inter alia* by the prevalence of internal conflict. It has also been seen that a considerable amount of international human rights law exists that can apply to these situations and that various organizations try to ensure the implementation of human rights law.

In order to contribute to an understanding of internal conflict, it is against this background that one may ask the following questions: what do recent developments demonstrate about the process or implementing the laws which have been devised? In addition, in the context of widespread internal conflict and with an awareness of the relevant treaties and organizations which exist, should one be optimistic or pessimistic about the politics of protecting human rights in internal conflict?[40]

To begin to answer the above questions, one can look at the salient experiences of the ICRC, an organization of global scope that is associated with protection of rights in internal war and which works with political detainees in situations of internal troubles and tensions.[41] On the basis of ICRC experiences from 1975-80, one can commence by trying to fashion an optimistic viewpoint.

39. The point is made in T. BUERGENTHAL & J. TORNEY, INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL EDUCATION 71 (1976).

40. The implementation will be political in the basic sense that few "cases" will go to court; the law will be implemented by politicians, bureaucrats, and soldiers.

41. It is always difficult to do research on the ICRC, given that organization's discretion or secrecy. The following is drawn from public, "sanitized" sources. Therefore the account given here cannot be regarded as final or complete.

A. The Optimistic Viewpoint

Protocol II has been accepted by a number of States. By early 1981 sixteen States had adhered to it. Most of these were, contrary to some expectations, Third World States; some of them were characterized by domestic political fissures that might necessitate invoking the Protocol.[42]

Additionally, governments and other parties confronting armed conflict or serious political troubles have declared their acceptance of human rights norms. For example, in 1978 in what was then Rhodesia, Prime Minister Ian Smith implied that his regime was "complying with the principles laid down in Article 3 common to the Geneva Conventions."[43] In that same year in Chad, fighting parties acknowledged that an internal armed conflict existed.[44]. The following year, a number of parties recognized the existence of an internal armed conflict in Nicaragua[45] and, in 1980 UNITA, a fighting party in Angola, declared its acceptance of the norms of the Geneva Conventions.[46] Also in 1980, the African National Congress of South Africa declared its acceptance of the Geneva Conventions and Protocol I.[47]

Beyond the question of initial acceptance of human rights norms, some protection of and assistance for human rights was actually carried out in conjunction with the ICRC.[48] An extensive number of prison visits to persons detained because of internal war or political events was carried out by the ICRC. In its publications the ICRC referred to detainees in internal wars as prisoners of war. Apparently States did not object. This could be seen as laying the semantical foundation for extending the rights of international prisoners of war under the Third Geneva Convention of 1949 and under Protocol I of 1977 to combatant detainees in internal armed conflict.

At times in both Angola and Chad, the ICRC entered into agreements giving the ICRC extensive rights to over-fly national

42. As of February 1981 the list read as follows: Ghana, Lybia, El Salvador, Ecuador, Jordan, Botswana, Niger, Yugoslavia, Tunisia, Mauritania, Gabon, Bahamas, Bangladesh, Laos, Sweden, Finland.

43. ANNUAL REPORT, *supra* note 12, at 11 (1978).

44. *Id.* at 20

45. N.Y. Times June 19, 1979 at 16.

46. REVIEW, *supra* note 1, at 264 (No. 281, 1980); 320 (No. 219, 1980).

47. REVIEW, *supra* note 1, at 20 (No. 220, 1980).

48. The ICRC has not provided a recent and analytical overview of this activity, other than the 1978 account. *See supra* text accompanying note 8.

territory in order to carry out humanitarian tasks. In Angola in 1980 the ICRC entered into a written agreement to provide food to individuals in the "hinterland" of that nation.[49] Additionally the ICRC was working more closely with National Red Cross Societies regarding the protection of human rights. In the Tansley Report of 1975, officially the Final Report of the Re-appraisal of the Role of the Red Cross, it had been noted that the overall Red Cross movement was not well integrated and in particular that protection of human rights could be enhanced by greater cooperation among Red Cross components.[50]

Since that time the ICRC has shown a closer relationship with National Societies concerning the dissemination of human rights principles.[51] It also was trying to identify nations prone to serious internal conflict in order to improve the "operational capacity" of the local Red Cross Society.[52] In places like Nicaragua the ICRC has worked tightly with the local National Society in human rights efforts *sur place*.

The ICRC seemed to be devoting more practical and systematic efforts to dissemination. Again consistent with recommendations in the Tansley Report,[53] the ICRC was trying to get an understandable version of the rules of the Geneva Conventions to soldiers and civilians and to extract the basic rules on human rights from the legal complexities.[54] Seminars on the human rights of armed conflict were being held for military leaders and others.[55] Situations like the internal war and troubles in Lebanon in the late 1970's had demonstrated the need to get human rights values more widely accepted by the population at large; the ICRC had understood this clearly and was doing what it could.

The ICRC was showing signs of renewed assertiveness in its protection and assistance efforts. Despite the policy of the central government to the contrary, the ICRC declared that it thought Common Article III. applicable to the Ethiopian province of Eritrea and sent foodstuffs to that area through the Sudan.[56]

---

49. REVIEW, *supra* note 1, at 84 (No. 215, 1980); 264 (No. 281 1980).

50. D. TANSLEY, FINAL REPORT 23, 47-52, 67-74 (1975).

51. *See e.g.*, the ANNUAL REPORTS of 1977-79.

52. *See e.g.*, reference to the Society in El Salvador in ANNUAL REPORT, *supra* note 12, at 36 (1979).

53. Mower, *supra* note 38, at 69.

54. REVIEW, *supra* note 1, at 47-49 (No. 206, 1978).

55. In 1979, for example, the first regional seminar in Latin America took place, and also the first French-speaking African seminar. *See also* recent ANNUAL REPORTS.

56. ANNUAL REPORT, *supra* note 12, at 17 (1978).

B. The Pessimistic Viewpoint

Protocol II, even with its restricted field of application, had not been adhered to by the vast number of States. Whereas over 145 states are now parties to the Geneva Conventions, less than twenty have fully accepted Protocol II. Moreover, no major military power has adhered to it.

A number of political actors refused to recognize the applicability of international standards of human rights for their adversaries. In Ethiopia, the government refused to admit the relevance of Common Article III to the area of Eritrea, despite obvious and sustained control of territory and opposition to the central government by rebel forces. The central government refused to allow the ICRC to engage in protection and assistance efforts to that area from the Ethiopian side.[57] The ZANU division of the Patriotic Front, led by Robert Mugabe, refused during the struggle for Zimbabwe to endorse the principles of the Geneva Conventions or to accept a code of conduct for fighters of ZANU. The Mobutu government of Zaire refused to admit the applicability of Common Article III to Shaba Province during 1977.[58] Despite long and widespread fighting in the Philipines leading to the displacement of tens of thousands of civilians,[59] the Marcos government failed to recognize the applicability of Common Article III.

Despite some explicit or implied acceptance of the abstract applicability of rules on human rights in armed conflict or in major internal disturbance, many ICRC efforts to protect human rights came to nothing. In Chad, for example, despite agreements between the ICRC and political and military leaders to respect human rights, the ICRC finally had to withdraw from that situation because even the safety of its delegates could not be guaranteed.[60] In Angola, too, the ICRC had to withdraw for a time because of the lack of cooperation from various parties.[61] In Lebanon, the ICRC could receive a hearing from highest officials; yet most of its efforts to trace missing persons received no replies from these authorities. Of almost 43,000 requests submitted by the Central Tracing

57. In addition to *Id.*, *see also* REVIEW, *supra* note 1, at 323 (No. 219, 1980). Ethiopia permitted the ICRC to visit Somali international prisoners of war, but not Eritrea detainees under Common Article 3 or otherwise.

58. ANNUAL REPORT, *supra* note 12, at 8 (1977).

59. REVIEW, *supra* note 1, 32 (No. 220, 1981).

60. REVIEW, *supra* note 1, at 324 (No. 219, 1980).

61. ANNUAL REPORT, *supra* note 12, at 7 (1975); 16 (1976); 18 (1977).

Agency, only about 2,000 received "positive results."[62]

The actual fighting of internal wars and the actual politics of internal troubles and tensions showed little advance for human rights. ICRC delegates and other neutral persons were murdered in Rhodesia, killed in Nicaragua, shot at in Lebanon. The Red Cross emblem was the target of military attacks, as were the wounded supposedly protected by the ensignia. Systematic killing of unarmed and unresisting individuals occurred in places like Nicaragua and El Salvador. While millions starved in Kampuchea, various political actors argued over ideology, prestige and national sovereignty. The Rhodesian "protected villages" or relocation camps compelled by the government did not even have medical facilities.

The International Red Cross was not really an organization, as the Tansley Report had said; it was only a communications network.[63] In Latin America, for example, the International Red Cross was much less influential than the Catholic Church in ameliorating the harshness of war and politics. A number of National Red Cross Societies were extremely weak operationally and in any event were largely appendages of the Central government—and therefore incapable of acting impartially to protect rights violated by the government. Many National Red Cross Societies, including large and wealthy ones like the American Red Cross, did not even associate their role with the subject of human rights except in international war.

It was clear that many fighting parties had never heard of the principles of human rights in war and that civilians could not rely on such principles for protection. This unreliability was classically demonstrated by the internal war and related events in Lebanon from 1975-76. In that situation even summary executions were widespread.[64] It was also clear that the American trained army in El Salvador and the Soviet trained army in Ethiopia were paying scant attention to human rights. In the view of general public opinion, human rights in internal conflict remained for the most part an arcane and academic subject.[65]

---

62. ANNUAL REPORT, *supra* note 12, at 8 (1977).

63. Mower, *supra* note 38, at 45.

64. ANNUAL REPORT, *supra* note 12, at 6 (1976); N.Y. Times June 9, 1976 at 1.

65. The general mood was captured by a journalist writing of the fighting in Lebanon. Markham, *Is this a civil war? It is an academic point, though an interesting one*, N.Y. Times, Nov. 9, 1975 (Magazine), at 21.

IV. CONCLUSIONS

It has been said that a pessimist is a frustrated optimist. In a similar vein Michael Waltzer in writing about violence and justice comments: "War is so awful that it makes us cynical about the possibility of restraint, and then it is so much worse that it makes us indignant at the absence of restraint."[66] This view is useful as a step toward summarizing the status of human rights in internal conflict.

One can justifiably be cynical about expecting too much from ruling elites threatened with loss of territory, pride or privilege. After all, as Waltzer reminds us, " '[e]mergency' and 'crisis' are scant words used to prepare our minds for acts of brutality."[67] One can be wary about any restraints being accepted by challenging factions driven by a sense of injustice or a lust for power. Yet, universally, a line is drawn. Restraint is demanded. Rights are established. Organizations are created to oversee them. Even as abuses of rights occur, they are generally perceived as abuses. Hence there is progress in the face of brutality. It goes too far, and it is seen to go too far, to employ torture and murder in Lebanon, systematically slay young males in Nicaragua, and to rape and kill nuns and social workers in El Salvador.

That atrocities reoccur in a historical fact. That one is pessimistic about improvement indicates the staying power of humane expectations against which behavior is measured. We are pessimists and optimists at the same time.

Telford Taylor in his writings on justice and violence kept to a middle position in evaluating human rights and wrongs. The effect of the law of human rights in war, he reminds us, is that, "[i]f it were not regarded as wrong to bomb military hospitals, they would be bombed all of the time instead of only some of the time."[68] This view provides a second step toward summarizing the trends and events reviewed in this Article. The recent developments involving the ICRC demonstrate reasons for both optimism and pessimism, and hence ultimately for a middle position. Progressive efforts are accompanied by lacunae in protection. Some starvation and inhumane detention are successfully countered, while some persons *hors de combat*—including ICRC delegates—are deliberately shot.

66. M. WALZER, JUST AND UNJUST WARS 46 (1977).

67. *Id.* at 251.

68. T. TAYLOR, NUREMBURG AND VIETNAM 40 (1970).

On balance then, the development since 1945 of numerous laws on human rights and the continued functioning of organizations devoted to their implementation remind us of how far human rights has come. The work of the European Commission on Human Rights, the Inter-American Commission on Human Rights, the International Committee of the Red Cross, is testimony to what can be achieved. But each time a government refuses to apply Common Article III and Protocol II, each time it refuses access to the ICRC for prison visits, each time it or a private army permits the starvation and malnutrition of civilians under its control, one is reminded of how far we have to go.