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ETHNIC TURMOIL AND HUMAN RIGHTS : THE PROMISE OF  
THE IGO AND NGO SECTORS IN CONFLICT PREVENTION

BY

DAVID LEWIS WRIGHT



A thesis submitted to the Faculty of Graduate Studies and Research in partial  
fulfilment of the requirements for the degree of Master of Arts.

Department of Political Science

EDMONTON, ALBERTA

SPRING, 2000



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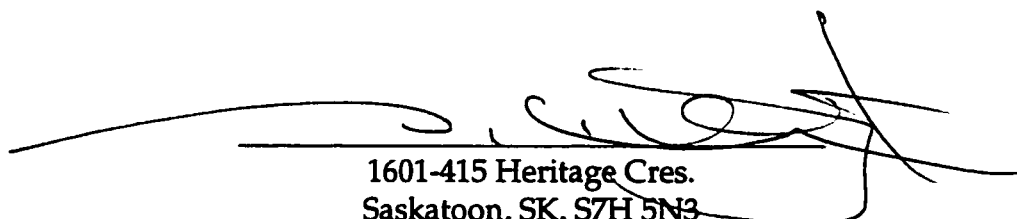
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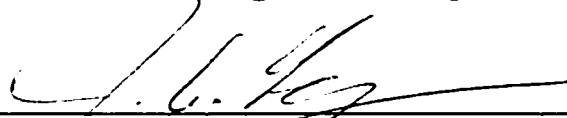
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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled 'Ethnic Turmoil and Human Rights : The Promise Of The IGO and NGO Sectors In Conflict Prevention', submitted by David Lewis Wright in partial fulfilment of the requirements for the degree of Master of Arts



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## **ABSTRACT**

The former Yugoslavia's steady slip into civil war in the early 1990s caught the global community off guard, and by the time regional and multilateral institutions responded, it was too late. Yet, there was substantial evidence in the 1970s and 1980s of significant human and minority rights abuses by the Federal Government, particularly in hotspots such as Kosovo. These abuses were evident enough to suggest a break-up of the entire nation was inevitable or unavoidable.

This thesis argues that a conflict prevention strategy, particular to ethnic and minority rights issues, must be incorporated into the international political process. Intergovernmental organisations such as the United Nations must work with non-governmental organisations to develop a system which alerts them to potential ethnic hot spots. In order for this early warning system to work, crises must be detected and dealt with before they develop into disputes, violence, and war. The monitoring and analysis of human rights abuses should be used to help predict and prevent, through early-warning avenues, the outbreak of ethnic turmoil.

## **DEDICATION**

This thesis is dedicated to my parents, David and Lynette, and my sisters, Verity and Jennifer, who shared their wisdom, and who relentlessly encouraged me through those difficult times ;

To my grandparents, Gorrell Lewis, Alexander Wright, and Kathleen Wright, whom I miss every day ; and,

To my good friend, Terrence Bell.



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## **LIST OF SYMBOLS, NOMENCLATURE, ABBREVIATIONS**

ACLU	AMERICAN CIVIL LIBERTIES UNION
AI	AMNESTY INTERNATIONAL
APEC	ASIA-PACIFIC ECONOMIC COOPERATION
CIA	CENTRAL INTELLIGENCE AGENCY
CLAHR	CANADIAN LAWYERS ASSOCIATION FOR INTERNATIONAL HUMAN RIGHTS
CSCE	CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE
EC	EUROPEAN COMMUNITY
ECOSOC	ECONOMIC AND SOCIAL COUNCIL
EU	EUROPEAN UNION
G-8	GROUP OF EIGHT
HCNM	HIGH COMMISSIONER ON NATIONAL MINORITIES
HRW	HUMAN RIGHTS WATCH
IGO	INTERGOVERNMENTAL ORGANISATION
JNA	YUGOSLAV FEDERAL ARMY
KPJ	COMMUNIST PARTY OF YUGOSLAVIA
NATO	NORTH ATLANTIC TREATY ORGANISATION
NGO	NON-GOVERNMENTAL ORGANISATION
OSCE	ORGANISATION ON SECURITY AND CO-OPERATION IN EUROPE
OAS	ORGANISATION OF AMERICAN STATES
OAU	ORGANISATION FOR AFRICAN UNITY
SFRY	SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA
UN	UNITED NATIONS
USSR	UNION OF SOVIET SOCIALIST REPUBLICS
WTO	WORLD TRADE ORGANISATION

# INTRODUCTION

History points to a tradition in the Balkans of a readiness to solve disputes by the taking up of arms and acceptance of the forceful or even negotiated movement of people as the consequence of war. It points to a culture of violence within a crossroad civilization where three religions, Orthodox Christianity, Islam and Roman Catholicism, have divided communities and on occasions become the marks of identification in a dark and virulent nationalism. All wars bring evil to the surface, but the peculiar ferocity of civil wars is well chronicled throughout history. The fact that the wars in the former Yugoslavia contained elements both of a war of secession and of civil war only added to the difficulty of forming objective judgements.<sup>1</sup>

[Lord David Owen]

Several years ago the international community achieved a significant policy victory in the Dayton Peace Accords. The establishment of a cease-fire and the move to representative government in Bosnia-Herzegovina stood as an important, albeit belated accomplishment in the peace process. Given the gridlock that the international community experienced during the early 1990s, the cessation of fighting brought about a guarded sigh of relief among those directly and indirectly affected by the crisis in the Balkans. The risk of renewed hostilities are still far from alleviated. More critically, history repeated itself with recent events in the Yugoslav<sup>2</sup> province of Kosovo. Serbian authorities in Belgrade sought to impose rigid restrictions on the ethnic Albanian minority residing in Kosovo. In response, ethnic Albanians demonstrated, through civil protest and the taking up of arms in some regions, that they were not willing to allow a Serb crackdown go unchallenged.

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1 Owen, David. *BALKAN ODYSSEY* (London : Victor Gollancz, 1995), at 3.

2 Serbia adopted the title Yugoslavia, as successor state to the former Socialist Federal Republic (SFRY).

After months of intense fighting involving the mass deportation of hundreds of thousands of Kosovars, and a 40 day bombing campaign by the North Atlantic Treaty Organisation (NATO), Yugoslav President Milosevic now stands accused by the international tribunal of human and minority rights violations against the 90 per cent ethnic Albanian population. Once again, ethnic rivalries have challenged peace in the Balkans. NATO air strikes and the interposition of Western and Russian ground troops on Kosovar soil may have quelled the dispute for the time being, but peace and stability in the region continue to hang in the balance.

Is there a culture of violence in the Yugoslav corner of the Balkans, such as suggested by former (and failed) peace negotiator Lord David Owen? Perhaps Owen's comments are meant as an expression of personal frustration, presenting the beleaguered and cynical view of a peace negotiator, rather than an accurate portrayal of the Yugoslav condition. The former Yugoslavia has suffered from a history of conflict and violence. The young nation suffered through three civil wars during the Twentieth Century alone. Internal or cross-cultural conflict extends back to the medieval ages. There is a history of conflict, but it does not follow that a culture of violence predetermines the actions of its inhabitants. Given the persistence and extremity of the violence, it is easy to forget the relatively long periods of peace and progress enjoyed by this multiethnic land.

The following thesis will attempt to grapple with the significance of minority rights and human rights in the former Socialist Federal Republic of Yugoslavia (SFRY) as a way of illustrating the important role that the identification, monitoring, and eventual elimination of rights violations can play in developing an effective

system of conflict prevention in ethnically divided societies. In particular, it is argued that the violation of such rights, by both the government and citizens (whether organised, or 'at large'), has been a key element in the sequence of factors leading to the outbreak of violent civil conflict. The SFRY, in its formative years, was one of the most ethnically tolerant multicultural states in the world. However, as a result of the crackdown on basic democratic rights in the 1970s and the rampant human and minority rights abuses of the 1980s, many outsiders (i.e. CIA, United Nations, academics) predicted early on that the Republic would not endure.

A key argument set out below is that the potential for ethnic conflict within diverse societies can be predicted, to a significant degree, by observing a nation's pattern of human, and minority rights abuses. Rights violations in these two areas are necessarily tied to political, economic, and historical considerations. The premise, nonetheless, is that an increase in the degree and/or frequency of violations of human and minority rights within a multiethnic state could ultimately lead to political turmoil and possibly civil war. This seems to have been the case throughout the 1990s, with nations such as the former Yugoslavia and Rwanda. Rights violations can thus be viewed as an appropriate, if elementary, gauge of stability because they reflect the state of relations between citizens themselves and between citizens and their government. Repeated deviations from international human rights standards are, presumably, a warning sign of pending ethnic upheaval.

The prevention of human and minority rights violations, and of inter-ethnic violence, is desirable in and of itself. From an international political perspective,

prevention is desirable to avoid any further strain on limited international resources which should be dedicated to other tasks such as consolidating international co-operation, promoting sustainable development, and protecting Earth's threatened eco-systems.

## **MOVING FROM STATE-CENTRIC REALISM TOWARDS A PHILOSOPHY OF PREVENTION**

The identification and monitoring of human rights abuses in multi-ethnic states should facilitate the development of a strategy for the prevention of continued and aggravated violations, and ultimately the outbreak of civil war. There is a tendency in the debate on and the practical enforcement of international human rights, to focus on remedial and punitive responses to violations, as opposed to preventive approaches. This is the standard way in which the international community has responded to human rights violations and crises, although it has also failed to respond on a number of occasions. The greatest ideological hurdle for international actors to overcome is in making the shift to a more activist and preventive role in protecting and promoting human rights.

This paper will not attempt to construct a procedure under which international and regional organisations co-operate to monitor, investigate, and prevent inter-ethnic disputes, although some suggestions are provided at its conclusion. That is the subject of a much lengthier paper which would touch on the institutional reform of the United Nations (UN) and the Organisation for Security and Co-operation in Europe (OSCE), international law, and diplomacy. Rather, the following presents a perspective which challenges traditional notions of inter-state



relations, shifting the focus away from states to the rights of not only the individual, but the 'community'. It calls upon international and state actors to support and participate in prevention strategies, and suggests that such strategies will likely remain ineffective if not accompanied by a change in the traditional conception of inter-state relations. As discussed below, organisations such as the OSCE, NATO, and the UN, together with nation-states must adopt a different approach to intervention in domestic affairs. In other words, state sovereignty can no longer remain inviolable in the face of egregious rights violations.

Without attempting to establish a linear causal connection between the role of history and contemporary conditions, the context of animosity, cultural relations, and the political environment needs to be analysed. For example, the SFRY's system of government was born out of years of internal, as well as regional and even global warfare. Decades of religious and ethnic persecution between the different cultural groups influenced the Tito regime's construction of a multi-ethnic state - one which insisted upon greater tolerance in intercommunity relations. However, the historical analysis does not suggest a deterministic outcome. That is, pre-SFRY history cannot solely explain the nation's demise. Historical lessons can aid in understanding the socio-political setting, but they do not explain all elements of a dispute. They do, however, provide the background from which early warning analysts can profile troubled nations. In particular, such lessons might help to explain why a government or a majority ethnic group would choose to violate citizens' rights.

This paper proposes that the fact-finding, reporting, and monitoring performed by human rights non-governmental organisations (NGOs) can be an

effective method of circumventing state sovereignty, and can bring the plight of the abused to the attention of the international community. NGOs can serve to provide states and inter-governmental organisations (IGOs), like the United Nations (UN), with detailed information on the violation of human rights in unstable multiethnic states. In co-operation with the NGO community, the UN, and other international actors, can then respond to these early warning reports and have a better opportunity to develop an ethnic conflict prevention plan.

For prevention to be successful in most cases, some form of intervention would likely have to take place, and would have to be both forceful and timely in order to remedy the impugned conduct of a state. Intervention may comprise various forms of action, whether diplomatic, military, or economic. Whatever form it takes, intervention must rely on accurate information about existing and/or potential human rights hot spots. Thus effective intervention ultimately depends on effective early warning strategies and analysis. This paper proposes that such a strategy of early warning and conflict prevention should focus particularly on the human rights element. Special focus must be placed on the nature of the rights violations, the severity (from basic civil or political rights to the fundamental right to life), and the frequency with which they occur. To support the legitimacy and credibility of decisions to intervene, the process of reporting and fact-finding on human rights abuses must be both balanced and accurate.

This thesis identifies two types of agencies that could work together to carry out a strategy of conflict prevention. The first are intergovernmental organisations (IGOs). Early warning systems for situations of potential ethnic conflict do already

exist, forming, for example, part of the strategy of the High Commissioner on National Minorities in the Organisation for Security and Co-operation in Europe (OSCE). However, as discussed below, this is only a start in what has become a critical and overdue process. While interventions by outsiders must be more forceful and timely, such interventions are best initiated and conducted by IGOs, such as the United Nations (UN), the OSCE, and NATO. While the legitimacy and credibility of some of these actors may be questioned, they may provide the institutional structure and stable policy planning regime in which to determine instances where intervention is warranted. This is especially critical because intervention in the internal affairs of problem states violates basic principles of sovereignty.

A second set of useful agencies are non-governmental organisations. Here, it is useful to explore the contribution of agencies, such as Amnesty International (AI) and Human Rights Watch (HRW), to the profiling process. This paper proposes that IGOs work in conjunction with NGOs to arrive at accurate or balanced conclusions on detecting and acting upon the warning signs of ethnic conflict. The thesis maintains that patterns of human rights violations are a principal indicator of ethnic discord and even state dissolution.

The following pages argue that first and foremost, non-governmental organisations, intergovernmental organisations, and state governments must recognise human rights violations as a key factor in ethnic conflict and violence. Therefore, the creation and adoption of a real strategy on early warning and conflict prevention presupposes that these actors recognise that the promotion and

protection of human rights, by the governments concerned, will actually help to deter a breakdown in multiethnic relations. As human rights is an element which is critical to a country's stable governance, state records on human rights are a matter of concern for the entire international community, not just the nation or the victims concerned.

Chapter One looks at the roots of the Socialist Yugoslav state, both prior to and after the break-up. A review of the nation's history sets the context for the SFRY's development, and its eventual disintegration. It may also help to explain some of the events of the late 1980s and early 1990s. The chapter also surveys the SFRY's record on human rights abuse in Kosovo. Chapter One concludes that historical analysis must be employed by NGOs and IGOs as part of country profiling, human rights monitoring, and early warning procedures.

When intergovernmental agencies and governments concern themselves with rights violations of states, it is essential that they recognise the value that NGOs can bring to early warning schemes, and subsequently, conflict prevention strategies. As valuable sources of expertise, NGOs can help IGOs, such as the UN and the OSCE, to implement policies which promote human rights, and which help to prevent rights abuses. This is the subject matter of Chapter Two.

The thesis concludes that, coupled with some institutional reform, the co-ordination of IGO and NGO mandates stands as the most effective strategy on early warning and conflict prevention. While both agencies might eventually possess clear mandates on preventing rights abuse, they would be considerably more effective in their objectives by pooling their resources and co-ordinating their

activities. Combining the expertise of NGO operations with the institutional strength of IGOs, the goal of conflict prevention may be more effectively and rapidly realised.

# CHAPTER ONE

## HUMAN RIGHTS VIOLATIONS AND THE DEATH OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

### INTRODUCTION

Before launching into an overview of Yugoslavia's record on human rights, it is necessary to define 'rights abuse'. Human rights abuses, in the context of multi-ethnic turmoil, are directed not only at individuals but also collectivities which are definable in terms of ethnicity. This is what separates ethnic rights violations from other types of abuse which do not stem from cultural, religious, or historical factors. Rodolfo Stavenhagen enumerates how some violations have been manifested.

These violations have run across the whole spectrum from mass killings (genocide), to *razzia*, illegal and arbitrary detention, torture, mass population removals, deportations and segregation, to lack of due process of law, discrimination in public and private institutions and other forms of open or subtle antagonism.<sup>3</sup>

To facilitate the ensuing review, it is essential to articulate the definition of 'human rights', both from a specialist's and a lay person's perspective. Otago University Professor Ramesh Thakur provides both:

By a human right I mean one which is :

- universal, owing to every person simply as a human being;
- held only by human beings;
- held equally by every person, since it is available to anyone qua

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<sup>3</sup> Stavenhagen, Rodolfo. 'Ethnic Conflict and Human Rights – Their Interrelationship' in *ETHNIC CONFLICT AND HUMAN RIGHTS* (Oslo: Norwegian University Press, 1988), at 20 to 21.

- person;
- not dependent on the holding of any office, rank, or relationship, such as political leader, teacher, aristocrat, parent, or creditor;
- claimable against all governments. That is, if someone asserts a human right against the government of China, then that right is equally assertible by that person against the Government of New Zealand or vice versa.<sup>4</sup>

The abuse of human rights, and more specifically minority rights, may come from ethnic-ethnic conflict, or ethnic-state conflict. In the case of the former, there may be an opportunity for legal recourse. However, when the state or an economically or politically powerful group is responsible for the abuse, recourse to legal mechanisms is rarely available. As the following review demonstrates, in the multi-ethnic state of the former Socialist Federal Republic of Yugoslavia, the persistent abuse of minority rights and basic civil rights has played a significant role in the destruction of that state.

This chapter provides an historical analysis of Yugoslavia's birth, evolution into statehood, and subsequent demise into bitter civil conflict and partition. It is a review of the historical and political conditions from which the Yugoslav state emerged, and eventually perished. A review of the historical roots of the conflict helps to provide some explanation of the events of the late 1980s and early 1990s. It also helps to demonstrate the significant role that human rights practices have played in the SFRY. In particular, the last part of the chapter will review the recent history of human rights abuses in Kosovo. This type of historical review not only illustrates some of the significant factors that have influenced human rights practices

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<sup>4</sup> Thakur, Ramesh. 'Human Rights : Amnesty International and the United Nations' in JOURNAL OF PEACE RESEARCH Vol.31(2), 1994, at 146.

in ethnically divided societies such as Yugoslavia, it also provides a potentially useful assessment tool for international organizations and non-governmental organizations in profiling a country's human rights practices and thus contributes to early warning systems for the prevention of ethnic conflict.

## **THE BIRTH OF THE YUGOSLAV STATE**

Since its birth in 1918, the existence of the Yugoslav state has been a struggle against formidable odds. Pressure to bring about its demise was as much the design of outside powers as that of internal forces, from Nazi pan-Germanism to the rift with Stalinist USSR. Lenard Cohen has written on modern Yugoslav history, arguing that a singular causal nexus exists between the SFRY's demise and the region's cultural and socio-historical roots. Yet the issue involved appear more complex. Indeed, the break-up can be attributed in part to several factors in addition to these historical animosities, including political decisions and practices that sanctioned or encouraged human rights abuses, unresponsive and ineffectual international actors, and an ineffective international legal regime. The historical assessment is an important starting point, but the principal argument of this paper is that the most recent and intense conflict was foreshadowed by the former SFRY's treatment on human and minority rights. The increase in human rights violations by the government has been a significant contributing factor in the destruction of Yugoslavia.

Yugoslavia has often been described as an 'artificial creation'. The



description suggests a structure bereft of any common social, political, or historical roots. This may have been the case throughout most of the 19<sup>th</sup> and early 20<sup>th</sup> centuries. Yet, Yugoslavia was created because eventually many recognised the commonality (i.e. linguistic) of the Balkan nationalities.

The core of Yugoslavia's initial existence came out of the Kingdoms of Serbia and Montenegro and the remnants of the Habsburg Empire after World War I.<sup>5</sup> Yet, the first theoretical expression of unification came in the guise of the *Yugoslav idea*. The *Yugoslav idea* was the product of Croatian writers, who were among the first to recognise the common ethnicity, heritage, and language of southern Slavs. This common ethnicity became the catalyst or the justification for basic economic and political co-operation. It derived much of its spirit from the Illyrian movement of the early 1800s. That movement was largely inspired by the principles of republican government and the nation-state system which emerged in the French Revolution and which spread during the Napoleonic wars.<sup>6</sup> Illyrianism appealed mostly to the Croatian intelligentsia and upper classes, but enjoyed little support among common folk or the Slovene, Serb, and other southern Slav groups. The idea was expanded during the second half of the nineteenth century by Croatian academics and religious leaders, including liberal Catholic clergymen Bishop Josip Juraj Strossmayer and Franjo Racki. Both envisioned 'Yugoslavism as a supranational ideology expressing the common origins, cultural ties, and spiritual bonds among the South

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<sup>5</sup> International Institute for Strategic Studies. *ADELPHI PAPER: 270* (London: Brassey's Ltd., 1992), at 6.

<sup>6</sup> Cohen, Lenard J. *BROKEN BONDS: YUGOSLAVIA'S DISINTEGRATION AND BALKAN POLITICS IN TRANSITION* 2nd Ed. (Oxford: Westview Press, 1995), at 4.

Slavs'.<sup>7</sup>

The spread of the Yugoslav idea came up against many barriers in the late 19th century. Within the Croatian community, Yugoslavism came up against a narrower nationalist agenda which went against the vision of a multiethnic and multicultural society in the Balkans. It also faced opposition from other South Slav nationalities. Serbian nationalism held as its primary aim the removal of all vestiges of the Ottoman imperial system. Many Serbs had suffered under the empire, their role in Balkan society relegated to agrarian servitude. Freedom from Ottoman control was more appealing to the Serb population than Illyrianism or Yugoslavism. Serbia's military leadership was much more concerned with liberating territories claimed by Serbia that were still under foreign possession. The elite political culture of ethnic Serbs, in addition, had been moulded by the presence of the Ottoman empire, including the tutelage of Serb princes functioning under 'quasi-Ottoman' control.<sup>8</sup>

By the early 1900s, the appeal of pan-Yugoslavism became fashionable, especially among the region's younger leaders. Radical youth movements drew together younger Slovenes and Croats. Most Slovenes and Croats eyed Serbia with suspicion, especially in reaction to the Serbs' lack of enthusiasm regarding South Slav unity. However, the Serbian military's success in the Balkan Wars of 1912-1913 prompted many in the radical youth movement to consider its strength as essential

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<sup>7</sup> Cohen, 1995, at 4 to 5.

<sup>8</sup> Cohen, 1995, at 6 to 7. (Much of the historical literature provides little discussion on the role of the Muslim minority in the development of the Yugoslav state)

for the cause of unification.<sup>9</sup> For example, a 1913 group manifesto of young Slovenian intellectuals stated,

As it is a fact the we Slovenes, Croats and Serbs, constitute a compact linguistic and ethnic group with similar economic conditions, and so indissolubly linked by common fate on a common territory that no one of the three can aspire to a separate future, and in consideration of the fact that among the Slovenes, Croats, and Serbs, the Yugoslav thought is even today strongly developed, we have extended our national sentiments beyond our frontier to the Croats and the Serbs.... By this we all become members of one united Yugoslav nation.<sup>10</sup>

The strides the Yugoslav movement made by the early 1900s came to an abrupt end with the assassination of Austria's Archduke Franz Ferdinand in Sarajevo and the eventual outbreak of World War I. Austrian hostilities pitted the Dual Monarchy of Croats and Slovenes against the Serbian Kingdom. It was not until 1918 that a South Slav political union was finally created with the help of King Alexander.<sup>11</sup> Ironically, many Serbs who were originally opposed to unification now embraced it, most of all because it realised the historic mission of uniting all Serbs into one state. These same Serbs 'genuinely believed that they had liberated the Croats and the Slovenes from the Habsburg yoke'.<sup>12</sup> The 'Kingdom of the Serbs, Croats, and Slovenes' included: the Kingdoms of Serbia and Montenegro; Macedonia; Slovenia and Dalmatia; Vojvodina and Croatia-Slavonia; and, Bosnia-Herzegovina.<sup>13</sup>

The first Yugoslav state was multiconfessional, embracing three large

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<sup>9</sup> Cohen, 1995, at 9.

<sup>10</sup> Cohen, 1995, at 10.

<sup>11</sup> Cohen, 1995, at 13.

<sup>12</sup> International Institute for Strategic Studies. ADELPHI PAPER: 270 (London: Brassey's Ltd., 1992), at 7.

religious communities (Eastern Orthodox, 46.7 per cent; Roman Catholic, 39.3 per cent; and Muslim, 11.2 per cent). The ethnic composition was even more disparate, comprising Serbs/Montenegrins (42 per cent); Croats (23 per cent); Slovenes (8 per cent); Macedonians (5 per cent); and, Albanians (4 per cent). The 1920s was an unstable period for the new nation. Despite the milestone of creating such a heterogeneous state, the regime failed to achieve interethnic harmony. The continual attempts to dissemble the nation through peaceful negotiation were rejected by Serb leaders. The failure to reconcile competing interests ultimately resulted in the imposition of dictatorial rule by King Alexander. In an attempt to slow the growth of nationalism among minority groups and sever old regional loyalties, Alexander instituted a number of political changes. He changed the name of the country to the 'Kingdom of Yugoslavia', and reorganised and renamed its traditional territorial units. There was an attempt to promote the pan-ethnic notion of 'integral-Yugoslav national unitarianism' (as opposed to confederal government), the rationale of which was to cast off ties with the past. The 1931 constitution went further by strengthening the power of the Crown and central authorities and banning political organisations with ethnic, regional, or religious agendas.<sup>14</sup> In 1929, Parliament was dissolved, and the constitution suspended. While Alexander I was promoting Yugoslav nationalism, his intent to overcome all opponents translated into brutal authoritarian government. The lack of respect for certain political and cultural rights generated intense opposition. Croatian extremism was one of the

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<sup>13</sup> Cohen, 1995, at 13.

<sup>14</sup> Cohen, 1995, at 15 to 16.

resulting bi-products of this era. The rise of the fascist *Ustache*, which sought complete independence for Croatia, was behind the 1934 execution of Alexander I. This occurred, despite attempts to address Croatia's political concerns in the 1931 constitution.<sup>15</sup>

While the first Yugoslav regime may have enjoyed a state of quasi-stability during the 1930s, the authoritarian rule of the post-Alexander regime and its failure to recognise the political and civil rights of the country's diverse population, eventually failed to alleviate interethnic tension.<sup>16</sup> The minimal success of creating a multi-ethnic nation came to an abrupt end with the eruption of the Second World War and the Nazi Germany occupation. A bloody civil war ensued destroying the negligible political and cultural unity achieved under the first Yugoslav regime. Under the Nazi occupation, a wave of violent ultranationalism erupted in numerous regions, prompted by the rise in power of axis-backed leaders. Programmes of ethnic domination were implemented to settle old ethnic grudges. Within the new Independent State of Croatia, the Ustache practised a campaign of ethnic violence against Serbs, Jews, and non-Croats. Persecution ranged from institutional discrimination to genocide. Similar policies were followed by puppet leaders and occupation forces in Vojvodina, Kosovo, and Macedonia.<sup>17</sup> However, it was the puppet state of Ante Pavelic, in Croatia, which exacted the most widespread campaign of terrorism. The campaign involved killing, expelling, or forcefully converting to Catholicism those Serbs living within its territory. It is estimated

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<sup>15</sup> Adelphi Paper: 270, at 7 to 8.

<sup>16</sup> Cohen, 1995, at 17.

between 300,000 and one million people were slaughtered; 200,000-300,000 Orthodox were forcibly converted, and another 300,000 fled to Serbia. Roughly 50,000 Jews and 20,000 Gypsies were executed. Ironically, the Ustashi regime treated Muslims as 'brothers and allies' because they historically considered Muslims to be Croats.<sup>18</sup>

In response to their renewed persecution, many Serbs became involved in the ultranationalistic Chetnik guerrilla movement, which indiscriminately inflicted comparable atrocities against Croats and Muslims.<sup>19</sup>

It was under the leadership of Josip Broz Tito that the Communist Party of Yugoslavia (KPJ) emerged as one of the few non-ethnonationalist movements. The KPJ spearheaded a multiethnic movement dedicated to preserving the Yugoslav state. However, this new Yugoslav state would step away from the 'integral-Yugoslav' model of the royalist government towards a cultural hybrid of supranationalism and communism.<sup>20</sup> In fact, Tito was able to rally most of his Yugoslav support during the war under the slogan 'Brotherhood and Unity', which was part of his promise to respect the equality of nations upon assuming power.<sup>21</sup> As Slovenian communist leader Edward Kardelj proclaimed,

The growth of universal culture depends on the consciousness of a universal community, or the common interests of all peoples of all languages. And that consciousness will develop parallel with the development of the means of production with the new forms of the social division of labor, with the progress of socialist societal relations.... In that sense we are also speaking of the amalgamation of nations in a universal community.<sup>22</sup>

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17 Cohen, 1995, at 21.

18 Spencer, Christopher. 'The Former Yugoslavia: Background to the Crisis' in BEHIND THE HEADLINES Vol.50(4), 1993, at 7.

19 Cohen, 1995, at 21.

20 Cohen, 1995, at 22.

21 Adelphi: 270, at 9.

22 Cohen, 1995, at 22.

## ETHNONATIONALISM AND THE DEMISE OF YUGOSLAVIA

Writing before the collapse of the Soviet Union, Stephen Van Evera identified nine potential border disputes and noted thirteen sizeable ethnic groups that have or may seek independence in Europe alone. These figures do not include Yugoslavia, nor the ex-USSR.<sup>23</sup> K.J. Holsti suggests that 'the process of nation-state creation, that began with the Greek war of liberation in the 1820s, has not yet run its course' and 'the rise of ethnic-based conflicts... has become the 'AIDS of international politics'".<sup>24</sup> Holsti's argument seems especially convincing in light of events in the Balkans, the former USSR, and Eastern Africa. Yugoslavia has been one of the most prominent victims of this trend and its story has been told widely and frequently. Too often, however, the stories neglect to mention that human rights practices can provide an important indication of the state of inter-ethnic relations and conflict. This is evident as one reviews the post-war history of Yugoslavia.

The devastation of internal ethnic warfare pushed Tito's communists, at war's end, to implement their programme of one-party Soviet-style government. The express intention to construct a political union to the exclusion of the ethnic question is, Lenard Cohen suggests, one of the key factors in the regime's downfall. By denying basic rights to these ethnic communities, individuals within these communities remained insecure and attempts to claim rights were often met with brutal opposition. Even such fundamental territorial issues, such as the design of

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<sup>23</sup> Holsti, K.J. 'A "Zone of Civility" in European Diplomatic Relations? The CSCE and Conflict Resolution' from the Conference' in *THE CSCE AND FUTURE SECURITY IN EUROPE* ed. Michael Brynns, March 1992, at 58.

the new internal borders, immediately were viewed by most minority groups as a threat to cultural, and by extension, civil rights. In particular,

- (1) Serbs and Croats objected to the creation of the Republic of Bosnia-Herzegovina, with its mixed composition of Muslims, Serbs, and Croats. Many Croats viewed the Muslims as Islamicized Croats as a result of Croatian control of most of the region under the 1939 Cvetovic-Macek Agreement;
- (2) The region of Kosovo-Mehotija was the location of the medieval Serbian Empire. Serbia longed for its independence during the presence of the Ottoman Empire, but had not achieved integration with the region until 1912. The region's population was 70 per cent Albanian by 1945 and yet the weak communist organisation was largely Serb dominated. Furthermore, the Albanian majority hoped to unify with their ethnic brethren in Albania;
- (3) The most troublesome areas, however, were the Serbian inhabited areas of Dalmatia, Lika, Kordun, Baranja, Slavonija, and Baranja. These regions perhaps suffered the most under the control of the Independent State of Croatia. They were now part of the Socialist Republic of Croatia.<sup>25</sup>

Despite their vocal commitment to ethnic equality in the newly formed communist state, the communist elite had no intention of permitting ethnic and traditional divisions to interrupt the transition to communist rule. It was believed that with major economic, political, and social reform, post-war development would eradicate the country's interethnic and interregional malaise. The one constant in managing Yugoslav ethnicity was the maintenance of the single-party system within a federally structured state. It would be the key element in the creation of an 'all-Yugoslav consciousness', sometimes referred to as 'homogenous socialism'.<sup>26</sup> Yet it had the effect of denying basic political rights to individuals throughout the country.

The 1950s and 1960s witnessed various strategies to liberalise the federal-

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<sup>24</sup> Hollett, at 57 to 58.

<sup>25</sup> Cohen, 1995, at 24 to 25.

<sup>26</sup> Cohen, 1995, at 26 to 28.



regional division of powers, as well as an attempt to 'humanise' the face of socialism. The regime moved towards recognising the 'national question' as a necessary consideration in domestic political relations. As Cohen explains, there was a further recognition that ethnic relations issues needed to be addressed, and in a manner open to the public eye.

Adopting an outlook that can be conceptualized as *pluralist socialism*, the regime no longer treated intergroup conflicts as a taboo theme that needed to be suppressed or administratively resolved outside public view.... Increasingly, there was recognition that different and conflicting interests were normal and long-term phenomena during socialist evolution and that such plurality of interests would best be channeled and institutionalized through a politically more vital federal system that distributed power among all levels of governmental authority.<sup>27</sup>

Yet the strides made on the national question in the sixties were set back significantly with the crackdown on resurgent nationalism in the early part of the 1970s. It is possible that, had the federal government coincided democratic reform with the redistribution of federal powers, Yugoslavia might have achieved a level of greater stability. Despite the shift towards decentralisation, such change was accompanied by a greater restriction on liberal-democratic rights, which in turn led to greater civil instability. Croatia, like many Communist controlled countries, felt the effects of the velvet revolution in Prague. Sometimes referred to as the 'Croatian Spring', the liberal-democratic/nationalist movement suffered a similarly violent fate.<sup>28</sup> Under Tito's directing hand, the federal government and the military purged

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<sup>27</sup> Cohen, 1995, at 28 to 30.

<sup>28</sup> Helsinki Citizens Assembly. 'Yugoslavia: A Short History of an Idea' in YUCOFAX - BREAKDOWN: WAR AND RECONSTRUCTION IN YUGOSLAVIA (London: Institute for War and Peace Reporting, 1992), at 4.

the Communist party in Croatia of all liberal-democratic and nationalist elements. This was followed by similar purges within the other republics.<sup>29</sup> As Dusko Sekulic suggests, the eradication of liberal-democratic influences, through gross violations of political and civil rights, would later deprive the Yugoslav peoples of an established, recognised form of government after the demise of Communism.<sup>30</sup> The vacuum would be filled with the ultranationalist alternative.

Despite the extreme methods of the state, the violence of 1971/1972 was followed by a formal and fundamental change in the nature of federal-regional relations. Regional representation at the federal level was instituted on the basis of parity rather than proportionality. In particular, ethnic group and ethnoregional interests were formally recognised as being legitimate so long as they were not 'aggressively' anti-socialist. The republics were vested with 'theoretical statehood' thereby effectively creating a semiconfederate political structure, with the rotation of regional officials into the office of the presidency, as the unifying component. While this mode of governance was often cumbersome, it seemed to suggest that the ethnicisation of the political process could succeed without resort to violence or discord. Yet, despite the effort at reform, it was apparent that the Yugoslav state was 'beginning to show signs of internal strain'.<sup>31</sup> The friction between nationalism and communism haunted Yugoslavia during much of Tito's regime, despite the system of federalism which accorded recognition of the country's distinct regions and multi-ethnic make-up. Richard Falk best describes Tito's creation:

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<sup>29</sup> Cohen, 1995, at 29 to 31.

<sup>30</sup> Sekulic, Dusko. 'Nationalism Versus Democracy: Legacies of Marxism' in *INTERNATIONAL JOURNAL OF POLITICS, CULTURE, AND SOCIETY* Vol.4(1), 1992, at 132.

The Yugoslav political arrangement was not only an exercise in centralised control. It was also a delicate effort to balance antagonistic ethnic and religious forces by way of a federalist compromise, establishing a pluralistic framework that achieved an impressive record of tolerance and respect for minority rights.<sup>32</sup>

In the end, the tensions were too difficult to maintain and 'tolerance and respect for minority rights' gave way to repression and the selective abuse of these rights by Serbian authorities.

The 1974 Constitution has been regarded as a major milestone in the negotiation of ethno-political interests. It has also been cited as one of the principal causes of the dissolution of the Yugoslav state. It is difficult if not impossible to say to what extent these amendments affected the well-being of the former SFRY. At the very least, the new constitution was an obvious indication that the regime's old structure of governance had fallen into disfavour.

Vojin Dimitrijevic characterises the 1974 Constitution as 'an unusual, enormously long (406 articles), verbose, and confused text'. He suggests that the onerously legalistic nature of the text confirmed 'the presumption that its purpose was to hide rather than reveal the true intent of the regime'. The sections on federal-regional powers were better designed and more comprehensible than those dealing with self-management. Despite the government's claims that great strides were achieved towards direct democracy, the complexity of the text effectively hid the

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<sup>31</sup> Cohen, 1995, at 32 to 33.

<sup>32</sup> Falk, Richard. 'Yugoslavia and the New Laissez-Faire Geopolitics' in YUGOFAX - BREAKDOWN: WAR AND RECONSTRUCTION IN YUGOSLAVIA (London: Institute for War and Peace Reporting, 1992), at 57.

fact that such 'advances' were, at best, negligible.<sup>33</sup>

The most apparent change under the new constitution was the devolution of power from the central government in Belgrade to the republics. The composition of regions within Yugoslavia was the same as at the birth of the SFRY: six republics - Slovenia, Serbia, Montenegro, Bosnia-Herzegovina, Croatia, and Macedonia; 2 autonomous regions within Serbia - Vojvodina and Kosovo. Parallel with that dispersion of power was the apparent strengthening of the republican parties. This devolution suggested a radical move towards a more confederal and democratic form of government that would recognise certain political and civil rights.

The decentralising effects of the 1974 amendments effectively undermined remaining loyalties to the ailing regime. The population increasingly identified itself with its deep-seated ethnicity. Decentralisation also worsened the nation's economic situation, creating a crisis and an unstable polity.<sup>34</sup> Zarko Puhovski suggests the constant decentralisation of the regime's power base became an inadequate substitute for democratisation. The call for greater powers to the Republics by Slovenia and Croatia in the late 1980s, however, provoked a chauvinistic reaction by ethnic groups who feared for the stability of the regime. This sentiment was shared by most ethnic groups, including the Serbs. The economic impact of decentralisation prior to and after 1974 also led to the creation of region-specific interests. It also brought about economic and educational inequality between the Republics, with Slovenia at the top of the pyramid, and the

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33 Dimitrijevic, Vojin. 'The 1974 Constitution and the Constitutional Process as a Factor in the Collapse of Yugoslavia' in YUGOSLAVIA: THE FORMER AND THE FUTURE (REFLECTIONS BY SCHOLARS FROM THE REGION) Ed. Payam Akhavan (Geneva: The United Nations Research Institute for Social Development, 1995), at 54 to 58.

autonomous region of Kosovo possessing the highest rate of illiteracy and unemployment.<sup>35</sup>

Since Tito's death in 1981, tensions had been growing between Belgrade and the republics, although disputes were for the most part settled peacefully. Both Slovenia and Croatia attempted to negotiate a confederation of independent states prior to their September 25<sup>th</sup>, 1991 unilateral declarations of independence. Serbia rejected this arrangement in favour of a new federation with greater powers located at the central government level.<sup>36</sup> The central government approach to conflict resolution changed the day after Slovenia and Croatia's declarations of independence. At this point in time, the federal government mobilised the Yugoslav Federal Army (JNA).<sup>37</sup> Subsequent hostility was largely directed against opposing republics as well as local, national, and religious minorities having connections with those republics, and the result was a dramatic increase in the violation of human rights.<sup>38</sup> Much of this hostility was incited and maintained by Communist and Yugoslav nationalist supporters who had privileged access to the state media, the military, and economic resources. Ana Devic describes this 'consolidation and concentration of state power' as the primary goal of competing communist and nationalist forces.<sup>39</sup> In the case of Yugoslavia, nationalism came out the winner in its struggle with the forces of traditional communism and liberal

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34 Spencer, at 11.

35 Puhovski, Marko. 'Yugoslav Origins of the Post-Yugoslav Situation and the Bleak Prospects for Civil Society' in YUGOSLAVIA : THE FORMER AND THE FUTURE (REFLECTIONS BY SCHOLARS FROM THE REGION) ed. Payam Akhavan (Geneva: The United Nations Research Institute for Social Development, 1995), at 128 to 129.

36 Higgins, Rosalyn. 'The New United Nations and former Yugoslavia' in INTERNATIONAL AFFAIRS Vol.69(3), 1993, at 468.

37 Higgins, at 468.

38 Higgins, at 468.

reform.

### *The Spillover Effects of Ethnic Tensions*

The area of the former Socialist Republic represents a small part of a wider community of diverse ethnic groups which are spread across most of South-East and Central Europe. The continued fear of a spillover of conflict into countries neighbouring ex-Yugoslavia is well-founded for two reasons. Firstly, the potential for its re-emergence and expansion is encouraged by the economic chaos connected to the fighting and the movement of refugees.<sup>40</sup> Joan De Bardeleben writes:

Regional unemployment and competition for scarce resources have already produced violent clashes.... Massive population movements, establishment of new regional dictators, strife in border and mixed-population regions, further dramatic declines in economic well-being...and regional wars are all possible consequences of failed accommodation.<sup>41</sup>

Secondly, the presence of innumerable ethnic minority groups in the region also ensures a direct interest in future disputes on the part of neighbouring powers.<sup>42</sup> In this case, the pattern of rights abuse in one society are often reflected or replicated in others. The neighbouring states are particularly sensitive to any abuse of the human rights of their ethnic cousins. One country that seemed the most concerned with the 1991-92

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<sup>39</sup> Devic, Ana. 'The Limits of Ethno-National Analysis' in INTERNATIONAL JOURNAL OF POLITICS, CULTURE, AND SOCIETY Vol.6(1), 1992, at 135.

<sup>40</sup> Asmus, Ronald D. 'Building a New NATO' in FOREIGN AFFAIRS Sept/Oct.1993, at 29.

<sup>41</sup> Holsti, at 59.

<sup>42</sup> 'Opposition? What Opposition?' in THE ECONOMIST Oct.30th, 1993, at 61; and, Pfaff, William. 'Invitation to War' in FOREIGN AFFAIRS Vol.72(3), 1993, at 99.

Balkan war was Hungary, which had been rather vocal about the status of the Hungarian minority in the Serbian autonomous province of Vojvodina. There were heightened fears that the policies of the Antall administration were the groundwork for a rejection of the 1920 Treaty of Trianon, where large parts of Hungarian-populated territories were ceded to Yugoslavia, Romania, and Czechoslovakia.<sup>43</sup> When Antall took office in the early 1990s, he declared himself to be the leader of the citizens of Hungary and the leader of the six million Hungarians living in Yugoslavia, Slovakia, Ukraine, as well as the United States, Canada, and Australia.<sup>44</sup> While no military operations against Hungary's neighbours surfaced, such irresponsible political statements by leaders like Antall did not help ease regional tensions.<sup>45</sup>

After receiving world-wide recognition of statehood, Macedonia nearly became another Balkan hot spot as a host of historical claims to the area have been made by at least four neighbouring countries. Bulgaria views Macedonia as 'West Bulgaria'. While Sofia does not question the existence of Macedonia as a state, it still does not recognise the Macedonian 'nation'. Serbia categorically rejected Macedonian independence demanding its re-annexation, in part to protect the Serb minority, which makes up only 2 percent of the population. Greece formally protested Macedonia's declaration of independence and made friendly overtures to Serbia during the height of the Yugoslav civil war. Athens even used its veto to prevent official recognition of Macedonia by the European Community (EC) until April 1993. Albanian interests also entered into this complex mixture of overlapping demands, as a sizeable Albanian

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<sup>43</sup> 'Hungary looks across its borders' in FOREIGN REPORT Jan.14th, 1993, at 3 to 4.

<sup>44</sup> Licht, Sonja and Mary Kaldor. 'Nationalism and War, Civil Society and Peace' in YUCOFAX (London: Institute for War and Peace Reporting, 1992) , at 11.

minority exists in Macedonia. Serbia, Greece, and Bulgaria issued joint statements in the spring of 1991, declaring that 'only Serbs, Bulgarians, and Greeks live in Macedonia'. This added to international fears that the hostilities would expand.<sup>46</sup> In this case, however, the international community, through the UN, intervened to maintain stability and to monitor the treatment of the various groups within Macedonia. The UN Security Council had responded to warnings from UN security envoy Cyrus Vance about 'the imminent explosion in Macedonia'. In December 1992, 900 observers were deployed in various towns and along the Serbian-Macedonian border.<sup>47</sup> This provides a good example of an early warning signal that may have prevented yet another civil conflict in the region.

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<sup>45</sup> 'Hungary looks across its borders', at 4.

<sup>46</sup> Weithmann, Michael W. 'Macedonia - "Land between Four Fires"' in *AUSSENPOLITIK* Vol.44(3), 1993, at 267 to 270.

<sup>47</sup> Weithmann, at 261.



## RIGHTS ABUSES AND THE CONFLICT IN THE PROVINCE OF KOSOVO

The events in Kosovo are yet another illustration of the sorts of violations, mirrored in numerous other regions, including Vojvodina, as well as the Republics. In reviewing the Kosovar example, it is worthwhile to consider at which points various prevention techniques might have been used to assuage an escalating conflict. The various instances of abuse are detailed below, but it can be suggested at the outset that prevention should have occurred when the Albanian majority began to vocalise dissatisfaction with its position or status in SFRY society. The following paragraphs describe stages of escalation, from organised political opposition, to terrorism instigated by the KLA. Arguably, the reporting of rights violations coupled with preventive measures of diplomatic intervention, should have come at the stage of political opposition.

The province of Kosovo is located in the south of what was once the Socialist Federal Republic of Serbia, nestled between Albania, Montenegro, and Macedonia. It remains part of the 'new Yugoslavia' where Serbia is the successor state. Its population numbers at 1 955 000, with 82.2 per cent of ethnic Albanian origin, 10 per cent Serb, and 2.9 per cent Muslim of non-ethnic Albanian origin.<sup>48</sup>

Prior to the 1980s, Kosovo was somewhat successful at asserting demands for greater regional autonomy and self-determination. The first post-war Yugoslav Constitution of 1946 defined that state's territory as a federal state of six sovereign

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<sup>48</sup> Relacewicz, Philippe. 'Une Mosaïque de Peuples' in *MANIERE DE VOIR 17: NATIONALISMES - LA TRAGÉDIE YOUGOSLAVE* Publication of *Le Monde Diplomatique*, at 46.

republics. Within Serbia itself, the territories of Vojvodina and Kosovo were given limited autonomy. However, their official status was that of 'Autonomous Provinces'. The internal affairs of each territory were governed by Serbia, although there was provision for representation at the chamber of the Federal Legislature. From the 1940s to the early sixties, Yugoslavia's feud with Albania translated into secret police persecution of the Albanian population in Kosovo. Despite this, ethnic Albanians managed to secure greater authority over territorial affairs after political set-backs in the 1960s. New amendments to the constitution, for example, augmented the independent authority of Kosovo and Vojvodina. Among the new powers were provisions allowing the provinces to create their own laws (provided they conformed with the federal and Serbian constitutions) and for representation in the federal government as separate delegates. The 1974 constitution formally defined the autonomous provinces as constituent members of the federation. In almost all respects, Kosovo and Vojvodina had acquired the status of republics. Along with this new status was the right to seats in the federal parliament, and on the federal constitutional court.<sup>49</sup>

At the beginning of the 1980s, the socio-political situation grew worse in Kosovo. Student demonstrations in Kosovo erupted in March 1981, calling for better living conditions and financial aid. The demonstrations were forcibly dispersed by the local police. Subsequent events led to a wave of general demonstrations demanding higher wages, greater freedom of expression, the release of political prisoners, and republican status for Kosovo. The government reaction was swift

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<sup>49</sup> Helsinki Watch. YUGOSLAVIA: HUMAN RIGHTS ABUSES IN KOSOVO, 1990-1992. (Oslo: Human Rights Watch, 1992) at 56.

and brutal. Several people were killed and many arrested and sentenced to prison terms lasting up to 15 months. The press, schools, and the local government were purged and a new party leadership was installed.<sup>50</sup>

These incidents of rights abuse, from arbitrary arrest and detention, to summary executions, as well as persecution of the press, educators, and local officials were sufficient indicators of the potential for instability. The greatest opportunity for prevention came at the moment of the vocalisation of Kosovar grievances, whether in the writings of press or through public demonstration. At this stage, with the international community watching closely and expressing its concern over such internal events, escalation could have been much more easily averted with preventive action, whether via forceful intervention or not. Both opposition and government, perhaps aided by outside diplomacy and arbitration, might have been able to reconcile differences more peacefully and to save face at the same time.

After Milosevic assumed power in Serbia, conditions worsened. His proposals for revoking the provinces' autonomous status sparked a new set of demonstrations. Eventually all public meetings were banned. In February of 1989, the collective Yugoslav presidency 'clamped down', sending in the Federal Militia. Protests and rioting ensued throughout the province. The Serbian Assembly suspended the Kosovo Assembly and other provincial organs. Renewed demonstrations were forcibly dispersed and followed by police beatings, arbitrary house searches, and arbitrary detention. In September of 1990, ethnic Albanians

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<sup>50</sup> Helsinki Watch, at 57.

staged a 24-hour strike. Meanwhile, dismissed Kosovan politicians secretly met to draft a constitution for a sovereign Kosovo Republic within Yugoslavia. One hundred and eleven delegates of the underground Kosovo Assembly were subsequently charged with 'counter-revolutionary' activity. Most of the delegates fled Kosovo, but many were also arrested. During the same period, Kosovo and Vojvodina's autonomous status was revoked and they were directly placed under Belgrade's rule. By 1992, Slovenia, Croatia, Macedonia, and Bosnia-Herzegovina had seceded from the SFRY, while Kosovo and Vojvodina still remained under the thumb of Serbia.<sup>51</sup> At this stage, the conflict had escalated to a very dangerous level. It was apparent to Albanian Kosovars that in order for Republics such as Croatia and Slovenia to protect their rights from Serb abuse, they had to opt for independence. With an extremely abusive Milosevic government in Belgrade, ethnic relations in Kosovo had escalated to a state of violence and the risk of civil war.

Many of the rights abuses that took place in Kosovo, as well as other areas of the former Yugoslavia, were specifically directed at the majority Muslims. Those abuses covered the full spectrum of human rights, including :

- (1) Police violence (arbitrary arrest, detention, beatings, and killings);
- (2) Legalised discrimination (lack of independent judiciary);
- (3) Restrictions on the freedom of association;
- (4) Denial of the freedom of speech and expression;
- (5) Limitations on the freedom of the press, and the persecution of

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<sup>51</sup> Helsinki Watch, at 58 to 59.

journalists;

(6) General employment and workplace discrimination and mass dismissals of Albanians; and,

(7) Discrimination in education (university quotas requiring that half of student body be Serb - Serbs are 10 per cent of population)<sup>52</sup>

The above-enumerated violations occurred concurrently, in varying degrees, as well as at different stages in the conflict. The instances of arbitrary arrest, detention, summary executions, as well as the crackdown on basic freedoms of association and expression increased over time in their frequency and severity. It is important to emphasise that human rights in Kosovo and in the SFRY had been violated long before Tito's death. Since the establishment of the Communist state, basic liberal-democratic rights had been withheld to all citizens. It was only until the severe cases of killing, torture, and arrest, coupled with restrictions on local governance, that the situation became so intolerable that citizens turned to armed opposition. As previously suggested, prevention was necessary at the earliest stages of escalation – when basic liberal-democratic rights were denied to Kosovars, and the SFRY's other regions. The issue then - who or what is the best agency to execute such measures of prevention.

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<sup>52</sup> Helsinki Watch, at i.

## CHAPTER TWO

### ETHNIC CONFLICT PREVENTION – INSTITUTIONAL RESPONSE & HUMAN RIGHTS AS THE DETERMINATIVE ELEMENT

When Jan Patochka wrote about Charter 77, he used the term 'solidarity of the shaken'. He was thinking of those who dared resist impersonal power and to confront it with the only thing at their disposal, their own humanity. Does not the perspective of a better future depend on something like an international community of the shaken which, ignoring state boundaries, political systems, and power blocs, standing outside the high game of traditional politics, aspiring to not titles and appointments, will seek to make a real political force out of a phenomenon so ridiculed by the technicians of power - the phenomenon of human conscience.

(Vaclav Havel, *Power and Conscience*)

#### INTRODUCTION

Jan Patochka's 'impersonal power' suggests that both state, as well as international and regional actors need to become more sensitised to the 'human' element of global politics.<sup>53</sup> They must look beyond the nation-state and international organisations as the only legitimate international actors. The emerging, yet still fragile international human rights regime is one of the few mechanisms that recognises the individual. However, conventions and treaties on human rights have not focused on the importance of collectivist or group rights. The 'cultural element' is often overlooked by rights activists in their pursuit to enforce euro-centric human rights codes on non-european states or peoples. Despite the

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<sup>53</sup> The OSCE added the 'Human Element' to the Charter of Paris and other documents, as one of the principal areas under its purview. The 'Human Element' under the OSCE mandate refers to human rights.

adoption and enforcement of the *Universal Declaration of Human Rights* and the Geneva conventions on genocide and torture, there has been limited success in the development and adoption of treaties and conventions which acknowledge minority and collective rights.

Chapter Two is an attempt to incorporate the human element into the causal nexus of ethnic violence, state stability, and conflict prevention, and hence the focus of international affairs. Part One of the chapter first looks at how records on random and systematic human rights violations can be utilised to identify potentially unstable regions. It proposes that a local and/or regional strategy of conflict prevention is necessary to help reconcile ethnic differences and to prevent the resulting bloodshed and strain on international resources. Therefore, the argument is that an overall strategy of conflict prevention will first successfully identify problem regions, based on their record of human and minority rights violations. The second important element to the 'strategy' is to work with local, regional, and international agents to act on these early warning signs of conflict. Part Two examines the extent to which Intergovernmental Organisations (IGOs), such as the UN and the OSCE, possess the instruments to identify, monitor and alleviate escalating rights violations. Part Three suggests that non-governmental organisations (NGOs), such as Amnesty International and Human Rights Watch, are an essential resource for IGOs in 'identification', through their expertise in fact-finding and reporting.

## PART ONE - THE PARAMETERS OF CONFLICT PREVENTION

### I. *Patterns of Human Rights Abuse*

Taking into account the diversity of multi-ethnic states that have erupted into conflict, and the complexity of balkanisation, it is possible to observe distinct patterns in conflict escalation. These patterns are the first step in developing a standard against which one can measure the severity of a particular crisis, and the critical points at which preventive intervention becomes necessary. Stephen Ryan discusses what he calls the 'destructive patterns of inter-ethnic tension'. He suggests the principal types of destructive interaction are (1) forced assimilation, (2) forced expulsion, and (3) genocide. All three entail some form of gross human rights abuse. Of the three, forced assimilation is the most applicable to Yugoslavia *prior* to its dissolution; and, to Kosovo both prior to and after the SFRY's dissolution. Assimilation involves an attempt by one controlling ethnic group to destroy the culture of other group(s), forcing them to adopt their culture. Assimilation can be imposed in the form of language restrictions and the abolition of religious practices and customs. Most often the replacement of the minority culture, with the dominant, will be reflected in schooling, the media, and government propaganda. Sometimes the dominant group will move large groups of 'its own' into areas populated by the minority in order to facilitate the success of forced assimilation.<sup>54</sup> In Kosovo, Serbian authorities made a concerted effort to repopulate the region with

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<sup>54</sup> Ryan, Stephen. 'Transforming Violent Intercommunal Conflict' in CONFLICT TRANSFORMATION (Basingstoke, UK: MacMillan Press, Ltd., 1995), at 102 to 104.



ethnic Serbs. Education in Albanian was also discouraged and replaced with a curriculum that was very Serb-centric.

If outside intervention is to be effective in preventing the occurrence of violent conflict, it must occur before the first phase (forced assimilation) starts. There is a danger of a minority or ethnic backlash as soon as governments implement policies of forced assimilation. However, even prior to assimilation, the real potential for ethnic instability and turmoil starts with the violation of basic civil and political rights. This is especially the case in states where such basic rights are enjoyed by dominant groups, and denied to minorities.

## *II. Identifying Human and Minority Rights*

Greg Beyer's human rights matrix (Appendix A) provides a scale on the severity of violations, with nine categories of fundamental rights :

- (1) Life
- (2) Liberty
- (3) Security of the Person
- (4) Economic Rights
- (5) Educational and Cultural Rights
- (6) Personal Rights
- (7) Legal, Political, and Nationality Rights
- (8) Social, Family, and Property
- (9) Personal Integrity and Privacy.<sup>55</sup>

Violations under the category of the right to 'Life', for example, descend in severity from 'arbitrary deprivation of life by a government entity', to the 'credible threat to life by a non-government entity'. Under the category of 'Personal Rights', Beyer describes the most extreme violation as 'Interference with freedom of thought,

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<sup>55</sup> Beyer, Gregg, 'Human Rights Monitoring: Lessons Learnt From the Case of the Isaks in Somalia' in *EARLY WARNING AND CONFLICT RESOLUTION* (Basingstoke: MacMillan Press, Ltd, 1992), at 37 to 39

conscience and religion and its manifestation through teaching, practice, worship and observance, by GE'. The least serious violation of 'Personal Rights' is harassment and/or discrimination by a non-government agency because of thought, conscience, religion, and expression.<sup>56</sup>

Beyer suggests that the development and application of a matrix on rights abuses might help in the monitoring of specific incidents which have the potential to lead to ethnic conflict, violent disputes, and refugee displacement and movement.<sup>57</sup> In the case of Kosovo and the former SFRY, both 'serious' and 'minor' violations, cited in Beyer's matrix, occurred under Tito's communist dictatorship. The abuse of basic rights to liberty and security (i.e. freedom from arbitrary arrest or detention) existed well before the break-down in inter-ethnic relations. The crackdown on resurgent nationalism in Croatia during the early 1970s resulted in the violent suppression of political rights by the Federal Government. The 'Croatian Spring', inspired by the 'Velvet Revolution' in Prague, was one of the first indications of an escalation in human rights violations, and, in turn, of ethnic discord.

The situation in the autonomous province of Kosovo before and after the 1980s is another, more recent example of the increase in severity of human rights abuses. There had been a longstanding denial of economic and political rights to Kosovar ethnic Albanians, that were enjoyed by other SFRY citizens, including Kosovar Serbs. From the denial of 'republic' status to Kosovo, to the denial of

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<sup>56</sup> Beyer, at 37 to 39

<sup>57</sup> Beyer, at 24 to 25.

educational rights to ethnic Albanians, the autonomous province was a prime example in the early 1980s of a powder keg waiting to explode. The denial of free choice of educational institutions, as cited under Beyer's matrix, was one particular abuse which, together with others, fuelled violent confrontations with Kosovar Serbs, culminating in armed conflict and ethnic cleansing in 1998 and 1999.

The complexity and detail of Beyer's matrix raises the question, at which stage monitoring should cease, and early warning and intervention should occur. The point on the matrix, at which intervention becomes necessary, is an arbitrary decision. When should NGOs and other human rights agencies call for intervention : when there is the denial to the right of free expression; when citizens are arbitrarily detained ; or, when governments engage in acts of torture and summary execution? Presumably, conflict prevention would necessitate intervention at the earliest stages possible, certainly in instances where basic violations of freedom of expression, etc. are committed by government entities.

### *III. Conflict Escalation and Intervention*

Kumar Rupesinghe, recognising the above dilemma, claims that there must be greater congruency between conflict escalation and intervention. He adds that it is important to identify the 'gaps in the conflict process and find ways to strengthen and build competence in these areas'.<sup>58</sup>

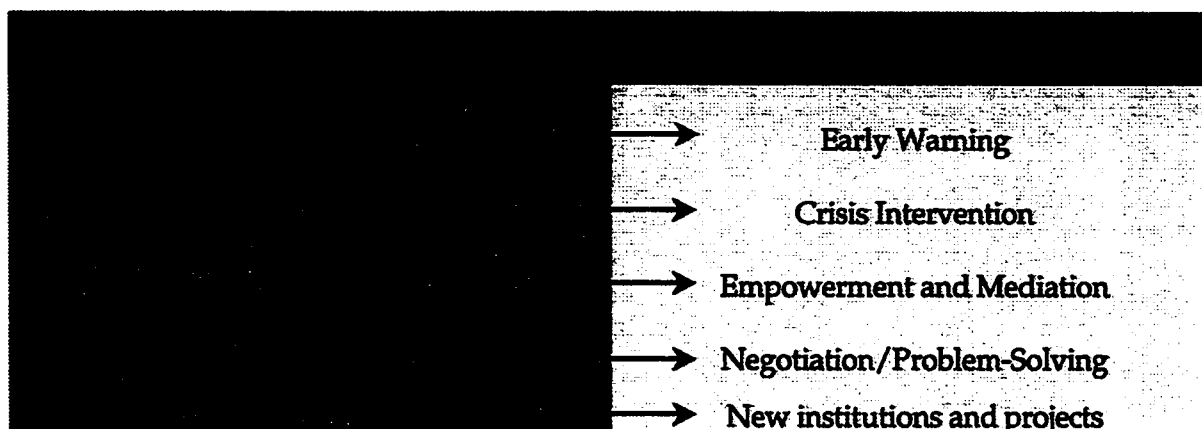
Rupesinghe provides a useful description of the phases of the conflict process,

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<sup>58</sup> Rupesinghe, Kumar. 'The Role of Non-Governmental Organizations in early warning and conflict resolution' in *NGOS AND REFUGEES : REFLECTIONS AT THE TURN OF THE CENTURY* eds. Morten Kjaerum, Klaus Slavensky, & Finn Slumstrup (Danish Centre for Human Rights, 1993), at 128 to 129.

and where prevention might fit in during escalation<sup>59</sup>:

**Table 1 – Stages of Conflict and Methods of Intervention**



Rupesinghe describes conflict formation as the 'process at which there is a perceived disjuncture between actors in a given social system'. It is very difficult to ascertain at which stage outside and internal monitors should become concerned about 'disjunctures'.<sup>60</sup> For example, the constitutional and policy-oriented discrimination of a state may be considered human rights abuse, such as occurred with Russian minorities and restrictive Estonian property laws in the early 1990s. Government policies which on the surface do not target minorities, but which have the unintended effect of discrimination, are another problem area. For example, the employment of capital punishment by some American states is only meant to be directed at capital offenders, yet a large majority of death row inmates are African-American. The inherent discrimination of capital punishment has been a great source of tension between visible minorities and State governments.

Conflict escalation, under Rupesinghe's scale, is the phase of 'attrition', both

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<sup>59</sup>Rupesinghe, at 131.

military and verbal, of the disputing parties, followed by a cycle of violence and counter-violence. The threat of violence is a critical juncture in which conflict prevention can still work. Diplomatic intervention should, however, come sooner than later. Invariably, whether instigated by government or by non-government entities, the longer violence is allowed, the more intransigent the feuding parties will become. Local NGOs must be turned to for recent reports of violations. In essence, NGOs are the early warning instrument which regional and international agents can rely upon to determine if and when action is necessary. If conflict prevention fails, the violence will then become 'pathological', thus necessitating mediation, conflict resolution and possible military intervention to bring it to an end.<sup>61</sup>

#### *IV. Early Warning and Information Control*

The process of ethnic conflict prevention and protracted rights abuse prevention starts with detection systems. The 'early warning' process begins with information gathering. Information was available to governments and international institutions regarding the Yugoslav situation as early as the late 1970s. NGOs such as Amnesty International or groups like Helsinki Watch fulfilled part of that role. As argued in Part Three, non-governmental organisations can play an increasing and even dominant role in reporting to IGOs potential and actual human and minority rights violations. However, there exists at present little co-ordination and

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<sup>60</sup>Rupesinghe, at 131.

<sup>61</sup>Rupesinghe, at 131 to 133.

dissemination of such data.

That initial information (i.e. reports from NGOs, regional, international, or intelligence agencies) should be assessed according to the standards or patterns of violations set out above. A final interpretation of the data may or may not lead to a recommendation for action. The collection of information may also require further observation, possibly in the form of monitoring missions. The methods of data collection are as important to any solution of crises as the steps in active prevention. Gregg Beyer suggests that systematic monitoring and reporting should be available to international and national decision-making processes. He suggests that the provision of data would allow decision-makers to direct their foreign policies and financial resources towards ameliorating conditions.<sup>62</sup>

Beyer provides a set of criteria which, when applied to ethnic conflict and human rights data, provides seven uses for such information. These elements can aid the prevention and mediation processes:

*Identifying root causes* - Beyer suggests it is essential to develop baseline data, specific to a particular situation, through the creation of 'comprehensive integrated baseline reports'. The reports cover states' respect for human rights, current abuses, and the severity of violations.<sup>63</sup>

*Monitoring root causes* - The 'systematic reporting' of improvements in, or deterioration of, the overall human rights situation in particular states would be made to government agencies and NGOs. These agencies or NGOs would be

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<sup>62</sup> Beyer, at 18.

<sup>63</sup> Beyer, at 28.

involved, at a minimum, in human rights monitoring, foreign policy or diplomacy, economic assistance, and relief and development operations.<sup>64</sup>

*Early Warning* - Early warning entails predicting, identifying, and preparing for specific human rights abuses. The process also involves identifying emerging human rights problem situations.<sup>65</sup>

*Averting ethnic disputes* - The co-ordination of preventive responses would be facilitated using the data collected as a background to convene appropriate agencies and design an effective response.<sup>66</sup>

*Addressing protracted disputes* - This is the co-ordination of 'reactive responses' to human rights situations that have turned into major crises leading to violent protests and political unrest. Using up-dated monitoring and reporting, the background is set to re-convene appropriate agencies or organisations to discuss the options available under a 'co-ordinated collective strategy'.<sup>67</sup>

*Monitoring improvements of problem situations* - Where human rights situations improve, recognition and encouragement of further improvements should be considered and agreed upon.<sup>68</sup>

*Adjusting policies accordingly* - Policies and procedures should be accordingly adjusted as situations improve or deteriorate.<sup>69</sup>

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<sup>64</sup> Beyer, at 28.

<sup>65</sup> Beyer, at 28.

<sup>66</sup> Beyer, at 28.

<sup>67</sup> Beyer, at 29.

<sup>68</sup> Beyer, at 29.

<sup>69</sup> Beyer, at 29.

## V. *Intervention and Cultural Relativism*

Despite Beyer's criteria for the use of data on rights abuse, the process is of little value if the fourth aspect, 'Averting Ethnic Disputes', is not applied. International and regional institutions had ample opportunity to observe events in Kosovo, both before and after the break-up of the SFRY, and to act accordingly. As previously stated, early warning and prevention strategies are of little use if these organisations, together with world powers, are unwilling to intervene at sufficiently early stages, such as during periods of forced assimilation.

Diplomatic intervention, whether in the form of formal protests from concerned governments, or exerting pressure for the placement of observer missions in target states, raises innumerable difficulties. In addition to citing the UN Charter to protect the integrity of their internal affairs, many nations invoke the argument of 'cultural relativism'. Cultural relativists, especially those concerned with China and Southeast Asian states, assert that human rights vary from country to country because of differing moral and social codes. The argument is that western conceptions of morality cannot be imposed upon the sovereign culture of nations like China or Malaysia.

Ramesh Thakur eloquently dispels the cultural relativism argument. First, he suggests that rights violations in many states are the subject of criticism and rejection under their own moral and social codes. Second, he adds that a nation's internal standards are often congruent with international convention. Thakur asserts, 'But the fact that moral precepts vary from one culture to another does not mean that different peoples do not hold some values in common'. For example, the most apparent



universal prohibitions include murder and incest, even when there is some differentiation in how the crimes are defined.<sup>70</sup> Thakur describes Amnesty International's ability to reconcile the legitimacy of its work against the specious reasoning of cultural relativists.

One attempt to reconcile relativism with universalism was organized around the proposition that all societies require retribution to be proportionate to the wrong done. The justification for much of the AI movement could be anchored to this apparently simple universal principle.<sup>71</sup>

From this juncture, Thakur lists a series of basic propositions which he believes are consistent with both international human rights conventions as well as the basic moral and social covenants of most societies:

- (1) Governments may not punish citizens who have done no wrong;
- (2) Before punishment, a citizen's guilt must first be established;
- (3) The determination of guilt requires procedural fairness;
- (4) Punishment cannot precede such determinations;
- (5) Suspects of non-violent crimes may not have violence done to them;
- (6) Summary executions and disappearances are 'morally impermissible'.<sup>72</sup>

Thakur adds that, as conscientious objectors, foreign governments are entitled to apply sanctions where they object to the human rights conduct of another state. Despite differing moral codes, State A is entitled to deny developmental aid, economic assistance, and more to State B. Without probing into the wisdom of such punishment, Thakur states 'If our moral code imposes a duty on us to assist you, then the same code also permits us to impose a reciprocal duty on you'. Furthermore, as outsiders to internal standards, all that international society can do is operate from its own frame of

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<sup>70</sup> Thakur, at 146.

<sup>71</sup> Thakur, at 146.

reference and presume that adherence to international convention 'reflects societal consensus'.<sup>73</sup>

Ramesh Thakur's observations bring to mind a further consideration: that nations who choose to participate, and who in turn benefit from international cooperation, are capable of contributing to the evolution and the reform of human rights legislation. Cultural relativists could not argue away the application of international standards if the international community made every effort to involve all nations in the ongoing process of reform. Yet, the relativists' arguments are often convincing because not all nations are 'allowed' involvement in the process of reform.

The monitoring and critiquing of human rights abuses is further warranted by the increasing dependence of nation-states upon the international community for the provision of economic assistance and for facilitating their participation in the global marketplace. The principle, but not necessarily the practice, is simple: if you wish to benefit from international commerce, diplomatic regard, and the protection of international law, your behaviour must conform to the accepted norms and practices of the international community – citizenship is not a game of selective adherence

Part One has attempted to set out the framework in which conflict prevention must work: first by examining instances of destructive interaction between populations, such as forced assimilation; second, by establishing examples of human rights abuse, using Gregg Beyer's rights' matrix; and, third, by identifying instances in which reporting and intervention become necessary. In order for information on rights

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<sup>72</sup> Thakur, at 146.

<sup>73</sup> Thakur, 176 to 177.

abuses, gathered from fact-finding and monitoring, to be of any value, it must be put to use when provided to intergovernmental agencies. The work of non-governmental organisations in monitoring, fact-finding, and early warning is entirely dependent upon states and intergovernmental organisations acting upon the information they are provided. Governments, and regional and international organisations, must be willing to dedicate resources to conflict prevention initiatives, with the long-term objective of averting the greater human and economic cost of armed conflict. Such a commitment will also entail a change in the belief that nation-states be allowed to conduct their internal affairs without outside interference.

## PART TWO - EXISTING MODELS OF CONFLICT PREVENTION - THE PROMISE OF THE OSCE (CSCE) AND THE UN

If there is to be any attempt to prevent ethnic disputes from turning violent, such as in the former Yugoslavia and Kosovo, it is necessary to establish a connection between ethnic discord and the regime or dominant group's record on human and minority rights.<sup>74</sup> Mohamed Rabie describes the kind of role the international community would have to take in any conflict prevention scheme.

Because [conflict prevention] requires special systems to monitor conflict on a continuous basis in order to anticipate trouble and to activate the proper mechanisms to avoid hostilities, no single outside power could be seen as credible or capable of performing the task. International organisations and forums, particularly the United Nations and the Conference on Security and Co-operation in Europe (CSCE), have emerged as the political bodies that are most likely to be able to build and manage systems capable of avoiding international crises.<sup>75</sup>

### *I. The Organisation on Security and Co-operation in Europe*

For any attempt at ethnic conflict prevention to be successful, it must be responsive to the particularities of the ethno-nationalist dispute to which it is to apply. As previously discussed, the context of multiethnic tension will help determine the nature and urgency of the outside 'response'. As is the case with regional or inter-state disputes, the most 'appropriate' actor to intercede will depend on a number of factors including the capacity and mandate of the organisation, the support of the organisation's principal actors, and the attitudes of the parties

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<sup>74</sup> Holsti, at 57.

<sup>75</sup> Rabie, Mohamed. *CONFLICT RESOLUTION AND ETHNICITY* (Westport: Praeger Publishing, 1994), at 52.

concerned. The Organisation on Security and Co-operation (OSCE) in Europe stands as one of the most advanced agencies in this area, even if it must be limited in its applicability to the European arena. Yet, as the OSCE has extended 'observer' status to nations such as Japan, and as others take a greater interest in the OSCE's mechanisms, there is a real possibility for Latin American (through the Organisation of American States) and African (Organisation for African Unity) parallels to develop. Such parallels would, however, have to be properly 'attuned' to the cultural, economic, and political context of those regions in order for IGOs to work.

OSCE business (the 'Helsinki Process') continues to be conducted on an informal basis as the organisation does not possess a constitutive treaty. Prior to the 1990s and the Charter of Paris, it was devoid of specific structures and agencies. Observance of the Helsinki Final Act<sup>76</sup> was monitored through numerous follow-up meetings between Foreign Ministers, experts, and other representatives of member states. The key follow-up meetings took place at Belgrade, Madrid, Vienna, and Helsinki between 1978 and 1992.<sup>77</sup>

Outside the Decalogue, the OSCE concerns itself with three major areas or 'baskets': European security, economic co-operation, and human rights.<sup>78</sup> It has developed a series of observation mechanisms and confidence building measures in all three areas. Many of the notification and transparency procedures adopted were used for the conventional arms reduction process. However, those have been

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<sup>76</sup> The Act was the product of negotiations between the east and west blocs, together with neutral and non-aligned states, in the early 1970s, resulting in some of the first steps towards conventional and nuclear disarmament.

<sup>77</sup> Décaux, *LA CONFERENCE SUR LA SECURITE ET LA CO-OPERATION EN EUROPE* (Paris : Presses Universitaires de France, 1992), at 32 to 34, and 62.

<sup>78</sup> Décaux, at 6.

extended to the area of human rights monitoring.<sup>79</sup>

Due to its emphasis on human rights (the 'human dimension'), the OSCE is now active in monitoring human rights and in detecting the potential for ethnic rivalry where rights are being infringed.

The OSCE has taken concrete steps to ensure that human rights receive attention. Procedures regarding military transparency and Unusual Military Activities (UMA) were adopted for the human dimension as well in a series of meetings, beginning with the Charter of Paris meeting in 1990. Among the permanent structures created at this meeting were: the Committee of Senior Officials (CSO), the Office of Democratic Institutions and Human Rights (ODIHR), and the Conflict Prevention Centre (CPC). The CSO was created to prepare the meetings of the Council of Foreign Ministers. It reviews current issues and formulates recommendations to the Council. There is also a provision allowing for the convening of meetings in emergency situations. The ODIHR was set up to 'facilitate contacts and the exchange of information on elections within participating states.' Finally, the CPC was established specifically to help reduce the risk of inter-state and intra-state conflicts. The CPC is mostly concerned with activities of a military nature. However, as it has decision-making powers, its deliberations will have an impact on situations of rights abuse and ethnic tribalism.<sup>80</sup>

The 'non-military emergency mechanism' of the CSO was adopted at the Berlin meeting of 1991. It responds to 'a serious emergency situation which may

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<sup>79</sup> Décaux, at 77 to 82.

<sup>80</sup> Vetschera, Heinz. 'The Role of the CSCE in European Conflict Prevention'. Paper presented at the conference on THE ART OF CONFLICT PREVENTION: THEORY AND

arise from a violation of one of the Principles of the Final Act or as a result of major disruptions endangering peace, security, or stability.’ The provision allows that if any member state of the OSCE concludes that an emergency situation is developing, that state may seek clarification from the state or states involved. In the request for information, it must state the cause or causes of concern. Within 48 hours, the requested states must provide all necessary information in order to clarify the situation.<sup>81</sup>

Where the situation remains unresolved, all states involved in the process have the option of notifying the Chairman-in-Office of the CSO and may request that an emergency meeting of the CSO be held. The request must state the reasons why the matter is urgent and the reasons for employing the emergency mechanism. If twelve or more participating states have seconded the request within a maximum 48 hour period, the Chairman will notify all participating states of the date and time of the CSO meeting. That meeting will be held at the earliest 48 hours, and at the latest three days after notification. At the meeting itself, officials may agree to recommendations or conclusions to arrive at a solution. There is also the option to call for a meeting at the ministerial level.<sup>82</sup>

The non-military emergency mechanism was activated in 1991 during the Yugoslav imbroglio. However, it was instituted too far into the crisis when violent skirmishes were already taking place between the JNA and local Slovenian and Croatian soldiers. The institution of the mechanism did, however, lead to the OSCE

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PRACTICE held at Helsinki, 2 June, 1992, at 6.

<sup>81</sup> Vetchera, at 11.

endorsement of the EC monitoring mission. However, as the process did not exist prior to the escalation in ethnic discord and in human rights violations, its institution at the later stages of the crisis was largely ineffective.

The 'humanitarian mechanism' was instituted at the Vienna Follow-up Meeting of 1986 to 1989. The mechanism envisaged that member states of the OSCE would exchange information and also respond to requests for information on issues and questions relating to the human dimension. Multilateral meetings are held in order to examine such questions. Three special conferences entirely devoted to the human dimension were held in Paris in 1989, Copenhagen in 1990, and Moscow in 1991. At the Copenhagen meeting, an obligatory mechanism with a defined procedure was established. The mechanism stipulated that where one state requests information from another on its human rights situation, the requested state must respond within a maximum of four weeks. It also allows for bilateral meetings to be held between the states in question within three weeks of the date of such a request.<sup>83</sup>

The Moscow document provided for the establishment of a list of qualified independent experts. These experts may be brought together under an OSCE mission. The aim of the mission would be set up to address or 'contribute to the resolution of questions' within the territory of the state in question. The territory must be that of a OSCE member state, and the mission must have permission to visit

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<sup>82</sup> Vetschera, at 11.

<sup>83</sup> Vetschera, at 12.



that territory. It is up to the state in question to establish the mission.<sup>84</sup>

Where the violating state has not established a mission, a minimum of nine other states may initiate the establishment of a mission of rapporteurs. This power is also available to the CSO. The objective of the rapporteur mission would be similar to that of the experts - making recommendations as to questions of human rights within the disputed territory. The Office for Democratic Institutions and Human Rights is charged with co-ordinating the expert and rapporteur missions.<sup>85</sup>

The Helsinki Decisions of 1992 created a High Commissioner on National Minorities (HCNM). The Commission acts under the auspices of the CSO as an instrument of conflict prevention at 'the earliest stage'. This is, perhaps, the closest vehicle in which human rights and minority rights abuses are addressed, within the context of ethnic tribalism. The Commissioner heads up the Commission and he or she is expected to provide 'early warning' and even 'early action' at the earliest stage possible with regard to tensions involving national minority issues. Those issues include those 'not yet developed beyond an early warning stage, but in the Commissioner's judgment, have the potential to develop into a conflict within the OSCE area.'<sup>86</sup>

The appointment is made by the Council of Foreign Ministers of the OSCE upon the recommendation of the CSO, and lasts three years. The Commissioner draws upon the facilities of the ODIHR. He or she must collect and also receive information from numerous sources, including the media, NGOs, and the parties

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<sup>84</sup> Vetushera, at 12.

<sup>85</sup> Vetushera, at 12 to 13.

involved in the incident being investigated. The High Commissioner may also request the assistance of up to three experts for brief, specialised investigations.<sup>87</sup>

Where the High Commissioner concludes that there is a *prima facie* risk of potential conflict, he or she may issue an 'early warning'. The early warning will be immediately communicated by the Chairman-in-Office to the CSO. The early warning would normally be put on the agenda of the next CSO meeting. However, if a state believes that such an early warning requires immediate consultation, it may activate the CSO emergency mechanism. If the Commissioner concludes that the situation is escalating into a conflict, he or she shall inform the CSO through the Chairman-in-Office. Should the CSO decide to take any action, the High Commissioner must be available to provide information on request to advise the CSO and any other institution or organisation invited to take action.<sup>88</sup>

Since the High Commission on National Minorities was created, the High Commissioner has issued several reports and made recommendations. Perhaps the most revealing and promising recommendations came from the HCNM's work on the situation in the then newly independent Estonia. Estonia's large Russian minority had been concerned about its status in that country. The Estonian parliament in the early 1990s passed a series of laws limiting property ownership for ethnic Russians. Russia voiced its disapproval and there was some concern regarding regional stability. There was a dangerous potential for irredentism, as well as for more significant rights abuse, especially given the animosity of Estonians

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<sup>86</sup> Vetschera, at 16.

<sup>87</sup> Vetschera, at 16.

towards their former oppressors. In one of its first actions, the HCNM monitored the situation. It eventually drafted a series of recommendations calling on the Estonian government to abolish the property-owning restrictions and to protect and further promote human rights for all minorities and all citizens.<sup>89</sup>

The HCNM has been fairly active since its creation, having monitored numerous regions, ranging from Turkey to Lithuania. However, it is difficult to say if the Commissioner's activities have had any effect on regional or state stability. Recommendations on the treatment of the Kurdish minority in northern Turkey do not seem to have repaired the situation. The process may take some time to prove itself, and the real test of the HCNM's effectiveness will be an incident as severe as the events in the former SFRY, or in Chechnya, which remain unresolved.<sup>90</sup>

While the functions of early warning and conflict prevention have been enshrined in the Helsinki Decisions, those measures came too late for the former SFRY and Kosovo. It is also quite probable that the measures, had they been in place during the escalation phase, may not have been enough to enable the CSCE/OSCE or other bodies to address the emerging problems in a timely matter to prevent the outbreak of armed conflict. Dr. Heinz Vetschera suggests that the further measure of establishing a 'permanent analysis capacity' within the CSCE/OSCE institutions could give bodies like the HCNM and the CSO more of an ability to handle upcoming crises. These agencies may find the source of competent analysis within the ranks of human rights NGOs.

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<sup>88</sup> Vetschera, at 16.

<sup>89</sup> 'The Prague Document on Further Development of CSCE Institutions and Structures' IN HUMAN RIGHTS LAW JOURNAL, Vol.13(4), 1992, at 289.

## II. *The United Nations*

Since its creation, the UN contribution to the promotion and protection of human rights has been considerable. The creation of the *Universal Declaration of Human Rights* and Geneva conventions on genocide and torture are the foundation of the present international rights regime. This 'legislation', together with treaty-based monitoring, has done much to define and establish international standards on the respect and promotion of human rights.

Despite the above advances, other attempts at standard setting in human rights have met with mixed success. The creation of the UN Commission on Human Rights did not result in major advances for human rights, as it became severely restricted by its own procedural rules. One particular rule disallowed the identification of alleged violators during deliberations of the Commission. Member states who were guilty of violations also sought positions on the Commission, or on the Economic and Social Council (ECOSOC) NGO Committee, in order to protect themselves, and to impede proper investigation of abuses, in the face of hard evidence.<sup>91</sup>

Some progress was made in the mid-seventies to circumvent political obstacles to public criticism with the UN creation of the regionally based *Working Group on Forced or Involuntary Disappearances*. The establishment of the Working Group came out of disturbing accounts of 'disappearances' in Chile and Argentina. Amnesty International has been credited for greatly advancing human rights work as a result of its 1977 observer mission to Argentina. Iain Guest, author of a detailed study on Argentina's

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<sup>90</sup> HCNM annual reports and recent accounts of its activities can be found at the OSCE website : [www.osceprag.cz](http://www.osceprag.cz)

<sup>91</sup> Gaer, Felice D. 'Reality Check : Human Rights NGOs Confront Governments at the UN' in NGOS, THE UN, AND GLOBAL GOVERNANCE eds. Weiss, Thomas & Leon

abusive conduct, claims the AI initiative was 'one of the most significant human rights missions ever undertaken by a non-governmental organisation'. Professor Felice Daer adds, 'It energised those directly involved, turning supporters of the regime into critics, making the organisation a focal point for the families of victims and adding credibility and authenticity to Amnesty's reporting as a human rights NGO'. From this stage, AI and the UN conceived the so-called 'thematic mechanisms' in human rights. As of 1995, ten issue specific mechanisms have been created and are conducted by a five-person working group. The group, together with special rapporteurs, conduct expert investigations into arbitrary detentions, summary executions, torture, religious intolerance, freedom of expression, violence against women, sale of children, independence of the judiciary, forced relocation, and 'contemporary forms of racism'.<sup>92</sup>

In 1994, the high-level UN post of *High Commissioner for Human Rights* was created, after a thirty-year delay. The position's duties did not fit with NGO proposals which had called for an independent monitor capable of rapid action in human rights emergencies. Instead, the less activist mandate authorises the Commissioner to :

- (1) Recommend measures for the protection and promotion of human rights to UN bodies;
- (2) Play an 'active role' in the prevention of human rights violations;
- (3) Coordinate all human rights activities within the UN regime;
- (4) Promote international cooperation in human rights;
- (5) Organize public education programmes; and,
- (6) Strengthen the UN's human rights 'machinery'.<sup>93</sup>

The 'thematic mechanisms' illustrate the co-operative relationship between

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Gordenker (London : Lynne Rienner Publishers, 1996), at 51 to 53.

<sup>92</sup> Daer, at 54.

<sup>93</sup> Daer, at 61

human rights NGOs and the United Nations. As the 'premier global international institution', the UN is able to extend its reach to almost every society and to implement universal norms. While the mechanisms rely on the political and ideological influence of the UN, they equally depend on NGO fact-finding and reporting to complement the process. In essence, AI and HRW expertise acts as the unofficial research base for the Working Group.<sup>94</sup>

Despite the significance of finally establishing the position of UN Commissioner, the mandate appears overbroad, with the potential to become mired down in procedural limitations and political obstacles. In contrast, the OSCE's High Commissioner on National Minorities is mandated to provide a rapid and effective response to human rights crises. While the HCNM does not function independently of the CSO or the Council of Foreign Ministers, it is free to operate with considerably fewer procedural impediments, which were effectively overcome by the implementation of the rapid-response mechanisms.

However, unlike the UN Commissioner, the OSCE's High Commissioner may only operate within the arena of member states. The UN Commissioner must, on the other hand, 'co-ordinate all human rights activities within the UN regime', and is therefore free to operate and to set standards across a much vaster territory. As the Commissioner is authorised to 'strengthen the UN's human rights machinery', it could eventually develop the ability to incorporate conflict prevention initiatives into its mandate, through extensive co-operation with non-governmental organisations. Furthermore, in light of recent policy failures in Rwanda and Bosnia,

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<sup>94</sup>Gaer, at 56.

there may exist greater political motivation within the UN Secretariat to embrace principles and strategies of conflict prevention. The United Nations, in co-operation with human rights non-governmental organisations and regional agents like the OSCE, could eventually succeed at setting global standards on conflict prevention, and in turn, at establishing a comprehensive and effective regime of human rights monitoring and reporting.

### **PART THREE - NON-GOVERNMENTAL ORGANISATIONS - THE 'THIRD SYSTEM' IN EARLY-WARNING AND CONFLICT PREVENTION**

The interposition of outside agents in the internal affairs of states experiencing ethnic tension must be undertaken in good faith. In order to lend an air of legitimacy to the process of conflict prevention via diplomatic interference, intervening parties must rely on objective and accurate information. The most dependable and credible source of that information may come from human rights and refugee non-governmental organisations, sometimes referred to as 'The Third System'. In the case of allegations of human and minority rights abuses, Amnesty International (AI), Human Rights Watch (HRW), and lesser knowns like the Lawyers Committee for Human Rights and the Canadian Lawyers Association for International Human Rights (CLAIHR) are excellent agencies. It is, however, local NGOs, operating in the midst of the violations, which sometimes provide the best repositories of information and expertise.

The above assertion poses an unusual dilemma. Non-governmental Organisations have earned the respect and trust of the international community, among other things, because of their detachment from government influence. Human rights NGOs function as independent monitors in their assessment of rights

abuses, and usually rely on non-government sources of finance, although an increasing number are now relying on government funding. There is a fine distinction at work here because NGOs must work with governments to effectively advance their agendas. Ideally, organisations' participation should be carefully limited to independent and objective fact-finding. Increasingly, however, human rights NGOs may get involved as expert advisors, or agents in the process of implementing peace agreements. Furthermore, for NGOs to have the greatest impact, they may require access to governments and states in order to relay their information and analysis. Finally, human rights NGOs are perceived, especially by non-western states, as biased agencies, regardless of any association they may or may not have with government. For example, organisations such as Amnesty International, tend to place greater emphasis on the promotion of western liberal political rights than basic economic rights, such as food and housing. Non-governmental organisations are indeed subject to bias, and the appearance of partiality, and this will sometimes impact upon their independence and credibility within the international community. As with other organisations, they must work to earn respect and credibility, through honest and accurate fact-finding and reporting.

Amnesty International and similar agencies depend almost entirely on the contribution of local chapters in the monitoring and reporting process. This is yet another path around the obstacles presented by cultural relativism. When human rights advocacy arises at the grassroots level, the process will likely enjoy greater support among local populations and be viewed as a genuine reflection of community



interests and concerns.

Part Three discusses the unique role human rights NGOs can play in observing, analysing, and reporting the conduct of abusive governments and peoples. It concludes that human rights NGOs can play a vital role, together with IGOs, in conflict prevention because of their fact-finding and reporting expertise, and their proximity to the violations.

### *I. The 'Third System'*

Professors Leon Gordenker and Thomas Weiss produce a useful definition of non-governmental organisations :

The term 'nongovernmental organisation' itself is challenged by a host of alternative usages. These include officials, independent sector, volunteer sector, civic society, grassroots organisations, private voluntary organisations, transnational social movement organisations, grassroots social change organisations and non-state actors. Some of these refer to highly specialised varieties and many are synonyms for each other. There seems no quarrel, however, with the notion that these organisations consist of durable, bounded, voluntary relationships among individuals to produce a particular product, using specific techniques.<sup>95</sup>

... and ...

[NGOs] function to 'serve undeserved or neglected populations, to expand the freedom of or to empower people, to engage in advocacy for social change, and to provide services'.<sup>96</sup>

As summarised below, Weiss and Gordenker review the functions and activities of non-governmental organisations in such a manner as to provide a comprehensive understanding of their purpose :

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<sup>95</sup> Weiss, Thomas C. and Leon Gordenker. 'Pluralizing Global Governance : Analytical Approaches and Dimensions' in NGOs, THE UN, AND GLOBAL GOVERNANCE eds. Weiss & Gordenker (London : Lynne Rienner Publications, 1996), at 18.

- (1) Some analysts conclude that NGOs pre-occupied with international concerns (environment, development-related, etc.) function to 'create transnational links between state and non-state'. In essence, NGOs in these and similar domains connect local political issues to international interests<sup>97</sup>;
- (2) NGOs act as formal agencies and thus are not *ad hoc* entities. They are 'self-governing', as established under their own mandates or constitutive charters. They are also private and independent in that they are separate from government and possess non-profit 'transnational goals , operations or connections'. Most importantly, many NGOs maintain active cooperation and contact with the UN regime<sup>98</sup>;
- (3) Nongovernmental Organisations derive part of their status from Article 71 of the UN Charter. Under this provision, the Economic and Social Council (ECOSOC) may consult with NGOs pertaining to matters within its competence. Article 71, however, is the only acknowledgement of NGOs under the Charter. UN / NGO interaction has instead arisen out of the historical formalisation of that relationship. General Assembly Resolution 1296 refines Article 71 by adding that NGOs seeking consultative status must possess objectives consistent with the UN's social and economic agenda. Admission to consultative status is governed by a ECOSOC mandated committee (Committee on Nongovernmental Organisations)<sup>99</sup>;
- (4) NGO activity has expanded considerably in recent years. The growth in the phenomenon is due in part to the end of the cold war. The disappearance of cold war

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<sup>96</sup> Weiss, at 19.

<sup>97</sup> Weiss, at 19.

<sup>98</sup> Weiss, at 20.

<sup>99</sup> Weiss, at 21 to 22.

ideologies paved the way for greater interaction between NGOs, diplomats, and UN practitioners. The authors suggest that with the easing of tensions between East and West, ' the UN has also become an obvious forum for discussions between governments and NGOs'. Most importantly, the removal of cold war issues from the international agenda has allowed NGOs to more effectively promote their objectives<sup>100</sup>;

(5) Weiss and Gordenker also attribute the expansion of NGO activity to an increased access to resources, both monetary and professional, as well as a reliance on technological developments<sup>101</sup>;

(6) Inter-organisational networking has, perhaps more than any of the above considerations, allowed NGO activity to flourish. With the use of new and improving communication technology, informal and formal bonds have been formed between like-minded organisations and individuals.<sup>102</sup> The authors best summarise the potential of and the achievements made by NGO networking :

NGOs may 'create conditions that facilitate the formation of international institutions' and 'reinforce the norms promoted by these institutions through public education as well as through organized attempts to hold states accountable to these, and enhance institutional effectiveness by reducing the implementation costs associated with international institutions'. Moreover, the potential for enhanced networking increases the 'capacity to monitor states' compliance with international agreements, promote institutional adaptation and innovation, and challenge failed

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<sup>100</sup> Weiss, at 24.

<sup>101</sup> Weiss, at 24 to 25.

<sup>102</sup> An astounding example can be found with the prevalence of internet websites, local and international, devoted to human rights issues. Amnesty international maintains an exhaustive archive of reports, essays, and contact addresses, as does Human Rights Watch. At the local level, human rights interests are as capably served by related organisations such as B92 ([www.b92.net](http://www.b92.net)), a Serbian based radio network which provides extensive reporting of and opposition to abuses by the government, via the airwaves and their internet web page. North American websites are numerous, including CLAIHR (Canadian Lawyers Association for International Human Rights - [www.web.net/~claihr/index.htm](http://www.web.net/~claihr/index.htm)), and occasionally inward-looking, as found at the comprehensive Southern California American Civil Liberties Union site ([www.aclu-sc.org](http://www.aclu-sc.org)).

institutions'<sup>103</sup> ;

(7) From a procedural point of view, local NGOs have survived with the help of parent bodies. However, along with the benefits of federated organisations like AI or the Red Cross, come disadvantages. Although local and regional or international chapters may share the same ideology, inevitable tensions may arise over issues of 'accountability versus autonomy and independent action' by local groups. From a UN perspective, coordinating activity is extremely difficult given the fierce independence of NGOs. It may not always be desirable, especially when an agency's affiliation with the UN or other bodies could diminish their credibility. Weiss and Gordenker suggest, on a political level, that the separation of some NGO work from UN or other IGO activity may be quite beneficial. They point to election monitoring in Cambodia and El Salvador, where it was much easier for NGOs to make public statements about irregularities than it was for the UN observer mission. This 'division of labour' may help to maintain the credibility of both agencies while allowing them to pursue their objectives.<sup>104</sup>

Professors Weiss and Gordenker provide a table which affords an understanding of the breadth of NGO activity, its geographic and strategic range, and its structural character.

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<sup>103</sup> Weiss, at 25 to 26.

<sup>104</sup> Weiss, at 27 to 29.

Table 2 - NGO Dimensions<sup>105</sup>

<p><i>Governmental contact</i></p> <p>Intergovernmental</p> <p>International conferences</p> <p>Regional</p> <p>National</p> <p>Subnational</p> <p>Community</p> <p>Informal transnational</p> <p><i>Range of concern</i></p> <p>Norm setting</p> <p>Policy setting</p> <p>Policy execution</p> <p>Contractor</p> <p>Mediation between levels</p>	<p>Information</p> <p>Expert advice</p> <p>Financing</p> <p>Material goods and services</p> <p>Support for policies</p> <p>Mobilisation of opinion (leaders and followers)</p> <p>Maintenance of interorganisational relations</p> <p>Political feedback among governmental units</p> <p>Encouragement of networks</p> <p>Education of specific publics</p>
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Together with a local support base, which may directly observe the incidents of rights abuse, human rights NGOs can provide more accurate and reliable assessments of violations than government or intergovernmental organisations. Weiss and Gordenker point to the aspects of governmental contact and organisation, in their table, as some key NGO strengths. The greatest NGO strengths may come through : the 'tactical mode', under the category of 'strategic dimensions'; and, 'networking', under 'output dimensions'. Through lobbying, and campaigns of mass propaganda and mass

105 Weiss, at 42.

demonstration, NGOs can bring to the world's attention the plight of the victims of rights abuse. Networking at the local level, with church leaders, opposition parties, and others may allow NGO access to more recent and possibly more accurate information on violations. In turn, networking with the outside world permits non-governmental organisations to spread the word about human rights abuses.

Human rights NGOs serve as adjudicator of state conduct, as well as advocate for the disaffected. Perhaps of greatest importance is their ability to bridge the chasm between the interests of the individual and his or her community, and those of the international community by alerting the latter to the plight of the former. As previously discussed, it is the individual's lack of 'standing' in international affairs that has troubled the promotion and protection of human rights. The argument is that NGOs can act as a voice for victims of abuse, and IGOs can use such information in their efforts at conflict prevention.

The ability of human rights non-governmental organisations to effectively operate at the local level is crucial to conflict prevention because of their proximity to the abuse, their local expertise, and their perceived legitimacy. The most formidable obstacles to their activities are political and legal barriers. According to Laurie Wiseberg, repressive governments attempt to control NGOs in six different manners:

(1) *Limiting freedom of association* - Freedom of association is not an established right under international law. Article 22 of the *International Covenant on Civil and Political Rights* states that association may not be restricted, except in the interests of 'national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others'. It is important, however, to distinguish the difference between legitimate concerns over protecting society from private associations (i.e. organised crime) and denying the legal existence of

political organisations.<sup>106</sup>

(2) *Monitoring and restricting access to funding* - Beyond the usual requirements for filing tax returns, access to funding cripples NGO action in certain states. Organisations in Bangladesh, relying heavily on finances from abroad, must obtain government approval for the receipt and use of foreign funds. Monies can be withheld or delayed, especially when the government perceives NGO activity as subversive.<sup>107</sup>

(3) *Controlling the right to publish* - Governments will curtail NGO efforts by denying the rights to freedom of expression and the press, and indirectly, by frustrating the ability to publish. Publishing can be delayed or prevented through a variety of censorship techniques : 'basic press laws, prior restraint, post-publication censorship (closures, banning of organisations, banning individuals), economic pressures, media concentration and ownership, self-regulatory methods, controlling the supply of information to media and news agencies, and imposing restrictions on imparting information (through control of newsprint, typewriters, photocopiers, restrictions on circulation)'.<sup>108</sup> With the advent of internet technology, there may be a way to circumvent such restrictions, although it is too early to tell.

(4) *Undermining NGO credibility through defamation* - The labelling or demonisation of NGO workers has been used by the Philippine and Indian governments. It can be an effective tool to not only discredit organisations, but to demoralise them or even make them the targets of civilian attack.<sup>109</sup>

(5) *Pitting GONGOs against NGOs* - Government-organised non-governmental organisations (GONGOs) are created in the guise of NGOs, but controlled by government. The former have directed attacks against the latter in an attempt to undermine their credibility through misinformation.<sup>110</sup>

(6) *Implementing 'states of emergency' or 'security' legislation* - As a final measure of oppression, dictators will invoke state of emergency powers to curtail limits on their power, including certain rights of association or

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106 The Malaysian Societies Act is employed extensively to deny registration (and therefore legal existence) to human rights organisations. See Wiseberg, Laurie. 'The Importance of Human Rights NGOs' in DEFENDING HUMAN RIGHTS DEFENDERS : THE IMPORTANCE OF FREEDOM OF ASSOCIATION FOR HUMAN RIGHTS NGOs ed. Laurie Wiseberg. (Ottawa : Legal Deposit, National Library of Canada, 1993), at 15 to 16.

107 Wiseberg, at 19 to 20.

108 Wiseberg, at 21 to 22.

109 Wiseberg, at 23.

110 Wiseberg, at 24.

expression.<sup>111</sup>

## II. *Human Rights NGOs - the 'Mobilisation of Shame'*

Amnesty International and Human Rights Watch have proven their effectiveness, and thereby their *raison d'être*, through what is termed the 'mobilisation of shame'. These and similar NGOs have demonstrated that individuals are protected from abuses as a result of the 'heightened embarrassment of government officials over specific violations, directed against specific individuals.' This is especially effective when victims are identified, bringing a human face to the abuse.<sup>112</sup> AI and HRW employ a host of tactics for the purpose of protecting individuals:

- (1) *Mobilising Shame* - By exposing abuses and publicly advocating for the amelioration of conditions;
- (2) *Influencing decision-makers* - By alerting key national and international leaders about the impugned conduct, or by lobbying these same figures for the establishment of human rights norms, with the objective of shaping the agendas of international actors to address these issues;
- (3) *Providing expertise* - Through provision of services, such as legal aid, social education, and training in public advocacy skills, with the aim of empowering individuals and groups to protect their rights.<sup>113</sup>

As mentioned at the outset of Part Three, for NGOs to move any further into the political arena might result in a loss of independence and impartiality. If non-governmental organisations are to retain this status, the political instruments of the UN, OSCE, and other inter-governmental organisations must be strengthened to allow

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<sup>111</sup> Wiseberg, at 27 to 28.

<sup>112</sup> It is interesting to note that China has become very open with its abuse, often publishing the names of 'criminals' who have been executed or convicted. This may be an attempt to force the world to accept China's domestic policy and may represent a steadfast refusal to be embarrassed by its conduct.

<sup>113</sup> Gaer, at 57 to 58.



for more effective intervention. Felice Gaer's appraisal of the role of NGOs further suggests that these agencies can provide the greatest assistance by continuing to do what they have done to this point:

The impact of nongovernmental organisations is now greatest as a source of independent information that triggers special mechanisms and engenders action by UN special rapporteurs. Human rights NGOs can so profoundly influence attentiveness to human rights in UN peacekeeping, humanitarian or technical assistance programmes that an ongoing operational role in these areas ranks with the submission of detailed complaints as more significant than NGO speeches and representational activities at the Commission on Human Rights, even though such activities maintain public pressure on governments for action.<sup>114</sup>

Human rights NGO participation must, however, be strengthened by establishing their political legitimacy, whether under international law or less formal methods, and by ensuring their right of access to suspect states. As discussed below, non-governmental organisations must be relied upon to provide early warning of pending disputes, and it is clear that they are the most reliable source of expertise in this area. They stand as the most effective early warning tool available to IGOs, and as explained below, serve an important role in the process of ethnic conflict prevention.

### *III. Human Rights NGOS and the Future*

The early warning of minority rights violations, especially of small and remote groups, will likely come from local contact networks, including church organisations and others. In some countries, it is these agents which are the only source of

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<sup>114</sup> Gaer, at 64.

information, especially when local NGOs are not allowed to formally operate.<sup>115</sup> In any case, this chapter has spelled out the vital role NGOs and other agencies play in human rights monitoring, together with IGOs like the UN and the OSCE. Accordingly, the NGO contribution to conflict prevention is critical. However, fact-finding, monitoring, and reporting will be of little use if such information is not put to proper use. Even when regional and international institutions are intent upon averting violence through mediative intervention, factors such as improper timing, access to limited resources, and the appropriateness of the measures employed, among others, will render such efforts fruitless.

Kumar Rupesinghe emphasises the importance of networking for NGOs in providing responses to human rights crises. He states, 'These networks have in some ways been a low cost, flexible and efficient way of working and have tended to be a more democratic way of managing mandates'. He also underscores the importance of the information revolution and the benefits of emerging communications technologies, which should 'facilitate networking and bring communities closer together'. Furthermore, the rapid communication of such information may allow regional and international actors to respond in a timely enough manner to prevent escalation.<sup>116</sup>

As with any political entity, human rights NGOs do have their limitations. As a vital link in the prevention process, they 'do not sufficiently address the issues of prevention'. In fact, much of NGO reporting and fact-finding comes too late, when the crisis has blown into conflict. Monitoring and fact-finding must not only look into

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115 Gammeltoft-Hansen, Hans. 'NGOs - A bridge between national and international security' in *NGOS AND REFUGEES : REFLECTIONS AT THE TURN OF THE CENTURY* eds. Morten Kjaerum, Klaus Slavensky, & Finn Slumstrup (Copenhagen : Danish Centre for Human Rights, 1993), at 70 to 71, 74.

current violations but, as Rupesinghe ventures, must also 'forecast and assess possible future violations and build up a system of preparedness'. NGOs also must broaden their focus to non-government entities, such as terrorist, insurgent, and guerrilla groups. Accountability for human rights violations must extend to individuals and groups, although governments need to be held accountable if they fail to take sufficient steps to protect their citizens.<sup>117</sup>

The role of NGOs in international litigation is unclear. At present, they are perhaps only effective in the capacity of *amicus curiae*, and may only possess that standing before certain bodies such as the International Court of Justice or the European Court of Justice.<sup>118</sup> Furthermore, it is perhaps more important for NGOs to act as liaisons between victims and international prosecutors, instead of undertaking the role of legal representative. Their role in litigation may be as an intervenor. However, NGOs may be most effective as witnesses for the proceedings. Furthermore, there are no assurances that international law can impose the appropriate sanctions to force compliance with universal human rights standards, and thereby discourage or prevent other states from deviating from those standards.

As a final note, the vital role of NGOs continues well after a nation-state has embraced democratic and constitutional values. It is during the nascent stages of democratisation that some nations are at their most vulnerable because their political culture is in a state of flux and uncertainty. NGOs, therefore, can play an important

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<sup>116</sup> Rupesinghe, at 134 to 136.

<sup>117</sup> Rupesinghe, at 136 to 137.

<sup>118</sup> Shelton, Dinah, 'The Participation of Nongovernmental Organizations in International Judicial Proceedings' in *THE AMERICAN JOURNAL OF INTERNATIONAL LAW* Vol.88, 1994, at 611.

role as educators and contribute to the shaping of ethnically and political tolerant societies.

## CONCLUSION

The preceding chapter has attempted to bring together three major considerations, in an effort to establish the argument that the promotion and protection of human and minority rights must be factored into averting ethnic disputes. First, both governmental and intergovernmental agents must learn to identify patterns of conflict escalation and their connection to the abuse of rights. The recognition of the warning signs of armed conflict, must be followed by an ability to identify the stage at which intervention, for the purposes of prevention, becomes necessary.

Second, the participation of intergovernmental organisations like the UN and the OSCE will depend on the willingness and the ability of these two agents to contribute to ethnic conflict prevention. IGOs must not only recognise the need for conflict prevention initiatives, but must be willing to put the information they receive to good use. Fact-finding and rights monitoring will be of little use if these and other intergovernmental actors are unwilling to intervene and to assert their concerns over the impugned conduct of rights abusers. Their participation will be facilitated, but will not depend upon the receptiveness of nation-states to monitoring and scrutiny. The willingness of organisations such as the UN and the OSCE, to work together, and to work independent of one another, will also help to

establish and solidify the development of conflict prevention practices.

Finally, the 'hands-on' fact-finding, and the reporting conducted by non-governmental organisations can lend greater accuracy, not to mention an air of legitimacy, to the process of conflict prevention. When IGOs must take the sensitive step of interfering in the internal affairs of nation-states, they must do so while acting upon reliable and objective information. The 'Third System' of NGOs may not be completely free of bias, but human rights networks ultimately function under a mandate of promoting and protecting the fundamental rights articulated in the Universal Declaration of Human Rights. NGO co-operation with intergovernmental agencies provides the most effective collaboration in (a) identifying human and minority rights hotspots, (b) deciding at which stages of conflict escalation preventive intervention must occur and, (c) bringing emerging disputes to a peaceful resolution.

# CONCLUSION

## CONSTRUCTION OF A REGIME ON CONFLICT PREVENTION AND HUMAN RIGHTS – LESSONS FOR THE FUTURE

We know that early warning and early intervention are still the weak links in the chain. We also know that once a conflict matures there is a mismatch between the event and forms of intervention. Intervention whether in the form of fact-finding, or mediation generally come too late. Bloodshed has already begun, rancor and bitterness have developed, and both sides have already militarized the conflict.... The problem is not only to reduce the duration of the conflict, but also to reduce the mismatch between conflict escalation and intervention. This is why we need to prepare a major contingency approach for conflict prevention.<sup>119</sup>

[Kumar Rupesinghe, Director of *International Alert* London]

This thesis has attempted to bring together three major areas of academic interest: the recognition of human rights abuses as a determinative element in conflict prevention; the intergovernmental institutions necessary to bring effect to conflict prevention initiatives; and, the role of non-governmental institutions in early warning. The recognition of the 'human rights' element may allow international and regional actors to more effectively identify and resolve discord before it turns violent. Such recognition is a good in itself, but it has the potential to play a critically important role in an effective system of conflict prevention.

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<sup>119</sup> Rupesinghe, at 127 to 128.

## *I. Issues of Enforcement*

As part of Rupesinghe's major 'contingency approach', prospective measures for the advancement of human rights may eventually necessitate forced intervention. As Michael Posner<sup>120</sup> states, the mere reporting of human and minority rights violations 'yields diminishing returns', particularly 'if such reporting is not accompanied by follow-up efforts that are likely to address the problems in a concrete manner'. Early attempts to link human rights conduct to aid and trade policies seem to have failed although western governments have never whole-heartedly embraced the principle. Posner suggests world leaders, such as the United States, can 'no longer go it alone'. They must join with other actors, such as the UN, or the Group of Eight, in developing any multilateral initiatives on human rights. Unilateral action is no longer appropriate, if it ever has been, and will not enjoy the same credibility, or effectiveness, as international efforts. Posner further asserts that governments genuinely interested in human rights reform must be full partners to the international human rights system. Countries like the United States must ratify all international rights treaties and submit to UN jurisdiction in the monitoring process. If not, the US and others will be in no position to lecture the international community about the respect for human and minority rights.<sup>121</sup>

As mentioned in Chapter Two, access to the global economy (via the WTO, etc), to development assistance (sustainable development, world bank loaning), and to

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<sup>120</sup> Executive Director for Lawyers Committee for Human Rights

<sup>121</sup> Posner, Michael. 'Forward : Human Rights and Nongovernmental Organisations on the Eve of the Next Century' in *FORDHAM LAW REVIEW* Vol.66, 1997, at pp.627 to

diplomatic forums (APEC, G-8), could be made contingent upon a state's human rights record. However, economic sanctions are not always the most effective tool, and often the burden of sanctions falls on the shoulders of those the international community is trying to protect. Furthermore, the global marketplace is still relatively fragile and unstable, and it is unlikely that states threatened with recession will want to jeopardise their economic well-being.

Before the issue of enforcement, however, lies the question of what can be done to avoid the degeneration of human and minority rights, and the inevitable conflict which ensues. If oppressive regimes are closely observed and monitored, and forced to consider the long term costs (i.e. civil war, economic sanctions, foreign occupation of soil) of abusing their citizens, they may think twice before initiating oppressive policies. As with Josep Tito in socialist Yugoslavia, political leaders, especially in unstable multiethnic societies, are confronted with strong pressures, not to mention personal incentives, to use rights policies to reward and/or discriminate disproportionately among competing groups in society. Regional and international organisations can and should, consequently, be provided with the mandates and resources to give assistance to such governments and societies in making a smooth and responsible transition to democratic rule and multiethnic tolerance. The shift away from autocratic government, however, will be less effective if it comes too late after violent conflict has wrecked social, economic, and political relations and institutions. Thus, every effort must be made to prevent government and citizen's prejudices from turning into discrimination, persecution, and violence. Once again, all of this ultimately depends on how receptive



troubled nation-states are to outside 'assistance'. It also depends on the capacity of IGOs and NGOs to provide timely and effective support mechanisms.

## *II. A Paradigm Shift Towards Prevention and Intervention?*

It has been eight years since Slovenia and Croatia first declared their independence from the Yugoslav federation in 1991. The region still remains embroiled in ethnic conflicts. After three years of bitter, violent conflict in Bosnia, the animosity and the distrust remains, despite the apparent return of peace. More recently, violence erupted in the neighbouring province of Kosovo. In each case, outside governments acting through IGOs such as the OSCE, the UN and NATO, have tackled such problems as they have arisen.

Despite increased attention, the concept of conflict prevention itself has still not been grasped, or more importantly, embraced by these actors. There remains a reluctance to intervene in the internal affairs of troubled nation-states. This is the result of a number of factors, including the fact that most states do not want their own internal affairs to undergo the same kind of scrutiny. However, these circumstances have begun to change as internal disputes have erupted across borders. Refugee problems in Rwanda and Zaire, and in the southern Balkans, are but one example of the 'externalisation' of multi-ethnic civil conflict.

The conflict in the former Yugoslavia, as well as similar types of disputes in other parts of the world, have emerged as a result of a combination of elements. Among these are a legacy of cultural and historical grievances which have created

an atmosphere of distrust. For example, while it took many years under the Tito regime to offset centuries of hatred and war, under that same regime, a new set of grievances emerged in reaction to Serb domination of government institutions, including the Yugoslav Federal Army and federal civil service. Another contributing factor has been the absence of an international legal order, and procedures that could provide effective direction for the disputing parties or for the international community, on such issues as the legitimacy of secessionist demands, minority rights, and cultural imperialism. It has also been apparent that civil conflicts between and among different ethnic groups have often not been recognised as real security issues. Such recognition, at least, does not come until the threat of irredentism and the expansion of the conflict into neighbouring states has prompted outside governments and institutions, such as the European Union (EU), the CSCE/OSCE, the UN and eventually NATO to respond. Finally, and most importantly, it has been evident that violations of human and minority rights have been a regular feature preceding the outbreak of violent conflict in these troubled communities. Moreover, the violation of these rights continues to be a low priority for other states and international organisations. Yet, the absence of fundamental liberal-democratic and human rights protection in the former SFRY and Kosovo guaranteed that violations would take place, eventually leading to citizens and communities taking the law into their own hands. Thus, the status of human and minority rights in ethnically mixed communities stands as an important predictor of the likelihood of conflict in these communities.

### III. *The Structure of an Early Warning and Prevention Strategy*

Revisiting the principle of conflict prevention, this paper proposes that the structure of an early warning strategy be made up of the following:

- (1) An independent early warning system designed to collect and co-ordinate information regarding human and minority rights abuses. This 'agency' may exist within a regional or international body, or in the case of an NGO exist independently, and serve to provide monitoring missions with critical information.
- (2) The monitoring function of any mission must be comprised of two elements: initial observation (on or outside the territory concerned) and follow-up observation. 'Observation' involves a team of diplomats or experts responding to a potential abuse of human rights. Monitoring begins and continues until enough information can be compiled to formulate recommendations for change. Follow-up observation occurs after the monitoring mission's recommendations are voiced to the state under review. The situation is still assessed regardless of whether the state voices its compliance.
- (3) The IGO or body which has made the recommendations may wish to respond to compliance or non-compliance through a series of measures. These may include increased aid, participation in law reform and democratisation, and further observer missions on site to ensure implementation of recommendations. In the case of non-complying states, the organisation may use varying forms of sanctions or incentives - economic, diplomatic, etc.

Driven by these and other fundamental principles and commitments, a regime of conflict prevention might employ the following elements in accordance with its model of prevention :

- (1) *NGO monitoring and fact-finding.* Based on a new understanding of the 'inviolability' of nation-states in their internal affairs, regional and global actors are justified in inquiring about state practices towards citizens. At the outset, an agency is necessary to observe the internal activities of nations, focusing on internal

stability, political processes (authoritarian v. liberal-democratic), state-ethnic and ethnic-ethnic relations, the legal regime (constitutionally entrenched rights), and the geographical context (including strategic, economic, and ethnic). The most obvious agent for such an undertaking is the local human rights NGO. However, NGOs must be formally recognised under international law, sanctioned by regional actors to investigate and report, and called upon to provide evidence in legal proceedings against offenders. The NGO may ultimately report to a designated body under UN or OSCE/regional control and made up of a panel of experts and of representatives of signatory states to the pertinent treaty, and that body might raise its concerns with the country in question;

(2) *Intergovernmental Organisations.* IGOs should, without (preferably with) state approval, send in an investigatory team. It may eventually make recommendations for reform to the government concerned, possibly with an offer of aid, personnel, and monetary resources. In the alternative, the IGO should call its concerns to the attention of the international community, especially in the event the state concerned has rejected any proposals. The international community may choose to deal with the crisis in a number of ways. By direct involvement in the form of diplomatic pressure, economic sanctions, or legal action in a regional or an international court of human rights. International reaction might be less intrusive and more proactive, promoting, for example, greater tolerance for human and minority rights through political and economic incentives. It may choose not to act, or it may choose to intervene militarily if warranted.

The international community must learn to recognise the warning signs of

ethnic conflict, those that have the potential of leading to a clash between minority groups. Human and minority rights violations must be recognised as a 'tell-tale' sign. In turn, the community of nations must learn to apply the 'appropriate' steps of conflict prevention, once the warning signs have been identified, such as alerting the concerned state as to the problem. Finally, that state's failure to address the impugned conduct must be followed up with some form of sanction, if a prevention strategy is going to be effective. This involves an entirely different set of issues, the most extreme example of which is humanitarian intervention. However, the likelihood of forced intervention in internal disputes would not arise until well past the initial crisis. This essay has looked at the feasibility of preventive measures in potentially unstable multi-ethnic states, not the stages of conflict resolution which would follow. Nonetheless, co-ordinating strategies on ethnic conflict prevention with conflict resolution is an important step in the peace process.

#### *IV. Co-operation and Co-ordination of NGO and IGO Agents*

It is quite possible that the move towards greater recognition of minority rights and ethnicity will not come from a formalised political process, but rather from the growth in non-governmental organisations, both international and local, who are becoming increasingly active in surveying and identifying human rights practices throughout the world. Such groups have become increasingly effective in reporting these activities and in gaining access to sympathetic national governments and to regional and international institutions, especially in Europe and North

America, but also importantly in Africa and Latin America as well.

As previously mentioned, a key strength of human rights non-governmental agents (at least, among local NGOs) is their close proximity to the conflict, and to the protagonists embroiled in the dispute. International NGOs, such as Amnesty International, rely directly on the reporting provided by local agencies, and / or citizens, in their survey of rights records. While such information may provide a 'bird's eye view' of events as they unfold, a key weakness is that the information may not be reliable or may necessitate verification.

This leads to a second consideration - the necessity of human rights and other NGOs concerned with conflict, to co-ordinate and co-operate in the monitoring and reporting process. As Greg Beyer explains, non-governmental human rights and refugee NGOs have operated in relative isolation from one another, and 'according to narrowly-defined and narrowly-perceived organizational mandates'. They must bridge the gap by co-ordinating their monitoring and reporting agenda, and their resources. This is a logical proposition given that refugee movement is often a by-product of heightened ethnic conflict and human rights violations.<sup>122</sup>

Non-governmental organisations suffer from problems of access to states, and to governments. This problem is two-fold : NGOs cannot be of much use in reporting and fact-finding if they are denied territorial access to states where alleged abuses occur. They may also be denied political access to governments because the regime in place refuses to co-operate. Even where territorial access is possible, and the government is responsive or open to NGO activity, the regime may ultimately

be powerless to prevent conflict where it is unable to exercise its authority. Human rights NGO reporting and recommending may be a fruitless endeavour if the national government cannot control local governments, leaders, and populations. There is not much non-governmental agents can do in such circumstances, except to turn to their intergovernmental equivalents to co-ordinate appropriate intervention.

Non-governmental agencies also require access to governments and IGOs who are in a position to undertake remedial action. NGOs must successfully secure the attention, and the co-operation of IGOs, and governments (not party to the conflict) who are willing to intervene in nascent disputes. Therefore, IGOs such as the United Nations, the OSCE, and especially NATO need to recognise the role that NGO participation must play in any remedial strategy. An inability to 'capture' IGO attention is not necessarily a key failure of the NGO system, but it does point to a fundamental limitation on its capacity to influence policy-making.

Greg Beyer takes the above-mentioned issue a step further, suggesting that NGOs must co-ordinate their efforts with IGOs and non-party governments, as part of an overall, agreed-upon strategy. In addition to their traditional role of evidence gathering, NGOs must also work directly with these actors to influence policy-making, even at the risk of sacrificing a part of their independence and any appearance of impartiality. It is noteworthy that if non-governmental agencies must work closely with IGOs and governments as part of a conflict prevention scheme, they are likely to lose the appearance of impartiality anyway, regardless of their

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122 Beyer, at 31.

efforts to prove otherwise.<sup>123</sup>

Limited resources, in financing and expertise, stand as a significant barrier to NGO operations. Agencies, such as Amnesty International, who wish to maintain the appearance of neutrality, depend upon unreliable sources of financing and expertise, such as private donations and volunteering. These can be considered strengths of the NGO system, but in order for non-governmental agencies to effectively impact upon policy- and decision-making within IGOs, they must also turn to human rights experts, and stable sources of funding. Many NGOs now benefit from government funding, which may alter their appearance of neutrality, but which empowers them to function more effectively.

Chapter Two discussed the work of the High Commissioner on National Minorities (HCNM) in the OSCE. The HCNM is still a relatively new entity and it will take time to reform its mandate and refine its functions. Nonetheless, it, in conjunction with the OSCE, stands as a model for other regions of the world to pursue similar institution building. The HCNM, in co-operation with human rights NGOs, provides the most effective regional conflict prevention mechanism to date. Its UN equivalent has similar potential but the High Commissioner for Human Rights will have to overcome numerous political obstacles to become truly effective.

A significant political obstacle to IGO intervention and prevention comes from the concern of western states not to disrupt global trade, by accusing nascent economies (potential trading partners) of human rights abuses. The concept of tying a state's

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<sup>123</sup> Beyer, at 31.



human rights record to its potential access to overseas markets and preferential trading status, has never been fully embraced by western powers. The APEC summits of recent years are a prime example of how the emerging economies of the Pacific have rejected any connection between their records on human rights abuse, and their participation within the global marketplace. Western governments have, ultimately, accepted this course of events.

Finally, as with non-governmental organisations, IGOs must wrestle with problems of capacity or resources. Intergovernmental bodies, such as the OSCE's HCNM, must work with extremely tight budgets and limited expertise. However, without having to depend on further financing, IGOs can turn to non-governmental agencies as independent and relatively inexpensive sources of expertise. As previously mentioned, the costs connected to an overall conflict prevention strategy can be reduced if IGOs and NGOs co-ordinate their activities, and reduce duplication.

Kumar Rupesinghe suggests that institution building for conflict regulation may function as one effective form of conflict prevention.<sup>124</sup> For example, regional regimes may be able, through multilateral agreements, to set the proper guidelines for when state conduct has violated regional norms. Regional co-operation may include collaboration in areas of security, trade, and diplomacy. As discussed later, regions might also opt to create their own intergovernmental regimes to protect human, minority, and even economic rights. In some instances, regional organisations enjoy greater trust from their member-states. Alternately, the regional agency might be seen as biased, reflecting the opinions of neighbouring members who have a vested

interest in the conflict in question. It seems that in order for conflict prevention measures to work, institutional reform will have to come at the regional level with bodies such as the OSCE, the Organisation for African Unity (OAU), and the Organisation of American States (OAS), which appear to have the necessary clout. In turn, to legitimise the conflict prevention and management mandates of these regional agencies, it is vital that NGOs be formally recognised and sanctioned in order for them to effectively carry out their objectives. Ultimately, the best method of extending such recognition is to co-ordinate NGO activity with the prevention mandate of intergovernmental bodies, as part of a greater strategy of conflict prevention.

States who join regional IGOs could come to agree on standards of diplomatic and even military intervention and enshrine them as principles in their charters. Such 'enlightened' action might only occur if these states could benefit economically or politically from such reform.

## V. *Intervention*

On the issue of the legality of intervention, there needs to be a reconciliation between principles of non-intervention in the affairs of the state, and the protection of human and minority rights. More often than not, the former has taken priority. However, this has not always been the most politically expedient way of handling ethnic oppression and tribalism, considering the devastation that has resulted from the international community's inaction and indifference. History is replete with

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124 Rupasingha, at 131.

'Yugoslavia's', from the slaughter of citizens at the hands of the Khmer Rouge in Cambodia to modern day Rwanda and Chechnya. The question then, in the face of so many historical examples, is why the international community has not learned from the lessons of the past.

First, international actors must escape from the myopia presented by the principles of non-interference in a state's internal affairs, and recognise the necessity to intervene at critical stages of conflict development. A case can be made that intervention in the early stages of conflict imposes considerably less pressure on the accused state – that diplomatic or economic interference in the internal affairs of a state is considerably less intrusive than foreign occupation of its territory in the event of war.

Second, if international actors are to intercede, they must do so (and appear to do so to others) for legitimate reasons - to advance the respect and promotion of human rights, not to assert their own political and/or economic agenda. This paper does not intend to suggest that human rights should be employed for any means other than to improve the well-being of the disaffected and the oppressed. Unfortunately, states have used the protection of human rights for ulterior motives. A primary example was Hitler's policies of pan-germanism, under the guise of protecting German minorities in neighbouring states, which resulted in irredentism, conquest, and world war. Any move to intervene must, subsequently, come from regional or international organisations such as the UN and the OSCE, whose motivation and objectives may be more balanced and controlled by the viewpoints of member states, both partial and impartial to the conflict. It is, consequently, in

the best interests of the leaders of problem states to be open to the process early on. If not, they could eventually find a military presence (NATO or UN Peacekeepers) on their soil, after their peoples and economy have undergone great suffering. Based on the principle of impartial and controlled interference by IGOs, the international community might then be less reluctant to intervene, and accused states might avoid more extreme forms of intrusion.

Acceptable intervention would ultimately depend on the legitimacy of the early warning process, in which the impugned conduct of a state is brought to the world's attention. An early warning strategy, as suggested in Chapter Two, should then rely on NGO fact-finding. NGO partiality might also be tempered with the presumably more balanced perspective of IGOs (i.e. member opinions), and separate IGO monitoring and fact verification.

## *VI. Forms of Intervention*

Intervention, both diplomatic and military, will remain a difficult issue for some time and standards may only become established on a case by case basis.<sup>125</sup> Moreover, military intervention is the most extreme method of ending human rights abuse. To avoid playing the 'military' card, and as part of a long term conflict prevention strategy, it is important for western industrialised nations to promote both democratic development and sustainable development so that struggling nations may escape the clutches of economic and political poverty. Both economic and social rights are as

important to developing nations as civil and political rights, and it is crucial that both be fostered. Even modern Russia, which is neither a developing nation nor a stable western economy, has made the mistake of not balancing the economic rights of its citizens with political rights. The shift to western style democracy has been an essential but very painful step in the process of reform.

## *VII. Lessons for the Future*

A standard conflict prevention model must be sensitive to the particularities of each dispute, without sacrificing the fundamental principles that underlie it. Among those principles is a new perception of the integrity of the nation-state. For any international or regional preventive response to work, some level of intrusion in a state's domestic affairs is necessary. This, however, has in the past only been justified where there is a perceived threat to regional stability and security. Such an intrusion, however, might be more easily justified in the future, on other grounds such as respect for basic human rights, where the states concerned belonged to a multilateral treaty or to bilateral agreements and have been directly and fully involved in developing understandings on minority rights protection.

As a final proposition, and in connection with institution building, ethnically diverse corners of the world might opt to establish their own regional human rights regimes, similar to the European Commission and Court on Human Rights. The recognition of their common diversity under a constitutive charter of rights could

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125 Rupasinghe, at 129.

act as the first step towards true conflict prevention and management. The collective resources (monetary, expertise) of a regional court on human and minority rights might reduce the potential for irredentism and separatist-nationalism.

This proposition, however, assumes that before one state would agree to fall under the jurisdiction of a regional rights regime, it would first have to undergo internal reform. A troubled multi-ethnic nation should first be open to democratisation and the promotion and protection of civil and human rights, before embracing the rulings of a regional court. However, as discussed above, the potential for using external incentives, either of a political or economic nature, might provide enough of a motivation for a state to agree to submit to the jurisdiction of a human rights regime.

The principle that human rights violations can be used in an early warning system and conflict prevention scheme, is fairly elementary. However, it is another issue to practically apply the principle. As has been suggested in the Conclusion, the greatest barrier to human rights reporting in conflict prevention is the absence of the co-ordination of activities by governments, IGOs, and NGOs. There is also a lack of co-ordination between participants inside these three groups. For example, IGOs such as the UN might undertake preventive and remedial action without consulting other IGOs. Exceptions do exist, however, such as the co-ordinated action of UN peacekeeping, and NATO participation. However, NATO has often acted without the express approval of the UN Security Council, underscoring the above argument.

Intergovernmental agencies and non-governmental organisations must co-

ordinate their mandates, agree upon the same objectives, and establish permanent lines of communication. Bureaucratic constraints may make such co-ordinated action difficult, but not impossible. Greg Beyer discusses a case study on the ethnic upheaval of the Issaks of Somalia, in the early 1980s. He suggests the study as an example of where the international community has failed, in the area of early warning. Beyer's study, summarised below, asks the following critical questions, which can be applied to all incidents of ethnic upheaval and rights violations :

- (1) *Prediction and Prevention* : Who was monitoring the situation of the Issaks in Somalia? What did we know, and when did we know about it? Were actions taken coordinated or integrated into a general strategy? Would better coordination and focus of these activities have speeded up our response and improved the situation of the Issaks in Somalia? ;
- (2) *Assistance to Victims* : What did we do in response to the crisis once it happened? Who (in the US government, in the US and international NGO community, and in the international arena) did what? Were these responses coordinated and focused? ;
- (3) *Continuous Monitoring of the Situation* : Which agencies (and where) are monitoring which aspects of any improvements in, or deterioration of, the problem situation (which boxes of Beyer's human rights matrix) ? Which agencies are collating this information into action-oriented reports most easily utilized by policy and resource allocations decision-makers? ;
- (4) *Lessons Learned, Recommendations for the Future* : What did we or can we learn from the experience of our response to the situation of the Issaks in

Based on the questions raised by Beyer, the first major step towards early warning and conflict prevention, is for non-governmental organisations, intergovernmental organisations, and state governments to recognise human rights violations as a key factor in ethnic conflict and violence. The next step is for these actors to recognise that the promotion and protection of human rights, by the governments concerned, will help to deter a breakdown in multiethnic relations.

Next, intergovernmental agencies and governments must recognise the value that NGOs can bring to conflict prevention strategies and early warning schemes. As repositories of expertise, NGOs can help IGOs such as the UN and the OSCE to form and implement policies of human rights promotion, and the prevention of abuses.

Finally, the co-ordination of IGO and NGO activity, under a collective mandate, stands as the most effective strategy on early warning and conflict prevention. With the expertise of NGO operations, and their proximity to disputes, and the institutional strength and political legitimacy of IGOs, some real measure of success at prevention may be achieved through co-operation.

Yugoslavia's destruction was both an intense and harrowing ordeal. The very ferocity of the fighting, with neighbour battling neighbour, does reasonably suggest that no form of prevention could have worked. Yet, if more had been done by outsiders to limit the potential for economic and political disparities to degenerate into ethnic scapegoating and retributive acts of vigilante justice, violent

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<sup>126</sup> Beyer, at 32 to 33.



conflict may have been avoided. In the final analysis, if a peoples are committed to fighting one another, it becomes exceedingly difficult for an effective system of prevention to be put in place by outsiders. In such circumstances, the international community may be able to do little but stand by and wait it out. Yet, this is not a satisfactory solution. The more destructive the conflict is to the civilian population, the more likely the global community will find it necessary to step in, regardless of the costs. The barbarity of ethnic cleansing and genocide underscores this.

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## APPENDIX A – Gregg Beyer’s Human Rights Matrix

(GE - Governmental Entity / NGE - Non-Governmental Entity)

	Arbitrary deprivation of life, political killings or disappearances, by GE	Arbitrary deprivation of life, political killings or disappearances by NGE with government unwilling to prevent / protect	Arbitrary deprivation of life, political killings or disappearances by NGE with government unable to prevent / protect
<b>Life</b>			
<b>Liberty</b>	Slavery or involuntary servitude, by NGE, with government unwilling to prevent / protect	Slavery or involuntary servitude by NGE, with government unable to prevent / protect	Arbitrary arrest and prolonged detention, by GE
<b>Security of Person</b>	Torture, inhuman treatment, by GE	Torture, inhuman treatment, by NGE, with government unwilling to prevent / protect	Torture, inhuman treatment, by NGE, with government unable to prevent / protect
<b>Economic Rights</b>	Denial of right to work and/or lawful means of subsistence through employment by GE	Denial of choice of employment by GE	Denial of equal pay for equal work, by NGE or GE
<b>Educational &amp; Cultural Rights</b>	Denial of right to education, by GE or NGE	Discriminatory denial of right to free elementary and/or secondary education available to others by GE or NGE	Discriminatory denial of equal access to higher, technical or professional education based on merit, by GE or NGE
<b>Personal Rights</b>	Interference with freedom of thought, conscience and religion and its manifestation through teaching, practice, worship and observance, by GE	Interference with freedom of thought, conscience and religion and its manifestation through teaching, practice, worship and observance, by NGE, with government unwilling to prevent / protect	Interference with freedom of thought, conscience and religion and its manifestation through teaching, practice, worship and observance, by NGE, with government unwilling to prevent / protect
<b>Legal, Political, &amp; Nationality Rights</b>	Discriminatory denial of equal treatment before the law	Denial of access to effective legal remedies to redress violations of fundamental rights granted by a constitution or law	Discriminatory denial of right to freely participate in the government (governing process and/or services) of his/her country
<b>Social, Family, &amp; Property</b>	Arbitrary deprivation / confiscation of property, by GE	Arbitrary deprivation / confiscation of property, by NGE with government unwilling to prevent / protect	Arbitrary deprivation / confiscation of property, by NGE with government unwilling to prevent / protect
<b>Personal Integrity &amp; Privacy</b>	Arbitrary interference with personal privacy, integrity, and/or correspondence, by GE	Arbitrary interference with personal privacy, integrity, and/or correspondence, by NGE with government unwilling to prevent / protect	Arbitrary interference with personal privacy, integrity, and / or correspondence, by NGE with government unwilling to prevent / protect

## APPENDIX A – Human Rights Matrix (continued)

(GE - Governmental Entity / NGE - Non-Governmental Entity)

	Death penalty through 'due process', discriminatorily applied by NGE	Death Penalty by NGE, with government unwilling to prevent / protect	Death Penalty by NGE, with government unwilling to prevent / protect	Random violence, by NGE, with government unable to prevent / protect
<b>Life</b>				
<b>Liberty</b>	Arbitrary detention, by NGE, with government unwilling to prevent / protect	Arbitrary detention by NGE, with government unable to prevent / protect	Arbitrary arrest by GE	Internal exile, by GE
<b>Security of Person</b>	Cruel, degrading treatment, by GE	Cruel, degrading treatment, by NGE, with government unable to prevent / protect	Cruel, degrading treatment, by NGE, with government unable to prevent / protect	Surveillance and / or harassment, by GE
<b>Economic Rights</b>	Discrimination in advancement in employment despite merit and seniority, by GE and NGE	Discriminatory denial of safe / healthy work environment, by GE or NGE	Denial of protection against unemployment and / or of unemployment compensation and other employee benefits available to others, by GE	Discriminatory denial of right to join trade unions available to others, by GE or NGE
<b>Educational &amp; Cultural Rights</b>	Denial of parental right to choose kind of education to be given to their children, by GE or NGE	Denial of freedom of choice of course of study, by GE or NGE	Discriminatory denial of free choice of educational institutions if otherwise qualified by GE or NGE	Discriminatory fees charged in excess of those charged others for education, by GE or NGE
<b>Personal Rights</b>	Arbitrary interference with freedom of opinion and its expression through media and/or peaceful assembly, by GE or NGE	Compulsion to join and belong to an association, by GE	Compulsion to join and belong to an association, by NGE, with government unable to prevent / protect	Compulsion to join and belong to an association, by NGE, with government unable to prevent / protect
<b>Legal, Political, &amp; Nationality Rights</b>	Discriminatory denial of access to effective legal assistance available to others	Arbitrary denial of nationality	Denial of freedom of movement or residence within one's country	Denial of right to leave and return to one's country
<b>Social, Family, &amp; Property</b>	Denial of right to social services / security available to others similarly situated	Discriminatory denial of social protection / benefits equal to those of others similarly situated	Discriminatory restrictions on housing and / or relegation to substandard housing	Discriminatory higher charges for same / similar housing available to others
<b>Personal Integrity &amp; Privacy</b>	Arbitrary interference with family / home, by GE	Arbitrary interference with family / home, by NGE, with government unable to prevent / protect	Arbitrary interference with family / home, by NGE, with government unable to prevent / protect	Slander / libel against honour or reputation

## APPENDIX A – Human Rights Matrix (continued)

(GE - Governmental Entity / NGE - Non-Governmental Entity)

	Random violence, by NGE, with government unable to prevent / protect	Credible threat against life, by GE	Credible threat against life, by NGE
<b>Life</b>	External (forced) exile, by GE, or denial of return / re-entry into one's country	Arrest and detention, by government in excess of normal punishment for same offences	Intimidation and / or threat(s) against liberty
<b>Liberty</b>	Surveillance and / or harassment, by NGE, with government unable to prevent / protect	Surveillance and / or harassment, by NGE, with government unable to prevent / protect	Credible threat(s) of cruel, inhuman or degrading treatment
<b>Security of Person</b>	Discriminatory denial of right to protection and material interest resulting from production of scientific, literary or artistic work, by GE	Discriminatory denial of reasonable limitation on working hours and paid holidays enjoyed by others, by GE or NGE	Discriminatory denial of rest and leisure time available to others, by GE or NGE
<b>Economic Rights</b>	Discriminatory imposition of greater duties to community service than required from others	Discriminatory denial of right to freely participate in the cultural life of the community	Discriminatory denial of right to freely enjoy the arts and share in scientific advancement and its benefits
<b>Educational &amp; Cultural Rights</b>	Harassment and / or discrimination because of thought, conscience, religion and its expression, by GE	Harassment and / or discrimination because of thought, conscience, religion and its expression, by NGE, with government unable to prevent / protect	Harassment and / or discrimination because of thought, conscience, religion and its expression by NGE, with government unable to prevent / protect
<b>Personal Rights</b>	Denial of right to change one's nationality	Discriminatory denial of equal access to fair and public hearing / trial by an impartial tribunal	Discriminatory harsher punishments for crimes / violations similar to others
<b>Legal, Political, &amp; Nationality Rights</b>	Discriminatory denial of right to live anywhere one can otherwise afford	Interference in owning property alone or in association with others	Discriminatory interference in rights available to others to freely choose a spouse and found a family
<b>Social, Family, &amp; Property</b>	Slander / libel against honour or reputation by NGE, with government unwilling to prevent / protect	Slander / libel against honour or reputation, by NGE, with government unable to prevent / protect	Credible threat against privacy, family, home, correspondence, honour or reputation
<b>Personal Integrity &amp; Privacy</b>			