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RESPONDING TO HUMANITARIAN CRISES

MEL GURTOV
& ELLEN MEKJAVICH*

Over the last quarter-century internal conflicts, often marked by large-scale loss of innocent life, wanton destruction of communities and environments, and systematic denial of human rights, have become commonplace. Rwanda, Cambodia, Congo, Angola, Yugoslavia, Liberia, Chechnya, Somalia, East Timor, Sierra Leone: the list is long and growing; and each entry is a reminder that we, the post-Holocaust generation that is supposed to represent a more civilized humanity, have failed to act in time. Equally tragic is that when the international community has responded, it has rarely been up to the enormous task encompassed by the term “conflict resolution.” Not one of the humanitarian crises, generated by the internal conflicts just mentioned, can truly be considered resolved, even though some of those countries are said to be at peace.1

The ruthlessness, venality, and repressive uses of power by State leaders have led to the adoption of a new international norm: the sovereignty of States is not absolute. The era of unchallengeable State supremacy, as the former United Nations (UN) Secretary General, Boutros Boutros-Ghali, wrote in An Agenda for Peace, “has passed . . . . It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever

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* Mel Gurtov is Professor of Political Science and International Studies at Portland State University (Oregon). His recent books include GLOBAL POLITICS IN THE HUMAN INTEREST (Lynne Rienner, 4th ed., 1999) and CHINA'S SECURITY: THE NEW ROLES OF THE MILITARY (Lynne Rienner, 1999, coauthored with Byong Moo Hwang). Ellen Mekjavich is an M.A. candidate in the Conflict Resolution Program of Portland State University.

1. As an example, Cambodia, the object of a $2 billion UN peacekeeping mission, is today reportedly peaceful and politically stable, in the sense that the Khmer Rouge have largely disintegrated, there are no political killings, a central government is fully in charge, and the economy is growing. Yet, the gap between rich and poor is widening, basic needs are not being met, population growth far outpaces sustainable farming, illegal businesses account for much of the economic growth, and the rule of law is a very long way off. See Seth Mydans, Fragile Stability Slowly Emerges in Cambodia, N.Y. TIMES, June 25, 2000, § 1, at 1.
more interdependent world." Some domestic affairs of States, notably genocide and other massive threats to human security, are now generally regarded as subject to international intervention on the principle that in such cases a moral duty to humanity outweighs sovereignty.

But in practice, the norm of limited sovereignty is open to significant qualification. There is no international consensus on the precise line that should separate matters "essentially within the domestic jurisdiction" of States from "threats to international security" inherent in a humanitarian crisis. Nor is there a consensus on which kind and what degree of assault on human beings and their environment should prompt outside intervention—that is to say, what exactly is a humanitarian crisis—much less on what form such intervention should take. Even if there were a consensus, there is no guarantee, as Rwanda and even the Holocaust itself showed, that State leaders will consider the prevention of genocide a matter of national interest. Besides, outrageous behavior by State leaders is often mirrored by their opponents, and (as in the NATO bombing of Belgrade) sometimes by their supposed saviors. International intervention is itself open to abuse, as well as to incompetence and self-interested behavior by nongovernmental organizations (NGOs) and other third parties. The cure may worsen the disease, so much that some observers believe such interventions should be abandoned.

This article identifies three stages of a humanitarian crisis. It proposes some guidelines in an attempt to answer the vexing question: When, and how, should the international community


4. Note Amnesty International's finding that "[o]n the basis of available evidence, including NATO's own statements and accounts of specific incidents, Amnesty International believes that—whatever their intentions—NATO forces did commit serious violations of the laws of war leading in a number of cases to the unlawful killings of civilians." AMNESTY INTERNATIONAL, NATO/FEDERAL REPUBLIC OF YUGOSLAVIA: "COLLATERAL DAMAGE" OR UNLAWFUL KILLINGS? VIOLATIONS OF THE LAWS OF WAR BY NATO DURING OPERATION ALLIED FORCE 3 (June 2000), available at http://www.amnesty.org/ailib/intcam/kosovo/docs/eur7001800.pdf.

5. For a particularly cynical view, see Edward N. Luttwak, Give War a Chance, FOREIGN AFF., July–Aug. 1999, at 36.
intervene to prevent a humanitarian crisis in an internal conflict from occurring, stop it from continuing, or at least help ensure it does not happen again? To illuminate our argument, we undertake a critical examination of the U.S.-led UN peacekeeping operation in Haiti in 1994. There, despite the appearance of a legitimate intervention, humanitarian concerns were subordinated to national interests.

Informing our approach is identification with what Thomas G. Weiss has called “political humanitarianism.” We accept that it is virtually impossible to separate political from humanitarian concerns in today's internal conflicts, and that at all stages of such conflicts humanitarian assistance is going to be shaped by political preferences. At the same time, we are mindful of the debate over the “new internationalism” and the dangers, political and ethical, of interventionism in the name of doing good. Following Weiss, we take a “maximalist” approach to humanitarian action—seeking to address the root causes of violent conflict and carrying out a “human-interest” political strategy that puts peace with social justice, environmental protection, and accountable governance above any national interest.

I. THE STAGES OF INTERNAL CONFLICTS

Stage 1: Prevention

We must do more to prevent conflicts happening at all. Most conflicts happen in poor countries, especially those which are badly governed or where power and wealth are very unfairly distributed between ethnic or religious groups. So the best way to prevent conflict is to promote political arrangements in which all groups are fairly represented, combined with human rights, minority rights, and broad-based economic development.

—Kofi Annan


7. The concept of “human interest,” and the values that lie behind it, were inspired by the World Order Models Project. They are explicated in Mel Gurtov, Global Politics in the Human Interest (4th ed. 1999).

The crisis of the State sets the stage for possible internal conflict; the best kind of preventive action anticipates the crisis and seeks to move it toward a nonviolent settlement. Whether a crisis of the State involves a rupture of State power (as in Yugoslavia in 1991 and Indonesia in 1999), civil war (as in Rwanda and Angola), or outright collapse (as in Somalia), the key indicators are political and social fragmentation and a real threat of national disintegration. From the standpoint of conflict resolution, the fundamental challenge is how, with minimum violence, either to restore national unity or, if that is impossible, to affect a fair separation of contending parties. But that task—which often entails the State’s acknowledgment of genuine autonomy for disempowered groups, their access to political and economic resources, and arrangements for power-sharing—can hardly be separated from broader considerations of human rights and structural inequalities.

Michael S. Lund argues for a fairly narrow definition of preventive diplomacy, one that brings preventive action into proximate relationship with the onset of violence. Largely in agreement with Boutros-Ghali’s definition in An Agenda for Peace, Lund says the purpose of preventive diplomacy is to “keep peaceable disputes from escalating unmanageably into sustained levels of violence and significant armed force.” Lund rejects the notion that addressing structural inequalities, such as by promoting sustainable development and democratization, is or should be automatically included in preventive diplomacy. Though improving economic and human rights conditions may help prevent violence, he argues, it may also help bring it about. Nor has it been clearly established that social inequality directly causes violent conflict.

Lund is certainly correct to point out that not all internal conflicts have taken place in poor, undemocratic countries. But many of them, and especially the most ruinous and most difficult to resolve of them, do occur there. And if it is true that a direct link cannot be established between human rights (or other) deprivations and social conflict, it is also difficult to dismiss their close interconnectedness, in terms not only of oppressed peoples’ desperation to change their condition, but also of State leaders’ and elites’ determination to keep their grip on power. As Lund writes, preventive diplomacy:

10. Id. at 37.
11. Id. at 35–36.
[C]omes into play only when policies, institutions, and procedures between States and groups at the local, national, or regional levels that could handle disagreements and maintain a process of orderly resolution either do not exist, are breaking down, or fail to regulate political disputes and conflicts of interests . . . .

But what if such "policies, institutions, and procedures" do not exist or do not work precisely because they are a function of oppressive conditions? Policies, such as dependence on foreign military and economic aid and preservation of traditional landed interests; institutions, such as police forces, courts, media, and parliaments that represent only dominant classes; and procedures, such as pervasive corruption and use of terrorist tactics against political opponents are not designed to promote conflict resolution. There is, in short, a systemic bias against social equality and respect for human rights. Moreover, Lund's definition presumes that a distinct moment can be discerned when escalation occurs. But a humanitarian crisis may not crystallize around a single event, such as a genocide or an attack that destroys a village. Rather, the crisis may, as in Haiti, be so embedded in a country's history that its daily toll hardly raises an eyebrow. When that happens, one looks in vain for the usual early warning signs of a crisis, for the humanitarian crisis is the early warning.

In a prolonged humanitarian crisis—El Salvador, Nicaragua, and Cambodia are other examples—preventive diplomacy that seeks to prevent disputes from turning violent would seem to miss the point. In a political system that is hegemonic, social conflict is not being "disputed"; it is being perpetuated by tyrannical leaders who will not admit of a legitimate opposition or political alternative. Preventive diplomacy in such circumstances can only be useful if it removes them from power and targets the structural violence that has long fed the crisis. In none of these cases, however, was preventive diplomacy even tried.

In cases of partial or substantial success, one key ingredient, in addition to the will of the parties involved to avoid violence, seems to be international attention—a great array of resources, domestic and international, and a conflict-resolution agenda that reaches to the sources of violence. The agenda might include the kinds of unofficial bridge-building, transformative workshops, and "sustained dialogues" between adversaries developed by Herbert Kelman in the Middle East and Harold Saunders in

12. Id. at 42.
Tajikistan. Institution-building programs and economic development projects would come into play as well. Policy reassessments by international agencies, such as the World Bank and the International Monetary Fund, might be required in order to free up resources—actions, for example, that might have addressed Yugoslavia's economic troubles in time to avert a breakup in the late 1980s. To the extent UN peacekeeping under Chapter VI of the Charter would need to be invoked, its purpose in Stage 1 would probably focus on mediating autonomy talks. In the extreme, and where feasible, a preventive deployment of forces, such as occurred in Macedonia, should be an option strictly for the purpose of separating hostile populations.

Stage 2: Peacekeeping

National sovereignty offers vital protection to small and weak States, but it should not be a shield for crimes against humanity. In extreme cases the clash of these two principles confronts us with a real dilemma, and the Security Council may have a moral duty to act on behalf of the international community. But in most cases the international community should be able to preserve peace by measures which do not infringe State sovereignty. It can do so, if our capacity to conduct peace operations is strengthened.

—Kofi Annan

When preventive diplomacy succeeds in internal conflicts, it lays the basis for post-conflict peacebuilding. But when it fails, large-scale loss of innocent lives may lie ahead. A winner-takes-all politics emerges whose warning signs are cultural-psychological scapegoating, power linked to identity, and extremist nationalism. For international peacekeeping, Chapter VII replaces Chapter VI as the basis for action.

But what should that action be? Annan has consistently emphasized giving priority to gross violations of personal security

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15. Annan, supra note 8.
over State sovereignty. His idea, quoted above, suggests the necessity of a rapid response aimed at rescuing people before they become victims. The role of a Chapter VII action would therefore be, not to punish the side presumed to be responsible for a humanitarian crisis, but to interpose military units so as to protect people under the authority of international law. The precedent is UN Security Council Resolution 688 in 1991, which aimed to protect the Kurds in northern Iraq from Saddam Hussein's forces. A cease-fire could then be negotiated, sanctions for non-compliance would be announced and carried out, and the resources of NGOs and other third parties would be mobilized for relief and reconstruction efforts. The sooner an international interposition occurs, the greater the chances of isolating extremists and gradually moving an impending disaster back to the essential tasks of Stage 1.

Stage 3: Peacebuilding

The challenge of creating, or re-creating, the conditions of peace in a conflict-devastated country is monumental. One reason is that agreements to stop fighting all too easily break down. Negotiated settlements are the most likely to hold and the least frequently achieved. And many of those likewise do not “stick.” Sometimes that is due to insufficient follow-up resources (as in Angola), sometimes to poor agreements (Sierra Leone), and sometimes to international abandonment (Congo). Even more fundamentally, as Haiti showed, international peacekeeping missions do not have the independence, organizational depth, or political support to undertake effective implementation of a lasting peace. The conditions of conflict re-create themselves, like a virus that has been quelled by antibiotics but still lives, waiting to thrive anew at the proper moment.

In a sense, post-conflict reconstruction is an effort to return a conflict to Stage 1. Whereas the chief humanitarian task in Stage 2 operations is to rescue innocent victims of a conflict, in Stage 3 the chief task is to devise and implement nation- and community-building projects that ought to have been attempted before the conflict reached the crisis stage. From the standpoint

16. “Emerging slowly, but I believe surely, is an international norm against the violent repression of minorities that will and must take precedence over concerns of State sovereignty.” Kofi Annan, Our Differences Can and Must Be Outweighed by Our Common Humanity, Commencement Address to the University of Michigan (Apr. 30, 1999), in UN Press Release SG/SM/6977, at http://www.un.org./search.
of "political humanitarianism," professionalizing and integrating (or completely restructuring) the army; building or re-forming political parties, the judiciary, and other institutions; reducing corruption; and rectifying social inequalities are all essential tasks of post-war rebuilding. And they should be seen as being very long-term tasks, as with preventive diplomacy, extending "beyond the negotiating table" to as much as "the course of a generation." 18

Here, the role of third parties can be critical. As Fen Osler Hampson puts it, their involvement works best "when [they] entrench and institutionalize their role in the peacemaking and peace-building process, that is, when they cultivate ripeness." 19 To be sure, an activist conception of humanitarian assistance runs the serious risk, most palpably demonstrated in the refugee camps of Zaire following the Rwanda genocide, that NGOs will become part of the problem instead of part of the solution. 20 They may choose not to play politics, but their very involvement puts them in the politics business. It is thus important that NGOs understand the limits of what they can accomplish; be more than a little familiar with local history, language, and politics; and condition assistance on performance. 21 Perhaps they will decide not to become involved at all, given the practicalities of particular situations or the unacceptability of the partnerships they may have to establish. Thus, Médecins Sans Frontières, an NGO that is forthright in advocating on behalf of human rights victims, is probably right to reject making humanitarian work part of a conflict-resolution strategy. 22

The quest is not just for agreement, but for a sustainable peace. 23 One may think of that in terms of four phases:

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18. Jan Egeland, The Oslo Accord: Multiparty Facilitation through the Norwegian Channel, in HERDING CATS, supra note 13, at 529, 545. Egeland wrote: "Perhaps the biggest mistake made during the Oslo [Israeli-Palestinian] negotiations was to agree to judge the success of the peace process based on what could be achieved during a five-year period rather than over the course of a generation." Id.
19. Fen Osler Hampson, Why Orphaned Peace Settlements are More Prone to Failure, in MANAGING GLOBAL CHAOS, supra note 13, at 533, 535.
20. See PHILLIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA 266-72 (1998).
21. See Weiss, supra note 6, at 17-18.
• *conflict containment*, referring to cease-fire management, demobilization, disarming of regular and irregular forces, and their integration in a single professional military;
• *implementation*, referring to elements of the agreement that need to be brought into play: repatriation, resettlement, power-sharing, and confidence-building measures (C.B.M.s);
• *institution-building and basic-needs planning*, and
• *conciliation*.24

The chances of achieving a sustainable peace, as Harold Saunders has long maintained, are greatly enhanced if conflict resolution is multilevel. Each of the four phases, in other words, probably requires resources and attention simultaneously at every level of involvement—local, state, and international—and by official and unofficial actors. For example, at the local level, international peacekeeping forces may be training police. Meanwhile, local officials may be establishing new working relationships with citizens in community-based development projects,25 and NGOs may be conducting workshops that seek to bridge and perhaps transform personal relationships between members of adversarial communities. But in all these projects, *conditionality* seems to be an important ingredient—It is not a matter of throwing maximum resources at problems, which can result in enormous waste and worsening problems, but of tying outside assistance to progress toward creating democratic ways of governing and carrying out humane, sustainable development.

Secondly, as has often been observed, the parties to a sustainable peace need to have the political will to agree. But, we have also learned, mainly from the secret Israeli-Palestinian negotiations at Oslo in 1993, that political will needs to be coupled with the values and perseverance needed to realize it—a commitment to partnership in the peace project, acceptance of the opponent's equality and legitimacy, the willingness to fight through disagreements and adverse developments, and optimism that agreement is actually possible.

24. See generally id., supra note 23, at 153-69 (discussing prerequisites for building a solid peace agreement).
II. THE HAITI CASE

A. A Disrupted Sovereignty

Haiti is not a case of civil war in which sovereignty is contested, and ethnic or other identity issues are at stake. We prefer to call it a case of disrupted sovereignty and civil conflict. State power was illegally seized in 1991 by a military junta that ruled by terror and corruption, milking an impoverished country in the manner of the Duvalier dictatorship that preceded it. Civil war was not a threat inasmuch as there was no organized opposition to the military. But civil conflict was a fact of life due to systematic human rights violations, including political assassinations, perpetrated by military and paramilitary forces.

Political violence is only one element of Haiti's long-running humanitarian crisis. The other element is its underdevelopment. Of a total population of eight million, about two-thirds live in rural areas; and of that number, about eighty-one percent live in extreme poverty. Haiti has a high birth rate—the population is projected to be around twelve million by 2030—and its population density in relation to arable land is greater than China's. The labor force of around three million, of which women comprise forty-three percent, is growing at an annual rate of two percent, ensuring high unemployment. Nearly one-quarter of children ages ten to fourteen work. Typically of the poorest Third World countries, Haiti also has high male and female illiteracy (around fifty percent) and a disastrous health care picture—virtually no doctors, very low public-health spending, high infant mortality, and low access to drinkable water. The failure of successive Haitian governments to meet the people's basic needs is one sign of the country's impoverishment. The other is the economy—continual balance of payment defi-

26. "Haiti wasn't even a sovereign nation. Haiti was a country kidnapped by a small group of uniformed bandits, self-important drug dealers, and unscrupulous businessmen." Bob Shacochis, The Immaculate Invasion 28 (1999).

cits that compel dependence on foreign aid and foreign investment.\textsuperscript{28}

The absence of democratic structures and economic justice in Haiti is rooted in historic inequality and suffering. Hardship has long been a way of life for the majority of Haitians. Since a successful war of independence in 1804 ended colonial rule and struck fear in the hearts of slave-owners throughout North America, there has been an increasing cultural and economic gap between the rural and urban Port-au-Prince populations. Power was consolidated in the capital, nicknamed "The Republic of Port-au-Prince," where the minority French-speaking mulatto aristocracy continued to profit from trade relationships established when the Haitian colony imported more enslaved Africans than anywhere else in the Americas. One telling indicator of this imbalance is that in 1987, one-half of one percent of Haitians earned forty-six percent of the national income.\textsuperscript{29}

The military power and personal wealth of the Duvalier family were products of this class division—the feared Tonton Macoutes, created by François "Papa Doc" Duvalier to cleanse the army of opposition forces, recruited its numbers from the poor and illiterate blacks of Port-au-Prince's ghettos. Where Haitians had no money, they lived in desperation and were more easily mobilized by the side that promised power and material reward.\textsuperscript{30} Military rule ensured that there was no legitimate channel for the moderation of conflict between the people and their leadership.

\textbf{B. The Defeat of Democracy, 1987-1991}

Unfortunately, the ousting of the Duvalier regime in 1986 did not result in the kinds of social changes hoped for by poor

\begin{itemize}
\item \textsuperscript{28} Haiti's international ledger shows significant debt, mostly (nearly $1 billion in 1999) owed to multilateral banks. \textsc{Organization for Economic Co-operation and Development, Joint \textsc{Bis-imf-oecd-world Bank Statistics on Economic Debt}, available at http://www.oecd.org/dac/debt/htm/jt_hai.htm (last modified Aug. 31, 2000). Foreign investment is small and recovering from the capital flight that accompanied the military coup; but in relation to the size of Haiti's economy, even limited foreign investment—mostly American, and amounting to about $16 million (Texaco, Shell, and Standard Oil) between 1995 and 1999—is important for those wealthy Haitians who are tied to it. See generally Haiti: Investment Climate Statement, at http://www.tradeport.org/ts/countries/haiti/climate.html (last visited Feb. 19, 2001).
\item \textsuperscript{29} See Michael S. Hooper, \textit{Model Underdevelopment}, in \textsc{Haiti: Dangerous Crossroads 134 (Deirdre McFadyen \\& Pierre LaRamée eds., 1995) [hereinafter \textsc{Haiti}].}
\item \textsuperscript{30} See Greg Chamberlin, \textit{Up By the Roots: Haitian History through 1987}, in \textsc{Haiti, supra note 29, at 15.}
\end{itemize}
Haitians. Using much needed aid money as leverage, including termination of military aid, the United States pressured former Duvalier loyalists who retained powerful positions within the military and new National Governing Council (C.N.G.), to hold new elections. The C.N.G. agreed even as the army began to violently suppress the opposition parties and populist movements that were forming within a nascent civil society. The end result was a series of elections starting in 1987 amid outbursts of violence against reformers, the outcomes of which were not seen as legitimate by the Haitian people. Clearly, the human rights violations committed by the Haitian police and military throughout these years were a product of the desire of an elite few to continue to profit from their position in Haitian society and in the international economy.

Haiti's plight was well documented by relief organizations and governmental agencies, including the U.S. State Department in its annual human rights reports to the Congress. The pervasive official violence and disregard for fundamental human rights were early warning signs of the potential for deepening oppression. Among the steps that could have been taken were an international needs assessment to determine high-priority development projects; international development assistance monitored to ensure that it would be allocated for poverty relief and other humanitarian goals; redirection and mobilization of the Haitian military toward assisting in these development projects; placement of human rights monitoring teams with access to resources that would allow them effectively to document infractions; and workshops conducted by outside parties in collaboration with Haiti's civic organizations, business community, and local political leaders. Unfortunately, the international response to political instability gave priority to the holding of elections, and not to the creation of a safe and healthy populace.

The period between the election of Jean-Bertrand Aristide in December 1990, and his overthrow by the military in September 1991, represented a unique opportunity for the international community to meet the aspirations of ordinary Haitians that their grievances would finally have a voice, through new institutions. The identity assumed by Aristide and his supporters was shaped both by a Populist party platform that emphasized the duty of those with resources to sacrifice some of them for the

benefit of those less fortunate, and by a genuine terror of the brutality that had been exhibited by the military. When sixty-seven percent of the population voted in favor of the reforms that Aristide’s presidency promised to bring them, it was a mandate to break a cycle of poverty that was connected to a system of exploitation and abuse.\textsuperscript{33}

Some of Aristide’s actions following his inauguration, however, were partially responsible for furthering the distance between the two sides. First, Aristide displayed little regard for the wishes of the parliament, which had been elected with only a fifteen percent voter turnout, when he unilaterally imposed a series of reforms. In an attempt at reconciling his own goals for the improvement of living conditions with the needs of an army on the defensive, Aristide allotted $6 million for bettering the working conditions of soldiers. Simultaneously, Aristide replaced the army’s high command and appointed a cabinet to review human rights abuses during the post-Duvalier years.\textsuperscript{34} The latter of these actions was clearly undertaken to address the climate of fear that the Haitian people had lived under in previous years; but for obvious reasons, it was seen as a threatening move by the many who would face punishment.

It is also likely that Aristide did not do enough at this time to dissuade those who were fearful of their lives and who wanted to see justice done from using violence. Some, particularly members of the military who cited it as a primary reason for the coup and subsequent reluctance to return power, felt that Aristide actually encouraged his supporters to seek violent retribution against members of the military. There is some evidence that Aristide indirectly advocated the use of “Père Lebrun,” or the “necklacing” of soldiers by setting fire to gasoline-soaked tires hung around the soldiers’ necks, but it is not clear that this practice was routinely employed or encouraged by Aristide himself.\textsuperscript{35} Later, the U.S. Central Intelligence Agency (CIA) cited this practice in a report to Congress as evidence of Aristide’s unfitness to return to office.\textsuperscript{36} Among low-ranking soldiers, uncertainty about the future made it easy for commanders to persuade them of the necessity of a coup “as a way of fostering the unity and


\textsuperscript{34} See Greg Chamberlin, \textit{Haiti’s “Second Independence”: Aristide’s Seven Months in Office}, in \textit{Haiti}, supra note 29 at 51-56.

\textsuperscript{35} See \textit{DAVID MALONE, DECISION MAKING IN THE UN SECURITY COUNCIL} 60-61 (1998).

spirit of solidarity of the army." No less significant was Jean-Claude Duvalier's impending trial and his promise to turn over the names of his co-conspirators, both civilian and military. Here again, an international presence in Haiti directed toward rebuilding the army and judicial system might have averted a coup. But the United States, among others, was content to take some credit for the elections and otherwise play no significant role in Haiti's rebuilding. That left U.S. policy in the hands of agencies close to the Haitian military and paramilitary forces hostile to Aristide.

C. The Failure of Peacekeeping, 1992-94

It took about a year and a half for the UN Security Council, early in 1993, to impose an arms and fuel embargo on the coup regime in response to Aristide's plea for help. During that time the military's human rights abuses reached shocking levels—imposing rule by terror, forcing people into desperate flight, plundering the economy. All this took place under the noses of a growing international presence in Haiti that included an impossibly small Organization of American States (OAS) human rights observer mission. A 400-member UN observer mission (U.N.M.I.H.) did effectively curb some of the abuses, and the UN embargo more thoroughly sealed Haitian ports, increasing pressure on the coup leaders. But the one negotiated agreement between Aristide and the "de factos"—at Governors Island, New York, in July 1993—addressed neither the humanitarian crisis nor the need for reconciliation. It merely set the terms for Aristide's restoration, and was reached only because both sides decided they had nothing to gain by appearing to be uncompro-

38. See id.
39. See, e.g., U.S. Dep't of State, Country Reports on Human Rights Practices for 1994, S. Prt. No. 104-12, at 420 (1995) (documenting systemic and extensive violations of labor laws governing child labor, unionization, and health and safety and noting the "political and extrajudicial killings by the security forces and their allies; disappearances; and politically motivated rapes, beatings, and other mistreatment of citizens, both in and out of prison"). See also ShacoChis, supra note 26, at 34–36 (addressing the military's strategy of repression by selected assassination).
41. The terms included Aristide's naming of a new prime minister, creation of an independent police force, amnesty for the coup leaders, deployment of the U.N.M.I.H. to help modernize the army, and Aristide's return to power on Oct. 30, 1993. See Barbara McDougall, Haiti: Canada's Role, in Herding Cats, supra note 13, at 396.
mising. Little wonder that the junta failed to comply with the agreement, compelling reimposition of the sanctions and, in mid-1994, UN Security Council Resolution 940, which authorized the use of "all necessary means" under Chapter VII of the Charter to dislodge the junta.

It is not altogether plausible that mediating reconciliation could have been attained since one side had so flagrantly violated national and international standards of behavior. But any such possibility was undermined by the inconsistent and unprincipled nature of U.S. policies. First and foremost, an absence of U.S. public statements recriminating the military for abuses were the least frequent when Haitian refugees, or "boat people," picked up off the coast of Florida were at their most numerous. The refugees, whose numbers reached 40,000 in 1991 at the height of the violence, were regularly repatriated despite former President Clinton’s campaign promise to halt this practice. Instead of using its moral authority, the administration squandered it by violating international law and an American tradition of granting asylum to political refugees.

The counterpoint to the continued repatriation of displaced Haitians was the United States' reluctance to endanger American lives through a military enforcement of Aristide’s presidency. The supreme test of American resolve to end the conflict came with the attempted docking of the USS Harlan County in Port-au-Prince in October 1993. When demonstrators waiting at the gates of the port threatened diplomats and press with their ability to "turn this into another Somalia," the ship received orders to turn around. This decision was made without consultation with the UN and showed an unwillingness to implement the Governors Island Agreement.

Perhaps the most disturbing and counterproductive element of U.S. involvement following the coup was the evident backing of Haitian paramilitary groups by American intelligence agencies. According to Emmanuel Constant, leader of the Front for the Advancement and Progress of Haiti (F.R.A.P.H.), a terrorist group responsible for the burning down of Cité Soleil, Port-Au-Prince’s largest slum in 1993, and organizer of the Harlan County protests, he began the group at the "urging of the Defense Intelligence Agency." Lawrence Pezzullo, chief negotiator at Gover-

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42. See Malone, supra note 35, at 104–05.
44. See id.
45. Allan Nairn, Haiti Under the Gun: How U.S. Intelligence has been Exercising Crowd Control, Nation, Jan. 8, 1996, at 11–16.
nors Island, indicated that F.R.A.P.H.’s power was used to
convince Aristide that his influence over the Haitian majority was
being usurped and that he should thus accept the terms of the
agreement.\textsuperscript{46} Constant is said to have reported daily to the CIA
station chief and, along with junta leaders, to have been on the
CIA’s payroll.\textsuperscript{47} If these statements are true—and the evidence
strongly indicates that they are\textsuperscript{48}—U.S. credibility as a mediator
and upholder of democracy in Haiti is irretrievably damaged.

The U.S. strategy of coercion actually seems to have been
felt far more by Aristide than by the military regime. His only
weapons, unlike those of the other parties, were symbolic ones—
the support of public opinion and the stated support of the interna-
tional community. Initially, there was no question for him of
accepting a formula that would legitimize the actions of his
opponents. For three years, Aristide resisted pressure to grant
amnesty for the coup leaders because he knew that without the
institution of some form of punishment he would be compromis-
ing the dignity of the people who had been tortured or killed.\textsuperscript{49}
Aristide also insisted that his return be swift and pushed for inter-
vention by the UN or the United States to restore him to office,
by force if necessary.\textsuperscript{50} U.S. negotiators were reputed to have
been highly frustrated with Aristide’s unwillingness to negotiate
on these items.\textsuperscript{51} What they did not acknowledge was that in
order to come as far as he had, Aristide had survived repeated
attempts on his life and on the life of his party. He had made
these advances through determination and not through compro-
mise. He was also in the awkward position of having to accept
help from the very country that he suspected of aiding his oppo-
nents. In the end, Aristide’s desire to return and the probability
that that would not happen without major concessions resulted
in his agreement at Governors Island to grant amnesty to the
coup leaders and to wait for four months after the signing of the
accord for his reinstatement. This last concession was fiercely
resisted by Aristide, for he believed that four months gave the
military too much time to organize yet another resistance, as it
indeed did.\textsuperscript{52}

\textsuperscript{46} See \textit{id}.

\textsuperscript{47} See \textit{SHACOCHIS, supra} note 26, at 29.

\textsuperscript{48} See \textit{Nairn, supra} note 45. See also \textit{McDougall, supra} note 41, at 400–01,
403 n.2; \textit{SHACOCHIS, supra} note 26, at 33–36.

\textsuperscript{49} See \textit{AMERICAS WATCH, supra} note 40, at 127.

\textsuperscript{50} See \textit{id}.

\textsuperscript{51} See \textit{MALONE, supra} note 35, at 86–87.

\textsuperscript{52} See \textit{JEAN-BERTRAND ARISTIDE, DIGNITY} 128–29 (Carrol F. Coates trans.,
In contrast, the coup leaders had every reason to believe that their goals were attainable and that they could disregard the Governors Island Agreement. At the time of the Governors Island meeting, they had weathered two years of sanctions with their power intact. They most likely interpreted U.S. reluctance to use military force, Clinton’s inconsistent policy on Haiti, and behind-the-scenes support from the CIA and Defense Department as a go-ahead to remain in power. As a senior Canadian party to the mediation process wrote, the CIA’s support of the F.R.A.P.H., its “black propaganda” designed to undermine Aristide’s credibility and even his sanity, and the U.S. ambassador’s apparent sabotage of an OAS mission to Haiti, surely stiffened the coup leaders’ resistance to compromise.\(^5\) Not until U.S. warplanes literally approached the island on September 18, 1994 did the junta take seriously a threat of force and decide to accept the deal proffered by the negotiating team headed by former President Carter.\(^5\)

How might peacekeeping in Haiti have gone differently after the coup? Given that the international response from the UN Security Council and the OAS was not sufficient either to restore Haiti’s first freely elected president or to stop the military’s terrorism, more principled and decisive actions should have been considered. Neither the Carter mission nor the U.S.-led intervention was a proper response. Carter’s mission coaxed a last-minute agreement from the generals, but it was obtained under duress and rewarded their intransigence. It was not mediation but simply (though admirably, given the alternative of invasion) coercive diplomacy to extricate the generals and restore order. The United States seems not to have had a mediation strategy. And a compelling reason why it did not is that while the State Department supported Aristide’s return and consistently documented the junta’s human rights abuses, the CIA and the Defense Department evidently encouraged the Haitian military to stay the course.

When finally undertaken, moreover, the U.S.-led multinational force gave very little attention to rebuilding a viable community in Haiti (see below). Neither the UN Resolution nor the unsuccessful Governors Island Agreement made any attempt to outline a plan for meaningful economic and social change.\(^5\)

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53. See McDougall, supra note 41, at 400.
55. Resolution 940 did refer to “the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties . . .” And it
humanitarian approach might have included strong, regular, and public condemnations of the junta by international leaders; U.S. policies that were consistent with proclaimed human rights objectives, including humane treatment of refugees and termination of CIA and Defense Department ties to the F.R.A.P.H.; a much stronger international human rights monitoring effort; and a clearly targeted development-aid program to support Aristide’s reforms, subject to respect for the rule of law. Had these elements been in place, and had the use of force been credible, there would have been no need to give the military and paramilitary leaders the means of a graceful retirement in exile.

D. Aristide’s Return and the Failure of Peacebuilding, 1994-2000

The UN peacekeeping operation in Haiti in 1994 seemingly established the precedent that an unconstitutional seizure of power would not be tolerated by the international community, and therefore that those who had seized power would have to yield it to legitimate authority. Considering how frequently military leaders, among others, had seized control of their governments during the Cold War era, with the toleration and even active support of outside powers, the UN’s action was indeed extraordinary. And justified—the Haitian military had ousted a freely and overwhelmingly elected president, the Haitian people had been in essence held hostage to the brutal politics of their leaders for many decades, and the military had failed to abide by an agreement (the Governors Agreement)—it promised to uphold that the OAS put before it in 1992.

But the intervention raised troubling issues. The UN action was largely orchestrated and shaped by the United States, and thus responded to U.S. interests. Establishing democratic rule for the first time in Haiti was not one of them. As the United States so clearly demonstrated in 1970 by its complicity in the overthrow of Salvador Allende in Chile, it is quite prepared to assist foreign militaries to overthrow freely elected governments that threaten hegemonic interests. Nor have free elections or civilian rule been abiding U.S. interests in Latin America, or elsewhere, in recent years. The main U.S. concern in Haiti was to


56. U.S. policy in El Salvador, Guatemala, and Brazil at various times come immediately to mind. In the post-Cold War period, the U.S. response to
achieve a form of political stability favorable to itself—first, to keep people from fleeing to the United States, as Clinton followed President Bush’s policy of forcible repatriation of Haitian boat people; and second, to ensure the kind of political “stability” that is conducive to doing business, both on behalf of U.S.-based multinational corporations and the U.S. military.

In a case where the State is the historical agent of oppression, a UN or OAS intervention would have had to be directed at ameliorating the humanitarian crisis that culminated in the military’s seizure of power. But just as such interventions did not happen during the Cold War, when far-right and far-left dictatorships backed by one or the other major power held sway, so has it rarely happened since the Cold War’s end. The Kurdish precedent was not applied to protect Haitians from their government. Thus, Kofi Annan’s view of limited sovereignty was not extended to Haiti-type cases.

The U.S.-led force did achieve a de-escalation of violence in Haiti in that it ended the most brutal and overt forms of repression. But this was not accomplished by upholding decisions made by Aristide and Haiti’s parliament. Instead, it came about through the implementation of Washington’s agenda for restructuring the Haitian military and economy. First, U.S. forces put the majority of their efforts into “professionalizing” the existing army through a retraining program rather than training a new army. Much attention was given to separating the duties of police and military in order to limit the power wielded by the army. Unfortunately, this separation did not include a reduction

Peruvian President Alfredo Fujimori’s style of leadership is revealing. In April 1992, when he suspended democratic institutions, and again in his rigged reelection bid in June 2000, Fujimori rode roughshod over democratic processes. Though the Clinton administration, along with various Latin American governments, criticized Fujimori’s behavior, they quickly abandoned a confrontational approach. Larger interests of State, including Fujimori’s commitment to the drug war, and concerns about upsetting “stability” in Peru—the climate for foreign investment and the strong State, for instance—evidently argued in favor of soft-pedaling the criticism.

57. The Center for International Policy (C.I.P.) has provided a thorough compilation of the U.S. military presence in Haiti since 1994 under the rubric of a “Support Group.” Its activities are in “Humanitarian Civic Assistance,” which is supposed to have ended in early 2000. Around 500 U.S. military personnel were usually stationed in Haiti up until 2000. Additional U.S. military aid—several million dollars in sales and grants for construction, training, and small arms, according to C.I.P.—has been going to a counter-narcotics program in collaboration with the Haitian police. The program clearly puts Haiti within the orbit of the U.S. anti-drug effort around Latin America. See Haiti, Center for International Policy, at http://www.ciponline.org/facts/ha.htm (last visited Sept. 5, 2000).
in the total number of these forces. Moreover, there was a lack of attention to justice—soldiers who were documented to have committed heinous crimes during Aristide's absence were allowed to remain among the ranks.58

The issue of how to deal with the junta high command was a prominent and divisive issue between Haitians and their U.S. occupiers. Many felt that Aristide's restored presidency would be ineffective at assuaging the hatred and fear of the Haitian people if it was not accompanied by swift justice for the crimes committed over the past decade. Those who noticed the need for justice included American GI's, one of whom remarked, "These people are really believing in us now. But if these guys just walk free, it's all going to turn sour."59 The fact that higher ranking officers were granted amnesty and were funded in comfortable exiles by U.S. dollars raises the question whether the coup leaders did not actually emerge as the winners in this battle.

The second focus of the U.S. strategy for de-escalation was the restructuring of the Haitian economy. The loan agreement put together by the International Monetary Fund (I.M.F.) and the World Bank provided for the privatization of public services, a slashing of tariffs, "emergency aid" to the export sector, a rewriting of corporate laws more favorable to the efficiency of business, and a limit to the power of the executive branch in order to discourage corporate regulation. These reforms were offered in exchange for $770 million in development money, including $80 million dollars to be used to pay off debt to foreign banks.60 The benefits thus flowed mainly to interests external to individual Haitians, including the banks and multinational corporations. René Préval, Aristide's hand-picked successor, angered his mentor by pushing for improved conditions for foreign investors, such as privatization of State enterprises and their availability for foreign ownership.61 Préval was simply following the I.M.F. script for "structural adjustment," which included

58. See Kim Ives, Haiti's Second US Occupation, in HAITI, supra note 29, at 107, 115-17.


throwing open Haiti’s doors to imported (American) rice. As a result, Haitians’ consumption habits shifted away from home-grown grains, the U.S.-owned Rice Corporation of Haiti took advantage of low tariffs and cheap Haitian labor to make huge sums of money in the import and export of rice, and the company used high-ranking contacts in the Haitian police to smuggle its products into the country.

The real issue presented by Haiti was not simply the military’s illegitimacy but its undeniable terrorism. Eliminating State terrorism was neither U.S. policy nor the UN’s mission, however. Thus, instead of obtaining substantial international resources to cope with their profound social and economic problems, the Haitian people got a military intervention. While intervention was consistent with historical U.S. relations with Haiti, it was irrelevant to the structural violence that pervades Haiti’s political economy. The peacekeeping force did establish a kind of order and did restore Aristide to the presidency; but, nothing changed in Haiti’s political economy. To the present, Haiti remains a Fourth-World country, with widespread poverty and unemployment, unstable political processes, dependence on foreign aid, high indebtedness, and an environment at the mercy of multinational corporations and desperately poor people.

III. A FORCEFUL RESPONSE TO HUMANITARIAN CRISSES

Preventive diplomacy is always preferable to the risks and costs of violent conflict. But it was not used in Haiti, where many innocent lives were lost while the Security Council and the OAS tried to sanction the de factos out of power. When the generals finally left, however, the peacekeepers had little beyond Aristide’s return to show for their efforts. Unlike ethnic conflicts, such as Mozambique and East Timor, where the autonomy of certain groups and the means of protecting them were accepted, leading to a negotiated settlement, in Haiti the pattern was closer to that of two other kinds of intractable conflicts: long-standing wars and majority-minority conflicts over sovereignty. In the first type, such as Angola, the Kurdish conflicts, Kashmir, and Rwanda, a huge reservoir of hatred and mistrust has built up. In the second, such as Russia-Chechnya and China-Tibet, sover-

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64. See generally Ted Robert Gurr, Ethnic Warfare on the Wane, FOREIGN AFF., May-June 2000, at 52.
eighty is contested within the borders of big powers. The will to keep fighting in those conflicts far exceeds the will to make (or keep) settlements, or to allow outside mediation. Haiti resembles both types. Hatred and mistrust of authority, and the penchant to use violence to resolve political problems, puts Haiti alongside many long-running conflicts. Haiti also shares one important attribute of conflicts over sovereignty: it lies in America’s backyard, and the United States, like the Russian and Chinese governments in their internal conflicts, dominates decisions on its political and economic future.

Unlike most civil conflicts, Haiti’s did not end in victory for the military. Nor did it end in a true settlement. There was no opportunity to negotiate shared governance and the devolution of State power. In fact, Haiti showed that elections may not be the most important aim of international peacekeeping. As a leading figure in the UN peacekeeping operation in Mozambique concluded, “no elections would take place without demobilization” of soldiers—65—and devising appropriate methods of power-sharing may be premature in some kinds of internal conflicts.66 Breaking up the terrorist F.R.A.P.H., demobilizing and completely reorganizing the military, and providing avenues for citizens to improve the quality of their lives were far more urgent steps.

Without such preventive, and ultimately peacebuilding, efforts—structural changes that provide incentives for movement in the direction of social justice—Haiti remains in political and economic disarray. Parliamentary elections in May 2000 paved the way for Aristide’s return to power, but a change of political leaders is a long way from signifying structural change. U.S. and European donors have prevented the release of aid to Haiti, now amounting to about $500 million, until they are satisfied with Haiti’s electoral process. Licklider is thus right to conclude that if we want to see more internal conflicts settled by negotiations rather than (as is usually the case) by military victory, we need to

66. The Carnegie Commission’s guidelines for effective power-sharing are sensible when the parties are politically moderate and committed to moving toward democratic governance. CARNEGIE COMM’N, supra note 2, at 100. But if the African experience is any guide, power-sharing can become a dangerous illusion and should not be attempted in too-comprehensive a fashion. See Ian S. Spears, Understanding Inclusive Peace Agreements in Africa: the Problems of Sharing Power, THIRD WORLD Q., Feb. 2000 at 105–18.
know more about what it takes to make a settlement “stick.” In Haiti, U.S. leaders and mediators didn’t bother to find out.\footnote{See Roy Licklider, The Consequences of Negotiated Settlements in Civil Wars, 1945-1993, AM. POL. SCI. REV., Sept. 1995, at 681.}

Conflict resolution sometimes calls for disinterested third-party mediation and sometimes for a vigorous defense of those who cannot defend themselves. In many well-documented cases—Angola-Namibia, El Salvador, Northern Ireland, and Mozambique, for example—third parties have played crucial roles in “cultivating ripeness” for settlements. In such cases, third parties are welcome because of the objective situation on the ground. Either a relative power balance exists, or neither side sees a chance of winning, or both sides are simply exhausted. In any case, both sides finally decide that talking is preferable to fighting.

But in prolonged humanitarian crises, such as Haiti’s, the objective situation may require a very different form of third-party intervention. Three circumstances in particular distinguished the Haiti case. First, there were no opposing sides, the people’s legitimate representative was in exile, and many still in Haiti who spoke up for popular interests were murdered. Second, political power was in the hands of a criminal clique—coup leaders who had been widely condemned by the international community. At that point, reliance on a disinterested, bridge-building approach to resolving Haiti’s crisis was no longer realistic. The junta showed, in its response to OAS sanctions and its observer mission to Port-au-Prince, that there were “almost no points on which to base a confidence-building strategy.”\footnote{McDougall, supra note 41, at 394.} Third, Haitian sovereignty was not at issue, though the coup leaders argued as though it was the only issue. Rather, Haiti was the first test of whether or not the OAS members meant what they said when they issued the “Santiago Declaration” in 1991 about defending democracy in the Americas. But the actions that ensued were tepid. Neither the OAS’s refusal to recognize the military regime and call for trade and other sanctions, nor the subsequent UN resolution on mandatory sanctions and the Governors Island Agreement, convinced the military that it should step down. Most importantly, none of these actions directly addressed the human rights crisis in Haiti—the security of people, in Kofi Annan’s words.\footnote{See Annan, supra note 8.}

Perhaps the OAS’s and the UN’s prolonged reliance on nothing stronger than sanctions reflected a higher commitment...
to respecting even the most illegitimate sovereignty than to saving lives. Yet, when an oppressive regime is terrorizing its citizens, it should be subject to firm and consistent denunciation. Crucial to the rejection of an illegitimate government and to the building of a lasting peace is attention to justice and accountability. When the Haitian military and police leaders were granted not only freedom but access to material wealth and security after they were exiled, the dignity and worth of their victims was compromised, leaving the Haitian majority with the impression that its struggles continued to be ignored. It is the responsibility of the intervening parties to insure that illegitimate actors are not made to appear legitimate—that, as a Norwegian diplomat said with reference to Colombia’s paramilitary groups, “[t]he random killing of fellow citizens in a society should not lead to negotiations in the presidential palace.”70 Haiti’s crisis was no time for false neutrality, an abandonment of a commitment to human rights and the rule of law that is enshrined in numerous UN covenants. It was a time when restoring Haitian sovereignty required an active commitment to human rights—not merely by bringing Aristide back (which could be construed as endorsing a particular political organization), but by working with dedicated Haitians to build (as in Mozambique) a civil society.

Far from imposing the will of outside interests, as critics of an interventionist approach might contend, we believe that intervention undertaken with thought, transparency, and dedication to the principle of human worth presents a viable route to lasting peace. While the degree of political involvement or endorsement may differ between humanitarian relief organizations and the international community, the ultimate goal of these bodies should be to manifest this commitment on the level on which they are acting. This means that we must first and foremost empower individuals within the community in crisis by helping to establish and maintain access to the resources that help them meet their basic needs. The obvious components are decent levels of nutrition, health care, and education; labor and environmental protection; and a political system that at a minimum ensures freedom from torture and institutions with access and accountability.

Accountability, however, should not be required only of the parties in contention. If this strategy of conflict resolution, which unabashedly endorses a moral imperative for intervention, is to

70. Egeland, supra note 18, at 545. It is one thing, said Egeland, to negotiate with the guerrillas; but the only reason for meeting with “criminal terrorist organizations” should be “to discuss the laying down of arms.” Id.
limit the opportunity for self-interested actions, it must also incorporate humane standards. U.S. conduct failed to measure up to such standards because it did not promote peace with justice or accountable government. The larger lesson of Haiti may be that the real stability and security of States depends on global acceptance of humane standards. Perhaps one must speak first of adherence to a new global ethic, which most fundamentally means that all humans can expect to live without fear and in good emotional and physical health.

Our case study of Haiti also demonstrates the need to link foreign-policy and conflict-resolution studies when examining internal conflicts, and the potential shortcomings of legal analysis. Because of their concern with the process and mechanisms of conflict resolution, conflict resolution and legal studies often tend to telescope the problem. Their time frame is too short; crucial background information is ignored or downplayed. In the Haiti case, a focus only on the rivalry between Aristide and the generals in the 1990s misses the structural roots of political violence and economic decay in that country. Such a focus also tends to distort the U.S. role in Haiti's political and economic underdevelopment, casting the United States as saviors when in fact the United States significantly shaped and secured Haiti's neocolonial economic structure. Finally, a focus on the immediate political conflict fails to account for the direct links U.S. intelligence and military agencies had, and still have, to the sources of political repression—links that suggest U.S. interests in Haiti have nothing to do with helping Haiti's people overcome a legacy of exploitation or its government achieve a meaningful sovereignty.