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**IBHI**

**Commentary on draft declaration:**

**“Basic tenets of humanitarian action in  
emergency situations”**

(to be presented to United Nations General Assembly)

by

Hanne Christensen and Zia Rizvi

**WORKING PAPER**

 **INDEPENDENT BUREAU FOR HUMANITARIAN ISSUES**

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# Working Paper

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## CHAPTER ONE: THE RATIONALE

### Introduction

During the past decade, complex or humanitarian emergencies, sometimes referred to as 'man-made disasters', have predominated among all emergencies unfolding in the world. Their number and scale have escalated to unmanageable dimensions<sup>1)</sup>. Currently about 30 countries are stricken; 60 million people are directly or indirectly affected by the catastrophes; most of them since years back. Five years ago, the figures were 20 and 50 respectively.

Most humanitarian emergencies are generated by civil strife. Almost all occur in developing countries and approximately one-third of them are recurrent. In Africa, the poorest continent in the world, more than 10 countries are affected (one-fifth of the continent); two-thirds by a recurrent emergency. The affected populations have gone through a humanitarian emergency at least once before during the past 15 years.

Humanitarian emergencies not only threaten the survival of whole communities, they also claim hundreds of thousands of lives. They call for a heavy involvement of the international community and an ever growing amount of funds. In 1994 alone, almost five million people died, corresponding to the total population of a small country. The same year, United Nations peace-keeping operations increased to 17 from 5 in 1989, and global emergency assistance claimed 10 per cent of Official Development Assistance (ODA), compared to about 3 per cent five years earlier.

This explosive trend, caused by the neglect of root causes and the disregard of fundamental humanitarian values, has also brought to the fore the shortcomings within the international response system which, if not rectified, will lead to further escalation. A number of factors account for this state of affairs.

First, international humanitarian law relates essentially to inter-state warfare. The nature of armed conflicts has changed considerably in recent decades. War is seldom declared and there is a growing number of situations where one of the belligerents does not accept or respect the generally accepted norms and principles. International humanitarian law does not regulate humanitarian emergency-

1) Complex emergencies (or humanitarian emergencies) are overwhelming humanitarian crises involving massive threat and large-scale loss of life. They are generated by multiple causes which are essentially political in nature but closely linked to daunting socio-economic problems involving partial or neglectful responses at national and regional levels. They are invariably preceded by deprivation and marginalization and are the ultimate results or extreme expression of societal dysfunction, accumulated over a protracted period.

es in areas where there is no war; nor does it adequately address all the different aspects of contemporary internal conflicts.

The four Geneva Conventions of 1949 and the two Additional Protocols of 1977 are an impressive body of law in so far as conventional warfare is concerned, but besides Article 3<sup>2)</sup> common to the four Conventions and Protocol II there is no comprehensive framework to regulate conduct of parties in situations of internal conflict and tensions. Where civil strife has led to disintegration of the state, and the country is not a party to the two International Human Rights Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICCPR and ICESCR), there is little by way of a legal or humanitarian framework to ensure proper treatment of civilian populations.

Over 80 per cent of contemporary warfare basically amounts to civil strife and internal armed conflicts. Consequently, there is room for further progress in terms of international legislation in order to cover the entire spectrum of humanitarian emergency situations.

Second, during the past five years forced displacement or relocation of communities has increasingly been used as a strategy of warfare. Ethnic cleansing and forced uprooting of people to serve as human shields between conflicting parties have become a prominent feature of civil strife. Recent conflict situations in ex-Yugoslavia and in Rwanda bear witness to this. International legislation relating to internal displacement of people is lagging far behind the reality of numerous situations, affecting millions of people, which the world community has been faced with<sup>3)</sup>.

Third, during the past few decades assistance programming for humanitarian emergencies has focussed on alleviating the plight of refugees and conditions in the host country. The situation of the internally displaced and containment of the situation in the home country have received far less attention. In terms of international assistance, the ratio of two to one in favour of refugees and host countries has not been uncommon and frequently led to a situation where internally displaced have been forced to cross the border to get access to a means of sur-

2) Article 3 applicable to armed conflicts including civil strife obligates conflicting parties to treat civil populations humanely and without discrimination. By humane treatment is meant that they must not be exposed to: a) violence against life and body, in particular murder in any form, mutilation, gruesome treatment, torture; b) taking of hostages; c) violation of personal dignity, in particular humiliating and degrading treatment; d) verdicts which are not made by appropriately constituted courts with all judicial guarantees, and executions undertaken without a prior trial by such a court; and e) neglect of the wounded and sick.

3) The only instrument which specifically covers forced displacement across frontiers is the African Charter on Human and Peoples Rights. Article 12 of the Charter prohibits both expulsion of individuals and mass expulsion aimed at national, racial, ethnic or religious groups. Additional Protocol II to the Geneva Conventions, regulating internal armed conflicts, prohibits armed forces from forcing civilians to leave their territory for reasons connected to the conflict unless the security situation of civilians makes this imperative (Article 17). Situations such as ethnic cleansing and forced uprooting at times when armed conflict does not prevail - or by other groups in society than armed forces - are not covered by any instrument at all.



vival; and in fact contributed to prolongation, even escalation, of a situation instead of shortening or containing it.

There is a need to develop principles and norms relating to internally displaced persons (IDPs) in as comprehensive and rigorous a manner, as has been done for those who cross frontiers and qualify as refugees.

Fourth, in addition to aid differentials within humanitarian emergency-affected populations, disjointed action has been a feature of most humanitarian emergencies, both within the United Nations system, in donor circles and within the NGO community. Despite prevailing mechanisms of coordination to ensure concerted efforts by humanitarian actors, the international community has not been able to speak with one voice; let alone to act in unison.

Numerous field situations have brought out inconsistencies among different components of the United Nations system, between the policies and programmes of Specialised Agencies and Programmes and those of bilateral donors and NGOs. These have impacted the affected populations negatively.

The situation during the genocide in Rwanda is a striking illustration. For months action by the international community was paralysed; subsequently it was taken in an ad hoc and uncoordinated manner. There is also a need for a unified approach of the entire international aid community to humanitarian emergencies.

Fifth, during the past few years use of humanitarian action for political purposes and insistence on political restrictions on humanitarian assistance have also been brought out, not least in situations where sanctions apply.

Some humanitarian emergency situations have received far more attention from the international community than others, on non-humanitarian grounds. Africa, the continent with the largest share of humanitarian emergencies has received much less attention (e.g. the situation in Liberia) compared to Europe (e.g. the situation in ex-Yugoslavia).

There is need for international recognition that humanitarian action must be depoliticized to the greatest possible extent. That must be an international instrument stressing humanitarian action as apolitical per se and based on identified needs.

It is against this background that the Independent Bureau for Humanitarian Issues (IBHI) undertook to promote a Declaration of Humanitarian Action proposed in 1988 by its predecessor body, the Independent Commission for International Humanitarian Issues. The draft Declaration addresses all these issues in the form

of a resolution for the United Nations General Assembly entitled Basic Tenets of Humanitarian Action in Emergency Situations.

The purpose of the Declaration is to ensure respect for the humanitarian mandate by setting out the rights of affected populations, the duties of States and the responsibilities of humanitarian agencies. The text contained in the Declaration is the result of a process of comprehensive research, extensive consultations with governments, and reviews by eminent experts within and outside the United Nations system. The text is annexed in extenso to this Commentary. A preliminary outline was presented to the United Nations General Assembly at its 51st session under the item "New International Humanitarian Order"<sup>4)</sup>.

### Building blocks

The declaration builds upon the existing body of instruments emanating from the United Nations and other fora.

Firstly, and foremost, the Declaration draws on the ethics of indiscriminate international aid and solidarity among peoples of the world as illustrated by the Charter of the United Nations. In addition, it highlights three more important factors: (i) the sovereignty of States must be observed as far as possible in situations where the humanitarian mandate is to be applied; (ii) a balance must be ensured, when and where necessary, between national sovereignty and national responsibility for handling humanitarian emergencies, and the need for the international community to act promptly and effectively when there is risk of massive loss of life; and (iii) the internationalization of humanitarian crises should not suffocate or replace regional response capacity. Instead, the latter should be put to use in full measure and, when necessary, strengthened so that it can respond adequately to the humanitarian challenge.

The two most important prerequisites for effective international action are emphasized in the proposed Declaration. On the one hand, the international community must step in when the scale of the humanitarian tragedy so demands and the situation is clearly beyond the capacity of national and regional entities. On the other, national authorities are required to facilitate access to those in need by the international community. It is worth noting that national and regional entities are frequently more suitable than global institutions to avert degradation of a potentially dangerous situation in time.

The proposed Declaration goes beyond the Charter in that it emphasizes national responsibility, not only at the level of the government, other national autho-

<sup>4)</sup> A/51/454



rities as well as the belligerent but also as regards the local institutions of civic society involved in safeguarding the physical security of and humanitarian assistance to affected populations. It is thus people-oriented and calls for a community-based approach.

Second, the various UN General Assembly resolutions adopted since 1988 on strengthening of the coordination of emergency humanitarian assistance of the United Nations System have impacted the Declaration in three important ways: (i) the reference in the preamble, as well as the articles, to the importance of preventive strategies to contain the number and scale of humanitarian emergencies; (ii) its call for international cooperation whenever the required response exceeds national capacity and, above all, for strengthening local and national capacity in order to cope better in the future; and (iii) its provisions regarding the need to harmonize humanitarian assistance with development aid in order to ensure sustainability and prevent a long-term detrimental impact on local economies as well as the socio-economic development efforts.

The impact of these resolutions is, however, most distinct in the premise of the Declaration that preventive work and systematic pursuance of equitable development aid policies is not only cost-effective, but also the best strategy for arresting the escalation of humanitarian emergencies; and for preventing them in the future.

Third, Security Council resolutions relating to humanitarian interventions since 1991 have also influenced the content of the proposed Declaration, especially S. Res. 688 and 812. Specifically, the Declaration takes into account the requirement on the part of Member States and other authorities to facilitate access by humanitarian agencies to populations and areas targeted for humanitarian assistance and to allow the delivery of relief to endangered populations. In the Declaration this is referred to as 'adherence to the humanitarian imperative'.

Fourth, the relevant provisions of the Universal Declaration of Human Rights and subsequent human rights conventions (notably ICCPR and ICESCR) serve as important building blocks for the Declaration. In particular it emphasizes that endangered groups and populations are entitled to all human rights and fundamental freedoms. It stands to reason that victims of humanitarian emergencies have a greater need to benefit from their rights and freedoms than anybody else.

More specifically, in keeping with these international instruments, the Declaration views the so-called victims as active, resourceful and responsible persons with a right to protection and material assistance rather than as helpless, dependent people. Once humanitarian assistance is available, and their basic needs met, they should be capable of managing their lives. The phrase "victim" is deliberately avoided in the Declaration precisely because of its implication that dis-

aster-affected people are passive, helpless individuals. This does not preclude, however, that human beings affected by emergencies are often incapacitated. Disabled persons abound in these populations. However, it conveys respect for human beings affected by humanitarian emergencies as equals and as partners in action.

Fifth, the Fourth Geneva Convention and Second Additional Protocol, through their call for protection of civil populations during armed conflict, represent a vital framework for action during humanitarian emergencies. The proposed Declaration, however, goes beyond the Geneva Convention IV and the Additional Protocol by stressing unhindered access to endangered populations for timely supply of food, water and medical care and other assistance essential for their survival in humanitarian emergencies.

Sixth, the Declaration takes into account principles of humanitarian action developed outside the UN system, notably those developed by the Red Cross and Red Crescent movement on the basis of the fundamental requirements of humanity, impartiality, neutrality and independence. These principles together call for alleviation of human suffering wherever it is found, without discrimination and on the basis of need, with priority to the most urgent cases of distress, without taking sides, and without being motivated by non-humanitarian interests.

The Declaration also draws on the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes<sup>5)</sup> Hence the recognition of the right to humanitarian assistance of intended beneficiaries and their participation in the planning and implementation of humanitarian assistance programming, as well as the need for unhindered access to endangered populations.

Seventh the Mohonk Criteria for Humanitarian Assistance in Complex Emergencies are reflected in the provisions of the Declaration to the effect that principles of non-interference and sovereignty should not be used as an obstacle to humanitarian assistance<sup>6)</sup>.

#### New elements

In addition to consolidating in one document the relevant elements of existing international instruments, the proposed Declaration brings forth a number of

5) Steering Committee for Humanitarian Response, "Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief", Geneva, 1993.

6) "The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies", World Conference on Religion and Peace, Program on Humanitarian Assistance, New York, February 1994.



ideas based on lessons learned. It addresses issues hitherto left unattended, or insufficiently dealt with by earlier instruments. Altogether 12 out of 20 articles included in the Declaration make provision for issues not hitherto dealt with. On the whole, the Declaration is based on actual field experience and on empathy with the affected populations.

The proposed Declaration is the first to spell out the obvious: humanitarian action in emergency situations cannot - and must not - replace political action. Humanitarian action cannot solve what belongs to the political domain and must not be used to conceal a lack of political will. Humanitarian action can come to the rescue of threatened populations and ensure their survival in the short run, but it can neither eliminate the root causes nor ensure the populations' well-being in the long run. Nonetheless, proper linkages from relief through rehabilitation to development which promote sustainability must be part of the planning from the outset.

Inspired by purely humanitarian considerations and by the ethics of human solidarity, the proposed Declaration suggests that humanitarian assistance must be rendered according to identified need; and not whether there is a political will to provide assistance to a certain population while not to others; or to people living in one particular part of the world while not to others elsewhere.

Another important provision relates to international burden-sharing. Since the 1970s, burden-sharing has been a well-acknowledged and extensively applied principle within the international community. But it is not yet recorded as a firm universal tenet to be followed, particularly in cases of major emergencies. With a growing number of people affected by humanitarian emergencies, adherence to such a principle is needed more now than ever before.

The Declaration also takes into account the negative effects of humanitarian emergencies in non-humanitarian fields which hitherto have been neglected in international legislation. An example is the impact of humanitarian emergencies on local economies. In low income countries, where most humanitarian emergencies strike, local economies are deeply affected, mostly in a negative way. Recovery from the detrimental impacts can take years for the local economy. The wider effects of sustaining huge populations through humanitarian assistance are usually not taken fully into account during the emergency aid programming process. This in turn affects the development process of affected countries which become breeding grounds for resentment and violence, ultimately spurring more humanitarian emergencies or augmenting the scale of those which are ongoing. The present situation in eastern Zaire is a case in point. The humanitarian emergencies in Rwanda and Burundi from 1993 onwards grossly influenced conditions in the Kivu province. The Declaration states that negative impacts on local economies must be avoided and local markets studied and monitored as an integral part of the implementation process.

## CHAPTER TWO: PREAMBLE AND SELECTION OF BASIC TENETS

### General

Three main basic considerations conditioned the elaboration of the proposed Declaration and the selection of the basic tenets it contains: (i) the inadequacy of international legislation to respond effectively to complex humanitarian emergencies; (ii) the so-called 'grey areas' between existing international instruments; and (iii) lessons learned in recent emergencies, coupled with international principles and practices which need to be articulated.

### The Preamble

The Preamble lays out the premises of the Declaration, indicates the essence of the contents and identifies those responsible for ensuring the implementation of the basic tenets relating to humanitarian action in emergency situations.

As a first set of premises, the Preamble points to existing principles of humanitarian action belonging to the 'first generation', i.e. it reiterates the United Nations fundamentals for solving international problems and furthering respect for human rights through international cooperation with a quote from the United Nations Charter in its first paragraph. In the second preambular paragraph, the principle of State sovereignty, based on the Charter, is reaffirmed, while paragraph eight acknowledges principles of humanitarian law as enumerated in the four Geneva Conventions and the two Additional Protocols.

As a second set of premises, the Preamble draws attention, in paragraphs three to seven and in nine to ten, to essential United Nations resolutions, (belonging to a 'Second Generation') relating to the strengthening of the coordination of emergency humanitarian assistance of the United Nations. In this context, the following aspects are highlighted: (i) access to endangered populations; (ii) involvement of local communities and NGOs in provision of humanitarian emergency assistance; (iii) adherence to principles of non-discrimination, impartiality and neutrality; (iv) safety of aid staff; and (v) a vigorous pursuance of preventive strategies.

As indicated in Chapter One, all these issues have been dealt with by the United Nations General Assembly since 1988<sup>7)</sup>.

7) Notably in resolutions A/43/131, A/45/100, A/46/182 and A/51/194.



On the essential content of humanitarian action, the Preamble draws upon the past but looks forward to the future. It reflects earlier instruments as well as issues not yet universally recognized. In paragraphs four and seven it points out the aim and targets of humanitarian action, its content and how it is expected to be undertaken.

In addition, as a projection into the future, it stresses in paragraphs eleven and fourteen that the Declaration is only a step in the process of international legislation relating to humanitarian principles and norms at regional and international levels. As for implementation, the Declaration points to the primary responsibility of the affected State assisted by international governmental and non-governmental agencies (paragraphs twelve to thirteen).

The principle of State sovereignty is maintained as a fundamental premise of humanitarian action. But, in addition, the role of other actors besides the affected State is outlined. The Declaration calls upon them to assist actively when the State is unable or unwilling to honour or fulfil its duties regarding the endangered people.

While reaffirming the sovereignty, territorial integrity and national unity of States and recognizing that it is primarily the duty of the affected State to take care of the endangered population, the Declaration stresses the role of the international community to safeguard the international norms and principles and to monitor actively the performance of the actors involved in the emergency.

In the overall context of preventive and curative strategies and actions, the Declaration suggests a more active role for regional organizations as well as local institutions and communities.

The contents of the Declaration are applicable to all emergencies, but special attention is paid to humanitarian emergencies - since, currently, they constitute the bulk of all disasters and are insufficiently covered by the existing body of instruments.

### **The Declaration**

The twenty operative paragraphs of the Declaration are predicated on two main aspects of humanitarian action: solidarity with affected populations and responsibility for alleviating their plight. In addition, the tenets specify the need for three related approaches, i.e. strategies of preventive action, containment of situations and linkages between emergency aid and development.

The underlying rationale is based on common sense: the best and the most cost-effective way to handle human suffering is to prevent humanitarian emergenci-

es by addressing the root causes in time and if that process is difficult, to contain the crisis through concerted and well-planned effort.

The emphasis on solidarity with, and responsibility for, the affected populations, the main thrust of the Preamble and the articles, is a boost to the humanitarian mandate; a signal to the international community that humanitarian concerns must prevail upon non-humanitarian considerations and be given the priority attention they deserve. It stresses that humanitarian action must be undertaken with care in order to alleviate the plight of the endangered population and should not jeopardize local conditions nor be used, or manipulated, to serve non-humanitarian purposes. It is a reminder that each and every one of us is vulnerable to an emergency, that it is time to accelerate the process of international legislation and deal with this issue as a common risk to humanity which must be addressed in a timely and effective manner.

It is worth noting that the Declaration does not specifically refer to the requirement of an appeal or request for international assistance by the affected country. Nor does it highlight the assent of the country concerned as a condition for action to alleviate human suffering. While these aspects are a part of international practice, experience has shown, time and again, that strict legalistic adherence to these preconditions has resulted not only in unacceptable delays to help those in need, but also contributed to a worsening of the crises due to delayed action. Sometimes, the affected country will hesitate to ask for help due to internal political circumstances or ill-founded national pride. The price is, however, paid by the innocent people affected by the crisis. This is why it is important not to articulate, at the international level, hard or fast rules which could inhibit timely action, but rather to treat each case on its own merits. In so doing, the cardinal requirement of our common humanity should be that helping those in dire need should take precedence over all other considerations, without necessarily downgrading political or legal aspects.



## CHAPTER THREE: COMMENTARY ON ARTICLES

### Article 1

“Humanitarian action shall be undertaken in all situations which constitute an emergency when essential human needs are not being met and abandonment of people affected by the emergency would constitute a massive threat to human life, and cause widespread suffering and grave offence to human dignity.”

The main purpose of Article 1 is to provide a broad definition of a ‘humanitarian emergency’ as well as a general framework for humanitarian action. For a definition to be all-encompassing, it must be flexible in approach and wide in scope. A number of definitions have been formulated by various publicists and humanitarian organizations. On the basis of an analysis of these definitions and experience gained during actual emergency situations in recent years, four constituent elements are retained in this Article:

(i) unmet essential human needs; (ii) massive threat to human life; (iii) widespread suffering; and (iv) grave offence to human dignity.

The elements (i) and (iv) cannot by themselves constitute an emergency in the context of the present Declaration. On their own, they may appear to belong to the field of development and human rights. However, they are powerful contributory factors to elements (ii) and (iii) and together they lead to a situation which calls for concerted humanitarian action.

Often, humanitarian assistance is mobilized only after considerable loss of life has already occurred. It is not only very difficult but also altogether undesirable to determine how many lives must be lost before a situation can be considered an emergency. This is why the notion of ‘massive threat’ to human life has been introduced in this Article. It highlights the most fundamental of human rights: the Right to Life. This, coupled with ‘widespread suffering’, should be enough for humanitarian actors, both regional and international, to initiate appropriate and adequate action.

The use of the words ‘all situations’ at the beginning of the Article is a key element that must be emphasized. It is based on the ethics of non-discrimination which are one of the most important building blocks of the Charter of the United Nations. The Article calls for attention to each and every emergency, no matter where it occurs in the world, and which country or society is affected by it. As long as the four constituent elements mentioned above are present, a concerted humanitarian response becomes imperative.

As experience in recent decades has shown, there is hardly any part of the world which can be considered immune to vulnerability in the context of humanitarian emergencies. To rescue and assist the endangered people, wherever and whoever they may be, is, therefore, not so much a matter of charity or generosity as of human solidarity and enlightened self-interest.

How, when and by whom the required humanitarian action should be initiated, are questions which have hitherto escaped well-defined answers. At times, this has resulted in unacceptable delays or inadequate responses. In a world where democratic principles and practices are increasingly gaining ground and taking hold, it is obvious that decisions regarding international action in the event of major humanitarian emergencies should also be democratically guided. This means that the membership of regional bodies or the United Nations (the General Assembly) should be involved. It does not mean, however, that timely action should become hostage to political debates, but rather that all convergent and divergent views be registered so that they can be taken into account on determining the nature and scale of humanitarian action. Facts (ascertained through neutral and independent fact-finding missions) should speak for themselves and allow the humanitarian imperative to prevail.

In recent years, the role of the United Nations General Assembly (UNGA) vis-à-vis the Security Council has been the subject of scrutiny in the context of humanitarian emergencies. It is true that, many a time, humanitarian emergencies are inextricably linked to a threat to peace and security. Nonetheless, an impartial and indiscriminate response to an emergency calls for humanitarian concerns to prevail upon political considerations. To determine the limits and possibilities of action by the two principle organs of the United Nations is a matter of fundamental importance. It is, however, beyond the scope of the present Declaration.

On the whole, this Article is inspired by Article 1(3) of the Charter of the United Nations which calls for ‘international cooperation in solving international problems of an economic, social, cultural and humanitarian character’. In recent years, the number of humanitarian emergencies has increased drastically and their magnitude has assumed overwhelming proportions. It is, therefore, all the more important on the one hand to determine the parameters within which humanitarian action should be undertaken (Article 1) and, on the other, to articulate the principles and codify the practices governing humanitarian emergencies.

### Article 2

“Humanitarian action must ensure the survival, protection and fulfilment of basic needs of people, irrespective of their origin, race, religion, gender or affiliation to a social or political group, in conformity with humanitarian law, principles and practices.”



This Article is closely linked to the first Article in that it provides the constituent elements of 'humanitarian action'. These are:

(i) survival i.e. the right to life; (ii) protection, both moral and physical; and (iii) assistance to meet basic needs.

These elements together cover the full range of tasks that need to be undertaken simultaneously in an emergency situation. Experience has shown that more often than not greater attention is paid to provision of material assistance than to the moral well-being and physical security of the endangered people. This is particularly so in the case of IDPs, victims of civil war or of excesses by authoritarian governments. Their numbers around the world now exceed those of refugees, while the problems linked to their protection are more difficult to resolve either because of the sovereign prerogatives of States or the chaotic circumstances generated by armed conflicts. This is why the notion of protection is placed immediately after that of survival in this Article.

The second part of the Article elaborates on the principle of non-discrimination in a different context to Article 1. The latter pleads for an impartial and humane attitude with regard to the situations which call for humanitarian action, while Article 2 refers to the persons who should be assisted without discrimination. The terms used in the Article, i.e., origin, race, religion, gender, affiliation to a social or political group are commonly used in human rights instruments developed in recent decades. They are inspired partly by Article 1(3) of the Charter of the United Nations and partly by Article 1 of the 1951 Convention Relating to the Status of Refugees, as well as the stipulations of the ICCPR and ICESCR.

While the enumeration of categories that should be treated without discrimination is comprehensive, it does not mean that every person is automatically entitled to assistance in an emergency situation. The Article is intended to cover only those whose actual needs, both in terms of protection and material assistance, are evident and identifiable. This aspect is dealt with in the following Article.

### Article 3

"The scale and scope of humanitarian action must be determined principally on the basis of identified needs."

At first sight, this Article may seem to restrict the principle of non-discriminatory response alluded to in the first Article. This is, however, not the case. The Article simply stipulates that the range of humanitarian action in terms of nature and number of activities, as well as the areas and populations covered, must be determined first and foremost on the basis of carefully identified actual needs.

In other words, a needs-assessment must be carried out and the humanitarian action planned accordingly before being taken. Otherwise, a measure of arbitrariness may get built into the response and may turn out to be either inappropriate or inadequate.

In many recent humanitarian emergencies, needs-assessment was not properly done. Policies were formulated and programmes launched before the complexity of the situation was fully comprehended. Past experience was relied on instead. As a result, distorted operations ensued and humanitarian emergencies were not effectively addressed.

Needs-assessment involves fact-finding missions to the affected areas and to people caught in humanitarian emergencies. All relevant factors to be included in the aid operation must be properly weighted. During this process, the nature and coverage of actions to be undertaken must be determined; at least on an interim basis. If conditions are nebulous and vulnerable to rapid changes, regular reviews would be in order. To avoid needs-assessment causing delays in the ability of the international community to respond fast to a humanitarian emergency, a system of rapid deployment of assessment teams is required in the humanitarian agencies.

Identification of needs also means that a humanitarian emergency which holds considerable potential to spread to neighbouring vulnerable areas must be given more in-depth attention in order to prevent contiguous effects. It further implies that people should receive assistance according to their need and that endangered groups should be assisted for a period of time, while those capable of fending for themselves should not.

The Article thus calls for more sensitivity to the reality of a situation, no matter where and how it unfolds, and a more systematic and effective approach to humanitarian assistance programming.

### Article 4

"Root causes of humanitarian emergency situations must be addressed in a timely and effective manner, not only at the site of an emergency but in all areas and with all actors concerned."

Prevention is better than cure. Humanitarian emergencies can be dealt with more easily, with less suffering for affected groups and populations, and at lower cost if root causes are tackled in time, at the place where they originate and are nourished from, in coordination with the parties involved. Such are the assumptions of Article 4 which is a call for the United Nations (or a regional body, as appropriate) to step in earlier and eventually leave earlier.



The question is how to do this in a world full of volatile situations demanding attention simultaneously. The answer is to pay attention to signs of dormant humanitarian emergencies and creeping internal tensions and conflicts, as and when they emerge.

Humanitarian emergencies do not spring into being overnight. They are preceded by long periods of systematic gross violation of human rights and fundamental freedoms, especially the right to life, protection of the human person and equality before the law, and suppression of the right of expression and of association, etc. Or they are rooted in a grossly distorted distribution of wealth within a country, causing deprivation of basic needs for a large proportion of the population, leading ultimately to tension, violence and conflict.

Whatever the cause(s) of a given situation, the outside world knows of it well before it escalates into a humanitarian emergency. The remedy is to connect all early-warning systems with a central operational unit within the United Nations and appropriate regional bodies, develop a roster of potential humanitarian emergencies, closely monitor the evolution, and deploy humanitarian diplomacy in time through regional or international institutions whenever gross violations of human rights begin to take firm hold in a country.

Where necessary, international relief assistance should supplement national efforts to improve the capacity of developing countries to record the signals, and should expedite the process of remedial action while simultaneously conveying the signals to the central operational unit. The United Nations and regional bodies can and should enhance their efforts to assist developing countries to strengthen their capacity to respond to upcoming emergencies, at national and regional levels.

Diplomatic efforts should be directed at addressing the concerns of all actors in every country involved; and observance, or monitoring, of the situation should regularly feed situation reports into these efforts. Dialogue with all actors in all involved areas should be initiated as early as possible and well before a situation heats up; to keep them all on board throughout the entire process and deal with their concerns in a manner which minimizes emergency potential.

If dialogues concentrate only on a selection of the actors involved and do not cover all the areas affected, only partial solutions will be found; the potential of a humanitarian emergency will remain and possibly increase.

Where grossly unequal distribution of wealth plays a major role, humanitarian diplomacy should be linked to, and should be seen to be linked to, aid programming which targets absolute poverty groups or issues in society which are perceived as distinctly unacceptable and unfair by the general public.

An important part of such diplomacy, and monitoring, would be to keep the population informed through the most effective media coverage. Constructive

use of the media, and voluntary contributions by the media itself, can help contain a situation in difficult times.

#### Article 5

“Humanitarian action must not replace the search for solutions to political problems and even less be used to buy time.”

Experience gained in the humanitarian emergency field, especially during the past five years, shows that humanitarian action cannot replace political action; nor can it remove the lacunae in the political process. On the contrary, it may serve to divert attention from what is happening, or not happening, on the political scene. When this is allowed to occur, the problems generating the emergency remain unresolved or their resolution is delayed unduly. The price, each and every time, is greater hardship for human beings, more work for the international community, and higher costs to donors. The recent situations in ex-Yugoslavia, Somalia and Rwanda bear witness to this recurrent phenomenon.

The essence of the Article is that humanitarian action must not be made subservient to political issues, nor should it become hostage to the political process. The search for solutions should not be dependent upon humanitarian action. However, humanitarian assistance, if planned properly, can provide a window of opportunity in the search for solutions and can, as a side effect, contribute positively to the negotiation process.

What is required in emergencies is a strategy whereby humanitarian action and the search for solutions to political problems are complementary in resolving the crisis and in relieving the plight of endangered populations. It is important, therefore, to plan in such a way that the search for solutions promotes a humanitarian space of tranquility and security for endangered populations, as well as for humanitarian agencies. This can eventually help institutionalize peace and the transition to normal conditions. In short, humanitarian action should help ensure the humanitarian space and transition to self-reliance. To achieve this, a unified line of command and a coherent process of policy-making are essential. In other words, the two types of action, i.e. political and humanitarian action, should mutually reinforce each other in order to make and consolidate peace on the one hand, and ensure normalization of life and self-sufficiency on the other. Tension or conflict between humanitarian action and the search for solutions to political problems can only prolong an emergency situation; not bring an end to it.

#### Article 6

“Regional organizations and institutions must play a key role in preventive, curative and consolidation measures in situations of actual and potential emergencies.”



The involvement of regional organizations and institutions in preventive, curative and consolidation measures for both latent and manifest emergencies is emphasized in Article 6. It is formulated in the spirit of Chapter VIII of the Charter of the United Nations.

The assumption of the Article is that regional organizations, and institutions formed by countries of the region, whose mandate, principles and practice are in accordance with the purposes and principles of the United Nations are better equipped to contain an emergency in their area. They are nearer to the scene, and have better knowledge of the area and greater empathy. They also have a greater vested interest in dealing with the emergency rapidly and effectively; if only to stop possible contiguous impacts. Furthermore they are often perceived by countries in the region as a more appropriate body for the task.

However, involving regional organizations and institutions in preventive and curative work as well as in consolidating post-emergency conditions of peace, requires two things. First, in the event of their involvement in peace and security issues, close collaboration between these entities and the United Nations is essential to ensure consistency in the approach of the United Nations and the regional entities; as well as the access of the regional entities to preventive measures determined by the United Nations. Secondly, the regional entities also require access to resources to enable them to fulfil their responsibilities.

The involvement of regional entities in the full range of preventive and curative measures must, however, correspond to their capacity. If there is a considerable increase in the numbers of humanitarian emergencies in the region, or an emergency assumes proportions beyond their capacity to respond effectively, their resources should be used only to the extent they can afford. Likewise, if the complexity of the emergency is likely to lead to socio-political problems or friction between member states, the regional bodies should be protected or assisted, as appropriate, by the world community.

#### **Article 7**

“Humanitarian action must neither weaken nor marginalize local structures but rather strengthen the capacity of local communities and entities.”

It is now widely recognized that building local capacity is the most efficient and cost-effective way not only to respond to emergencies, but also to promote self-reliance and sustainability. A community-based approach, supported by provision of material help and technical know-how, is essential for the successful implementation of international humanitarian action, be it at national, provincial or municipal level.

No emergency situation can be alleviated without the involvement of local communities and no international humanitarian agency can operate effectively without the support of local staff and people: the greater the participation of the latter, the quicker the alleviation of the plight of affected populations and the smoother the implementation of humanitarian action.

In almost every emergency situation local communities and entities play an important role in supporting endangered populations. Their contribution is, however, seldom applauded or even acknowledged, nor are they sustained in their endeavour by the international community. They simply do it as a token of solidarity and in observance of the humanitarian imperative.

As far as the international community is concerned, building local capacity has suffered from benign neglect. It has been initiated during times of emergencies on only a sporadic basis by a few international agencies. As a result, local entities within and outside the government structures are usually overwhelmed by the aid operation. There is, at the same time, also a brain drain since qualified local personnel are sucked away by the attractive conditions of employment offered by the international governmental and non-governmental organisations. Thus, a vicious circle of gradual weakening of local structures and human resources within them, which starts with the negative impact of the emergency itself and is accentuated by the demands for local support by the aid operation, is perpetuated.

For humanitarian action to be effective in relieving the plight of endangered populations at locations where local capacities are weak, or partially non-existent as a result of an emergency, humanitarian action must be geared to building local capacity as an integral part of humanitarian assistance programming.

A sound local capacity-building project should not only ensure the preparedness of the community but also strengthen local structures during emergencies, in order to accelerate the process of normalization. It should at the same time enable local communities to handle future emergencies on their own.

To be successful, building local capacity must also include adequate incentives for local communities and entities in order to reverse the brain drain and to maintain their involvement in responding to emergencies.

#### **Article 8**

“Negative impacts of humanitarian assistance on local economies must be avoided. To this end, thorough study and regular monitoring of local markets and overall conditions must be an integral part of the planning and implementation processes.”



The local economy must not suffer from the sudden and sizeable influx of humanitarian assistance during times of emergencies. This is the message of Article 8, based on experience in a number of countries. Before remedial action, local markets and socio-economic conditions must be carefully studied and monitored as part and parcel of aid programming by both multilateral and bilateral donors.

For understandable reasons humanitarian aid is rushed in when there is massive threat to life and widespread suffering. Under the pressure of fast unfolding events there is often little time or inclination to pay attention to the damage that may be caused to local food markets, the employment situation of local people and to the physical infrastructure and environment of the affected areas. The amount of relief items coming into an area to feed an emergency-stricken population, usually numbering hundreds of thousands of people - sometimes millions - is huge. Local food prices are affected; as are wages when the supply of cheap labour suddenly increases. Roads not made for heavy-loaded trucks are over-used. Buildings and public sites used for accommodation of the emergency-stricken populations suffer degradation. The physical environment is affected negatively. For example, use of wood as fuel for cooking or heating leads to deforestation and attendant ecological problems, in addition to depletion of natural resources.

For low-income countries, the visible and invisible damage left by an emergency can have disastrous effects which take years to overcome. The livelihood conditions of large groups of people, including those affected by the emergency but not stricken by it (host populations), can be negatively affected for long periods of time. The overall development of affected areas is thus set back in relative and absolute terms. Depletion of natural resources by emergency-stricken people also causes friction, tension and violence and nourishes an environment of mistrust, intolerance and non-acceptance between poor non-assisted local people and assisted newcomers.

In many instances, the basis for an emergency emerges in areas hosting emergency-stricken people. If not detected or addressed in time this ultimately becomes a crisis itself. A ripple effect of contiguous impact gives rise to a second emergency. In other words, humanitarian assistance to endangered people negatively affects the situation of the host population, and coupled with demographic and social pressures leads ultimately to an emergency evolving in the host area.

Expert studies and regular monitoring of local conditions during the planning and implementation of humanitarian assistance are not by themselves enough to break the vicious circle. But they are a thoughtful beginning to formulate programmes tuned to the immediate needs as well as longer term requirements of affected areas and the transition linkages between immediate relief and long-term development.

Article 8 should be interpreted in the light of both Articles 3 and 19. Likewise, it should be recognized that humanitarian assistance is required for both emergency-stricken and emergency-affected populations and areas in order to prevent contiguous effects and to avoid unnecessary political, economic and social problems.

#### Article 9

“Endangered persons must be treated as human beings entitled to human rights and freedoms and not as helpless victims.”

The thrust of the Article is the issue of human equality and resourcefulness. It de-mystifies the concept of endangered persons. They are people just like everybody else. They are entitled to the same rights and freedoms as everybody else and indeed are expected to assume the same obligations as any other citizen.

Nothing justifies the image of endangered populations as mere helpless victims or passive participants in life. What sets them apart is that their survival is threatened; or that they have been exposed to massive suffering or grave offence against their dignity. For that reason they should, for a short period, be assisted in regaining a meaningful life and enabled to enjoy their rights and exercise their freedoms, on a help-to-self-help basis.

This means that endangered persons have the full spectrum of human rights and fundamental freedoms, including the right to life and liberty and to protection against cruel and degrading treatment. During the period of peril, they should be enabled to have a standard of living adequate for the health and well-being of themselves and their families, including food, clothing, shelter and medical care, as well as necessary social services.

As regards countries in which endangered populations reside, the State has the responsibilities codified in the existing body of human rights instruments and is as obliged to honour its commitment to endangered persons as to others residing within its territory.

It should be recognized that endangered populations, like everybody else, have the right to economic, social and cultural development with due regard for their freedom and identity. Likewise, States have the duty, individually and collectively, to ensure the exercise of their right to development. In other words, endangered populations must be enabled to get out of the emergency situation and get on in life; and States must help them achieve this either on their own or through international cooperation.



#### Article 10

“Endangered populations have the right to stay in their places of habitual residence or to temporarily seek safety and security elsewhere. No one shall be involuntarily dislocated at times of humanitarian emergencies.”

It is seldom recognized that for endangered persons the right to remain is as important as the opportunity to seek safety elsewhere. The choice belongs to the individuals concerned. With the right to remain goes the right to be free from mass expulsion and from being used as human shields during armed conflict in their own country. With the right to temporarily seek security elsewhere goes the right to return to their places of habitual residence, to get their property back and to resume life as before, once the conditions which made dislocation imperative have ceased to exist.

Should circumstances involving gross violations of human rights so require, governments and humanitarian agencies should assist the affected populations to seek security elsewhere. They should be granted asylum, if necessary on a temporary basis if this is the only way their security can be ensured. Likewise, in the case of return from safety, it is the responsibility of governments and humanitarian agencies to assist in the voluntary return of displaced persons and the repatriation of people, and to facilitate their reintegration.

The right to remain or to temporarily seek safety and security elsewhere englobes the increasingly recognized concepts of ‘safe havens’, ‘zones of tranquility’ and ‘relief corridors’. It draws on Geneva Convention IV and the Additional Protocols which prohibit forced relocation of civilians (in particular Additional Protocol II, Article 17). Also prohibited are attacks on areas reserved for the care of civilians and soldiers in need of medical attention, as well as hinderance of delivery of relief to civilians caught in conflict. In addition conflicting parties are suggested to formally agree on the establishment of neutral and demilitarized zones where civilian populations can take refuge.

In cases other than armed conflict, there has been scant coverage of the right to remain. The Subcommittee on Prevention of Discrimination and Protection of Minorities in its resolution 1994/26 mentions the Declaration of Minimum Humanitarian Standards adopted by a group of experts in December 1990 which, inter alia, affirms the right of persons to remain in peace in their homes, on their own lands and in their own countries. The proposed resolution in this Article articulates the principle clearly and will thus be the first declaration in which the UN General Assembly is invited to endorse and affirm this right.

Such affirmation of the right to remain requires the United Nations, in conjunction with concerned international and regional institutions, to actively faci-

litate the establishment of a secure and adequate ‘humanitarian space’ by obtaining the consent of all the parties involved.

The right to remain must not be interpreted as encouragement of people to stay in situations where they cannot be protected properly or where no solution can be readily found to their plight. Nor should it be understood as a justification for the closure of borders to asylum seekers, nor as a pretext to keep potential refugees inside their own country.

For governments and humanitarian agencies to be able to take preventive and alleviating steps to ensure the right to remain, a satisfactory institutional framework covering endangered populations inside their country is urgently required. Otherwise people may be obliged to become refugees in order to survive and feel safe. This issue is all the more important since the number of IDPs now exceeds that of refugees, while their plight and the hardship they face are often greater than those of refugees. Yet they are not protected on the basis of a specific mandate by any particular agency within the United Nations System. Since 1961, when the United Nations High Commissioner for Refugees (UNHCR) was first requested by the General Assembly to extend its ‘good offices’ to assist people in refugee-like situations, the problem of the internally displaced has been dealt with on a case by case basis. In recent years, the Department of Humanitarian Affairs (DHA) has been taking an increasing interest in the problem of IDPs, while a Special Rapporteur has been studying and reporting on various aspects of the problem. However, for operational purposes, the UNHCR has often been entrusted with the task of assisting and protecting IDPs, in view of its expertise and experience in the field of refugees.

The question of protection of IDPs has proved especially complex due to the problem of State Sovereignty as well as the difficulties involved in situations of internal armed conflict. In view of the fact that the number of IDPs continues to grow around the world, the development of a satisfactory conceptual and institutional framework is all the more necessary and urgently required. It is in this context that Article 10 is of significant importance.

#### Article 11

“It is primarily the duty of the States concerned to ensure the protection, safety and well-being of the populations affected by emergencies.”

This Article is a logical sequence to the preceding one. The responsibility of the State to care for both the protection and material well-being of its citizens affected by emergencies is stressed. While implicitly recognizing the sovereign prerogatives of States, it also reminds them of their duty towards their citizens. Striking the right balance between their sovereignty and the humanitarian imperative is a matter of vital interest, but best left to States themselves as long as they



recognize that the well-being of their endangered populations is first and foremost their concern. States must be reminded of their duties, whenever required, by their populations, local entities as well as national and international agencies.

Only when an emergency is of such magnitude that the State authorities cannot handle it on their own does it become the concern of the international community. This implies that the State must have the will to assume its responsibility and be prepared for it by developing an appropriate structure to cope with emergencies, either within the government structure itself or within the society at large, and is ready to activate it as and when required. Such a structure must enjoy the confidence of the affected population, which should have no fear of it but rather be convinced of its reliability and competence.

It does not follow, however, that the State must have the means to ensure the protection, safety and well-being of emergency-affected populations. In situations where the State has the will, but not the means, international cooperation is required as stipulated below in Article 14.

International cooperation is also required in cases where the State fails to honour its obligations; or when a State has disintegrated into multiple factions and conflicting parties control different parts of the country.

In such cases, the duties of the State are sometimes assumed by other entities, notably the United Nations or regional organizations. The affected country can make an appeal to the international community for assistance on humanitarian grounds and has the right to expect appropriate response.

The notion of a request by the affected country is already codified in UNGA resolution A/46/182, the resolution which established the DHA. It implies that provincial or local authorities can make such requests, as can political parties representing large segments of the population or major civil society associations. In other words, the absence of a functional State does not prevent the country from access to humanitarian action in emergency situations, whenever and wherever required.

#### Article 12

“It is the responsibility of international and national humanitarian agencies which provide assistance to ensure through monitoring the proper use of such assistance and its impact on the affected populations, and to contribute to the protection and safety of the affected populations.”

This Article explains the responsibility of agencies providing humanitarian assistance. On the basis of extensive experience gained in the field, three main aspects are highlighted:

- (i) proper use of humanitarian aid; (ii) its impact on affected populations; and (iii) ensuring the protection of affected populations.

The responsibility for provision of humanitarian assistance (relief and social services) is different in nature from that of contributing to protection and safety. In both cases, however, the expression ‘affected populations’ refers to all those whose conditions are seriously influenced by an emergency situation, i.e. the emergency-stricken as well as the host populations; and, in the case of protection and safety issues, it also includes the aid personnel.

In situations of armed conflict it has often happened that the relief supplies are deviated or simply looted by armed groups. Likewise, corrupt officials in the receiving countries divert a considerable proportion. The aid workers, under pressure because of the emergency, face the dilemma of either agreeing to part with a certain amount of the humanitarian aid in order to gain speedy access to endangered populations or getting involved, sometimes at the risk of injury or death, in difficult negotiations, thus delaying the delivery of urgently needed food or medicaments. This dilemma can only be resolved through forceful action at regional or international level. The responsibility of the recipient country as well as of the transit country must be made clear to them at the time logistics arrangements are made for the aid flow. If endangered populations do not actually receive their entitlements, the situation must be rectified through collective action.

The Article also reflects field experience accumulated during the past few decades which reveals that large segments of endangered populations targeted for humanitarian assistance do not receive what they need and are left to fend for themselves. Sometimes the distribution system does not reach everybody, while on other occasions relief items or services are too scarce.

In a number of developing countries this has also had disastrous effects on host populations, cf. Article 8. Groups among the hosts have had their fields and houses plundered. Or emergency-stricken people have exhausted available water or fuel resources, causing serious problems for the hosts.

Regular and reliable monitoring is essential for supervising the demand and supply relationship and for ensuring that the logistics and distribution system function properly. Monitoring can be carried out either by aid agencies themselves or through the services of an external body, and the required adjustments or changes made to programming.

With regard to the protection and safety of affected populations, the responsibility of the agencies is a contributory factor. They must monitor these issues and alert the responsible national or international body and help it devise appropriate



te protection and safety measures. They may also assist in the actual protection of people, bringing them to safety by moving them elsewhere inside or outside the country and if necessary escorting them from or through the danger area.

#### **Article 13**

“For rapid deployment of humanitarian actors, it is essential to establish a stand-by arrangement, adequate capacity and a modus operandi involving mandatory coordination.”

To respond swiftly, adequately and effectively to volatile situations, rapid deployment of humanitarian actors is essential. Timely action cannot only save more lives, but is also cost-effective.

The call for rapid deployment of humanitarian actors reflects what has proved a major handicap in humanitarian emergency operations: the need for reduction of lead time, whether supplies, personnel or services are involved, and for a satisfactory modus operandi to ensure speedy and appropriate response.

In practice it means that the United Nations System should be ready with an integrated response, tailored to the local situation, from day one. A pre-requisite for achieving this is a mandatory mechanism for effective coordination between agencies and humanitarian actors. Very often coordination is limited to regular exchange of information about who is doing what. A proactive approach would turn inter-agency coordination into a framework of concerted action. The donor community and the operational bodies should join hands to develop such a framework.

Agreements on stand-by arrangements with adequate capacity must be made and implemented. A flexible yet firm modus operandi which obligates agencies and other entities within the international community to coordinate their operations must be agreed and institutionalized in order to avoid lacunae of humanitarian action and the duplication of efforts.

The Article thus points at the responsibility of States to make available, or maintain, rapid deployment actors; and the responsibility of the United Nations to deploy such actors in a timely and flexible manner whenever a situation so demands.

The provision for stand-by arrangements reaffirms earlier resolutions suggesting the establishment of a central register of specialized personnel, teams of technical specialists, relief supplies, equipment and services to be called upon at short notice, notably UNGA resolutions A/45/100 and A/46/182.

It also strengthens the agreement made by seven Member States in December 1996 to make available to the United Nations a force of 4,000 troops ready for rapid deployment as from 1999.

#### **Article 14**

“Where the magnitude and duration of a humanitarian emergency are beyond the response capacity of affected countries, international cooperation and assistance must be provided. This must be done in accordance with international law and practice.”

During the past four years the number of humanitarian emergencies has risen drastically, up to an average of more than 25 per year. The number of countries affected is almost 30. The duration of an emergency is counted in years. The size of affected populations has grown to 60 million people. The costs of alleviating the plight of affected people amounts to billions of dollars.

With the current trend towards unmanageable dimensions, few countries can be considered capable of single-handedly handling such emergency situations adequately. International solidarity must, therefore, be mobilized in order to avoid the collapse of affected countries, entailing widespread suffering and massive loss of life. Hence the call for international cooperation and assistance in accordance with international law and practice when an emergency situation arises and the country cannot cope with it on its own.

The call is in line with UNGA resolutions, including, in particular, A/46/182 and as prescribed most notably by: (i) the four Geneva Conventions and Additional Protocols of assistance to civil populations and aid staff during international conflicts and warfare; (ii) the Convention on Genocide and international cooperation to punish those participating in crimes against humanity; (iii) the two international human rights covenants and three regional human rights conventions on the care of people who remain within the country of abode and international monitoring of their conditions; and (iv) legal instruments, international and regional, relating to refugees and externally displaced persons. This Article thus strengthens both customary law and practice as well as existing international instruments.

#### **Article 15**

“People affected by humanitarian emergency situations must be regarded as resourceful human beings entitled to participate in the planning and implementation of assistance which they have the right to request and receive.”

It has been observed in many emergencies that international agencies and the expatriate community working in the field tend to underestimate the resilience



and resourcefulness of the local population and in particular the populations directly affected. Despite good intentions, they often end up damaging the spirit of initiative and self-reliance. This Article therefore calls upon humanitarian actors to respect:

(i) affected people as resourceful persons; (ii) their entitlement to participate in the planning and implementation of assistance; and (iii) their right to request and receive assistance.

The call is based on two assumptions: (i) humanitarian assistance must be pursued by involving the community, not simply by providing for it; and (ii) persons affected by humanitarian emergencies may, like any other human beings, be perfectly capable of contributing actively to survival mechanisms and to the betterment of their lot during an emergency. They should, therefore, be given the opportunity to participate to the extent possible in the process of planning and implementing aid programmes.

Such participation by the affected persons is likely to lead to assistance geared to identified needs (which is the thrust of Article 3), since they, being most directly concerned, are best placed to identify their needs and to develop coping mechanisms.

Giving the affected people an active role in aid programming and co-responsibility for the development of appropriate assistance - as trusted partners of humanitarian actors - would be in sharp contrast to non-involvement, which is conducive to passivity, depression and apathy. This approach would combat dependency and would, in fact, be perceived as an important favour to the endangered people.

Although a community-based approach is increasingly popular in the field of development, earlier resolutions on emergencies do not explicitly mention the right of affected persons to participate in their own life situations, during the emergency and afterwards, nor to request and receive assistance. But these rights are implicit in the Universal Declaration of Human Rights and the ICESCR, which have inspired resolutions on humanitarian emergency situations.

More specifically, the present draft draws on Article 25 of the Universal Declaration of Human Rights which grants everyone the right to a standard of living adequate for the health and well-being of himself and his family. In the ICESCR, Article 11 reaffirms Article 25 of the Universal Declaration of Human Rights and, in addition, recognizes the fundamental right of everyone to be free from hunger, and obligates States to take appropriate measures while recognizing that international cooperation on a voluntary basis is of significant importance in this respect.

#### Article 16

“The State and conflicting parties are required to adhere to the humanitarian imperative and facilitate safe and easy access to endangered populations and affected areas for rapid provision of humanitarian assistance.”

Here observance of the humanitarian imperative is invoked to give priority to humanitarian concerns, despite any conditioning factors, for the purpose of saving lives and alleviating suffering. Although the term ‘humanitarian imperative’ is in frequent use in the international vocabulary, the Declaration is in fact the first instrument to use the term.

If the humanitarian imperative were fully understood and universally respected, it would obviate the need to initiate action for country-specific resolutions.

The Article enjoins States and conflicting parties on whose territories emergencies occur to facilitate access, in a safe and easy manner, to endangered populations and affected areas for the purpose of rapid provision of humanitarian assistance.

The use of the terms ‘The State and conflicting parties’ is noteworthy. It covers all parties involved in any kind of conflict, whether inter-State or internal. The phrasing takes into account the reality of the situation that has evolved during recent years, i.e. a disturbing increase in internal tensions, fragmentation of societies and dismemberment of States through implosion.

By invoking the humanitarian imperative, the Declaration builds on the Charter of the United Nations without infringing on sovereign prerogatives recognized by it. It also strengthens the relevant provisions of the Geneva Conventions and Additional Protocols by pleading for safe and easy access for provision of humanitarian assistance in emergency situations where abandonment of the people affected would constitute a massive threat to human life, and cause widespread suffering and grave offence to human dignity, such as the situation in Iraq in 1990 and in Somalia in 1993, thus consolidating the precedent set by the Security Council in resolution 688.

In the context of the humanitarian imperative, this Article also presents the question of access (in both Articles 16 and 17) as a mode of international cooperation in line with UNGA resolutions A/43/131, A/45/100 and A/46/182.

#### Article 17

“States in proximity to humanitarian emergency situations, particularly in regions that are difficult to reach, are required to observe the humanitarian imperative by facilitating the transit of humanitarian assistance and by participating in the international aid efforts to the extent possible.”



The idea of the humanitarian imperative is carried onto Article 17 where States in proximity to humanitarian emergencies, i.e. neighbouring and other surrounding States, in particular in areas that are difficult to reach, are required to observe the humanitarian imperative by facilitating the transit of humanitarian assistance and participating in the international aid efforts, to the extent they can. The provision is intended to serve two purposes:

(i) to ensure passage of humanitarian assistance to the territories of the State struck by a humanitarian emergency; and (ii) to facilitate provision of aid through cross-border operations, where necessary.

The requirement of nearby States to observe the humanitarian imperative by participating, to the extent possible, in the international aid efforts is meant to encourage solidarity with the emergency-stricken State and to raise awareness of the problem at regional level. Such cooperation also enhances the capacity of regional States to deal with similar situations in the future. In this respect it also relates to Article 6 which emphasizes the involvement of regional organizations and institutions. Likewise, the cooperation foreseen in this Article is also an indirect affirmation of the principle of burden-sharing.

As in the case of Article 16, Article 17 addresses the question of access as a mode of international cooperation and not as a challenge to State sovereignty.

#### **Article 18**

“Use of humanitarian assistance for purposes other than it is intended for is prohibited.”

Diversion of humanitarian aid is not a new phenomenon, but blatant and widespread diversion is increasingly becoming a common feature of humanitarian programmes. Somalia, Rwanda, Bosnia and Herzegovina are recent examples of this unfortunate trend. Food aid and medicaments are often diverted for political/military purposes rather than for saving lives or alleviating the suffering of emergency-affected people. The purpose of this Article is to discourage the improper use of humanitarian aid: it is for endangered people; nobody else. It must not be used for other than the target group. It is not for combatants. Nor is it for emergency-affected populations who can take care of themselves, nor indeed for aid staff.

While in transit to target groups humanitarian assistance must not be reduced, or removed, to fulfil other purposes than it is intended for; nor when it is stored in warehouses while in transit to recipients. It must not be diverted in any way to destinations other than places affected by humanitarian emergencies.

Humanitarian assistance must not be a bargaining chip for political gains. It is meant to help people out of imminent danger or a distressful plight; not for extracting concessions or exerting pressure for non-humanitarian purposes.

The message of the Article is crystal clear. Subverted use or misuse of humanitarian assistance is prohibited. Article 18 thus reinforces provisions of the Geneva Convention IV (Article 60), Additional Protocol I (Articles 69-70) and Additional Protocol II (Article 14). But it goes beyond them in that it covers all humanitarian emergency situations, not only those related to armed conflicts.

The thrust of the Article is prohibition of diversion through looting, corruption and politically motivated misuse as referred to above under Article 12. The function of monitoring foreseen under that Article is intended, inter alia, to cover this unfortunate feature of contemporary emergencies.

#### **Article 19**

“Humanitarian action in emergency situations must be pursued to the greatest possible extent in a way which links relief and rehabilitation to developmental activities.”

It is increasingly being recognized, particularly by the donor community, that an emergency relief operation, however successful, is not, and cannot be, an end in itself. It should only serve as the means to address the root causes as soon as the problem of survival has been resolved. Likewise, there is growing recognition of the fact that beneath political instability, which often degenerates into armed conflict, there is often the underlying problem of poverty and social injustice. Economic deprivation linked to authoritarian repression serves as a lethal combination which, sooner or later, gives rise to emergency situations. Humanitarian action must, therefore, attempt to gear emergency relief towards rehabilitation and development. If post-emergency rehabilitation does not dovetail into developmental activities in a sustained manner the emergency will never end. The involvement of the international community may thus go on for a protracted period. In the long run, the relief/rehabilitation/development linkage is both the most humane and cost-effective approach.

Today's humanitarian emergencies are mainly situated in low-income countries. About one-third are recurrent, while in Africa, the poorest of all continents, two-thirds are recurrent and the period between two emergencies is marked by political instability, economic fragility and social unrest. People affected by one emergency are hardly rehabilitated before another strikes. A vicious circle ensues whereby emergency relief and rehabilitation follow each other without leaving any room for sustainable development.



Contemporary humanitarian emergencies are not only a serious strain on the foreign aid budgets of donors but, with the scale and duration witnessed in recent years, they also constitute a threat to peace and social order. Humanitarian action may avert the immediate threat of recurrence, but society as a whole remains fragile and vulnerable.

Linking short-term emergency aid to longer-term development is an important aspect which must be borne in mind when planning. It must be geared to turning emergencies into rehabilitation and development opportunities, and define modes for this transformation with the ultimate aim of reducing absolute poverty and vulnerability within populations while consolidating peace.

Humanitarian actors must recognize the intimate relationship between under-development, socio-political crises and emergency situations and work tenaciously towards an international consensus which delimits humanitarian assistance operations and provides for transition to longer-term development aid. Through Article 19, the Declaration strengthens provisions relating to the need for such transition, drawing on earlier United Nations actions, notably UNGA resolutions A/46/182 and A/51/194.

#### Article 20

"In the context of international cooperation, the principle of burden-sharing shall be applied to all humanitarian actions."

The principle of burden-sharing is a token of international solidarity with a cause of common concern. It calls for international cooperation to deal with an emergency situation, and to share the costs in terms of material assistance and services, as well as protection. Such sharing of the burden must, however, correspond to the capacity of each State and humanitarian actor.

Although it has gained world-wide recognition and respect in recent years, the principle of burden-sharing is codified for the first time in this Declaration. It gained momentum as an unwritten understanding during the Indochinese refugee situation in the late 1970s when resettlement countries agreed to receive a share of the affected populations within their borders. Prevailing international development policies bear witness, e.g. the invitation to States to contribute 0.7 per cent of gross national product (GNP) to official development assistance (ODA), or more recently the agreement at the 1995 Social Summit of mutual commitment between interested developed and developing country partners to allocate 20 per cent of ODA and 20 per cent of the national budget, respectively, to basic social programmes.

A similar shared commitment to support humanitarian action would further strengthen these policies and consolidate international cooperation. Leaving the burden to be carried and shared by just a few can lead not only to inadequate humanitarian action but also to non-humanitarian tilts in favour of or against the affected populations. It can also lead to imbalance within the international community between those who commit themselves to the common causes of humanity and those who do not. Imbalances lead to dissensions which weaken the resolve to act in unison. The guiding principle for humanitarian action should be, as Alexandre Dumas aptly put it: "All for one and one for all."

**ANNEX:  
DRAFT DECLARATION "BASIC TENETS OF  
HUMANITARIAN ACTION IN EMERGENCY SITUATIONS"**

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**The General Assembly,**

**Considering** that the Charter of the United Nations seeks to achieve international cooperation in solving international problems of an economic, social, cultural and humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

**Reaffirming** the sovereignty, territorial integrity and national unity of States, and recognizing that it is up to each State, first and foremost, to take care of the populations affected by humanitarian emergencies occurring on its territory,

**Concerned** about the difficulties and obstacles encountered by the persons affected by emergencies in receiving humanitarian assistance,

**Convinced** that timely supply of food, water and medical care, for which unhindered access to endangered populations is essential, can significantly decrease the number of casualties,

**Aware** that alongside the actions of Governments and inter-governmental organizations, the speed and efficiency of humanitarian emergency assistance depend significantly on local communities and non-governmental organizations,

**Reaffirming** that humanitarian emergency assistance must be based on the values of non-discrimination, impartiality and neutrality, Considering that emergency assistance should be based on identified needs with the sole purpose of saving lives, alleviating suffering and ensuring that the dignity and rights of everyone are respected and protected,

**Reaffirming** in the context of armed conflicts which, in recent years, have claimed millions of lives, the fundamental importance of respect for humanitarian law and the provisions of the 1949 Geneva Conventions and the 1977 Additional Protocols,

**Reaffirming** further the necessity of ensuring the safety of humanitarian emergency assistance personnel,

**Convinced** that it is essential to pursue more vigorously preventive strategies with regard to humanitarian emergencies,

**Recognizing** that the ongoing process of development, at regional and international levels, of humanitarian principles and norms which must be respected in the context of emergencies, should be further strengthened,

**Calls upon** Governments to contribute actively in the development and eventual codification of norms and principles which should be universally respected in the context of humanitarian emergencies,

**Invites** international governmental and non-governmental organizations, including the Independent Bureau for Humanitarian Issues<sup>8)</sup>, to assist in the above mentioned process,

**Adopts** in the context of standard-setting the text contained in the annex to the present resolution enumerating some of the basic tenets of humanitarian action in emergency situations,

**ANNEX**

1. Humanitarian action shall be undertaken in all situations which constitute an emergency when essential human needs are not being met and abandonment of people affected by the emergency would constitute a massive threat to human life, and cause widespread suffering and grave offence to human dignity.
2. Humanitarian action must ensure the survival, protection and fulfilment of the basic needs of people, irrespective of their origin, race, religion, gender or affiliation to a social or political group, in conformity with humanitarian law, principles and practices.
3. The scale and scope of humanitarian action must be determined principally on the basis of identified needs.
4. Root causes of humanitarian emergency situations must be addressed in a timely and effective manner, not only at the site of an emergency but in all areas and with all actors concerned.
5. Humanitarian action must not replace the search for solutions to political problems and even less be used to buy time.

8) A/51/454 of 4 October 1996 (report of the Secretary-General pp. 6-10)



6. Regional organizations and institutions must play a key role in preventive, curative and consolidation measures in situations of actual and potential emergencies.
7. Humanitarian action must neither weaken nor marginalize local structures but rather strengthen the capacity of local communities and entities.
8. Negative impacts of humanitarian assistance on local economies must be avoided. To this end, thorough study and regular monitoring of local markets and overall conditions must be an integral part of the planning and implementation processes.
9. Endangered persons must be treated as human beings entitled to human rights and freedoms and not as helpless victims.
10. Endangered populations have the right to stay in their places of habitual residence or to temporarily seek safety and security elsewhere. No one shall be involuntarily dislocated at times of humanitarian emergencies.
11. It is primarily the duty of the States concerned to ensure the protection, safety and well-being of the populations affected by emergencies.
12. It is the responsibility of international and national humanitarian agencies which provide assistance to ensure through monitoring the proper use of such assistance and its impact on the affected populations, and to contribute to the protection and safety of the affected populations.
13. For rapid deployment of humanitarian actors, it is essential to establish a stand-by arrangement, adequate capacity and a modus operandi involving mandatory coordination.
14. Where the magnitude and duration of a humanitarian emergency are beyond the response capacity of affected countries, international cooperation and assistance must be provided. This must be done in accordance with international law and practice.
15. People affected by humanitarian emergency situations must be regarded as resourceful human beings entitled to participate in the planning and implementation of assistance which they have the right to request and receive.
16. The State and conflicting parties are required to adhere to the humanitarian imperative and facilitate safe and easy access to endangered populations and affected areas for rapid provision of humanitarian assistance.

17. States in proximity to humanitarian emergency situations, particularly in regions that are difficult to reach, are required to observe the humanitarian imperative by facilitating the transit of humanitarian assistance and by participating in the international aid efforts to the extent possible.
18. Use of humanitarian assistance for purposes other than it is intended for is prohibited.
19. Humanitarian action in emergency situations must be pursued to the greatest possible extent in a way which links relief and rehabilitation to developmental activities.
20. In the context of international cooperation, the principle of burden-sharing shall be applied to all humanitarian actions.

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19. Humanitarian action in emergency situations must be pursued to the greatest possible extent in a way which takes relief and rehabilitation to develop mental activities.

20. In the context of international cooperation, the principle of burden-sharing shall be applied to all humanitarian actions.

21. Endangered populations have the right to be protected and to be temporarily evacuated to a safe area, and to be voluntarily repatriated or resettled in a secure environment.

22. It is primarily the duty of the States concerned to ensure the protection, safety and well-being of the populations affected by the emergency.

23. It is the responsibility of international and national law, national agencies which provide assistance to the affected populations, and other entities of such assistance and its impact on the affected populations, and to ensure that it is to the protection and safety of the affected populations.

24. For rapid deployment of relief supplies, it is essential to establish a system of standby management, of quick response, and a standby system of voluntary mobilization.

25. Where the magnitude and duration of an emergency exceeds the capacity of the response capacity of the affected States, international cooperation and assistance must be sought. This may be done through international law and practice.

26. People affected by humanitarian emergency situations may be regarded as vulnerable human beings who are in need of the planning and implementation of assistance, and of the necessary support and resources.

27. The States and drafting bodies of the Convention shall, in the exercise of their respective responsibilities, and in cooperation with the United Nations, take all necessary measures to ensure that the Convention is fully implemented.



