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Keywords

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must acknowledge and reflect the Department's view. The plain words of the Treaty appear to provide an answer to this dispute. Furthermore, the Bernstein exception, if it is a recognized exception, can be invoked to provide Kal-Spice relief.

Robert M. Cooper

Humanitarian Intervention: A Possibility for Northern Ireland

Northern Ireland has been embroiled in conflict throughout this century. Due to the most recent eruptions of political and religious conflict in Northern Ireland, there have been losses of life and property, and erosion of the civil liberties of a minority group as well. Human rights involve the most sensitive areas of an individual's relationship to his society and to his state. Because most governments are reluctant to surrender their traditional authority over matters affecting their citizens, a valid question is raised: Which countries and organizations have the right to intervene in a situation involving human rights violations? A more specific question may also be asked: How is it possible for states and international organizations to justify their inaction in Northern Ireland and elsewhere after claiming to embrace the idea that human rights are to be recognized and enforced, and not merely conferred? Although this paper will examine the very recent history of the problem in Northern Ireland, the types of human rights violations being perpetrated, and international treaties and organizations dealing with these violations, its main focus will be the possibility of humanitarian intervention.

In 1948 the United Nations adopted the Universal Declaration of Human Rights (Declaration or Universal Declaration).¹ The Declaration begins: "All human beings are born free and equal in dignity and rights."² It continues by naming civil and political rights, such as "life, liberty and security of person, . . . freedom from arbitrary arrest, detention or exile, . . . the right to own property [and] freedom of thought, conscience and religion."³ Also included are economic, social and cultural rights, such as "the right to work, and the right to a standard of living adequate for health and well being."⁴ Although the Universal Declaration has been in existence for nearly thirty years, it was not until President Carter's administration focused upon human rights as an integral component of American foreign policy that the issue dominated the international arena.

1. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A(III) art. 1, U.N. Doc. A/810, at 71 (1948) [hereinafter cited as Declaration].

2. *Id.* art. 1.

3. *Id.* art. 23.

4. *Id.*

President Reagan's administration has promised to continue the use of human rights as an instrument of American foreign policy. Jeanne Kirkpatrick, the U.S. Ambassador to the United Nations, notes that the main difference between the Carter and Reagan approaches to human rights issues is that Carter's approach was ineffective.⁵ Whereas Carter stressed the goodwill of his policy rather than the consequences, Reagan's approach is a "highly principled effort to prevent the establishment of one-party regimes . . . which would oppress the human rights and the liberty of its citizens even more than they are normally oppressed."⁶ As part of the United Kingdom, Northern Ireland is a member of the United Nations⁷ and is considered a member of the international community. In light of the national administration's promises, as well as the treaties and conventions to which the United States is a party,⁸ some form of intervention by the United States to stem human rights abuses is plausible in this war-torn area.

I. RECENT HISTORY

The recent social and political history of the conflict in Northern Ireland must be examined in order to justify humanitarian intervention. During the mid-1960's the Ulster Volunteer Force (UVF), a right-wing Protestant group, began a campaign to prohibit the right-wing Unionist government of Northern Ireland from establishing harmonious relations with the Republic of Ireland.⁹ At the same time, the Northern Ireland Civil Rights Association, an (allegedly) nonsectarian and nonviolent civil rights movement, emerged and demanded equality of treatment for Northern Ireland's Catholic minority.¹⁰ Religious intolerance—a constant irritant to the already dangerous economic and social oppression—divided the population.¹¹ Although the government of Northern

5. Rehm, *Human Rights: Who Defines Them, Who Denies Them*, N.Y. Daily News, May 31, 1981, at 43, col. 3. The author touches on three documented cases in the latest report of Amnesty International, the London-based organization that received the 1977 Nobel Prize for its work in human rights. Vincent McGee, Amnesty's Chariman of the Board in the United States, reports that the 1980's will be a time of crucial testing for human rights. "The right to dissent is under attack in country after country. Torture and murder, abduction and imprisonment are often sanctioned at the highest levels of government." He estimates that nearly one-half of the 154 member nations of the United Nations have 50,000 persons imprisoned for their political and religious convictions. *Id.*

6. *Id.*

7. See R. LILlich & F. NEWMAN, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY* 611 (1979).

8. See *infra* notes 42-45 and accompanying text.

9. Lowry, *Internment: Detention Without Trial in Northern Ireland*, 5 HUMAN RIGHTS 261, 263 (1976). See also Cohn, *Torture in the International Community Problems of Definition and Limitation the Case of Northern Ireland*, 11 CASE W. RES. J. INT'L L. 159, 161 (1979); Lowry, *Ill Treatment, Brutality and Torture: Some Thoughts Upon the Treatment of Irish Political Prisoners*, 22 DE PAUL L. REV. 553, 558 (1978).

10. Cohn, note 9 *supra*. See also E. O'BALLANCE, *TERROR IN IRELAND* 98, 102 (1981).

11. The Catholic population complained of unfair and unequal allocation of rental space to Protestants, dissatisfaction with enfranchisement and overall abuse of civil rights.

Ireland banned civil rights demonstrations, both protestors and police became increasingly violent. With all legitimate routes of protest seemingly closed, the Irish Republican Army (IRA), a revolutionary group of militant nationalists which was formed in the 1920's, increased in size and prestige in the 1970's. In an attempt to preserve law and order, the Government introduced a policy of internment¹² as a counterinsurgent tactic. In August 1971, pursuant to the Special Powers Act,¹³ the Northern Irish Parliament invoked provisions allowing the imprisonment without trial of those persons suspected of threatening the peace and order in Northern Ireland. The Special Powers Act had previously been invoked in every decade since the 1920's to intern suspects.¹⁴ The renewed enforcement of this Act increased the visibility of the British occupation in Northern Ireland.

During recent years the British presence and the Government's violation of human rights has been discussed in the world press. For instance, a highly publicized event occurred in 1981 when IRA members detained in Northern Ireland's prisons started a hunger strike, and refused food and medical attention.¹⁵ The hunger strikers had made five demands which would have abolished their status as criminals. Those demands consisted of the right to wear one's own clothes, the right to free association, the right to extra visits, the right to parcels and the right to choose whether or not to do prison work.¹⁶ In addition, one of the prisoners, Bobby Sands, was elected to parliamentary office while on the hunger strike. Sand's election severely tested the citizens' acceptance of the British Government's actions in Northern Ireland; in fact, some have inter-

See E. O'BALLANCE, *supra* note 10, at 98, 102. The Civil Rights Association (CRA) sought and campaigned for the following: (1) A one man, one vote policy in local elections; (2) removal of gerrymandered boundaries; (3) laws against discrimination by local government and machinery to deal with complaints; (4) repeal of the Special Powers Act (*see* note 13 *infra*); and (5) disbanding of the B Special Police force, a wholly Protestant militia. See Lowry, *supra* note 9, at 558, and Cohn, *supra* note 9, at 161.

12. Internment may be defined as the extra-judicial deprivation of liberty by executive action. The essence of internment lies in incarceration without charge or trial. Lowry, *supra* note 9, at 261.

13. The Civil Authorities Act, 1922, 12 & 13 Geo. 5 [hereinafter cited as Special Powers Act], *cited in* Cohn, *supra* note 9, at 159 n.1. Under this Act, passed by the Northern Ireland Parliament, "the Civil Authority had power in respect of persons, matters and things within the jurisdiction of the Government of Northern Ireland to take all such steps and issue all such orders as may be necessary for preserving peace and maintaining order in accordance with the Act." This section requires that the course of law and avocations of life and the enjoyment of property should be interfered with as little as possible.

14. Lowry, *supra* note 9, at 272. Suspects have also been imprisoned for indeterminate periods of time in the south of Ireland. For example, in 1956 the Prime Minister of the Republic of Ireland interned suspects without trial in response to IRA terrorist incidents. In 1958, the government in the south began to release those internees. See E. O'BALLANCE, *supra* note 10, at 87, 88.

15. *Violence Flares in Ulster as Fourth IRA Fast Begins*, N.Y. Times, May 10, 1981, at 5, col. 1.

16. *Id.*; Cohn, *supra* note 9, at 161.

preted his election as an endorsement of the prisoners' demand for political status.¹⁷

II. GREAT BRITAIN LEGITIMIZES ITS ACTIONS IN NORTHERN IRELAND

In coping with the crisis caused by the hunger strikers, the British Government asserted that the Special Powers Act¹⁸ had been passed to clarify the status of Northern Ireland. However, the Act was originally passed in 1922 to cope with terrorist attacks. Legal and political authorities in Great Britain have increasingly sought to justify internment and torture of political detainees by invoking the internment provisions of the act as "the normal procedure for punishing criminals."¹⁹ They also rely on theories of retribution and deterrence,²⁰ and on the U.N. Charter, which "prohibits the threat or use of force against the territorial integrity or political independence of any state."²¹ Britain has consistently treated the problems in Northern Ireland involving violations of human rights as domestic and not within the jurisdiction of outside states. The Prime Minister of England, Margaret Thatcher, stated that Bobby Sands, the first hunger striker to die, was a citizen of the United Kingdom in a British prison. As such, his fast was purely the concern of the Northern Irish administration and of the British Government.²²

The British Government also justifies its actions as a means of fulfilling a formal promise not to abandon Northern Ireland's one million Protestants. The pledge, "the guarantee," as it is called, is a section of the 1973 Constitution Act, which reads: "It is hereby affirmed that in no way will Northern Ireland or any part of it cease to be part of Her Majesty's dominion and of the United Kingdom without the consent of the majority of people in Northern Ireland, voting in a poll."²³ By giving in to the

17. Britain has recognized political prisoner status in the past with "special" category status for both Protestant and Catholic guerillas in Northern Ireland. The distinction instituted by the Tory Government was abolished by the Labor Government in 1976 because it was thought to be unwise. Some 300 prisoners convicted of crimes before 1976 were enjoying the special status the hunger strikers were seeking. Borders, *Britain's New Look at the Irish Question*, N.Y. Times, Oct. 11, 1981 § 6 (Magazine) at 94, 97.

18. Special Powers Act, *supra* note 13, Regs. §§ 11-13. These regulations deal with the internment provisions of the Act.

19. Prime Minister Thatcher's view was that the protesting inmates could not be granted special political statuses because they are common criminals. "Things like murder and bombing and arson are not political." Borders, *supra* note 18, at 96. *See also* notes 20-21 *infra*, and accompanying text.

20. Deterrent is defined as "anything which impedes or has a tendency to prevent; e.g., punishment is a 'deterrent' to crime." BLACK'S LAW DICTIONARY 405 (5th ed. 1979).

21. U.N. CHARTER art. 2, para. 4. "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

22. *See* Kelly, *How Many More Sacrifices Before Britain Leaves?*, Irish Echo, May 16, 1981, at 2, col. 1.

23. Borders, *supra* note 17, at 99.

prisoners' demand for political status, the British would be losing a degree of its sovereignty over its subjects.²⁴

Northern Ireland is now a recognized sovereignty of the United Kingdom and consequently, the United Kingdom objects to any external interference. Despite this view, do certain outside states have a moral duty, if not a legal obligation, to intervene?

III. A REBUTTAL OF GREAT BRITAIN'S THEORY

There is wide recognition that certain fundamental human rights are now guaranteed to individuals as a matter of international law.²⁵ International law imposes a duty on a nation not to torture its citizens.²⁶ International law also protects individuals and groups of individuals "in their own state or within the territory of a state where the governing authority permits abuses of human rights, or mistreats its subjects in a manner which shocks the conscience of mankind."²⁷ For example, "government A is permitted to file an official protest relating to the manner in which government B treats one of B's nationals, and if it can be shown that the conduct complained of is characteristic of B's overall human rights policy, government A can also impose economic sanctions."²⁸ Jurisdictional defenses may no longer rest on the proposition that the manner in which a state treats its citizens is strictly a matter within its domestic jurisdiction.²⁹ That defense may not be applicable to allegations relating to individual human rights violations, if it appears that rather than being isolated instances, they result from the policy of the state.³⁰

Traditionally, Britain has taken an unyielding approach with respect to Ireland and minority groups. After the British Government carried out

24. *Id.*

25. See the amicus curiae memorandum at the U.S. Dep't of State, which was solicited by the Second Circuit Court of Appeals in the matter of *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), reprinted in 19 I.L.M. 585, 587-89 (1980). See also Note, *Filartiga v. Pena-Irala: Providing Federal Jurisdiction for Human Rights Violation Through the Alien Tort Statute*, 10 DEN. J. INT'L L. & POL'Y 355 (1981).

26. European Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome, Nov. 4, 1950 (entered into force, Sept. 3, 1953) [hereinafter cited as European Convention]. Article 3 states, "No one shall be subject to torture or to inhuman or degrading treatment."

27. Fairley, *State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box*, 10 GA. J. INT'L L. 29, 32 n.11 (1980). See also L. OPPENHEIM, INTERNATIONAL LAW §134, at 312 (8th ed. 1955): "A state must be guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind before intervention is permitted."

28. Buergenthal, *Domestic Jurisdiction, Intervention, and Human Rights: The International Law Perspective*, in HUMAN RIGHTS AND U.S. FOREIGN POLICY 11, at 115 (P. Brown ed. 1979).

29. *Id.* at 115.

30. *Id.* "Political violence in Ireland began after acts of government repression, and internment and subsequent torture were catalysts for further opposition to the government." See Cohn, *supra* note 9, at 162.

the execution of the leaders of the 1916 minority uprising in Ireland, the Irish people became aroused and the fight for freedom gained support.³¹ The same fight was commenced once again in Ireland, and sympathy was aroused elsewhere³² by the British Government's reluctance to grant political status to IRA prisoners who are currently in Northern Irish jails serving sentences for violence which could be characterized as politically motivated.³³ In response to the arrest of twelve Irish citizens on August 9, 1979, and two in October, 1971, the Government of Northern Ireland filed an application with the European Commission on Human Rights against the United Kingdom. The application alleged, inter alia, that the British Government acquiesced in the use of brutality and torture during the interrogation of the detainees.³⁴ The detainees were apparently subjected to a form of "interrogation in depth" involving the application of five particular "disorientation" or "sensory deprivation" techniques.³⁵

The British Government conceded before the European Court of Human Rights in February, 1977 that it has used these torture techniques on detainees in Northern Ireland.³⁶ In its final disposition of the case, the court held that detainees had been treated in an inhumane and degrading fashion, but held that the detainees were not tortured.³⁷ This holding may be inconsistent with U.N. human rights covenants which refer to "torture and other cruel, inhumane or degrading treatment of punishment . . ." without differentiating the legality of the sanction.³⁸

31. Murphy, *The Principles of Freedom*, Irish Echo, May 16, 1981, at 8, col. 1. In the spring of 1916, in the first days after the Easter Uprising, the British army court-martialed and executed fifteen of the leading rebels who sought home rule for Ireland, independence from Britain. Almost immediately public opinion shifted sharply against Britain. Borders, *supra* note 17, at 99.

32. A public opinion poll conducted in 1981 indicated that no more than 29 percent of the British public wanted to retain British sovereignty in the province of Northern Ireland. Borders, *supra* note 17, at 99. The political wing of the IRA (Sinn Fein) made a strong showing in the recent assembly elections in Northern Ireland by picking up five of the 78 seats. *Northern Ireland, Fresh Pain*, Time, Nov. 1, 1982, at 57.

33. See Borders, note 17 *supra*.

34. *Ir. v. U.K.*, 1971 Y.B. EUR. CONV. ON HUMAN RIGHTS 41 (Eur. Comm. on Human Rights), cited in Cohn, *supra* note 9, at 172 n.76.

35. The methods, sometimes termed "disorientation" or "sensory deprivation" techniques, consist of: (1) wall-standing: forcing the detainees to remain for periods of some hours in a "stress position," described by those who underwent it as being "spreadeagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers"; (2) hooding: putting a black bag over the detainee's head and, at least initially, keeping it there all the time except during interrogation; (3) subjection to noise: holding the detainees in a room where there was a continuous loud and hissing tone, while awaiting interrogation; (4) deprivations of sleep: depriving the detainees of sleep pending their interrogation; and (5) deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the prison and pending interrogation. Lowry, note 9 *supra*. See also R. LILICH, *supra* note 7, at 591.

36. *Ir. v. U.K.*, 1971 Y.B. EUR. CONV. ON HUMAN RIGHTS, note 34 *supra*.

37. Cohn, *supra* note 9, at 184.

38. Declaration, *supra* note 1, art. 5.

(emphasis added). Therefore, according to U.N. policy, inhumane and degrading treatment may be considered equal to torture.

The recent hunger strike campaign in Northern Ireland illustrates that the approach of the British Government with respect to deprivation of human rights continues.³⁹ Therefore, certain states in particular, and all states bound by traditional international law, have a legal obligation to intervene.⁴⁰

IV. TREATIES AND CONVENTIONS LEGITIMIZING INTERVENTION

Humanitarian intervention must be precipitated by intense human rights deprivations and must conform to the general international legal regulations governing the use of force.⁴¹ Historically, legal and quasi-legal remedies have existed to defend against the use of physical abuse. Prohibitions were drafted in 1975 when the U.N. General Assembly adopted the Declaration on the Protection of all Persons from Being Subjected to Torture.⁴² Article 5 of the Universal Declaration of Human Rights proclaims that "no one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment."⁴³ The International Covenant on Civil and Political Rights⁴⁴ and article 3 of the European Convention for the Protection of Human Rights⁴⁵ contain this same pro-

39. *Violence Flares in Ulster as IRA Fast Continues*, N.Y. Times, May 10, 1981, at 5, col. 1. There were more than twenty-five reported deaths after Bobby Sands began his fast March 1, 1981, five years after Britain abolished the special prisoner status for IRA inmates. London refused demands for its restoration on ground that it lent legitimacy to IRA tactics.

40. Intervention by other states is permissible under the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted Nov. 4, 1950, 213 U.N.T.S. 221, cited in Nanda, *Implementation of Human Rights By the United Nations and Regional Organizations* 21 DE PAUL L. REV. 307, 323 (1971). The thirteen states which have adopted the procedure of individual petitions before the European Commission are Austria, Belgium, Denmark, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom (including overseas territories). The remaining five member states who have not yet signed the convention are Cyprus, Greece, France, Malta and Turkey. While articles 1 and 55 reaffirm the United Nations' commitment to promoting universal respect for an observance of human rights and fundamental freedoms for all, article 56 states that commitment is a positive obligation for action by member states in defense of human rights: "All Members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55." Nanda, *Humanitarian Military Intervention*, 10 WORLDVIEW 23, 24 (1980).

41. Reisman, *Humanitarian Intervention to Protect the Ibos*, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 167, 177 (R. Lillich ed. 1973).

42. Declaration on the Protection of All Persons from Being Subjected to Torture, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/1034 (1975). See also Nayar, *Human Rights: The United Nations and U.S. Foreign Policy*, 19 HARV. INT'L L. J. 813, 816 n.18 (1978).

43. Declaration, *supra* note 1, art. 5.

44. International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, reprinted in 6 I.L.M. 368 (1967) [hereinafter cited as International Covenant].

45. EUROPEAN CONVENTION, note 26 *supra*. For the text of the Convention, see 45 AM. J. INT'L L. SUPP. 24 (1957).

vision. Although certain articles in these conventions provide that a contracting party may derogate from its obligations under the conventions in certain circumstances, derogation from the articles on torture is not permitted.⁴⁶

The issue of humanitarian intervention involves two competing principles of international law: the right of a state to be free from outside interference in its internal affairs, and the individual right to enjoyment and protection of basic human rights. Article 2(4) of the U.N. Charter prohibits the "threat or use of force against the territorial integrity or political independence of any state."⁴⁷ The European Convention attempts to impose a legal obligation on states to enforce the principles expressed in the Universal Declaration of Human Rights to protect human rights.

While the European Convention does not include all the rights mentioned in the Declaration, it provides for meaningful enforcement machinery to protect the rights it does guarantee.⁴⁸ Observers of the European Convention frequently raise the following question: Are decisions by international tribunals such as the European Commission and European Court anything more than empty pronouncements in that these tribunals lack effective powers of enforcement? While it is true that there is no international police force ready to enforce decisions directly, the legal (and moral) obligations of the members of the European human rights community are clear.⁴⁹ The parties to the European Convention⁵⁰ have undertaken the duty to secure for everyone within their jurisdiction the rights and freedoms set forth in that Convention.⁵¹ The only specific remedy mentioned in the Convention is compensation.⁵² However, in addition to compensation, two other remedies can be sought through petition to the Commission. These remedies are (1) permanent injunction against a certain course of conduct by the state concerned and (2) a declaration that a state's legislation is incompatible with the Convention, which would create an obligation on the part of the state to revoke such legislation and to uphold its international obligations.⁵³ In the *Case of Northern*

46. Cohn, *supra* note 9, at 177.

47. U.N. CHARTER art. 2, para. 4.

48. EUROPEAN CONVENTION, note 26 *supra*. See also Hannum, *Ireland in Strasbourg: An Analysis of Northern Irish Proceedings Before the European Commission on Human Rights*, 7 IRISH JURIST 329 (1972). For a general discussion of the European Convention, see O'Hanlon, *The Brussels Colloquy on Human Rights*, 5 IRISH JURIST 252 (1970), and Weil, *The European Convention on Human Rights*, 57 AM. J. INT'L L. 804 (1963).

49. Hannum, *supra* note 48, at 340.

50. There are fifteen members of the Commission and seventeen members of the Court, even though only eleven states recognize its compulsory jurisdiction. R. BEDDARD, *HUMAN RIGHTS AND EUROPE: A STUDY OF THE MACHINERY OF HUMAN RIGHTS PROTECTIONS OF THE COUNCIL OF EUROPE* 30 (1973).

51. European Convention, note 26 *supra*.

52. See Hannum, *supra* note 48, at 341.

53. *Id.*

Ireland,⁵⁴ no sanctions have yet been imposed on the United Kingdom.

V. U.S. FOREIGN POLICY AND HUMANITARIAN INTERVENTION

Three multilateral human rights treaties have been signed but not ratified by the United States. These treaties are the Convention on the Elimination of All Forms of Racial Discrimination,⁵⁵ the International Covenant on Economic, Social and Cultural Rights,⁵⁶ and the International Covenant on Civil and Political Rights.⁵⁷ These treaties, adopted by the United Nations,⁵⁸ collectively define a series of individual fundamental rights. Significantly, each treaty contains provisions for its enforcement, requiring signatories to report the measures taken to implement the treaties to a committee of independent experts.⁵⁹

From November 14-19, 1979, the Foreign Relations Committee of the U.S. Senate held hearings to consider ratification of the previously mentioned multilateral human rights treaties. It was generally believed that any efforts to provide international protection to the fundamental rights of the individual would be fruitless without U.S. ratification of the treaties.⁶⁰ Witnesses opposing ratification expressed concern that the U.S. obligation would infringe upon areas of domestic concern that have been traditionally left to national governments.⁶¹ To date, these treaties have not been ratified by the U.S. Senate. However, the U.N. Charter, which outlines one of that organization's major objectives as the elimination of human rights violations, has been codified.⁶² Thus, whether or not the United States ratifies the treaties, it has a continuing obligation to observe the Charter, including support for the resolutions adopted by the Security Council.⁶³

Aside from ratification of treaties, U.S. intervention in Northern Ireland could proceed through diplomatic channels. There exist enough politicians with constituents who possess strong feelings about human rights

54. See note 34 *supra*.

55. The Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* March 7, 1966, 660 U.N.T.S. 195. This treaty, to which there are 106 parties, was signed on behalf of the United States on September 28, 1966. See UNITED STATES RATIFICATION OF THE HUMAN RIGHTS TREATIES, (R. Lillich ed. 1981), and Bennett, *U.S. Senate Hearings on Human Rights Treaties*, 74 AM. J. INT'L L. 453 (1980).

56. *Opened for signature* Dec. 19, 1966, reprinted in 6 I.L.M. 360 (1967) and S. EXEC. DOCS. C, D, E, AND F. This Covenant, to which there are 62 parties, was signed on behalf of the United States on Oct. 5, 1977, and entered into force on Jan. 3, 1976. See Bennett, note 55 *supra*.

57. International Covenant, note 44 *supra*.

58. See Bennett, *supra* note 55, at 454.

59. *Id.*

60. Bennett, *supra* note 55, at 454.

61. *Id.*

62. U.N. CHARTER, 59 Stat. 1031.

63. The U.N. Charter, a treaty ratified by the United States, is part of the Supreme Law of the land. *United States v. Steinberg*, 478 F. Supp. 29 (N.D. Ill. 1979); *Balfour Guthrie & Co. v. United States*, 90 F. Supp. 831, 832 (N.D. Cal. 1950).

and the situation in Northern Ireland to make diplomatic intervention desirable and plausible.⁶⁴

However, there are recognized dilemmas and problems which limit U.S. implementation of a strong human rights policy. National security interests may force the United States to continue aiding a country which may be violating the human rights of its own citizens.⁶⁵ In addition, human rights concerns may be too sensitive to raise without imposing too great a strain on our relations with other countries.⁶⁶ Nevertheless, the Congress has taken a major step toward the sanctioning of human rights violations by drafting legislation such as the Foreign Assistance Act.⁶⁷ That Act, passed in the early 1970's, established explicit human rights criteria for decisions on military and economic assistance. Section 502B of the Act forbids military assistance, arms sales or the transfer of crime control and police equipment to governments that engage in a consistent pattern of violations of internationally recognized human rights, unless extraordinary circumstances justify such a transfer. Section 116 of the same act forbids economic assistance to such countries unless the aid will directly benefit needy people.⁶⁸

VI. CONCLUSION

States may exercise a number of options to make humanitarian support of political prisoners in Northern Ireland meaningful. These include: 1) an increase in their levels of international assistance; 2) the enactment of statutes such as section 502B of the Foreign Assistance Act and the adoption of a mechanism for the enforcement of such statutes; 3) the acknowledgement of human rights violations and the expression of tangible concern for the conditions in Northern Ireland; and 4) the curtailment of economic and military assistance to the United Kingdom unless the economic aid will directly benefit needy people. A foreign policy based on these fundamental values may help to prevent additional abuses.

As previously discussed, the European Court of Human Rights has found that the British Government treated detainees in a cruel, inhuman and degrading fashion. The British Government also interned persons without trial in violation of traditional and basic internationally recog-

64. Former New York State Governor Hugh Carey, Senator Daniel Moynihan and 51 members of the U.S. House and Senate, including Senator Lowell Weiker and House Speaker Thomas P. O'Neill, Jr., called on Americans to reject the path of violence in Northern Ireland. Other New York state legislators criticized the British Government and called on it to cease its violations, to specify a certain date when it will leave the province and to begin immediate and meaningful negotiations with all pertinent parties in Northern Ireland and the Republic. N.Y. Times, March 18, 1982 at 8, col. 1.

65. *Human Rights and American Foreign Policy: A Symposium*, COMMENTARY 44 (Nov. 1981).

66. *Id.*

67. Foreign Assistance Act of 1961 §502B, 22 U.S.C. §2304 (amended 1979).

68. *Id.* at §116.

nized civil liberties.⁶⁹ The denial of basic civil liberties and the recorded violations which have been perpetrated on certain groups in Northern Ireland have shocked both the common man and the justices of international tribunals called upon to review such behavior. Given such maltreatment, Professor Claydon, speaking at the Conference of the Procedural Aspects of the International Law Institute on the Subject of Humanitarian Intervention and the United Nations,⁷⁰ speculated on the legitimacy of intervention in Northern Ireland. He listed as deprivations which would act as catalysts for intervention such items as discrimination in employment and voting, and internment without trial and torture of suspected terrorists. "Although internment, torture and the like might not be enough to justify intervention, if this category is coupled with regular loss of life that will certainly continue in the future, it may possibly be enough to justify intervention."⁷¹ Great Britain's human rights violations in Northern Ireland, documented in the European Court of Human Rights and reported in the world media,⁷² establish a pattern of human rights violations sufficient to justify intervention, if this analysis is applied. Professor Claydon raises another issue related to the Northern Irish situation: "Is there a likelihood of intervention against a member of the European Community, namely the United Kingdom?" While it is clear that international law permits nations to intervene, there are doubts as to whether any country would intervene in such a situation. Unfortunately, there are no distinct precedents to suggest an answer.⁷³

Existing rules of international law essentially prohibit military intervention by a nation or group of nations. The U.N. Charter proscribes member nations "in their international relations from the threat or use of force against the territorial integrity or political independence of any state."⁷⁴ However, in certain limited extraordinary situations where gross and persistent violations of basic human rights prevail in a nation, intervention is warranted. There is no universal solution which can be applied automatically to each rights violation. While a state may not be able to assure sufficient health care, food or housing, states such as Northern Ireland and Great Britain can immediately cease acts which violate human rights. Until they do so voluntarily, however, the existing global mechanisms for implementing the doctrine of humanitarian intervention, trea-

69. See *Borders*, note 17 *supra*.

70. *Humanitarian Intervention and the United Nations Conference on the Procedural Aspects of International Law Institute—1972*, in *HUMANITARIAN INTERVENTION AND THE UNITED NATIONS* 91 (R. Lillich ed. 1973). The conference sought (1) to clarify as much as possible the status of the doctrine of humanitarian intervention under contemporary international law; and (2) to recommend ways the United Nations might create or adopt institutions to govern the invocation and to regulate the use of coercive measures in humanitarian situations.

71. *Id.* at 92.

72. See notes 32-34 *supra*.

73. See note 72 *supra*.

74. U.N. CHARTER art. 2, para. 4. See also *Nanda*, *supra* note 40, at 23.

ties, conventions and the human rights tribunals are the most appropriate methods for assuring that human rights are protected in Northern Ireland.

The doctrine of humanitarian intervention supports a moral and legal argument for the use of force when acts which violate human rights become patterns of unacceptable conduct.⁷⁵ This argument specifically addresses those actions that are viewed by the international community as intolerable offenses against basic human dignity and affronts to the conscience of mankind.⁷⁶ The precedent of the hunger strikers and the concomitant violence in Northern Ireland suggest that such inhumane acts may continue to occur in that region and will continue to shock the global conscience. States cannot pick and choose which human rights causes to defend. The persistence and severity of the situation in Northern Ireland warrants that legally-based intervention embodied in sources of international law such as the European Convention.

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75. See Fairley, *supra* note 27, at 60-61.

76. *Id.*