

**We are happy to share this information with you and encourage you to use these documents for research purposes. Please ensure that all credits are acknowledged when using all or any of the information in these documents. Commercial reproduction is strictly prohibited.**

**States Without Law: The Role of  
Multilateral Intervention to Restore  
Local Justice Systems**

**Final Report - December 1995**

A Seminar Organized by  
the Canadian Committee for the 50th Anniversary  
of the United Nations

and

The International Centre for Criminal Law Reform and Criminal  
Justice Policy

at

Green College, University of British Columbia

## **States Without Law: The Role of Multilateral Intervention to Restore Local Justice Systems**

From Cambodia to Rwanda to the former Yugoslavia to Haiti, a key component of post-conflict peace-building is the re-establishment of governmental and legal structures. For states emerging from war, both a functioning government and a credible justice system are essential to ensuring that societies do not slip back into conflict. Increasingly, United Nations peace missions are taking on these peace-building responsibilities. In the space of a few short years, the world has moved from traditional peace-keeping, which was expected to do little but separate warring factions to allow breathing space for negotiations, to complex humanitarian interventions where the UN and the broader international community have become enmeshed in all of the machinery of government. And as the major UN interventions of the past five years have bluntly demonstrated, the United Nations is travelling up a steep learning curve as it seeks to help societies re-build themselves.

At the University of British Columbia on December 9, 1995, a broad array of legal and strategic thinkers focussed their attention on the role of the international community in restoring order to conflict-wracked societies or "failed states." As one speaker after another pointed out, the old idea that peace-keepers and aid agencies can march into conflict situations, stop the fighting and the bleeding, and march out again is painfully outdated. New, longer-term problems have landed at the UN's feet, such as how to help states re-build both justice systems and popular confidence in those systems, and how to balance justice with reconciliation in states emerging from traumatic periods of massive human rights violations. For the United Nations, successfully responding to these new challenges is critical to regaining the confidence of the world community. As Peter Burns, President of the Society for the Reform of Criminal Law, noted in his welcoming remarks, the "a remarkable line of advancement" over the last 50 years towards the respect for human rights and the rule of law has been overshadowed by recent events in Bosnia, Somalia and Rwanda. And while progress continues, these high-profile failures have generated a crisis of credibility not just within the UN's peace-keeping or peace-making bodies, but across the entire Organization.

Organized by the Canadian Committee for the 50th Anniversary of the UN and the International Centre for Criminal Law Reform and Criminal Justice Policy, the day-long seminar was the final event in the UN/50's United Nations Reform calendar.

### **I: The Failed State Syndrome: Neo-Colonialism or Constructive Idealism?**

The notion of the "failed state" first gained prominence in international relations with the collapse of Somalia in the early 1990s. The experience of the international community in Somalia since that time, both in the form of the two UNOSOM operations and the American-led "Operation Restore Hope", shows just how many things can go wrong with the most well-intentioned international efforts to re-build states.

Former Canadian diplomat Geoffrey Pearson opened the discussion by raising a number of questions regarding the nature of failed states and the role of the United Nations in helping to restore stable government. Pearson defined a failed state as one which is "unable to provide basic security for their people because of a collapse of authority." The reasons for this breakdown range from natural

disasters to civil wars, or, as in the case of Somalia, a combination of both. In many civil conflicts, the collapse of authority has been driven by the forces of ethnic nationalism. Along with the related questions of minority rights and self-determination, this issue poses very difficult questions for the international system, said Pearson, which is based on the often contradictory principles of respecting state sovereignty and recognizing the right to self-determination.

The exercise of defining a failed state in general terms is only so valuable in determining when and where intervention will take place. "Is Haiti a failed state?" asked Pearson. "The Americans decided it was, largely for reasons of American interest. And if Haiti is a failed state, then there are lots in the world." Ultimately, the UN Security Council decides which situations constitute a threat to international peace and security, and thus merit intervention. Pearson provided a list of potential criteria for UN intervention in failed states. Genocide, the movement of refugees in numbers significant enough to affect the security of neighbouring states, and gross and persistent violations of human rights might all be considered threats to international peace and security, he argued. However, other criteria, such as a lack of democratic practice, are more troublesome. If Haiti was considered a suitable candidate for intervention because of its military regime's lack of respect for democracy, he asked, why not Burma, whose military regime is at least as repressive as was that of Haiti's General Cedras?

In an ideal world, good government and balanced development would prevent the international community from having to deal with failed states in the first place, and Pearson outlined some of the tools available to keep states from collapsing. Canada, he noted, has placed particular emphasis on the promotion of democracy and human rights, an approach with which the UN has had some success, notably in Central America. He also pointed to development aid as another valuable support mechanism, noting that while aid does not necessarily guarantee order and stability, it still has a valuable role to play and should not be abandoned. Pearson also noted the wide and increasing acceptance among member states of the UN's role as a peace-keeper, mediator, and election monitor.

One of the hard lessons of the past few years is that in cases where states do collapse completely, the re-building process is demanding, complex and long-term. "People seem to expect that a state can be somehow reconstructed, then we can all leave and forget about it," said Pearson, "and it will be orderly and stable and last forever. But that's not the way things happen." Who, he asked, will pay for the re-building of Rwanda and Somalia? He compared these situations to Cyprus, where the presence of a UN peace-keeping force for more than 30 years has brought that conflict no closer to resolution.

No discussion of the UN's capacity for constructive intervention can avoid the issue of how decisions about intervention are taken and implemented. Reforming the Security Council, the key UN structure responsible for international peace and security, is one of the greatest challenges facing the UN today. "There is no consensus whatsoever on how to reform the Security Council," said Pearson. "Everybody agrees that Britain and France shouldn't be there anymore, except Britain and France, and they have a veto. Every permanent member has a veto over reform - talk about a box." Adding new permanent members to correct the imbalance of power held by industrial powers is equally problematic, as every likely contender from the South has a regional rival unwilling to countenance having their neighbour with a veto. Ultimately, said Pearson, the most likely solution is the addition of new non-permanent members, largely from Asia and Africa, to the Council.

*Peace-building at work: The Cambodian experience*

Cambodia provides a good case study of massive international involvement in a state to restore a functioning government structure. The UN Transitional Authority in Cambodia (UNTAC) guided Cambodia through its first democratic elections in 1993 and was the most wide-ranging, ambitious, and costly exercise in state-building the UN had ever undertaken to that point.

Martin Collacott, a former Canadian Ambassador to Cambodia, called the Cambodian operation one of the UN's great success stories. The issue now, he said, is whether success in Cambodia can be sustained. After the 1993 elections, in which over 90 per cent of the Cambodian electorate cast ballots, a new constitution was written and a new government was formed. By 1994, however, the wheels began to come off. It became clear, said Collacott, that increasing repression, combined with large-scale corruption and diversion of economic resources, were seriously threatening Cambodia's progress. Reforms to the Cambodian justice system were accepted only superficially, and today, reform in general is being taken less and less seriously by the Cambodian authorities.

One of Cambodia's problems, said Stephen Owen, BC's Deputy Attorney General who was recently in Cambodia, may be that the UN operation has been replaced by international aid donors. Many of these donor agencies represent governments who, as Owen said, "seem to have a high level of tolerance for authoritarian government in the region." And as these governments seem to be placing more emphasis on trade issues than on democracy or human rights, the Cambodian authorities may feel less obliged to institute reforms in these areas.

In many ways, Cambodia has been left on its own to re-establish itself as a viable democratic state. While the UN, said Collacott, seems to feel that it has done its part in the region, many of the donor nations have their own, often competing, priorities in Cambodia.

## **II: After "Rapid Reaction" and Beyond Peace-keeping**

### **i. The Prospects for a UN Rapid Reaction Capability**

In the aftermath of the Rwandan genocide of 1994, the case for a UN rapid reaction capability has never been so strong. As hundreds of thousands of Rwandans were slaughtered, the UN Secretary-General pleaded for member states to contribute troops to a UN intervention force. As the Secretary-General noted with a hint of bitterness in his supplement to *An Agenda for Peace*, "not one of the 19 Governments that at that time had undertaken to have troops on stand-by agreed to contribute."

In a paper delivered at the UBC seminar, Gregory Wirick, a consultant on UN Reform for the Canadian Committee for the 50th Anniversary of the UN and an Associate at the Parliamentary Centre in Ottawa, assessed the prospects for improving the UN's rapid reaction capability. Wirick noted that far from galvanizing the international community into action, the aftermath of the Rwandan genocide showed that the majority of member states were content to deal with humanitarian crises on an ad hoc basis. Despite this prevailing attitude, some states, notably Canada, have been exploring ways to enable the UN to react more quickly to crises.

The world has entered a new era of conflict. While the UN was set up largely to deal with conflicts between states, only three conflicts out of 82 between 1989 and 1992 were between states. The rest have been civil conflicts, and 90 per cent of the casualties in these conflicts have been civilian. Inter-ethnic conflict has replaced inter-state conflict as the primary threat to international peace and

security. We are experiencing what one scholar has labelled "chaos from below," which is leading to the violent break-up of many states. "To a large extent," said Wirick, "the world's principal powers are at a loss about how to respond to such disintegration."

Since the publication in 1992 of *An Agenda for Peace*, various concepts for strengthening the ability of the UN to react firmly and quickly to crisis situations, including the idea of a UN volunteer force, have been the subject of vigorous debate among UN reformers. This "reformist edge" at the UN has been dulled, however, by the UN's well-publicized failings in Somalia, the former Yugoslavia, and Rwanda.

Nevertheless, the disturbing reality remains that the time lapse between a Security Council mandate for a UN peace-keeping operation and the implementation of that operation is still measured in months. In the case of Rwanda, those months meant the loss of hundreds of thousands of lives. The Rwandan experience was the catalyst for the Canadian study on improving the UN's rapid reaction capability, presented to the General Assembly in September of 1995. The report's central recommendation was that a permanent UN operational-level headquarters be established, "which would be a standing, fully-deployable, integrated, multinational group of approximately 30 to 50 personnel, augmented in times of crisis, to conduct contingency planning and rapid deployment as authorized by the Security Council."

The study emphasized that a UN rapid reaction capability should be multi-dimensional, involving NGOs and civilian police, as well as humanitarian, human rights, political and legal elements. These components would work closely with a UN "vanguard force" of some 5,000 troops, which would be just large enough to be effective both as an intervention force and as a deterrent.

Earlier in the day, Geoffrey Pearson acknowledged Canada's contribution to the concept of a UN rapid reaction force, but suggested that true rapid reaction will not be possible until the UN has at its disposal a volunteer force, under UN command and not subject to the authority of national governments. The reaction generated by this idea is much the same today as it was when first proposed by then-Secretary-General Trygve Lie in 1950 - that governments are unable to accept the existence of an armed force which is not under their direct control.

The sour mood at the United Nations at the end of the Organization's 50th anniversary may hinder further progress towards rapid reaction, said Wirick. He mentioned three factors in particular which have resulted in diminished expectations within the UN. First, the UN's failure to establish peace in Somalia and Bosnia, as well as its failure to prevent genocide in Rwanda, has led to what one senior official has called "a disillusionment about the entire practice of peace-keeping" within the UN Security Council. This has led to a reluctance to approve new peace-keeping missions, and a rethinking of whether the UN even has any business getting involved in complex internal humanitarian crises.

Secondly, the UN's ongoing financial crisis is crippling the Organization's ability to undertake new initiatives. Overdue assessments are approaching nearly \$3 billion, with the United States as the biggest debtor. And thirdly, the current poisonous atmosphere within the United States towards the United Nations, a prime reason for the large American arrears, is also weakening the UN. This anti-UN mood has become especially antagonistic, said Wirick, since the Republicans gained a majority in both Houses on Congress in 1994, and has acted as a brake on UN action and initiative.

## **ii. Humanitarian Intervention as an Instrument of Human Rights**

Closely related to the development of a UN rapid reaction capability is the evolving role of humanitarian organizations in multilateral crisis intervention. Nancy Gordon, Deputy Director of CARE Canada, assessed the recent record of international humanitarian interventions from a non-governmental perspective in a paper, co-authored by herself and Gregory Wirick.

While non-intervention has long been the norm in international relations, humanitarian intervention, which can be defined as "a military operation whose primary purpose is the relief of human suffering," has become a prominent if controversial element of the post-cold war world. While failed states are hardly a modern phenomenon, the end of the Cold War has allowed a shift in the way the international community addresses these crises. The dangers of superpower confrontation have receded, while the collapse of communism has led to a greater international consensus on what constitutes proper domestic order. At the same time, the protection of individual rights has emerged as an international norm and a driving force behind the push for a more interventionist international community.

Gordon went on to assess the results of the major humanitarian interventions of the past five years. She began with Somalia, a country for which her own organization advocated massive military intervention. "CARE, in a reversal of its usual policy," she noted, "in fact petitioned both the Canadian government and the US State Department, and then the United Nations, to intervene militarily in a large effort. We were the implementing agency for the World Food Programme, and we could simply not deliver food. We couldn't get it out of the port of Mogadishu."

Operation Restore Hope, however, was far from an unqualified success, and Somalia still lacks an effective, functioning government. However, Gordon argued that intervention, for all its problems, was still the correct response, and did achieve its initial goal of unblocking humanitarian relief.

In their paper, Gordon and Wirick argued that the results of intervention in the former Yugoslavia have scarcely been better, the result of an "ambiguous middle course of limited humanitarian intervention." UNPROFOR became the half-way solution devised by the main Western military powers, who felt that something needed to be done in the former Yugoslavia, but were unwilling to use force to stop the war. Indeed, the authors raise the possibility that the intervention may have in fact prolonged the war, by maintaining "a teetering balance of power among the belligerents."

In Rwanda, almost all of the efforts of the international community were thwarted by the failure to intervene early on in the crisis. By the time massive refugee movements prompted a major relief operation in the camps around Rwanda, the international community was left with little to do but offer palliative care and admit impotence in the face of genocide.

Even when the intervention did come, said Gordon, its effects were often perverse. As an example, she referred to the CARE practice of employing locals and using existing social structures in the management of refugee camps. In the polarized atmosphere of the Rwandan refugee camps, this led to a politicization of both the aid organizations and the aid. "What we were doing," said Gordon, "was employing many of the people who had in fact incited the genocide, and were simply transferred what had been going on in Rwanda to the refugee camps ... we found ourselves supporting a government in exile."

Gordon and Wirick argued that all three cases - Rwanda, the former Yugoslavia, and Somalia - show that while humanitarian interventions may complement political efforts to resolve crises, they are no replacement for them. "The fact is that the humanitarian ethos has overreached itself - in good faith, to be sure, but a rigorous process of self-examination is required as a result."

The paper also pointed to a number of key emerging features of humanitarian intervention. The most significant is the increasing acceptance that intervention is a legitimate response to gross and persistent violations of human rights within states. This, in turn, has led to the emergence of non-government organizations as major international players. In many cases, these NGOs have filled power vacuums left by governments unable to control their own territory. The sheer number of NGOs, and the power and resources they wield in places like Rwanda, has led to what one analyst has described as an "anarchy of good intentions." This anarchy is heightened by the fact that NGOs themselves are competitive, and accountable not to the populations they serve but to those national or international agencies contracting them.

Another trend is the "permanent emergency." Echoing Pearson, Gordon noted that the old assumptions that aid organizations can parachute into crises, get things back to normal, and then go home is becoming obsolete. Humanitarian aid is becoming integrated into the dynamics of conflict, creating new moral and ethical dilemmas for aid and relief organizations.

In their paper, Gordon and Wirick argued that these trends are leading to a growing incidence of cases in which sovereignty is shared. How this sovereignty is shared, and whether this is leading to some form of neo-colonialism are questions still awaiting answers. A first step may be a re-affirmation of the values that bind communities and societies together, which may help balance a state's sovereignty against its people's right to security, and provide some guidance to the questions of when, where, and how to intervene.

An equally difficult issue concerns the means available when the criteria for intervention are met. "Ideally, or course," argued Gordon and Wirick, "there should simply be standards and the means would materialize when needed. But in the real world, we know this to be a false hope."

The authors do suggest one area where progress is possible - the creation of an international court to try war crimes. But having just returned from the former Yugoslavia, Gordon said that many people there have little faith in the international community as represented by the United Nations, and don't believe those responsible for the war in the Balkans will ever be brought to justice. This sad commentary is reflective of the failure of the international community to come to grips with the breakdown of old systems of governance and with the "ethnic fascism" that is destroying states from within. This, she concluded, is the real challenge facing the UN.

### **iii. Generic Justice Systems: Models for Rapid Deployment of Justice**

When William Schabas visited Rwanda three years ago, well before the 1994 genocide, he found what he calls today "a feeble excuse for a justice system." Of some 700 judges in the country, only 30 or 40 had any formal legal training. Most were political appointees, presiding over a corrupt system with only a handful of lawyers and few prosecutors.

Since then, the problems have become infinitely more acute. Some 57,000 people currently languish in atrocious conditions in Rwandan jails, awaiting prosecution for genocide, with some 800 people

being added to the list every week. This is a situation with which no legal system is prepared to cope, said Schabas, chair of the Law Department of the University of Quebec at Montreal and a senior policy advisor to the International Centre for Human Rights and Democratic Development. "Our legal system in Canada would collapse if we attempted to deal with 57,000 people charged with genocide."

Post-genocide Rwanda provides the classic example of why re-establishing legal and judicial systems is such an important, and difficult, part of re-building war-torn societies. Although in the case of the Rwandan justice system, said Schabas, "when you talk about re-building, you might be better to just rip it all apart and start fresh, and do something decent."

Two distinct challenges need to be addressed if Rwanda is to cope with its current judicial nightmare, said Schabas. First, the rule of law needs to be established through the creation of a legal system which can deal with the "garden-variety" crimes common to any society. Such a system is also needed to deal with civil cases such as property disputes. The second challenge is represented by the 57,000 people charged with genocide. In order to create an atmosphere for democratic development, especially in the extreme case of Rwanda, it is essential that the job of sorting out those guilty of genocide from the innocent get underway.

Despite the urgency of both of these tasks for the re-building of Rwandan society, Schabas reported virtually no progress on either front in the last 12 months. Part of the problem is the extent to which the physical infrastructure of the Rwandan justice system was destroyed during the war, and the terrible material problems, down to paper and pencils, faced by those trying to rebuild. Equally important, Schabas added, is the intentional foot-dragging by the survivors of the genocide within the Rwandan judicial system, many of whom are Hutus who built their careers under the old system.

As well, Schabas says the new Rwandan government is taking a security approach rather than a judicial approach to those charged with genocide, and for the moment prefers to keep the accused in jail rather than start legal proceedings. And finally, a stand-off between two competing judicial systems has worsened the blockage, with the new Rwandan government, favouring an English-language based common law system, bumping up against the former colonial, French-language legal system inherited from the Belgians.

Schabas offered some suggestions for kick-starting the judicial process in Rwanda. First, he said the country's pre-colonial indigenous justice system may offer some hope. This low-level dispute resolution mechanism may be part of the answer for creating a system to deal with run-of-the-mill crimes, he said, but would probably be inappropriate for major crimes such as genocide.

For these cases, Schabas suggested that "some kind of specialized justice system has to be set up, one that is simple, reduced to its basics in terms of justice, and one that could cope with the kind of volume that's necessary in dealing with 57,000 people." Under such a system, the courts would not be bound by classic and time-consuming rules of evidence and procedure. Rather, new rules would be created, based on fairness and simplicity, which would put Hutus and Tutsis on a level playing field. "I think that you can strip down the legal system to its essentials," he said, "and still respect fundamental human rights." Lawyers and judges should be trained on only those crimes relevant to genocide, such as murder, rape, and pillage, and on such issues as superior orders, duress, and cross-examination. Another key to such a system would be some sort of plea-bargaining mechanism to allow cases to be cleared quickly without court proceedings. Schabas suggested that such a system,



supported by foreign advisors, could get going quickly and could accomplish a great deal in a short period of time.

Underlining all of this, Schabas said people will have to get used to the idea that you can not judge 57,000 people in full-fledged murder trials, and that the guilty may not be judged as harshly as the victims may demand. However, he argued that such a system might be the fairest possible under the circumstances, and added that in Rwanda, some compromises between punishment and reconciliation will be inevitable if the country is ever to move beyond the genocide and get on with democratic development.

A further complicating factor is the existence of the International War Crimes Tribunal. The Arusha-based tribunal is expected to try most of those charged with primary responsibility for the genocide, but will not have recourse to the death penalty. This leaves open the possibility that the key perpetrators of the genocide will be sentenced to life imprisonment by the tribunal, while lesser players found guilty in Rwandan courts could be put to death under the Rwandan justice system.

In his response to Schabas' presentation, Maurice Copithorne of the UBC Faculty of Law set the tension between justice and reconciliation in a broader global and historical context. He mentioned the problems that developed when the UN Human Rights Committee initiated the first genocide investigation, looking into events in Khmer Rouge-dominated Cambodia in the late-1970s. The committee's investigation coincided with a period of political accommodation in Cambodia, when peace negotiations were taking place among the various Cambodian factions, including the Khmer Rouge. Under pressure from the negotiators, who feared a genocide investigation would threaten the peace process, the committee ultimately shelved the initiative.

"Basically," said Copithorne, "we do have this trade-off between those who give priority to justice, and those who give priority to the re-building of the society in a way that they feel precludes an eye for an eye and a tooth for a tooth."

In the area of restoring the credibility of local justice systems, Copithorne noted the role played by UN Civilian Police (CIVPOLs) as part of UN peace missions in places such as Croatia and Haiti. While this sort of ground-level legal support can play an important role in restoring citizens' trust in their police, Copithorne suggested that more effort needs to go into providing civilian police with adequate training in the different legal and cultural environments in which they may be operating.

Finally, Copithorne, who has been recently appointed as the Secretary-General's special representative on the human rights situation in Iran, warned against placing too much faith in so-called "generic justice systems." Systems such as those outlined by Schabas might be exceedingly difficult to implement in Islamic societies, he noted, where notions of justice and civil society do not exist outside of Islam.

#### **iv. Restoring Civil Society: Rethinking Territorial State Models for the 21st Century**

Any discussion of "failed states" and "restoring" judicial and governmental structures carries certain assumptions about what normal or appropriate state of affairs within nation-states should be. David Elkins, Acting Head of UBC's Political Science Department, refers to these as tectonic assumptions, "assumptions that so evade people's notice that they are not even seen as assumptions at all."

In a luncheon address, Elkins attempted to show that major, "tectonic changes" taking place in the world are casting doubt on some of these fundamental assumptions about the state system. "Beyond the failed state syndrome," he said, "some observers have questioned the status or continued health of all states or nation-states, or at least they question the ability of states to adapt to a New World Order."

Elkins argued that just as the state system came into existence through a process of "bundling", where authorities gained exclusive control over territory, a similar process of "unbundling" is at work. Responsibilities and powers that until recently were the prerogatives of nation-states are slowly being yielded to new, non-territorial actors, from international non-governmental organizations such as Greenpeace and *Médecins sans frontières* to economic organizations such as transnational corporations and the World Trade Organization. This process, said Elkins, suggests that states may serve fewer purposes in the future, and may have to share sovereignty with other institutions or authorities.

The implications of this trend towards shared sovereignty are potentially profound, not least for the United Nations, an institution founded as a voluntary assembly of sovereign states. Within states themselves, the unbundling process may erode the notion that territorial location is the most important aspect of individual identity. While shipyard workers in Gdansk, for example, would have traditionally defined themselves as Polish shipyard workers, the erosion of exclusive state power may open up room for other identities to compete for prominence. Particular individuals within that same group may be increasingly inclined to define themselves first as female shipyard workers, or as socialist shipyard workers, implying a broader international network of common interest.

While an optimistic take on this idea suggests that nationalism may recede as a source of conflict in the future, Elkins took the argument even further. He talked of the formation within individuals of "multiple identities" of shared interests, which should lead to "a greater sense of community among groups of people who do not currently share national boundaries." This, he argued, is what globalization is all about - a wider awareness of conditions in other parts of the world which not only heightens people's sense of difference, but which also increases people's awareness of like-minded individuals elsewhere.

This trend will be carried forward by the current explosion in communications technology, said Elkins. He called this the "second Megallanic age", where our world has been circled by electronic means. The unprecedented expansion in the number of messages available to information consumers through such means as the Internet and death-star satellites has allowed us to move away from the notion of "mass media", where everyone receives the same messages, and towards the creation of networks based on focussed interests of voluntary choice. While neighbours may have access to similar messages, the sheer volume of information available will mean that these neighbours may live in entirely different information universes, depending on which channels they choose to watch or to which Internet discussion groups they choose to belong. States will be unable to monopolize or control these opportunities for "virtual" community-building, and these identities and loyalties will further challenge territorial boundaries and national authorities.

One interesting aspect of this phenomenon is what Elkins called the virtual ethnic community. The same process as described above will enable ethnic communities to "consolidate their diaspora", as Elkins put it, by creating links and networks with their core communities. A ethnic Korean community in Toronto, for example, will be able to use the new communications technology to watch the same cultural programmes and receive the same news broadcasts as someone living in Seoul.

Elkins suggested that, by making ethnic communities feel more secure and less isolated, this may also make them less belligerent to those outside their own communities.

Finally, Elkins predicted that the next century will see international migrations on a massive scale. If our new identities become increasingly non-territorial, he asked, will we still be able to justify denying others entry into our own countries? The answer is not necessarily straightforward, as Elkins argued that even as other ascriptive criteria such as race and gender have been discredited as a means of judging people, we still allow ourselves to judge others based on their place of birth. Whether this last barrier will remain in place in the increasingly non-territorial world of the 21st century remains to be seen.

In her response to Elkins' presentation, Noemi Gal-Or attempted to address the role of the United Nations should the future unfold as Elkins described. Gal-Or, who teaches political science at Kwantlen University College, said the real challenge facing the UN today is whether it can pull itself together to adapt and take a leadership role in the current global transformation.

She suggested that the UN has arrived at a crossroads, and that a new approach and a new vision is needed. The current reform movement at the UN, she argued, needs to move beyond structural or procedural tinkering if the Organization is to take a leading role in a future where nation-states no longer prevail as the sole important variable in the international system. Indeed, she suggested that the rigidity of the state system may itself be a major cause of conflict, and may contain within it the seeds of its own destruction.

Specifically, Gal-Or pointed to the United Nations' new role in humanitarian intervention as offering possibilities of unblocking traditional assumptions about how the state system functions. The process of re-building failed states, she said, offers many opportunities for implementing innovative or revolutionary solutions that reflect the evolving nature of the state system. A re-building process that is open to such concepts as shared sovereignty, and that takes into account such new realities as a globalized economy, she suggested, might better prepare such states to survive in the 21st century.

### **III. The Role and the Capacity of the United Nations: A Panel Discussion**

Kicking off the day's final discussion about the role of humanitarian intervention in restoring civil society, Eduardo Vetere tried to place into context the UN's current credibility crisis. Vetere, the Vienna-based Chief of the UN Crime Prevention and Criminal Justice Branch, blamed the current crisis on the fact that while the UN's work in the peace and security field has always been considered an impossible job, it has become even more difficult in the past half-decade. He said the UN's new role as an organization which picks up the pieces in disintegrated states is a thankless one, made even more difficult by the gap between the rhetoric of member states about the importance of this role and the resources allocated to actually do the job on the ground.

Vetere cited the criminal justice component of UN development activities as one area which is chronically underfunded, despite its vital importance. He noted that Rwanda is only the most extreme example, among many others, of a state in dire need of international support to restore its justice system. From drafting new criminal codes and new criminal procedures to re-training virtually the entire legal profession, such activity is essential to restoring popular confidence in the ability of the state to function independently.

Vetere stressed the importance of a multi-faceted and integrated approach to helping states move from conflict to peace to development. He argued that in many cases, the difference between success and failure in UN peace-keeping or peace-building missions is whether a preparatory process, involving issues such as criminal justice and human rights protection, has been undertaken. In missions such as those in El Salvador and Cambodia, where the framework for these components were established before the mission began, the UN enjoyed some measure of success. He also noted the importance of ensuring that all participants in a mission, from the military and civilian components to the local population, shared a clear understanding of the objectives of the mission.

As the paper by Wirick and Gordon pointed out, NGOs themselves are struggling to identify their own roles in these changing circumstances where re-building and prevention is as important as relief. Cam Matheson, Executive Director of the Canadian Red Cross, Pacific Region, underlined this point by noting that the Red Cross has had to re-think its complacency with its role in the world in the wake of failures in Somalia and Rwanda. "I think the time is right," he said, "to talk about how we can actually re-build countries rather than simply patch them."

Arguing that a fundamental shift is needed in the way we view sovereignty, Matheson said that it is perhaps time for organizations like the Red Cross to come together to discuss new terms of reference and new ideas about how to operate. He added that the International Red Cross Movement is particularly well-placed to contribute to the process of re-establishing legal, political, and educational systems in war-torn states, or to strengthening those systems to prevent conflict in the first place.

However, Matheson also pointed to some of the potential difficulties of making a transition from emergency relief to a more interventionist peace-building role. For one, the Red Cross works under the Geneva Conventions, and Matheson said that in times of crisis, it is relatively easy for states parties to ignore the conventions, which lack robust enforcement mechanisms. He added that the Red Cross commitment to neutrality and impartiality could come into conflict with any new mandate that included agitation for social change and justice. Maintaining the trust of states is crucial for such work as visiting prisons, and an organization such as the Red Cross would be reluctant to cast off such hard-earned trust to play a more interventionist or activist role.

Speaking on behalf of Amnesty International, Shannon Colby said that Amnesty's mandate has remained unchanged, but in many cases the changed international environment has made its task more difficult. Amnesty's Coordinator for Pacific Regional Development, Colby noted that the organization's letter-writing campaigns aimed at halting particular human rights abuses have been undermined by governments, such as Canada's, which seem to be putting trade before human rights. She also noted that disappearances and political killings are on the rise, as repressive authorities discover that it is less trouble to dispose of their enemies than to imprison them. In response to this, Amnesty has taken to urging these governments to launch investigations into such disappearances and to bring the perpetrators to justice.

In situations where the international community intervenes to restore order in failed states such as Somalia, Matheson said the basic problem comes down to how to get those with the guns to lay them down. Attempting to impose political solutions through outside force, as the Somalia experience has shown, is a dangerous business, with no guarantee that even if political or judicial institutions can be established, they can survive without ongoing international support. The other obvious solution is equally difficult, said Matheson, as no one has yet figured an easy way of convincing those carrying

the guns and driving the tanks that it is in their best interests to put down their weapons and climb out of their tanks.

\*\*\* \*\*

Daniel Préfontaine, Director of the International Centre for Criminal Law Reform and Criminal Justice Policy, closed the seminar by thanking the participants and speakers for their contributions to a stimulating day of discussions. He also recognized the efforts of Gregory Wirick of the Canadian Committee for the 50th Anniversary of the UN, for his contribution to organizing the conference, as well those of Timothy Donais of the United Nations Association in Canada, who acted as conference rapporteur.

*Ed. note: The full text of both of the papers presented at the conference - The Prospects for a United Nations Rapid Reaction Capability, by Gregory Wirick, and Humanitarian Intervention as an Instrument of Human Rights, by Nancy Gordon and Gregory Wirick, are available. Contact Timothy Donais at the United Nations Association in Canada, Suite 900, 130 Slater Street, Ottawa, ON, K1P 6E2; Tel: (613) 232-5751, ext. 227; fax: (613) 563-2455; e-mail: unac@magi.com.*

**The Canadian Committee for the 50th Anniversary of the United Nations and  
the International Centre for Criminal Law Reform and Criminal Justice  
Policy  
present:**

**STATES WITHOUT LAW  
The Role of Multilateral Intervention to Restore Local Justice Systems  
Seminar: December 9, 1995**

---

**List of Panelists**

Peter Burns, Q.C.  
Professor of Law  
University of British Columbia  
1822 East Mall  
Vancouver, B.C. V6T 1Z1

Acting Head  
Political Science Department  
University of British Columbia  
1866 Main Mall,  
Vancouver, B.C. V6T 1Z1

Shannon Colby  
Coordinator, Pacific Regional Development  
Amnesty International  
1544 Westminister Avenue  
Port Coquitlam, B.C. V3B 1E2

Richard Ericson  
Principal, Green College  
University of British Columbia  
6201 Cecil Green Park Road  
Vancouver, B.C. V6T 1Z1

Martin Collacott  
Former Ambassador to Cambodia  
Centre for Asian Legal Studies  
University of British Columbia  
Faculty of Law  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Noemi Gal-Or  
Political Science Department,  
Kwantlen University College  
c/o International Centre for Criminal Law  
Reform and Criminal Justice Policy  
1822 East Mall, Vancouver, B.C., V6T 1Z1

Maurice Copithorne, Q.C.  
Professor, University of British Columbia  
Faculty of Law  
1822 East Mall  
Vancouver, B.C. V6T 1Z1

Nancy Gordon  
Human Rights Working Group  
Canadian Committee for the 50th Anniversary  
of the United Nations  
Ottawa, Ontario

Lucie Edwards  
Director-General  
Global Issues  
Department of Foreign Affairs and  
International Trade  
125 Sussex Drive  
Ottawa, Ontario K1A 0G2  
David J. Elkins

Edward Lee  
703 Chapman Blvd.  
Ottawa, Ontario K1G 1T5

Cam Matheson  
Executive Director, Pacific Region

Canadian Red Cross  
4750 Oak Street  
Vancouver, B.C. V6H 2N9

Geoffrey Pearson  
199 Daly Avenue  
Ottawa, Ontario  
K1N 6G1

Daniel C. Préfontaine, Q.C.  
Director  
International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Gulzar Samji  
Director  
United Nations Association of Canada  
Vancouver Branch  
5243 Nancy Green Way  
North Vancouver, B.C. V7R 4N2

William Schabas  
Director  
Department of Judicial Sciences  
University of Quebec-Montreal  
Case Postale 8888, Succursale Centre-Ville  
Montreal, Quebec H3C 3P8

### **List of Participants**

Heribert Adam  
Professor  
Sociology and Anthropology  
Simon Fraser University  
Burnaby, B.C. V5A 1S6

Kogila Adam-Moodley  
Associate Professor  
International Relations and Political Science  
University of British Columbia  
Ponderosa Office Annex G23  
Vancouver, B.C. V6T 1Z2

Jennifer Simons  
President

The Simons Foundation  
1400-401 West Georgia Street  
Vancouver, B.C. V6B 5C1

Eduardo Vetere  
Chief, United Nations Crime Prevention and  
Criminal Justice Branch  
Vienna International Centre  
P.O. Box 500, A-1400  
Vienna, AUSTRIA

Carolyn Bishop  
Program Coordinator  
International Centre for Criminal Law Reform  
and Criminal Justice Policy,  
at the University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Joost Blom  
Professor of Law  
Faculty of Law  
University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Christine Boyle  
Professor of Law  
Faculty of Law  
University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Yvon Dandurand  
Visiting Professor  
International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia,  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Tim Donais  
Communications Officer  
United Nations Association of Canada  
Ottawa, Ontario

John L. Evans  
Senior Associate

International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia,  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Gerry A. Ferguson  
Professor of Law  
University of Victoria  
P.O. Box 2400, MS 8150  
Victoria, B.C. V8W 3H7

Zayed Gamiet  
United Nations Association of Canada  
Vancouver Branch  
2973 West 42nd Avenue  
Vancouver, B.C. V6N 3G8

Ian Townsend-Gault  
Associate Professor  
Faculty of Law  
University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Ravi Hira  
Watson Goepel Maledy  
Barristers and Solicitors  
Suite 3023, Three Bentall Centre  
P.O. Box 49096, 595 Burrard Street  
Vancouver, B.C. V7X 1G4

John Hogarth  
Faculty of Law  
University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Robert Jackson  
Professor  
Political Science Department  
University of British Columbia  
1866 Main Mall, Vancouver, B.C.  
V6T 1Z1

Hon. Mr. Justice W. Kelly  
Visiting Associate



International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Kathleen Macdonald  
Manager  
International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Karin Mickleson  
Assistant Professor  
Faculty of Law  
University of British Columbia  
1822 East Mall  
Vancouver, B.C. V6T 1Z1

Kathryn Neilson  
Harper, Grey, Easton  
3100-650 West Georgia  
Vancouver, B.C. V6B 4P7

Wayne Nelles  
United Nations Association of Canada  
Vancouver Branch  
P.O. Box 33739 Station D  
Vancouver, B.C. V6J 4L6

Stephen Owen, Q.C.  
Deputy Attorney General  
Ministry of the Attorney General, Province of  
B.C.  
5th Floor, Harbour Square  
910 Government St.  
Victoria, B.C. V8V 1X4

Nicole Parton  
Vancouver Sun  
2250 Granville Street  
Vancouver, B.C. V6H 3G2

Richard Noyes Roberts  
Former Foreign Service Officer

Vancouver, B.C.

Mr. Craig Short  
President  
Canadian Institute International Affairs  
702-1330 Hornby Street  
Vancouver, B.C. V6Z 1W5

Miwa Stewart  
Administrative Assistant  
International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia  
1822 East Mall, Vancouver, B.C.  
V6T 1Z1

Carla Terzariol  
Trial Lawyers Association of B.C.  
Vancouver, B.C.

Vincent Yang  
Associate  
International Centre for Criminal Law Reform  
and Criminal Justice Policy  
at the University of British Columbia  
1822 East Mall, Vancouver, B.C.,  
V6T 1Z1