"FIAT PANIS" – LET THERE BE BREAD
(BUT WHO WILL PAY FOR IT?)
UNITED STATES AND UNITED KINGDOM LAW, POLICIES,
AND CONDUCT OF HUMANITARIAN AND CIVIC ASSISTANCE
(HCA) MISSIONS SINCE THE 1990s

by Kevin H. Govern

I. Introduction

Humanitarian aid is noble when coupled with political action and justice. Without them, it is doomed to failure ... and becomes little more than a plaything of international politics, a conscience-salving gimmick.

The cataclysmic events of the past decade have included numerous man-made and natural disasters, regional wars, and other humanitarian crises precipitating single and multi-state foreign interventions and “military operations other than war.” For this reason, legal scholars, practitioners, and those generally in the humanitarian assistance field, should have a firm understanding of humanitarian assistance as an evolving concept. This is a brief primer on the legal aspects of military-based, international humanitarian and civic assistance, with an emphasis on U.K. and U.S. authorities and limitations.

HCA, as a concept, must be understood within domestic and foreign policy, as well as military and non-governmental organizational contexts. These missions, aiding peoples and nations, are planned and unplanned consequences of other missions, policies, and initiatives. Numerous military missions from the past show how unplanned HCA missions arise through “mission evolution and “mission creep.”

Current U.K (Parliamentary and Cabinet) and U.S. (Executive and Congressional) concerns for future military operations impact on HCA-related policies and laws. Military (and other governmental and nongovernmental organizational) doctrine and plans need to create consistent, clear, and coordinated guidelines reflecting HCA missions competing with other politico-military objectives, done with less money, and fewer assets than in the past. Based on those changing policies and realities, this paper will close with six conclusions about when and how HCA missions should be conducted.
II. Historical Context of HCA

A. From Multiple Definitions, One Concept?

Acts, statutes, foreign policy initiatives, as well as military and civilian doctrine all prescribe HCA-related missions. Understanding what HCA is also requires understanding some complex legal, doctrinal, and political concepts (and their accompanying acronyms).5

1) U.K. Authority

In the U.K., the term “HCA” is not used in the law; instead, “Humanitarian Assistance” includes disaster relief, food aid, refugee relief and disaster preparedness. It generally involves the provision of material aid (including food, medical care and personnel) and finance and advice to save and preserve lives during emergency situations and in the immediate post-emergency rehabilitation phase; and to cope with short and longer term population displacements arising out of emergencies.6

The International Development Act,7 which came into force on 17 June 2002, is the central piece of legislation governing when the U.K. can give development or humanitarian assistance, what forms it can be given in, and on what terms. The Act replaced and repealed the outdated Overseas Development and Co-operation Act (1980). It reflects in law for the first time the Secretary of State for International Development’s Department for International Development (DFID) keystone concept to eliminate poverty and ensure that future (U.K.) governments will not be able to use development assistance for other purposes.8 Other prohibitions include the policy of “tying” aid to procurement contracts for U.K. companies. The U.K. will now be one of the only countries in the world where this practice is unlawful.

The Act also clarifies the purposes for which assistance can be given to U.K. Overseas Territories, gives clearer legal authority than before for DFID’s development awareness work, and increases the forms of financial assistance available.

The 2002 Act increases the number of ways in which development assistance can be provided (subject to the assistance being provided for the purpose of furthering sustainable development or promoting welfare and likely to contribute to the reduction of poverty):

- It enables the Secretary of State to provide not only grants or loans but also to give guarantees and purchase equities (or other company securities) (Section 6 of the 2002 Act).9 Specific guidance on the use of these new instruments and their use will issue shortly.
- It gives explicit power to support development awareness work (section 4(2) (c)).10
The 2002 Act gives the authority to spend money through a number of different “powers”. The most significant is the provision of development assistance which contributes to poverty reduction (the so-called “core” power).\textsuperscript{11} The Act also enables the provision of development assistance to the U.K. Overseas Territories, the provision of humanitarian assistance abroad, and contributions to Multilateral Development Banks.\textsuperscript{12} Supplementary powers are provided to assist in achieving the purposes of the Act. These include a power to support organizations or funds that contribute to international development. A specific power has been given to enable the Secretary of State to provide assistance in time of disaster (Section 3 of the 2002 Act). The power is limited to assistance for the purpose of alleviating the effects of disasters, man-made or natural, or other emergencies, on the people of the country or territory concerned. This power is not subject to the requirement that it be given for the purpose of furthering sustainable development or promoting welfare, nor that it contribute to the reduction of poverty. Longer term assistance would have to be justified under the core power.

2) U.S. Statutory Authority

The statutory starting point for U.S. HCA definitions is 10 United States Code (U.S.C.) §401, Humanitarian and Civic Assistance Provided in Conjunction with Military Operations.\textsuperscript{13} Under §401(a)(2)(e), HCA means:

1. Medical, dental, and veterinary care provided in rural areas of a country,
2. Construction of rudimentary surface transportation systems,
3. Well drilling and construction of basic sanitation facilities, and

Section 402 deals with transportation of non-governmental sourced humanitarian relief supplies to foreign countries.\textsuperscript{14} Acquisition and Cross Servicing Agreements (ACSAs) with North Atlantic Treaty Organization (NATO) and non-NATO nations also fill servicing and supply requirements for and between military forces during humanitarian relief and other operations.\textsuperscript{15}

The U.S. Congress’ Fiscal Year (FY) 1995 defense appropriation added yet another acronym to the HCA-related lexicon; “Overseas Humanitarian, Disaster and Civic Aid Programs.”\textsuperscript{16} Congress created OHDACA as one discrete, unified Operations and Maintenance (O&M)\textsuperscript{17} funding authorization, so all Humanitarian Assistance (HA) and HCA falls under one statutory basis.\textsuperscript{18} This term includes foreign disaster assistance under §404, amongst other HA and HCA-related Title 10 U.S.C. sections. The new §404, Foreign Disaster Assistance, says the President may “direct the Secretary of Defense to provide disaster assistance outside the United States to respond to man-made or natural disasters when necessary to prevent loss of life.”\textsuperscript{19}

Under 10 U.S.C. §166a, Congress gave Combatant Commanders\textsuperscript{20} special “Commander in Chief Initiative Funds” which are also available for HCA.\textsuperscript{21} Combatant Commands must prioritize spending and follow fiscal limitations when using those
funds. Desired HCA plan changes are possible through the mid-year status report, even after basic HCA plan approval.22

2) Department of Defense Directive 2205.224

This Directive stems from a 1993 Government Accounting Office (GAO) report on HCA programs, particularly within joint (multi-service) commands. The directive uses the 10 U.S.C. §401(c)(2) for minimal expenditures on incidental costs. Unified Combatant Commanders make the decision on "minimal expenditures,"25 but the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD SO/LIC) has oversight authority for Department of Defense (DoD) HCA programs.

3) Joint Chiefs of Staff Joint Publication 3-0, Doctrine for Joint Operations27

Figure 1 - U.S. Combatant Commanders' Areas of Responsibility

Figure 2 - War and Military Operations Other than War 1990 - 1999
The search for HCA doctrinal definitions includes yet another acronym: MOOTW, or Military Operations Other Than War. The Joint Chiefs of Staff consider MOOTW those operations "where the military instrument of national power is used for purposes other than the large scale combat operations usually associated with war." Examples of MOOTW are: arms control, combating terrorism, DoD support to counterdrug operations, nation assistance, noncombatant evacuation operations (NEO), and support to insurgencies.

<table>
<thead>
<tr>
<th>MOOTW Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Arms control</td>
<td>Nation assistance/support to counterinsurgency</td>
</tr>
<tr>
<td>Combatting terrorism</td>
<td>NEO</td>
</tr>
<tr>
<td>Counterdrug operations</td>
<td>Peace operations</td>
</tr>
<tr>
<td>Sanctions enforcement</td>
<td>Protection of shipping</td>
</tr>
<tr>
<td>Enforcing exclusion zones</td>
<td>Recovery operations</td>
</tr>
<tr>
<td>Ensuring freedom of navigation</td>
<td>Show of force operations</td>
</tr>
<tr>
<td>Humanitarian assistance</td>
<td>Strikes and raids</td>
</tr>
<tr>
<td>Military support to civilian authorities</td>
<td>Support to insurgency</td>
</tr>
</tbody>
</table>

Figure 3 - MOOTW Categories

The "other civil support operations" include "worldwide humanitarian assistance, military support to civil authorities, and military assistance for civil disturbances." Joint Pub 3-0's "peace operations" include these three general areas. Those areas are diplomatic (or peacemaking), traditional peacekeeping (noncombat military operations) and forceful military actions (or peace enforcement).

Such peace operations may be combined operations (conducted with other nations), or conducted with nonmilitary aid organizations such as non-governmental (NGO) and private volunteer organizations (PVOs).

Other written doctrine makes "post conflict peace building" a concept that implies potential HCA missions. The UN defines post-conflict peace building as "restoring civil authority, rebuilding civil infrastructures, and reestablishing commerce, schools, and medical facilities." The UN further defines peace-building as "action[s] to identify and rebuild support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict.

4) FM 41-10, Civil Affairs Operations

This reference defines HCA as a subset of the larger HA operations category. Those HA missions include:

[Programs to lessen the impact of natural or man-made disasters or other conditions. These programs help reduce human pain, disease, suffering, hunger, and hardship that might present a threat to life, damage to, or loss of property.]
Per FM 41-10, HCA projects must promote the security interests of both the United States and foreign countries involved.\(^{40}\)

B. Show Me the Money: Limitations on HCA Funding

1) A Short “Primer” On HCA Fiscal Limits.

The preceding section shows that there is not one current definition for HCA, but law and doctrine can prescribe and proscribe certain missions. Law and doctrine, however, accomplish nothing without present and future ability to carry them out. Fiscal limits are the single largest HCA limiter.\(^{41}\) The U.S.’ Anti-Deficiency Act (ADA), 31 U.S.C. §1341 and §1514(a), is the enforcement mechanism for these controls.\(^{42}\)

There are four types of appropriated funds available for HCA. Those are O&M funds, Military Construction (MILCON), Foreign Assistance (or Security Assistance) and Foreign Disaster Assistance. Procurement and other appropriations have tenuous connection to HCA. The O&M funds normally are the right funds for HCA. The military uses O&M funds for day-to-day expenses while in garrison, during deployment for training, and on military operations. O&M funds are the primary funding source supporting contingency operations. Each Annual Appropriations Act sets the amount of O&M available and sets spending controls (e.g., OHDACA).\(^{43}\)


The NDAA for each FY makes money available to the military. Each NDAA authorizes appropriations for military activities, military construction, prescribes certain Department of Energy (DoE) activities and the Armed Forces’ personnel strengths, amongst other things, for that FY.\(^{44}\) For FY 95, the DoD had $69,417,768,000 appropriated for Active Component (non-Reserves) O&M. The DoD wide OHDACA for FY 95 was $86,000,000 of that larger O&M amount.\(^{45}\) For 2003, the figures for DoD-wide OHDACA declined to $58,400,000.\(^{46}\)

The FY 95 NDAA had three sections which, for the first time, affected every segment of HA and HCA. It also created a new U.S. Code section on HA.\(^{47}\) Section 1411 also mandates monetary limits.\(^{48}\) Section 1412, Foreign Disaster Assistance, allows disaster assistance for man-made or natural disasters “when necessary to prevent loss of lives.”\(^{49}\) Section 1413, Humanitarian Assistance Program for Clearing Landmines, set a $20,000,000 OHDACA-allotted O&M ceiling, for landmine detection and clearance.\(^{50}\) Such assistance can include instruction, education, training, and advice, but not U.S. forces’ effort clearing landmines.\(^{51}\) For FY 04, the President’s budget requested $59,000,000 for the OHDACA appropriation, to finance humanitarian mine action ($10,000,000), humanitarian assistance, and foreign disaster relief and emergency response programs.\(^{52}\) For the U.K., the IDA remains the limiter on HA/HCA funding.

3) Other Statute-Based Fiscal Limits on HCA

The Foreign Assistance Act (FAA) of 1961, as implemented through Parts I (foreign assistance to developing nations) and II (military of security assistance) can also be a
factor in foreign HCA through disaster relief, developmental assistance, equipment “drawdown,” and other foreign assistance.\textsuperscript{53} As noted above, annual appropriations and proposed legislation, like the National Security Revitalization Act\textsuperscript{54} may expand, restrict or eliminate such HCA-related missions through fiscal constraints.

C. Brief Chronology of HCA Missions Since 1991

By the mid-90’s, the International Committee of the Red Cross (ICRC)\textsuperscript{56} judged that the human costs of conflicts and disasters of one sort or another were overwhelming the world’s ability to respond. There were 56 conflicts in progress at that time, with dozens more since that time, but most of such conflicts have the commonality of a move away from both territorial disputes between states and wars of de-colonization, to what some now call “Wars of Identity.”\textsuperscript{57}

Andrew S. Natsios, the current Director of the U.S. Agency for International Development (USAID),\textsuperscript{58} has observed that in each successful humanitarian operation, there are two primary objectives: “a declining death rate from disease and starvation, and the longer term objective is restoration of civil order.”\textsuperscript{59} He also added that measures of effectiveness (MOE) for HCA mission accomplishment should be: appropriate, mission-related, measurable, reasonable in number, sensitive to change, and useful.\textsuperscript{60}

The following highlighted operations involved extensive U.S. /U.K. or coalitional military HA efforts that included HCA as implied or stated missions:

<table>
<thead>
<tr>
<th>Mission</th>
<th>Location</th>
<th>Dates</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROMOTE LIBERTY</td>
<td>Panama</td>
<td>1989-90</td>
<td>U.S. Post-invasion HCA as well as population and resource control (PRC), foreign nation support (FNS), and support to civil administration (SCA)</td>
</tr>
<tr>
<td>DESERT SHIELD/STORM</td>
<td>Iraq and Kuwait</td>
<td>1990</td>
<td>U.S. and U.K./coalitional HCA, PRC, FNS, military civic action (MCA) and SCA</td>
</tr>
<tr>
<td>PROVIDE COMFORT</td>
<td>S. Turkey, N. Iraq</td>
<td>1991-95</td>
<td>US and U.K./coalitional HCA, PRC, FNS, military civic action (MCA) and SCA.</td>
</tr>
<tr>
<td>TASK FORCE FREEDOM</td>
<td>Kuwait</td>
<td>1991</td>
<td>U.S. and coalitional HCA, MCA, and FNS</td>
</tr>
<tr>
<td>SEA ANGEL</td>
<td>Bangladesh</td>
<td>1991</td>
<td>U.S.-led HCA\textsuperscript{62}</td>
</tr>
<tr>
<td>RESTORE HOPE / CONTINUE HOPE / UNITED SHIELD</td>
<td>Somalia</td>
<td>1992 – 95</td>
<td>U.S. and coalitional HA, PRC\textsuperscript{63}</td>
</tr>
<tr>
<td>-------------------------------</td>
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<td>--------------------------------------------------------------</td>
</tr>
<tr>
<td>RESTORE DEMOCRACY</td>
<td>Haiti</td>
<td>1994 - 2000</td>
<td>HCA missions evolved from other doctrinal operations.</td>
</tr>
<tr>
<td>JOINT ENDEAVOR</td>
<td>Bosnia-Herzegovina</td>
<td>1995 -</td>
<td>HCA, in addition to PRC, FNS, emergency services, and SCA.</td>
</tr>
<tr>
<td>[VARIOUS]</td>
<td>Sierra Leone</td>
<td>2000.</td>
<td>U.K.-led HCA (Spearhead Battalion Group)</td>
</tr>
<tr>
<td>ENDURING FREEDOM</td>
<td>Afghanistan</td>
<td>2001 -</td>
<td>Coalitional HCA missions evolved from other doctrinal operations.</td>
</tr>
</tbody>
</table>

Figure 5 – HCA Missions

III. The Way Ahead for HCA

A. U.S. and U.K. Policies

One Clinton Administration document set the course for past and present U.S. national security outlook regarding HCA: Presidential Decision Directive 56 (PDD 56). On 20 May 1997, President Clinton signed Presidential Decision Directive 56 (PDD-56) “The Clinton Administration's Policy on Managing Complex Contingency Operations.” This PDD was written to improve the political, military, humanitarian, economic, and other dimensions of the U.S. government’s planning for interventions that are identified as complex emergencies. The intent of PDD-56 is to define a specific U.S. national governmental policy planning process – one related to managing complex emergencies – to achieve unity of effort within and among the responsible U.S. federal agencies. The directive sought to reduce delays and eliminate redundancy that had marked responses to some earlier emergencies; it also is intended to help agencies avoid overextending their capabilities. It follows that close coordination and cooperation among those charged with crisis intervention also diminish the risk of incorrect or inappropriate use of resources. The intent of the directive is that the U.S. government would respond to a complex emergency as a member of a coalition while retaining the option to act alone if required. The strengths and weaknesses of a military response to these kinds of crises are recognized, as is the cost of an open-ended commitment of military forces to resolve the conflict. Operations that fall within the purview of PDD-56 range from peace accord implementation, such as the operation that has continued since 1995 in Bosnia (Joint Endeavor/Joint Forge), humanitarian interventions similar to Operation Provide Comfort in Northern Iraq in 1992-93, to humanitarian relief such as Operation Support Hope in Rwanda in 1994. The interagency community (ironically, only U.S. government agencies) have developed this significant new crisis management tool to develop policy to deal with complex emergencies.

During the 1990s a number of crises produced large displacements of civilian populations, both internally and beyond their national borders, on a scale that transcended the ability of civilian humanitarian relief organizations to respond effectively. While much of this turmoil occurred in Africa, more recent events in the Balkans have been marked by comparable savagery. Disruption of commerce, agriculture, and industry, loss of control by central governments, and predatory interventions by neighboring states or native rogue elements have all contributed to daily death tolls in the thousands and refugees in the hundreds of thousands.
Traditional relief mechanisms and the government, business, and volunteer organizations that for years had been adequate to meet the need for relief have been greatly challenged when dealing with crises involving an entire nation. Challenges of this magnitude gradually came to be described as complex emergencies.

While the terms "complex emergencies" and PDD-56's "complex contingency operations" sound similar, some distinctions between the two are worth noting. The common understanding of a "complex emergency" is derived from the UN Office for the Coordination of Humanitarian Affairs, which uses the term to define a humanitarian crisis in a country or region in which there is a total collapse of authority from internal or external conflicts and which requires an international response that goes beyond the mandate or capacity of any single agency. Such crises can include humanitarian considerations, rehabilitation of political institutions, and economic reconstruction. The expression "complex contingency operations," in U.S. parlance, refers to "crises, including some resulting from natural disasters, [that] require multi-dimensional responses composed of several components such as political, diplomatic, intelligence, humanitarian, economic, and security: hence the term ‘complex contingency operations.’"

Before the appearance of PDD-56, the lack of meaningful coordinated planning produced serious setbacks whenever Washington attempted to manage complex emergencies. Perhaps the most compelling case for reforming the U.S. government's policy planning processes is found in our experiences in Somalia involving the U.S.-led Unified Task Force (UNITAF) and forces deployed under the United Nations Operations in Somalia (UNOSOM II) between late 1992 and early 1995. Vague or unclear strategic interests, objectives, and responsibilities during the transfer of policy oversight from UNITAF to UNOSOM II contributed to the ensuing calamity and eventual failure and withdrawal of UNOSOM II. While a planning and management procedure involving the entire U.S. policy community might have improved the prospects for success in that ill-fated intervention, the U.S. experience in Somalia at least challenged the Washington interagency community to examine and correct its policymaking processes and procedures.

Will there be a consistent HA or HCA policies in the years ahead? Much depends upon the stability and continuity of U.S. and U.K. governments; change in parties may well bring change in policy. Operation IRAQI FREEDOM, for some, directly contradicts the above-stated policies. The U.S. Executive Branch recognizes that the military will do HCA and other missions with less OHDACA funding, as troops are still deployed to Afghanistan, Bosnia, Iraq, and on countless other training and contingency missions elsewhere. In this context, military forces will be stretched even thinner for future HCA missions, and funding will be a constant source of concern.

B. Congressional and Parliamentary Controls

Congress has often criticized HCA funding and accounting measures. In April 1994, the Oversight and Investigation Committee, House Armed Services Committee (HASC) opened investigations into changing HCA, with the result being greater congressional oversight. This paper cannot examine Congress' classified Future
Year Defense Program (FYDP) covering 2000-2004 funding, but the Congressional Budget Office (CBO) analysis for unclassified plan and budget has identified the absence of “firewalls” between defense and other types of discretionary spending. The CBO recommended that the Administration and Congress consider relative priorities amongst programs.\(^76\)

Congress wants strict Executive accountability for UN and other coalitional based mission abroad. Given OHDACA, most HA-related missions will draw on one pool of money, but the delineation of HA from other missions will continue to blur. Congress will continue to scrutinize HCA cost-to-benefit results worldwide, but will not ignore expenditures in Central and South America, the Caribbean and Africa as the world’s attention has been on Afghanistan and Iraq reconstruction efforts.

Section IIA (1) and the discussion of the IDA above has discussed some fiscal limitations on U.K. HA/HCA. In 1999, the U.K.’s DFID set out principles of a New Humanitarianism, lauded by Parliament, which consist of the following:

- We will seek always to uphold international humanitarian and human rights and laws and conventions;
- We will seek to promote a more universal approach in addressing humanitarian needs whenever they arise. People in need - wherever they are - should have equal status and rights to assistance;
- Our humanitarian policy will seek to work with other efforts aimed at tackling the underlying causes of a crisis and building peace and stability;
- We will seek to work with other committed members of the international community, and in particular seek collaboration across the North/South divide to secure better international systems and mechanisms for timely joint humanitarian action;
- We will agree ‘ground rules’ that prevent diversion of humanitarian goods and collusion with unconstitutional armed groups;
- We will be impartial: our help will seek to relieve the suffering of non-combatants without discrimination on political or other grounds with priority given to the most urgent cases of distress;
- We will seek the best possible assessment of needs, and a clear framework of standards and accountability from those who work to deliver assistance;
- We will encourage the participation of people and communities, and build capacity to reduce vulnerability to future crises; we recognise that humanitarian intervention in conflict situations often poses genuine moral dilemmas. We will base our decisions on explicit analyses of the choices open to us and the ethical considerations involved and communicate our conclusions openly to those with whom we work.\(^77\)

In response to the House of Commons’ recommendations in its 2002 report, the DFID simplified its responsiveness to Parliament. For instance, in its reports, tables of resource allocation for 2002-03, now show information on resources allocated by objective. Although DFID’s reporting was noted as “improved from previous years,” the House of Commons is still concerned about financial reporting remaining
“confusing and do not offer a sound basis for readers to track financial developments … [i]n particular, it was only after additional questioning of the Department that [the House of Commons] learnt more about the basis for the figures and cleared up significant confusion with reference to expenditure figures for specific countries.”

C. Joint and Combined Military Doctrine to Conduct HCA Missions

During the military’s journey from the industrial age to the informational age, “operations other than war” have taken on new significance. Humanitarian operations, loaded with political issues, present special challenges for commanders and planners. They must continually remind themselves that the military does not make policy; it provides options and executes missions. Still, in the U.S., combatant commanders each year “pitch” to Congress the value their HCA missions hold. What should commanders and staff consider when planning future HCA operations? Developing U.K. doctrine is filling in the gaps on how to conduct HCA missions; current and evolving U.S. doctrine will focus on requirements for future challenges.

Without repeating Section II of this paper, the U.S. Joint Pub 3-0, Doctrine for Joint Operations, is the keystone document of the joint operations series. Nevertheless, it offers scant reference to HA missions as part of “other civil support operations,” and is not the prime resource for HCA accomplishment, even if it is a good reference for joint operations overall.

U.S. Army Field Manual 3-0 [formerly 100-5], Operations, is another starting point for understanding humanitarian operations doctrine. It offers more doctrinal/philosophical guidance than Joint Pub 3-0, and another set of hybrid definitions which incorporate HCA. Chapters 9 and 10, FM 3-0, talks about foreign humanitarian assistance and “HCA,” but with scant coverage beyond repetition of the 10 U.S.C. §401 criteria.

U.S. Army Field Manual 3-07 (formerly 100-20), Stability and Support Operations, is an excellent resource for an overview on command, control, and liaison involved in peace operations, devoting a substantial portion of Chapter 5 to discussing how HCA activities assist the host nation populace with U.S. military operations, as well as how HCA programs improve the readiness of U.S. forces deployed in theater while residually benefiting the local populace.

U.S. Army Field Manual 100-23-2, HA Multi-Service Procedures for Humanitarian Assistance Operations, is still a solid, albeit dated source for HCA operational doctrine. It describes how, at the strategic, operational, and tactical levels, units coordinate with each other and with governmental and nongovernmental organizations. It is also a “single source reference” for UN humanitarian organizations, other NCO and PVO groups, checklists and procedures, and an extensive HA legal section. It also contains two extensive sections on joint task force HA operations and lessons learned from HA operations, so that service members performing future humanitarian missions can better understand what HA is and why they are doing HA missions.

How will U.S., U.K., and coalitional forces accomplish HCA missions in the next five years and beyond? Units will be called upon to do HCA as “implied” missions, and
may have to stretch assets to cover essential, “specified” missions. Extensive force deployment, overall force drawdown, and slowed modernization/new systems acquisition will be countered, in part, with better knowledge (and ample funding) about how to do HCA. Commanders and troops have many “lessons learned” from recent combat and noncombat missions which have included HCA; those “lessons learned” are finding their way into doctrine. Continued peace operations training at the U.S. National Training Center (NTC), Ft. Irwin, CA, and the Combat Maneuver Training Center (CMTC) in Hohenfels, Germany, and during joint and combined training exercises will keep troops ready for those operations yet to come.

D. The Role of the UN and Other International Organizations in HCA

There are three primary humanitarian forces: the UN (whose “face” in world opinion is the renowned Secretary General Kofi Annan); governmental agencies, and; other international organizations to include non-governmental organizations (NGOs). The UN, various other governmental organizations, and NGOs will not contribute direct monetary support to U.S. or U.K. HCA missions; however, they may be funding recipients or partnered with military forces through international policy, planning, or simply the circumstances of necessity.  

The UN itself created a number of supra-national organizations, including, but not limited to, the United Nations High Commissioner for Refugees (UNHCR), world food program (WFP), and the United Nations Children’s Fund (UNICEF). The UN Charter mentions the term NGO in Article 71; when the Charter was written, though, such organizations were, relatively few and far between and not the major players they are today. International/governmental aid agencies can be “multilateral”, like the UN or the World Bank, or “bilateral” like the U.S. Agency for International Development (USAID) or DFID. Funded by taxpayers to the tune of billions of pounds per year, these agencies are major HA/HCA players worldwide.

Non-Governmental Organizations (NGOs) play a vital role in humanitarian relief efforts. NGOs tend to be specialists in one field, or to direct their attention to a particular beneficiary population. They offer skilled staff, a rapid deployment capacity, operational flexibility and resources that might not otherwise be available in a complex emergency. As such, they are natural partners for UNHCR and other humanitarian organizations. The UNHCR and NGOs undertake cooperative operations in all aspects of UNHCR’s humanitarian work, including (but not limited to) protection, emergency relief, longer-term assistance, voluntary repatriation, special needs of refugee women and children, technical sectors (health, shelter, food aid, education) and fundraising.

The International Committee for the Red Cross was born in 1863 out of the Battle of Solferino. The Save the Children Fund (SCF) in 1919 out of the First World War, while OXFAM and the U.S. Committee for Aid and Relief Everywhere (CARE) out of the Second World War in 1942 and 1945 respectively. Hugo Slim has pointed out that, to a large degree, “militarism and humanitarianism have represented two sides of the same coin – humankind’s inability to manage conflict peacefully.” NGOs exist primarily, if not solely, to provide relief from suffering and, in today’s world, to try to bring about sustainable development, addressing the failures of governments and
society as a whole. Slim defines them as “a wide range of primarily non-profit organizations motivated by humanitarian and religious values, and that are usually independent of government, UN and commercial sectors”.

Ranging in size from large international and trans-national organizations like OXFAM, to very small local groups who send small donations of clothes or farm animals to a wanting village, NGOs have grown dramatically in size and operational scope over the last 30 years. Worldwide there are now over 1,500 international NGOs registered as “observers” with the UN. Nonetheless, of the hundreds in existence there remains a first order of NGOs through which perhaps 75% of all emergency aid flows.

The most effective NGOs have principled, knowledgeable, committed and diverse organizations. Nevertheless, like any organization, they are dependent upon several key factors. They require sufficient resources, generally private donations as well as governmental grants and collections. Their organizational hierarchy, from top to bottom, must remain “mission focused,” and not lose sight of the reason why they are constituted and funded. They must effectively deal with “the competition,” as well, minimizing rivalry with other NGOs, and working towards a symbiosis with, rather than competition against, military forces providing HCA. Finally, NGOs must cope with tangible “hostile forces,” to include armed threats to security, disease, adverse terrain and weather, and limited time in which to accomplish missions. NGOs are a powerful force in the world, in many cases providing the dynamics for positive change where despair and hopelessness might otherwise reign supreme. The revolution in communications technology, in networking and collaboration, and successful fundraising appeals, has strengthened NGOs further, especially in the last 10 years.

Some countries pursue humanitarian activities overseas through Government-created agencies. Examples of these are the British Overseas Development Administration (ODA), the Canadian International Development Agency (CIDA), the Swedish Rescue Board (SRB), or the Swiss Disaster Relief (SDR) (akin to the United States Office for Foreign Disaster Assistance (OFDA)). Other countries offer assistance in times of emergencies through their Ministries of Foreign Affairs, according to their own priorities. Most of this kind of assistance will be offered on an ad hoc basis, as few Governments have established agencies of the kind described above with standing mandates for foreign humanitarian emergency assistance. These Governmental Organizations operate with, and sometimes in lieu of, a wide range of governmental and international aid and relief agencies.

The key to joint (single nation, multi-military services), combined (multi-national military services) and interagency (military and non-military) cooperation in HCA is to understand and accept the differences, bring together the positive strengths and focus them on overcoming the crisis, be that man made or natural. Both the U.S. and the U.K. military have much to offer in this area. Greater interagency cooperation will be necessary in the future, especially in the areas of education, training and doctrine, capturing the essence of how military and civilian forces will provide HCA. This remains difficult, if not impossible, for preparations for real-world planning and operations where the nature of future operations should remain classified and where NGOs and PVOs lack personnel with the appropriate security clearances to collaborate. The U.S.’ DoD and DoS, and the U.K.’s DFID, the Foreign Commonwealth Office (FCO), and the MOD should, together, develop coordinated
doctrine to better orchestrate and execute more effective action. Real-world operations such as Operation Joint Endeavor/Joint Forge in the Former Yugoslavia have built effective multinational divisional and brigade-level peacekeeping and peace-enforcement units that, in stated and implied missions, have also performed HCA. Still, work can and should be done to codify in future operational plans and doctrine joint, combined, and interagency HCA. If not otherwise done under international alliance groups (e.g., NATO), then training centers can work towards the concept of a divisional level “Support Command,” and develop an integrated training and exchange programs.\textsuperscript{103} Through understanding and patient leadership, strong relationships can and should be developed; working together, the two sides of the humanitarian coin have the potential to be a very strong and effective team.\textsuperscript{104}

The U.S. Government does not want to make combined U.S.-UN operations impossible; its objectives are to make [UN operations] successful by recognizing current limitations, by enhancing future capabilities, by demonstrating patience and persistence, and by imposing discipline even when discipline is hardest to maintain.\textsuperscript{105} As Sergio Viera de Mello, former UN undersecretary –general for humanitarian affairs once remarked, what is needed with respect to UN operations is constructive criticism, not nihilism with respect to humanitarian affairs.\textsuperscript{106} In spite of these sentiments, the U.S. and U.K. led actions in Afghanistan and Iraq without UN-based coalitional operations may well have fostered a certain multilateral distrust between the Anglo-American alliance and the UN, and some UN apprehensiveness over the extent to which, if at all, it will be consulted and involved where the U.S. or U.K. send forth a military presence for HCA or other mission abroad. While the U.K. acted decisively to support NATO action in Kosovo, the Prime Minister Tony Blair did not find similar moral imperative to intervene militarily or with humanitarian efforts in Sudan or Sri Lanka; in practice post-Kosovo deployments have been undertaken sparingly.\textsuperscript{107}

Various NGOs and PVOs also recognize growing U.S. and U.K. reluctance to commit to consistently to humanitarian efforts abroad,\textsuperscript{108} and their own growing responsibility to protect themselves from threats of force or harm.\textsuperscript{109} They also appreciate that nationally-funded military operations do not transfer funds to NGOs and PVOs directly, while the latter organizations may nonetheless be partners in, or beneficiaries of, transport, planning, humanitarian materiel distribution, and security under optimal conditions. Not only do these organizations do battle with an ever-expanding list of humanitarian crises, they row are battling popular misconceptions, indifference, and political hostility. Because of those challenges, NGOs and PVOs may well re-think their own roles in humanitarian efforts throughout the world.

IV. Some Conclusions

Future HCA missions will continue in places like Southwest Asia, Central and South America, Africa, Asia, Central Europe, and the Former Soviet Republics during peacetime, war, and various natural and man-made contingencies in between. I will close by suggesting some guiding principles for why and how U.S. and coalitional forces should accomplish HCA, instead of dubious predictions of when and where HCA will take place. These guiding principles further amplify those set forth by Andrew Natsios, the current director of the U.S. Agency for International Development, who, in turn, had adapted Caspar Weinberger’s use of force criteria.\textsuperscript{110} Natsios’
quotations follow, with my **bold, italicized typeset** comments that adapt Natsios’ observations to HCA contingencies and realities.

1) The U.S. military mission must be clearly defined and reasonably achievable.\textsuperscript{111} *U.S. and coalitional doctrine should, as often as possible, use the same terms, account for the same present and future capabilities, and strive towards the same end-states.*

2) Although military intervention should not be the first resort, the earlier it is invoked, the better. Timing is critical.\textsuperscript{112} *U.S. and coalitional forces, government agencies, NGOs and PVOs should communicate and cooperate with each other. Information used well and early is power.*

3) Military intervention must reduce overall death rates from violence and starvation, not increase them.\textsuperscript{113} *U.S. and coalitional forces should make safe and effective HCA contributions. They should not “show force” without good cause, or unduly antagonize people or aggravate social situations. Today’s enemy could become tomorrow’s ally.*

4) Collective action involving U.S. forces should be undertaken under U.N. auspices and should enjoy broad international support – if not unanimity, then certainly a general consensus.\textsuperscript{114} *HCA is best done as a coalition effort of forces, funding, planning, and execution.*

5) U.S. military intervention should make a decisive difference in the conflict. When swiftly and carefully executed, massive military interventions can work to advance the purposes of humanitarian interventions in complex crises.\textsuperscript{115} *U.S. and coalitional forces should use the tools necessary for the task and always be capable of self-defense. When the HCA mission is done, forces should redeploy or move on to the next mission.*

6) Military assets should be employed in a humanitarian emergency intervention only when they have a comparative advantage over other relief organizations.\textsuperscript{116} *Whether or not U.S. and coalitional forces should do HCA depends on the political will, available forces, funding, equipment and supplies to do the HCA in question.*

In a perfect world, these criteria might be the recipe for successful HCA missions. Then again, HCA missions are a remedy for many imperfect world situations!
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ENDNOTES

1 Note: “Fiat Panis” is the slogan of the Food and Agriculture Organization (FAO), a specialized UN agency. The FAO was founded on 16 October 1945 in Quebec, Canada. Its functions include the care for the improvement of nutrition, increased production, and wider distribution of all food products and crops from agricultural lands and forests. One of its additional tasks is providing technical assistance in the provision of food and participation in the development of the international food market. As early as 1968, the FAO started the “money and medal” program, which is based on the annual issue of commemorative coins and special medals under the slogan “FIAT PANIS.” The profit from the sales of these coins is intended to finance agricultural projects in developing countries. The FAO is striving to increase general interest in the potential of agriculture, since the awareness that the production and distribution of food must be increased if hunger and malnutrition are to be reduced. See, e.g., www.fao.org.

2 Lieutenant Colonel, U.S. Army Judge Advocate General’s Corps, currently assigned as a student pursuing advanced civil schooling at University of Notre Dame Law School’s International and Comparative Law Master of Laws (LLM) Programme, London, England. The conclusions and opinions expressed in this document are solely those of the author cultivated in the freedom of expression, and academic environment of the University of Notre Dame Law School. They do not reflect the official position of the U.S. Government, Department of Defense, the United States Army or the University of Notre Dame.


4 The process by which a mission’s methods and goals change gradually over time. See, e.g., John M. Collins, Military Intervention: A Checklist of Key Considerations, Parameters, Winter 1995, pp. 53-58.

5 10 U.S.C. §402, available at http://www4.law.cornell.edu/uscode/10/402.html. Under 402 and other Code sections, such supplies may be distributed by a U.S. Government agency, a foreign government, an international organization, or a private nonprofit relief organization. That section provides that (B)(1) The Secretary [of Defense] may not transport supplies under subsection (a) unless the Secretary determines that—

   (A) the transportation of such supplies is consistent with the foreign policy of the United States;
   (B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;
   (C) there is a legitimate humanitarian need for such supplies by the people for whom they are intended;
   (D) the supplies will in fact be used for humanitarian purposes; and
   (E) adequate arrangements have been made for the distribution of such supplies in the destination country.

See also 10 U.S.C. §§2547 and 2551 and 31 U.S.C. §1301, available at http://www4.law.cornell.edu/uscode/10/ Section 2547, Excess Nonlethal Supplies: Humanitarian Relief, says the Secretary of Defense “any make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense.” Definitions for “excess” stem from DoD regulations; sub-section (d)(1)(B) defines nonlethal items as something “that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death.” Section 2551, Humanitarian Assistance, funds transportation of humanitarian relief and other humanitarian purposes worldwide. Section 1301 of Title 31, U.S.C. allows for U.S. armed force disaster relief and security measures necessary for safe and effective delivery of that relief. Please note that domestic disaster relief is a separate legal and operational process!


8 Id. See also http://www.dfid.gov.uk/policiesandpriorities/ida/ida_main.htm#Introduction#Introduction for a summary of salient provisions and effects of the International Development Act 2002. The Government committed itself to considering a new Act in the 1997 White Paper Eliminating World Poverty (see, e.g., http://www.nssd.net/references/SustLiveli/WhitePaper.htm). The idea received support from the development community during Development Policy Forums in 1998 and 1999. It was felt that the existing legislation (the 1980 Act) did not reflect DFID’s focus on poverty reduction and lay DFID open to pressures to give assistance for other purposes such as the policy of tying U.K. aid to British goods and services. It also meant that DFID was limited in the ways the U.K. Government could support private sector activity and had no specific authority to promote development awareness.

9 Id., at Section 6.
10. **Id.**, at Section 4(2)(c).

11. **Id.** The 2002 Act established poverty reduction as the over-arching purpose of British development assistance, either by furthering sustainable development or promoting the welfare of people (Section 1 of the 2002 Act): “The Secretary of State may provide any person or body with development assistance if he is satisfied that the provision of the assistance is likely to contribute to a reduction in poverty. In this Act ‘development assistance’ means assistance provided for the purpose of furthering sustainable development … or improving the welfare of the population…” (Section 1 (1) – (2)). In other words, two conditions need to be met: 1) assistance is provided for the purpose of furthering sustainable development or improving welfare, and 2) DFID is satisfied that the assistance will be likely to contribute to the reduction of poverty. The term “sustainable development” is clarified to prevent interpretations that have just an environmental or economic meaning: “[s]ustainable development includes any development that is, in the opinion of the Secretary of State, prudent having regard to the likelihood of its generating lasting benefits for the population of the country … in relation to which it is provided.” (Section 1(3))

12. **Id**


14. 10 U.S.C. §402, available at [http://www4.law.cornell.edu/uscode/10/](http://www4.law.cornell.edu/uscode/10/). The “Denton Amendment” is a commodities transportation program that is jointly administered by U.S. Agency for International Development, the Department of State, and the Department of Defense. It allows for the transport of humanitarian goods on a space available basis using U.S. Military transportation. The program was initially created to use the extra space on U.S. cargo aircraft that were flying supplies into Central America. Although the program expanded to include most areas of the world, the likelihood of obtaining transportation decreases as the distance to the country increases. Since Denton is a space available program, it is impossible to predict when transportation will materialize; therefore, no guarantees can be made regarding completion of a shipment.

15. 10 U.S.C. §§ 2341–2350, available at [http://www4.law.cornell.edu/uscode/10/](http://www4.law.cornell.edu/uscode/10/). See also Chapter 12, Fiscal Law, *Operational Law Handbook*, JA 422, The U.S. Army Judge Advocate General’s School, 2004, at 223. The U.S. DoD has authority to acquire logistic support without resort to commercial contracting procedures and to transfer support to foreign military outside of the AECA. Under the statutes, after consulting with the State Department, DoD may enter into agreements with NATO countries, NATO subsidiary bodies, other eligible countries, the UN, and international regional organizations of which the U.S. is a member for the reciprocal provision of logistic support, supplies, and services. Acquisitions and transfers are on a cash reimbursement or replacement-in-kind or exchange of equal value basis. The present Acquisition and Cross-Servicing (ACSA) authorities have their origins in the North Atlantic Treaty Organization (NATO) Mutual Support Act of 1979 (NMSA), which was originally enacted on 4 August 1980 (P.L. 96-323).

16. Until FY96, the U.S. Congress regularly restricted the use of annual humanitarian assistance appropriations, thereby limiting the range of activities under 10 U.S.C §2551 to certain regions (e.g., Northern Iraq and Sub-Saharan Africa) or categories of assistance (e.g., transportation). For FY96 Congress provided funding in a new Overseas Humanitarian, Disaster and Civic Aid (OHDACA) account. The FY 2003 OHDACA budget request was $58.4 million. The FY 2003 decrease ($9.4 million) from the FY 2002 planned obligations ($67.8 million) reflects the estimated decline of humanitarian mine programs ($7.2 million) and emergency response requirements ($13.5 million), offset by increases in humanitarian assistance programs ($11.3 million).

17. The U.S. DoD has available to it other appropriations and support authorities. These include funds and authority under the Foreign Assistance Act (FAA) (Title 22), the Acquisition and Cross-Servicing statute, and the Overseas Humanitarian, Disaster, and Civic Aid appropriations (Title 10). Congress appropriates funds to be used only for specific purposes. For example, the O&M title of the appropriations act includes funding for humanitarian assistance authorized under various Title 10 provisions. (10 U.S.C. §401 – Demining and 10 U.S.C. §2561 –Humanitarian Assistance) See, e.g., Department of Defense Appropriations Act, 2003, Pub. L. No. 107-314, (2002) (providing $58.4 million for Overseas Humanitarian, Disaster, and Civic Aid [OHDACA] available during FYs 2003-2004). Such earmarked appropriations require separate fiscal accounting. Generally, DoD may not use generic O&M appropriations for the same purposes as funds earmarked for specific purposes within an appropriations act.

18. **Id.**


Strategy process: the policy makers, the resource providers, and the military commanders who execute. The policy makers include the President, SECDEF, and the National Security Council (NSC) and its various working subgroups. The resource providers are the various Services, each headed by their respective Secretary and Chief. The military commanders responsible for execution from the national strategy-level perspective are the nine combatant commanders. Geographic [regional responsibility] Combatant Commands (5) include: U.S. Northern Command (USNORTHCOM), HQs in Colorado Springs, CO. Responsible for all forces in North America; U.S. European Command (USEUCOM), HQs in Stuttgart, Germany. Responsible for all forces in Europe, Russia, Greenland, most of Africa (minus CENTCOM AOR), European waters, waters off Africa’s west coast, and approximately ½ of the Atlantic Ocean (north and south); U.S. Pacific Command (USPACOM), HQs at Camp Smith, HI. Responsible for most of Asia, most of the Pacific Ocean, the Pacific Rim countries, Australia, and Antarctica; U.S. Southern Command (USOUTHCOM), HQs in Miami, FL. Responsible for Central and Latin America, and the Caribbean; U.S. Central Command (USCENTCOM), HQs at MacDill AFB, FL. Responsible for Southwest Asia, some North African countries, the Horn of Africa, Pakistan, Afghanistan, part of the Indian Ocean. Functional Combatant Commands (4) include: U.S. Transportation Command (JSTARS), HQs at Scott AFB, IL. Responsible global air, land, and sea transportation; U.S. Special Operations Command (USASOCOM), HQs at MacDill AFB, FL. Responsible for training and equipping all Services special operations forces (now also considered a supported, geographic combatant command with worldwide responsibilities); U.S. Joint Forces Command (USJFCOM), HQs in Norfolk, VA. Responsible for reviewing, writing, and validating joint doctrine by conducting joint training, simulation, experimentation and modeling to prepare battle-ready joint forces; U.S. Strategic Command (USSTRATCOM), HQs at Offutt AFB, NE. Responsible for deterring military attacks on U.S. and her allies in the areas of air, missile, and space defense.

22 Id.
25 Id., at E-1.
26 Dep’t of Army, Field Manual 3-07, Stability Operations and Support Operations, February 2003, Figure 1-4, at 1-9, available at www.adtdl.army.mil/cgi-bin/adtdl/fm/3-07/fm3-07.htm.
27 Joint Pub 3-0, Doctrine for Joint Operations (10 Sep 2001). Note also that HCA is cited elsewhere, consistently with Joint Pub 30, in U.S. Joint publications, to include: Joint Pub 3-07-6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, 15 August 2001, especially at Appendix D, and Joint Pub 3-57., Joint Doctrine for Civil-Military Operations, 8 February 2001, especially Chapter 1, as well as Joint Pub 3-57.1, Joint Doctrine for Civil Affairs, 14 April 2003, especially Chapter VII.
28 See Joint Pub 1-02, DoD Dictionary (12 Apr 2001, as amended through 5 Jun 2003): “Military operations other than war (MOOTW) (JP 1-02) - (Joint term only) Operations that encompass the use of military capabilities across the range of military operations short of war. These military actions can be applied to complement any combination of the other instruments of national power and occur before, during, and after war. (See also counterdrug (CD), counterinsurgency, domestic emergencies, humanitarian assistance (HA), and peace operations.) See FM 100-20 and JP 3-07.” See also JCS Joint Pub 3-0, Id., at V-1.
29 Id., at V-9 – V-16.
30 Supra note 26.
31 Supra note 27, at V-12. Those missions may require “disaster relief, support to displaced persons as well as humanitarian and civic assistance.” This section curiously commented from the 1993 policy perspective, predicting that the “united states’ participation in such operations may increase because of our capability to quickly respond to emergencies and disasters.” See also George K. Walker, United States National Security Law and United Nations Peacekeeping or Peacemaking Operations, 29 Wake Forest L. Rev. 435, 491. Walker comments that peacemaking and peacekeeping are ambiguous terms. He pointed out that peacekeeping can easily slide into peacemaking. Since U.S. forces can be involved in humanitarian actions before, during, and after peacemaking operations, it is possible that the War Powers Resolution, 50 U.S.C. §§ 1542-42 may apply to humanitarian missions.
32 Id., at V-14.
33 Id., at V-14. The JCS Joint Pub 3-0 complicates its definition for peace operations (peacemaking, peacekeeping, and peace enforcement) through its two cited examples. It its lead-in to Operation PROVIDE RELIEF and RESTORE HOPE, it says: “[those operations] demonstrated the complexity of integrating peace support operations (emphasis added) with other types of operations and provided a glimpse of a new style of post-Cold War military
operations.” Based on RESTORE HOPE, HCA can arguably be an implied or stated mission under “peace support” during peace operations, just as it is a stated mission under “other civil support operations.” Note also that Dep’t of Army Field Manual 100-23, Peace Support Operations, (30 Dec. 1994), has NO references to HCA; it has multiple references to Civil Affairs (CA) or CA-related topics, and references to humanitarian assistance (HA).

34 “Postconflict actions, predominantly diplomatic, that strengthen and rebuild civil infrastructure and institutions in order to avoid a return to conflict.” Id.

35 Id., at 2.


37 Dep’t of Army, Field Manual 41-10, Civil Affairs Operations (Feb 2000).

38 Id., at 3-2.; the FM 41-10 Glossary, either intentionally, or through inadvertence, broadly defines HCA. Page 6-22 says “HA includes H/CA, foreign disaster relief, NEOs, and support to DCs.

39 Id., at 1-2.

40 Id., at 3-2. They must also enhance specific operational readiness skills of the participating U.S. service members. The projects cannot duplicate other U.S. government programs.

41 Fiscal limitations on operations come down to three general control mechanisms: purpose, time and amount. First, obligations and expenditures must be for a proper purpose. That purpose must be based on a specific statute, such as those authorizing DoD-run HCA or security assistance, or the Economy Act (31 USC §1535 for interagency funds transfers. Next, obligations must occur within the time limits which apply to an appropriation. Funds, like Operations and Maintenance (O&M), are available for obligation one fiscal year. Last, obligations must be for the amounts that Congress authorized. Supra note 14, at L-2, V-1.


43 Id., at L-3. The O&M appropriations often have dollar limits on “end item” purchases and exercise related construction. JA 422 notes that O&M funds aren’t generally available for overseas exercise-related construction that is not truly temporary in nature, otherwise directed by the Joint Chiefs of Staff, or exceeds the 10 U.S.C. §2805(c)(2) threshold for permanent construction. General Rule. The Secretary of a military department may not use O&M funds to finance exercise-related UMMC projects coordinated or directed by the JCS outside the U.S. [NOTE: Congress passed 10 U.S.C. § 2805(c)(2) in response to The Honorable Bill Alexander, B-213137, Jan. 30 1986 (unpub.) (purpose statute applies to military); Opinion, General Fred F. Woerner, B-230214 (unpub.), (military training not Security Assistance where benefit to host government incidental, minor and not comparable to that normally conducted as security assistance)]. An exception exists where the Secretary of a military department may arguably use O&M funds to finance minor and/or temporary structures or any structures that are removed completely at the end of an exercise (e.g., tent platforms, field latrines, shelters, range targets, installed relocatable structures, etc.). See The Honorable Bill Alexander, supra (noting that the “temporary structure” exception is extremely limited in scope). But see AR 415-32, para. 3-5c. (stating that “the Army may use [O&M] funds, except when the exercise-related construction is JCS directed or coordinated outside the United States”). Combat and Contingency Operations. See also Memorandum, Deputy General Counsel (Ethics & Fiscal), Office of the General Counsel, Department of the Army, subject: Construction of Contingency Facility Requirements (undated) (stating that the Army should use O&M funds to build structures during combat and contingency operations if the structures “are clearly intended to meet a temporary operational requirement to facilitate combat operations”); see also Office of the General Counsel, Fiscal Law Outline, Section P: Current Issues, http://www.hqda.army.mil/ogc/earndoutline-secp.htm.

44 FY 95 NDAA, supra note 14, at H8124.

45 Id., at H069.

46 Supra note 15.

47 Id., Section 1411, Overseas Humanitarian, Disaster, and Civic Aid Programs (OHDACA), established the concept of OHDACA: 401 (Humanitarian and Civic Assistance Provided in Conjunction With Military Operations), 402 (Transportation of Humanitarian Relief Supplies to Foreign Countries), 404 (Humanitarian Assistance), 2547 (Excess Nonlethal Supplies: Humanitarian Relief) and 2551 (Humanitarian Assistance). Section 1413 of the FY 95 NDAA, as part of the OHDACA funding scheme, is the Humanitarian Assistance Program for Clearing Landmines. Note that 10 U.S.C. §§404, 2547, and 2551 are Humanitarian Assistance (HA), rather than the smaller, more limited
subset of HCA. They still bear examination here, in light of blurred mission statements, overlapping missions, and the unity of funding. Title 10 sections are available at [http://www4.law.cornell.edu/uscode/10/](http://www4.law.cornell.edu/uscode/10/).

48 *Supra* note 14, at H8124. See also Endnote 46 of this paper, discussing Section 1411 and consider 10 U.S.C. §403 with respect to the international peacekeeping / HCA nexus.

49 *Id.*, at H8124. If the President, through the Secretary of Defense, commits transportation, supplies, services, and equipment to foreign disaster assistance, then a 48-hour notice to Congress comes into play.

50 *Id.*, at H8124.

51 *Id.*, at H8124.


56 The ICRC is an International Organization whose mandate is to “help victims of war and internal violence, and to promote compliance with International Humanitarian Law.” Contact information is: The International Committee of the Red Cross (ICRC), 19, Avenue de la Paix, 1202 Geneva, Switzerland. World Wide Web: [http://www.icrc.ch](http://www.icrc.ch). E-mail: webmaster@mailto:egva@gwn.icrc.org (for information on web site and other publications); mailto:press.gva@gwn.icrc.org (for press information); and mailto:mlistserver@unicc.org


58 Current Bush Administration USAID director, who has served under President George H.W. Bush official, was World Vision Relief and Development Vice-President, and a former member of the U.S. Army’s Civil Affairs and Psychological Operations Command (USACAPOC). See Jon Sawyer, Managing Chaos; “We Know Where the Crises Are Going To Be. The Problem Is There is Never Enough Human and Political Will To Do Anything About Them,” St. Louis Post-Dispatch, Dec. 4, 1994, at 1B, available in LEXIS, News library, Mags, Majpap files [hereinafter Managing Chaos]. See also Andrew S. Natsios, *Food Through Force: Humanitarian Intervention and U.S. Policy*, 17 Washington Quarterly 1, 129 (1994). In that article, Natsios defined four types of humanitarian intervention: 1) The dispatch of ground combat troops with the authority to engage combatants interfering in relief efforts or causing animosity in the society [e.g., Operations RESTORE HOPE in Somalia and PROVIDE COMFORT in Iraq and Turkey]; 2) The use of air and naval forces engaged in enforcing no-fly zones or sea blockades to protect relief efforts from attack by hostile forces [e.g., Operations PROVIDE COMFORT II in Iraq, and Operations PROVIDE PROMISE in Bosnia-Herzegovina]; 3) The positioning of lightly armed peacekeeping troops between opposing forces facing each other in a cease-fire mode and desirous of the international community’s help in enforcing the peace [e.g., Multi-National Force Observers in Sinai, Egypt]; and 4) Military logistical support for the delivery of relief supplies [e.g., Operation SEA ANGEL in Bangladesh].

59 *Id.*

60 *Id.*

61 IAW continuing authority under UN Security Council Resolutions, airlift operations began on 7 April 1991, with U.S. ground forces deployed. The projected one-week operation continued through 2000. Operations included protected zone maintenance, refugee camp humanitarian assistance, refugee resettlement, and restoring infrastructure in various villages and cities. See, e.g., FM 100-23, supra note 32, at 10-26. In the Spring of 1991, more than 500,000 Kurdish refugees, pursued by Saddam Hussein’s troops, poured into the hills and valleys of Northern Iraq and Southeastern Turkey. President George H.W. Bush deployed U.S. Forces, as part of a coalition including U.K., French, German, Netherland, and other nations to augment Non-Governmental (NGO) and Private Volunteer Organization (PVO) efforts. At its peak, over 7,000 U.S. troops, many of whom came directly from Southwest Asia from DESERT STORM, formed a coalition with foreign troops. Then-Lieutenant General John Shalikashvili (later the Chairman, Joint Chiefs of Staff) commanded the Combined Task Force (CTF) PROVIDE

24
COMFORT. See also Operations Other Than War, Volume I, Humanitarian Assistance, Center for Army Lessons Learned (CALL), USACAC, Ft. Leavenworth, KS Vol. 92-6, Dec. 92.

62 Post cyclone disaster relief. Some 7,000 U.S. service members provided disaster relief, distributed food, and shelter supplies, and assisted NGO and PVO relief organizations. See Id., at J-1. The Amphibious Group Three Task Force, including the 5th Marine Expeditionary Brigade (MEB), formed the major force element, with the 3rd Marine Expeditionary Force (MEF) as the command element. As in PROVIDE COMFORT, troops who fought in DESERT STORM rendered HA in the months following combat operations.

63 U.S. relief to Somalia as part of a coalition (U.S., Malaysia, Pakistan et al.) began after the famine and unrest became unbearable in Somalia. Airlifted food and emergency relief went into Somalia and N. Kenya through May 1993, with increasing communication and coordination between U.S. military forces, U.S. contingents, and State Department agencies. Relief efforts transitioned into a UN Operation, with UN forces withdrawing from Somalia on 27 FEB 1995 through Operation UNITED SHIELD. See Id., at J-3-J-4. Note that the Office of Federal Disaster Assistance (OFDA) and Disaster Assistance Response Teams (DARTs) from the U.S. Department of State played mediator between the U.S. and UN, NGOs, and PVOs. By December 1992, Marines from the 15th Marine Expeditionary Unit (MEU) began ground operations for Operation RESTORE HOPE. Again, a multinational UN coalition led by an U.S. general (LtGen Johnston, USMC) spearheaded relief efforts. Some 28,000 of the 38,000 forces involved came from the U.S. armed forces.

64 UN Security Council established the UN Assistance Mission to Rwanda (UNAMIR) to monitor relations between the warring factions of Rwandese Patriotic Front (RPF) and the Government of Rwanda. See New, Wider UN Mission to Monitor Ongoing Peace Process; Rwanda, 30 UN Chronicle 53 (Dec. 1993). The Security Council unanimously adopted Resolution 872 (1993) on 5 Oct. 1993, establishing UNAMIR. Its mandate was “to contribute to the security of the Rwandese capital of Kigali.”

65 A part of that monitoring process, UNAMIR would perform mine clearance, resettlement of refugees and displaced persons, and HA coordination. See Id. Also, more troop battalions deployed with a 9 December 1994 operations end date. U.S. support to Rwanda operations, in Operation SUPPORT HOPE, shifted from airdropped supplies to ground-based deployment in Rwanda, Zaire, and Uganda. See also Security Council Extends Mandate of UN Mission in Rwanda to 9 December, Fed. News Svc., Jan. 9, 1994, available in LEXIS, News Library, News file. Although nearly 600,000 of the 900,000 displaced persons in Rwanda returned home under Rwanda-RPF peace agreement, food security, and safeguarding displaced Burundians and Rwandese remained critical.

66 What was the mission in Haiti? Arguably, such efforts were preventive diplomacy; “deploying military forces to deter violence at the interface or zone of potential conflict where tension is rising among parties.” It may also be “peace enforcement,” which, in part, would include HA and HCA. FM 100-23, supra note 32, at 2. That reference recognizes, in part of preventive diplomacy, “protecting the local delivery of humanitarian relief.” While there was no belligerency per se, RESTORE DEMOCRACY might also be peace enforcement, with HCA as a secondary mission. The Haitian Army led a military coup in 1991, overthrowing President Aristide. The U.S. exercised economic sanctions against the de facto military government in Haiti, and the UN and regional community organizations condemned the de facto Haitian government. On 19 September 1994, some 20,000 U.S. and other coalition forces entered Haiti without non-hostile, negotiated conditions. See e.g., Report DeConcini, Weldon Disagree Over Value of Haiti Policy (CNN, 1:00 p.m. ET, 3 Oct. 94); Paulette Walker, Who’s There? 47 UnitsDeployed to Haiti, Army Times, 3 Oct. 94; The U.S. is Taking a Tentative Approach to Rebuilding Haiti, The Wall Street Journal, Thursday, 23 Feb. 1995, at C1. President Aristide would return to power after Lieutenant General Cedras and other de facto leaders would voluntarily, peacefully relinquish what control they had. The last U.S. forces withdrew from Haiti (in an advisory role) in 2000.

67 Id., at 6-7. FM 100-23, supra note 32, defines peace enforcement as: “[t]he application of military force or the threat of its use normally pursuant to international authorization, to compel compliance with generally accepted resolutions or sanctions. The purpose of PE [peace enforcement] is to maintain or restore peace and support diplomatic efforts to reach a long-term political settlement. FM 100-23 also says that “[t]he missions assigned to PE forces include the restoration and maintenance of order and stability [and] protection of humanitarian assistance.”

68 Id. Recent comments expressed in frustration at the ineffectiveness of UN operations in Sierra Leone are unlikely to bring about a retrenchment; indeed the opposite may be true as increasingly the NGOs, the media and the UN itself argue for more effective intervention. The British Spearhead Battalion Group deployment had a significant impact on the situation in Sierra Leone, in stark contrast to the much larger but inexperienced and ill-equipped UN Forces; policy makers will be increasingly caught between the desire, indeed the imperative to act, and recognition that these deployments require strong combat power.

69 Supra note 35 et al. A superb compilation from the NGO perspective comes from Médecins du Monde: A Case by Case Analysis of Recent Crises Assessing 20 Years of Humanitarian Action Iraq, Somalia, the former


73 While the “price” (cost) of performing OHDACA missions grew 1.605% in FY 02 over FY 01, program growth (commitment) increased 7.112%. By FY 03, the price declined -1.448% but commitment grew 2.376%; in FY 04, the anticipated price growth is 1.113% but commitment decline of -0.513%. OHDACA appropriation amounts are anticipated to remain static for FY 04 and 05. Supra note 51, at 13.


75 See Testimony, Charles B. Sisisky, Oversight and Investigation Subcommittee, House Armed Services Committee Hearing on DoD Humanitarian Assistance Program, FDCH Congressional Testimony, Apr. 19, 1994, available in LEXIS, News library, Wires file. Mister Sisisky said: “[o]ur primary concern in calling this hearing today is that we have indication the particular program called humanitarian and civic assistance is out of control. Seven years ago – that’s two administrations ago – we called for DoD to issue regulations to govern this program. Last year, we repeated the directive, giving a deadline of March 1, seven weeks ago. No regulations have yet been shown to us.”

76 Id.


81 Id., at 1–9.

82 Id., at Chapter 10.

83 Supra note 25.


85 Id.

86 A complete study of governmental, NGO and other international organizations’ humanitarian efforts unfortunately would be well beyond the scope of this paper. Subsequent footnotes will reference some excellent resources which have already done such analytical study.

The World Food Program, the food aid organization of the United Nations, was established in 1963. WFP helps poor people by combating hunger and poverty. WFP provides relief assistance to victims of natural and manmade disasters, and supplies food aid to poor people in developing countries aimed at building self-reliant families. WFP operates in more than 90 countries worldwide. The largest multinational food aid organization in the world, WFP provides twenty-five percent of global food aid, reaching more than 47 million people. The hungry poor who receive WFP assistance include landless agricultural workers, small-scale farmers, the urban poor and others lacking food resources. Among these, some sixty percent obtain family rations by participating in labor-intensive programs to construct infrastructure and create assets essential for their longer-term advancement. Most of the remaining beneficiaries receive WFP assistance through human resource development projects. WFP is the largest source of grant assistance to developing countries within the United Nations system; the largest supporter of development projects involving and benefiting poor women; the largest provider of grant assistance for environmental protection and improvement; and the largest purchaser of food and services in developing countries and thus a major supporter of South-South trade.

The World Health Organization (WHO) was established in 1948. The first Article of its constitution states its purpose to be “the attainment by all peoples of the highest possible level of health.” In pursuit of this goal, WHO cooperates with national health authorities, other specialized agencies, professional groups, and other organizations concerned with health. It may also respond to Government requests for assistance in the technical, emergency relief and national health service sectors. WHO functions as the international health coordination authority.

Within the United Nations system, WHO's Division of Emergency and Humanitarian Action (EHA) coordinates the international response to emergencies and natural disasters in the health field, in close partnership with other member agencies of the United Nations InterAgency Standing Committee (IASC), and within the framework set out by the Department of Humanitarian Affairs (DHA). In this context, WHO's vast technical network is utilized to provide expert advice to Member States on, among other things, epidemiological surveillance, control of communicable diseases, public health information and health emergency training. The Division's emergency relief activities include the provision of emergency drugs and supplies, fielding of technical emergency assessment missions and technical support. Its emergency preparedness activities include coordination, policymaking and planning, awareness-building, technical advice, training, publication of standards and guidelines, and research on emergency preparedness issues. EHA's main objective is to strengthen national capacity of Member States to reduce the adverse health consequences of emergencies and disasters.

89 Id. “NGO” is an official term used in the United Nations Charter (Article 71) to describe a wide range of primarily nonprofit organizations motivated by humanitarian and religious values, and that are usually independent of government, UN, and commercial sectors. Its French and Spanish equivalents form the acronym ONG, but in the U.S., the terms PVO (private voluntary organization) and VOLAG (voluntary agency) are still sometimes used to describe the same spectrum of organizations. NGOs are legally different from UN agencies, the ICRC, and national Red Cross/Crescent Societies. NGOs form themselves and write their own charter and mission. In contrast, UN and Red Cross agencies were formed and operate under international or national government mandates, conventions, and legislation.

90 The following is a partial list of the UNHCR's “major NGO partners.” More complete NGO information may be obtained from the NGOs themselves, or the NGO Coordinator's Office at UNHCR Headquarters in Geneva [telephone (4122) 739 87 81 or fax (41 22) 739 87 89]. See also Appendix A, FM 41-10, supra note 35:
<table>
<thead>
<tr>
<th>Organizational Acronym / Name:</th>
<th>Target Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACORD - (Agency for Cooperation and Research in Development):</td>
<td>Emergency Assistance, Development (Consortium of Agencies)</td>
</tr>
<tr>
<td>ADRA - (Adventist Development and Relief Agency):</td>
<td>Transport/Logistics, Health/Nutrition, Shelter, Community Services, Education, Food Production, Legal Assistance</td>
</tr>
<tr>
<td>AI - (Amnesty International):</td>
<td>Human Rights, Legal Assistance</td>
</tr>
<tr>
<td>ACF - (Action International Contre la Faim):</td>
<td>Food, Water, Health/Nutrition, Shelter</td>
</tr>
<tr>
<td>ARC - (American Refugee Committee):</td>
<td>Sanitation, Health/Nutrition</td>
</tr>
<tr>
<td>CARE - (Cooperative for American Relief Everywhere):</td>
<td>Food, Transport/Logistics, Health/Nutrition, Shelter, Community Services, Legal Assistance</td>
</tr>
<tr>
<td>CARITAS</td>
<td>Food, Transport/Logistics, Domestic Needs, Water, Sanitation, Health/Nutrition, Shelter, Community Services, Education, Food Production, Income Generation, Legal Assistance</td>
</tr>
<tr>
<td>CONCERN</td>
<td>Water, Shelter</td>
</tr>
<tr>
<td>CRS - (Catholic Relief Services):</td>
<td>Food, Domestic Needs, Health/Nutrition,</td>
</tr>
<tr>
<td>CWS - (Church World Service):</td>
<td>Transport/Logistics, Domestic Needs, Health/Nutrition, Shelter, Community Services, Education, Income Generation</td>
</tr>
<tr>
<td>DRC - (Danish Refugee Council):</td>
<td>Transport/Logistics, Shelter, Community Services</td>
</tr>
<tr>
<td>HI - (Handicap International):</td>
<td>Food, Transport/Logistics, Shelter</td>
</tr>
<tr>
<td>ICMC - (International Catholic Migration Commission):</td>
<td>Transport/Logistics, Domestic Needs, Health/Nutrition, Community Services, Education, Legal Assistance</td>
</tr>
<tr>
<td>IFRC - (International Federation of Red Cross and Red Crescent Societies):</td>
<td>Food, Transport/Logistics, Health/Nutrition, Shelter, Community Services</td>
</tr>
<tr>
<td>IRRC - (International Islamic Relief Organizations):</td>
<td>Emergency Assistance, Logistics/Transport</td>
</tr>
<tr>
<td>LCHR - (Lawyers Committee for Human Rights):</td>
<td>Advocacy, Human Rights</td>
</tr>
<tr>
<td>LIRS - (Lutheran Immigration and Refugee Service):</td>
<td>Advocacy, Migration</td>
</tr>
<tr>
<td>MDM - (Medecins du Monde):</td>
<td>Health</td>
</tr>
<tr>
<td>MSF - (Medecins sans Frontieres):</td>
<td>Food, Transport/Logistics, Domestic Needs, Water, Sanitation, Health/Nutrition, Shelter, Community Services Food Production</td>
</tr>
<tr>
<td>NRC - (Norwegian Refugee Council):</td>
<td>Transport/Logistics, Shelter, Community Services</td>
</tr>
<tr>
<td>OXFAM -</td>
<td>Food, Transport/Logistics, Water, Sanitation, Community Services, Income Generation</td>
</tr>
<tr>
<td>PSF Health (Pharmaciens sans Frontieres) -</td>
<td>Health</td>
</tr>
<tr>
<td>Radda Barnen -</td>
<td>Domestic Needs, Community Services, Education</td>
</tr>
<tr>
<td>Refugee International -</td>
<td>Advocacy, Migration</td>
</tr>
<tr>
<td>SCF (Save the Children Fund) -</td>
<td>Transport/Logistics, Domestic Needs, Water, Sanitation, Health/Nutrition, Shelter, Community Services, Education, Food Production, Income Generation</td>
</tr>
<tr>
<td>World Vision -</td>
<td>Water, Food Production</td>
</tr>
<tr>
<td>WUS (World University Service) -</td>
<td>Education</td>
</tr>
</tbody>
</table>

91 Supra note 87.  
92 Supra note 55.  
93 OXFAM U.K. has a budget of around £124m, employs 1,500 staff in the U.K. and 200 “ex-pat” and 3,000 “local” staff abroad. CARE has an annual budget of around $350m. Supra note 32.  
95 Id.  
UNHCR needs to learn lessons from Kosovo. They have initiated a number of studies, including an Independent
operational responsibilities to concentrate on policy, advocacy and co-ordination. Cross further opined that the
Department for Humanitarian Affairs (established by the UN in 1992 and renamed in 1997), was relieved of its
view (criticisms of the UNHCR they (rightly) praise WFP and DFID for their response (paragraphs 9 and 73). In Cross'
(OCHA) might more appropriately take the lead in the co-ordination of humanitarian activities. To balance their
the suggestion that in future emergency situations the UN office for the Co-ordination of Humanitarian Affairs
Kosovo crisis, Third Report,
From a different viewpoint, the U.K. Government's
Disaster Assistance Response Team (DART)) and non-U.S. agencies. The CMOC also performs essential
agencies and other non-DoD (e.g., Department of State (DoS), U.S. Agency for International Development (USAID),
composition are situation dependent. This organization is where coordination occurs between the several U.S. DoD
organizations, and regional and international organizations (IO). There is no established structure, and its size and
coordinates between the Commanders of the NATO forces and UN-agencies, Non-Governmental Organizations
where these military forces are, or plan to be, stationed, supported or employed. Such measures also include
cooperation between the Commanders of the NATO forces and UN-agencies, Non-Governmental Organizations
(NGO), Private Volunteer Organizations (PVO) and other authorities. The Civil-Military Operations Center (CMOC)
is the nerve center for, in U.S. military parlance, Civil-Military Operations (CMO). It is an ad hoc organization,
normally established by the geographic combatant commander or subordinate joint force commander, to assist in
the coordination of activities of engaged military forces, and other U.S. Government agencies, nongovernmental
organizations, and regional and international organizations (IO). There is no established structure, and its size and
composition are situation dependent. This organization is where coordination occurs between the several U.S. DoD
agencies and other non-DoD (e.g., Department of State (DoS), U.S. Agency for International Development (USAID),
Disaster Assistance Response Team (DART)) and non-U.S. agencies. The CMOC also performs essential
coordination or liaison with host nation (HN) agencies, the Embassy Country Team, and if applicable, UN agencies.
From a different viewpoint, the U.K. Government's House of Commons International Development Report on the
Kosovo crisis, Third Report, printed 11 May 1999, was particularly harsh on the UNHCR, to the extent that it raised
the suggestion that in future emergency situations the UN office for the Co-ordination of Humanitarian Affairs
(OCHA) might more appropriately take the lead in the co-ordination of humanitarian activities. To balance their
criticisms of the UNHCR they (rightly) praise WFP and DFID for their response (paragraphs 9 and 73). In Cross' view
(supra note 32), the UNHCR should remain the tactical (i.e., field) level focus. OCHA, which was originally the
Department for Humanitarian Affairs (established by the UN in 1992 and renamed in 1997), was relieved of its
operational responsibilities to concentrate on policy, advocacy and co-ordination. Cross further opined that the
UNHCR needs to learn lessons from Kosovo. They have initiated a number of studies, including an Independent
Evaluation and produced a series of relatively hard-hitting reports which now need to be actioned. See also,

Supra note 70.

Id., at 98-99. Rieff concedes the fact that the U.K. did commit a small force to Sierra Leone in 2000, but that the mission was restricted so as to avoid direct confrontation with the Revolutionary United Front (RUF) rebels. Australia, the U.K.’s Commonwealth, did occupy East Timor only after the permission of the Indonesian government.

See, e.g., *OXFAM Briefing, An end to forgotten emergencies?* May 2000, in which OXFAM criticized Western governments’ aid as falling far short of meeting these needs, and being distributed in a grossly unequal way. By way of demonstration, to the 1999 UN appeal for Kosovo and the rest of former Yugoslavia, donor governments gave $207 for every person in need. Those suffering in Sierra Leone received $16 a head, and in the Democratic Republic of the Congo, little over $8. OXFAM cited this as a “reality” it sees in disasters around the world: “that, despite their own tenacious efforts, people suffer because not enough aid is given to those emergencies beyond the media spotlight, or outside the areas of interest to the main Western governments. As Western countries have got richer in the past ten years, the proportion of their wealth spent on humanitarian aid has gone down by 30%.”

See, e.g., Frances Williams, *Red Cross to Review Operations in Iraq*, Financial Times, Oct 27, 2003, at 10, available at [http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&cid=1066565393062&p=1031119383196](http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&cid=1066565393062&p=1031119383196). The International Committee of the Red Cross said on October 23, 2003 it was reassessing its operations in Iraq following the suicide attack outside its Baghdad headquarters on 27 October 2003, which killed 12 people including two Iraqi staff. “We believe we have to stay here because we do have an important job to do here for the Iraqis,” Nada Doumani, ICRC spokeswoman in Baghdad, told reporters. ICRC headquarters in Geneva said no decisions had been taken. “We will be re-evaluating the security conditions in Iraq”, said Florian Westphal, an ICRC spokesman. “But our priority today is to deal with the immediate consequences of this terrible attack, especially for the families of the victims. It’s too early to take decisions on our eventual response.” The ICRC reduced its expatriate staff in late July 2003 after one of its workers was killed, and did so again after the bombing of the United Nations headquarters in Baghdad in August to 14 expatriate staff in Baghdad and 30-40 in Iraq as a whole, compared with 130 in mid-July. Since the end of formal hostilities in Iraq the ICRC has focused on visits to prisoners of war and civilian detainees, among them senior officials of the former regime, as well as its other humanitarian work, and the provision of materials and drugs in medical emergencies, including bombing incidents, a public campaign to raise awareness of the dangers of unexploded ordnance, and help to strengthen the resources and capacity of the Iraqi Red Crescent society.

Natsios had adapted Caspar Weinberger’s use of force criteria to “humanitarian military intervention.” On 28 November 1984, while addressing the Washington Press Club, then--Secretary of Defense Caspar Weinberger proposed the following six major tests to be applied when the U.S. weighed the use of U.S. combat forces abroad. (1) The United States should not commit forces to combat overseas unless the particular engagement or occasion is deemed vital to our national interest or that of our allies; (2) If we decide it is necessary to put combat troops into a given situation, we should do so wholeheartedly and with the clear intention of winning; (3) If we do decide to commit forces to combat overseas, we should have clearly defined political and military objectives; (4) The relationship between our objectives and the forces we have committed—their size, composition, and disposition—must be continually reassessed and adjusted if necessary; (5) Before the United States commits combat forces abroad, there must be some reasonable assurance we will have the support of the American people and their elected representatives in Congress; (6) The commitment of US forces to combat should be a last resort. See, e.g., Caspar W. Weinberger *Fighting for Peace: Seven Critical Years in the Pentagon*, New York: Warner Books, 1990, p.446.

*Supra* note 57, at 129.

Id.

Id.

Id.

Id.

Id.

Id.