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# FOREWORD

MIAT's role is to address difficult and sensitive issues of major importance, on both a local and international level, within a religious framework. The first step in this process is to make available information to help develop an environment of scholarly discussion so that we may proceed to principles which can then be applied to real life situations.

One of those real life situations is in stopping wars and military invasions as has happened in Iraq. It is essential that as a human race we address this situation if individuals and nations are to live without fear.

In order to arrive at some guiding principles it is important to define the components which will be the building blocks of the process.

The fundamental definitions to start with would seem to be "humanity" and "humane". These terms are used extensively to define principles but they have no clear and universal definitions themselves. This makes the principles they are trying to build less than adequate to the task of formulating policy. It would seem that philosophers and theologians may well prove more powerful than generals and a definition of these terms lies outside of those who will have to abide by them.

But defining is no easy task as can be seen by the variety of definitions which follow — although they do share a number of common themes.

It is my intent to progress this vision of getting universally accepted definitions which can be benchmarks for international law and both national and international behaviour. To this end we are now asking for definitions from a wider range of cultures, religions and disciplines.

I welcome your comments and suggestions about how we can achieve this vision.

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# INTRODUCTION

It is generally accepted that the early Christian Church formed caring and sharing communities which for those times were remarkably egalitarian with little ranking between male or female, Jew or Gentile, free person or slave. They were strictly non-violent, if not pacifist.

Of course no community of humans will be problem free, as testified by the Apostle Paul's letters, but non-violence was a key belief.

This started to change around 312 CE after Constantine defeated his rival, Maxentius, near the Milvian Bridge just outside Rome. Constantine had made a promise that if the Christian God gave him victory, then he would convert to Christianity. Maxentius made strategic errors, not the least of which was having his soldiers, wearing their heavy armour, try to retreat over a bridge of boats bolted together across the Tiber River. He, and most of his soldiers, drowned.

Like many modern leaders, Constantine became convinced that victory in battle meant God was on his side. He became Emperor and converted. But because he had many battles still to fight and he believed, as was common then, that baptism washed away all previous sins, he waited until his deathbed to be baptised.

As Christians up till then had been thrown to the lions or otherwise persecuted, it is understandable that they accepted (or even welcomed) Constantine as one of them, even if he claimed the mantle of the earlier warrior, Abraham, to be God's appointed on earth.

Almost 1000 years later Saint Thomas Aquinas in *Summa Theologica* first defined the requirements for a "just war" which Christians still sometimes use for justification but more often don't bother with. Over the ages Christian nations have been as bloodthirsty as any Ghengis Khan. The Crusaders's motivation was to take the wealth of the Muslim Middle East with innocent Jews their first victims and Byzantine Christians next. If they found the Holy Grail, that would be an extra bonus!

In wars the vanquished always lost their rights, if not their lives. Women and children were often taken as slaves. Abraham ethnically cleaned out the Caananites, Moses exterminated the Midianites, the Saxons cleaned out

the Celts from England and there are countless other examples in more recent times. Australia's record of treatment of aborigines highlights the attitude of one group being considered second class, not "citizens", but sub-humans.

With this logic of "God given" superiority, the powerful justified the denial of basic rights to other humans.

Therefore the 1948 United Nations Universal Declaration of Human Rights was a major change of international attitude, even if 55 years later organisations like Amnesty International can still report countless abuses. The beginning of the Preamble to the UDHR is given below.

At the date of this report when there is so much fighting and human rights abuse in the Middle East and elsewhere MIAT decided to look at what could be done to get better enforcement of basic human rights.

Firstly, MIAT considers the whole concept of a "just war" should be reviewed in the context of "the global village" and the belief that the 21<sup>st</sup> century requires non-military solutions to conflicts between nations.

MIAT enthusiastically supports the International Criminal Court, acknowledging the limited range of crimes it can prosecute, which are mainly war related.

MIAT arranged for its Chairman, Rev Martin Levine, to attend the Pugwash Conference in California in 2002 where he met Dr. Robin Coupland of the International Red Cross. Coupland had written the article on "humanity" reproduced in Appendix II. A synopsis is within the text.

MIAT then realised that although there were acts defined as "in-humane" and crimes defined as "crimes against humanity" there were no universally accepted definitions of "humane" or "humanity" — hence this Project.

MIAT believes the foundation-stone for legislation, social action, business and other social activities and studies must be clear understandings of both "humane" and "humanity". So much news and other communications are today "de-humanised". Australia's 20% living below the poverty line, an Iraqi Battalion destroyed, are treated as statistics — not as brothers and sisters.

MIAT has asked philosophers, theologians and eminent people to

give their definitions of these two concepts, taking into account issues which were unthought of 100 years ago, but which are important now. Their submissions follow.

MIAT acknowledges that a definition of an abstract concept may not necessarily make it the yardstick for the application of laws, yet MIAT wants both. When reading the submissions this dilemma should be considered.

MIAT also acknowledges that researchers, psychopharmacologists in particular, are researching what it is to be "human". This is outside the scope of this Project.

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The Universal declaration of Human Rights Preamble opening paragraph:  
*"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ..."*

# Humanity: What is it and how does it influence international law ?

*Synopsis of Robin Coupland's paper by Clyde Mitchell — Feb.23, 2003*

Robin Coupland sets out to do two things:

- 1) to direct our attention to what is meant by "humanity" and to enhance our understanding of the term's scope of meaning, and
- 2) to discuss how the use of force may defend humanity or attack it .

This dichotomy leads Coupland to a well-documented commentary on the significance of the interpretation of "humanity" in the context of international law. He acknowledges the varied interpretations of "humanity" and seeks to bring the issue into focus by suggesting two defining aspects of the term: "humanity-humankind", the human race, and "humanity-sentiment", the character or quality of being humane, which implies a moral force.

His paper is largely directed to "humanity-sentiment". Humanity-sentiment he proposes, far from being an ethereal concept, can be assessed and measured in terms of national and individual health, security, and economic and cultural progress.

Coupland draws attention to the parallel paths of population growth, the development of civilisation, and the growth of human ability to make and use (or not use) weapons. He suggests that human development and weaponry go hand in hand. The force of arms may be used to defend humanity or attack it.

Acts of inhumanity usually involve the force of arms, but since the availability of force and sometimes its use, is also necessary to maintain law and order and thereby humanity, attention must be given to the countervailing force of the law, especially international law, in asserting and maintaining the cause of humanity at the national and international level. The balance between humanity and inhumanity in humankind may be determined by the degree to which armed violence is restrained.

With the Rome Statute of the International Criminal Court taking effect the Court has jurisdiction over crimes of aggression, war crimes, acts of

genocide, and crimes against humanity.

Seeking to arrive at a universal, applicable, objective definition of "humanity" and "humane" is therefore much more than an exercise in semantics.

*(#) Revue Internationale de la Croix-Rouge, December 2001 Vol. 83 No. 844*

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## **DEFINITION:**

"Humane" and "humanity" are interchangeable moral concepts. To act humanely is to exercise one's humanity. Both terms express the same two fundamental ideas.

First, the idea that human beings recognise themselves in each other, both in the sense of sharing — or potentially sharing — the range of human capacities, instincts, basic interests, and emotions, and in the sense that each of us is a unique, irreplaceable and precious personality.

Second, the idea that we relate to other people, animals, and our environment by aspiring to what is *best* in the human repertoire: what is most noble, generous, and caring rather than what is base, cruel, or indifferent. In short, 'humane' and 'humanity' designate how all people/s are joined in, and bound by, one overarching moral community. It follows that we diminish our own humanity wherever we deny the humanity of and in others, or otherwise are indifferent to the suffering of animals and the destruction of our environment."

## **Explanation/Notes:**

I have stated my definition of the two terms in question. On reading the Explanatory Notes, I did get the impression that what you are perhaps mainly seeking is less a definition of "humane" and "humanity" than the application of such definition. Definitions, especially of abstract concepts, tend themselves, of course, to be abstract and general. Their practical implications are not obvious, requiring something beyond definition, namely, a particular account or argument. Thus, a single definition might admit of different and even opposing applications. Nevertheless, I have responded to the request for a definition, and so my comments remain general.

## **Simon Rice OAM**

*Simon Rice OAM is President of Australian Lawyers for Human Rights. He is a judicial member of the NSW Administrative Decisions Tribunal in*

*the Equal Opportunity and General Divisions, and a lawyer, facilitator, and human rights consultant and trainer. From UNSW he holds degrees in Law and in Arts, and a Masters degree in Education. Simon was previously Director of the NSW Law Foundation, Director of Kingsford Legal Centre, and Board member of the NSW Legal Aid Commission. He has taught law at both UNSW and Sydney University. In 2002 he was awarded the Medal of the Order of Australia for legal services to the socially and economically disadvantaged.*

## **DEFINITIONS:**

### **Definitions of "humane" and "humanity": in law**

11 April 2003

What follows is a brief and limited survey of the extent to which law can contribute to an understanding of the concepts of 'humanity' and 'humane'. It is confined to Western cultural and English-speaking tradition: I do not know, for example, if there is an equivalent concept in China, Cantonese, or Confucianism.

### **International human rights law**

International human rights law uses the words 'humane' and 'humanity' without further explanation – see for example Article 10 of the *International Covenant on Civil and Political Rights*: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

The Human Rights Committee's *General Comment 21* expounds on the meaning to be given to Article 10 but offers no definition of 'humanity'.

It does however make clear that the terms of Article 10 are intended to protect prisoners from "torture or other cruel, inhuman or degrading treatment or punishment".

The essence of 'humane treatment' in Article 10, as in the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, is the infliction of physical pain and mental anguish.

### **Australian legislation**

Australian law uses the word ‘humane’ without defining it. No Australian laws explicitly require that the treatment of one person by another shall be ‘humane’. Treatment of one person by another is regulated principally by criminal laws in States and Territories which reflect society’s view of the extent to which one person can cause physical pain to another. They do so without invoking the concept of ‘humane treatment’.

The most extreme form of treatment of one person by another is the infliction of torture. It is contrary to international law, and has been made illegal in Australia by the Commonwealth *Crimes (Torture) Act* 1988. But there is no reference there to ‘humane’ conduct; torture is defined as intentionally inflicting severe physical or mental pain or suffering for a prohibited reason. That such conduct is ‘inhumane’ is understood without being said. Nowhere where ‘torture’ is defined in Australia law – from the Western Australian *Censorship Act* 1996 to the Commonwealth *Social Security Act* 1991 – is torture explicitly equated with inhumane treatment. Few would doubt however that the litany of conduct described as “objectionable material” in the WA *Censorship Act* would be described as ‘inhumane’.

The QLD *Corrective Services Act* 2000 specifies that the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders [s3(1)]. This legislation reflects the human rights standards of the ICCPR and “recognises the need to respect an offender’s dignity”. But again, ‘humane’ is not defined.

A notorious piece of legislation which prescribed ‘humane’ treatment was the Northern Territory’s ‘Euthanasia’ law, the *Rights of the Terminally Ill Act* 1997. Its purpose was to “confirm the right of a terminally ill person to request assistance from a medically qualified person to voluntarily terminate his or her life in a humane manner”. The Act prescribed a form which was a “request for assistance to end my life in a humane and dignified manner”. The Act did not define ‘humane’. That is the position with laws relating to conduct between people.

Where Australian legislation does spell out that people’s conduct must be ‘humane’ is in the treatment of animals. People are, I suggest, expected to treat other animals humanely because humans have the unique ability to know that animals can feel pain and do not want to. A person’s humanity not only entitles them to humane treatment, but obliges them to treat others

humanely.

None of the laws, however, from the Commonwealth *Whale Protection Act* to the *Victorian Prevention of Cruelty to Animals Act*, spells out what can and cannot be done within the bounds of ‘humanity’. The NSW *Prevention of Cruelty to Animals Act 1979* is intended “to promote the welfare of animals by requiring a person in charge of an animal to treat the animal in a humane manner [s3(b)(ii)], but ‘humane’ is not defined. The ACT *Firearms Regulation* excludes from the definition of “firearm” a “captive bolt gun of the kind designed for use in an abattoir in the humane killing of livestock” [cl.4], but ‘humane’ is not defined.

This is a wide ranging sample of circumstances in which ‘humanity’ is invoked as a legislative standard for conduct: keeping pets, killing cattle, containing prisoners and allowing voluntary death. Across this sample the policy of the drafters seems clear – humane means what humane means, and if there is doubt then it is the role of the court, reflecting contemporary social values (so the theory goes), to give it meaning at the time.

So how have courts understood ‘humane’?

## **Australian courts**

The judges, in a form of dialogue with the community through their decisions, have discussed the concept of ‘humanity’ in a range of contexts. They have taken varying views in the specific circumstances of a case, but generally with the consistent sense that ‘avoiding the infliction of harm’ is the essence of humane conduct.

### **‘Civilised’**

Judicial pronouncements on ‘humanity’ have equated it with ‘being civilised’. In distinguishing humans from animals, an English judge referred to incentives to “encourage kindness towards [animals], to ameliorate the condition of the brute creation, and thus to stimulate humane and generous sentiments in man towards the lower animals . . .

[to] promote feelings of humanity and morality generally, repress brutality, and thus *elevate the human race*” [Wedgewood 1915] (my emphasis).

Justice Lionel Murphy too saw ‘humane’ conduct as benchmark of a ‘civilised’ society. He said of Australia’s laws that they should be expected to “express the standards of a civilized humane society”. He said

that all laws should be construed as being “subject to an unexpressed qualification that the power be exercised humanely according to modern civilised standards” [*Pochi* 1982].

(Justice Murphy’s gloss of ‘humanity’ on the exercise of powers under law might be compared with the recent view of Chief Justice Gleeson. In a case concerning a refugee applicant he said that the “question . . . is whether the Minister has acted according to law; not whether his decisions are wise, or humane or in the public interest” [*Fejzullahu* 2000].)

In *Pochi* Justice Murphy, alone in the Court, identified breaking up families under the *Migration Act* as “inhumane” (and “uncivilised”) conduct. The UN Human Rights Committee was of a similar view 20 years later when it said that it would be a breach of Australia’s obligations under the *ICCPR* if it were to force the break up of a family through application of the *Migration Act* [*Winata* 2000]. But as Justice Murphy was alone in this view, so there was a difference of opinion on the Human Rights Committee as to whether the effect of the *Migration Act* in breaking up a family was a breach of the *ICCPR*. What is inhumane in one person’s eyes will be, perhaps, ‘tough but fair’ in another’s.

Along the same lines as the ‘civilised’ analogy, Justice Brennan referred to a “a view which might reasonably be held by a mature and humane society” when referring to the need of “Aborigines with traditional relationship with their country [for] protection from an inundation of their culture and identity by those who embrace different values and who constitute a majority in Australian society [*Gerhardy* 1985].

I do not however think that equating ‘humane’ with ‘civilised’ is helpful in understanding when conduct can be adjudged humane. Rather it is rhetoric, intended to emphasise, to those who value being called ‘civilised’, the importance of acting humanely. Whether a society is ‘civilised’ begs as many questions as, and different questions from, whether a society’s conduct is humane.

Justice Murphy equated ‘humane’ with ‘just’, a word which is no less value-laden. He was alone in the Court in rejecting the doctrine of ‘civil

death’, which is the idea that a convicted person has no status – effectively does not exist – in order to commence legal proceedings. He saw the doctrine as “an unjust, inhumane rule”, and expected judges to “evolve the common law so that it will be as rational, humane and just” as they

can make it [*Dugan* p 609].

## **‘Suffering’**

In the ‘Voyager’ litigation Justice Dawson expressed a view not far removed from the ‘be kind to animals’ concept of ‘humane’. He was commenting on an expectation that the Commonwealth Government would not rely on a time limitation to prevent a former naval officer for suing for his injuries, and saw the Commonwealth’s non-reliance on that defence as “a humane attitude befitting the Commonwealth towards a former member of its armed forces” [*Verwayen* 1990].

Many judicial decisions use the term ‘humane’ to describe measures that prevent or give relief from hardship or suffering. In 1925 the High Court considered the effect of a law which guaranteed workers a certain remuneration for minimum hours worked in a week, effectively guarding against employers’ over-working and underpaying employees. The majority found on a technical basis that the worker in the case had not worked a ‘week’ as defined in the law. In a dissent with Murphy-like force, Justice Isaacs described the law as having the “humane function [of coping] with a serious evil affecting this and every other civilized community industrially and socially” [*Bishop* 1925]. In this view Justice Isaacs echoed the Constitution of the International Labour Organisation which says in its Preamble that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”.

It may be that, privately, Justice Isaacs’ fellow judges agreed that a law intended to save employees from exploitation was ‘humane’. But they did not let any such view affect their judgement: they, like Chief Justice Gleeson more recently, stuck to a strict interpretation and application of the letter of the law.

In all these cases judges used the word ‘humane’ as an adjective to characterise the approach they felt should be taken in the circumstances.

But in one type of case the idea of ‘humanity’ took, for a short time, a central place in defining a legal principle: the liability of an occupier of land for injury to trespassers.

An occupier’s duty of care towards trespassers has been recognised in England since at least 1820, when Justice Best said “The law of England will not sanction what is inconsistent with humanity” [*Ilott* 1820].

Justice Windeyer recognised this when he said that when “an occupier [sees] a man or a child about to run into some hidden danger that he has created on his land” the “more humane view” would be that the occupier cannot be allowed to “fold his arms and close his mouth and let him go unwittingly to harm just because he is a trespasser” [*Cardy* 1960].

Reference to notions of humanity in principles of occupiers liability were brought to a head by the Privy Council in 1973 in *Southern Portland Cement*, when they identified the standard of care owed to a trespasser as that of “a humane man with the financial and other limitations of the occupier”, rather than the traditional standard of a ‘reasonable man’. In addition to the ‘reasonable person’ therefore, we had also the ‘humane person’, a doctrine which allowed courts to identify “wilful or reckless disregard of ordinary humanity rather than mere absence of reasonable care” [*Grand Truck Railway* p 307].

But the ‘humane person’ was short lived in Australia. The two identities – reasonable and humane – were merged by Justice Deane in 1984 in *Hackshaw*. He saw “references to ‘humane man’ and ‘common humanity’ [as] not inappropriate in describing the reasonable care that should be exercised by the reasonable man”. For Justice Deane, a reasonable person *is* a humane person. (In a flourishing turn of phrase he might now regret, Justice Deane said that “the persona of the ‘humane’ or the ‘conscientious humane’ man should be sent packing from the fields of negligence as an unwarranted immigrant”).

## **A conclusion**

The law – whether international or Australian, in legislation or in courts – has been no more willing to define ‘humane’ than it has been to define, say, the concept of ‘harsh and unconscionable’ in the area of contract.

This is ‘fuzzy’ drafting – a statement of broad principle and intent; the terms have a generally understood import, and their precise meaning will depend to an extent on the particular circumstances.

The law, determined as it usually is to say precisely what it means to say, gives us a signal – ‘humanity’ is an ordinary word with its ordinary meaning: humanity means what humanity means. ‘Humanity and ‘humane’ convey a sense of morality and values. One’s sense of what is

‘humane’ might be as personal, and as variable, as one’s sense of values and morality. But as there are fundamental human rights, derived from our identity as human, so there is a bottom line to ‘humanity’ or, to mix metaphors, conduct which is beyond the pale. It is clear that in any circumstance – whether killing cattle, caring for pets, containing prisoners, setting conditions of employment, maintaining property, or waging war – the law recognises that humane conduct derives from and respects the inherent dignity of human beings.

Humanity is consistently associated with the concept of human ‘dignity’. The dignity derives from the simple fact that we are human and carry with us qualities – such as the very capacity to identify and act on our distinctive qualities – that distinguish us from all other living things.

An appeal to humanity, is an appeal to this shared identity of being human, to our common human dignity:

*[are Jews] not fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer, as a Christian is? If you prick us do we not bleed? if you tickle us do we not laugh? If you poison us do we not die? [Shylock in W Shakespeare, *The Merchant of Venice* Act 3 Sc 1]*

The concept of ‘humanity’ is perhaps ineffable. Its importance to us is evident in our inability to define it – it is that which we are, it is our essence. But while we will all have our sense of selves, one of the broadly accepted identifiers of the human self is the desire to be free of pain.

At its most fundamental, a person’s humanity entitles them to treatment

- which does not cause physical or mental pain, or
- where pain is unavoidable, which causes the least possible pain and only in proportion to the seriousness of the larger undertaking, and
- which is just and fair in the circumstances, and
- which respects the dignity that is inherent in a person as a human.

Can a person, through their own inhumane conduct, forsake their own right to humane treatment? If their right derives from their being human, can they reduce themselves to less than human?

Perhaps this question illustrates that no matter how detailed or extensive an attempt to define humanity may be, it is of its nature a matter for judgment, by one human being of another.

## Case references

- Bishop:* Bishop v. Ford & Petrie (1925) 36 CLR 322
- Cardy:* Commissioner for Railways (N.S.W.) v. Cardy (1960) 104 CLR 274
- Dugan:* Dugan v. Mirror Newspapers Ltd. (1978) 142 CLR 583
- Fejzullahu:* Re The Minister for Immigration and Multicultural Affairs; Ex parte Fejzullahu [2000] HCA 23
- Gerhardy:* David Alan Gerhardy v. Robert John Brown (1985) 159 CLR 70
- Grand Trunk Railway:* Grand Trunk Railway of Canada v. Barnett (1911) AC 361, cited in Southern Portland Cement
- Hackshaw:* Dianne Maree Hackshaw v. George Shaw (1984) 155 CLR 614
- Ilott:* Ilott v. Wilkes (1820) 3 B & Ald 304 (106 ER 674), cited in Southern Portland Cement
- Pochi:* Pochi v. Macphee (1982) 151 CLR 101
- Southern Portland Cement:* Southern Portland Cement Ltd. v. Cooper. (1973) 129 CLR 295
- Verwayen:* The Commonwealth v. Verwayen (1990) 170 CLR 394
- Wedgwood:* In Re Wedgwood (1915) 1 Ch 113, cited in Attorney-General (S.A.) v. Bray (1964) 111 CLR 402

## Emeritus Professor Stuart Rees

*Stuart Rees is Professor Emeritus of Sydney University and the Director of the Sydney Peace Foundation and the Centre for Peace and Conflict Studies. His career has included positions in community development and social work in Britain, Canada, India, Sri Lanka and the United States. He was Professor of Social Work & Social Policy @ Sydney University and the author of over 100 articles in professional journals on issues ranging from evaluations of health and welfare services to studies of*

*humanitarianism in social policies and examinations of the content and outcome of peace negotiations. He is the author and co-editor of ten books including, Verdicts on Social Work (1982), A Brutal Game (1986), Achieving Power (1991), Beyond The Market (1993), The Human Costs of Managerialism (1995), Human Rights Corporate Responsibility (2000) and Passion for Peace (2003). He is currently the independent chair of the NSW Energy Council. He is also a Council member of the Toda Institute for Global Peace and Policy Research.*

## **DEFINITIONS:**

Humanity refers to a quality of living as in the enjoyment of political and economic rights, and to a set of values, as in acknowledgement of responsibility to care for one another. A commitment to humanity illustrates a moral imperative to respect such rights and to live by such values.

To be humane is to act from a belief in the interdependence of all peoples. Such a belief can be fulfilled by the philosophy, language and skills of non violence which are life enhancing. Archbishop Tutu expresses this best by his references to the quality of '*ubuntu*', a quality affirming of others. '*Ubuntu*' speaks the language of being human through generosity, hospitality and compassion. Humanitarianism — the quality of being human — is realized not alone but by being inextricably bound up with others.

## **John Anderson**

*John Anderson has been an active member of Amnesty International Australia since 1962 and has held positions at local, State and National levels. He has represented AIA internationally and he is now a member of the National Executive Committee of AIA.*

*While AI does not have definitions which are officially recognised, he has given the following:*

## **DEFINITIONS:**

Humane acts/ humanity reflect the values of compassion, tolerance, and mercy to which the UDHR calls every individual. Inhumanity is intolerance and cruelty of one toward another that entails grave abuses of the physical or mental integrity of the victim, or of his/her right to freedom from discrimination.

## **Explanatory Notes:**

The concept of "man's inhumanity to man" (and related terms, such as "inhuman(e)", "humaneness", "crimes against humanity") is of wanton cruelty, and injustice, and behavior unworthy of a human being. Hence it is possible to be "inhumane" to a non-human animal, even if it is not asserted that animals have rights.

In my opening sentence, I used the word "wanton" to connote actions or attitudes that are unreasoning, irrational, and (hence, likely to be) random. That such would be "inhuman" is supported by the tradition that goes back to Aristotle that humankind is inherently rational, so that irrational behavior would be subhuman in some sense.

In the Enlightenment tradition, human nature is therefore a rational one, and since humans are rational it is only reasonable and proper that they should be preserved so that they can exercise and enjoy their human rights. However, it is important that we note that, however much the rhetoric of 'inherent' or 'fundamental' rights may serve us in our work, we must recognize that human rights have neither biological nor any other empirical reality. Rather they are a human construct, a set of values or ideals toward which society must - through all difficulties - struggle.

However, that they are human constructs makes them no less important - indeed it may make them more important than if they possessed some kind of physical objectivity — for it is our constructs and the beliefs we attach to them that drive human behaviors.

Rights may be said to be universal if they are recognized as belonging to everyone, rather than only to certain persons or groups. Such universal rights are human rights, that is rights that we attach to the status of being human. Rights are fundamental if they are necessary to the full realization of full humanity. Thus, specific rights claimed by marginalized or

disadvantaged groups can properly also be called 'human rights' if they are necessary for the persons concerned to realize their full humanity. Hence, *the right to realize one's full humanity (i.e., one's full personhood or humanness) is central to the very idea of human rights.*

As human rights are social constructs, there must be a substantial universal consensus across cultural and other divides on the legitimacy of any asserted right. It must also be possible for the asserted right to be effectively realized by the claimant without injustice to others. Since rights and responsibilities to others are complementary, and imply a just society, we can assert that rights that pass these tests are indivisible (because interdependent) and universal (hence necessary to justice).

It is notable that the abuse of human rights frequently accompanies the classification (informally, at least) of persons thus abused as 'subhuman' or 'non-human' (e.g., Jews, the Rom, Bantu, 'Negro' slaves), and hence not entitled to full human rights.

Since human rights are constructed, the important thing is the process of dialogue and exchange that seeks to articulate universal values, for rights are constructed through human interactions as humankind its a common humanity. So, the Universal Declaration of Human Rights is a powerful and useful basis for the explication and elaboration of human rights, but it is not holy writ and cannot be deified as unchangeable truth: universality is not status, and the import of all statements of principle unfolds indefinitely as part of the historical process.

For reasons suggested in the last paragraph, attempts to define the words in the title are likely to disappoint: any such definitions may fail to foresee the unraveling of our future understanding of the import of these terms.

As an example, the Nuremberg Principles defined 'crimes against humanity' as "Murder, extermination, enslavement, deportation *and other inhuman acts* done against any *civilian* population, or persecutions on political, racial, or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection *with any crime against peace or any war crime*" (my emphases). This definition is restricted by the three provisions I have italicized. While the limitation to crimes against civilians in a context of an illegal war conducted in breach of the laws of war may be deleted to produce a more durable or 'timeless' definition, the weakness of the whole project is revealed by the catch-all phrase, "and other inhuman acts". Whenever jurists set out to define

a broad concept by constructing the definition as a set of specifics, they risk missing something they may wish to capture unless they use such a phrase. Some readers, too, may have noted that the "persecutions" listed make no reference to sex, sexual orientation, or age groups.

There is a number of definitions of torture available, but I understand none has universal acceptance. However, the gist of them is 'the infliction, for political or other ideological purposes and in order to secure compliance from the tortured or from others, of physical or psychological pain or injury'. This (or something like it) was a good enough definition until someone raised the issue of female genital mutilation ("FGM"). As described, it sounded like torture to me, but, although the victim might be submitted to 'cruel, inhuman, or degrading' ("CID") treatment to secure her submission, the painful act of mutilation was not itself intended to secure compliance of any kind. The problem was that FGM was not carried out by a political power to secure popular acquiescence or to extract information or a confession, but was a cultural tradition. So, our definition of torture or CID must be uncoupled from its traditional link to political objectives.

On these grounds, then, it is my view that all terms like "(in)humanity", "inhuman(e)" are best defined in the broadest acceptable terms, and that these should be linked to the concept of the fundamentality of human rights to the full development of the human person.

This would imply that *an inhumane act is any deliberate or negligent act of that is unworthy of our shared humanity because it is a breach of our responsibility not to inflict cruelty or do anything that might*

*reasonably be expected to result in a grave abuse of the right of any person to life, to physical and mental integrity, to freedom from unjust discrimination, or to develop his or her full potential as a human being.*

It will be noted that I have not specified any restriction to the term "any person". This would be open to interpretation as 'any person now alive', or more broadly to include persons as yet unborn - including unborn children. This lack of specificity, though it may seem dangerous and hence undesirable, is precisely what the world community needs in the formulation of a principle whose implications are to be explored and adjusted as part of an historical process. If my definition were to be applied to acts against animals, it might become "*an inhumane act*

*toward any animal is any deliberate or negligent act that is unworthy of a human being because it is breach of our responsibility not to inflict cruelty, or do anything that breaches the responsibility of human beings to protect animal lives."*

Future debate would then decide whether it was unacceptable speciesism and a breach of this definition to slaughter animals humanely for food.

## **Dr Philip Kime**

Originally studied Philosophy at Warwick University and then Artificial Intelligence at Edinburgh. His Doctorate was concerned with Cognitive Science and the notion of "explanation" that it employs. He taught Philosophy at the University of Edinburgh as Tutor and Teaching Assistant for eight years, thereafter giving guest lectures in the Psychology Department. His abiding interest is Jung and other approaches to psychology that take non-rational needs seriously.

## **DEFINITIONS:**

**"Humane" and "Humanity": Sensitivity and**

# Bravery

There is an inherent problem in trying to define these terms; a problem we may put like this: to define them is precisely to do the very thing that they stand in opposition to. So, I shall say rather that I attempt to elucidate these ideas than define them, the difference becoming clear as I make the case below.

The essence of the notion of humanity is sensitivity. That is, we should recognise that the task of being human and the task of the right way to treat the human — that is, "humane" behaviour — is unlike many other things that we routinely deal with.

One of the great consequences of being human is having a psychology to contend with; this fact alone makes the issues more complex than any other natural phenomenon and the more complex something is, the more sensitive we have to be in order to deal with it. Theoretical generalisations are increasingly useless the further we move upwards on the scale of complexity. Humanity is the most astoundingly, overwhelmingly complex thing and therefore needs a great sensitivity. So, to be "humane" is necessarily to be extremely sensitive.

What does this mean — "to be sensitive"? Well, this has one very important meaning, or at least a very important implication and this is the essence, the very core of the issue: it means that we must be brave enough to drop our theories. A theory is the opposite of sensitivity and cannot deal with the issues involved with being human and being humane.

I must explain this — must explain now why theories are anathema to sensitivity and therefore to a proper appreciation of humanity. A theory exists before the facts that afterwards it is used to judge. This statement is a tautology but it is important to realise that it highlights a crucial asymmetry - the facts that come after the theory is in place are brutalised - they have no chance to determine actions because the theory tells us a priori how to deal with them.

Once we have a theory of "what it is to be humane" or "what humanity is", we are thereafter blind to the world — a world which requires that we have our eyes open at all times. A theory about humanity is a special type of moral blindness that results in an arid intellectualism that can be taken over by the most awful tendencies to abuse humanity. This is simply because theories damage, indeed are the very antithesis of, sensitivity.

This happens because a theory is an intellectual construct that has very little force since it has no external signs, so to speak. Take a favourite of modern intellectual liberalism, the idea of "inherent human dignity".

This is a theoretical construct simply because it has no external signs — we do not see or even feel this quality — we simply decide it is so and force this construct onto the world. Of course, this is not to say that there is no such thing but rather that it cannot be supported by a theory. The irony is simply that we cannot have a theory that says "to be humane is to recognise inherent human dignity" or similar, simply because that is a dry formula that soon loses all force when it travels out into the world and attempts to influence actions.

A theory about dignity soon destroys dignity because the recognition of dignity requires incredible sensitivity and a theory cannot give this. To be sensitive to something is to approach it with a certain quality of mind which a theory destroys. It is quite simple — the job of a theory is to regiment the world into as few types as possible. To be sensitive is to see in the world as many different types of things as possible. They are diametrically opposed.

The reason that we cannot do this and always resort to theories about the most delicate things is simply that we are cowards. We do not have the bravery to approach something afresh each time. It is difficult, it is tiring, it is sometimes frightening because to look without a theory is to find new things every time one looks.

A world full of new things is exciting to a child but terrifying to an adult, who needs fixed points in order to survive in the unnatural psychological environment of the modern age. In this way, we see that bravery is required - humanity requires bravery of a sort that is extremely hard to endure for it means to deny ourselves the artificial comfort of theory.

This is not to say that there are no regularities in the world — indeed there are. But when we make the regularities we notice in theories — when we say "X is Y" or "X always means Y", then that is the death of a part of the world. That marks the limit of our sensitivity and therefore the limit of our humanity.

It is implied by this that to be "humane" does not necessarily mean to always decide in favour of

individuals. Indeed, this is a

particularly pernicious theory that often causes a great deal of misery simply because it is not sensitive to situations where the best thing to do is to decide against the interests of some individuals.

To be humane is, in a very important sense, to be human and to be truly human is to look at a situation in its own terms in order to decide a course of action. So a theory that automatically and always favours people is not humane. This really, is simply a roundabout way of stating the old piece of wisdom "sometimes you have to be cruel to be kind". This is very difficult and is at the heart of what it is to be human and therefore humane.

The reason that all previous definitions of and theories about humanity and humanitarianism have failed to help one little bit in the sphere of world events is not because we have not yet hit upon the right formula; the problem is rather that we have tried indeed to create formulas at all. We have failed not in practice or in the subtle application of our ideas but simply in our very understanding of what is required.

The requirement is sensitivity to particular situations not a theory that covers the most cases. Further, we seem to think that a theory that covers most cases is quite good and the exceptions are inevitable in such a complex area. This is a terrible mistake. If we look at the histories of all of our "isms", they start out quite idealistically but always end in a weary pragmatism; weary because it is a broken idealism.

So, why not start with the pragmatics and forget the theory?

"Humaneness" is about sensitivity to the world as a human — it is thoroughly and completely pragmatic — theories about how things should be in general simply trample it into the ground of hard and predominantly immature reason. So, to be humane is to be sensitive, to have the bravery to be sensitive and to refrain from theorising.

Humanity is the delicate, complex field in which we must exercise this sensitivity.

Can we look forward to a humane world?

## **Dr. Rachael Kohn**

*Born in Canada, Dr. Rachael Kohn has a Ph.D. in Religious Studies which she has taught in universities in Canada, England and Australia. She joined the ABC in 1992 as producer and presenter of religion programs including The Religion Report, Insight, Religion Today, Encounter, The Spirit of Things and The Ark. She has won many international awards for her work including 2 Gold World Medals from the New York Festivals. Her book, THE NEW BELIEVERS will be published in October 2003 by HarperCollins.*

**CONTRIBUTION WITHDRAWN**

## **The Honourable Sir William Deane AC KBE**

Sir William was born in Melbourne and educated in Sydney. He had a distinguished career in law before being appointed a Justice of the High Court of Australia in 1982, continuing in this capacity until 1995. He was Governor General of Australia from February 1996 to June 2001.

### **DEFINITIONS:**

"Humanity" has, for me three alternative meanings, namely:

- (i) All human beings, regardless of particular qualities or circumstances;
- (ii) The state or nature of being human: or
- (iii) The quality indicated by the adjective "humane".

For me, "humane" essentially summarises the qualities of caring exemplified by Chapter 25 of St. Mathew's Gospel verses 35 to 36:

*"For I was hungered, and ye gave me meat; I was thirsty, and you gave me drink; I was a stranger, and ye took me in. Naked, and ye*

*clothed me, I was sick, and ye visited me; I was in prison, and ye came unto me."*

Put differently, the ultimate touchstone of an individual's "humanity" in that sense is how he or she treats the most vulnerable and disadvantaged of his or her fellow human beings.



CHIEF OF  
THE DEFENCE FORCE

AUSTRALIAN DEFENCE HEADQUARTERS  
DEPARTMENT OF DEFENCE  
CANBERRA, A.C.T., 2600

CDF 196 /03

13 February 2003

**Mr Harry L. Wallace OAM**  
Major Issues and Theology Centre  
25 York Street  
BEECROFT NSW 2119

Dear Mr Wallace

Thank you for your letter dated 13 December 2002 in which you sought advice on whether the Australian Defence Force (ADF) can provide you with definitions of 'humane' and 'humanity.'

Generally, in the context of Australia's interpretations of 'humane' and 'humanity,' these terms are taken to include their ordinary dictionary meaning of 'compassion for the suffering or distressed.' In particular, the ADF is committed to the International Humanitarian Law principle of humanity in all of its activities. I assure you that the ADF is dedicated to observing the laws of International Humanitarian Law, including the Geneva Conventions and the Protocols Additional to the Geneva Conventions.

You mention in your letter that the Red Cross has been doing some work on the definitions of 'humane' and 'humanity.' The ADF has a close working relationship with the Red Cross and has representatives on the Australian Red Cross International Humanitarian Law Committee and several State and Territory Australian Red Cross Division International Humanitarian Law Committees. The ADF is therefore aware of some of the work the Red Cross has been doing.

Late last year the Vice Chief of the Defence Force, Vice Admiral Shalders met with Dr Jakob Kellenberger, President of the International Committee of the Red Cross, to discuss issues of mutual concern, including issues of International Humanitarian Law as well as implementation of the new International Criminal Court.

Please be assured that the Australian Government and the ADF is committed to adhering to the principles of International Humanitarian Law and is closely and actively engaged with allies, the International Committee of the Red Cross and the Australian Red Cross, to ensure that these fundamental principles are upheld.

Yours sincerely

**P.J. COSGROVE AC MC**  
General  
Chief of the Defence Force



OFFICE OF THE  
CHIEF OF  
THE DEFENCE FORCE

AUSTRALIAN DEFENCE HEADQUARTERS  
DEPARTMENT OF DEFENCE  
CANBERRA, A.C.T., 2600

CDF 511 /03

28 March 2003

**Mr Harry L. Wallace OAM**  
Major Issues and Theology Centre  
25 York Street  
BEECROFT NSW 2119

Dear Mr Wallace

Thank you for your letter dated 14 February 2003 in which you sought advice of definitions of 'humane' and 'humanity', the training given to Australian Defence Force personnel so that they understand their obligations, and whether an officer may attend your proposed forum on 30 April 2003.

In relation to your first question, I believe I addressed definitions of 'humane' and 'humanity' in my letter to you dated 13 February 2003. In the event you did not receive that letter, I enclose a copy for your reference.

As to training, members of the ADF receive regular training in the laws of armed conflict and the principles underlying those laws. Instruction, including that on the treatment of prisoners of war and targeting, occurs on an individual and group basis. For ADF members instruction takes place at the recruit or basic instruction phase, on a regular refresher basis at respective units, and immediately prior to and during deployment overseas.

I note your invitation for one of my officers to attend your forum on 30 April 2003. I do not believe that an officer attending the forum could add significantly more to what I have outlined in my letters to you. Nonetheless, I wish you well for your forum and in due course would welcome a brief on its outcomes.

I trust this information will be of assistance to you and I appreciate your interest in these matters.

Yours sincerely,

**P.J. COSGROVE AC MC**  
General  
Chief of the Defence Force

## **Sir Ronald Wilson AC KBE CMG**

*Sir Ronald, after a distinguished career in law was appointed a Justice of the High Court of Australia. He has a long record of concern for human rights, has written on the various aspects of human rights and was President of the Human Rights and Equal Opportunity Commission of Western Australia.*

### **DEFINITIONS:**

The words "humane" and "humanity" are, in my opinion, closely related. "Humanity" is the noun and "humane" the adjective.

I understand "humanity" to be a very broad term, inclusive of all members of the human family. As the adjective "humane" suggests, "humanity" carries a benign connotation, indicative of an inter-connected world at peace with itself. It conjures up the idea of a family whose members care for one another, expressed in the word "humanitarian".

The unity of the world family contemplated by the word "humanity" rests in the respect which members of the family accord to each other, which in turn, depends on the recognition of the inherent dignity of each.

I offer reflect on the opening phrase of the Preamble to the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948 which reads *"whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"*.

## **Clyde Mitchell**

*Clyde Mitchell is the Executive Director of the Major Issues And Theology Centre. He has graduated in economics and business management, and has a wide experience in working with government agencies and with business.*

### **DEFINITIONS:**

#### **" HUMANITY "**

A distinguishing characteristic of humankind is the ability to recognise and accept others as individuals with equal rights and obligations. This is an evolutionary characteristic.

We see over time that the individual has been viewed in the context of the tribe, the state, or the religious structure, being given greater or lesser value according to the perceived needs of the group and its governing structure. As communities developed and concepts of human rights emerged, so did the tension between the demands of the group and the emerging concepts of individual rights.

The mark of a mature society is not that equilibrium in this tension has been achieved, but rather that the tension is recognised and that attention is vigorously directed towards achieving that equilibrium.

The mark of maturity in an individual is when he or she can view the world not solely in terms of personal needs and desires but can see him or herself as a contributing partner in society with obligations to the immediate and extended community, present and future.

Similarly a mature state or nation accepts not only the responsibility to balance the individual rights of its citizens with its own perceived needs, but also accepts that it has an obligation to temper its own wishes to meet the needs of the world of which it is a part.

If we accept that an essential characteristic of humankind is a right to individuality and that nations have an obligation to acknowledge individual and collective rights, then it follows that "HUMANITY" may be defined as the ability and willingness to recognise that each human life is separate and sacred.

It may appear an insignificant life, compounded of things which are

unimportant elsewhere, but it is individual, it is separate, it is sacred and is given significance simply by its existence.

## **"HUMANE"**

To act in an HUMANE way is not limited to acting in the interests of each individual, but must also embrace the interests of humankind in total. Humans must be considered in the context of their environment.

Science has tended to de-personalise the human being and human work. We applaud the results of technological development and often overlook the need for commensurate attention to people and the environment. Whereas western thought has become snared by economic rationalism, traditional eastern thought has given more credence to the need for humans "to show a filial reverence for the active world".

If we accept that humankind and the environment are interdependent then the concept of "humane" acts include economic, social and political issues. Acts in the interests of global economic efficiency may have a severe adverse impact on the livelihood of small states or ethnic groups. Administrative systems or customs accepted as socially equitable to one nation may in fact introduce severe cultural tensions in another. Political actions benefiting one country may be seen as quite predatory to another.

To act HUMANELY therefore is to act in the best immediate and continuing interests of individual human beings and the social structures and dependencies which support humankind.

## Harry Wallace OAM

Harry Wallace is a Director of MIAT. He was awarded the OAM on Australia Day 1995 for starting the AusBuy campaign and other community work.

## HUMANITY

### Whereas:

➤ The Universal Declaration of Human Rights proclaimed by the UN General Assembly on 10 December 1948 clearly states the equality of all people in its opening Preamble:

*"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ..."*

➤ "Humanity" is a collective term for persons linked together in a community as well as a term for communities linked together to form a broader community or state.

➤ Each person is a social creature, uniquely identifiable as a contributing member of a number of communities, such as family, village/locality, work, religious, sporting or other. The right to belong to and participate in such communities is essential for the nurturing, emotional and physical development, and sense of identity, of each person.

➤ Having the inherent human rights referred to above requires the reciprocal obligation to actively promote and protect the inherent human rights of others, so that humanity is a mutually inter-dependent cohesive community.

➤ Each person has the right to be legally identified with and be a participating member of a state, usually the one where he or she was born. That is, no-one should be stateless.

➤ Being born equal entitles each person and community to have an equal say in the way that community or state is governed, together with the right for each person not to be prosecuted under any law of that community or state unless that law is applied without discrimination to all members of that community or state.

➤ Through evolution or creation, humanity has developed a richness of

cultures which include language, traditions, music and art. These are essential components of humanity, even though they have in the past, and will continue in the future, to evolve.

➤ Humanity has been given the gifts of reasoning, of being able to consider alternatives and chose between them. It has also been given the gift of being able to understand the "physical" laws which apply in our universe. The term "technology" will be used to cover this gift.

➤ Technology has created power, which has taken humanity from the Stone Age through the Bronze Age and subsequent Ages to bring great benefits, but also great suffering.

➤ History is full of examples of addiction to power and the struggle to control it. This struggle will be never-ending, but essential. Jesus told the parable (Matthew 19, 23-24) about the rich man ( today read "man with great power") losing his soul because he would not willingly give up his power. King John of England reluctantly and under duress signed the Magna Carta on 15<sup>th</sup> June 1215 to establish basic personal freedoms, including *habeas corpus*. In 1887 Lord Acton wrote: *Power tends to corrupt and absolute power corrupts absolutely.*

➤ Technology has exploded over the last 200 years while in the last 100 years atomic/nuclear technology has given the power to permanently destroy or pollute our planet. It is likely that the next 100 years will see even more awesome power developed.

➤ Technology has concentrated in the hands of small sections of humanity four critical areas of power:

Military power

Financial power

Information power

Environment power

Humanity knows this power has to be controlled, but has not yet agreed on how such power is to be controlled, for the benefit of most.

➤ Stable states with transparency have laws to balance the use of power with regulatory authorities and police forces to enforce laws impartially and with minimal violence.

➤ The international community is at present a long way from what eventually must occur — an international police force acting

impartially to stop violence between nations and to enforce financial, environmental and information laws which are beneficial to most of humanity.

➤ Humanity has a base instinct to be "in-humane". Theologians refer to this as man's sinfulness - the sins of omission and commission. As the Scottish poet, Rabbin Burns wrote in 1786:

*Man's inhumanity to man*

*Makes countless thousands mourn!*

All communities accept that this base instinct has to be controlled by laws, rules and traditions.

➤ Humanity is inextricably inter-connected with the environment. It feeds humanity and provides the resources for richer lives. At this point of time there is no known alternative planet for humanity to move to if this planet is not cared for. Therefore protecting and sustaining the whole environment is essential for humanity.

➤ Humanity, through creation or evolution, has a common genetic structure which must be sacrosanct and this structure must be protected from all forms of man-made genetic manipulation. Technology exists and is being further developed for the cloning of animals for commercial purposes. The technology can also be used to build numbers of endangered species. Both these applications appear beneficial, but the cloning of humans or the merging of human and animal genes, even if this was to grow a replacement organ, is not beneficial.

➤ By the end of the 20<sup>th</sup> century, enormous financial power was being concentrated in the Boards of Directors of trans-national corporations, in practice with little accountability to any state government. In the 21<sup>st</sup> century this trend looks likely to continue. The international community has yet to decide how this power is to be controlled, as without control large sections of humanity will lose their inherent right to collectively control their own destinies.

➤ Humanity will not be humane if it does not give financial support to poorer communities and nations.

Support does not just mean aid. It means affirmative action to provide trading opportunities so the poor have markets for their products, which

in turn will allow them to have the basic necessities of life.

➤ Humanity needs information to be able to exercise the gift of decision making. Each person, community and state must have the right to a variety of sources of information.

Therefore "humanity" can be defined as:

Persons joined together into communities by specific bonds (such as language, religion, race or traditions) and communities joined together to form states, with each person, community and state acknowledging the equality of each other, and with each having inherent rights and related obligations, all inextricably inter-connected with the environment and dependent on the collective controlling of the power it has obtained from technology, in particular military power, financial power, information power and power over the environment.

## **HUMANE**

**Whereas "Humane":**

➤ is the pro-active action or intent by a person, community or state to treat every other person or community as a valued and equal member of humanity.

➤ is being pro-active to alleviate deprivation, despair, physical and psychological suffering, and specifically not to deliberately kill, torture or cause pain or suffering. Therefore weapons deliberately designed to maim, such as landmines, are in-humane.

➤ is being pro-active to ensure that all people, and particularly children, have the basic necessities of life, including food, clothing, shelter, education and health services, and conversely means that collective punishment imposed on a community or state because of a war crime or dispute over resources or land, whereby it is deprived of basic necessities for life, is not humane, as is the ignoring of people or communities in need of the basic necessities.

➤ is being pro-active to avoid causing pain and suffering to some non human living creatures, including cats, dogs, horses, sheep, cattle, dolphins and whales.

Therefore "humane" can be defined in the words of the Golden Rule as:

*"Do unto others as you would have them do unto you."*

or as:

" Pro-actively minimising or eliminating physical and psychological suffering, and where appropriate, providing the basic necessities of life."

## **Rev. Dr. Clive Pearson**

*Clive Pearson lectures in theology at United Theological College [Sydney] and is also the Associate Director of the Research Group on Public*

*Theology for Charles Sturt University. Formerly he was Professor of Systematic Theology at the Theological Hall, Knox College, Dunedin, New Zealand. He has specialist interests in the fields of ecotheology [being on the editorial board of the international journal, Ecotheology], the nature of a public theology, and various forms of contextual theologies, in particular those to do with migration and diaspora. He is at present writing a book called For Christ's Sake which is a theological response to a number of contemporary issues in Australia; he is also preparing an anthology of writings on Following the Hyphenated Jesus-Christ, which is concerned with a diasporic theology written from the perspective of Australia. He also teaches a course in theological ethics.*

## **DEFINITION:**

The Christian faith has not traditionally thought in abstract terms about the concept of humanity. It is a modern term. The biblical and classical traditions of faith would want to affirm what it means to be human in the sight of God and alongside the rest of creation. We humans are creatures; we are part of the whole of creation; our dignity, our right to be, is given to us in our being made in the image of God, irrespective of race, gender, social standing, wealth, class, colour, success or otherwise. We are not perfect beings; humanity is flawed. For the Christian the exemplar of a true humanity is Jesus Christ whose life embodied a costly love of neighbour in a spirit of hospitable compassion and mercy.

## **APPENDIX I**

### **AUSTRALIA FAILS TO TAKE A STAND AGAINST**

# TORTURE

The Major Issues and Theology Centre (MIAT) was most concerned to read in the Sydney Morning Herald in July 2002 that Australia had voted against the Protocol to strengthen the 1984 U.N. Convention Against Torture.

MIAT wrote to the Prime Minister of Australia, The Federal Attorney-General and the Minister for Foreign Affairs and Trade, seeking clarification of Australia's position. All letters were given prompt and courteous attention, but the conclusion from this correspondence is that our national stance is less than admirable.

It appears that Australia refused to sign the Protocol because;

- (a) the Government was concerned that the Protocol was adopted at the Commission on Human Rights by vote rather than by consensus. Consensus, the Government suggests, would have given the Protocol a broader base of international support.

Just how the Government believes Australia can serve the best interests of the Protocol by refusing to vote with the majority of nations in support of it is hard to understand.

- (b) becoming a party to the Protocol would constitute a standing invitation to the Sub-Committee established under the Protocol to visit places of detention, whereas the Australian Government will agree to such visits by committees only when there is a compelling reason to do so.

Without reflecting in any way on the Australian Government's management of places of detention, one would expect that Australia should be in a position to welcome inspection by a recognised authority at any time.

From the above, it would appear that another opportunity to show moral leadership has been deferred in favour of doubtful national or political self interest.

MIAT's concern is that nations are using perceived security threats as an excuse for actions which do not promote international tolerance, understanding and peace. In fact, it could be claimed that diplomacy at the international level and

respect for the law and human rights at the national level are being replaced by belligerence and abuse of power. If the world is to avoid a decline in accepted standards of human rights, then secure, stable and prosperous nations such as Australia should accept the challenge to set aside immediate self interest and show leadership, even if it means some sacrifices.

Clyde T. Mitchell

## APPENDIX II

# Humanity: What is it and how does it influence international law?

by

Robin Coupland

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ROBIN COUPLAND is a surgeon and former co-ordinator of ICRC surgical activities. He now works as the ICRC's adviser on armed violence and the effects of weapons. — Paper written as part of the author's course work for a Graduate Diploma in International Law at the University of Melbourne, Australia.

The full citation for the article is *International Review of the Red Cross*, Vol. 83, No. 844, December 2001, pp. 969-990.

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People refer to humanity in different ways. It can mean human beings collectively, but at the same time it carries notions of philanthropy and altruism. The laws of humanity and crimes against humanity are referred to in international treaties, and humanity is cited as a source of international law.<sup>1</sup> Humanity implies a moral force; whether or how this constrains inhumanity — which invariably involves acts of armed violence — is unclear. Users of the words “humanity” and “humanitarian” are often perceived as placing themselves on a moral high ground. It is unclear whether humanity has been usurped by or become integrated into contemporary concepts such as human rights, development, humanitarian intervention and human security.

The last 150 years have seen remarkable advances in every aspect of human existence, from manufacturing technology, commerce and communications to politics, welfare and weapons, to name but a few (although the benefits have not reached all.) Simultaneously, there has been an increase in the population of the planet in the context of a world organized into nation-States.<sup>2</sup> That these phenomena have come about in the same brief period of human history points to their being connected. It is proposed here that the connection lies in the evolved abilities of humans to make and use weapons and, in parallel, to restrain the use thereof.

The ability of societies to defend themselves or to take what they want from elsewhere by force has given them the means to advance. Keegan's argument that nation-States have arisen from armed conflict is convincing.<sup>3</sup> Within a society or nation, enforcement of law and order in a just manner may ultimately involve the use of armed force by designated bearers of weapons. Whilst we recognize the recent advances in human existence, we do not recognize so readily that they are inextricably linked to the capacity of groups of humans to employ armed violence both outside and within the group. As a result of the advances noted above, the costs of settling disputes by armed conflict have become high and States have increasingly entered into treaties to avoid war with other States. During this period of history,

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<sup>1</sup> The “laws of humanity” are referred to in the St Petersburg Declaration of 1868, and in what is now known as the *Martens Clause* derived from the preamble to Convention (IV) respecting the Laws and Customs of War on Land, adopted by the 1907 International Peace Conference at The Hague. Legal recognition of crimes against humanity originated in the jurisprudence of the Nuremberg Tribunal; such acts also constitute a category of crime in the 1998 Rome Statute of the International Criminal Court. — Brownlie states that humanity is a source of international law. He cites as a classic reference the judgment in the *Corfu Channel* case (I.C.J. Reports 1949, p. 22): the court relied on certain “general and well recognised principles”, including “elementary considerations of humanity, even more exacting in peace than in war”. I. Brownlie, *Principles of Public International Law*, Clarendon Press, Oxford, 1998, p. 28.

<sup>2</sup> See generally J. Diamond, *Guns, Germs and Steel: a Short History of Everybody for the Last 13,000 Years*, Vintage, London, 1998; *The Economist*, Special Millennium Edition, 31 December 1999, pp. 10-14; B. Ehrenreich, *Blood Rites*, Metropolitan Books, New York, 1998, pp. 175-193.

<sup>3</sup> J. Keegan, *A History of Warfare*, Pimlico, London, 1993, pp. 386-392.

effective international law prohibiting acts of aggression by States has developed.<sup>4</sup> This is not a coincidence.

Armed violence or the ultimate threat thereof are the means by which confrontations between groups of humans on any scale are played out. As a result, a central feature of human existence has been the making of, threatening with or use of weapons.<sup>5</sup> In practical terms, the purpose of a weapon is to help its user to overcome his or her physical or psychological limits when dealing with an adversary; it creates a differential of physical power. Armed violence and threats of armed violence based on this power differential between groups or individuals are the critical factors leading to aggression between States and acts of inhumanity such as massacres, persecution, forced displacement, arrests, attacks on civilians, excessive use of force by police and denial of freedom or of self-determination.<sup>6</sup> These acts are all executed ultimately by, for example, air-delivered explosive munitions, artillery, mortars, assault rifles, handguns or batons; however, such weapons are originally designed to be used either for national defence or for policing a nation's populace. What this means is that the only difference between war or inhumanity, on the one hand, and the legitimate use or threat of armed force creating the conditions for social advances, on the other hand, is restraint as to how, when and where weapons are used. When the capacity for armed violence slips or might slip the leash of restraint, rules are invoked. At the international level, these rules constitute an important part of international law

It is argued in this paper that the status of humanity with respect to international law is ambiguous. Humanity will consequently be interpreted in terms of people's security and well-being. Based on this interpretation, a universally applicable and objective definition of humanity is proposed that helps to clarify the complex relationships between humanity, inhumanity, the capacity for armed violence, the restraint of armed violence, and international law.

### *The status of humanity in relation to international law*

Clarifying what is meant by "humanity" or "humanitarian" when they are used in international law is not a purely academic pursuit. The words carry increasing importance in international legal and political discourse when armed violence, its effects or its regulation are under discussion.

There are alternative definitions of humanity. One is "the human race; mankind; human beings collectively;" another is "the character or quality of being humane; behaviour or disposition towards others such as befits a human being."<sup>7</sup> Most people would acknowledge that the word humanity carries these two meanings and would also recognize a link between the definitions. However, the nature of that link is not obvious, given that collective human existence is not necessarily associated with humane behaviour of individuals. For the purposes of this paper, the notion of humanity as being the collective existence of human beings is referred to as "humanity-humankind" and the notion of humanity as being a form of behaviour or disposition is referred to as "humanity-sentiment."

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<sup>4</sup> Chapter I of the UN Charter. See also B. Boutros-Ghali, "The United Nations at fifty", *Melbourne University Law Review*, vol. 20, 1995, pp. 9-13. T. Farer, "International Law: The Critics are Wrong", *Foreign Policy*, 1988, pp. 22-45.

<sup>5</sup> *Op. cit.* (note 3).

<sup>6</sup> The definition of violence adopted by the World Health Organization is: "[T]he intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a likelihood to result in injury, death, psychological harm, maldevelopment or deprivation." From J. Koplan *et al.* *Violence Prevention: A Public Health Policy*, Atlanta, Centers for Disease Control, 1998. See also R. Coupland, "Armed violence", *Medicine and Global Survival*, vol. 7, 2001, pp. 33-37.

<sup>7</sup> *Oxford English Dictionary*, 2nd ed., Clarendon Press, Oxford, 1989.

In 1956, Jean Pictet wrote that “[t]he principle of humanity stands out on its own in the doctrine of the Red Cross, and all other principles hang from it.” He never gives a definition and even says it is “something understood but not actually expressed.” Quoting a *Littre* dictionary definition of it as “a sentiment of active goodwill”, he goes on to describe it as “a complex motive in which kindred elements such as kindness, pity, gentleness, generosity, patience, and mercy are present in varying degrees.” In further attempting to define humanity, he says that “humanity is born of man’s love for his fellow-men”, but acknowledges that this is “a further example of the poverty of language.” He describes humanitarianism as “simply this attitude of humanity laid down as a social doctrine and extended to mankind as a whole.”<sup>8</sup> The 20th International Conference of the Red Cross (Vienna, 1965) proclaimed seven Fundamental Principles of the Red Cross and Red Crescent Movement. Humanity is the first principle, but again there is no definition; instead the Conference gave the following description of what the Red Cross wants to do in the light of humanity:

“*Humanity* – The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours – in its international and national capacity – to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.”<sup>9</sup>

Both Pictet and the Red Cross Conference were referring to humanity-sentiment, but both imply a link to humanity-humankind. In 1983, Pictet still did not dissociate humanity-sentiment from humanity-humankind and recognized that international humanitarian law was linked to “the formidable struggle which has been carried on from the very beginning of human society between those who wish to preserve, unite and liberate mankind and those who seek to dominate, destroy or enslave it.”<sup>10</sup>

Given the ambiguity of the meaning of humanity in the latter half of the twentieth century, it is surprising that the “laws of humanity” were evoked in the St Petersburg Declaration of 1868 which prohibited the use of bullets that would explode on impact with a soldier’s body.<sup>11</sup> At first sight, one would assume that reference was being made to humanity-sentiment. But is it possible that government lawyers and diplomats drew up a treaty invoking laws about something that remained undefined a century later? Such people were and are unlikely to allow the creation of laws that constrain their country’s military force without knowing exactly to what those laws pertain. Or were the laws of humanity referred to actually the laws of humanity-humankind more in keeping with the laws of nature?<sup>12</sup> Grotius’s *De Jure Belli ac Pacis* published in 1625 was among the first to postulate that natural law provided a source of international law.<sup>13</sup> Grotius described the attitude to war in the Christian world at the time, saying that “when arms were once taken up no reverence [was] left for divine or human law.”<sup>14</sup> However we interpret earlier references to natural or human law and the laws of humanity, it is important to note that the laws of humanity were first evoked in the

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<sup>8</sup> J. Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, pp. 14-31.

<sup>9</sup> A. Durand, *The International Committee of the Red Cross*, ICRC, Geneva, 1981, p. 54.

<sup>10</sup> J. Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff/Henry Dunant Institute, Dordrecht, 1983, p. 5.

<sup>11</sup> In the 1868 St Petersburg Declaration, the use of explosive projectiles of less than 400g in weight is deemed to be contrary to the “progress of civilization” and the “laws of humanity” because they would “uselessly aggravate the sufferings of disabled men, or render their death inevitable”.

<sup>12</sup> P. Lauren, *The Evolution of Human Rights*, University of Pennsylvania Press, Philadelphia, 1998, pp. 4-36. See also \_\_Selim Abou, “Natural and philosophical foundations of ethics”, *Diogenes*, vol. 43, 1995, pp. 35-54.

<sup>13</sup> B. Kingsbury/A. Roberts, “Introduction: Grotian thought in international relations”, in H. Bull/B. Kingsbury/A. Roberts (eds), *Hugo Grotius and International Relations*, Clarendon Press, Oxford, 1990, pp. 1-64.

<sup>14</sup> Quoted in C. Greenwood, in D. Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford, 1995, para. 112.

St Petersburg Declaration in response to the development of a new weapon because it was contrary to the “progress of civilization.”

At the Hague Peace Conference of 1899 a Russian diplomat, Fyodor Fyodorovich Martens, successfully introduced a clause into the preamble of the Hague Convention (II) with Respect to the Laws and Customs of War on Land which was retained almost verbatim in the latter’s revised version, adopted as the Hague Convention (IV) by the Peace Conference of 1907. It reads in part:

“the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of public conscience.”<sup>15</sup>

The "Martens Clause" has been carried over to the 1977 Additional Protocol I.<sup>16</sup> However, in 1977 the term “laws” was replaced by “principles.”<sup>17</sup> This moves the notion of humanity towards Pictet’s description of it and the resulting Red Cross principle; both are more in keeping with humanity-sentiment.

In his analysis of the Martens Clause, Ticehurst claims that States’ lawyers have had difficulty in applying belief in natural law to international humanitarian law because natural law lacks objectivity, but that the Martens Clause provides the objectivity, namely "dictates of public conscience". He also claims that the clause provides a moral code that stands outside positive international legal codes.<sup>18</sup> If the Martens Clause had read: "the dictates of *human* conscience", how would this be distinguished from humanity-sentiment or even morality?

It appears that the earlier legal attempts to restrain armed violence at an international level were based on concerns arising *from* humanity-sentiment together with concerns *for* humanity-humankind. The ambiguity surrounding the “laws of humanity” became apparent in the report of a commission to the 1919 Preliminary Peace Conference; the commission found that the Central Powers had committed acts “in violation of the established laws and customs of war and the elementary laws of humanity.”<sup>19</sup> However, two members of the commission dismissed the concept of the laws of humanity as being a question of “moral law” which lacked any “fixed and universal standard”.<sup>20</sup>

Humanity-sentiment as a principle with a unique influence in international law seems to have been championed by Pictet and the Red Cross. The question arises whether the introduction of humanity as a principle is simply a result of the poverty of language to which Pictet referred, or a means to maintain considerations of humanity at a time when States’ lawyers wanted to avoid reference to natural law. Nevertheless, specific and more recent reference to humanity–humankind has been made in international law. The President of the International Court of Justice, in the judgment in *Nicaragua v. United States of America (Merits)* referred to the principle of non-intervention as “the very cornerstone of the human effort to promote peace”, pointing out that this key doctrine is “so vital for peace and progress of the international community” and that its "non-observance could lead to disastrous consequences causing untold misery to humanity".<sup>21</sup>

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<sup>15</sup> 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land, preambular paragraph.

1 <sup>16</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>17</sup> Art. 1(2) of Protocol I reads: “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”

<sup>18</sup> R. Ticehurst, "The Martens Clause and the Laws of Armed Conflict", *IRRC*, No. 317, March-April 1997, pp. 125-134.

<sup>19</sup> *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties*, Report Presented to the Preliminary Peace Conference, 29 March 1919, reprinted in *AJIL*, 1920, No. 95, p. 115.

<sup>20</sup> *Op. cit.* (note 18), p. 144.

<sup>21</sup> Separate Opinion of President Nagendra Singh, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America)*, Merits, I.C.J. Reports 1986, pp. 143 and 146 respectively.

The adoption of the 1998 Rome Statute of the International Criminal Court is seen as a major milestone in the development of international law. The second preambular paragraph reads “[m]indful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity”. When the Statute enters into force, the Court will have jurisdiction over crimes of aggression, war crimes and genocide,<sup>22</sup> all of which would involve the use of weapons or the threat thereof. It will also have jurisdiction over crimes against humanity. This class of international crime, defined in Article 7, paragraph 1, of the Statute (murder, extermination, enslavement, deportation, unlawful imprisonment, torture, and persecution) cannot be committed without a group or an individual having greater power over others; this power differential is invariably but not necessarily brought about by the possession and threatened or actual use of weapons.<sup>23</sup> Moreover, crimes against humanity have a special status as international crimes. Robertson points out that the Nuremberg Charter identified a class of crimes “which is so peculiarly horrific that the very fact that educated, rational and otherwise respected rulers of men were capable of conceiving and committing it must diminish whatever value there is in being human.” He goes on to say: “Jurisdiction over ordinary crimes depends on a link, usually territorial, between the state of trial and the crime itself, but in the case of crimes against humanity that link may be found in the simple fact that we are all human beings.”<sup>24</sup> It is not clear which notion of humanity is referred to in this mention of crimes committed against it. Whilst the conscience of humanity is invoked, thus implying humanity-sentiment, Robertson’s comments resonate more with the laws of humanity found in the St Petersburg Declaration and the Martens Clause.

Everyday news clearly reveals a duality in collective human psychology which is not reflected by the duality of the meaning of humanity: *inhumanity* comes into play. This duality can be retraced to the origins of our thoughts about humanity. Blondel has written that “the concept of *humanitas* goes back to the Greek sophists who believed that the use of reason was mankind’s distinguishing feature. This belief was adopted by the Roman stoics, particularly Cicero, who contrasted *homo romanus* with *homo humanus*, the cultured and moral human being. For Cicero, the contrast was no longer between Romans and Barbarians, but between humanity and inhumanity.”<sup>25</sup> Recently, Gilbert has reminded us that recognition of this duality is important for the future of humanity-humankind; he tells us that “humankind is a living paradox, combining a sublime capacity for rationality, charity and self-sacrificing nobility with a breathtaking capacity for cruelty, egotism, irrationality and prejudice. These two contending and essentially moral coordinates form a matrix in which the denouement of life on earth will be determined, certainly in the next millennium, perhaps the next century.”<sup>26</sup>

The definition of inhumanity can be taken as the converse of humanity-sentiment.<sup>27</sup> Humanity-sentiment and inhumanity correspond to the duality recognized as being an inherent aspect of humanity-humankind. Furthermore, the balance between the two elements of that duality can be viewed as the degree to which capacity for armed violence is restrained. This helps us to comprehend better the nexus of humanity-humankind and humanity-sentiment. Whilst humanity-humankind and humanity-sentiment are intimately linked with restraining armed violence, armed violence lacking restraint — inhumanity — has

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<sup>22</sup> Statute of the International Criminal Court, Art. 5.

<sup>23</sup> The obvious exception is the crimes cited in Art. 7(1)(g): rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Whilst this category of crime could clearly be committed without weapons, the power differential required to commit them is given by weapons and also by the difference in physical build between most men and women.

<sup>24</sup> G. Robertson, *Crimes against Humanity: the Struggle for Global Justice*. Ringwood, Penguin Books Australia, 2000, p. 239.

<sup>25</sup> J. L. Blondel, “The meaning of the word “humanitarian” in relation to the Fundamental Principles of the Red Cross and Red Crescent, *IRRC*, No. 273, November-December 1989, pp. 507-515.

<sup>26</sup> A. Gilbert, *Betting on the Better Angels*, The Inaugural Henry Dunant Lecture, Australian Red Cross, Melbourne, 1999.

<sup>27</sup> “The quality of being inhuman or inhumane; want of human feeling and compassion; brutality, barbarous cruelty”, *op. cit.* (note 7).

a direct counterbalance that is humanity-sentiment. In brief, humanity-sentiment seems to come into play against inhumanity to determine the status of humanity-humankind. Crimes against humanity then are crimes against humanity-humankind carried out by acts of inhumanity. Glover describes many acts of inhumanity using armed violence in the last century. He concludes that avoiding repetition involves addressing the psychology of inhumanity and that such a repetition must be avoided for the sake of humanity-humankind. It is worthy of note that his book, entitled *Humanity*, is subtitled *A Moral History of the Twentieth Century*.<sup>28</sup>

It seems that humanity-sentiment, limiting inhumanity, a collective human conscience, respecting human rights, the restraint of armed violence and, as Blondel, Gilbert, Glover and Ticehurst would argue,<sup>29</sup> morality are so closely knit within our psychology that they may only bear different names because of the poverty of language alluded to by Pictet. This may to some extent clarify what is meant by humanity, but it does not provide us with a workable definition of humanity in the context of international law.

### *Interpreting humanity in terms of security and health*

It can be seen from the above that those who create rules, norms and laws pertaining to armed violence recognize that restraints on the capacity for armed violence act as a force for social cohesion and collective human well-being. Whilst there may be ambiguity about the status of humanity in relation to international law, humanity-humankind has been extensively studied by scientific disciplines such as biology, anatomy, physiology, psychology, anthropology and sociology. Health sciences in particular have given us numerous ways to measure humanity-humankind's well-being or lack of it. Acts of inhumanity or crimes against humanity are all too objective in terms of results, however emotional our reactions to them may be. Such results can, however, be measured in terms of the impact that armed violence or the threat of it have on health.<sup>30</sup> Humanity-humankind and inhumanity can therefore be moved from the ambiguous area where humanity is now situated to the domain of health.<sup>31</sup> This would make humanity amenable to objective analysis and to the discipline imposed by the requirement for a base of evidence.

The following section therefore examines armed violence, humanity-humankind, humanity-sentiment and inhumanity in terms of their lowest common denominator, namely, how security serves as a prerequisite for health.

Jackson has described security as "a foundation value in human relations", saying that the "human quest for security is our self-protecting response to what we believe is a world that contains menacing people who must somehow be kept in check". He emphasizes the difference between personal security and national security: "Personal security is a basic value because it is an essential requirement, or condition, of a successful and fulfilling existence: it liberates people (both physically and mentally) to get on with the business of building their lives without undue fear of those around them. (...) It is also peace of mind: liberation from the anxiety and apprehension associated with fear of those who are in a position to harm us."<sup>32</sup>

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<sup>28</sup> J. Glover. *Humanity: A Moral History of the Twentieth Century*, Jonathan, Cape, London, 1999, pp. 411-413.

<sup>29</sup> *Op. cit.* (notes 17, 25, 26 and 28, respectively).

<sup>30</sup> Coupland, *op. cit.* (note 6).

<sup>31</sup> The definition of health as given in the World Health Organization's mission statement is: "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." WHO website.

<sup>32</sup> R. Jackson, *The Global Covenant: Human Conduct in a World of States*, Oxford University Press, Oxford, 2000, pp. 185-215.

This description implies the existence of a link between security and health that becomes evident from considering their definitions.<sup>33</sup> However, the nature of the link is complex, given that security can be considered at both national and personal levels. It becomes more complex if we consider that weapons and the potential for armed violence are not only a means to assure security at both levels but also the means to erode it, and more complex still given the all-encompassing concept of health. In relation to victims of armed conflict, Perrin states that a public health approach to the well-being of populations “can be effective only in as much as the security of victims of armed conflict is guaranteed. Security embraces the sustainable satisfaction of needs and respects basic rights of human beings.”<sup>34</sup> This concept does not apply exclusively to victims of armed conflict. As a principle it would also apply, for instance, to people subject to use of force by police. The concept that personal security serves as a prerequisite for health has been advanced further by Meddings in the framework of human security.<sup>35</sup> However, this concept is not entirely new.

In 1651, Hobbes wrote that without security “there is no place for industry... no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish and short.”<sup>36</sup> He argued for collective security arrangements to ensure the security of individuals but to which the individual gave little consent. Locke was the first political philosopher to argue for government by popular consent as a means to achieve collective security. In 1690, he wrote about security and well-being as a function of government; in addition, he combined this with the notion that humans had rights. He wrote: “Men, by nature all free, equal and independent, no-one can be put out of this estate and subjected to the political power of another without his own consent. The only way whereby anyone divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community for their comfortable, safe and peaceable living one among another, in a secure enjoyment of their properties...”<sup>37</sup> He also said that anybody who transgresses the law of nature “declares himself to live by another rule than that of reason and common equity ... and so becomes dangerous to mankind.”<sup>38</sup> The arguments of Hobbes and Locke can both be related to humanity-humankind and the definition of health;<sup>39</sup> they are pertinent today in relation to security in a world of States and international law.

Governments do not necessarily give primary consideration to personal security or to individuals' physical, mental and social well-being. A government's security policies ensure that the State is defended from aggressive acts committed by other States and from threats that arise from within its own populace, the latter being deemed, at present, the concerns only of the State in question.<sup>40</sup> The assumption is easily made that State security means security for the people in that State, but as the history of the twentieth century has amply shown, especially during the Cold War era, State security does not automatically so translate. There is frequently a trade-off between personal security and State security.

The United Nations has introduced — as its primary purpose — a third security consideration: international or global peace and security.<sup>41</sup> International security depends on the community of nations and means peace, order and lawfulness within that community.

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<sup>33</sup> See note 31. The definition of security is “the state of being or feeling secure”, and of secure: “certain to remain safe and unthreatened; protected against attack or other criminal activity; feeling free from fear and anxiety”, *op. cit.* (note 7).

<sup>34</sup> P. Perrin, “War and public health: Extending the concept of public health for the victims of armed conflict”, Editorial, *Health in Emergencies*, issue 3, WHO, Geneva, 1998, p. 1.

<sup>35</sup> D. Meddings, “Human security as a prerequisite for health”, *British Medical Journal*, vol. 322, 2001, p. 1553.

<sup>36</sup> T. Hobbes, *Leviathan*, Ed. R. Tuck, Cambridge University Press, Cambridge, 1996, p. 89.

<sup>37</sup> J. Locke, *Second Treatise of Government: Of the Beginning of Political Societies (1690)*, Blackwell, Oxford, 1976, p. 49.

<sup>38</sup> *Ibid.*, p. 6.

<sup>39</sup> See note 31.

<sup>40</sup> UN Charter, Art. 2(7).

<sup>41</sup> UN Charter, Art. 1(1).

Whilst State security may be subordinated to international security, it is only when personal insecurity within a State is of such magnitude that it poses a threat to international security that forceful intervention by other States can be justified under the UN Charter.<sup>42</sup> Such intervention has been labelled “humanitarian.”<sup>43</sup>

Alongside recognition of the benefits for all resulting from international security, there is a growing interest in the international arena in promoting personal security. The ascendance of human rights is one aspect. There is also the emerging concept of “human security”, which is a term coined in 1994 by the United Nations Development Programme.<sup>44</sup> The definition of human security given in the UNDP report has two main aspects: “[s]afety from such chronic threats as hunger, disease and repression [and] protection from sudden and hurtful disruptions in the patterns of daily life”. Here personal security and health are clearly linked. Although human rights are only mentioned directly within the context of political security, the whole document is written in the language of human rights. An example is: “There have always been two major components of human security: freedom from fear and freedom from want.”<sup>45</sup> Interestingly, and perhaps to avoid more controversial issues, the report emphasizes that “[h]uman security is not a concern with weapons.” It is contended here that such a dismissal is illogical because weapons are the principal means by which personal security is eroded and therefore must be recognized as both security and health issues.

The Commission on Global Governance, in 1995, recommended that as global society has changed, so too should thinking about global security.<sup>46</sup> The report states: “Global security must be broadened from its traditional focus on the security of states to include the security of people and the planet.” It further explains: “The security of people recognises that global security extends beyond the protection of borders, ruling elites and exclusive state interests to include the protection of people.” The report, like the UNDP report, is also founded on human rights. As the first proposed principle of security for a new era it proposes: “All people, no less than all states, have a right to a secure existence, and all states have an obligation to protect these rights.” It strongly recommends a re-examination of Chapter VII of the Charter of the United Nations.

In 1999 the governments of Canada and Norway adopted human security as a new paradigm for foreign policy. The Canadian Foreign Minister declared: “In essence, human security means safety for people from both violent and non-violent threats. It is a condition or state of being characterised by freedom from persuasive threats to people’s rights, their safety or even their lives.”<sup>47</sup>

None of the above reports that propose new security concepts make explicit the fact that security is a prerequisite for health. However, three important points emerge: first, that new thinking about personal security is permeating the international community; second, those who are promoting the notion of human security are promoting human rights and the inextricable link between personal security and health; and third, that health and human

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<sup>42</sup> UN Charter, Art. 40.

<sup>43</sup> See F. Teson, “Collective humanitarian intervention”, *Michigan Journal of International Law*, vol. 17, 1996, pp. 323-371; M. Glennon, “The new interventionism”, *Foreign Affairs*, 1999, pp. 2-7. B. Simma, “NATO, the UN and the use of force: Legal aspects”, *EJIL*, 1999, vol. 10, pp. 1-22; N. Chomsky, *The New Military Humanism: Lessons Learnt from Kosovo*, Pluto Press, London, 1999.

<sup>44</sup> *Human Development Report*, UNDP, New York, 1994, pp. 22-40.

<sup>45</sup> This is a reference to Franklin D. Roosevelt’s “Fundamental Freedoms” speech of 1941. The four freedoms are: freedom from fear, freedom from want, freedom of speech and freedom of worship.

<sup>46</sup> Commission on Global Governance, *Our Global Neighbourhood*, Oxford University Press, Oxford, 1995.

<sup>47</sup> *Human Security: Safety for People in a Changing World*, Department of Foreign Affairs and International Trade, Ottawa, April 1999.

rights are being taken beyond the right to health, perceived widely as a collection of economic and social rights, to the domain of civil and political rights.<sup>48</sup>

It appears, then, that for some time security has been recognized as a prerequisite for a peaceable, constructive and collective existence in which individuals can live in a state of complete physical, psychological and social well-being; this recognition has simply been expressed in different ways. The required security can be, and for many has been, achieved by an interplay of international, national and personal security measures, many of which constitute obligations of States under international law.

But do not personal security and health represent the ultimate goal of humanity, human rights and humanitarian intervention? Can we not interpret “humanity” as the promotion of security and health? This interpretation would encompass both humanity-sentiment and humanity-humankind. It enables crimes against humanity to be viewed as shocking crimes liable to erode people’s security and health to the point that collective human existence is in jeopardy. An act of humanity and therefore humanitarianism may comprise: first, preventing certain effects of armed violence on security and health (which often involves invoking the law); and second, assisting people suffering the effects of use of weapons or the threat thereof. Humanity accordingly limits, to the greatest extent possible, the effects of armed violence on people’s security and health. Importantly, it extends to restraining the capacity for armed violence so that humans can live in a peaceable, constructive society in which, for instance, family life, education and commerce, i.e., humanity-humankind, can flourish.

Interpreting humanity in these terms has the advantage that many objective indicators of insecurity are, at the same time, indicators of a decline in health which are measurable at the level of either individuals or groups. Examples are numerous and include the number of people shot by firearms and their mortality rate, the number of detainees beaten or tortured, the number of people who have to leave their homes at gunpoint, and the number of people denied access to clean drinking water through destruction of water supplies.<sup>49</sup> Falling literacy rates and rising infant mortality could be examples of less direct indicators of widespread insecurity that results in social disruption. In this way, degradation of personal security and therefore of people’s health can be identified, analysed and commented upon in objective terms before any moral, political or legal judgment is made of the context. Furthermore, the degree to which humanity is degraded in response to events such as wars, elections and natural disasters is an indicator of the civil and political stability of a society.

Does an objective interpretation of humanity in terms of security and health imply that considerations of humanity in international law are universal considerations? Whatever the state of development of any human group, the individuals within it have striven for the improvement if not maintenance of their security and health or, in the terms of this paper, to uphold their humanity. Societies have developed because there is greater security in living in a group. However, one group can impact on the security of the individuals in another; this implies the need for collective security arrangements and reflects the origins of militarism. Alternatively, the security of individuals within a group may be eroded by others of the same group, especially by the leader of the group or people acting on the leader’s behalf. When security is eroded to the point that living in such a situation becomes intolerable, i.e., individuals are threatened by or ultimately subject to armed violence, they react with one of four identifiable patterns of behaviour that are exhibited in any aggressive situation: they fight; they flee; they submit; or they posture.<sup>50</sup> This suggests first, that humanity is a universal human aspiration; second, that humanity is both the result and right of living in groups; and third, that our reactions to any erosion of humanity are driven by our biology.

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<sup>48</sup> The right to health arises from Art. 25 of the 1948 Universal Declaration of Human Rights, Art. 12 of the International Covenant of Economic, Social and Cultural Rights, Art. 12 of the Convention on the Elimination of All Forms of Discrimination Against Women, and Art. 24 of the Convention on the Rights of the Child.

<sup>49</sup> Coupland, *op. cit.* (note 6).

<sup>50</sup> D. Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Little Brown, Boston, 1995, pp. 5-16.

Further evidence for the universality of humanity comes from the relatively new discipline of evolutionary psychology.<sup>51</sup> Culture, behaviour within our particular culture and the ability to impart and receive knowledge are all manifestations of the evolution of *homo sapiens*. They derive in part from our genetic make-up and in part from environmental influences. In brief, we are born with an ability to behave in certain ways and learn certain things. This means that employing violence for gain or defence, reacting to aggression and both creating and enforcing rules are, in part, driven by our evolved biology. This speaks for the genuine universality of international law. Appropriately, D'Amato has used Darwinian terms to describe the evolution of customary international law.<sup>52</sup>

If we interpret humanity-humankind as people living together in a state of security and health, there is near total overlap of meaning with development, human security and even civilization. Achieving this state requires an aspect of our psychology which is found in the collection of synonyms for humanity-sentiment. Humanity-sentiment and humanity-humankind are co-dependent; the former has evolved as an essential component of the latter.

*How does humanity, interpreted in terms of security and health, influence international law?*

Two bodies of international law are traditionally associated with humanity, as shown by their names: international humanitarian law and human rights law. By interpreting humanity in terms of security and health, it becomes apparent that other bodies of international law restrain armed violence and so serve also to promote humanity.

There are customary law rules which give States a right to self-defence and which prohibit international aggression.<sup>53</sup> These, together with laws pertaining to the pacific settlement of international disputes and ensuring international peace and security, are formalized in the Charter of the United Nations.<sup>54</sup>

The international law of arms control and disarmament is negotiated either on a bilateral or multilateral basis by States with national security as the highest priority.<sup>55</sup> This body of law diminishes the likelihood of war, the extent of suffering and damage in the event of war, and expenditure on weapons, and provides a framework for negotiation between opposing sides and reducing suspicion.<sup>56</sup> In this way, and like the UN Charter, it forms part of international law that promotes humanity by restraining armed violence. However, in arms control and disarmament negotiations there is some influence brought by "humanitarian" principles and therefore by personal security considerations.<sup>57</sup> In contrast, human rights law gives priority to personal security.<sup>58</sup> Full accord with human rights can be equated with the greatest possible security and health of a population. International humanitarian law stands in the middle; it fits the paradigm because its principle objective is to promote personal security

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<sup>51</sup> H. Plotkin, *Evolution in Mind: An Introduction to Evolutionary Psychology*, Penguin, London, 1997. See also R. Trivers, "The evolution of reciprocal altruism", *Quarterly Review of Biology*, vol. 46, 1971, pp. 35-57.

<sup>52</sup> A. D'Amato, "Trashing customary international law", *AJIL*, vol. 81, 1987, pp. 101-105.

<sup>53</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, paras. 187 to 201.

<sup>54</sup> UN Charter, Arts 1(1) and (2), and Art. 51.

<sup>55</sup> Examples are the 1968 Nuclear Non-Proliferation Treaty, the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention.

<sup>56</sup> R. Matthews/T. McCormack, "The relationship between international humanitarian law and arms control.", in H. Durham/T. McCormack (eds), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Kluwer, The Hague, 1999, pp. 65-98.

<sup>57</sup> R. Matthews/T. McCormack, "The influence of humanitarian principles in the negotiation of arms control treaties", *IRRC*, No. 834, June 1999, pp. 331-352.

<sup>58</sup> Art. 1(3) of the UN Charter addresses States' obligations to uphold human rights. The 1948 Universal Declaration of Human Rights, the 1976 International Covenant on Civil and Political Rights and the 1976 International Covenant on Economic, Social and Cultural Rights together are seen as an international bill of rights from which have flowed other human rights instruments.

and health when national security is being determined by recourse to armed violence, but also overlaps with international law governing arms control and disarmament.<sup>59</sup> These bodies of law all ultimately serve to restrain armed violence or to limit its effects on security and health and thereby promote humanity. The difference lies in the level of security that is the main objective of those negotiating or implementing the treaties.

The nexus of armed violence, humanity and international law can be explained in practical terms by considering the four situations in which governments and their designated bearers of weapons, namely the armed forces or the police, may use weapons without violating international law. They are: defence of the nation; suppression of armed insurrection, i.e., fighting against an armed faction within the State's own borders and which comprises its own nationals; peace-enforcement missions authorized by the UN Security Council; and domestic law enforcement. These situations are compatible with promoting humanity. Broadly speaking, one or more of the international laws cited above are violated if armed violence or the threat thereof is either unrestrained within or employed outside these situations.

Humanity is the lowest common denominator of most, if not all, international law and thus continues to influence a much wider spectrum of international law than is traditionally thought.

### *Conclusions*

At present, the meaning of humanity is ambiguous. It is currently perceived as little more than a source of international law with tenuous links to natural law. This ambiguity has led to a failure to recognize humanity as a continuing and powerful influence on international law and as the only valid objective of that law. It is therefore denied a place in legal dialogue.

This paper has postulated that a fundamental and objective relationship exists between humanity, armed violence and international law and that this relationship has long been recognized. The supporting evidence is eclectic; it indicates that the different notions of humanity are co-dependent and that international law pertaining to the differential of power brought about by the possession of weapons, their use and the threat thereof is the cause and effect of any collective human advancement. A definition of humanity is proposed, namely that humanity arises from and signifies restraining the capacity for armed violence and limiting its effects on security and health. Humanity interpreted in these terms encompasses humanitarianism, morality, development, human rights and human security. Does this not provide an objective basis for the "humanised version of ethics" demanded by Glover and the value system that Alston recommends for the practice of international law in the face of globalization?<sup>60</sup>

Humanity is not solely the domain of "humanitarian" agencies or international lawyers. Other disciplines, especially those based on life sciences, can be brought to bear.<sup>61</sup> Slim argues that humanity is a universal ethic and should be shared between all people involved with the process of going to war.<sup>62</sup> The author of this paper concurs and goes further by proposing that because of humans' predisposition to make and use weapons, humanity and international law go hand in hand as universal necessities for human existence.

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<sup>59</sup> The principle treaties of international humanitarian law are the 1949 Geneva Conventions for the protection of war victims and the 1977 Additional Protocols thereto. Some other treaties are considered part of international humanitarian law, such as the 1980 UN Convention on Conventional Weapons and the 1997 Ottawa Anti-personnel Mines Treaty.

<sup>60</sup> *Op. cit.* (note 28), p. 410. P. Alston, "The myopia of handmaidens: International lawyers and globalization", *EJIL*, vol. 3, 1997, pp. 435-448.

<sup>61</sup> To coincide with the 50th anniversary of the 1949 Geneva Conventions, the *British Medical Journal* published a special theme issue on 14 August 1999 entitled "Medicine and international law." It examined the role of health professionals in the upholding of human rights and international humanitarian law.

<sup>62</sup> H. Slim, "Sharing a Universal Ethic: the Principle of Humanity in War", *International Journal of Human Rights*, vol. 2, 1998, pp. 28-48.

## **Résumé**

Humanité : qu'est-elle et comment influence-t-elle le droit international ?  
par ROBIN COUPLAND

Pour l'auteur, le principe de l'humanité inclut la possibilité et la volonté de réduire la capacité de se livrer à la violence armée et d'en limiter les effets sur la sécurité et la santé. L'humanité ainsi interprétée englobe l'humanitarisme, la moralité, le développement, les droits de l'homme et la sécurité humaine. À ce titre, elle est une des principales sources du droit international en général et du droit international humanitaire en particulier. Dans cet article, l'auteur décrit les conséquences du lien étroit qui existe entre humanité et droit international.