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The Right to Life During Armed Conflict:
Disabled Peoples' International v. United States

David Weissbrodt*
Beth Andrus**

I. INTRODUCTION

During its brief military intervention in Grenada in October 1983, the United States bombed a mental institution, killing sixteen patients and injuring six.¹ On November 5, 1983, Disabled Peoples' International (DPI)² filed a complaint against the United States with the Inter-American Commission on Human Rights (Commission)³ on be-

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2. Disabled Peoples' International (DPI) is a nongovernmental organization representing advocacy groups of and for disabled people in 75 countries. In addition to advocating the rights of the disabled, DPI works to develop self-help training seminars, exchanges, and other projects for disabled people. HUMAN RIGHTS INTERNET, HUMAN RIGHTS DIRECTORY, NORTH AMERICA 94 (1984). DPI's efforts in this case have been supported by the J. Roderick McArthur Foundation.


Only those states which have ratified the American Convention are bound by its provisions. The U.S. signed the American Convention and President Carter transmitted it to the Senate for advice and consent to ratification, but the Senate has yet to act on that request. Buergenthal, Inter-American System for the Protection of Human Rights, in 2 Human Rights in International Law: Legal and Policy Issues 439, 440 (T. Meron ed. 1984). All members of the OAS, even those not signatories to the American Convention, are bound by the OAS Charter, the American Declaration, and the Statute of the Inter-American Commission on Human Rights, 1960 Annual Report of the OAS Secretary General, OAS Doc. OEA/Ser.D/III.12, at 19–21 (1961), reprinted in
half of the "unnamed, unnumbered residents, both living and dead, of the Richmond Hill Insane Asylum, Grenada, West Indies." The complaint alleged an "unjustified violation of the right to life, liberty and security of the person pursuant to article 1 of the American Declaration of the Rights and Duties of Man" (American Declaration). In April 1986, the Commission found the DPI petition admissible. This case is the first in which the Commission has found a prima facie violation of the American Declaration by the United States. Depending on how it construes the factual circumstances surrounding the bombing of the mental institution, the Commission could ultimately find that the bombing violated the mental patients' right to life and


According to the Commission's Statute, a petition need not be presented by the victim or the victim's representatives, but may be presented by any person, group, or nongovernmental organization. Statute of the Inter-American Commission on Human Rights, supra, art. 1; see also Cerna, The Inter-American Commission of Human Rights, 2 CONN. J. INT'L L. 311, 316 n. 1 (1987).

5. Id. at 1. Article 1 of the American Declaration provides: "Every human being has the right to life, liberty and the security of his person." American Declaration, supra note 3, art. 1. DPI also alleged a violation of article 11 of the American Declaration because of unsanitary living conditions at the bombed hospital. Petition of DPI, supra note 1, at 3-4. Article 11 reads: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." American Declaration, supra note 3, art. 11. DPI has since amended its petition to request compensation only for the mental and physical damage resulting from the attack. The organization concedes that since the time of the initial filing, the U.S. has provided the government of Grenada with funds and materials for the care of the patients at the Richmond Hill Asylum. Letter from Disabled Peoples' International to the Inter-American Commission on Human Rights (Feb. 4, 1986) at 5 [hereinafter Letter from DPI, Feb. 1986]. See also Treaster, Since the Invasion, A Grenada in Flux, N.Y. Times, Oct. 25, 1987, § 4, at 3, col. 2 (a new mental institution has been built in Grenada with funds provided by the U.S.).

6. Disabled Peoples' International v. United States, Case 9213 (United States), INTER-AM. C.H.R., OAS Doc. OEA/ser.L./VIII.67, doc. 6 (1986). Complaints submitted to the Commission must set forth a prima facie case that a violation of one of the rights enumerated in the American Declaration or the American Convention has occurred. Farer & Rowles, The Inter-American Commission on Human Rights, in INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE 47, 60 (J. Tuttle ed. 1978). If a petition does not state facts that constitute a violation of the American Declaration or American Convention, the Commission must declare the case inadmissible. Regulations of the Inter-American Commission on Human Rights, art. 38, reprinted in T. BUERGENTHAL, R. NORRIS & D. SHELTON, supra note 3, at 355, 361 [hereinafter Regulations].

hold the United States government responsible for the resulting injuries and deaths. 8

On October 25, 1985, the United States launched an attack on a complex in the capital city of St. George's which included two forts, Fort Matthew and Fort Frederick, as well as several other buildings. 9 Fort Matthew housed the Richmond Hill Insane Asylum at the time of the attack. Another building within the complex housed the Richmond Hill Prison. Located nearby were Fort Frederick and other old mental institution offices. 10 While the United States anticipated a fairly simple military exercise in Grenada, troops loyal to the Revolutionary Military Council, assisted by a substantial number of Cuban "construction workers," put up a surprisingly spirited resistance. 11 The United States military, asserting that its forces "took fire" from People's Revolutionary Army (PRA) soldiers using buildings near Fort Matthew as their headquarters, 12 ordered an A-7 attack aircraft from the USS Independence to terminate the resistance coming from the alleged PRA military command post. A bomb from the A-7 struck Fort Matthew. 13

8. If the Commission makes an adjudicatory finding against the U.S., it can recommend that the U.S. government pay damages to the victims or take other appropriate measures. If the U.S. fails to do so, the Commission can report its finding to the OAS General Assembly. It is possible that the OAS could then condemn the U.S. for violations of the American Declaration. Article 20 of the Commission's Statute spells out the full extent of its powers:

In relation to those member states of the Organization that are not Parties to the American Convention on Human Rights, the Commission shall have the following powers . . . :

a. to pay particular attention to the observance of the human rights referred to in Article I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;

b. to examine communications submitted to it and other available information, to address the government of any Member State not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights;

Statute of the Inter-American Commission on Human Rights, supra note 3, art. 20.


10. The U.S. described the fort complex in the following terms:

The mental institution at issue here was located at Richmond Hill, St. George's, Grenada, in a single compound that includes two forts, Fort Matthews and Fort Frederick. The building housing the mental institution was in the Fort Matthews portion of the compound. On October 25, 1983, the PRA was using a group of buildings located inside the battlements between Fort Frederick and Fort Matthews as one of its regional headquarters, housing armed PRA members and serving as a command post for PRA forces. That group of buildings was only 143 feet away from the mental institution.

Letter from U.S. Dep't of State to the Inter-American Commission on Human Rights (Sept. 21, 1984) at 2 [hereinafter Letter from U.S. Dep't of State, Sept. 1984].

11. W. Gilmore, supra note 1, at 36. The Revolutionary Military Council was made up of radical elements which took control of the country after assassinating Prime Minister Maurice Bishop. See The priming of the Grenada grenade, THE ECONOMIST, Oct. 29, 1983, at 17.


While it is not disputed that the bomb hit the mental institution, many of the surrounding details are still uncertain. Beyond the factual discrepancies, this case also presents a unique challenge in that the Commission has been called on to determine whether the right to life provision in article 1 of the American Declaration extends to civilian victims of an armed conflict. The Commission has considered the right to life in the context of abortion and the execution of juvenile offenders in the United States,\(^1\) but never in a situation of armed conflict.

DPI has requested the Commission to interpret article 1 in light of principles of humanitarian law. Many difficult issues come to the forefront when human rights law and humanitarian law overlap. Should the rights in the American Declaration be applicable in time of war? Does article 1 warrant a literal interpretation, creating an absolute right to life regardless of the surrounding circumstances? Whose lives must a state preserve during an armed attack? The application of the right to life in this case raises more complex questions than the Commission may have anticipated when it found the matter admissible.\(^1\)

This article first examines the admissibility phase of the dispute and concludes that the Commission has apparently expanded the jurisdictional reach of the American Declaration. Second, it suggests an analytical approach to the interpretation of the American Declaration that refers to the principles of humanitarian law. Finally, the article discusses how the Commission could apply the American Declaration to the specific circumstances of the military operation in Grenada in light of the relevant principles of humanitarian law.

II. ADMISSIBILITY

The United States failed in several attempts to dismiss the case on both procedural and substantive grounds. Its main procedural argument was that DPI had failed to meet the requirement of exhaustion.

\(^{14}\) See Baby Boy, \textit{supra} note 7 (abortion); Roach, \textit{supra} note 7 (execution of juvenile offenders).

\(^{15}\) The Commission could circumvent an analysis of the right to life provision by determining that the special program established by the U.S. to compensate those who suffered damage during the invasion discriminated against the victims of the bombing based on their mental handicap. See \textit{infra} note 25. Article 2 of the American Declaration states that all persons are equal before the law "without distinction as to race, sex, language, creed, or any other factor." American Declaration, \textit{supra} note 3, art. 2. In its admissibility decision, the Commission held that the special compensation program was inadequate because of its ad hoc nature as well as the refusal of the U.S. to seek out the victims of the bombing to assist them in filing claims. Disabled Peoples' International v. United States, \textit{supra} note 6, at 13. See \textit{infra} text accompanying note 27.
of local remedies. The major substantive objection advanced by the United States was that the Commission does not have the competence to interpret and apply humanitarian law without the express consent of each state involved. In deciding in favor of admissibility, the Commission found that the requirement of exhaustion of local remedies should be waived and implicitly held that the Commission has the competence to interpret article 1 of the American Declaration to conform with principles of customary international law. The Commission's admissibility decision also signals an apparent expansion of the jurisdictional scope of the American Declaration.

A. Exhaustion of Local Remedies

Article 37(1) of the Commission's regulations stipulates that "for a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law." The Commission may waive this requirement, however, in three situations: 1) if the domestic legislation of the state concerned does not afford due process of law for the protection of the rights allegedly violated; 2) if the party alleging the violation has been denied access to remedies under the domestic law or has been prevented from exhausting them; or 3) if there has been an unwarranted delay in rendering a final judgment under the domestic law.

In its first formal communication with the Commission, DPI presented three arguments in support of its request that the Commission waive the requirement of exhaustion of local remedies. First, DPI

16. The U.S. also requested dismissal on the theory that the petition "failed to identify any of the 'unnamed, unnumbered residents' on whose behalf the petition is purportedly filed, in contravention of Article 29 of the Commission's regulations." Letter from U.S. Dep't of State, Sept. 1984, supra note 10, at 1. Petitions to the Commission must include an account of the act or situation, specifying the date and place of the violations, and if possible, the names of the victims. Regulations, supra note 6, art. 32(b). DPI responded by sending a delegation to Grenada which subsequently provided the Commission with the identities of the sixteen persons who were killed and six who were injured. Letter from DPI to the Inter-American Commission on Human Rights (Jan. 10, 1985) at 1-2 [hereinafter Letter from DPI, Jan. 1985]. In a subsequent communication, DPI reiterated its intention to represent "any unnamed injured mental patients who are no longer at the facility and who have yet to be located and identified." Comments on Respondent Government's Reply, Submitted by Disabled Peoples' International (Feb. 8, 1985) at 12 [hereinafter Comments of DPI]. Apparently satisfied, the U.S. did not respond, and the Commission subsequently found that the procedural defects had been corrected. Disabled Peoples' International v. United States, supra note 6, at 1.


19. Regulations, supra note 6, art. 37(1).

20. Id., art. 37(2)(a)-(c).

claimed that no remedy was available in Grenada. Not only was DPI unable to find counsel willing to represent the victims, but no judicial system existed in Grenada when the petition was filed.22 "The judicial system of Grenada was in complete disarray. . . . Even at the time of Petitioners [sic] mission of inquiry one year later, judges from other English-speaking Caribbean States were being imported."23

Second, DPI asserted that it could not bring a suit in the United States because, as an organization whose membership did not include the Grenadian victims, it failed to meet standing requirements under United States law.24 DPI also cited the Foreign Claims Act and the War Claims Act as statutory bars to any claims in United States courts arising out of military actions.25

Finally, DPI stressed that the victims' mental incompetence meant they were unable to assert their rights.26 In essence, DPI argued that no compensation program could provide an adequate remedy if the burden of applying fell to the dead or injured mental patients.

The Commission apparently decided to waive the exhaustion of local remedies requirement based on DPI's third argument:

[Given the ad hoc nature of the United States compensation program, the evident failure of the United States Government to contact these incapacitated victims, and the unwillingness of the

22. Letter from DPI, Feb. 1986, supra note 5, at 4; Comments of DPI, supra note 16, at 12. According to Amnesty International, the Governor-General assumed authority for the civil government of Grenada after October 25, but he did not vest full legal and political powers in an interim civilian administration until November 15, 1983. AMNESTY INTERNATIONAL REPORT 156 (1984). See also W. GILMORE, supra note 1, at 95 (letter from Sir Paul Scoon, Governor-General of Grenada, to Prime Minister Adams of Barbados, stating that the government in Grenada had ceased to function after the takeover by the Revolutionary Military Council).

23. Comments of DPI, supra note 16, at 10. DPI may not have been aware that judges and lawyers in the English-speaking Caribbean often work in different countries of the region.

24. Comments of DPI, supra note 16, at 9 (citing Havens Realty Corp. v. Coleman, 455 U.S. 363, 373 (1982) (abstract social interests are not sufficient to maintain an action); Würth v. Seldin, 422 U.S. 490, 499 (1975) (plaintiffs must show injury in fact and a causal connection to the challenged action); Sierra Club v. Morton, 405 U.S. 727, 735 (1972) (plaintiffs must have actual injuries in order to sue)).


In response, the U.S. argued that the victims could have submitted their claim by way of a special temporary claims procedure established to compensate individuals and public entities for damage incurred during the military operation. Letter from U.S. Dep't of State, Aug. 1985, supra note 17, at 4. The adequacy of this remedy, however, remains in question. One report on the compensation and reconstruction program states that "[b]y Christmas of 1983, thousands of requests for compensation had been received but only 250 were approved, at a total cost of $115,000. All these payments related to destruction caused by US forces when not engaged in combat; Washington refused to accept that it should pay for any damage caused by fighting whether by its forces or not." F. AMBURESLY & J. DUNKERLEY, GRENADA: WHOSE FREEDOM? 101 (1984).

United States Government to compensate these victims subsequent to the expiration of the ad hoc compensation program, . . . the Commission . . . conclude[s] that the domestic remedies could not be invoked and exhausted so as to render the provision of Article 37(2)(a) applicable.\textsuperscript{27}

\section*{B. The Commission's Competence}

The United States government's major substantive argument during the admissibility stage centered on the Commission's competence to decide an issue of humanitarian law. The United States Department of State asserted that as a general principle of international law, an organization such as the Commission has no authority to decide a particular issue without the express consent of each state involved.\textsuperscript{28} The United States argued that the Commission is an inappropriate organ to apply humanitarian law as urged by DPI: "Only if it concluded that the United States had violated the law of armed conflict could the Commission find in petitioners' favor. Because the OAS member States did not consent to the Commission's jurisdiction over that subject, the petition must be dismissed."\textsuperscript{29}

This argument, taken literally, probably articulates a correct statement of the Commission's competence. Unlike the Inter-American Court of Human Rights, the Commission has no express authority to make direct interpretations of treaty law other than the American Convention and the American Declaration.\textsuperscript{30}

DPI, however, does not ask the Commission to apply directly treaties concerning humanitarian law. Rather it asks the Commission to construe article 1 of the American Declaration "in conformity with other relevant international rules protecting the human person."\textsuperscript{31} The Commission thus would not be making a judgment based on humanitarian law, but would use humanitarian law principles as a method

\begin{thebibliography}{9}
\bibitem{27} Disabled Peoples' International v. United States, supra note 6, at 13.
\bibitem{28} Letter from U.S. Dep't of State, Aug. 1985, supra note 17, at 2 (citing Monetary Gold Removed from Rome in 1943 (Italy v. Fr, U.K. & U.S.), 1954 I.C.J. 18, 32 (Preliminary Question of June 15)).
\bibitem{29} Id.
\bibitem{30} The Inter-American Court of Human Rights (Inter-American Court) does have the authority to examine documents outside of the OAS system. Article 64 of the American Convention allows member states to consult with the Inter-American Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States." American Convention, supra note 3, art. 64.
\bibitem{31} Comments of DPI, supra note 16, at 3.
\end{thebibliography}
of interpreting the applicability of article 1 of the American Declaration during armed conflict. 32

Even though the American Declaration was not initially promulgated as a treaty, 33 it has become incorporated by reference into the OAS Charter by the Protocol of Buenos Aires. 34 As Judge Buergenthal has observed, "the human rights provisions of the American Declaration can today consequently be deemed to derive their normative character from the OAS Charter itself." 35

Article 31 of the Vienna Convention on the Law of Treaties (Vienna Convention)36 provides that a treaty shall be interpreted in accordance with the ordinary meaning of its terms in light of the treaty's object and purpose. 37 Also pertinent to treaty interpretation are "any relevant rules of international law applicable in the relations between the parties." 38

The ordinary meaning of the phrase "every human being has the right to life" in article 1 of the American Declaration can be interpreted as prohibiting government officials from arbitrarily taking the life of anyone. Yet the language of article 1 does not make clear whether a government is responsible for civilian lives taken during the aerial

32. DPI also suggested that the Commission could decide the case without even mentioning the armed conflict. Letter from DPI, Feb. 1986, supra note 5, at 2. Without considering the factual circumstances of the bombing, however, the Commission would be pressed into a finding that any and all killing is a violation of article 1's right to life. This interpretation would ignore the realities of armed conflict and the principles of humanitarian law which allow the killing of enemy combatants. See infra text accompanying notes 52-54.

33. M. MONROY CABRA, LOS DERECHOS HUMANOS 103 (1980).


On November 22, 1971, President Nixon transmitted the Vienna Convention to the U.S. Senate for its advice and consent to ratification, but the Senate has not yet taken any action. In its letter of submittal to the President, the U.S. Department of State indicated that the Vienna Convention is "already generally recognized as the authoritative guide to current treaty law and practice." S. Exec. Doc. No. Y1/1L, 92d Cong., 1st Sess. 1 (1971).


38. Vienna Convention, supra note 36, arts. 31(3)(c), 32(a).
bombing of an allegedly armed fortress. In conformity with the Vienna Convention, this question may be resolved by taking into account the relevant obligations of customary humanitarian law which bind the United States.

In fact, the Commission has previously construed the American Declaration in light of relevant international instruments in reports on human rights in Nicaragua, Argentina, and El Salvador. In addition, in its most recent decision in Roach and Pinkerton v. United States, the Commission referred to customary international law in determining that the absence of a federal prohibition in the United States on the execution of juveniles violates article 1 of the American Declaration.

Hence, although the Commission did not directly address the issue of its competence in the admissibility phase, its past practice and its decision to accept jurisdiction over the DPI case clearly indicate that

39. The American Declaration contains nothing regarding derogation from the right to life during armed conflict. The American Convention expressly disallows derogation from the right to life "[i]n time of war, public danger or other emergency." American Convention, supra note 3, art. 27, para. 2.


41. See supra note 7.

the Commission believes it has the competence to interpret the American Declaration in light of customary norms of international humanitarian law.

C. Expansion of the Scope of the American Declaration

Neither party raised the issue of whether the American Declaration obligates the United States to protect the human rights of people outside its jurisdiction. It is unclear whether the American Declaration could possibly govern United States military actions occurring outside of United States territory.

The language of the American Convention suggests that a state's human rights obligations extend only to persons within its jurisdiction. If this same language were found in the American Declaration, the United States would arguably have no duty to protect the right to life of Grenadian citizens in Grenada.

Unlike the American Convention, however, the American Declaration focuses on the rights of individuals rather than on the obligations of states. The preamble to the American Declaration recites that the members of the OAS "recognized that the essential rights of man are not derived from one's being a national of a certain state, but are based upon the attributes of the human personality." Since membership in the OAS obligates a state to guarantee the rights articulated in the American Declaration and these rights belong to every human being found within an OAS member state, it could be argued that a member state's duty to protect human rights does not stop at its borders, but extends to any place in the hemisphere where that state is affecting the lives of individuals.

Since the Commission did not expressly consider this issue in its admissibility decision, it is not possible to determine whether the Commission intends to recognize an expanded jurisdictional reach for the American Declaration. The import of its admissibility decision, however, does indicate such an expansive approach. This broad inter-

43. Article 1 of the American Convention obligates states to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights [enumerated in this Convention]." American Convention, supra note 3, art. 1 (emphasis added).
44. American Declaration, supra note 3, preamble.
46. Article 3(j) of the OAS Charter supports the argument that each of the member states recognizes the fundamental rights of all individuals. It reads: "The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex." OAS CHARTER, supra note 3, art. 3(j). Article 16 of the OAS Charter proclaims that each state must respect these rights: "Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality." Id., art. 16. Neither article contains any language which would limit the geographical scope of the state's obligation.
The obligation to protect persons outside a state's jurisdiction may be inherent in the duty to protect human rights during armed conflicts. While peace-time human rights impose duties either on all states or only on the state of which an individual is a national, humanitarian law often imposes a duty on states of which the individual is not a national. Dinstein, Human Rights in Armed Conflict: International Humanitarian Law, in 2 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 345, 354 (T. Meron ed. 1984). The European Commission on Human Rights has interpreted the jurisdictional language of the European Convention in this manner. The words "within their jurisdiction" in article 1 ("The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.") have been construed by the European Commission to mean "actual authority and responsibility." Cyprus v. Turkey, 1975 Y.B. EUR. CONV. ON HUM. RTS. 118 (Eur. Comm'n on Hum. Rts.). So long as the element of responsibility exists, a state remains subject to human rights obligations for acts of its agents. Buergenthal, To Respect and Ensure: State Obligations and Permissible Derogations, supra note 39, at 77.

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48. American Declaration, supra note 3, art. 1.

49. See supra notes 33–42 and accompanying text.
four Geneva Conventions of 1949, the Geneva Protocol I of 1977, and other legal principles apply; 2) wars of liberation or self-determination which are principally defined by and made subject to the Geneva Protocol I of 1977; 3) noninternational armed conflicts which are subjected to the regulation of common Article 3 in the four Geneva Conventions of 1949 and some customary norms; and 4) noninternational armed conflicts which are narrowly defined and regulated by the Geneva Protocol II of 1977.

The short "rescue mission" in Grenada, as it is called by the United States Departments of State and Defense, was not considered a situation which warranted a formal declaration of war because of the temporary nature of the operation and the lack of an opposing party which "constituted a government." While arguably not warranting a declaration of war, there is little doubt that the operation in Grenada was an international armed conflict. The authoritative Red Cross commentary on the Geneva Conventions of 1949 defines an international armed conflict as any "difference arising between two states and leading to the intervention of members of the armed forces . . . even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or . . . the number of victims." The United States military action in Grenada lasted only a few days, but the hostilities involved several states, both directly and indirectly. As a result, the Commission should look to the customary principles of humanitarian law applicable to international armed conflicts in order to interpret the right to life provision of the American Declaration.

One of the basic legal norms applicable to international armed conflict is the principle of military necessity. The essence of this principle is that a belligerent is justified in applying the amount and kind of force necessary to achieve the complete submission of the
enemy at the earliest possible moment and with the least expenditure of time, life, and resources.\(^5\)

The principle of military necessity was first codified in 1863 in the Instructions for the Government of the Armies of the United States in the Field (Lieber Code):

XIV. Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.\(^5\)

As the definition in the Lieber Code clearly suggests, however, military necessity does not exempt combatants from all legal limitations on their actions during time of war. One widely accepted limitation on behavior during armed conflict is the principle of proportionality. The principle of proportionality holds that the destruction of a military objective must not be effected at the price of disproportionate suffering among the civilian population.\(^5\)

It has . . . been understood that, in directing attacks against military objectives, some incidental injury to civilians . . . is likely, at times, to result. Accordingly, the law has interposed the further requirement, under what is commonly termed the “Rule of Proportionality,” that attacks against military objectives cannot be made when the injury to civilians and damage to civilian property [that] is likely to occur is out of proportion to the military advantage reasonably expected to be gained.\(^5\)

It is often difficult to apply the principles of military necessity and proportionality in specific cases. But a third principle of humanitarian law, the principle of distinction, has evolved into a much more detailed restriction on military necessity. The principle of distinction dictates that civilians and civilian objects must be treated differently from

\(^{53}\) See M. BOTH, K. PARTSCH & W. SOLF, NEW RULES FOR VICTIMS OF ARMED CONFLICT 196 (1982).


\(^{56}\) Id. at 583. See also E. ROSENBLAD, INTERNATIONAL HUMANITARIAN LAW OF ARMED CONFLICT 12 (1979).
combatants. A belligerent is expected to "execute his military operations in a manner which enables a distinction to be made at all times between unlawful and lawful targets."58

Several international instruments embody the principle of distinction. The 1899 and 1907 Hague Conventions articulate a prohibition on the attack or bombardment of undefended towns or buildings.59 This limitation provides civilians with the right to be free from attack so long as they do not take an active part in the hostilities.

The Geneva Conventions of 194960 likewise reiterate the principle of distinction, particularly in the Fourth Convention, which deals with

57. E. ROSENBLAD, supra note 56, at 63. See also G. HERCZEgh, DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW 139 (1984) (the principle of distinction is the cardinal point of protection for civilians); J. PICTET, DEVELOPMENTS AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW 52 (1985) (the principle of distinction arose in the 16th century and became established in the 18th century). U.S. military manuals reiterate this principle: "The civilian population as such, as well as individual civilians, shall not be the object of attack." UNITED STATES AIR FORCE, INTERNATIONAL LAW — THE CONDUCT OF ARMED CONFLICT AND AIR OPERATIONS 110-31 (1976). Austrian, German, and Swiss military manuals similarly prohibit attacks directed against civilians and their dwellings in order to destroy morale and the enemy's will to fight. See E. ROSENBLAD, supra note 56, at 136.

58. E. ROSENBLAD, supra note 56, at 63.


protection of civilians during time of war. Articles 14 through 23 specify that civilian hospitals and places housing the sick and wounded are immune from attack. However, article 19 provides that a civilian hospital shall lose its immunity if it is used to commit acts harmful to the enemy. Protection may only cease, however, after due warning has been given by the attacking party.

Even though the Fourth Convention exclusively addresses the treatment of civilians, it does not provide adequate protection for non-


61. A proposed preamble to the Fourth Convention read in part:

Respect for the personality and dignity of human beings constitutes a universal principle which is binding even in the absence of any contractual undertaking. Such a principle demands that, in time of war, all those not actively engaged in the hostilities and all those placed hors de combat by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war.


The preamble was not included in the Convention because of objections to language referring to the divine origin of man. According to Jean Pictet, "the essential motive which had brought sixty-four nations together at Geneva was left unexpressed solely on account of non-essential additions that one delegation or another wished to make." COMMENTARY ON THE GENEVA CONVENTION IV, supra note 51, at 14.


63. Id., art. 19. DPI has argued that the mental institution’s status as a civilian hospital gave it legal protection from attack. Petition of DPI, supra note 1, at 6. It appears doubtful, however, that the Richmond Hill Asylum qualifies as a “civilian hospital” within the meaning of the Fourth Convention. Article 18 defines “civilian hospitals” in narrow terms and lays down a series of strict conditions for their protection. Civilian hospitals are to be provided by the states which are parties to the conflict with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive them of protection under article 19. In addition, the belligerent parties are to take necessary steps to mark civilian hospitals with distinctive emblems clearly visible to the enemy. Fourth Convention, supra note 60, art. 18. The preferable line of argument for DPI would be that the building was an institution housing civilians, and, as such, qualified as a civilian object. Letter from F. Kalshoven to D. Weissbrodt (Nov. 3, 1987) at 3–4. See infra notes 72–75 and accompanying text.

64. Fourth Convention, supra note 60, art. 19. DPI also relies on the Fourth Convention, and, in particular, on article 32, to support the argument that the right to life is jus cogens and is therefore protected even in states of emergency or war. Comments of DPI, supra note 16, at 4. Article 32 reads in part: “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands.” This article states a principle common to the four Geneva Conventions. See First and Second Conventions, supra note 60, art. 12; Third Convention, id., art. 13. This language does not, however, support DPI’s argument. As noted in the official commentary to the Geneva Conventions of 1949, the phrase “protected persons in their hands” refers only to enemy civilians actually in the custody of a party to a conflict and does not apply to individuals who suffer as a result of an enemy attack. COMMENTARY TO THE GENEVA CONVENTION IV, supra note 51, at 222.

65. DOCUMENTS ON THE LAWS OF WAR, supra note 59, at 271. The Fourth Convention expressly excludes from coverage those persons protected by the First, Second, and Third Geneva Conventions. Fourth Convention, supra note 60, art. 4.
combatants in the modern era of high-technology warfare. This gap in the Fourth Convention was not filled until 1977, when a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Conference) adopted two Protocols Additional to the Geneva Conventions of 1949 (Protocols I and II).

Protocol I, in addition to reaffirming the general principle of distinction, details the protections to be afforded to civilians during hostilities. The most sweeping provision of Protocol I is article 51,

66. Roberts, supra note 52, at 120. See also Erickson, Protocol I: A Merging of the Hague and Geneva Laws of Armed Conflicts, 19 Va. J. Int'l L. 557, 558 (1979) (changes in the nature of conflict since the end of World War II raised serious doubts about the previously separate rules of Hague and Geneva Law). The scope of civilian immunity during an aerial bombing may have been purposely excluded from the Fourth Convention. In his commentary to the Fourth Convention, Jean Pictet states:

[The main object of the Convention is to protect a strictly defined category of civilians from arbitrary action on the part of the enemy, and not from the dangers due to the military operations themselves. Anything tending to provide such protection was systematically removed from the Convention.

COMMENTARY ON THE GENEVA CONVENTION IV, supra note 51, at 10 (emphasis in original). The main purpose of the Fourth Convention is to protect civilians in enemy hands. As the history of the Fourth Convention shows, protection of civilians during attack was carefully placed outside the terms of the Geneva Conventions of 1949. Letter from F. Kalshoven to D. Weissbrodt (Nov. 3, 1987) at 3.

The 1923 Hague Rules do address aerial bombing:

1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

2) Such bombardment is legitimate only when directed exclusively at the following objectives: military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes.


68. In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

which states that civilians enjoy "general protection against dangers arising from military operations." 69 Starting from this general principle, the Conference codified bans on direct or indiscriminate attacks on civilian populations. 70 Article 51(4) describes an indiscriminate attack as an attack "of a nature to strike military objectives and civilians or civilian objects without distinction." 71 It goes on to give specific examples of indiscriminate attacks:

(a) one which is not directed at a specific military objective;
(b) one which employs a method or means of combat the effects of which cannot be directed at a specific military objective; or
(c) one which employs a method or means of combat which, by its nature, strikes military objectives and civilians without distinction. 72

Protocol I defines military objectives as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military objective." 73 Civilian objects are defined by exclusion as all objects that do not fall within the definition of military objectives. 74 Protocol I goes on to state that if there is any doubt about whether a civilian object is being used "to make an effective contribution to military action," thus removing its immunity from attack, "it shall be presumed not to be so used." 75

The commanding officer in charge of a military operation is obligated to verify that its objectives are neither civilians nor civilian objects. 76 Moreover, the commander is required to take all feasible precautions to minimize or avoid collateral civilian casualties or dam-

69. Protocol I, supra note 67, art. 51(1). Jean Pictet commented on the origin of this protection: "Such general immunity of the civilian population developed from customary law and general principles, but had not been expressly stated in positive law. This has now been accomplished." J. PICTET, DEVELOPMENTS AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW, supra note 57, at 72.

70. 2. The civilian population as such, as well as individual civilians, shall nor be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.
4. Indiscriminate attacks are prohibited. . .
Protocol I, supra note 67, art. 51(2)-(4). See also J. PICTET, DEVELOPMENTS AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW, supra note 57, at 53–58.

71. Protocol I, supra note 67, art. 51(4).
72. Id.
73. Id., art. 52(2).
74. Id., art. 52(1).
75. Id., art. 52(3).
76. Id., art. 57(2)(i).
age to civilian objects. The belligerent must give advance warning where an attack may affect the civilian population unless the necessity of surprise precludes such warning.

While Protocol I thus places a heavy burden of care upon attackers to ensure that their military actions do not harm civilians unnecessarily, it also imposes duties on defenders to protect civilians. The party controlling the civilian population should endeavor to evacuate civilians from the vicinity of military objects, to avoid locating military objectives within or near densely populated areas, and to take any additional precautions to protect the civilian population against the dangers resulting from military operations.

Even though Protocol I has not been ratified by the United States, to the extent that the humanitarian principles embodied within it — and within the Hague and Geneva Conventions before it — are reaffirmations of existing customary law, those principles can be used by the Commission in interpreting the right to life provision of the American Declaration.

77. Id., art. 57(2)(ii)-(iii).
78. Id., art. 57(2)(c).
79. Id., art. 58.
80. On January 29, 1987, President Reagan transmitted Protocol II to the Geneva Conventions to the U.S. Senate for advice and consent to ratification, but in the same correspondence he stated: "[T]he United States cannot ratify a second agreement on the law of armed conflict negotiated during the same period. I am referring to Protocol I additional to the 1949 Geneva Conventions, which would revise the rules applicable to international armed conflicts." Message from the President of the United States Transmitting the Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Noninternational Armed Conflicts Concluded at Geneva on June 10, 1977, Treaty Doc. No. 2, 100th Cong., 1st Sess. (1987), reprinted in 23 Weekly Comp. Pres. Doc. 91 (Feb. 2, 1987). The reasons given for refusing to ratify Protocol I include the automatic treatment of "wars of national liberation" as international conflicts, the grant of special status to these wars, and the grant of combatant status to irregular forces. Id. at 92. See also Roberts, supra note 52, at 170 n.321 (Joint Chiefs of Staff and the Department of Defense have recommended that Protocol I be rejected).

The U.S. rejection of Protocol I apparently had nothing to do with the provisions protecting civilians. The President reaffirmed his support for "traditional humanitarian law" and for "the positive provisions of Protocol I that could be of real humanitarian benefit if generally observed by parties to international armed conflict." 23 Weekly Comp. Pres. Doc. 92 (Feb. 2, 1987). For a view supporting ratification, see Gasser, An Appeal for Ratification by the United States, 81 Am. J. Int’l L. 912, 914 (1987) (Protocol I codifies customary principles of the laws of war). 81. See supra notes 33–42, 49 and accompanying text. According to the International Law Commission, the factors to be considered in determining whether a legal norm has entered the realm of customary international law are:

(a) a concordant practice by a number of states with reference to a type of situation falling within the domain of international relations;
(b) a continuation or repetition of the practice over a considerable period of time;
(c) a conception that the practice is required by or consistent with prevailing international law; and
(d) general acquiescence in the practice of other states.

The regulations of the Hague Conventions have long been recognized as principles of customary humanitarian law. In 1946, the International Military Tribunal at Nuremberg rejected the argument that the Hague Conventions were not binding on Germany, holding that "by 1939 these rules laid down in the [1907 Hague] Convention [IV] were recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war."

The Geneva Conventions of 1949 are likewise "widely accepted in the international community and have acquired the status of customary international law." The provisions of the Conventions were followed in practice by United States forces during the Korean War (1950–53), even before formal United States ratification. The International Court of Justice has recently affirmed that the Geneva Conventions of 1949 are the expression of fundamental general principles of humanitarian law.

Protocol I contains elements that cannot be considered declarative of customary international law. But its provisions on distinction and proportionality and its prohibition on indiscriminate attack are reaffirmations of principles that have been expressed in international legal documents and writings since the time of Grotius. Protocol I gives more explicit content to these norms — for example, by providing a formal definition of military objective in article 52 — but the basic principles are ones that the Conference itself recognized as having long ago passed into customary international law. The Commission can

84. Meron, supra note 82, at 5; Roberts, supra note 52, at 114.
87. See Meron, supra note 82, at 5 (discussing the grant of combatant status to guerrilla forces in art. 44(3)-(4)).
therefore look to these principles for guidance when interpreting article 1 of the American Declaration in the context of the bombing of the Richmond Hill mental institution.

IV. INTERPRETATION OF THE AMERICAN DECLARATION'S RIGHT TO LIFE PROVISION IN LIGHT OF HUMANITARIAN LAW

The difficulty which is so acutely evident in Disabled Peoples' International v. United States is not determining the existence of a customary norm prohibiting the taking of civilian lives, but applying it to the military action in Grenada during which sixteen civilian mental patients were killed. The key issue that the Commission will address is whether the manner in which the United States pursued the operation over Fort Frederick and Fort Matthew violated the prohibition on attacks on civilians embodied in customary international law.

The information presented by the parties indicates that the aerial attack which killed the mental patients could fall into one of four categories: (1) a deliberate attack on civilians, (2) an indiscriminate attack with civilian casualties, (3) a military mistake, or (4) a legitimate military attack resulting in collateral injuries to civilians.

The first possibility is that the bombing by the A-7 aircraft was a deliberate attack on a civilian object. As immunity of noncombatants from willful attack is one of the most fundamental rules of the customary law of armed conflict, such an attack should be considered a violation of the right to life provision of the American Declaration.

It is improbable, however, that such a finding could be made against the United States in this case. Correspondence from the United States Department of State indicates that only after the air strike did the United States learn that one of the buildings bombed was a mental institution housing civilians. Without a clear showing of intent, the United States cannot be found to have deliberately attacked the civilians in the Richmond Hill complex.

The second possibility is that the United States attacked in an indiscriminate manner, without regard to possible civilian casualties. Customary principles of humanitarian law state that an aerial attack

Solf, supra note 54, at 130 ("To the extent that Protocol I clarifies and implements the principle of civilian immunity and the principle of distinction, its provisions should be considered customary law."); Gasser, supra note 80, at 914 (Protocol I is a restatement of customary laws of war).

90. See supra notes 57–64, 68–69 and accompanying text.
91. Letter from U.S. Dept of State, Sept. 1984, supra note 10, at 3. DPI, however, asserts "Everyone in Grenada knew what Richmond Hill was and that other disabled people were kept at the Kennedy Home close by. United States diplomats had paid courtesy calls at both facilities for years." Comments of DPI, supra note 16, at 6.
which does not distinguish between civilians and combatants may be evidence of a general intent to harm civilians.\textsuperscript{92}

In order to prove an indiscriminate attack, the Commission must find either that the bombing was not directed at a legitimate military objective, or that the attack was of a type which could not have distinguished between military and civilian objectives.\textsuperscript{93} The United States Department of State asserts in its correspondence that the bombing was directed at Fort Frederick, which it considered a military objective. DPI does not dispute that Fort Frederick was being used by PRA forces and, in fact, concedes that soldiers had been stationed within the complex.\textsuperscript{94} The facts, as presently stated, seem to indicate that Fort Frederick at least was indeed a legitimate military objective.

The United States Department of State also alleges that “[s]ome of the fire came from the mental institution itself, into which armed members of the PRA had moved.”\textsuperscript{95} A United States military publication states that the director of the mental institution reported that at the time of the air strike, PRA troops had not only occupied the mental institution to fire at United States forces, but had armed both patients and staff as well.\textsuperscript{96}

Even if it were occupied by hostile forces, however, the mental institution could be deemed a military objective only if it was being used to make an effective contribution to the military action;\textsuperscript{97} United States troops had no doubt that the civilian object was being used for such a purpose;\textsuperscript{98} and the United States gave warning of its imminent attack.\textsuperscript{99} Whether PRA troops were inside the mental institution presents a factual dispute, but the requirement of a warning was clearly not fulfilled.\textsuperscript{100} Without having given the requisite notice, the United States would not have been justified in attacking the mental institution even if it were a legitimate military objective.

Alternatively, the Commission may be able to prove an indiscriminate attack by finding that the method used by the United States did

\textsuperscript{92} See supra notes 70–72 and accompanying text. See also Solf & Grandison, supra note 55, at 583.
\textsuperscript{93} See supra text accompanying note 72.
\textsuperscript{94} Comments of DPI, supra note 16, at 7: “Some soldiers had been stationed in what had been offices of the hospital further up the hill about 300 yards from where the attack occurred at the patient's [sic] dormitory.”
\textsuperscript{95} Letter from U.S. Dep't of State, Sept. 1984, supra note 10, at 3.
\textsuperscript{97} See supra text accompanying note 73.
\textsuperscript{98} See supra text accompanying note 75.
\textsuperscript{99} See supra text accompanying note 78.
\textsuperscript{100} Comments of DPI, supra note 16, at 6.
not adequately distinguish between military and civilian objectives. 101
The means by which the United States chose to subdue the forces
within Fort Frederick was an aerial bombing by a lone A-7 attack
aircraft. 102 While aerial bombings are not known for their precision,
they are not in and of themselves considered indiscriminate attacks. 103
An argument could be made that if the United States had been aware
of the proximity of the mental institution to the fortress, it should
have attempted to subdue the enemy fire without risking civilian lives.
The United States could have, for example, used only infantry to
capture the enemy soldiers. Land combat might have partially elimi-
nated the imprecision that characterizes aerial bombing.

The obvious defense to this argument would be military necessity. 104
Absolutely no facts have been presented to indicate that the aerial
bombing was necessary to complete the overall military mission on
the island or even to save lives of those United States troops who were
allegedly under attack from PRA troops at Richmond Hill. Unknown
at this time is the number of PRA troops actually found within the
complex and how heavily these soldiers were armed. A determination
that the aerial attack was indiscriminate must be based on such further
fact-finding.

The third possible categorization of the attack would be as a military
mistake. 105 The United States reports that officers commanding the
intervention did not know which of the buildings was the alleged
PRA headquarters: “Only after the air strike did the United States
learn that one of the buildings from which PRA forces fired on U.S.
forces was a mental institution.” 106

DPI alleges that the United States knew or should have known that
the facility was a mental institution, rendering the bombing a negli-
gent and unjustifiable act. 107 DPI argues that the only soldiers on the
grounds of the mental institution at the time of the attack were fleeing
the fortress in search of shelter from the bombing and were not there
to attack United States forces. 108 DPI concedes that some soldiers had
stationed themselves nearby in former hospital offices, but argues that
their presence did not justify an attack on the mental institution itself. 109 The United States government asserts that the PRA had

101. See supra text accompanying note 72.
103. See supra note 66.
104. See supra notes 52-54 and accompanying text.
105. Cypher, supra note 96, at 99.
108. Petition of DPI, supra note 1, at 7.
raised a flag in front of the building as a rallying point for its forces.\textsuperscript{110} No such flag, however, was found in the rubble of the mental institution after the bombing.\textsuperscript{111}

Accidental and presumably negligent acts of bombing have been the subject of compensation claims in the past. The International Arbitral Commission noted "numerous international incidents . . . in which damages have been assessed for mistaken, unnecessary, indiscrete or reckless action."\textsuperscript{112} Legally, however, the Commission can hold the United States responsible only if it finds that the United States military officials negligently failed to verify that Fort Frederick was a military objective.\textsuperscript{113}

The fourth possibility is that the bombing was a legally justified attack on a military objective. United States forces may have attempted to spare civilian lives as much as possible. The casualties suffered as a result of the bombing may simply have been the unfortunate consequence of an attack on a legitimate military target. There is no absolute right of civilians to be free from injury during an armed conflict. If the parties to the hostilities take all possible precautions and use methods of warfare that conform to international standards, they cannot be held responsible for any collateral damage.

A finding for the United States based on this fourth explanation, however, is impossible without further factual investigation. If the United States' action conformed with the above-mentioned duties, then the Commission will have to find that the fatalities were non-intentional, nonindiscriminate, and nonnegligent, and absolve the United States from responsibility. Further information discoverable through an on-site investigation is necessary to provide the Commis-

\textsuperscript{110} Cypher, \textit{supra} note 96, at 104.

\textsuperscript{111} D PI asserts: "If any flag at all had been flown (there is much doubt that a flag actually existed) it would only have been the Grenadan [sic] flag. No other flags were then in the area and no other flags were found afterwards at Richmond Hill." Petition of D PI, \textit{supra} note 1, at 7. Others state that Fort Frederick brandished a flag, though unidentifiable. H. O'SHAUGHNESSY, \textit{Grenada: Revolution, Invasion, and Aftermath} 106 (1984).

\textsuperscript{112} See The Kling Case, IV Rep. Int'l Arb. Awards 575, 580 (1951) (citing the Dogger Bank Case, 2 L. OPPENHEIM, INTERNATIONAL LAW 7–8 n.2 (3d ed. 1921) (Russia held responsible to Great Britain for unjustifiably firing into a fishing fleet in the North Sea) and the Stephens Case, Opinions of the Commissioners (Mexico-U.S. General Claims Comm'n) 397, 399 (1927) (Mexico held responsible to the United States for the reckless use of firearms by members of the Mexican Guard causing the death of a U.S. citizen)).

The U.S. agreed to pay $964,199 to the Vatican for damage caused by bombs accidentally dropped on Papal territory during World War II. I. BROWNIE, \textit{International Law and the Use of Force by States} 146–47 (1963). In July 1961, the Grand Council of San Marino accepted a British offer of £80,000 in compensation for the consequences of an Allied air raid in 1944 in which fifty-nine persons were killed and forty-eight were injured. \textit{Id.} at 147 n.1.

\textsuperscript{113} See \textit{supra} text accompanying note 76.
sion with insight into the incident. Traveling to Grenada, interviewing those injured in the bombing, and discussing the operation with those who experienced it first-hand could uncover reliable information from which the Commission could make a decision.

V. CONCLUSION

When the Inter-American Commission on Human Rights decided in April 1986 that the DPI complaint against the United States was admissible, it was the first time in the 27-year history of the Commission that it had ever made an admissibility decision against the United States. Since that time the Commission has rendered its March 1987 decision on both admissibility and the merits in the case of Roach and Pinkerton v. the United States, holding that the United States violates articles 1 and 2 of the American Declaration by permitting the execution of juvenile offenders. The admissibility decision in the DPI case and the judgment in Roach indicate that the Commission may be adopting a much more aggressive approach to allegations of human rights violations by the United States. Indeed, the Commission soon will have another opportunity to examine United States human rights practices: the American Civil Liberties Union and others have recently asked the Commission to consider whether the indeterminate imprisonment of the Mariel Cubans is a violation of the American Declaration.

In Disabled Peoples' International v. United States, the Commission has taken on a matter which will present far greater factual and legal difficulties than the Commission may have realized when it decided in favor of admissibility. In order to decide the case on its merits, the Commission must interpret the very simplistic language of the American Declaration's protection of the right to life in the unaccustomed domain of international armed conflict. If the Commission proposes to apply the American Declaration at all to a situation of armed conflict with insight into the incident.

114. The Commission is well-equipped and well-qualified to perform on-site investigations, and has done so successfully on many previous occasions. See e.g., Report on Situation of Human Rights in Argentina, supra note 40, Report on Situation of Human Rights in Nicaragua, supra note 40. Article 55 of the Commission's Regulations reads in part: "On-site observations shall be carried out in each case [of petitions concerning states that are not parties to the American Convention] by a Special Commission named for that purpose." Regulations, supra note 6, art. 55. See also Vargas Carreño, The Experience of the Inter-American Commission on Human Rights, in INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS 137 (B. Ramcharan ed. 1982) ("No other intergovernmental human rights organization has had the experience of the Inter-American Commission on Human Rights with regard to on-site observations.").


conflict, it must interpret the American Declaration in light of the customary principles of humanitarian law.

Humanitarian law will not, however, resolve this case easily. At a minimum, the Commission must also use its well-developed procedures for on-site fact-finding to determine if the killing of the sixteen mentally ill patients was intentional, indiscriminate, negligent, or simply collateral damage in connection with a justifiable attack on a military target. The facts surrounding the attack on the mental institution at Richmond Hill will be difficult to determine. Even if the Commission is able to ascertain the relevant facts, it will need to use great care in analyzing the applicable law. *Disabled Peoples' International v. United States* will present the Commission with the very difficult challenge of defining the limits of the right to life through an interpretation of the American Declaration.