

# **Implementation of International Humanitarian Law**

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## **Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law**

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### **Introduction**

The present study deals with one specific aspect of the whole issue of finding ways and means of improving respect for international humanitarian law, namely, implementation of the obligation, as contained in Article 1 common to the Geneva Conventions of 1949 and to their Additional Protocol I of 1977, to ensure respect for this law. It is based upon the premise that the interpretation of common Article 1, whereby the obligation to ensure respect for international humanitarian law implies that every High Contracting Party ought to take action with regard to any other High Contracting Party which does not respect this law, is uncontested. The study therefore does not discuss this issue, but rather identifies and briefly comments upon the various types of measures available to States in order to fulfil their obligation to ensure respect. The examples given for the various measures are merely illustrative and ought by no means to be considered as a judgement by the author regarding their justification in the light of the circumstances under which they were adopted.

### **General remarks**

The **main purpose** of this study is to identify, classify and briefly examine certain legal aspects of action that has been taken by States, in various contexts, in order to ensure respect for international law in general, and thereby provide a list of measures that States could consider

adopting, as appropriate, in order to fulfil to their obligation under common Article 1.

Accordingly, it does not dwell on a detailed analysis of the veritable legal nature of this obligation to ensure respect.<sup>1</sup> It should nevertheless be pointed out that in view of the almost universal ratification of the Geneva Conventions and the growing number of States party to their Additional Protocols, as well as the transcendence of humanitarian principles and hence *erga omnes* character of the obligation to respect them,<sup>2</sup> all States have the right to ensure that any other State respects customary humanitarian law, and all States party have the obligation to do so, under the strict terms of the Conventions and Protocol I, *vis-à-vis* any State party to these instruments.<sup>3</sup>

Common Article 1 imposes an obligation on the High Contracting Parties to act, but does not identify any specific course of action. There

<sup>1</sup> For such an analysis, see *inter alia* Luigi Condorelli and Laurence Boisson de Chazournes, "Quelques remarques à propos de l'obligation des Etats de 'respecter et faire respecter' le droit international humanitaire 'en toutes circonstances'" in Christophe Swinarski (ed.), *Studies and essays on international humanitarian law and Red Cross principles* in honour of Jean Pictet, Martinus Nijhoff, Geneva-The Hague, 1984, pp. 17-36; Nicolas Levrat, "Les conséquences de l'engagement pris par les Hautes Parties Contractantes de 'faire respecter' les Conventions humanitaires" in Frits Kalshoven & Yves Sandoz (eds.), *Implementation of International Humanitarian Law*, Martinus Nijhoff, Dordrecht, 1989, pp. 263-296.

<sup>2</sup> "...since such an obligation does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give specific expression". Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, *ICJ Reports*, 1986, paragraph 220. In the *Barcelona Traction* case, the International Court of Justice (ICJ) observed that States' obligations to the international community as a whole may be conferred by international instruments of a universal or quasi-universal character and that all States may be considered as having a legal interest in their observance. *Barcelona Traction Light and Power Company, Limited*, Judgment, *ICJ Reports*, 1970, paragraphs 33 and 34.

<sup>3</sup> See also Resolution XXIII of the *International Conference on Human Rights, Tehran, 1968*, which emphasizes that the obligation to ensure respect for the Conventions is incumbent even upon States that are not directly involved in an armed conflict. It should equally be noted that there have been neither reservations nor interpretative declarations with regard to Article 1. Nor has any State contested the validity of the appeals issued by the ICRC on the basis of that Article to all States party to the Conventions, in connection with the conflict between Iran and Iraq, in 1983 and 1984. Furthermore, both the General Assembly and the Security Council of the United Nations have referred to the obligation under Article 1, as for example in Security Council resolution 681 of 20 December 1990 concerning the Arab territories occupied by Israel, which, in paragraph 5, calls upon the High Contracting Parties to the Fourth Geneva Convention "... to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with Article 1 thereof" and in General Assembly resolution 45/69 of 6 December 1990 concerning the uprising (*intifada*) of the Palestinian people, which similarly, in paragraph 3, calls upon all States party to the Fourth Convention to ensure respect by Israel for this Convention in conformity with their obligation under its Article 1.

is no indication of how they should set about ensuring respect for international humanitarian law. It is primarily to fill that gap that the lawful means available have to be identified. A further reason for determining such means is the fact that, in order to make progress in the implementation of international humanitarian law, especially in the context of Article 1, it is necessary to go beyond the framework provided by international humanitarian law itself and to consider other options such as, for example, "humanitarian diplomacy", which mainly involves States and the United Nations. Of course humanitarian action, in this particular context, then becomes implicated in politics, but the responsibility, both individual and collective, laid down in Article 1 does rest with States and thus necessarily involves politics.

It is worth pointing out at this juncture that the present study focuses upon measures to enable States to "ensure respect" for international humanitarian law by other States, in the sense of **restoring respect** for international humanitarian law by States which are violating it.<sup>4</sup> However, it ought to be borne in mind that States may also fulfil their commitment to ensure respect by way of measures designed to assist other States to respect the law, particularly in peacetime (and possibly during armed conflicts of long duration). Such measures include, for instance: providing legal advisers to assist in developing or adapting national legislation and penal codes for effective implementation of international humanitarian law and to train legal advisers within the armed forces; teaching international humanitarian law as part of any kind of military cooperation; holding regional and international seminars with the participation of States in order to debate the specific problems associated with respect for international humanitarian law; and helping to set up and update regional data banks (or a single international data bank) on the various aspects related to national measures and their implementation, which would be accessible to any State needing information.

The legally permissible measures available to third parties, i.e. States which are not party to an international or non-international armed conflict, to ensure respect for international law in the event of a breach of the law may be classified into four broad categories. The first of these is *measures to exert diplomatic pressure*. The second category is *coercive measures* that States may take themselves. The third comprises

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<sup>4</sup> As L. Condorelli and L. Boisson de Chazournes observe, this aspect (*vis-à-vis* other States) of the obligation to ensure respect relates to what is required of States in the face of violations of humanitarian law attributable to another State. *Supra* note 1, p. 26.

steps which States may take *in cooperation with international organizations*. The fourth category differs from the other three, in that it does not relate to measures aimed at restoring respect for international law by a State violating that law, but rather to that aspect of the obligation to ensure respect which confers on States the duty, moral in the very least, to contribute to assistance action undertaken in conformity with international humanitarian law. The measures in this case could be considered as *contributions to humanitarian efforts*.

Finally, insofar as international humanitarian law is concerned, it should be noted that, under the terms of Article 1 ("in all circumstances", i.e. whenever international humanitarian law is applicable) and pursuant to Article 3 common to the Geneva Conventions, the obligation to ensure respect applies to both international and non-international conflicts.

## Measures to exert diplomatic pressure

Generally speaking, such measures do not pose any problems from the legal point of view. They may take more or less the following five forms:

- a) *Vigorous and continuous protests lodged by as many Parties as possible with the ambassadors representing the State in question in their respective countries and, conversely, by the representatives of those Parties accredited to the government of the aforementioned State.*
- b) *Public denunciation, by one or more Parties and/or by a particularly influential regional organization, of the violation of international humanitarian law.*

One example would be the statement made by the United States to the Security Council on 20 December 1990 concerning the deportation of Palestinian civilians from the occupied territories: "We believe that such deportations are a violation of the Fourth Geneva Convention... We strongly urge the Government of Israel to immediately and permanently cease deportations, and to comply fully with the Fourth Geneva Convention in all of the territories it has occupied since June 5, 1967" (S/PV.2970, Part II, 2 January 1991, pp. 52-53). Similarly, resolution 5038/ES, of the Council of the League of Arab States, at its extraordinary session (Cairo, 30-31 August 1990), condemned, in its paragraph 1, "... the violation by Iraqi authorities of the provisions of international humanitarian law relative to the treatment of civilians in the Kuwaiti territory under Iraqi occupation".

**c) *Diplomatic pressure on the author of the violation, through intermediaries.***

For instance, the steps that were taken by Switzerland to persuade the USSR, China and France to exert pressure upon the Arab States in the Zerka affair of 1970 when three civilian planes were hijacked by Palestinian movements.

**d) *Referral to the International Fact-Finding Commission (Article 90, Additional Protocol I) by a State with regard to another State, both of which have accepted the competence of the Commission.***

In fact, the very assertion, by a State which has declared its acceptance of the competence of the International Fact-Finding Commission, of its desire to approach that body, even if the State against which an enquiry is requested has not itself declared its acceptance, might prove a means of inducing the latter to accept the Commission's competence, at least on an *ad hoc* basis, and/or to take steps to suppress continuing violations of international humanitarian law. A refusal could be publicly regretted by States.

## **Coercive measures that States may take themselves**

The list that follows includes only measures available to States which are legally permissible in international law, and does not therefore take into consideration armed intervention undertaken unilaterally, i.e. without any reference to a treaty or custom, by a State or a group of States, as such intervention is not permitted under public international law and as no armed intervention can be based on international humanitarian law.<sup>5</sup>

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<sup>5</sup> Yves Sandoz, "It would indeed be unthinkable to see international humanitarian law, whose philosophy it is not to link its application to *jus ad bellum*, itself become a pretext for armed intervention", *Annals of International Medical Law*, No. 33, 1986, p. 47. See also the second and fourth preambular paragraphs in the Preamble to Protocol I additional to the Geneva Conventions. With regard to respect for human rights, "the use of force could not be the appropriate method to monitor or ensure such respect". Judgment, *Nicaragua v. United States of America*, *ICJ Reports*, 1986, paragraph 268. For an overview, with extensive references, of the prohibition of the use of force in international law, see International Law Commission: *Third report on State responsibility*, Chapter X.A. "The Prohibition of the use of Force" (Doc. A/CN.4/440/Add.1, 14 June 1991).

It should be pointed out here that the inadmissibility of the use of force by States is confined to unilateral actions (Article 2, paragraph 4, of the Charter of the United Nations) and hence is without prejudice to cases where the United Nations intervenes, pursuant to Articles 42 and 43, paragraph 1, of the Charter. Nor does it apply to the right of individual or collective self-defence (Article 51 of the Charter).

It would be useful at this stage to touch very briefly upon the legality, in international law, of the adoption of coercive (albeit unarmed) measures by States *vis-à-vis* other States. Practice shows that States employ a wide range of such measures in order to exert pressure on other States in retaliation for an act committed by the State against which they are directed. Such measures may be classified in two broad categories, namely retaliation and unarmed reprisals.

**Retortion** refers to acts which are unfriendly, and even damaging, but intrinsically lawful, carried out in response to a prior act which might also be unfriendly but lawful, or internationally unlawful.

**Reprisals** are acts which are by their very nature unlawful but are exceptionally justified in the light of a prior unlawful act committed by the State at which they are directed. Thus the International Law Commission, which uses the term "countermeasures" to designate such acts, considers the initial illegality to constitute a circumstance which precludes the illegality of the response.<sup>6</sup>

The *lawfulness of the measures themselves*,<sup>7</sup> notably with regard to their content and implementation, is determined not only in terms of the

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<sup>6</sup> "The wrongfulness of an act of a State not in conformity with an obligation of that State towards another State is precluded if the act constitutes a measure legitimate under international law against that other State, in consequence of an internationally wrongful act of that other State" (ILC Draft Article 30 on State responsibility), *Yearbook of the International Law Commission*, 1979, vol. II, p. 115. For termination or suspension of the operation of a treaty as a consequence of its breach, see Article 60, paragraphs 1-4 of the Vienna Convention on the Law of Treaties. Also, Arbitral award in the case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France, Decision of 9 December 1978, paragraph 81: "If a situation arises which, in one State's view, results in the violation of an international obligation by another State, the first State is entitled, within the limits set by the general rules of international law pertaining to the use of armed force, to affirm its rights through countermeasures". *Report of Arbitral Awards*, Vol. XVIII, p. 417. For an exhaustive study see Frits Kalshoven, *Belligerent Reprisals*, Sijthoff, Leyden and Henry Dunant Institute, Geneva, 1971, 389 pp.

<sup>7</sup> This refers chiefly to reprisals. For jurisprudence dealing with the lawfulness of reprisals, refer to the "Naulilaa" and "Lysne" cases, Arbitral awards of 31 July 1928 and 30 June 1930 respectively, *Report of Arbitral Awards*, Vol. II, p. 1025 and p. 1056. Nevertheless, the considerations which follow also apply, by analogy, to measures of retaliation which, although intrinsically lawful, should not however stray beyond the bounds of lawfulness. They must for instance respect the principle of proportionality in relation to the objective pursued. They may not be used for purposes other than to put a stop to the unlawful act which prompted them. However, neither practice nor case law provide any clear indications of the bounds of lawfulness of retaliation. For details on lawfulness and related considerations with regard to retaliation and countermeasures, see International Law Commission: *Third report on State responsibility*, Chapter I.B. "Retortion" (Doc. A/CN.4/440, 10 June 1991), and *Fourth report on State responsibility*, Chapter V. "Prohibited countermeasures" (Doc. A/CN.4/444/Add.1, 25 May 1992).

limits dictated by the demands of civilization and humanity, but also in terms of their aim. The aim is neither to punish (we are concerned with countermeasures, not sanctions) nor to seek compensation, but solely to oblige the State which is responsible for violating the law to stop doing so, by inflicting damage upon it, and to deter it from repeating the same offence in the future. Thus, in order to remain lawful, the coercive measures must:

- be directed against the State responsible for the unlawful act itself;
- be preceded by a warning to the State in question, asking it to stop the said act or acts;
- be proportional; all measures out of proportion with the act which prompted them would be excessive, and hence unlawful;
- respect fundamental humanitarian principles, as provided for in public international law and international humanitarian law, whereby such measures are forbidden against certain categories of persons;<sup>8</sup>
- be temporary and therefore cease as soon as the violation of the law by the State in question ceases.<sup>9</sup>

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<sup>8</sup> In conformity, *inter alia*, with Article 60, paragraph 5, of the Vienna Convention on the Law of Treaties. Furthermore, paragraph 4 of the same Article makes reservation for the specific provisions of each treaty applicable in the event of a breach. Under international humanitarian law, prohibitions of certain measures against protected persons are to be found in Articles 46, 47, 13(3) and 33(3) of the Four Geneva Conventions respectively and certain articles of Additional Protocol I, such as, for example, Articles 20, 51(6), 54(4). See also International Law Commission, *Fourth report on State responsibility*, Chapter V.C. "Countermeasures and respect for human rights" (A/CN.4/444/Add.1, 25 May 1992) wherein the rapporteur observes that "... humanitarian limitations to the right of unilateral reaction to internationally wrongful acts have acquired in our time... a degree of restrictive impact which is second only to the condemnation of the use of force" (paragraph 78). Among the examples he cites to support his observation, one finds the total blockade of trade relations with Libya declared in 1986 by the United States, which prohibited the export to Libya of any goods, technology or service from the United States with the exception of publications and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies strictly intended for medical purposes (paragraph 79).

<sup>9</sup> This condition ought equally to be read in the light of General Assembly resolution 2131 (XX) of 21 December 1965 on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, and resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law Concerning Friendly Relations Among States in Accordance with the Charter of the United Nations, both of which clearly condemn the use of economic and political force by States to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.

## **Possible measures of retortion**

**a) *Expulsion of diplomats.***

For instance, during the hostages affair at the United States embassy in Tehran (1979-1980), the United States expelled some of the Iranian diplomatic personnel posted in Washington.

**b) *Severance of diplomatic relations.***

Soon after the aforementioned decision, the United States broke off diplomatic relations with Iran.

**c) *Halting ongoing diplomatic negotiations or refusing to ratify agreements already signed.***

The American Senate refused to examine the SALT II agreements, already signed by the USSR and the United States, following the invasion of Afghanistan (1979).

**d) *Non-renewal of trade privileges or agreements.***

The United States decided, in 1981, not to renew its bilateral maritime agreement with the USSR and to introduce restrictions on the admission of its vessels to American ports as from January 1982, following the repression in Poland.

**e) *Reduction or suspension of public aid to the State in question.***

As a reaction to militia killings and other human rights violations in Suriname, the Netherlands in December 1982 suspended implementation of a 10 to 15-year aid programme to that country.

## **Possible unarmed reprisals**

These include measures to exert economic pressure.<sup>10</sup> The aim is to hamper normal economic and financial relations, either by failing to

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<sup>10</sup> This expression seems the most appropriate to cover the whole range of such measures, rather than employing more restrictive terms such as "embargo", which strictly speaking only concerns exports, or "boycott" which, similarly, only relates to imports.

respect agreements in force or by way of decisions running counter to the rules governing those relations.

**a) *Restrictions and/or ban on arms trade, military technology and scientific cooperation.***

The European Communities took a series of decisions on 4 August 1990 with regard to Iraq which comprised, among others, an embargo on the sale of arms and other military equipment, and the suspension of all technical and scientific cooperation.

**b) *Restrictions on exports and/or imports to and from the State committing the violations; total ban on commercial relations.***

Following the invasion of Afghanistan (1979) the United States set up a grain embargo against the USSR; the European Communities imposed a total ban on imports from Argentina during the Falklands/Malvinas conflict (1982); the United States suspended commercial relations with Uganda in 1978 in reaction to violations of human rights.

**c) *Ban on investments.***

A ban on all new investment in South Africa was imposed by France in 1985, following a hardening of the repression associated with apartheid.

**d) *Freezing of capital.***

The European Communities decided to freeze Iraqi assets on the territory of the Member States (4 August 1990).

**e) *Suspension of air transport (or other) agreements.***

On 26 December 1981, the United States suspended the 1972 US-Polish Air Transport Agreement following the Polish government's repression of the Solidarity movement.

## **Measures in cooperation with international organizations**

### **Regional organizations**

In addition to decisions to take measures to exert economic pressure, such as those identified above, certain regional agencies, particularly

those active in the human rights field, may help in another way to promote respect for both human rights and international humanitarian law.<sup>11</sup> This has been the case of the European and Inter-American Human Rights Commissions.

In 1967, a complaint was lodged with the European Commission by the governments of Denmark, Norway, Sweden and the Netherlands against the government of Greece, accusing the latter of violations of the European Convention on Human Rights. As the case was not submitted to the Court, it was the Committee of Ministers which took a decision.

The two aforementioned Commissions have also undertaken fact-finding missions in the field and conducted private interviews with prisoners: the European Commission in Turkey (1986), and the Inter-American Commission during the civil war in the Dominican Republic (1965).

### United Nations

As mentioned above,<sup>12</sup> Article 1, by imposing an obligation on States, inevitably brings in politics. And one of the most important means at States' disposal, at the international level, is precisely the United Nations. Moreover, any effective attempt by a State to ensure respect for international humanitarian law, especially in the event of massive violations, would be difficult, if not impossible, without the political support of the community of States, and the United Nations is one of the most widely used vehicles for such support in the contemporary world. This is implicitly recognized in Article 89 of Additional Protocol I, which states: "In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter".

The different types of measures which States may take in cooperation with the United Nations are listed below.<sup>13</sup>

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<sup>11</sup> In this connection, see Dietrich Schindler, "The International Committee of the Red Cross and Human Rights", *International Review of the Red Cross*, January-February 1979, No. 208, pp. 3-14.

<sup>12</sup> See *General remarks* following the introduction.

<sup>13</sup> For a recent study on this and related subjects, see also Hans-Peter Gasser, "Ensuring respect for the Geneva Conventions and Protocols: The role of Third States and the United Nations" in Hazel Fox and Michael M. Meyer (eds.) *Armed Conflict and the New Law*, vol. II "Effecting Compliance", The British Institute of International and Comparative Law, London, 1993, pp. 15-49.

***Measures decided by the Security Council***

**a) *Unarmed countermeasures.***

Article 41 of the United Nations Charter lists a series of measures that the Security Council may decide to take if it determines the existence of one of the three situations referred to in Article 39, that is, any threat to the peace, breach of the peace, or act of aggression. An analysis of actual practice, however, reveals a certain reticence and an empirical approach on the part of the Security Council, which has not always found it necessary either to refer expressly to the articles on which it bases itself or to declare formally in the preamble or operative part of a resolution whether the situation in question corresponds to one of the three designated in Article 39.<sup>14</sup> Consequently, when the Security Council places itself in the context of Chapter VII of the Charter, it is implicitly acknowledging that it is in the presence of one of the three situations designated in Article 39. Moreover, the Security Council enjoys great latitude in its competence to classify situations, and "... it is very difficult to find a common guideline in its various resolutions that allows a coherent classification of the various situations enumerated in Article 39".<sup>15</sup> For example, in resolution 688 of 5 April 1991, the Security Council deemed that the repression of the Iraqi civilian population in Kurdish-populated areas threatened international peace and security in the region (paragraph 1).

The unarmed measures cited in Article 41 are complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Thus, from 1965 onwards, the Security Council adopted several decisions requesting member States to suspend all their trade relations with Southern Rhodesia.

**b) *Use of armed force.***

It is generally accepted that all military countermeasures by a State are unlawful, and that the sole body competent to impose a sanction involving armed force today is the United Nations and in principle,

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<sup>14</sup> *La Charte des Nations Unies: Commentaire article par article*, Jean-Pierre Cot and Alain Pellet (eds.), Paris/Brussels, Economica/Bruylant, 1985, p. 651 ff.

<sup>15</sup> *Ibid.*, p. 654.

within that organization, the Security Council.<sup>16</sup> States may thus act on the Security Council's authorization to use force in order to ensure respect by a given State for its international obligations.

A typical example would be the action taken during the Gulf crisis as from 17 January 1991, in pursuance of Security Council resolution 678 of 29 November 1990.

However, as observed earlier, the Security Council enjoys great latitude in deciding which situations constitute threats to international peace and security. For instance, resolution 794 of 3 December 1992 stated that the human tragedy caused by the conflict in Somalia, and further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constituted a threat to international peace and security (preambular paragraph 3). Consequently, in order to stem violations of international humanitarian law, in particular the deliberate impeding of humanitarian assistance (paragraph 5), the Council decided that action be taken under Chapter VII of the Charter, which would include the use of all necessary means to establish a secure environment for humanitarian relief operations in Somalia (paragraphs 7, 8 and 10). This decision was to a large extent repeated in resolution 814 of 26 March 1993, using more or less similar terminology (heading of section B and paragraph 14, in particular). In this context, it would be useful to make the following observations. Although the aforementioned action, with allowance for the use of force, was decided upon by the Security Council with a view to ensuring respect for international humanitarian law in an armed conflict situation (provision of humanitarian assistance in this case), it was taken, firstly, on the basis of the United Nations Charter and not of international humanitarian law, and secondly, with the **primary** goal (and the **only one** permitted under Chapter VII of the Charter) of restoring (or maintaining, as the need may be) international peace and security. The lawfulness of the use of force in such circumstances is strictly limited to this goal, and **cannot be derived** from any rule or provision of **international humanitarian law**, not even Article 89 of Additional Protocol I, which calls upon States party to act, in cooperation with the United Nations and in conformity with its Charter, in situations of serious violations of that law. For international humanitarian law starts off from the premise that any armed conflict results in human suffering, and proceeds to elaborate a body of rules **meant precisely to alleviate this very suffering**. It would

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<sup>16</sup> *Supra* note 5.

indeed be logically and legally indefensible to deduce that that same law **itself allows**, even in extreme cases, for the use of armed force.<sup>17</sup> Enforcement measures would therefore **fall outside** the scope of international humanitarian law.

### *Measures decided by the General Assembly*

#### *a) Implicitly authorized countermeasures.*

The General Assembly may more or less explicitly acknowledge that a State has not respected its obligations under the Charter, but without making any recommendation to member States to adopt countermeasures against it.

For instance, resolution A/RES/ES.6/2 adopted by the General Assembly at its sixth emergency special session, on 14 January 1980, strongly deplores the armed intervention in Afghanistan (paragraph 2), but makes no mention of the USSR. In such cases, there is nothing to prevent States from taking lawful countermeasures.

#### *b) Explicitly recommended countermeasures.*

The General Assembly may recommend that members (and sometimes even other States) adopt sanctions against a State whose conduct is qualified as contrary to the rules of the Charter.

A perfect example would be resolution A/RES/ES/9/1 of 5 February 1982, adopted at its ninth emergency special session on the situation in the occupied Arab territories. The resolution lists a whole series of measures to be applied against Israel: suspension of economic, financial and technological assistance and cooperation, severing of diplomatic, trade and cultural relations [paragraph 12 (c) and (d)] in order to isolate it totally in all fields (paragraph 13).

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<sup>17</sup> For this reason, international humanitarian law applies **equally** to all parties in an armed conflict situation, and **independently** of considerations relating to the **legality** of the use of force (Statements by the ICRC on the applicability of international humanitarian law to United Nations Peace-keeping Forces, 47th and 48th sessions of the General Assembly, 1992 and 1993 respectively). See also "Report on the Protection of War Victims" prepared by the ICRC for the International Conference for the Protection of War Victims, published in *International Review of the Red Cross*, No. 296, September-October 1993, at 3.1.3. In fact, if it were conceded that international humanitarian law does permit the use of armed force in order to put an end to violations of this law, then it could also be argued that any use of armed force which abides by international humanitarian law to the letter is thereby "legal" under that law, independently of the provisions of the Charter. This would be absurd, which is precisely one of the reasons why international humanitarian law **cannot (and must not) in any way be connected** with the legality of the use of force.

- c) *Besides resolutions requesting States to apply countermeasures, the Security Council, the General Assembly and the Secretary-General may be mobilized by member States to issue statements on the applicability of international humanitarian law and denounce violations which have been committed.*

The Security Council expressed concern with regard to attacks against the civilian populations in the Gulf in resolution 540 of 31 October 1983 on the situation between Iran and Iraq, which specifically condemned all "violations of international humanitarian law, in particular of provisions of the Geneva Conventions in all their aspects" and called for "the immediate cessation of all military operations against civilian targets, including city and residential areas" (paragraph 2); resolution 681 of 20 December 1990, in its paragraph 4, underlined the applicability of the Fourth Geneva Convention to the territories occupied by Israel; General Assembly resolution A/45/172 of 18 December 1990, concerning the situation of human rights and fundamental freedoms in El Salvador, referred to international humanitarian law; the Secretary-General made several appeals calling upon Iran and Iraq to release and repatriate all sick and wounded prisoners immediately (paragraph 40 of report S/20862 to the Security Council, 22 September 1989).

- d) *States may also use the public (denunciation) and confidential (in principle, discreet negotiations) procedures provided for in the Commission on Human Rights in order to bring pressure to bear on States to respect applicable international law. They may encourage references to international humanitarian law in the Commission and in the Sub-Commission.*

During their 1990 sessions, for example, both the Commission and the Sub-Commission mentioned international humanitarian law in the cases of Afghanistan, southern Africa, El Salvador and Israel.

- e) *States may encourage recourse by the United Nations to the services of special rapporteurs mandated to conduct enquiries into specific violations of international humanitarian law, taking the procedure already employed in the field of human rights as a model.*

In 1984, a report was prepared by experts designated by the Secretary-General to investigate the Islamic Republic of Iran's allegations concerning the use of chemical weapons (S/16433, 26 March 1984); the Commission on Human Rights decided, in paragraph 4 of resolution 1993/2 A (19 February 1993) to appoint a Special Rapporteur

to investigate Israel's violations of the principles and bases of international law, international humanitarian law and specifically the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territory occupied by Israel since 1967.

- f) States may also, through the Security Council and/or the General Assembly (within the limits set out in Article 96, paragraph 1, of the Charter), request the International Court of Justice to give an advisory opinion on whether an established fact — namely an alleged violation of international humanitarian law by a State or States party involved in a conflict — actually constitutes a breach of an international commitment undertaken by that State or those States.*

This is not equivalent to requesting the International Court of Justice to rule on the dispute underlying the armed conflict in question, which it would decline to do,<sup>18</sup> but rather on a more abstract question associated with the responsibility of States party to an international treaty.

## **Contribution to humanitarian efforts**

Such actions may take the form either of support for organizations involved in humanitarian assistance or of practical action to facilitate such assistance.

*a) Support.*

States could provide financial and/or material support to permanent organizations such as the ICRC and UNHCR, and to *ad hoc* structures, such as that entrusted to Saddrudin Aga Khan for "Operation Salaam" in Afghanistan.

*b) Practical action.*

States, particularly those in the region concerned, could make available their logistic (airports, ports, telecommunication networks) and medical (hospitals, personnel) infrastructures.

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<sup>18</sup> Interpretation of peace treaties, Advisory Opinion, *ICJ Report*, 1950, p. 72, where the ICJ states that it would not be in a position to express an opinion should the question put to it be directly related to the main point of a dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties.

In the Falklands/Malvinas armed conflict (1982) for example, Uruguay, a neutral country sharing a border with Argentina, allowed wounded British military personnel to be repatriated by air from Montevideo, medical supplies for British hospital ships to transit through its territory (under the supervision of ICRC delegates) and Argentine prisoners to be repatriated and handed over to the representatives of their own authorities, also in Montevideo.<sup>19</sup>

## Protecting Powers

Finally, there exists the system of Protecting Powers which, as provided for in international humanitarian law, is essentially aimed at securing more effective respect for this law. Thus, a Protecting Power is a State mandated by one of the parties to a conflict to safeguard its interests in humanitarian matters *vis-à-vis* the other party or parties to the same conflict. Although it is true that the appointment of Protecting Powers rests with the parties to a conflict, third States could nevertheless encourage belligerents to have recourse to this system either by approaching them unilaterally with proposals to that effect or by activating interest within the United Nations.

## Conclusion

In a world characterized by increasing concern about violations of international humanitarian law, which in some cases are occurring on an unacceptably massive scale, the need for States to fulfil their obligation to ensure respect for this law has become both urgent and acute. As this study bears out, there do exist a wide range of measures available to them, measures that they have, on various occasions and in different contexts, adopted in the past. It is therefore up to them, as stated in the Final Declaration of the International Conference for the Protection of War Victims (30 August-1 September 1993), to make every effort to “ensure the effectiveness of international humanitarian law and take resolute action, in accordance with that law, against States bearing

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<sup>19</sup> For details, see Sylvie-Stoyanka Junod, *Protection of the Victims of Armed Conflict, Falkland-Malvinas Islands (1982): International Humanitarian Law and Humanitarian Action*, ICRC, Geneva, 1984, 45 pp.

responsibility for violations of international humanitarian law with a view to terminating such violations".<sup>20</sup>

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<sup>20</sup> See Part II, paragraph 11 of the Final Declaration in *IRRC*, No. 296, September-October 1993, p. 380.

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