

of the personnel appointed to protect it and of its emblem — but that she devotes equal attention to the legal regime for the implementation of the Convention. And she does so in a very clear and systematic way. For this is the challenge of most if not all of humanitarian law today: effective implementation of existing law (as opposed to the creation of new law). It shows that, while there is room for improvement, the 1954 Hague Convention does in fact contain various mechanisms to achieve its implementation. Each one of these mechanisms is described by Stavraki: international supervision, repression of breaches, prevention (including the establishment of consultative committees, dissemination, translation, reporting, meetings of States parties and the conclusion of special agreements).

All in all, Toman's commentary and Stavraki's treatise are complementary publications. Both deserve a place in every law library and every collection on international humanitarian law.

Jean Konopka's collection of documents, finally, deals with the protection of cultural property both in time of war and peace. No less than 22 conventions are included in this collection, which not only highlights the renewed interest in the subject but also provides evidence of the wide scope of international law on cultural property in general.

Jean-Marie Henckaerts
ICRC Legal Division

Matthias Pape, *Humanitäre Intervention: Zur Bedeutung der Menschenrechte in den Vereinten Nationen*, Nomos, Baden-Baden, 1997, 350 pp.¹

This book is primarily concerned with the lawfulness and degree of effectiveness in cases of military intervention on humanitarian grounds either by the United Nations directly or under its authority. The study was

¹ Translation of citations by the author of this review.

submitted as a Ph.D. dissertation to the University of Freiburg, Germany. The author, a German lawyer and political scientist, deals with the subject of UN "intervention on humanitarian grounds" in five main parts. He starts by examining what kind of human rights can lawfully be protected by such intervention. He goes on to describe the "classic" intervention on humanitarian grounds as effected by individual States before and after the UN Charter entered into force, and draws a distinction between such intervention and humanitarian assistance. The third part of the study analyses the legal basis for UN intervention on humanitarian grounds while the fourth part consists of case studies of such operations in Iraq, Somalia and the former Yugoslavia. Finally, Pape draws conclusions as to the degree to which human rights have been effectively protected by recent UN intervention, and ways in which the UN's performance might be improved by amendments to the Charter and other measures.

Pape's study is an impressive summary and critical review of UN efforts in the post-Cold-War era to protect human rights by military means. As the bibliography (pp. 316-350) at the end of the book shows, the author has used all the relevant literature published up to the summer of 1996. He also interviewed UN officials in Geneva and Vienna as well as staff from the ICRC, the German Red Cross, and the German Ministries of Foreign Affairs and Defence. The subject is approached from the angle of both international law and political science, which is particularly appropriate in a field like human rights. Accordingly, Pape does not limit himself to a discussion of legal norms and their application but rather seeks to establish whether the various interventions have served their purpose of safeguarding the enjoyment of human rights by the peoples in question. Nor does he deal with the various cases of military intervention in an isolated manner; he looks at them in the context of other UN efforts to put into effect human rights guarantees. Hence the study's ambitious but justified subtitle "On the meaning of human rights at the United Nations". While this broad approach, as well as the author's readiness to reconsider questions considered many times before (such as the character of the "third generation" of human rights, the universality of human rights and the status and powers of the Security Council), account for the study's comprehensiveness, they also make it fairly long and at times — despite the author's diligence — inaccurate. There are simply too many issues raised, even if they all are somehow intertwined.

The first part of the work seems based on the assumption, often voiced in recent scholarly comment, that only a "massive" violation of "fundamental" human rights entitles the Security Council to use military force under Chapter VII of the UN Charter. Pape seeks to identify these fun-

damental rights (and thus to establish a hierarchy of human rights) by comparing universal and regional human rights instruments as well as rights guaranteed under customary international law and the general principles of international law. He distinguishes between rights which are guaranteed in all the relevant treaties and those which are not, and sets those off against obligations from which no derogation is possible even in time of public emergency. He concludes that the right to life and the prohibitions of torture, slavery and discrimination on the ground of race, colour, sex or religion constitute "fundamental" or "absolute" human rights which may be protected by UN military intervention (pp. 68-69).

In the second part of his paper, Pape considers unilateral military intervention by States on humanitarian grounds (which he rightly terms unacceptable owing to the comprehensive prohibition of the use of force laid down by the UN Charter) and humanitarian assistance rendered by States and non-governmental organizations — in particular the ICRC — with the consent of the States or other warring parties (which has nothing to do with military intervention and poses no problem from the point of view of international law). Pape then arrives at the key issue of military intervention by the UN on humanitarian grounds. He rightly asks whether Article 39 of the UN Charter, as the only possible legal basis for such action, allows the Security Council to intervene militarily in order to improve the human rights situation in a given country. In agreement with the majority of scholars working in this area, and the practice of the Council since Somalia, he very briefly concludes that human rights violations may be deemed a "threat to the peace" within the meaning of Article 39 (p. 129). A violation of the fundamental guarantees referred to above can, he says, constitute such a threat (p. 131). This finding, though tenable, makes the extensive analysis in the first part difficult to understand. If it is true (and of course it is) that "the UN Charter is the decisive source of law determining the legality of humanitarian intervention" (p. 27), it would have seemed reasonable to start with an analysis of the Charter, especially Article 39, and not with an abstract comparison of human rights instruments. This comparison could instead have been made part of an interpretation of the Charter, provided the author had demonstrated that it was useful for this interpretative task. In particular, it would have been necessary to establish a link between the concept of "peace" as it appears in Article 39 and that of "fundamental human rights". Why is it that only a violation of that elevated class of human rights constitutes a "threat to the peace" justifying military intervention under Chapter VII? Incidentally, the fact that the Charter does not provide for UN "intervention on humanitarian grounds" as such, but can be read as allowing the

use of force to counter human rights violations as one among several threats to international peace and security suggests that the terminology conventionally used may be misleading, and that one should not simply apply to UN peace-enforcement measures the problematical concept of such intervention.

The case studies in the fourth section (pp. 155-255) show that only the intervention in Somalia was initiated primarily for humanitarian reasons, and that so far the Security Council has not ordered a single intervention on humanitarian grounds against an effective government in peacetime. "Following the end of the Cold War, intervention by the UN on humanitarian grounds remains the exception, and non-intervention — even in cases of massive human rights violations — is the rule" (p. 254; see also p. 305 ff.). The author rightly emphasizes that the relevant "case law" established by the Security Council is therefore much weaker than it appears in much of the more recent legal literature. It should be borne in mind that the Council has not repeated the view it expressed in resolution 794 (1992) that the "magnitude of the human tragedy" may in itself constitute a threat to international peace and security such that the Council is justified in taking measures under Chapter VII of the Charter. In addition, the notion of "human tragedy" in the 1992 resolution did not specifically refer to governmental violations of human rights.

The shortcomings of the military measures so far taken by the UN for the sole (or, more often, additional) purpose of upholding human rights are something that the author discusses in his case studies and, by way of summary, at the beginning of the fifth part of his study (pp. 257-276). These vividly demonstrate that far-reaching changes in the organization of military intervention and, above all, the attitude of member States (especially the most powerful ones) are required in order to make UN intervention on humanitarian grounds a more effective tool. The author calls for seven main steps: 1) when deciding on intervention, the Council should put aside considerations that have nothing to do with human rights; 2) if an intervention is ordered, the protection of human rights should play a central role; 3) peacekeeping forces should not be overburdened with administrative and humanitarian tasks for which they are not trained and which run counter to the role of impartial mediator that they are supposed to play; 4) the effectiveness of intervention must be enhanced by making available sufficient funds and qualified personnel; 5) measures to prevent conflicts in the first place should be improved and stepped up; 6) the Security Council should be enlarged, the veto power of its permanent members restricted, and its procedures made more transparent; 7) regional organizations and NGOs should have a bigger role to play in the

preparation and implementation of intervention. However, Pape rightly states that even if all these steps were taken (which is very unlikely), military intervention would remain an exceptional means of last resort. "The traditional system for protecting human rights on the basis of universal and regional agreements is still of decisive importance for world-wide respect for those rights" (p. 306).

Such respect, the author holds, would in the end require an international order modelled on the rule of law that can be provided only in a modern constitutional *Rechtsstaat*. The UN Charter and the human rights treaties may be regarded as the basic building blocks of such an order, but from a legal perspective that order is still light-years away from a 'world State' structure (p. 311). However, there may be international constitutionalism without a 'world state'. The author himself refers to the UN Charter as the constitution of the international community (p. 292). This well-founded appraisal reflects — perhaps inadvertently — scholarly efforts to extend the concept of constitution beyond the sphere of the sovereign State and, in particular, to use it to promote the rule of law in the international community.

In conclusion, one cannot but agree with the author's sceptical outlook. It reflects salutary progress in international law that the broad, generally accepted present-day concept of a "threat to the peace" (Article 39 of the UN Charter) includes widespread violations of human rights (be it a violation attributable to a government or to another organized group, or a deterioration in the human rights situation caused by a general breakdown of governmental authority or with a natural disaster being used as a smokescreen or excuse) allowing the Security Council to intervene with military force. But it is completely groundless to believe that in the foreseeable future the Council will make determined and consistent use of this power. The arduous task of promoting human rights in ways other than by military force remains.

Bardo Fassbender
Institute of International and European Law
Humboldt University, Berlin