

*This paper was prepared by the ICRC's Legal Division to aid in internal discussions intended to clarify the organization's position in this topical debate.*

## **The ICRC's position on "humanitarian intervention"**

by ANNE RYNIKER

### **Executive summary**

- International humanitarian law cannot serve as a basis for armed intervention in response to grave violations of its provisions; the use of force is governed by the United Nations Charter.
- It is not for the ICRC to pronounce on the legality or legitimacy of such intervention.
- International humanitarian law applies when intervention forces are engaged in hostilities with one or more of the parties to the conflict.
- The ICRC seeks to promote the term "armed intervention in response to grave violations of human rights and of international humanitarian law".

### **Defining the problem**

The United Nations operations in northern Iraq and Somalia and NATO's intervention in Kosovo have all been termed "humanitarian intervention". The doctrine of "humanitarian intervention" has long been a controversial subject, both in law and in international relations, and remains so today. Given that by no means all States accept the principle involved, there is no generally accepted definition of

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"humanitarian intervention". One possible definition runs as follows: "the theory of intervention on the ground of humanity (...) recognizes the right of one State to exercise international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity".<sup>1</sup> Another writer affirms that "humanitarian intervention is defined as coercive action by States involving the use of armed force in another State without the consent of its government, with or without authorisation from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law".<sup>2</sup>

"Intervention on the grounds of humanity" and the *droit d'ingérence* ("right to intervene") are other terms used in the past to describe operations involving assistance and intervention in a country's internal affairs. The first term, used mainly during the 19th century, referred to protection of a State's own citizens in another country, but was also used to react to particularly shocking acts perpetrated by a State on its own citizens. The debate at the end of the 1980s on the *droit d'ingérence* was always ambiguous and concerned both operations carried out by individual States and action taken by international organizations and NGOs.

While there is as yet no unanimous acceptance of "humanitarian intervention", certain States and a body of doctrine consider such acceptance sufficiently widespread that one can speak of international custom. Those who take this view say that practice is in the process of developing and still requires consolidation. They maintain that the principle is already accepted whereby a threat to peace can be constituted by violations of human rights and of humanitarian law committed within a country. One part of the current debate is concerned with the need to set up a legal framework for intervention, in order to provide a clear decision-making mechanism and ensure that the intervention is non-discriminatory. There are plans to develop criteria for

<sup>1</sup> Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, 1999, p. 31.

<sup>2</sup> *Humanitarian Intervention, Legal and Political Aspects*, Danish Institute of International Affairs, 1999, p. 11.

intervention, based on factors such as the gravity of the violations concerned, the adequacy of the response and the use of force as a last resort. One of the forums in which these questions will be subjected to particularly close scrutiny over the coming months is the *International Commission on Intervention and State Sovereignty*. Created in September 2000 at the initiative of the former Canadian Minister of Foreign Affairs, Lloyd Axworthy, the Commission is co-chaired by Mr. Gareth Evans and Mr. Mohamed Sahnoun; it is composed of 10 other international figures, including the former President of the ICRC, Cornelio Sommaruga. The Commission has been given a year to carry out its work, the conclusions of which are to be presented to the 56th General Assembly of the United Nations, in 2001.

From the viewpoint of humanitarian law, it is a contradiction in terms to speak of humanitarian “intervention” or “interference”, as the term “humanitarian” should be reserved to describe action intended to alleviate the suffering of the victims. Yet “humanitarian intervention” refers to armed intervention, often carried out with a political agenda. International humanitarian law recognizes the right to provide humanitarian assistance, and impartial humanitarian aid cannot be condemned as interference or infringement of a State’s national sovereignty. In its 1986 ruling on a case involving military and paramilitary activities in Nicaragua, the International Court of Justice stated that if the provision of “humanitarian assistance” is to escape condemnation as an intervention in the internal affairs of another State, it must be limited to the purposes hallowed in the practice of the Red Cross.<sup>3</sup> However, the court also added that “the use of force could not be the appropriate method to monitor or ensure such respect [for human rights]”.<sup>4</sup>

The most one can speak of, therefore, is “armed intervention in response to serious breaches of human rights and of international

<sup>3</sup> *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, para. 243.

<sup>4</sup> *Ibid.*, para 268.

humanitarian law". This wording also serves to emphasize the fact that the forces engaged in the intervention are bound by humanitarian law in their military operations.

### **The legal status of "humanitarian intervention" and its relationship to international humanitarian law**

"Humanitarian intervention" is a *jus ad bellum* question. When does a State or a group of States have the right to resort to force? This question is dealt with explicitly by the UN Charter. In principle, States are to refrain from the use of force in their international relations (Article 2 para. 4). Chapter VII sets out exceptions. In the event of a threat to international peace and security, the Security Council may take military action (Article 42). The Charter also guarantees the right to individual or collective self-defence (Article 51). The right to self-determination is another possible justification for intervention accepted in practice. On the other hand, it is not currently possible to say that there is any right to take unilateral action or use force against a State that commits abuses of human rights or breaches of humanitarian law. In our view, international custom in this field has yet to be established.

Humanitarian law stipulates that when grave breaches of its provisions are committed, those responsible are to be prosecuted and punished as criminals. They can be tried either by national courts or, failing that, by international courts created for this purpose, or else by the International Criminal Court once it has been set up.

Under Article 1 common to the Geneva Conventions, there is an individual and collective obligation to "respect and ensure respect for" international humanitarian law. If grave violations of that law are committed, the States are obliged to take action jointly or separately, in cooperation with the United Nations and in accordance with the UN Charter (Protocol I additional to the Geneva Conventions, Article 89). The question of what measures are to be taken by the States and the United Nations in order to put an end to those breaches is not dealt with by humanitarian law, but rather by the UN Charter (Chapters VII or VIII). The Security Council has a variety of means at

its disposal, ranging from condemnation to the sending of troops, with full or partial interruption of economic relations as an intermediate measure. If armed intervention is decided upon, the Security Council can decide whether it is to be carried out by UN forces or delegated to a State or regional security body. However, Article 53 of the Charter specifies that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council”.

If armed force is used, international humanitarian law applies regardless of the grounds for the intervention. Debate on the applicability of humanitarian law to United Nations forces continues. Generally speaking, there are differing interpretations of certain aspects of international humanitarian law, especially those that govern the conduct of hostilities. The ICRC study on customary humanitarian law, due to be completed in 2001, will certainly shed further light on the topic, as will the meeting of specialists that the ICRC should be organizing in 2002 on the conduct of hostilities.

### **The ICRC’s position on “humanitarian intervention”**

What should the ICRC do in the event of extremely serious violations of international humanitarian law, or in case of genocide? It must sound the alarm and inform the States that humanitarian action has reached its limits. However, it is not the business of the ICRC to specify the means (such as armed force) that should be employed to bring an end to the violations. The ICRC does not express an opinion regarding the legitimacy of operations carried out in response to breaches of human rights or humanitarian law.

Where violations are very serious, and prevent humanitarian action, the problem exceeds the bounds of international humanitarian law and can no longer be dealt with by means of humanitarian action. However, in deciding to order armed intervention under Chapter VII of the UN Charter, the Security Council cannot ignore the fact that its primary role is to restore peace. It cannot take such a decision without drawing up a consistent and comprehensive plan of action that addresses the situation as a whole and, in particular, deals with the

underlying causes. In addition, adequate resources and facilities must be provided to those sent on such missions, in order to ensure that genuine protection is provided for those groups who are supposed to be protected.

While armed intervention in response to grave violations of human rights and international humanitarian law may be unavoidable in certain extreme situations, what we expect of the community of States is that they should not view either such intervention or the situations that have caused it as inevitable. To systematically use armed intervention for humanitarian purposes would amount to an abdication by the international community of its true responsibilities: preventing conflict and promoting the basic values expressed in international humanitarian law.

Finally, in the event of armed intervention, humanitarian organizations must retain their freedom of decision and action even if that intervention has a humanitarian objective. Any armed intervention will have consequences of humanitarian concern, such as the taking of prisoners. It is therefore important that the ICRC be able to go on fulfilling its mandate in accordance with its fundamental principles. Both the parties to the conflict and those who suffer its consequences must be able to discern a clear distinction between humanitarian and military entities. Any blurring of that distinction must be avoided.