Humanitarian issues and agencies as triggers for international military action

by
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In crises and conflicts since the end of the Cold War considerations specifically identified as "humanitarian" have been repeatedly designated by States and international bodies as grounds for threatening, and embarking on, international military action. Such considerations have been given greater prominence in international decision-making than in previous eras. Since 1990, in one episode after another in which international bodies have sought to stop terrible excesses in crisis-torn regions, three main types of humanitarian issue have been cited, for example in UN Security Council resolutions, as grounds for international concern:

- murder and deliberate infliction of suffering on civilians, prisoners and others;
- refusal of parties to a conflict to allow or assist humanitarian relief activities;
- violence and threats of violence against humanitarian workers.

In a few cases these types of humanitarian issue have been raised, not in the context of an armed conflict, but as a result of tyrannical government or else a state of uncontrolled violence. However, in

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most cases these issues have arisen during armed conflicts (whether international or internal, or with elements of both). Thus they necessarily relate directly to the law of war. Security Council resolutions have in fact repeatedly condemned such actions by parties to conflicts as violations of international humanitarian law. Then in many cases the Security Council, or certain of its leading members, have gone on to authorize or initiate the use of force in order to end a pattern of violations. In short, the law of war is acquiring a role as a trigger for military action.

The terms "law of war" and "international humanitarian law" are used more or less interchangeably in this paper. They and the various near synonyms also used currently (such as "international law of armed conflict") all refer to what is substantially the same body of law. The term "law (or laws) of war" is sometimes seen as old-fashioned, but it has the merit of being succinct; and it also encompasses aspects that are not exclusively humanitarian in purpose, such as the law relating to neutrality. At the same time, the term "international humanitarian law" has come to be widely used in diplomatic circles and non-governmental organizations; and it can be particularly useful in referring to those parts of the law of war that deal with substantially humanitarian matters such as protection of vulnerable populations and of aid activities.

Military action based on these three types of humanitarian issue is one important response to the questions of how to prevent violations of international humanitarian law, and how to protect civilians and other victims of war. Much discussion of the protection of civilians in war has failed to take account of this developing practice of military action. One reason may be that the whole subject is controversial. Any exploration of military action as a response to violations of the law of war challenges the long-standing and important principle that the law relating to resort to war (*jus ad bellum*) is a separate and distinct subject from the law relating to conduct in war (*jus in bello*). Likewise, any suggestion that humanitarian workers and organizations may play some part in triggering military action challenges their deep (and in some cases legally-based) commitment to impartiality and neutrality.

"Military action" is a broad term. As used here, it encompasses the use of military force, or the explicit threat of such use, with

the aim of ending persistent violations of international humanitarian norms. The particular purposes of such action can include altering the policies of certain factions or governments; weakening or defeating certain armed forces and the infrastructure that supports them; arresting suspected violators of the law of war; providing humanitarian relief; and providing physical protection for vulnerable people, activities and institutions. Its forms can include the use of air, naval and land forces, whether in direct combat operations, in protection, in intervention in a State, or in making threats against a particular State or group.

The legal framework for such action includes three main types:

(a) UN command and control, as with enforcement operations which are approved by the Security Council and remain directly under UN;

(b) action following a UN authorization under which powers are delegated to national or alliance command and control;

(c) action without explicit UN backing, for example under the auspices of a regional alliance or organization.

In some cases, as noted below, military action has the additional legal basis that it has the full consent of the government of the State where the action takes place.

The broad subject of military action as considered here overlaps with, but is not quite the same as, humanitarian intervention. "Humanitarian intervention" in its classical sense means military intervention in a State, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants. Shorn of the epithet "humanitarian", the term "intervention" still carries an implication of forcible action against the wishes of the government of the State concerned. Many military actions rooted in considerations of international humanitarian law fit these definitions of intervention, but by no means all do. Some, indeed, may have the explicit consent of the government of the territory in which the action takes place (for example, when such action is taken against insurgents or separatists in a civil war) and therefore do not count as interventions in the classical sense, whether humanitarian or otherwise. Equally, some actions, even if grounded in considerations of international humanitar-

ian law, may have other purposes (for example, concern with international peace and security) that are not strictly speaking humanitarian, and are therefore doubtful candidates for inclusion in the category of "humanitarian intervention".

Considerations of international humanitarian law and international human rights law often converge. The same acts may constitute violations of both of these bodies of law, and may be cited in a particular instance as justifications for military action or the threat thereof. Sometimes the international humanitarian law element is underplayed, such as when public figures advocate or defend military action, or discuss the general issue of humanitarian intervention, exclusively on grounds of violations of human rights, when the violations concerned might equally properly be viewed as violations of international humanitarian law. However, considerations of international humanitarian law, which are the main focus of attention here, have come to be emphasized much more since about 1991 than in any previous period, especially in the practice of the UN Security Council.

Military action as a response to violations of human rights and humanitarian norms has a long history, well predating the modern codifications of international law on the subject. In the 1820s, it was largely as a consequence of reported Turkish atrocities that French and British governments decided to give a degree of naval support to the cause of Greek independence from Ottoman rule. The history of European colonialism is replete with cases in which one part of the public justification for intervention was the violation of basic humanitarian norms in one or another part of the non-European world. Similarly, in the period of the Cold War (roughly 1945-89) numerous interventions were justified at least partly in humanitarian terms.

The purpose here is, first, to illustrate the extent to which humanitarian issues have become entwined with the initiation of international military action, especially in the practice of the Security Council, in response to a wide variety of situations by no means limited to war. This is followed by an examination of some of the other purposes that may contribute to the initiation of international military action in particular cases, and an examination of the apparent absence

of specific authorization of such military action in international law, including the law of war. The chapter then turns to the difficult role of humanitarian organizations in situations where force is threatened or used, and a specific examination of some of the problems that the entwining of humanitarian and military issues has created for the International Committee of the Red Cross (ICRC). This is followed by a brief discussion of the protection of civilians in UN debates, focusing on three key UN documents issued in 1999. Finally, on the basis that "humanitarian" issues will continue to have a bearing on decisions about military force, some possible conclusions for humanitarian organizations, States, and inter-State organizations are suggested. Of these, perhaps the most challenging is the question of how peacekeeping forces may need to undergo a complex metamorphosis in order to be effective in carrying out tasks such as protection of civilians in violent situations.

Security Council practice since 1990

Since early 1991 there have been at least nine crises in which humanitarian issues were referred to prominently in UN Security Council resolutions, after which military action was authorized either by the Security Council itself and/or (in the case of northern Iraq and Kosovo) by major Western States, and such action took place. In all but the first of these cases, relevant Security Council resolutions explicitly referred to Chapter VII of the United Nations Charter, indicating that the Council's powers to take action, including sanctions and enforcement, were being invoked. These nine cases are briefly outlined below, with a few examples of the reference to humanitarian issues in the relevant resolutions. (In almost all cases other issues were also mentioned, including, for example, the maintenance of international peace and security.)

Northern Iraq (1991)

Following a failed uprising within Iraq and a huge exodus of Kurds and others to neighbouring countries, a Security Council resolution in April 1991 required that "Iraq allow immediate access by international humanitarian organizations to all those in need of assis-

tance in all parts of Iraq".[1] This was not adopted under Chapter VII of the UN Charter, but it did state that Iraqi actions causing refugee flows "threaten international peace and security in the region". The resolution, while less than a formal authorization of intervention, was of considerable help to the United States and its coalition partners when the US-led military operation within northern Iraq began on April 17, 1991. Iraq subsequently consented to the presence of the UN Guards Contingent in Iraq (UNGCI).

Bosnia and Herzegovina (1992-1995)

During this long and atrocious war, from as early as June 1992 onwards several Security Council resolutions suggested that if the UN Protection Force (UNPROFOR) and its humanitarian activities were obstructed, further measures not based on the consent of the parties might be taken to ensure delivery of humanitarian assistance.[2]

Also in 1992, the resolution establishing the NATO-enforced "no-fly zone" in Bosnia specified that one of the purposes of the ban on military flights was "for the safety of delivery of humanitarian assistance".[3]

The resolutions on the "safe areas" in Bosnia approved by the Security Council in April-June 1993 all condemned violations of international humanitarian law, and referred also to other humanitarian considerations, including the Security Council's duty to prevent the crime of genocide.[4] Certain subsequent uses of force by NATO in Bosnia from 1993-1995 were based on these resolutions.

Somalia (1992/1993)

The US-led invasion of 9 December 1992, by the Unified Task Force (UNITAF) was authorized by a Security Council resolution passed six days earlier that referred to "the urgent calls from Somalia for

1 SC Res. 688 (5. April 1991).

2 See e.g. SC Res. 758 (8 June 1992); SC Res. 761 (29 June 1992), and SC Res. 770 (13 August 1992), this last adopted explicitly under Chapter VII.

3 SC Res. 781 (9 October 1992).

4 SC Res. 819 (16 April 1993); SC Res. 824 (6 May 1993), and SC Res. 836 (4 June 1993), the last two adopted explicitly under Chapter VII.

the international community to take measures to ensure the delivery of humanitarian assistance in Somalia", expressed alarm at "continuing reports of widespread violations of international humanitarian law occurring in Somalia", and made numerous other references to humanitarian issues.[5]

In 1993, the expanded UN peacekeeping force, UN Operation in Somalia (UNOSOM II), was established on the basis of a resolution that deplored "the acts of violence against persons engaging in humanitarian efforts" and noted with regret "the continuing reports of widespread violations of international humanitarian law".[6] This resolution accorded UNOSOM II specific powers of enforcement, confirming that it was intended to be more than a normal peacekeeping force. It left Somalia in March 1995 following a number of disastrous incidents, mainly in Mogadishu in 1993 and 1994, that raised questions about the command structure and purposes of the international forces in Somalia, and about their failures to observe fundamental humanitarian norms.

Rwanda (1994)

The UN response to the genocide in Rwanda in April-July 1994 was marked by weakness and indecision, despite the presence in the country of a small peacekeeping force, the UN Assistance Mission for Rwanda (UNAMIR). When the Security Council did begin to call for forceful action in response to the crisis, it stressed the importance of humanitarian issues as a basis for such action. For example, an early resolution on these lines passed in April 1994 expressed concern over "a humanitarian crisis of enormous proportions" and decided on an expansion of UNAMIR's mandate:

> "(a) To contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas;

5 SC Res. 794 (3 December 1992), adopted under Chapter VII.

6 SC Res. 814 (26 March 1993), adopted under Chapter VII.

(b) To provide security and support for the distribution of relief supplies and humanitarian relief operations".[7]

This mandate was repeated and reaffirmed in a resolution in early June, which referred to "reports indicating that acts of genocide have occurred in Rwanda", and underscored that "the internal displacement of some 1.5 million Rwandans facing starvation and disease and the massive exodus of refugees to neighbouring countries constitute a humanitarian crisis of enormous proportions".[8] Great difficulties arose in obtaining forces to go to Rwanda to carry out the mandate.

On 22 June, in a further decision on Rwanda, the Security Council accepted an offer from France and other member States to establish a temporary operation there under French command and control. The Council authorized France to use "all necessary means to achieve the humanitarian objectives" that had been set out in the resolutions cited above.[9] This was the prelude to the controversial French-led *Opération Turquoise* in western Rwanda in summer 1994.

Haiti (1994)

Following the coup d'Etat in Haiti in September 1991, the Security Council eventually passed a resolution in July 1994 stating *inter alia* that it was "gravely concerned by the significant further deterioration of the humanitarian situation in Haiti", and authorizing the use of "all necessary means to facilitate the departure from Haiti of the military leadership ... and to establish and maintain a secure and stable environment".[10] This resolution is remarkable for its unequivocal call for action to topple an existing regime. The US-led invasion followed in September 1994, with the last-minute consent of the military regime to the presence of the Multinational Force in Haiti (MNF). In 1995, the UN Mission in Haiti (UNMIH), a peacekeeping force, took over

7 SC Res. 918 (17 May 1994), only part of which was adopted under Chapter VII.

8 SC Res. 925 (8 June 1994).

9 SC Res. 929 (22 June 1994), adopted under Chapter VII. The humanitarian objectives to which it referred were those set out previously in SC Res. 925 (1994), and also in SC Res. 918 (1994).

10 SC Res. 940 (31 July 1994), adopted under Chapter VII.

from the MNF, inheriting the powers, including those under Chapter VII of the UN Charter, that had earlier been accorded to the MNF.[11]

Albania (1997)

In March 1997, during a period of widespread disorder in Albania and a large refugee exodus, the Security Council adopted a resolution approving the establishment of an Italian-led multinational protection force (MPF) "to facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organizations in Albania, including those providing humanitarian assistance."[12] This operation had the consent of the Albanian government. The MPF was deployed in Albania shortly after the resolution was passed, and by the time that the force was withdrawn in June it had contributed significantly to the restoration of order.

Kosovo (1998/1999)

Following the outbreak of hostilities and atrocities in Kosovo from February 1998 onwards, and a worsening of the situation over the summer, the UN Security Council passed a resolution in September 1998 demanding that the parties take certain concrete steps including a cease-fire and acceptance of an effective international monitoring force in the province. In the course of repeated references to humanitarian issues, this resolution stated that a main purpose was "to avert the impending humanitarian catastrophe", and also demanded that the Federal Republic of Yugoslavia "facilitate, in agreement with the UNHCR and the ICRC, the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies to Kosovo".[13] The subsequent major resolution on Kosovo, endorsing agreements concluded in

11 SC Res. 975 (30 January 1995), provided for UNMIH to take over certain specific powers that had been accorded to the MNF in Haiti by SC Res. 940 (31 July 1994).

12 SC Res. 1101 (28 March 1997), adopted under Chapter VII. See also SC Res. 1114 (19 June 1997), deciding that the operation in Albania was to be limited to a period of 45 days from 28 June 1997.

13 SC Res. 1199 (23 September 1998), adopted under Chapter VII.

Belgrade on 15 and 16 October 1998 and adopted just over a week later, made similar references to humanitarian issues as a basis for action.[14]

Over Kosovo in 1998/1999, as in the case of northern Iraq in 1991, the Security Council did not explicitly authorize the use of force, but did spell out demands relating *inter alia* to humanitarian issues. These resolutions were then cited by representatives of NATO member States as evidence that the military action they were taking, even though not endorsed by the Security Council, was in pursuit of goals (including humanitarian ones) that the Council had proclaimed.

Following the war between NATO States and Yugoslavia in March-June 1999, the Security Council passed a further resolution deciding to deploy an international civil and security presence in Kosovo, the latter with substantial NATO participation and with extensive powers. Its assigned tasks included establishing "a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered".[15]

East Timor (1999)

When pro-Indonesian elements in East Timor refused to accept the outcome of the referendum of 30 August 1999, which had favoured independence for the territory, and embarked on large-scale killings and expulsions, the Security Council passed a resolution in mid-September authorizing an Australian-led multinational force to restore peace and security in East Timor, and "to facilitate humanitarian assistance operations".[16] This resolution was only passed after Indonesian consent to the multinational force had been obtained: this followed the exertion of considerable pressure on the Indonesian government.

A resolution adopted in the following month made provision to replace the Australian-led force with the UN Transitional Administration in East Timor (UNTAET), which was authorized "to

14 SC Res. 1203 (24 October 1998), adopted under Chapter VII.

15 SC Res. 1244 (10 June 1999), adopted under Chapter VII.

16 SC Res. 1264 (15 September 1999), adopted under Chapter VII.

take all necessary measures to fulfil its mandate". Again, humanitarian considerations and organizations were mentioned.[17]

Sierra Leone (1999/2000)

Faced with the difficult task of ensuring implementation of the Lomé Peace Agreement of 7 July 1999 that was intended to end the long civil war in Sierra Leone, in October 1999 the Security Council adopted a resolution establishing a new UN force there with certain limited enforcement powers. The UN Mission in Sierra Leone (UNAMSIL), which replaced a UN observer mission with fewer powers, was authorized "to take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence". The resolution also called on all parties "to ensure safe and unhindered access of humanitarian assistance to those in need in Sierra Leone, to guarantee the safety and security of humanitarian personnel and to respect strictly the relevant provisions of international humanitarian and human rights law."[18]

A subsequent resolution adopted in February 2000 strengthened UNAMSIL's mandate, giving it authority to "take the necessary action" regarding an enlarged range of tasks that included, *inter alia*, "to facilitate the free flow of people, goods and humanitarian assistance along specified thoroughfares".[19]

Other purposes in these military actions

The fact that humanitarian issues were cited authoritatively in so many Security Council resolutions, the great majority of which also referred to Chapter VII of the UN Charter, and all of which led to military action of some kind, does not mean that States and international bodies had experienced a sudden conversion to humanitarianism. In some crises they adopted a response in the name of humanitarianism because they were unable to formulate, or to agree, substantive

17 SC Res. 1272 (25 October 1999), adopted under Chapter VII.

18 SC Res. 1270 (22 October, 1999), adopted under Chapter VII.

19 SC Res. 1289 (7 February 2000), adopted under Chapter VII.

policies dealing with the fundamental issues involved. Nor does the emphasis on humanitarian aspects mean that there were no other purposes, interests or motives at stake. In each case there were. They included:

Securing return of refugees. While enabling refugees to return home may appear to be a humanitarian cause, it also reflects a strong interest of States faced with a sudden refugee influx or a threat thereof. In many cases States taking a significant role in military action in a crisis, or urging others to do so, were also those that faced major refugee problems. In many cases since 1990, massive refugee flows have been seen as constituting a threat to international peace and security, and hence as justifying involvement and action by the Security Council and by others.

International peace and security. In all the above crises, considerations of international peace and security were mentioned alongside humanitarian issues as a basis for international action. For the UN Security Council, reference to this matter is procedurally important in order to justify the Council concerning itself with a crisis. In general, the crises demonstrate that humanitarian issues are not easily separable from more explicitly political ones, including those relating to peace and security.

Credibility of commitments and/or demonstration of power. If States, or the UN Security Council, have called for certain action to be taken by a party to a conflict, and their calls have been ignored, they may have an interest in taking military action in order to maintain the international credibility of their words and of their military capacity. In addition, some States may embark on military action, including in support of humanitarian causes, partly out of a concern to demonstrate a capacity for exercising power, including in cases where their material interests are not directly involved. Some such motivations may have been involved in the willingness of various countries to support the Sarajevo airlift for three years following the visit by President François Mitterrand of France to Sarajevo on 28 June 1992.

In many cases there may have been other interests at stake, encompassing the protection of fellow nationals, the protection of UN

personnel from attack, the security of present or future investments, and the spreading of democracy. Yet the main problem in connection with many of these crises has been the *lack* of solid interests on the part of actual and potential intervening States, and a resulting lack of willingness to take any seriously committing action. In some cases (as in Bosnia) they have acted too late; in other cases (as in Rwanda) most States failed to act at all; in still other cases (as in Somalia) those intervening were not willing to stay for the length of time, nor to accept the level of casualties, that completion of the tasks assigned to the mission might have required.

Lack of legitimation of military action in the law of war

There is no treaty that explicitly recognizes a general right of States or international bodies to take military action in response to gross violations of humanitarian norms, including those in the law of war. The nearest to a legal basis for such action is the UN Charter. The wording of Article 2(4) and 2(7), while basically non-interventionist, appears to leave some scope for the Security Council to take enforcement action within a State; and Chapter VII recognizes the Security Council's right to take a wide range of actions, some of which can be military, in cases where there is a threat to international peace and security. Chapter IX, on international economic and social cooperation, contains a pledge by members to "take joint and separate action" to achieve, *inter alia*, universal observance of human rights, but it has never been suggested that this phrase in Chapter IX legitimizes specifically military action.

Some international agreements concluded since 1945 contain provisions pointing towards a possible right of military action in response to violations. The clearest example (which belongs equally to both the human rights and armed conflict branches of international law) is the 1948 Genocide Convention, Article VIII of which specifies that any contracting State "may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide". Another possible example (which is not in

the strict sense a laws of war treaty) is the 1994 Convention on the Safety of United Nations and Associated Personnel, Article 7 of which contains a provision that States will cooperate in its implementation, "particularly in any case where the host State is unable itself to take the required measures". Both of these agreements have been cited frequently in the course of UN Security Council resolutions authorizing the use of force.

As to humanitarian interventions (in the classical sense of military interventions on humanitarian grounds) not authorized by the UN Security Council, there is a dearth of any binding legal text that supports such action. Treaties in the fields of human rights and international humanitarian law do require States to observe well-defined standards, and to prevent and punish certain violations of those standards. Further, common Article 1 of each of the four Geneva Conventions of 1949 famously calls on States "to ensure respect for the present Convention in all circumstances". This phrase, while open to considerable interpretation, does not go so far as to imply that forcible military action is among the means of implementation.

A number of treaties in the field of the law of war appear to exclude the idea that a State's violations of their terms could provide a basis for military intervention. The 1977 Protocol additional to the Geneva Conventions, which relates to international armed conflicts (Protocol I), contains the following caveat in the Preamble:

> "*Expressing* their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations ..."

Additional Protocol II, on non-international armed conflicts, states in Article 3, entitled "Non-intervention":

> "1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
>
> "2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the

armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs."

The 1998 Rome Statute of the International Criminal Court (not yet in force) contains a similar provision in the Preamble, emphasizing that "nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State." Finally, the 1999 Second Hague Protocol on Cultural Property, in its chapter on non-international armed conflicts, reaffirms State sovereignty and non-intervention in Article 22(3) and (5), in terms virtually identical to those of Additional Protocol II, quoted above.

The principal purpose of these provisions of agreements on the laws of war seems to be to protect the sovereignty of potential target States, and in particular to exclude the possibility of these treaties being so interpreted as to justify forcible intervention by States in the affairs (internal or external) of another State. However, these provisions by no means exclude all military action in response to violations. For example, they do not rule out action that is by consent of a government involved in a conflict; and they do not appear to deprive the Security Council of its powers under the UN Charter.

In the 1990s, the increased interest in how international humanitarian law can be implemented inevitably resulted in a shift away from a rigid insistence on the non-intervention rule in favour of a limited (and far from uniform) acceptance that sometimes international military enforcement action may be needed. However, in those cases where military action is without the consent of the government concerned and lacks UN Security Council authorization, international law offers some conflicting principles. In an international crisis the balancing of these principles against one other is a subjective process that cannot always lead to agreed conclusions.

Requests of humanitarian organizations for military action

In a number of post-Cold War crises, international humanitarian workers and organizations have themselves called for outside military intervention in a crisis. For example, in the second half of 1992

a number of agencies called for military action to protect humanitarian aid in Somalia; and in April and May 1994 the UK charity Oxfam described the killings in Rwanda as genocide and called for international action.

In certain cases, even if they do not explicitly call for military action, humanitarian workers and organizations may provide an analysis and description of the crisis in such a way as to assist building a consensus for it. A case in point may be the evidence of the situation in Kosovo presented by a representative of UNHCR to the Security Council meeting on 10 September 1998. This contributed something to the subsequent strongly worded Chapter VII resolution on Kosovo.[20]

Even if such workers and organizations are silent, actions taken against them can have the effect of leading to calls for intervention. Today's aid workers may sometimes, involuntarily, have a role similar to Western missionaries in distant lands in the era of European colonialism: violence against them may lead to outside intervention. Such a process may have been reinforced by the 1994 Convention on the Safety of UN and Associated Personnel, especially its above-mentioned provision in Article 7(3) requiring States parties to cooperate in implementation of the Convention, "particularly in any case where the host State is unable to take the required measures".

Special case of the ICRC

Any development that seems to associate international humanitarian workers and organizations, and indeed international humanitarian law, with demands or justifications for military action poses a serious problem for the Red Cross and Red Crescent Movement. For the ICRC in particular, the statutory requirements of impartiality and neutrality are fundamental to its effective performance of the tasks in armed conflicts that are assigned to it in international conventions.

20 SC Res. 1199 (23 September 1998), adopted under Chapter VII.

The ICRC's understandable caution about being associated with positions and actions of the United Nations was indicated during the negotiations that led to the conclusion of the 1994 Convention on the Safety of UN and Associated Personnel. The ICRC stated that it did not want its personnel to be protected under this Convention. This was partly because ICRC personnel already have international legal protection deriving from the 1949 Geneva Conventions, and partly because the ICRC's role as neutral humanitarian intermediary might be jeopardized if the ICRC were perceived as closely linked with the United Nations.

The dilemmas all this poses for the ICRC were well expressed by Jakob Kellenberger, President of the ICRC, in an address at Wilton Park on 15 May 2000. He referred to "the confusion caused by the mixing of humanitarian aims with political and/or military aims in action taken by the international community in armed conflicts." He went on:

> "My point is not to criticize military intervention, which can, under extreme circumstances, become the only possibility to prevent a humanitarian situation from worsening or to create the conditions for humanitarian organizations to do their work. But we should be careful with words. Whereas an intervention can well be motivated by humanitarian reasons, 'humanitarian intervention' is a problematic expression."[21]

While it is certainly right to be sceptical about the term "humanitarian intervention", the remarkable trend of the 1990s for humanitarian issues to be cited as a basis for Security Council action is not likely to be reversed. For better or for worse, military and humanitarian issues are now intertwined. The ICRC, to maintain its distinct identity, must necessarily put emphasis on its unique character and on the special roles that it performs: it simply cannot be a typical humanitarian organization, if such a thing exists.

21 Dr Jakob Kellenberger (President of the ICRC), "Humanitarian challenges in the midst of war", address at Wilton Park Conference, May 15-19, 2000, text as distributed at conference, p. 6.

Consideration of the protection of civilians in key UN documents

Since the early 1990s there have been extensive discussions within the United Nations addressing the role of the military in supporting humanitarian operations. An awareness of the importance of the issue contributed to the fact that the 1994 Convention on the Safety of UN and Associated Pérsonnel, which was negotiated at the UN Headquarters in New York, dealt extensively with the legal protection of a wide range of "associated personnel", including those working for inter-government bodies, UN specialized agencies, and humanitarian non-governmental organizations. The discussions at the United Nations, which became frequent in the second half of the 1990s, gradually moved in the direction of concentrating not just on the legal and physical protection of aid, but on the physical protection of civilians at risk; and gradually came to accept the validity of military action, especially in opposing systematic murder of civilians. However, there is little sign that policies that should flow from these conclusions have been understood and acted upon by States, by the Security Council, or by the UN Department of Peacekeeping Operations.

One early high-level discussion of the military/humanitarian interface, in which serious differences of opinion were expressed, was the Security Council's day-long session on 21 May 1997 on "Protection for humanitarian assistance to refugees and others in conflict situations", in which senior representatives from many leading international agencies as well as from States took part. This, like many such discussions, was concerned more with the issue of protection of humanitarian operations than with the closely related question of protection of civilians at risk. It exposed a conflict between those in favour of international military support for humanitarian operations, and those who are sceptical or even opposed to such support, fearing above all that it would threaten the neutrality and impartiality of humanitarian work.[22]

22 "Difficulty of providing military support for humanitarian operations while ensuring impartiality focus of Security Council debate", UN Press Release SC/6371, 21 May 1997.

In 1999, three UN documents addressed directly the question of how the international community should respond when civilians are at risk, whether in armed conflict or at the hands of a brutal regime. These were: the Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict; the Report of the Secretary-General on the Fall of Srebrenica; and the Report of the Independent Inquiry into the Actions of the UN during the 1994 Genocide in Rwanda. With the publication of the reports on Srebrenica and Rwanda opinion moved in the direction of accepting the importance of military action in certain extreme circumstances.

The three reports all recognize that there can be situations in which "protection" of civilians and prisoners of war in the narrow legal sense may be woefully inadequate: physical protection is needed, and may have to be provided by foreign armed forces. This is a key lesson from the disasters of the 1990s that must be taken on board by humanitarian agencies, even if they cannot associate themselves directly with such use of force. What follows is in no sense a summary of the reports; rather it is a distillation of their conclusions as to how humanitarian issues should sometimes be a basis for the initiation of military action.

Secretary-General's Report on the Protection of Civilians in Armed Conflict

This report, issued in September 1999, was the follow-up to an open meeting of the Security Council on the matter of protection of civilians in armed conflict. It is the most general of the three reports and, perhaps for that reason, the least satisfactory. One weakness is that it presents a completely negative view of the implementation of the law of war in contemporary conflicts, stating in a typical passage:

> "International humanitarian and human rights law set out the rights of civilians and the obligations of combatants during time of conflict. Yet, belligerents throughout the world refuse to respect these statutes, relying instead on terror as a means of control over populations."[23]

23 Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, UN Doc. S/1999/957 (8 September 1999), para. 3. There are similarly negative views of implementation in paras. 2, 7, 12, 13, and 21.

There is no recognition that in some conflicts certain basic norms have been observed, at least by some parties; nor is it pointed out that some of those who committed the most egregious violations of humanitarian norms (the Rwandan regime in 1994, and the Serbs at Srebrenica in 1995) subsequently suffered serious military reverses.

The report makes some worthwhile proposals regarding ratification of existing treaties, further development of the law, conflict prevention, and other matters. However, it merely reiterates certain proposals without discussing the tragedies ensuing from their application in practice in the 1990s. Thus it advocates arms embargoes in respect of situations where parties to the conflict target civilians, but fails to show any awareness of why particular forms of arms embargo came to be seen as deeply unsatisfactory in the former Yugoslavia in 1991-1996 and in Sierra Leone from 1997. Likewise it fails to offer any detailed analysis of the Security Council's actual efforts in the preceding decade to act in various conflicts to secure physical protection of vulnerable populations. On this subject, the report makes an apparently robust statement with a distinctly less than robust finale when it recommends that the Security Council

> "[e]stablish, as a measure of last resort, temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population, subject to the clear understanding that such arrangements require the availability, prior to their establishment, of sufficient and credible force to guarantee the safety of civilian populations making use of them, and ensure the demilitarization of these zones and the availability of a safe-exit option."[24]

There is a case for the demilitarization of certain security zones — at least if it can be achieved with the agreement and ongoing consent of parties to a conflict. However, the apparent assumption here that any security zone should be demilitarized is open to two objections. First, it was precisely the zones in Bosnia that were subject to demilitarization agreements (albeit imperfect) that were conquered by

24 *Ibid.*, recommendation 39.

Bosnian Serb forces in summer 1995. Secondly, there is an obvious risk in demilitarizing a zone and then putting all reliance for defence on outside forces, especially if those forces are imbued with the mentality of the "safe-exit option". In short, the report's coverage of the core issue it is supposed to address — the protection of civilians in armed conflict — is not serious.

In the same part of the report the Secretary-General also recommended, in more robust mode, that the Security Council,

> "[i]n the face of massive and ongoing abuses, consider the imposition of appropriate enforcement action. Before acting in such cases, either with a United Nations, regional or multinational arrangement, and in order to reinforce political support for such efforts, enhance confidence in their legitimacy and deter perceptions of selectivity or bias toward one region or another, the Council should consider the following factors:
>
> (a) the scope of the breaches of human rights and international humanitarian law including the numbers of people affected and the nature of the violations;
>
> (b) the inability of local authorities to uphold legal order, or identification of a pattern of complicity by local authorities;
>
> (c) the exhaustion of peaceful or consent-based efforts to address the situation;
>
> (d) the ability of the Security Council to monitor actions that are undertaken;
>
> (e) the limited and proportionate use of force, with attention to repercussions upon civilian populations and the environment."[25]

The greatest omission in the report is one that is not easily remedied. It fails to discuss the capacity and will of States to act. Proposals such as the one above depend crucially upon major regional or global powers, equipped with intervention forces, being willing to commit their military assets over a substantial period, and to accept the possibility of casualties. There is persuasive evidence from the years since 1990 that such willingness is in limited supply. Hence the protection of civilians has sometimes assumed perverse forms: empty promises

25 *Ibid.*, recommendation 40. This report led promptly to the passing of SC Res. 1265 (17 September 1999) on the protection of civilians in armed conflict.

to protect the "safe areas" in Bosnia, and retaliatory bombing from a safe height as a response to ongoing killings and expulsions in Kosovo.

Secretary-General's Report on the Fall of Srebrenica

The report of the Secretary-General on "The Fall of Srebrenica" is an extraordinarily powerful account and analysis of a difficult subject, leaving the reader in little doubt about the complex causes and tragic consequences of the failure of States and the United Nations to take serious action to protect this "safe area". Its central lesson is put bluntly in the conclusions:

> "The community of nations decided to respond to the war in Bosnia and Herzegovina with an arms embargo, with humanitarian aid and with the deployment of a peacekeeping force. It must be clearly stated that these measures were poor substitutes for more decisive and forceful action to prevent the unfolding horror."[26]

The report in no way denies the validity of humanitarian considerations as a basis for international involvement, but it does suggest that the resulting policies and deployments need also to involve elements that go well beyond the purely humanitarian. In particular, member States and the UN must on occasion be willing to use armed force, support one side in a conflict and oppose the other, and/or impose a settlement.

Independent Inquiry Report into UN Actions during the Rwanda Genocide

In April-July 1994 between half a million and a million people were killed in massacres in Rwanda in the worst case of genocide since the Second World War. This report examines why the international response was so weak. Its focuse on the response to the crisis within the United Nations, and says far less about the equally important subject of the responses of key national governments. The report's narrative confirms that for too long key UN personnel, especially in New

26 Report of the Secretary-General pursuant to General Assembly resolution 53/35: The Fall of Srebrenica, UN Doc. A/54/549 (15 November 1999), para. 490.

York, failed to heed information about impending or actual massacres, and stuck for too long to the concept of impartial peacekeeping when stronger measures were required. A key conclusion of the report consciously echoes the Srebrenica report issued the previous month when it states:

> "While the presence of United Nations peacekeepers in Rwanda may have begun as a traditional peacekeeping operation to monitor the implementation of an existing peace agreement, the onslaught of the genocide should have led decision-makers in the United Nations — from the Secretary-General and the Security Council to Secretariat officials and the leadership of UNAMIR — to realize that the original mandate, and indeed the neutral mediating role of the United Nations, was no longer adequate and required a different, more assertive response, combined with the means necessary to take such action."[27]

Conclusions

Since the end of the Cold War there has been a strong trend towards identifying humanitarian considerations as a basis for certain military mandates and actions. This trend has been observed not only in armed conflicts, whether civil or international (for example, Bosnia and Sierra Leone), but also in situations of tyrannical or brutal government (Rwanda and Haiti), uncontrolled violence (Somalia and Albania), and the establishment of international forces to help implement a peace agreement (Kosovo and East Timor). Some of the cases mentioned have had characteristics of several of these types of situation.

It is easy to criticize this trend on several grounds. First, some extremely serious humanitarian crises do not result in military action. Crises that have led to severely limited international military action, or no action at all, include those in Abkhazia in the 1990s, and the war in Chechnya in 1999-2000. There is inevitably a selective element in international military responses. Secondly, military actions taken on largely humanitarian grounds are sometimes too little, too

27 Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, attached to UN Doc. S/1999/1257 (16 December 1999), pp. 50/51.

late. They are often characterized by lack of clarity about strategy and aims, reluctance to accept sacrifices, nervousness about siding with one or other of the belligerent parties, and an unwillingness to keep forces in a crisis area for more than a short period. Thirdly, humanitarian issues and organizations get entangled with politico/military matters, potentially undermining their distinctive roles. And, fourthly, there is no practical prospect of developing a coherent and agreed general international legal doctrine of humanitarian intervention. The legitimacy of military action, as well as the practical aspects thereof, must necessarily be considered, taking into account the unique aspects of each case.

Despite all the problems, there are positive outcomes from the ways in which humanitarian considerations have played some part in the initiation of military actions. Many lives have been saved in many crises, including even the controversial case of Somalia; international military action has helped to end some vicious wars, including in Bosnia; persons indicted for war crimes have been arrested by the NATO-led forces in Bosnia; many refugees, including those from Albania and East Timor, have been enabled to return to their countries; and those inclined to inflict wanton violence on civilians and prisoners are under notice that they may face serious military consequences.

As to the future, humanitarian issues seem destined to remain intertwined with decisions about the use of force in at least some crises. Whether this development is condemned or celebrated, it must probably be accepted as a fact; and it poses the challenge of how to address some of the problems associated with it, and to take the matter forward.

For humanitarian organizations it is almost inevitable that there will be a division of labour not just in their activities but also in their moral stance. Some will stress absolute impartiality and neutrality. Others may be more prepared to engage in advocacy — even, occasionally, military advocacy — and also to seek some degree of military protection for their activities. This suggests a key conclusion: while neutrality and impartiality may represent one valid moral position for humanitarian organizations, especially the ICRC, it is not the only moral position that is valid.

For States and intergovernmental bodies, two main challenges need to be faced. The first is that if military force is used in support of at least partly humanitarian goals, or in implementation of international humanitarian law, it is important that it should itself comply with that body of law. Experience suggests that there can be particular pressures in military operations with humanitarian purposes that make observance of the law difficult. The perception of those involved that a military action is disinterested, and in support of high moral purposes, can easily lead to an attitude of superiority over the people they are seeking to save. Whether committed for this or other reasons, the crimes by the forces intervening in Somalia in 1992-1995 are evidence of the seriousness of the problem. The case of the 1999 Kosovo war suggests two further grounds for worry. One is that where a military operation has the purpose of changing the policy of a government, it may involve putting pressure on individuals and installations that are as much connected with the government as they are with the army, and may have some elements of civilian function or character. A second worry exemplified by Kosovo is that conducting low-risk war by bombing from 15,000 feet may make it difficult to attack military units or to protect vulnerable civilians. These concerns arising from the Kosovo war suggest that the clear distinction in the laws of war between civilian and military targets is at risk of being eroded. In principle, the application of the laws of war to international forces is not in doubt, and important aspects of this principle have been confirmed by the Secretary-General's Bulletin of August 1999.[28] However, ensuring that such application is effective remains a problem.

The second challenge is how to combine humanitarian aims with the effective strategic and political management of armed force. This problem has many dimensions. In particular, there is an urgent need to develop clear concepts and procedures for a process that has recurred in an *ad hoc* and muddled fashion in the crises of the

28 Secretary-General's Bulletin: "Observance by United Nations Forces of International Humanitarian Law", entry into force 12 August 1999, UN Doc. ST/SGB/1999/13 (6 August 1999).

1990s: the metamorphosis of a peacekeeping and observer mission into an enforcement operation. For peacekeeping tasks, forces are often spread out widely within a country. For enforcement, forces must be constituted differently: they generally need to be concentrated, and an efficient system of command and control becomes even more important than in peacekeeping. Until there is a clearer idea of how such forces may be deployed and used, humanitarian issues may remain triggers more for failure than for effective intervention to achieve the humanitarian objectives that have been so frequently proclaimed and only rarely achieved.

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Résumé

Problèmes et organisations humanitaires, éléments déclenchants d'actions militaires internationales

par ADAM ROBERTS

À plusieures reprises depuis la fin de la guerre froide, les gouvernements et les organisations intergouvernementales ont justifié, notamment à travers le Conseil de sécurité, la menace ou le recours à la force par le biais d'arguments à caractère «humanitaire». Trois types de violations de normes humanitaires ont été régulièrement invoqués pour déclencher une intervention par la force, soit dans le cadre d'un conflit armé en cours, soit contre un régime brutal : atteintes graves à la vie de la population civile, refus d'autoriser des actions d'assistance à une population dans le besoin et violence exercée à l'encontre du personnel d'organisations humanitaires. Après avoir passé en revue différentes interventions ayant impliqué l'usage de la force, l'auteur examine la position des États et des organisations internationales, notamment les Nations Unies. La question de la légitimité d'un recours à des arguments humanitaires pour justifier l'usage de la force reste cependant posée. L'auteur est convaincu qu'à l'avenir, «l'humanitaire» jouera un rôle plus important que par le passé dans les considérations relatives à l'usage de la force. Il souhaite une réflexion approfondie à ce sujet.