# Humanitarian Military Intervention

**BY VED P. NANDA**

Government-sanctioned mass killings in Kampuchea and Uganda in recent years argue forcefully for military intervention on humanitarian grounds. While international law does permit such intervention in special circumstances, there remains the need to devise satisfactory procedures for carrying out this intervention as well as effective international mechanisms to ensure that it is not used to promote a nation's own self-interest.

Existing rules of international law essentially prohibit military intervention by a nation or a group of nations. The United Nations Charter, Article 2(4), bars member nations "in their international relations from the threat or use of force against the territorial integrity or political independence of any State...." Likewise, regional organizations, such as the Organization of American States (OAS) and the Organization of African Unity (OAU), explicitly proscribe intervention in the internal affairs of member states. But international law allows two conditions under which military intervention is permitted. One depends upon a specific finding by the United Nations Security Council that a breach of peace, threat to the peace, or aggression has taken place. The U.N. action in Korea falls in this category.

The second condition is said to be fulfilled when, in certain limited, extraordinary situations, gross and persistent violations of basic human rights prevail in a nation. Crimes against humanity—even the imminent danger that heinous crimes might be perpetrated—are warrants for such aciton. It is preferred that action be taken collectively, under the aegis of the United Nations or a regional organization. In the absence of collective action, however, intervention by a group of nations or even by a single nation is justified.

India's military action in East Pakistan in December, 1971, which led to the birth of Bangladesh, might well fall in this category of humanitarian intervention. Also, during the Biafran war there were forceful pleas by Professors Myres McDougal and Michael Reisman of Yale for such an intervention on behalf of the Ibos, though nothing ever came of this. Similarly, rescue operations such as the recent aborted U.S. mission in Iran, the West German action in Mogadishu in October, 1977, the Israeli raid on Entebbe in July, 1976, and the U.S.-Belgian action in the Congo in 1954 are all valid under international law.

The statement of the United States representative during the U.N. Security Council debate on the Entebbe raid aptly reflects the current state practice on rescue missions: "There is a well established right to use limited force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the state in whose territory they are located is either unwilling or unable to protect them." Thus, for such an action to be justified, an imminent danger to human lives—indicating an overwhelming necessity for prompt action—is a prerequisite; and the force used in conducting rescue operations has to meet the test of proportionality to the demands of the crisis.

## CALLING IN THE MARINES

Opponents of humanitarian intervention usually invoke the doctrines of sovereign equality, political independence, and territorial integrity. They also contend that humanitarian intervention is unacceptable for practical reasons. In the absence of an objective fact-finding body and of effective international machinery to supervise and monitor such operations, humanitarian intervention suffers from lack of precision and can be easily manipulated by powerful nations to impose their will on weak, usually Third World nations.

Opponents acknowledge the growing consensus on an emerging law of human rights that entitles the individual to international protection. Yet they maintain that under the existing international system the only basis for military intervention to protect these rights lies in a decision by the U.N. Security Council that, in violating the human rights of its citizen, a particular nation has caused a threat to peace.

Opponents concede that humanitarian intervention was an accepted norm at the end of the nineteenth century, but they argue that the doctrine was occasionally abused and had fallen into disrepute by the end of World War II. Several armed interventions against Turkish rule by various European powers (in 1827-29 in Greece, which led to the independence of that country; in 1860 in Syria; in 1876-78 in Bosnia, Herzegovina, and Bulgaria; and in 1913 in Macedonia) are considered to have been lawful on humanitarian grounds. Other interventions continue to divide authorities on the issue of their legality. For example, when in the nineteenth century the United States dispatched the Ma-

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rines to Latin American countries, allegedly to protect the property of U.S. nationals, critics considered such action merely a pretext to dislodge governments unfriendly to U.S. corporations.

The admittedly mixed record on humanitarian intervention is no reason to reject its useful function in the future. The political climate of the Monroe Doctrine era bears little resemblance to today's, which is sometimes characterized by major powers as a "tyranny of the small and weak nations." Both the United States and the Soviet Union have painfully learned the limits of power.

On legal grounds the opponents' argument is tenuous at best. Human rights issues are no longer a matter of exclusively internal concern—as the U.N. has demonstrated by denouncing apartheid in South Africa and oppressive conditions elsewhere and by imposing economic sanctions against Rhodesia and South Africa for violations of human rights.

The Preamble of the U.N. Charter expresses the determination of the peoples of the world "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person," and a commitment "to insure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest...." This common interest certainly includes humanitarian action. While Articles 1 and 55 reaffirm the United Nations' commitment to promoting universal respect for an observance of human rights and fundamental freedoms for all, Article 56 states that commitment as a positive obligation for action by member states in defense of human rights: "All Members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55."

## RULES TO INTERVENE BY

As to who is authorized to intervene, collective action is preferable to intervention by a single nation, for the former shows a consensus and minimizes potential abuses. It is, for instance, difficult to contend and hard to believe that Vietnam intervened in Kampuchea on humanitarian grounds. At the United Nations the secretary-general is empowered under Article 99 to bring to the attention of the Security Council any matter that potentially threatens international peace and security. The Security Council has primary responsibility for dealing with serious matters that are threats to international peace. In the face of inaction by the Security Council, however, the General Assembly has ample power to discuss the situation and recommend appropriate action to member nations.

Of utmost importance, however, is the involvement of the U.N. human rights machinery in such situations. The U.N. Commission on Human Rights might be authorized to meet in emergency session to discuss situations that demand urgent attention because of "the imminent threat or willful destruction of human life on a massive scale"—a suggestion made by the International Commission of Jurists during the Bangladesh crisis. Perhaps a high-ranking official of the U.N. Human Rights Commission should be authorized to undertake an initial investigation and recommend measures to the Commission. It is unfortunate that the Commission failed to make recommendations for any effective action by the U.N. on Kampuchea and Uganda.

A strong case can be made for intervention by regional organizations to protect human rights because they are close to the scene and are usually immune from accusations of insensitivity to unique local conditions. Indeed, under the U.N. Charter they have a special position of responsibility. Because no effective regional organization exists in Asia, intervention in Kampuchea by even a single nation would have been permissible if carried out on humanitarian grounds.

The nature and scope of armed intervention considered justified varies with the nature and extent of the violations and the remedy required to correct them. The twin criteria of necessity and proportionality have to be met. Thus, the most desirable remedy—prompt action of short duration, without affecting the governmental structure—would not apply in Kampuchea, where a massive operation was necessary to dislodge those in power.

The Cambodian case illustrates a situation, contemplated by the U.N. Charter, calling for prompt action by its members. The matter is not one of rhetoric or of naked power but indeed finds an established body of international law that bears on its solution. In the final analysis, however, pragmatic considerations alone dictated the outcome. While the Khmer Rouge oppression continued, no serious effort was made by any country to alleviate the situation. Instead of playing a responsible role, China invaded Vietnam, which had earlier invaded Kampuchea, and under no interpretation could either action be considered to have been based on humanitarian grounds.

While these invasions forcefully point to the need for satisfactory standards for intervention, they also give rise to a sobering thought: that in the foreseeable future there is little hope for collective humanitarian action led by the United States and the Soviet Union. In spite of the demonstrated necessity for remedial measures in a specific situation, political constraints are likely to prevent the necessary consensus. The United States especially has yet to recover from its Vietnam experience and is likely to shy away from any direct military involvement in situations demanding a remedial action. However, as my colleague William Beaney noted recently, if giants stand aside but tacitly agree to allow a coalition of lesser powers to take the necessary action, there is some hope for remedial action in or outside the U.N. [WV]

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