Human Rights in Security Matters

Markus G. Schmidt

The issue of the protection of human rights in internal armed conflict and during states of emergency has long occupied lawyers and diplomats as well as international organizations. It has been demonstrated in the past decade by the debates in the UN Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities during states of emergency. Some human rights instruments acknowledge the particular situation which may be faced by States in instances of armed conflict or internal unrest. Article 4 of the International Covenant on Civil and Political Rights, for example, provides for the possibility of derogation in times of “public emergency which threatens the life of the nation”; no country may, however, derogate from its covenant obligations under article 6 (right to life), 7 (prohibition of torture), 8 (prohibition of slavery), 11 (no imprisonment for debt), 15 (nulla poena sine lege), 16 (recognition as a person before the law), or 18 (freedom of conscience and religion).

The adoption of Security Council Resolution 688 on 5 April 1991, which addressed the treatment of the Kurdish population by the Government of Iraq, has reinvigorated the debate about the existence of a presumed right or duty of humanitarian intervention. The concept of humanitarian intervention itself is old and may be traced back through many centuries: it encompasses the use of armed force or deployment of military units by a State against another State with the aim of protecting the life and liberty of the citizens of the latter State which is either unwilling or unable to do so itself.

It is not easy to dissect the doctrinal justification for humanitarian intervention. Some international lawyers, in particular American ones, submit that the often opposing goals of conflict-minimization or settlement and protection of human rights must be weighed against each other in any given case, with the result that in extreme cases involving serious human rights violations the protection of these rights has precedence over the principle of non-violence enshrined in article 2, paragraph 4, of the Charter. Others argue that, besides the provisions of the Charter, there exists a customary right of humanitarian intervention: the Belgian intervention in the Congo (1964) and the interven-
tion of United States troops in the Dominican Republic (1965) are adduced as precedents in support of the argument. It is, however, arguable that these examples belong in a different category of humanitarian intervention, namely the protection of nationals of the intervening (or third) State(s) threatened abroad.  

Many pros and cons can be advanced in favour and against these arguments. One might, for instance, maintain that the principle of non-intervention cannot be invoked by a State against a humanitarian intervention of another State, or coalition of States, if specific rights are being violated or threatened which both sides, as parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, have undertaken to respect. What may have galvanized the debate on Resolution 688 is the recognition that the United Nations have, in the recent past, come to act as a legitimating body for intervention; and the malaise perceptible in some of the comments on Resolution 688 may be attributable to the feeling that the Organization’s doctrine of national sovereignty is simply no longer adequate.

The wording of Resolution 688 partly reflects such concerns. It is couched in vague and legally diffuse terms; it does not answer the question of whether the right of humanitarian intervention exists de lege lata or de lege ferenda. The United States and many European States endorse the concept, as evidenced by statements made by President Bush, the German Foreign Minister, Hans-Dietrich Genscher, and the recent European Community proposal for a UN Coordinator on international humanitarian affairs.  

Others, in particular the representatives of developing countries, are far less enthusiastic. France, in turn, has envisaged proposing an amendment to the UN Charter to incorporate a “duty of interference” in instances of particularly flagrant abuses of human and minority rights. Supported by some of her EC partners, France also proposed the creation of a “rapid intervention force” for instances of particularly serious instances of internal unrest coupled with human rights violations; under the French design, this intervention force would not be subject to UN command, but the proposal has met with stiff US resistance. At the recent NATO ministerial meeting in Rome therefore, it was not even included on the conference agenda.  

What resolution 688 does not even address obliquely is the presumed right of intervention in purely internal conflicts where hostile political factions are opposed, or situations where armed forces of national entities in a federal State fight seek to assert their right of self-determination. The inability of the EEC member States to agree, in September 1991, on the deployment of an intervention force (“force d’interposition”) in Yugoslavia; the repeated deferral of the