

The history of man often records the “interference” of a stronger group with a weaker one, of a people with another, of a coalition of nations against other nations.

This has always been a violent kind of interference, often brought about by wars, and therefore it has not been possible to give it some kind of codification.

Even contemporary history, as well as recent events, has experienced and recognized the right to interference in a region as a prerogative of leader States in order to re-establish a situation after the violation of the world economic and political order.

The events which happened as late as the Gulf War have actually witnessed the application of the right to military intervention, and therefore also political intervention, which was decided upon in order to solve an evidently dangerous situation for the balance of world power politics.¹

This century has also experienced the so-called **humanitarian intervention**.

It is clear that the expression “humanitarian intervention” must be understood, or rather matched, with the more easily perceptible exigencies of the international balance of power, and especially with the resistance of some geopolitical prejudices. In spite of this it has been possible to actually carry out campaigns whose only aim were humanitarian, for the re-establishment of peace and justice as necessary conditions, although not always sufficient, for re-establishing the minimum conditions for the respect of personal dignity.

The more recent interventions of multinational forces under the aegis of the UN in Africa, the Middle East and in the Balkans must be considered in this framework.

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¹ “The Democracy of Non-Governmental Organizations, Publisher Amnesty International, 1995.

Humanitarian intervention, unlike military intervention, may not have had a proper codification but it has anyway adopted certain procedures which, although lacking the abstract character which is typical of a formal set of rules, nonetheless make it possible to follow the sequence of decisions.

The difficulties facing codification were obviously due to knots of resistance and international objective mechanisms, and it has therefore been difficult to define, for example the status of “aggressor” and distinguish it from that of “victim”, and consequently prepare and foresee automatic intervention by the international community.

In this century, however, thanks to the spread of humanism, both of the socialist and liberal kind, but also thanks to the setting up of international movements, such as the non-governmental associations which have appeared on the international scene, a universal awareness has developed, and a capacity to react indignantly in proportion to the horrors created by man himself.

The century of Auschwitz and Hiroshima² has also been the century of Nuremberg, in the same manner that the killings in ex-Yugoslavia and Rwanda have seen the setting-up of ad hoc International Courts.

Humanity is nowadays very much conscious of its potential for genocide and of the planet’s terrible potential self-destruction, but it has also developed a global concept of human life, aided by the exceptional progress in technological development and by the, as yet still ambiguous, hints at what has been hazily called “electronic democracy” (the Electronic Townhall)³ or “continuous democracy”⁴, conditioned by the so-called *mutation cathodique*⁵, cathodic mutation.

The need is increasingly being felt to set up norms allowing the intervention of man in all those cases where the abnormal violation of the rules of common and civil coexistence risks upsetting the acquired levels of peaceful and civil living.

² “900. *I tempi della storia*”, C. Pavone, Donzelli Editore, 1997.

³ I refer to the electoral programme of Ross Perot, a candidate for the Reform Party at the American presidential elections and at the “Contract” of Newt Gingrich.

⁴ “*Tecnopolitica. La democrazia e le nuove ideologie della comunicazione*”, Stefano Rodotà, Sagittari Laterza, 1997.

⁵ “*Communication, télévision et démocratie*”, P. Lecomte, Presses Universitaires de Lyon, 1993.

Obviously no one harbours the utopian elimination of the germs of war, since these last fifty years of peace have not succeeded in sparing a number of deaths equal to those of the second world war in innumerable local conflicts.

The process of historic maturity has allowed us to evaluate the limits and defects of those "provisional" solutions, like Nuremberg, Tokyo and the ad hoc courts, which have seemed to be a kind of justice **organized** by the victors, almost a well-prepared epilogue to the war, so that the decision has been taken to set up a Permanent International Court, which will be constituted by the launching of a preliminary set of substantial and procedural rules, perhaps still minimal but universal.

United Nations' resolution number 51/207⁶ gave official recognition to what the French aptly called *droit d'ingérence*, the right to intervene in all those occasions where basic human rights are in danger.

A Preparatory Committee is working on the first draft of a memorandum for the International Judicial Institution, while the Conference of plenipotentiaries will be held during 1998, which is the date set for the constitution of the Permanent International Court.

Actually this is an authentic revolutionary process, since it introduces a radically new way of understanding international relations, whereby the old relational models are abandoned and preference is given to the recognition of the **interdependence of human rights**⁷ and to what jurists call the "global society".⁸

Certainly it is understandable that there should be a juridical

⁶ Ref. to Resolution A Res 51/207 of the UN dated 17.12.1997 for the "Institution of an International Criminal Court" which refers to UN resolutions 47/33 of the 25.11.1992, 48/31 of the 9.12.1993, 49/53 of the 9.12.1994, and 50/46 of the 11.12.1995. A series of pronouncements of the General Assembly which bear witness to the UN's commitment and which goes back to the founding act itself of the United Nations, in San Francisco, which was interrupted during the years of the cold war and revived in the Nineties.

⁷ *"Le relazioni internazionali nell'era dell'interdipendenza e dei diritti umani"*, Antonio Papisca and Marco Mascia, Cedam, 1997.

⁸ *"Globalism versus Realism: International Relations Third Debate"*, by R. Mughroori and B. Ramberg, but also J. W. Burton in "World Society" and M. Shaw in "Global Society and International Relations: Sociological Concepts and Political Perspectives".

and political debate on the definition of the limits of the Court's competence, which in the meantime has been restrained to the repression of the crimes of genocide, crimes of war and crimes against humanity. In the same way one understands that considerable and imaginable difficulties crop up during the codification of the conditions of procedure of the Court, of the role and activation of penal action by the Prosecution, and also of the enforceability of the Court's judgements.⁹ And yet, what really matters is that we are witnessing the first success of the law which is moving beyond the obsolete powers of the State¹⁰ towards a new global institutional order.

The coordination of interdependent economic and financial policies cannot be carried out without organizing an Institution of Justice which can provide the international community, through the guarantees of a set of rules, with the certainty of a true peace, by stating that there can be no peace without justice, and where the right to judicial intervention will, in time be replaced by a right which will no longer be seen as interference but will be recognized as a legal system of norms and sanctions, universally established and effective.

⁹ See Giulio Illuminati in *"Gazzetta Giuridica"*, n. 26/97, Giuffr  Editore.

¹⁰ *Idem*, footnote 1.