



HUMANITARIAN LEADERSHIP

**Illegitimate
Humanitarian
Aid**

Illegitimate Humanitarian Aid

Does a Lack of State Legitimacy Affect the Mandate of the International Committee of the Red Cross? *

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Keywords

Humanitarian Aid, State Legitimacy, ICRC, Geneva Conventions, Somalia

The International Committee of the Red Cross (ICRC) derives its legitimate mandates from the ratification of the Geneva Conventions by states. Yet, what happens if a state turns out to be illegitimate? This paper suggests that the legitimacy of states is a necessary condition for the ICRC's mandate and therefore for its interventions to be legitimate. In case of illegitimate states, we develop the idea of organising democratic procedures in the countries lacking legitimacy, which will be supported by the ICRC, to solve the problem of state legitimacy for the ICRC's missions. It will be argued that the neutrality principle of the ICRC is not violated by engaging in this kind of activity, because all relevant groups in the country will participate equally. Furthermore, due to the strong commitment to this principle, the ICRC is in the best position to help solve the state's and therefore also the ICRC's legitimacy problem. The discussion will be applied to Somalia as a case in point.

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1. *Introduction*

In the philosophical debate, much is said about the justification of nation states. Frequently in these discussions, the organisation of the world in nation states is questioned, but put aside for pragmatic reasons, even though this train of thought is an interesting and important one, especially in case of conflict within a state. The paper at hand will not attempt to answer whether the world should be organised in nation states either, but highlights related areas of conflict, namely the legitimacy of states and the role of the International Committee of the Red Cross (ICRC) in armed conflicts or other situations of violence.

While questions of justification of states might highly overlap with questions of legitimacy in the affluent and so-called well-ordered world, differences become apparent in the realm of poorer or less well-ordered societies, where different national groups fight for independence or acknowledgment of their position in an existing state. Such conflicts are very often violent and cruel situations among different tribes or clans. External (armed) forces usually do not intervene here (while exceptions do exist¹), but humanitarian aid can be provided by the ICRC. By doing so, the ICRC relies on a mandate provided through the ratification of the Geneva Conventions by participating nation states. The paper at hand analyses the problems caused by the legitimacy problem of these nation states. Crucial for the legitimacy of the state is the moral relationship between the state and the individual person, who has to subscribe to the state. This cannot be taken for granted, in the case that one or more groups in a country fight against the state's authority. It will be argued here that this affects the legitimacy of the ICRC's mandate, too, and accordingly, renders the whole humanitarian mission illegitimate. The aim of this paper is to convincingly argue that this problem can be solved by the ICRC by organising democratic procedures of collective decision making, in which all (relevant) groups participate.² This is not to argue for democracy in all nations, but as a device for solving legitimacy problems of states with violent conflicts.³ It will be argued that the ICRC can do this without violating its principles of conduct, among which, in this case, the

1 The war in Kosovo, for example.

2 This even could – as a by-product – contribute to a just social order on the global level: “I argue tentatively that the system of democratic association is superior to international democracy” (Christiano 2010: 120). An association of democratic states is more feasible in the nearer future than international democracy is, which is why the ideas put forward in this paper would contribute to an advancement of the global order, even though it excludes the question of whether to have nation states or not.

3 Whether this supports or affects the discussion of democracy in other states is not pursued here, nor is a stance taken on this in the paper at hand. The purpose of democratic procedures of decision making is focused on their problem-solving capacity only.

most important is the neutrality principle. The ICRC solves its own legitimacy problem by setting up a mechanism which makes legitimacy possible again and thereby renders its own mandate legitimate. The theoretical considerations will be applied to a real world example, namely Somalia. Several groups have fought for a common state on the Somalian territory, but certain partialities could not be overcome by the group in power, regardless of whatever group obtained power. This can be seen – until now – as the root of violent conflicts within the Somalian territory. Even more important for the paper at hand, we consider Somalia to be a case in point of an illegitimate state: parts of the population did reject a draft of the constitution during a referendum, but their vote was turned over by the majority of another group and resulted in the adoption of this constitution. This made all people living in the territory subject to the constitution, irrespective of the fact that only a minority approved it.

This paper is organised in the following way: first, we will introduce the concept of justification and the concept of legitimacy and make a clear distinction between the two, and outline the possible consequences of an illegitimate state. In the second part, we will introduce the ICRC and its principles and discuss what problems occur for the ICRC due to illegitimacy of a state and the ICRC's mission within this state. In the third part, we propose a solution, which we see in procedures of democratic decision making. The concluding will be dedicated to a real-world case study, namely Somalia, and policy recommendations will be given.

2. The Legitimacy of States and How to Obtain it

In contemporary political philosophy, most of the debate is concerned with the justification of states rather than with its legitimisation. Here, we will be concerned with the legitimacy of states and only briefly discuss the justification of these states. Before discussing the two approaches, we have to be clear on the terms justification and legitimacy. A state is justified if it is preferable to any other ideal or feasible alternative. The answer to the question of justification gives information about the goodness or badness of a state, i.e. its social justice concerning its actions towards its inhabitants. In contrast, legitimacy depends on a special moral relationship between each individual and the state, i.e. whether the individual can consent or consents to the state. This is important because the state coerces people to do or not to do certain things (cf. Christiano 2010; Pettit 2010, 2012; Simmons 1999).

2.1 Justification vs. Legitimacy

Those scholars working within a Kantian framework take the existence and the participation of the people living in its territory for granted. Every person has an innate right to freedom and (provisional) property, which – according to Kantians – can only be fulfilled within a state, which uses coercive power (cf. Kant 1990). The questions of justification and legitimacy collapse into only one question: what should the state do? One outstanding example of such a justification is Rawls' *A Theory of Justice* (1971), which tries to show how to find conditions for a state in which people can live under the state's authority, even though they have very diverse moral beliefs. In this sense, the specific state in which the people live is relative to the moral beliefs of the people forming it. It will be argued here that the sole fact of being born in a specific territory does not give an individual reason to subscribe to this specific state. This state might be most preferable to all alternatives available, but still is not legitimate (even though it might be possible to legitimise it), which means that people subscribe to a certain state and thereby decide whether to accept the coercive power of the state or not (cf. Pettit 2012: 140; Christiano 2010).

2.2 Relationship between Citizen and the State

We argue that each individual has a special moral relationship towards the state, which exercises coercive power over this individual. Here, the individual decides through his consent whether it wants to stay in a state of nature or not. The state's right, then, is the exclusive right to make people obey the laws of the specific state they consented to due to the special moral relationship between the individual and the state. This is the case only if people consent to the authority of the state; otherwise, they remain in a state of nature. We face a distinction here: the state can be legitimate due to the moral relationship towards the people it exercises coercive power over, but at the same time can be a bad state. A state being bad is understood in terms of the laws issued and enforced by the state, i.e. the goods provided or not provided through state authority. To use the terminology of the Kantian approach, the state might not be justified, even though it is legitimate. Pettit (2012) distinguishes four cases with reference to a just social order (justification) and a legitimate social order (legitimacy): if the social order is just and legitimate, people should accept the social order and comply with it. If the social order is unjust but legitimate, people should accept it. They then may oppose the laws imposed on them. In case the order is illegitimate but just, people may

resist the regime in power, but should comply with the laws. Lastly, the case which is of the most relevance in this paper, even though it might be a very rare case in the affluent world, is a situation of an unjust regime and an illegitimate social order, whose laws may be contested and resisted (cf. Pettit 2012).

SOCIAL ORDER	JUST	UNJUST
LEGITIMATE	SHOULD ACCEPT AND COMPLY	SHOULD ACCEPT AND CONTEST
ILLEGITIMATE	MAY RESIST, SHOULD COMPLY	MAY RESIST AND CONTEST

TABLE 1: THE DEMANDS OF JUSTICE AND LEGITIMACY (CF. PETTIT 2012: 140)

Pettit says, “Few actual states may count as legitimate, [...], but many are likely to count as at least legitimizable” (Pettit 2012: 140). This already hints at the new task of the ICRC in the aforementioned contexts: how can states be legitimized? This will be discussed in later sections of this paper in more detail (cf. Christiano 2010; Pettit 2010, 2012).

2.3 *States Lacking Legitimacy*

“States are not entitled to demand from unwilling inhabitants anything that one person may not demand from another independent of states” (Simmons 1999: 754).

In the Lockean tradition, these demands are very limited. A Lockean state of nature, for example, is one of abundance, where everybody lives in a situation of perfect equality among the people and enjoys perfect freedom within the laws of nature. This means that no one ought to harm another person, which comprises his life, health, possessions and so forth. Furthermore, as many people as possible should be preserved, they have to be provided with sufficient resources for their life. On the other hand, people have the right of self-preservation and self-defence, which mirrors the law of nature. In such a state of nature, people are the actors, not the states. Every person autonomously

decides whether to remain in the state of nature or to subscribe to a state (most probably the state of the territory the person lives in, but not necessarily).

While this is less of a problem in the affluent world, it obviously causes conflicts in countries which are not so well-off. The actions of these states do not satisfy the inhabitants' claims well, so they might not even be justified. Causes for this are not only the lack of resources in the specific country, but also a majority dominating minorities, i.e. other tribes within a country:

“The problem of domestic legitimacy is that of ensuring that in the exercise of its public power, the domestic polity is not a dominating presence in the lives of its citizens. It is a non-dominating guardian against private domination and it is a non-dominating organizer of whatever other collective goods it seeks to advance” (Pettit, 2010: 143).

Dominance can occur because people are cognitively biased towards their own interests. Democratic institutions could help to realize the equal advancement of the state's members' claims (cf. Christiano 2010: 121). This challenges the ICRC in at least two respects: firstly, more and more conflicts are not fought state against state, but tribe against tribe; the ICRC, however, was set up for situations of armed and violent conflicts between states. The second reason is that the ICRC acts upon the Geneva Conventions, which are ratified by nation states. Yet, if the state ratifying the Geneva Conventions is illegitimate, no legitimate claim can be derived from these conventions, thereby rendering the mandate of the ICRC illegitimate, too. Can these challenges be overcome for the sake of humanitarian aid? (cf. Christiano 2010; Pettit 2010, 2012).

3. The ICRC, the State and the Geneva Conventions

3.1 The ICRC: Its Mandate and Its Principles

To figure out what the prospective role of the ICRC in a changing environment of violent conflicts could be, we will now focus on the ICRC and in particular its mandate, its mission as well as its fundamental principles.

The ICRC was founded with the intention to assist and protect wounded soldiers only; this changed over time, however, and it is now covering all victims of armed conflicts and other situations of violence, respectively (cf. ICRC 2009: 3). The ICRC is a private organisation⁴, which is not only part of as well as a founding member of the International Red Cross and Red Crescent Movement, but also one of the most widely recognised humanitarian organisations in the world.⁵ As one of the leading humanitarian actors, the ICRC's main tasks are the protection and assistance for civilians, (supervision of) visits to detainees, tracing missing persons, promoting the reunion of families as well as the provision of medical services and food supply. The ICRC's mission and its humanitarian assistance are subject to strict legal regulations and conditions. Because humanitarian aid always affects sovereign states, the provision of humanitarian aid within a state's territory always requires a legitimate mandate which has to be acquired before the mission in order to act upon a reliable basis.

The ICRC obtains its legitimacy and its mandates, respectively, from the four Geneva Conventions.⁶ By ratifying the Geneva Conventions, every state automatically issues a mandate to the ICRC and thereby consents to any form of humanitarian aid in case of violent conflicts within its territory. So, in brief, the ICRC's mandate relies on the Geneva Conventions acknowledged by the international community and every participating state. The core element of the organisation and its operations and so to speak the ICRC's identity is its mission statement:

“The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent Organisation whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles” (ICRC 2009: 4).

4 Legally, the ICRC is “neither an intergovernmental nor a non-governmental Organisation. It is a private association under Swiss law with international mandates under public international law”(ICRC 2009: 6).

5 The ICRC, for example, has been awarded four Nobel Peace Prizes for its humanitarian commitment.

6 The four Geneva Conventions from 1949: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949. Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (cf. ICRC 2013: 1).

This directly leads us to another essential characteristic of the ICRC's work and mission: its fundamental principles, of which we will only discuss three in this paper, namely impartiality, independence and neutrality.⁷ The principle of impartiality precludes and forbids any kind of discrimination, whether in terms of nationality, race, religious beliefs, class or political opinions, i.e. (humanitarian) assistance must always be impartial and in every circumstance proportional to the situation's severity and urgency. The independence principle, on the other hand, means that the entire movement has to be independent, i.e. the Red Cross and Red Crescent institutions should be independent from any political, financial, or ideological intervention, since in the end, the National Societies of the Red Cross or Red Crescent must always be autonomous and able to act in compliance with the Movement's basic principles (cf. ICRC 1996: 17f). The last principle we refer to here is the neutrality principle, probably even the most essential principle for the ICRC and its work because this guarantees and secures access to each state's territory in the first place. The principle of neutrality implies that "the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature" (ICRC 1996: 12). So the neutrality principle actually covers two facets: military and ideological neutrality. Military neutrality means that in situations of (violent) conflicts, the ICRC has to conduct itself in such a way so as not to provoke or cause any hostilities between the parties involved, i.e. National Societies of the Red Cross or Red Crescent have to be neutral when it comes to any military operation. On the other hand, ideological neutrality forbids the organisation from taking a position in any religious, ideological or political controversy, because taking a position would immediately undermine the trust in the Movement of at least one group and consequently jeopardize the whole operation (cf. ICRC 1996: 12f).

3.2 Problem of Illegitimate Mandate

In the following, we are going to build a bridge between the previous part regarding the ICRC, its mission, and its mandate and the problem of state legitimacy. We will, furthermore, have a closer look at the (il-)legitimacy problem of states and the resulting consequences for the ICRC as well as its (il-)legitimate mandate.

⁷ The seven core principles were proclaimed by the 20th International Conference of the Red Cross in Vienna, Austria, in 1965 and are written down in the statutes of the International Red Cross and Red Crescent Movement. Altogether there are seven principles; those not discussed here are humanity, voluntary service, unity and universality.

It is essential for the legitimacy of a state that there is always a special moral relationship between the state and the individual citizen. According to the approach of state legitimacy put forward in the paper at hand, in all countries suffering from violent national conflicts because of domination through the state authorities by one or more groups, the violent conflict would shed doubt on the legitimacy of this state. Reality gives us reason to believe that this is a real problem, because more and more conflicts are not fought state against state anymore but within states, between different tribes, for example. The paper at hand asserts that the legitimisation of the ICRC's humanitarian operations and interventions require the Geneva Conventions to have been ratified by legitimate states.

If a state ratifying the Geneva Conventions turns out to be illegitimate, no legitimate claim can be derived from the Conventions, and ultimately the ICRC's mandate for the state concerned is rendered illegitimate, too. So, after all, the legitimacy problem of nation states affects the legitimacy of the ICRC's mandate as well as the entire movement considerably. As soon as the legitimacy of the respective state is not given, the ICRC loses this state's (once obtained) mandate and therefore its legitimisation to enter the country and provide humanitarian assistance. The ICRC's operations and interventions in the respective country concerned are rendered illegitimate, which weakens the position of the ICRC (and the entire movement), because it cannot rely on the recognition as an organisation acting upon an international agreement at least with respect to the people fighting against the current state. We will propose a solution to this problem: organising democracy and control by the people.

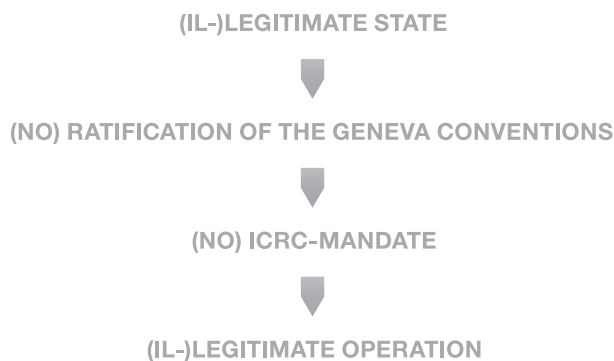


FIGURE 1: ICRC AND THE GENEVA CONVENTIONS (SOURCE: OWN ILLUSTRATION)

3.3 A Way Out: Organising Democracy

Pettit claims that whereas social justice is concerned with the horizontal relations that the citizens should have amongst themselves, political legitimacy constrains the vertical dimension and the relations that citizens should have with their government and their state ruling them, respectively (cf. Pettit 2012: 136). While social justice, according to Pettit's republican theory, requires that citizens be free in the sense of non-domination, the requirement for political legitimacy (and accordingly the protection against public domination on the vertical level) is a form of shared, popular or civic control over the state and the government (ibid.: 149). But in the case that a state is dominating the public, it turns out to be illegitimate, and so are the laws and governmental authorities (ibid.: 139). The paper suggests that the ICRC should support democratic decision making in the circumstances of the aforementioned kind, which satisfies the condition of shared, popular control over the state and the government. In Pettit's view, even illegitimate regimes can be made legitimate and are in that sense legitimisable (ibid.: 139). A state, however, is legitimate only to the extent that individuals experience equal control over the government and thereby the state. This means that citizens not only have to support and influence the process leading to the result, but they also have to participate in imposing "a relevant direction on the process" (ibid.: 153), helping to achieve or at least push it into the direction of a result being acceptable to all (ibid.: 153). Moreover, the only system satisfying this form of equally shared, public control required for legitimacy is a democratic system. Establishing democracy is the only way of guaranteeing the sort of (public) non-domination guaranteeing legitimacy, because only democratic regimes respect and enhance freedom in the sense required for political legitimacy. Thus, based on these assumptions, we are developing the idea that the only solution to the ICRC's problem of illegitimate mandates is to establish and organise democracy in the (illegitimate) nation states concerned. This is not to argue for democracy in all nations, but considered as a device for solving legitimacy problems in states with violent conflicts. By fostering and establishing democratic structures, the ICRC solves its own legitimacy problem by setting up a mechanism which makes legitimacy possible again, and thereby renders its own mandate legitimate, too. One might oppose this proposal with the argument that engaging in such kind of activity would violate the neutrality principle of the ICRC. However, due to the fact that all citizens and all relevant groups in the country should "control" and participate equally and that legitimate orders (whether just or unjust) always impose a moral obligation on the state's citizens to accept the regime and its laws (ibid.: 140), the ICRC

can support democracy in countries without violating its principles of conduct, among which the most important here is the neutrality principle. On the contrary, the neutrality principle puts the ICRC (at least in principle) in a special position, because this principle demands that the ICRC “not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature” (ICRC 1996: 12). The problem is that groups obtain power over the state and thereby dominate other groups. Due to the strong commitment to the neutrality principle, the ICRC is the best actor to organise a decision procedure of equal and shared control of state power, i.e. solving the state’s legitimacy problem and thereby its own legitimacy problem for the purpose of humanitarian aid provision.

In this sense, even though the intervention based on an illegitimate mandate acquired through the ratified Geneva Conventions is illegitimate, the intervention of the ICRC can be legitimised with reference to a higher order principle of legitimacy, which is the democratic procedure of conflict resolution fostered by the ICRC’s actions. Thereby, the intervention of the ICRC strengthens its position towards the groups engaged in violent conflicts. This contributes, on the one hand, to a moral legitimization of the measures taken by each and every ICRC staff member and, on the other hand, can contribute to the goal of humanitarian aid provision.

In the subsequent chapter, the theoretical considerations so far will be applied to a real world example, namely, Somalia – one of the ICRC’s largest operations.

4. Case Study: Somalia

In this section, we will apply the theoretical considerations to Somalia, which is seen as a case in point here. The ICRC began implementing humanitarian aid projects in Somalia in 1982 (cf. ICRC 2012a). In order to respond to the needs and vulnerabilities of the victims of the ongoing armed conflicts within the country and the aggravating circumstances due to natural disasters (like floods and droughts), the ICRC started to provide emergency aid to the people which were directly and severely affected and suffering (cf. ICRC 2012b: 163). The state’s accession of the four Geneva Conventions of 1949 and thereby the legitimisation required for the ICRC’s humanitarian operations in Somalia took place on July 12, 1962 (cf. ICRC 2013: 5). However, the extreme insecurity resulting from the continued fighting in southern, central and northern regions of the country significantly impedes the provision of humanitarian aid as well as the implementation of

relief projects for international aid agencies as – in our case – the ICRC. At the start of 2012, for instance, after local authorities in southern and central Somalia started to block food deliveries in mid-December 2011, the ICRC decided “to temporarily suspend its distributions intended for 1.1 million people in urgent need after having its food and seed relief commodities blocked in parts of central and southern Somalia” (ICRC 2012c). We argue that the accession to the Geneva Conventions was illegitimate.

In 1960, the Somalian areas colonised by the Italian and the British were declared to be independent. Before the independence, an idea of a greater Somalia evolved, which meant the unification of the two mentioned areas (cf. Brons 1993). The unification turned out to be more difficult than previously thought, because of different concepts of the common constitution for the common country. The draft of a constitution was then elaborated by an advisory board, which was set up by the president Aden Abdulle Osman, who had been elected by both the northern and the southern parts’ representatives. The advisory board was dominated by people from the southern region, which significantly affected the content of the draft of the constitution. The referendum about the draft showed that the people from the northern part were not satisfied, so they rejected it, which was insignificant for the result of the referendum, because the broad majority of the people of the territories lived in the south. With their votes, the constitution was adopted anyway (cf. Bradbury 2008; Brons 1993). We argue that due to this rejection, the state was then imposed which was illegitimate, and because this state accessed the Geneva Conventions, this accession was also illegitimate. In the referendum, the southern people overruled the northern people, i.e. gaining power over them and used it for their interests. Several attempts were made to overcome this situation, but did not succeed. Even though some more or less peaceful periods have been seen, fostered by the facilitating position of some kind of council of elders, partiality in the democratic processes remains highly problematic. This situation did not change significantly even after the military dictatorship in 1991. A central government authority was not established despite the efforts to do so. In particular, the southern and central parts of the country remained affected by civil strife and unrest due to the continued violent conflicts between Somali authorities and the al-Shabaab group in the south as well as between Puntland and the Republic of Somaliland in the north. At least to some extent, the activities to reorganise a centralised state authority has even caused conflicts (cf. Menkhaus 2003, 2009). What, then, are the insights for the ICRC’s policies derived from this case?

5. Policy Recommendations and Concluding Remarks

How can this problem be solved? Here, we propose the idea that the legitimacy problem can be solved by fostering and organising impartial, democratic procedures and thereby (re-)establishing the legitimacy of a state. The ICRC should take up a position of an impartial arbitrator among the groups in conflict and support impartial democratic procedures and consequently setting up a mechanism, which enables the (re-)legitimation by equal and shared control by the people. In conformity with its three core principles (impartiality, independence, neutrality), the ICRC is supposed to seek

“dialogue with all actors involved in a given situation of armed conflict or internal violence as well as with the people suffering the consequences to gain their acceptance and respect” (ICRC 2008).

Engaging in democratising activities is not contrary to the ICRC’s principles, but contributes to the humanitarian focus of the ICRC’s work in changed circumstances. We recommend that the ICRC act more proactively in analysing the conflicts and its roots in more detail and take up appropriate measures to legitimise the state in question. This will surely change the activities of the ICRC, but takes into account the contemporary challenges in humanitarian aid and will thereby help to save lives and form less violent circumstances for a number of people, especially in poorer regions of the world.

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