

Introduction

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Humanitarian intervention has been defined as a “form of coercive action, undertaken by one or more states, involving the use of armed forces in another state without the consent of its authorities and with the purpose of stopping and preventing widespread suffering or death among its inhabitants” (Adam Roberts).¹ The emergence of the doctrine can be seen as one of the defining features of a new global human rights regime, alongside the establishment of the International Criminal Court and other international tribunals, a regime in which state sovereignty is not absolute anymore. Cornelio Sommaruga, President of the ICRC (Red Cross and Red Crescent) explains this emergence as a response to the rising number of internal conflicts and of new actors autonomous of the state, rise caused by the mounting tensions between the “processes of globalization and the assertion of identity”. These conflicts, he asserts, have changed the contours of humanitarian action in an environment ever more complex.²

Armed interventions can take many forms ranging from peace enforcement (e.g. cantonment and demobilisation of fighters, destruction of weapons, setting up of new armed forces..) coercive protection of civilians (e.g. humanitarian corridors, no fly zones, safe heavens, protection of aid convoys..) to war fighting (e.g. use of force against conflicting parties or spoilers..) (see TG Weiss).³ It can even take the form of military bombing, as was the case in Libya. More controversially it can be unilateral (e.g. Kosovo by NATO) or with the explicit authorisation of the Security Council (Libya). In all cases it boils down to the use of armed forces in a country without the consent of its authorities in order to stop or prevent violations of human rights occurring on a massive scale.

The phenomenon of humanitarian interventions has grown in recent years and especially after the end of the cold war when the preoccupation was rather the maintenance of blocks and alliances. The literature generally identifies 4

phases:

1-During the cold war with the interventions of India in East Pakistan (today Bangladesh) in 1970, of Vietnam in Cambodia (1979) and of Tanzania in Uganda in 1978. These interventions led to the collapse of existing regimes and brought an end to extreme situations of humanitarian disasters. Some have argued however that even if the outcomes of these interventions led to radical improvements, in the human right contexts the prime motivation was political and strategic, in other words a defence of the national interest.

2-The 1990s saw an increase in the number of interventions as the end of the cold war gave way to numerous internal conflicts, while the promises of a new international order made the suffering of the people caught in them difficult to ignore. These would include among others the no-fly zone in Northern Iraq (USA-UK) in 1992, the operation Restore Hope in Somalia (USA-UN) in 1993, the intervention by NATO in Kosovo in 1994, by the USA/UN in Haiti in 1994, the delayed operation by the French to stop the genocide in Rwanda in July 1994. These operations characteristically involved the imprimatur of the Security Council or at least an attempt to secure it.

3-Post 9/11 humanitarian concerns have been overtaken by those raised by the “war on terror”, and at times humanitarianism has been instrumentalized by the US and the UK to win over public opinions as in the case of the 2nd Iraqi war or in Afghanistan.

4-The emergence of the people’s revolutions in the Arab world with potential widespread implications is opening up new challenges to the international community especially after the adoption by the UN General Assembly in 2005 of the “Declaration on the Responsibility to Protect”. What should the UN do if Arab Governments do not relinquish power gracefully? What if the armies remain loyal to the rulers and engage in brutal reprisals involving massive violations of human rights? The UN has responded in Libya by authorising an intervention but how will it cope should the situation deteriorate in Syria and in other countries of the region and elsewhere? And will it manage the long-term ramifications of the prolonged conflicts e.g. refugee flows?

As to be expected, the meaning of humanitarian intervention and the tasks associated with it has triggered heated controversies within the UN itself as

well as among humanitarian practitioners, NGOs and the academic community and most likely within the military around issues such as legitimacy, moral dilemmas, legal complexities and also policy incoherencies and lack of effectiveness as well as fierce debates on the roles of states, international institutions and NGOs: When the norms of international society are based on principles of sovereignty, non intervention and non use of force, can humanitarian interventions, especially when undertaken unilaterally, be legitimate? Who controls who is a victim, who decides who is a repressive regime, and who decides when an intervention is justified? Is there a basis in international law? Indeed can a military intervention be humanitarian? Does it work? Does it address the underlying political causes of the violence and suffering? Is it possible to impose human rights or democracy by force from outside? What are the intentions and motivations of powerful states? How do we cope with the inevitable issues of selectivity and self-interest? How do we get an agreement on the appreciation of what constitute extreme situations of human suffering? But on the other hand, for some, human rights are now intrinsic values and must prevail over state sovereignty. Haven't the states now a moral obligation to intervene when those human rights are seriously violated? As human beings are we expected to just sit and watch images of unutterable misery and do nothing? Is national sovereignty a licence to torture imprison and kill? What is best for the victims? Isn't the UN after all about "We the people"? But at the same time do people in the target country understand the nature of the operation? Do the people in the intervening states support it?

Kofi Annan the former Secretary General of the UN in his speech at the General Assembly in September 1999 declared that there was a developing international norm to forcibly protect civilians who were at risk from genocide and mass killings. This norm has now been codified in a new Declaration adopted by the General Assembly of the UN in the 2005 Summit, seeking to find the best ways to protect endangered peoples. The Declaration stipulates that states have primary responsibility to protect their citizens. When they fail to do so or terrorize them, the international community has a responsibility to protect them by reacting, preventing and rebuilding. No criteria for assessing the gravity of the situation have been included in the Declaration, leaving it to the Security Council, whose authorisation here is explicitly required, to decide.

The debates in Asia about humanitarian intervention have not reached the intensity of those in the academic community in the West. As for the governments, their positions remain marked by their own historical experiences (colonial occupation, foreign domination) weak status (developing countries) or constitutional restrictions (e.g. Japan). They remain by and large suspicious of western true motivations, and rest attached to the international principles of sovereignty and non-interference in domestic affairs. In any case they reject any form of unilateral form of intervention, i.e. when not authorized by the Security Council, and are keen to explore ways and means to bolster human security (security against economic deprivation, an acceptable quality of life and guarantee of fundamental human rights) as a way to prevent situations of gross abuses of human rights. But at the same time, most Asian countries have stated their adherence to international instruments such as the Universal Declaration of Human Rights, the Genocide Convention, the Geneva Conventions and more recently the 2005 Declaration on the Responsibility to protect. ASEAN is discussing ways of more flexible engagement, Japan, South Korea are participating in peace enforcement missions (Iraq, East Timor) and the moral question remains unanswered - what to do in the face of genocide in a neighbouring country?

The purpose of the Doshisha international Conferences on Humanitarian Intervention was to further the debate in Asia on the moral, legal, policy implications of humanitarian interventions versus inaction. The conferences took place at the Doshisha University in Kyoto (Japan) in June 2011 and June 2012. Both conferences brought together scholars from the region to present papers and exchange views in order to clarify the principles and moral dilemmas of humanitarian intervention, its complexity in terms of legal basis in international law, its requirements to ensure legitimacy and effectiveness. The participants explored alternatives to military intervention to ensure international cooperation in the prevention of humanitarian disasters and preservation of the right to life.

This publication is a selection of some of the papers submitted at the conferences. They explore first the potential theoretical foundations of

humanitarian interventions (Kardas) followed by an examination of the international law and policy as they stand today (Pitts). Decision making at the level of the Security Council is then analyzed from the perspective of the BRICS states i.e. Brazil, Russia, India, China and South Africa (Higashi) followed by a discussion on the morality of unilateral intervention (Dobos). In the second part of the publication, authors from Asian universities present their views on the issue, recognizing that the rising power of the region invests it with greater responsibility in world affairs (Kak). However, the lack of tradition of a “theoretical framework of liberalism” (Shinoda), traditions of collective governance of regional issues (Torres-Cortes), colonial experience (Patnaik), suspicions regarding the true motives of western powers (Li) and uncertain outcomes (Salim) lead authors to plead caution regarding the development and implementation of the R2P principles.

Professor Kardas starts by acknowledging the growing consensus around humanitarian interventions post the cold war period albeit “as a limited practice whose life course is stringently bound by the contingencies of the existing international order”. His paper aims to establish the implications of this practice and discourse on the dilemma between “the Westphalia world order and the promotion of Human rights” and to provide a theoretical grounding to these new developments. He argues that the concept of “international society” advanced by the “English School” provides a “via media” between the competitive normative claims of state sovereignty and universal human rights and a relevant theoretical framework to explain the emerging consensus on Humanitarian Intervention: The international order may be “anarchical” (i.e. states not subject to an overall authority) it is nevertheless a “system of states bound by a common set of rules in their relations with one another and sharing in the working of common institutions”. The goal of the system being its preservation, the independence of the states, maintenance of peace and common goals of the social life (e.g. human rights), which is leading to a reappraisal of the norm of non-intervention when it condones gross injustices and threat to international peace and order and to a redefinition of sovereignty as responsibility (to protect). This in turn culminating in the emergence of R2P and humanitarian intervention “as an acceptable form of a policy instrument at the disposal of the international community to end human

suffering”.

Prof Chip Pitts paper provides a useful clarification of the concept of Humanitarian Intervention, differentiating it from the various military actions undertaken recently under the rubric of the “war on terror”. He traces the historical foundations of the concept to the legal rules proposed to govern the recourse to war and conduct of war from various early Chinese, Greek, Islamic and Christian scholars to the construction of the “just war” theory by the Dutch jurist Hugo Grotius working in the context of the Westphalia arrangement. The atrocities of World War I and World War II led to the institutionalisation of a collective security arrangement through the League of Nations and then the United Nations. After 1945, continuing conflicts involving genocides, crimes against humanity and war crimes have led to calls for more effective legal and non-legal mechanisms to prevent and/or halt such atrocities through various forms of humanitarian interventions. In response to these calls, Professor Chips documents the emergence of the R2P concept through the work of various commissions and the endorsement by the United Nations General Assembly of 2005 which emphasized the primary responsibility of individual states to protect their populations with the help of the international community, while granting to the Security Council only the decision to use military intervention as the last resort should the individual state fail to stop the atrocities. In applying the principle of R2P to the NATO intervention in Libya, Professor Chips finds the decision and outcome wanting when analyzed against the criteria of “just cause”, “right intent”, “victims and regional opinion”, “last resort”, “proportionality” and “prospects of success”. He concludes that instead of reinforcing the R2P doctrine, the Libyan operation tends to counsel caution in humanitarian intervention including consideration of changes in international law aimed at strengthening the means of intervention. He concludes by calling for efforts to seek a clearer understanding of the current international law pertaining to R2P especially in the different regions of the world.

Professor Higashi provides some interesting insights into the working and decision making of the United Nations Security Council by examining the voting patterns of the BRICS countries (Brazil, Russia, India, China, South

Africa) on the resolutions on intervention in Libya and Syria. His research reveals that even though the 5 countries try to coordinate their stance in the Security Council, their final vote tend to split IBSA countries (India, Brazil, South Africa) from Russia and China. The latter 2 countries traditionally oppose humanitarian intervention due to their suspicions that the real motive is indeed regime change and because of internal challenge while the IBSA countries are driven by a greater attachment to human rights and democracy, legacy of their own historical trajectory of anti colonial struggle and opposition to military rule or apartheid. Professor Higashi submits that Japan while sitting on the Security Council should take this differing approach into account and consult more frequently with IBSA countries in order to act as a bridge with western countries on decisions regarding humanitarian interventions. He calls on Japan to support the principle of R2P while joining hands with others to implement the third pillar of R2P, which is the Responsibility to Rebuild.

Professor Dobos in his paper explores the morality of unilateral humanitarian interventions not sanctioned by the Security Council. He starts by establishing that UN authorisation carries “indirect necessity” in that it allows a more impartial examination and validation of the facts on the ground (gravity of the human rights situation and urgency of action) and legitimacy in the eyes of the citizens of the intervening state. This he argues is likely to enhance the prospects of success of the intervention. However in the face of egregious human rights violations would a unilateral intervention be morally wrong even if illegal in international law? Such intervention according to Prof Dobos would constitute an infringement (not a violation) on the rights of other nations co-contractors of the Charter of the United Nations and its provision on the exclusive authority vested in the Security Council to decide on humanitarian intervention but nevertheless would be consistent with the imperative to prevent gross violations of human rights. This latter commitment according to Professor Dobos takes moral priority over the imperative to honour international agreements.

For Air Vice Marshal Kapil Kak, the debate on humanitarian intervention in Asia must be examined in the context of “the ongoing geo strategic shift of global power and influence from Europe North-Atlantic to Asia” investing Asia

with greater responsibility in world affairs. In this respect a restructuring of the United Nations Security Council is “an idea whose time has come” and in it Asia must have a “commensurate say”. According to Kapil Kak this would ensure a more representative and holistic consideration of key issues and reflect a concept of Humanitarian intervention that is “more universal, non-western-centric, and farthest removed from what is termed the colonial logic of the “white man’s burden”.

Going beyond the strictly defined humanitarian intervention, Professor Shinoda explores the reasons why foreign interventions whether military or judicial are not embraced by Asian countries:” It is difficult to find any indication of humanitarian intervention pursued by Asian countries anywhere in the world. And in most cases Asian countries are unwilling to accept large size peace keeping operations.” This trend also applies to civilian oriented political and judiciary operations in conflict ridden areas (i.e. participation in the International Criminal Court). This attitude according to Professor Shinoda stems from the lack of the tradition of the “theoretical framework of liberalism in Asia”. Revolutions in Europe and in America often supported by foreign interventions derived their legitimacy from the “supreme power of the people” and their right to the “appeal to heaven”, namely the “right to resistance and revolution in case of abuse of governmental power” (John Locke). Which in turn could justify some form of outside intervention to help protect civilians. By contrast, Prof Shinoda asserts that Asian revolutions were not revolutions based on liberal values: “The political aspirations are for state-led economies as a source of political order.” Furthermore, at the geopolitical level the end of the cold war did not have in Asia the negative impact witnessed in Africa and Europe, thus keeping the pregnancy of humanitarian intervention at bay.

In her paper, Attorney Torres Cortes examines the concept of sovereignty vis a vis the ASEAN evolving construction of Human rights through exploring both the prospects and limits of humanitarian intervention within the AICHR framework. Assessing the Terms of Reference of the Commission against the requirements of humanitarian intervention (just cause, last resort, proportionality, and positive outcome), Torres Cortes stipulates that the principles of the AICHR would rule out intervention due to the rule of

consensus in deciding on the existence of a humanitarian emergency and on military action. However the author argues that presenting “the glass half empty presents only one side of the coin.” The adoption of an “evolutionary approach” to the development of the human rights agenda indicates that change is possible. First the Charter mandates ASEAN to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights and subsequent human rights instruments, including the international humanitarian law. Second, principles of sovereignty and non interference have evolved in the region as exemplified by the reactions of ASEAN member states to the “saffron revolution” in Myanmar and with the moves to find alternatives to “constructive engagement” through concepts such as “constructive intervention” (Malaysia), “flexible engagement” (Thailand) and the adoption of “enhanced interaction”. Ultimately Attorney Torres-Cortes asserts that the direction of change will depend on how governments, civil society and academe will rise to the challenge of utilizing the opportunities presented by the AICHR and ASEAN.

Professor Patnaik emphasizes that South Asia despite its rich ancient cultural and historical common traditions has not developed a common approach to regional or international issues. Instead, the colonial experience, the upheavals of the decolonization process, the religious and ethnic factors and individual states’ relations with outside powers have impacted on each state perspectives on international law including issues of use of force and humanitarian intervention. All states in the region (India, Pakistan, Bangladesh, Sri Lanka) share in a common attachment to the principle of sovereignty and non interference and to the need to exercise caution on the development of the concept of R2P. Analyzing the statements made by the countries of the region in the United Nations debates on R2P, Professor Patnaik noted that India stresses the need to take military action on a “case by case basis” in cooperation with relevant regional organizations and as a last resort. Pakistan calls for greater attention to be paid to preventive measures to avoid future international conflicts by addressing root causes such as underdevelopment and poverty. Sri Lanka cautions against the risks of a selective application of the R2P and highlighted the need for regional initiatives focusing on the “history, culture, and value systems of the region”, while

Bangladesh insists on the primary responsibility of the individual state. In other words while states in the region agree with the principle of the need to protect human rights they are wary of the modalities by which protection ought to be triggered conditioned and regulated in order to eventually benefit people.

As to Professor Bojun Li, he squarely rejects the concept of humanitarian intervention which he qualifies as being “conceptually obscure and legally controversial”. He argues that it is illegal in the sense that it is not supported by any international treaty including the United Nations Charter or customary international law; it is illegitimate due to the selfish motives of the interveners leading to manipulations of the facts on the ground of misuse and pretext for regime change. Furthermore, experience has shown the limits of the use of foreign military means in addressing local conflicts and needs for reconstruction. Professor Li concludes by asserting that forcible intervention in humanitarian crises is more likely to be a short term palliative that does little to address the underlying political causes of the violence and suffering.

Finally Iyas Salim, PhD candidate at Doshisha University, focusing on the current conflict in Syria, contends that western military intervention is not an option in that it could spark a civil war. He advocates the implementation of the traditional Islamic principle of “Hilfal Fidul or Alliance of Fidul” whereby through the unity of the opposition, outreach to all segments of the Syrian people including the Alwite minority and the support of a coalition of Arab countries and Turkey, atrocities by the regime could be stopped. Traditionally the term Hilfal Fidul refers to the “alliance or coalition of certain tribes and social representation in stopping crimes and establishing justice”.

This collection of essays is the first of its kind that tries to engage scholars from Asia in a debate on Humanitarian Interventions. As it shows, further work is required in terms of clarification of the concept in order to ensure that scholars can provide policy makers with useful inputs to feed into the international debates. The initiative of Doshisha University in this regard is welcome and should be encouraged.

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