

The Debate on Humanitarian Intervention

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When a massive and systematic violation of basic human rights is committed by the authorities of one state, can other states intervene forcefully to halt the violation? Since the North Atlantic Treaty Organisation's (NATO's) military intervention in Kosovo in 1999, the issue of what is now commonly called humanitarian intervention has become one of the most contentious subjects in managing contemporary international relations. Conspicuous in the argument on Kosovo has been the fact that most Asian countries were opposed to, or reluctant to endorse, the use of force by NATO against the Federal Republic of Yugoslavia.

The Force, Intervention, and Sovereignty Project grew out of the recognition that there was a distinct need to clarify the positions of Asian countries to the extent possible, so that any future dispute between them and members of the Atlantic alliance on the matter of international intervention—albeit defined as humanitarian—would not develop into a situation affecting the peaceful global environment. The project was designed to promote a comparative analysis of the views held on intervention by China, India, Japan, South Korea, and member states of the Association of Southeast Asian Nations (ASEAN). In the following pages, the project members have identified areas of consensus and divergence and set forth practical policy recommendations.

ASIAN VIEWS

In Asia, the subject of both international and humanitarian intervention has elicited attitudes ranging from negative to ambivalent, reflecting interrelated factors shared to varying degrees, including historical experience, developing-country status, small- and/or weak-state status, problems with the West, and the concept of the "Asian way." Prior to World War II, most Asian countries were colonized or subjected to foreign domination, which historical experience has left them sensitive to foreign intervention and jealous guardians of their sovereignty.

Inasmuch as the West is considered the advocate of democracy, human rights, and the

rule of law—so-called Western values—some Asian countries reject intervention by Western countries as an imposition of Western values on Asians, or more Western dominance. While debate continues on the question of whether a cohesive set of Asian values does, in fact, exist, there is certainly a vague pattern of behavior that is recognized by many as the Asian way. Often cited as a typical instance is the ASEAN policy of nonintervention.

Considering that ASEAN is composed of a diverse set of nations in terms of size, political system, stage of economic development, and religious faith, one is inclined to appreciate and value the pragmatism of the policy. Moreover, the fact that these developing countries have a common history of having been dominated by the West, are relatively weak states, and have diverse identities while at the same time being distinct from the West makes them skeptical of the notion of humanitarian intervention in general.

China

On the matter of international intervention, Jia Qingguo explains in chapter 2 that China's posture is a reflection of "the nature of the existing international system; China's experience with the outside world in modern times; its international status; and its domestic politics." Beijing has found itself best able to defend its interests in international relations by adhering to the code of national sovereignty, in the recognition that states will inevitably assert these rights in their own separate ways. While this view has drawn ridicule from detractors at home and abroad, Jia appeals for our understanding of it and the historical constraints on which it is based.

Beijing has opposed international intervention in its internal affairs since 1949, the birth of the People's Republic of China, in the belief that the sovereignty of nation-states and the right of developing countries to be free from foreign intervention in their internal affairs should be respected by the international community, according to the precepts of international law and standards of morality. While it is the duty of each country to protect human rights within its borders, no country has the right to "assume moral superiority and impose its preferences on others," each country having the right to determine how it shall protect human rights "in light of its economic, social, political, and cultural priorities." Thus, China was one of those countries most critical of NATO's intervention in Kosovo, denouncing the act as a flagrant violation of international law because it did not have the

approval of the UN Security Council.

In sum, Jia throws down the gauntlet: China's position is consistent with international law; international intervention has no legitimate basis and violates the Charter of the United Nations; such intercession is mostly conducted to further the interests of the intervening, rather than the target state; and the net result is that existing problems are usually exacerbated in terms of the proclaimed objectives. Historically, intervention in the internal affairs of developing countries has been either the handiwork of developed countries or at their instigation. Still in the process of nation-state building, developing Asian countries are socially and politically fragile, and some are experiencing ethnic and religious minority problems.

In the sense that weak states do not intervene forcefully in the affairs of powerful states, most countries in Asia consider themselves in a weaker position relative to the developed countries, making them more concerned about being targeted for intervention than about intervening. Although the stronger of the developing countries may be tempted to intervene in the affairs of weaker states—China and India may harbor that temptation—their position relative to the West is for the most part inferior in the power equation. The image of the West as more powerful is particularly potent when the West is associated, as is generally the case, with the United States, the world's sole superpower.

Japan

Japan, although never colonized, was a colonial power that committed acts of aggression against Asian states. This historical legacy has, as Murata Koji relates in chapter 3, left Japan averse to the notion of the use of force and, by extension, intervention.

As stipulated by its 1947 Constitution, Japan has renounced the use of force, and is sensitive to the charge of intervention into the domestic affairs of other states. Thus, the official Japanese position on the NATO military intervention in Kosovo was that of understanding, not outright endorsement or approval. Japan did not endorse NATO's action because of the perceived legal difficulties surrounding justification of the action under established international law. The Kosovo case was markedly different from the case of the Gulf War in 1990, when Japan approved and supported the military action by the multilateral force against Iraq, since the United Nations Security Council had authorized the multilateral

force to exercise the right of collective defense against the sovereign state of Kuwait.

The nub of the issue appears to revolve around whether the principles of state sovereignty are seen to be violated when international intervention seeks to halt the actions of a government involved in infringing human rights or to intercede, for humanitarian reasons, in a civil war. The conditions and means of intervention are key. Once again we are reminded that in such theaters of conflict as Kosovo and Afghanistan, the use of the term humanitarian may be difficult for some to justify.

Muddying the waters of Japan's official response both to incidents of international intervention and the call for Tokyo to assist, as a willing partner, in such intervention, is the government's current interpretation of its constitution, which is open to various interpretations with regard to the role of the Self-Defense Forces (SDF) and the country's right to self-defense. Because the government believed that the country has the right to collective self-defense, but cannot exercise it, it was not until the early 1990s that it made any effort to participate in UN-sponsored peacekeeping operations (PKOs). In 2002, as a result of the gradual change in the country's perceptions of security and under the revised PKO Law, 690 SDF personnel were dispatched to East Timor, marking a sea change in the country's stance on intervention.

South Korea

In chapter 4, Kim Sung-han reminds us that the major threats to human rights have, during the post-cold war era, come from quasi and failed states in which there has been civil strife and complex emergencies. Even though at such times intervention has been carried out in a bid to limit human suffering and death, it should be borne in mind that intervention, involving the use of force by one state within the borders of another without the latter's concurrence, violates the sovereignty of the state in which the intervention occurs and, without the authorization of the UN Security Council, is illegal unless justified as self-defense.

Over the centuries, emphasis has moved from religious toleration to minority rights, human rights and, more recently, to human security, which includes "security against economic privation, an acceptable quality of life, and a guarantee of fundamental human rights," all of which aspects are recognized as basic if there is to be peace and stability. Kim underlines the paradox that, while nonintervention is considered vital to the functioning of

international society, states have, nevertheless, intervened because of the oligarchic nature of international relations that was strengthened at the end of the cold war and left both the United States as the sole superpower, and military force the linchpin of its foreign policy. Since the end of the cold war, the United States has, thus, justified humanitarian military intervention as a way of promoting peace.

And so it was that, in March 1999, NATO used force against Yugoslavia, also on the grounds that to do so was necessary to avert an impending human catastrophe. However, the systemic violations of human rights in Kosovo were not halted by NATO intervention. In stark contrast, however, the intervention in East Timor reaffirmed the long-accepted rules of international intervention, for Indonesia gave its consent, the UN Security Council its authorization, and all the criteria for legitimate humanitarian intervention were met.

Kim also raises the matter of human security, pointing out the importance of controlling knowledge and information. Networking and coalition building could help address human rights abuses, international crime, and human security issues, thereby bolstering democracy.

The Korean position on intervention is somewhat similar to that of Japan, in the sense that South Korea is a member of the Organization of Economic Cooperation and Development (OECD), a grouping of industrial democracies respecting democracy, human rights, and the rule of law. Although South Korea was colonized by Japan, the attitude of its people toward humanitarian intervention is, nevertheless, more positive than in most other Asian countries. Active South Korean participation in the peacekeeping operation in East Timor exemplifies this. At the same time, South Korea has its own problems related to North Korea, concerning which it would seem a case can probably be made for human rights violations.

India

As Jasjit Singh expounds in chapter 5, intervention is carried out by the strong against the weak, and by the developed countries of the West against the developing countries of the South. He also reminds us that “[i]t is important to note that there is as yet no viable alternative to the system of the sovereign state,” and that with the world order having become polycentric, the principle of sovereignty should be strengthened. Coping with the problem of human rights violations requires looking into its causes and taking preventive measures, not resorting to military means. “The needs of humanitarian intervention must be met with

assistance aimed at building the nation-state, rather than military intervention in its name.”

Although support has been forthcoming from developing countries for international intervention by Western countries when carried out under the auspices of the United Nations, problems have arisen in such cases when the United Nations has been marginalized, as happened in Kosovo.

The bitter criticism and strong reservations concerning NATO’s action in Kosovo notwithstanding, no country in Asia seems to be categorically rejecting the notion of humanitarian intervention as such. India militarily intervened in Pakistan in 1970, and China supported anti-government forces in South Africa for many years. While both cases could have been motivated by strategic and political considerations, humanitarian factors were also cited as justification.

ASEAN

ASEAN member countries, comprising mainly small to medium-sized states, have been disquieted and ambivalent about NATO’s actions in Kosovo. Since the use of force is strictly limited under international law and the NATO allies failed to seek specific UN authorization, many ASEAN member countries saw the Kosovo situation as a matter of power politics rather than a moral question. As Simon S. C. Tay and Rizal Sukma eloquently discuss in chapter 6, intervention—albeit for humanitarian reasons—has become a significant aspect of the ASEAN notion of state sovereignty as, with globalization and the related transformations that have taken place in some ASEAN countries, there has arisen a need for cooperation beyond the interests of states to include broader human concerns.

The authors explore a range of ASEAN views, from the changing context of nonintervention debate in ASEAN states to the fact that member states are becoming increasingly differentiated. Thus, while the ASEAN policy of nonintervention—that benign aloofness and tolerance that one country maintains vis-à-vis the internal affairs of another—remains firmly in place, efforts in the direction of flexible engagement and acceptance of enhanced interaction are proceeding. For example, the role played by the Philippines and Thailand in East Timor peacekeeping efforts suggests that some ASEAN countries are more positive about humanitarian intervention than others. Bearing this in mind, it may be necessary, the authors suggest, “to reinforce the acceptance of diversity as a basis

of cooperation.”

Meanwhile, the possibility that solutions might be imposed on smaller, weaker states by larger, more powerful regimes continues to loom large in the ASEAN viewfinder, as concern remains that the United States, either unilaterally or with allies, might choose to forcefully intervene in yet another country, on a pretext related to the defense of human rights.

CONTRADICTION OF TWO NORMS

The critical issue in any debate on humanitarian intervention is the need to harmonize intervention with the principle of sovereignty, which in essence requires that a sovereign state be treated as an independent political unit, its territorial integrity be respected, and it be allowed to pursue its domestic affairs without external interference. These stipulations are essentially those regulating inter-state relations that have evolved since the Treaty of Westphalia and have been codified as core principles of international law.

In terms of intra-state affairs, however, sovereignty represents the result of a social contract between the government and the governed/citizens to ensure good governance. Some of the intra-state components of sovereignty already have been embedded in humanitarian norms—such as in the case of the United Nations’ 1948 Universal Declaration of Human Rights, the Genocide Convention of 1948, and the four Geneva Conventions signed in 1949—but it is only in the post-cold war world that democracy, human rights, and the rule of law have been recognized by the international community as principles ensuring good governance with legitimacy and accountability.

It is against this background that the debate on the legitimacy of humanitarian intervention must be continued, in order to clarify whether military intervention can be justified on the basis of general international law.