

The Legitimacy of Humanitarian Intervention in International Society of The 21st Century

「21 世紀の国際社会における人道的介入の正当性」

Yukio Kawamura[†]

人道的介入の問題は国際社会、国際機構、国際法学会における重要な議論的的となっている。1990 年代以降、国連安全保障理事会は紛争地域にたいする討議と決議を通して、幾つかの人道的介入の事例を経験した。そこからの成功例と失敗例を検証しながら、国際社会では 21 世紀に入り、改めて正当性を持つ人道的介入について多くの議論がなされてきている。米国系の学者はより積極的な人道的介入を主張する傾向が強く、欧州系の学者はより慎重姿勢を見せる傾向にある。本論文は著者の国連本部法務官の経験及び、オックスフォード大学交換研究員としての研究成果と予防外交研究会での議論を踏まえて、今後、人道的介入の正当性を支えるための定義について幅広い検証を行った。次に、人道的介入に関する関連法規は国連憲章をはじめ、多くの条文が存在するが、特に、正当性を抽出できる国連憲章の条文について検討を加えた。そしてどの条件の下で、人道的介入を実施すれば正当性が担保されていくのか世界中で提案されている議論の中から、正当性と人道的介入の観点で注目すべき事柄を論じたものである。

I. Introduction

The United Nations faces a very difficult challenge in terms of the continuity basis for making peace-building and peace-keeping in conflict areas. Now the international organization must create a new international system for stability and order by cooperation on multilateral basis.

The issue of humanitarian intervention has generated one of the most main concerns in international relations over the past decade, among both theorists and practitioners. The debate is the alleged tension between the principle of the state sovereignty, a defining pillar of the United Nations system and international law, as well as evolving international norms related to human rights and the use of force.

The question of intervention on humanitarian basis in the case of international conflict also has been a very controversial issue in international law societies. For example, European scholar groups have dominated the debate in considering to increate several conditions in order to clear the decision for intervention on a humanitarian basis.

In the post-Cold War era, debates regarding humanitarian intervention have become more frequent and more public, and the issue has moved to the very centre of the international political agenda.

The purpose of this article is to address a comprehensive overview of the key concepts central to this debate, an analysis of the major sources of controversy, and an exploration of key criteria studies which highlight the legitimacy of humanitarian

[†] 早稲田大学大学院アジア太平洋研究科教授

intervention in international society.

II. The Existing Definitions of Humanitarian Intervention

Humanitarian intervention necessarily challenges the statist bias in international relations and international law, and as states have assumed more formal legal powers and entitlements, the tension between the rights of states and the rights of the individuals within them has increased.

The use of an essentially positive adjective humanitarian to describe an intervention largely determines the parameters within which the evaluation of this intervention can proceed. An intervening party that declares its actions to be “humanitarian” is explicitly attempting to legitimize these actions as a matter of moral, rather than selfish and strategic, and necessary actions on international order.

The recent shifting conception of international order had a various impacts on the governance of the international security and humanitarian orders. There was a change in the prevailing belief regarding what kinds of arrangements would be the best maintain the stability of international society. The international humanitarian order, almost by definition, divided the world between those who were too weak to help themselves and who those now had responsibilities to save them.¹

In the reflection of such complexity on the area of international order, the International Commission on Intervention and State Sovereignty (ICISS) has discussed and agreed the following definition on humanitarian intervention:

[action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective . . . including all forms of preventive measures, and coercive intervention measures—sanctions and criminal prosecutions—falling short of military intervention]²

For the implementation of the pragmatic approach based on the above-mentioned definition by the ICSS, European scholar groups have interpreted that military action should be also prescribed as follows:

[Military action taken by a state, group of states or nonstate actor, in the territory of another state, without that state’s consent, which is justified, to some significant extent, by a humanitarian concern for the citizens of the host state.]³

These composite definitions are clearly not a legal definition, nor is it without contention, but it serves to differentiate ‘humanitarian intervention’ from ‘humanitarian action’ and ‘strategic military intervention’, and thus significantly narrows the parameters of enquiry.⁴

III. Un Charter: Articles on Humanitarian Intervention and The Security Council

The former Secretary General, Boutros-Ghali described in the report of “Agenda for Peace” issued in 1992; “The authority of the United Nations system to act in the field [human rights] would rest on the consensus that social peace. There is an obvious connection between democratic practices—such as the rule of true peace and security in any new and stable political order.”⁵ There has always been tension between the UN’s role as representative of sovereign states and its role as representative of peoples and individuals who have universal rights and deserve the protection of international community.

For most of its history, the United Nations has resolved the tension in favor of state sovereignty, but the significance of these reports advocate a change in the direction of greater balance for implementing of international intervention.

The United Nations is the only international organization that approximates universality and is invested by states as having some degree of moral and universal authority.

The facts that the Security Council of the United Nations has the power to authorize interventions, and has often done so since 1990, have contributed to a sense that the Security Council actually matters.⁶

The long standing question of the Security Council composition has also been affected but its practice of intervention. There have been accusations that there has been selectivity indecisions about intervention due to the right of “veto” of the five permanent member states.⁷ The right of such “veto” might be excluded from the decision matter of intervention on humanitarian basis. It has sometimes proved difficult to reach decisions in a Security Council with fifteen members, as well as five nuclear armed member states with veto. For example, in Bosnia in during 1992–5 and in Rwanda in 1994 were not so much lack of capacity of the Security Council to reach decisions for humanitarian intervention, however, it is likely that it would be harder to achieve such results in an enlarged Security Council in the future. This suggests that if the much-needed expansion of the Security Council does take place, it will have to be accompanied by other changes to improve its capacity, and of its member states, for taking and implementing decisions promptly.⁸

At the center of the freeze-frame is Article 2(4) of the UN Charter, which prohibits states’ recourse to force except in self-defense against attack or with prior authorization by the Security Council. Furthermore, humanitarian intervention is additionally differentiated from what may be described as strategic military intervention. In this respect, the UN charter is clear about the prohibition of use of force in international orders. This principle finds its clearest expression in Article 2(4): “All members shall refrain in their international relations from the threat or use of force against the territorial integrities or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.” At the same time, the Secretary-General also stressed the Security Council’s primary responsibility for maintaining peace and security and the urgent need for unified, effective Council action in defense of human rights in the future.⁹

The principal of UN organs deal with, and try to diminish the risk of war and incidence of violence on human rights. To this end, the United Nations have tried to implement the processes and procedures spelled out in the Charter and, in doing so, adjust and adapt its text to respond to the exigencies of each challenge to better international order.

Under Article 39 of the UN Charter, the Security Council has legal authority to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and to decide on appropriate measures “to maintain or restore international peace and security.” Moreover, the drafters of the UN Charter declined to limit or constrain the Council’s authority by defining these terms. Instead, after considerable discussion, they deliberately left the terms “threat to the peace, breach of the peace, or

act of aggression” undefined to give the Security Council flexibility in responding to new and unforeseen circumstances. The notion of “threat to the peace” is now interpreted as including essentially internal situation that might degenerate into an international conflict.¹⁰

Accordingly, the interpretation for the matter of “threat to the peace” recognized under Article 39 of UN Charter could be more flexible for implementation of humanitarian intervention.

IV. New Criteria for Decision Making on Humanitarian Intervention

Humanitarian activity after the 1990s suggests that certain claims particularly human rights claims, now trump sovereignty and legitimize intervention in ways not previously accepted.¹¹

The contemporary debates including humanitarian intervention has tried to establish criteria for decision making in the Security Council. In addition, in order to codify the criteria to unilateral humanitarian intervention, the United Nations has discussed and can authorize humanitarian intervention to overcome the problems with the use of Chapter 7 of the UN Charter. Since the beginning of the 21st century, the importance of the legitimacy of humanitarian intervention in international society has been emphasized.

For example, in the High Level Group Meeting of the United Nations has been discussed and concentrated the following five basic criteria on the implementation for the humanitarian intervention:

1. Seriousness of threat
2. Proper purpose
3. Last resort
4. Proportional means
5. Balance of consequences¹²

Subsequently, the UN High Level Panel on Threats, Challenges and Change outlined the above “five basic criteria of legitimacy” which they argued should guide for the Security Council. The criteria reflect many of the sets of criteria previously discussed.¹³ The UN Panel acknowledged that these criteria did not constitute agreed conclusions with push-button predictability, and offered them as means to maximize the possibility of achieving Security Council consensus around when it is appropriate or not the use coercive action.¹⁴

The UN Charter gives the Security Council significant powers but does not outline how the effectiveness of the Security Council should be measured.

The balance between state sovereignty and individual right can be maintained by paying close attention to the set of principles known as just war doctrine. These principles can help political leaders to decide by answering the following questions, when to use military force against sovereign for the purpose state in the service of human rights.

1. Is the intervention intended to help the needy population ?

2. Has the UN or (less desirably) another intergovernmental body authorized the intervention?
3. Is military force the last resort, all reasonable alternatives having been tried or considered?
4. Is the intervention proportionate to the need?
5. Is there a reasonable chance of success?¹⁵

As to the above-questions in considering the nature of the relationship between human rights and the state, the logical steps that put individual right before state right and allow intervention when a state does fulfill its duty to protect its citizens should be concerned.

V. Conclusion

The matter of humanitarian intervention is the most important means of addressing fundamental problem of international organization on the relations between law and power.

As interesting fact is that for the past several years, international legal scholars have referred to the concept of legitimacy not only in those articles analyzing the legitimacy of the Security Council, but also in those discussing the legality and constitutionality of various activities by the Security Council. It has increasingly stepped into legally grey areas from the perspective of the UN Charter. Increasing references to the concept of legitimacy in legal literature would be a clear indication that the legality or constitutionality of various activities by the Security Council is ambiguous or fragile at best.¹⁶

In conclusion, we have focused the existing relevant definition of humanitarian intervention prescribing under the ICISS. We have also reviewed the question of interpretation under the relative articles of UN Charter specially wording of Article 39. As pointed, the notion of “threat to the peace” is currently interpreted as including essentially internal situation that might degenerate into international conflict. We have suggested, to avoid the abuse of “the right of veto” by five permanent members of the Security Council, the matter of intervention on humanitarian basis should be decided majority bases of Security Council without exercising of veto power. Finally, we have discussed the new criteria as mentioned in section four which presented by UN High Level Group meeting and recent idea to promote the faster discussion and decision making for humanitarian intervention in the legitimacy by the United Nations.

Notes

1. Barnett, Michael N. “The International Humanitarian Order,” Routledge Publisher, 2010, p 8.
2. International Commission on Intervention and State Sovereignty (2001), *The Responsibility to Protect*, p 8, <http://www.iciss.ca/pdf>
3. Hehir, Aidan, “Humanitarian Intervention: An Introduction,” Palgrave MacMillan, 2010, p 20.
4. *Ibid*, p 20.
5. Boutros Boutros-Ghali, “An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, UN Documents,” A/47/277-S/24111, United Nations, 1992, para17
6. Welsh, Jennifer M. “Humanitarian Intervention and International Relations,” Oxford University Press, 2006, p 90.

7. *The right of “veto” holding by p-5 U. S. A, Russia, China, U. K and France*
8. *Welsh, supra*, p 91.
9. Holzgrefe, J. L. and Keohane, Robert O. “Humanitarian Intervention: Ethical, Legal, and Political Dilemmas,” Cambridge University Press, 2003, p 238
10. Cociand, Jenn Marc and Heiskanen Veijo, “The Legitimacy of International Organization”, United Nation University Press, 2001, p 315.
11. Finnemore, Martha “The Purpose of Intervention,” Cornell University Press, 2003, p 21
12. The Report of UN High Level Panel on Threats, Challenges and Change, UN Document A/59/565, 4 December 2004, pp. 57–58
13. Hehir, supra, p 100
14. Seybolt, Taylor B. “Humanitarian Military Intervention: The Conditions for Success and Failure,” Oxford University Press, 2008, p268
15. Ramsbofthm, O. and Woodhouse, T., Humanitarian Intervention n Contemporary Conflict, Policy Press, UK, 1996 p 23
16. *Ibid.* p 73

References

1. Buzan, Barry. *People, States & Fear: An Agenda for International Security Studies in the Post-Cold War Era*. Second Ed. (Colchester: ECPR Press, 2007).
2. Finnemore, Martha. *The Purpose of Intervention: Changing Beliefs about the Use of Force*. (New York: Cornell University Press, 2003).
3. Hehir, Aidan. *Humanitarian Intervention: An Introduction*. (Hampshire: Palgrave Macmillan, 2010).
4. Hoffman, Peter J. and Thomas G. Weiss. *Sword and Salve: Confronting New Wars and Humanitarian Crises*. (Lanham, Maryland: Rowman & Littlefield Publishers, 2004).
5. Holzgrefe, J. L. and Robert O. Keohane. *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. (Cambridge: Cambridge University Press, 2003).
6. Jackson, Robert. *The Global Covenant: Human Conduct in a World of States*. (New York: Oxford University Press, 2000).
7. Ramcharan, Bertrand G. *Preventive Diplomacy at the UN*. (Bloomington: Indiana University Press, 2008).
8. Sandel, Michael J. *Justice: What's the Right Thing to Do*. (London: Penguin Books, 2010).
9. Schellnhuber, Hans Joachim, and Mario Molina, and Nicholas Stern, Veronika Huber, and Susanne Kadner Ed. *Global Sustainability*. (Cambridge: Cambridge University Press, 2010).
10. Seybolt, Taylor B. *Humanitarian Military Intervention: The Conditions for Success and Failure*. (New York: Oxford University Press, 2008).
11. Shelton, Dinah Ed. *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*. (New York: Oxford University Press, 2000).
12. United Nations Office for the Coordination of Humanitarian Affairs. *The Humanitarian Decade: Volume I—Panel Discussion on the Occasion of the Tenth Anniversary of General Assembly Resolution 46/182*. 2004.
13. United Nations Office for the Coordination of Humanitarian Affairs. *The Humanitarian Decade: Volume II—General Assembly Resolution 46/182: The Development of Practice, Principles and the Humanitarian Framework*. 2004.
14. Walker, R. B. J. *Inside/Outside: International Relations as Political Theory*. (Cambridge: Cambridge University Press, 1993).
15. Weiss, Thomas G. *Military-Civilian Interactions: Intervening in Humanitarian Crises*. (Lanham, Maryland: Rowman & Littlefield Publishers, 1999).
16. Weissman Fabrice Ed. *In the Shadow of ‘Just Wars’: Violence, Politics and Humanitarian Action*. (New York: Cornell University Press, 2004).
17. Welsh, Jennifer M. Ed. *Humanitarian Intervention and International Relations*. (New York: Oxford University Press, 2006).