ETH

Eidgenössische Technische Hochschule Zürich
Swiss Federal Institute of Technology Zurich

**International Relations
and Security Network**

ETH Zurich
Leonhardshalde 21, LEH
8092 Zurich
Switzerland

ISN
ETH Zurich

ISN Special Issue November 2005

Humanitarian intervention: controversial questions

The notion of 'humanitarian intervention' has generated a heated international debate over the past decade. In the wake of the 11 September 2001 attacks on the US, the topic has come under even more discussion. At the heart of the debate lies the tension between the principle of state sovereignty, which is one of the core principles of conventional international law, and the evolving norms related to individual human rights. This newsletter aims to provide an overview of the most controversial questions related to the issue of humanitarian intervention.

According to Article 2 (7) of the UN Charter, the sovereignty of states is a fundamental principle in international relations, and the use of force or threats against another state constitutes a severe violation of the foundations of international public law. The only exception is described in Chapter VII of the UN Charter, which gives the UN Security Council the primary authority to take any measures necessary to 'restore international peace and security'. Therefore, key debates in international law focuses on whether this primary responsibility for global peace and order amounts to exclusive authority, and whether the so-called 'failed states' retain their state sovereignty. Whereas the Security Council is the only global authority with the legitimacy to decide about such measures, many point out its inherent structural flaws, such as the preponderance of the five veto-powers, each of which can prevent an intervention.

However, the notion of 'failed states' is also contentious due to disagreement over terminology. Some observers suggest that if a state is not providing security for its entire population, then the protection of human rights should be the prime consideration. These states are referred to as 'failing' or 'failed' states. But there are no recognized criteria of what determines a 'failed state' (analogous to the definition of a 'state', see Montevideo Convention), since this is a political term with no bearing on international law. No international court or tribunal has ever disallowed the statehood of any country. Moreover, the judicial interpretation of the state criteria is very extensive due to the prominent position of the principle of state sovereignty in international law.

However, recent precedents (Kosovo, Liberia) suggest that a coalition of states may intervene without explicit Security Council approval in the case of grave and large-scale violations of human rights. This kind of humanitarian intervention can be partly justified by its urgency, success, and multilateralism (which reduces the danger of abuse), whereas there is no justification for unilateral interventions (except for self-defense as defined in Article 51 of the UN Charter). Some states advocate the establishment of formal criteria for intervention, but it is unclear who would oversee their implementation. It would be very difficult to interpret such norms, since the question of what constitutes a 'grave' human rights violation is highly subjective and would become highly politicized, regardless of whether it was ultimately decided in the Security Council or by a coalition of states.

Existing international law could be amended to allow for humanitarian intervention to prevent large-scale abuses of human rights. However, international law has also to establish rule-based mechanisms and frameworks to prevent abuse of this measure. 'If power is used to do justice, law will follow, but if power is used to do injustice, what follows then?' (CSS Strategic Briefing Papers, Vol.3; Part 1: June 2000).

Babajalscha Meili
ISN Editor

1.1 Government / official documents

International Court of Justice
This judgment by the International Court of Justice (ICJ) holds that humanitarian intervention is only justified in very limited cases. Furthermore, the ICJ concludes that the invasion of Iraq by the UK and US was not justified under the authority of existing UN resolutions. The ICJ concluded that a further UN resolution expressly authorizing the use of force would have been required.

1.2 International organizations

UN Charter
Full text of the UN Charter.

Human Rights Watch
Human Rights Watch offers press releases and reports on the issue of humanitarian intervention in Iraq and other countries.

ICRC
This report by the ICRC on humanitarian intervention concludes that under the current framework, humanitarian interventions can only be justified *post hoc*, and only if a clearly defined set of criteria is met.

1.3 Research / academic reports

Humanitarian Intervention, NATO and International Law – Can the Institution of Humanitarian Intervention justify Unauthorized Action?
This report argues that there is no such institution as 'humanitarian intervention' under international law and whether the establishment of such an institution is legally feasible and politically convenient. Furthermore, this study clearly shows that NATO's military operations in Kosovo were illegal, as they were neither authorized by the UN Security Council nor justified under the principle of self-defense.

Legality, Morality, and the Dilemma of Humanitarian Intervention after Kosovo
This essay deals with questions of legality and morality and the dilemma of humanitarian

intervention after Kosovo, and highlights the primacy of institutions over individual considerations of morality.

Nation State Failure: A Recurring Phenomenon?
This discussion paper by the US National Intelligence Council discusses the alleged 'failure' of states and distinguishes between 'strong', 'weak', 'failed', and 'collapsed' states.

1.4   Media

Failed States und Globalisierung, by Aus Politik und Zeitgeschichte
This essay, published in 'Aus Politik und Zeitgeschichte', discusses the negative effect of the globalization process on nation building efforts in the countries of the developing world.

World Order, Failed States and Terrorism, by Asian Times Online
This website provides a series of articles on the international legal system, precedents for the concept of 'failed states', and the US-led 'war on terror'.