

## **THE RAMAKRISHNA MISSION INSTITUTE OF CULTURE**

### **Humanitarian Intervention : A Challenge To Human Solidarity JAMES MAYALL**

The last decade of the twentieth century opened and closed with crises that were ended as the result of international interventions, ostensibly carried out for humanitarian reasons. Operation Desert Storm, which ousted Iraq from Kuwait in January 1991, was an American-led, predominantly Western, military campaign. But it was mounted with a mandate under Chapter VII of the UN Charter, with the unanimous support of the Security Council, and the enthusiastic backing of all but one of the Middle Eastern states. NATO's bombardment of former Yugoslavia in March 1999 succeeded in forcing the Serbs out of Kosovo after a seventy-nine-day bombing campaign. It was again led by the United States but this time without recourse to the Security Council, and in the face of considerable international criticism.

The Gulf war was initially fought to reverse an aggression not for humanitarian reasons. Indeed, many of those opposed to the war pointed out, at the time, that Kuwait's human rights record left much to be desired. But the aftermath of the war witnessed a humanitarian catastrophe when Saddam Hussein's regime in Iraq put down the northern Kurdish and southern Shiite rebellions against his authority with great brutality. This repression, in turn, set the stage on which the Western powers first established a safe haven for the Kurds within their own regional homeland and then attempted to protect the Marsh Arabs by the imposition of an air exclusion zone. These actions took place in a country, whose aggressive designs against a neighbour has been legally repulsed, but not in one whose sovereignty or territorial integrity had been formally revoked.

Not only were these interventions justified on humanitarian grounds, their 'success' gave rise to the hope that, in the post cold-war climate, it would prove possible for the international community, acting through the Security Council, to intervene in civil conflicts to protect the victims of sustained human rights abuse, even when the perpetrators were their own governments. Despite this enthusiasm, from the start there were dissenting voices. For this reason, the Western powers relied, somewhat dubiously, on previous Security Council resolutions to justify their actions within Iraq—they knew that several non-permanent members, including India and Zimbabwe would have opposed any resolution that legitimised interference in the domestic affairs of a sovereign state and that China might well have vetoed it. By contrast, the NATO intervention in Yugoslavia was justified as a humanitarian operation from the start. In the British Defence Secretary, George Robertson's words, it was fought 'to avert a humanitarian catastrophe by disrupting the violent attacks currently being carried out by the Yugoslav security forces against the Kosovo Albanians and to limit their ability to conduct such repression in the future'.

On closer inspection, the two episodes reveal more continuity than change in the theory and practice of humanitarian intervention. It is true that, in Kosovo, the United Nations was only involved at the close of the campaign, where in Kurdistan the Western powers argued that their actions were covered by a previous Security Council resolution, passed in the context of the war over Kuwait. But, more significantly, in neither case were they prepared to seek a new Security Council Resolution under Chapter VII, for fear—and in the latter case the certainty—of facing a veto.

In the period between the Gulf War and the Kosovo crisis, the United Nations was involved in an unprecedented number of conflicts—fourteen in Africa alone. The majority were intra rather than interstate conflicts and UN intervention was driven by the need to provide humanitarian relief, alongside, and indeed as an essential ingredient of, more traditional peace-keeping and peace-making functions. However, most of these operations were based on Chapter VI mandates. In other words, they depended on the consent of previously conflicting parties, and should not strictly speaking be classified as humanitarian interventions. In the minority of operations, which were based on a Chapter

VII mandate—ie, those in Somalia, Bosnia, Rwanda, Haiti and Albania where the intervening states were authorised to use force to achieve their humanitarian objectives, opinions differ widely on whether the experiment should be counted a success.

In Bosnia, the most protracted of these conflicts, the war was only ended after the United States had taken over the diplomatic initiative from the UN and the peacekeeping operation had been taken over by NATO. Moreover, the peace conference held in Dayton Ohio in November 1995 was facilitated by the United States and its allies turning a blind eye to Croatia's ethnic cleansing of the Krajina, an action that was hardly consistent with the humanitarian objectives for which the UN operation had originally been established. In any event, following the signing of the Dayton Accords, the major powers seemed disinclined to continue the debate about the rights and wrongs, and practicality of humanitarian intervention, which had been such a feature of the early 1990s.

The debate was inevitably re-kindled by the NATO action against Yugoslavia over its treatment of the Kosovo Albanians. Its apparent success led the Western media to assume that the issue had been settled. It is my purpose in this lecture to suggest that this was not in fact the case. Western triumphalism—even the more sober assessment that NATO had achieved one of its primary goals, albeit at a very high human cost, should not be allowed to end the debate. After all, it remains uncomfortably true that, most of the refugees, whose return was NATO's major war aim, had been forced out of Kosovo after the beginning of the bombing campaign. The humanitarian motives of the NATO powers were not in doubt (although they clearly had other powerful motives as well). What remained in doubt was whether humanitarian intervention is consistent with the prevailing norms of international society, and, if so, under what circumstances? Before turning to these questions it may be helpful to locate them within the theory of international relations in which they arise.

### **Humanitarian intervention in liberal international theory**

The concept of humanitarian intervention occupies an ambiguous place in the theory and practice of international society. At first sight this may seem counter-intuitive since, in other areas of social life, for example, medicine or public health, advances in welfare and the accompanying reduction of unnecessary suffering could not have been achieved without human intervention. Extreme advocates of *laissez-faire* may cling to the view that social and economic progress has depended on governments refraining from interference in the market, but even a cursory examination of the record will prove them wrong. There is a genuine argument about the balance of private and public interventions, which is most likely to maximise welfare in particular circumstance, but few economists would seriously maintain that economic growth is a purely natural phenomenon. Only in international relations does the concept of intervention retain its sinister reputation.

The reason is not mysterious. It flows from the fact that the modern international system has been constructed on the basis of the doctrine of sovereignty, and its twin entailments, territorial integrity and non-interference in the domestic affairs of other states. Sovereignty is not only the corner-stone of international law but of the diplomatic system. It is sometimes argued that economic globalisation has made this system obsolete—that the money that lubricates the contemporary world is no more respectful of international borders than the tsetse fly. This argument should not be taken too seriously. Trans-national market integration, foreseen by every major political economist from Adam Smith to Karl Marx, may indeed have made it more difficult for national governments to exercise sovereign authority, but it has done nothing to replace them with an alternative structure. In any case, the rules that have been established in an attempt to level the playing field for international trade and monetary transactions—for example under the WTO—have been negotiated and entered into voluntarily by sovereign states. It is misleading to regard all action beyond the borders of the state as intervention. To return to the previous analogy: it is only when a doctor embarks upon a treatment expressly against the will of the patient that intervention becomes problematic. In international society the states are the wilful patients but there are no doctors. Intervention, however, is similarly problematic when it goes

against the sovereign will of the state. Indeed, in international politics the term is normally confined to coercive action to make another government—or armed movement—do something it would not otherwise choose to do.

The states-system which developed in its modern form after the mid-seventeenth century peace settlements that ended the European wars of religion, was a self-help system. It established a quasi-constitutional order that outlawed religious war but was in other respects highly permissive. The formula *cuius regio eius religio*, which can be roughly translated as *to each prince his own religion* is the ancestor clause to the modern non-interference principle, on which these agreements were based. It left sovereigns free to pursue their interests by whatever means they saw fit, up to and including war for reasons of state and territorial conquest. The Dutch international lawyer, 'Grotius, and his followers, kept alive the mediaeval tradition of the just war, including the idea that states should be entitled to intervene in order to prevent oppression and maltreatment in other states. But as the natural law tradition was gradually taken over by the modern conception of positive international law, they became more concerned with developing the concept of a fair fight—*ius in bello*—in war between European sovereigns than with the requirement that the war itself should be just—*ius ad bellum*. Further a-field, for example in the competition between the Dutch and Portuguese to establish a monopoly over the spice trade in the East Indies or in the creation of plantation economies in the new world on the basis of imported African slave labour, the European powers showed little restraint under either head. Non-intervention, it seemed, was consistent with a system of power politics; humanitarian considerations were seldom referred to; and before the end of the nineteenth century were never entertained as a justification for the introduction of outside force into a civil conflict.

All political action involves a contest, not merely to effect outcomes, in other words to shape the human environment according to certain ideas about justice and order, but to do so in an authoritative manner. Politics cannot be divorced from power, but power without authority is bound to degenerate into a conflict in which there is neither justice nor order. This familiar liberal maxim has never stopped ambitious and ruthless men from seeking power for its own sake, but it continues nonetheless to underpin all liberal thought about government and international relations. Its implications in the two spheres, however, are different.

In the domestic sphere, sovereignty can be exercised either by prescriptive right, or under representative arrangements designed to reflect 'the will of the people'. Since the French and American revolutions prescription—most often expressed by dynastic rule—has increasingly given way to various forms of popular sovereignty. But whether rule is exercised by prescription or on the basis of representation, from one point of view makes little difference: either way sovereign powers are ultimately accountable to the people over whom they exercise their authority. In democratic countries they can be removed through the ballot-box; in authoritarian states, if the regime systematically oppresses the bulk of the population—unhappily, minorities are another matter—they will eventually face a popular insurrection. Internally, it is thus ultimately the ethic of responsibility that justifies the self-help system.

Liberal thought has more difficulty in dealing with a concept of self-help at the international level. This is precisely because, until the end of the nineteenth century, once across the border, self-help was more often than not translated as help-yourself. Colonial expansion had not seriously troubled the European conscience because in a mercantilist age it was taken for granted that there would always be winners and losers. A zero-sum world-view might not be very edifying but that was the way the world was assumed to be. Since, under dynasticism, people had at best very limited political and civil rights—and in many countries none at all—European governments did not have to fear charges of double standards.

All this changed in the course of the nineteenth century. Western imperialism was now paradoxically driven forward by the two leading European democracies, Britain and France. For a time, they were

able to justify their enclosure of the non-European world by theories, which sought to explain Western dominance by analogy to Darwin's theory of natural selection. But however convenient, social Darwinism was never convincing. Once, the idea of equality before the law, and equal civil and political rights, had been entrenched at home, it was only a matter of time before the discriminatory treatment of colonial subjects would appear contradictory, not merely to the victims, whose knowledge of their situation was brought home to them by exposure to Western education and values, but to the imperialists themselves.

In *A Few Words on Non-Intervention*, John Stuart Mill defended the British annexation of the independent princely state of Oudh (present day Uttar Pradesh). Mill argued, that, since Britain exercised absolute authority in the surrounding territory, and had, therefore, effectively released the ruler from the necessity of providing for the defence of his own country, it could not simultaneously rely on the doctrine of non-interference, for the destitution into which the ruler had allowed his country to fall. There was, Mill implied a moral obligation on Britain to intervene for humanitarian reasons. While in domestic politics it is held that governments must be held accountable for their actions, in line with the ethic of self help, Mill's argument has not been widely used by those wishing to claim a right of humanitarian intervention. Most twentieth century liberal thinkers have been reluctant to follow Mill's logic, presumably because of the difficulty of distinguishing between humanitarian, and less worthy, motives for intervention. Indeed, at the international level, non-intervention, like non-discrimination in economic affairs, is generally assumed to be an impeccably liberal principle.

With a Millian approach to the problem of humanitarian intervention blocked off, the question has been discussed, on the one hand, in terms of the duties of governments to uphold the inalienable human rights of those under their charge, and, on the other, of the recognition that, the principle of non-intervention notwithstanding, there may be some violations of these rights which are so massive as to justify a breach of the principle under exceptional circumstances. Theoretically, these two positions are not mutually exclusive, but in practice those who stress the first tend to see international law as the primary instrument for developing international society along progressive lines, while those who accept that it is impossible—and indeed undesirable—for the law to cover all contingencies, regard the law as a pivotal institution of international society, but in the final analysis only one of several such institutions. In short, the first group, work within a legalist paradigm, the second within a political one.

The failure of legalism between the two world wars led to a re-assertion of the primacy of politics, and, through the institution of the Security Council, the recognition of the special responsibility of the great powers for international order. However, it was these same powers, which were responsible for promulgating two new international crimes—crimes against humanity and war crimes. It was also the great powers, which, in 1948, secured the passage of the Genocide Convention, which sought to establish the prevention and punishment of genocide as a peremptory norm of international law. It could be argued, therefore, that the post-1945 international society was deliberately re-constructed to uphold the principle of state sovereignty, but also on occasion to allow it to be breached. However, whether as a consequence of the Cold War or for other reasons, between 1949 and 1990 such breaches of the non-intervention rule as occurred—and there were many—were not justified on humanitarian grounds. In those cases where such a defence could most plausibly have been offered—in the Indian intervention on behalf of the Bengali separatists of East Pakistan, in Tanzania's deposition of the Ugandan dictator, Idi Amin, and in Vietnam's action against Pol Pot's genocidal regime in Cambodia—it was not. By 1989 the majority of governments had ratified the Universal Declaration of Human Rights and its two supporting covenants, but this did not prevent them from sheltering, with impunity, behind Articles 2.4 and 2.7 of the Charter.

To summarise the argument so far. After 1945, international society was re-constructed on the basis of an unequal compromise between power and law. Under it, the use of force, other than in self-defence, was to be sanctioned only on the authority of the Security Council and only then when the Council determined that a threat to international peace and security existed and that all alternative means of

settlement had been exhausted. Under the Genocide Convention, there was also provision for a reference to the Security Council, presumably in the expectation—although this interpretation has never been tested—that it would rule that genocide, although carried out within the borders of a state, could nonetheless justify action under Chapter VII of the Charter. In other words, it was tacitly accepted that deciding when to trigger the collective security provisions of the Charter could not be determined by objective criteria, and without reference to the national interests of the major powers.

### **Humanitarian intervention since the 1990s**

If this account of the underlying rationale of liberal thought on intervention is broadly accepted, it remains to ask whether it has been modified by events since the end of the Cold War? The collapse of communism and the disintegration of the Soviet Union was a world historical event, not merely in the trite sense that nobody predicted it, but because its effects were felt throughout the international system. It was followed by a series of violent conflicts in many parts of the world, which, in turn, provided the setting for an unprecedented series of UN interventions. Most of these fell somewhere between traditional peace-keeping and peace enforcement under Chapter VII of the Charter. There are those who argue that none of these operations were either appropriate or successful. Nonetheless, where they followed, rather than accompanied, the negotiation of a political settlement—as in Namibia, Cambodia, and Mozambique—UN forces were able to reinforce the work of humanitarian agencies and contribute to political stabilisation. On the other hand, where the humanitarian catastrophe was the direct result of the absence of any such settlement—or at least one to which the parties were seriously committed—UN intervention probably had more negative than positive results.

The reluctance of the major powers to sanction new peace-keeping operations in the second half of the 1990s reflected this view. It is only partly explained by budgetary constraints. More centrally, it is related to the discovery, in the Somali and Bosnian conflicts, that there was no Chapter six-and-a-half solution. Traditional peace-keeping required the consent of the parties and, particularly where the UN was engaged in active peace-building as well, their confidence in its impartiality. Enforcement, on the other hand, required partiality, at least at the point of intervention and until those responsible for the crisis have been restrained and persuaded to cooperate.

This observation only seems obvious with hindsight. It was perhaps unfortunate that the UN's new role in the security field should have been tested in two of the most intractable civil conflicts anywhere in the world. In former Yugoslavia, once the over-arching federal structure had been removed, the populations of the successor republics refused to accept the legitimacy of their previously internal—but now international—borders. What were formerly inter-state wars (requiring, according to some prominent international lawyers a similarly robust response as had greeted Saddam Hussein's annexation of Kuwait) had all the characteristics of a ferocious civil war, in which compromise fails in the face of the passionate and self-righteous belief of the belligerents in the justice of their respective causes.

The result was that, even under Chapter VII, to which the Security Council resorted, it was impossible to fashion a mandate that would allow the UN to do more than soften the worst consequences of the competitive ethnic cleansing in which all sides engaged. The preferred American strategy, of air strikes against the Serbs, who they identified as the main culprits, had the advantage of not confusing humanitarian relief with peace enforcement, but it left those countries with troops on the ground dangerously exposed to hostage-taking by the Serb-dominated Yugoslav army. The open disagreement amongst the Western powers about how to deal with the crisis inevitably whittled away at the UN's authority.

If the confusion in former Yugoslavia arose from the fact that the overlapping wars were at once civil and international, in Somalia, the collapse of the state had much the same effect. In both countries

social life was reduced to the level of a primitive and anarchic state of war. The international response to the Somali crisis, first under UNITAF, the American-led task force, and its successor UNISOM II, was again framed within Chapter VII mandates, despite the absence of any major international dimension to the conflict. But, in this case, the prospects for the restoration of stability were even bleaker. In Bosnia, the rival Serb and Croat communities seemed determined to make their political and communal boundaries congruent, leaving the hapless Bosnian Muslims trapped in the middle. However objectionable to liberal sensibilities, territorial partition could at least provide a basis for a settlement. It is true, that the partition, which reflected the balance of forces after ethnic cleansing, was contained within a loose confederal institution to retain the illusion of Bosnia's legal personality, and the fiction that international society no longer tolerates the use of force to redraw the political map. However these devices at least allowed the guns to be silenced. In contrast, when the UN finally withdrew from Somalia, it left the situation in the country fundamentally unaltered.

It is important not to exaggerate the extent of the UN's failure in the interventions of the early 1990s. In both Bosnia and Somalia, lives were undoubtedly saved and the level of suffering reduced as a result of the UN presence. In Somalia, where in order to deliver humanitarian assistance, NGOs had to buy protection with money that was then used to purchase the weapons and supplied that fed the conflict, the worst aspects of this vicious circle were broken. The failure was political, not humanitarian: those targeted were not coerced into changing their objectives, with the result that the major powers came to fear being drawn into conflicts, in which their own interests were not seriously engaged, and from which there was no easy escape.

The realisation that civil conflicts could not be resolved on the basis of humanitarian intervention, in the absence of a prior political settlement, had disastrous consequences in Rwanda. When, in April 1994, the Hutu-dominated government embarked upon a systematic genocide of ethnic Tutsi and moderate Hutu, the UN peace-keeping force was scaled down to a point where it could not hope to stem the killing. Moreover, the nineteen countries that had promised troops for a traditional peace-keeping operation, to oversee the implementation of the Arusha Accords, withdrew their offer once it was clear that the Agreement was dead and that the conflict had been intensified.

In these circumstances it was perhaps not surprising the Security Council deliberately refrained from identifying the Rwandan crisis as genocide. To have called the slaughter by its proper name would have made it difficult to avoid intervention. But to do what? In this case the allocation of blame was relatively straightforward, but since the guilty government in Kigali could plausibly claim to represent around 85% of the population, it was unclear on what basis a new order could be constructed, so long as Rwandan society remained divided along ethnic lines.

The failure to take effective action to stop the Rwandan genocide, let alone to forestall it, coincided with the decision of the Security Council to authorise the use of force to restore the elected, but subsequently deposed, Haitian President, to power. In taking this decision, the Council referred specifically to 'the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal *de facto* regime of systematic violations of civil liberties'. For the first time, force was used by the United Nations to change the government of a member state. In this sense, a precedent has been set, and the principle of sovereignty interpreted as effective control, on which the society of states had previously operated, was called into question. But, it was nonetheless the American interest in stemming the flood of Haitian refugees to the United States, rather than humanitarianism, that finally drove the operation forward.

The unavoidable conclusion would seem to be that, while humanitarian considerations have greater political salience than during the Cold War, they are insufficient to compel the international community to act in the absence of other more specific or economic motives. Until the Kosovo crisis erupted in 1999 the decline of Security Council activism seemed to confirm the view that the constitutional order of society had not been fundamentally modified. Indeed, the fact that the intervention was staged by

NATO rather than the UN reinforced this conclusion, since the majority legal opinion was that even if the intervention was moral, it was not legal. After the Cold War, Western governments took the lead in promoting human rights and democratic values, but their willingness to intervene in the domestic affairs of states whose governments transgressed these norms, remained highly selective, particularly where their own interests were not directly involved.

Nor, unhappily, is it clear that much has changed in the intervening period. Humanitarian issues have been pushed into the background by the so-called 'war on terror'. Although the intervening powers in Afghanistan and Iraq have justified regime change with humanitarian arguments, the undoubted abuse of human rights in both countries was not the reason for these interventions. To pretend otherwise is to confuse unnecessarily an issue that is already complex.

In an attempt to promote a more solidarist conception of international society the Canadian Government appointed an international commission to review the conditions under which the international community should intervene to protect the victims of humanitarian catastrophes. In order to secure maximum international support, the commission set the bar for legitimate intervention very high. Its findings—including the principle of a Right to Protect—were presented to the UN Secretary General and fed into the work of his High Level Working Group on UN Reform. The principle has now been included in a General Assembly Resolution. But in the absence of endorsement by the Security Council, it has no operational force. It is not clear that UN intervention in the Sudan would have been justified under the just war criterion that was adopted by both the Commission and the Secretary General's High Level Task Force, namely that there must be a reasonable expectation that the situation will be improved as a result. But it is clear that, even if it passed this test, no effective action could be taken in the face of a Chinese veto and lack of any pronounced Western interest in Darfur.

\* Professor James Mayall, Emeritus Professor, Cambridge University, U. K., delivered this lecture for the UNESCO-approved Course on International Understanding for Human Unity at the RMIC on 24 February 2007.