

British Academy Forum

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Two Decades of Military Interventions : Questions of Law, Morality and Effectiveness

Session 2 : Sanctioning Intervention

I confess to being somewhat overawed by the challenge of sharing the introductory contributions to this session, which is devoted to the topic of "Sanctioning intervention", with a lawyer of the eminence and distinction of Lord Bingham of Cornhill. The last time we worked together was in 1978 when he was given the complex if ungrateful task of enquiring into sanctions-breaking in the country that was then known as Rhodesia (I was at the time the Head of the FCO's Energy Department). Suffice it to say that I am no lawyer; and, during the period 1990-95 when I was at the UN sanctioning a wide range of military interventions, I relied heavily on the legal advice, politely but firmly proffered of, first, Michael Wood and then Elizabeth Wilmshurst. So what you will get from me today are the views of a former practitioner.

Before the last twenty year period we are considering today, member states did not often come to the UN seeking sanction for military interventions, and, when they did, they did not often get it, thanks to the Cold War motivated vetoes of the Permanent Members of the Security Council. More often the Security Council was regarded merely as a forum for gladiatorial debate over the rights or wrongs of an intervention which was already under way. And while, during that period, there were in fact state actions which we would now be inclined to categorise as cases of humanitarian intervention – India's intervention in East Bengal, Vietnam's in Cambodia to get rid of Pol Pot and Tanzania's in Uganda to overthrow Idi Amin – these cases were, for a whole range of complicated reasons, not brought to the UN to be sanctioned. So, when the Cold War ended and the rules of the game at the UN changed pretty fundamentally, when much that had

previously been off-limits became on-limits, there were not many legal and political precedents and what there were, were not particularly relevant or useful.

Since the end of the Cold War the Security Council of the UN has been seen by most of its member states as the place to which you did come to receive sanction before military intervention. Most prominently that was the case following Iraq's invasion of Kuwait in 1990; but other, even more startlingly ground-breaking precedents were set when, for example in the case of Somalia in 1991, a large multi-national force led by the US was unanimously authorised to intervene in order to prevent mass starvation and that without any invitation or consent by Somalia (whose government had in fact ceased to exist long before the UN acted); and the case of Haiti was quite similarly treated in 1994. Over the first half of the period we are looking at a whole range of new-fangled variants on the UN sanctioning military intervention were developed to suit the often very different and difficult circumstances of each case. Look, if you like, at the series of resolutions sanctioning military intervention in Bosnia, in the first instance to protect the delivery of humanitarian supplies and then later sanctioning the use of force in response to attacks on the so-called "safe areas" which the UN had established. No one could reasonably argue that the UN Security Council was not flexible and legally imaginative during that period, although how effective it was is a matter for a later session of our deliberations.

Moreover, even in the two most celebrated cases when military intervention was not sanctioned by the Security Council – Kosovo in 1999 and Iraq in 2003 – the member states which wanted to intervene did go to the Security Council to sanction their interventions. In the case of Kosovo NATO eventually proceeded to use force against Serbia without UN sanction only when one of the Permanent Members (Russia) had publicly stated that it would veto any such authorisation and when Serbia had quite clearly violated the terms of a previous Chapter VII Security Council resolution. The instance of Iraq was less clear-cut, although on that occasion too there were

public threats of vetoes by Permanent Members of any authorisation to use force; and, with the benefit of hindsight, it can now be seen that the UN basis on which the interveners rested their argument, Iraq's non-compliance with the WMD-related provisions of Security Council Resolution 687, was less solid than was asserted at the time, indeed, thanks to the success of Saddam Hussein's concealment of the loss of his WMD programmes, was not solid at all. In the case of Kosovo the legitimacy of the intervention in what was presented as a humanitarian emergency has been pretty widely, although certainly not universally, recognised. In the case of Iraq, partly but not only because the WMD evidence did not stand up, the legitimacy of the intervention has had dwindling support. In both cases the question of legality has not been tested, and would be difficult to test, in any law court.

Following the intervention in Iraq in 2003 there have been two important developments. The first was the widening resistance to the unilateralist policies of the Bush administration and therefore an unwillingness to sanction interventions, such as in Darfur, which might conceivably have been sanctioned in the earlier part of the period we are looking at. The second was the endorsement by the UN Summit of September 2005 of the new international norm or standard of the Responsibility to Protect which stated that, while the primary responsibility to protect its citizens lay with the state to which they belonged, in the event of a state being unwilling or unable to protect its citizens against grave abuses of international humanitarian law, then the responsibility to do so fell on the international community as a whole, acting through the UN Security Council. That provision has not yet been applied, although many would argue that it should have been in a number of cases, most notably in Darfur.

So where does that leave the issue of sanctioning intervention now? There is really no doubt at all that there has been some backsliding since the heady days of the 1990's when so many Cold War taboos were broken. There is no doubt, if ever there was, that the UN will not sanction

intervention in the territory of one of the Permanent Members of the Security Council. So there will not be UN sanctioned intervention in Tibet or in Chechnya. Moreover what can be called the Permanent Member penumbra has begun to spread outwards again, as we have seen in the case of Georgia, Abkhazia and South Ossetia where not only was it inconceivable that the UN should play an active role when hostilities broke out, but now a UN peacekeeping mission in Abkhazia has become a victim to collateral damage. A similar spreading of the penumbra can be seen in the frustration of efforts to bring pressure to bear at the UN on clearly abusive regimes in places such as Zimbabwe and Myanmar. We are not yet back in a full Cold War situation. Agreement recently to the strengthening of the economic sanctions against North Korea, following its second nuclear test, has demonstrated that. But we have slipped some way in that direction.

Should we regard that as unavoidable, as a necessary swing of the pendulum after it had swung so far in the 1990's towards the UN being willing to sanction intervention? I would argue against such a passive, indeed I would argue pusillanimous, course of action, or rather inaction. For one thing the Obama administration, with its proclaimed desire to work for multilateral solutions to global problems has yet to get fully into its stride and the reactions of others, of Russia, China and some of the main developing countries, to the new US administrations foreign policy has yet to take clear shape. So I believe we should be continuing to work at the UN and in key capitals for collective responses to threats to international peace and security through UN sanctioned action. Then, secondly we need to realise that there is still a huge amount of common ground in the international community on the need for UN-sanctioned conflict resolution and peacekeeping missions. Why otherwise are there some 120,000 UN peacekeepers deployed world-wide, often in missions which straddle the boundaries between classical peacekeeping under Chapter VI of the Charter and more forceful variations under Chapter VII. We need to make these operations more effective, to strengthen the cooperation of the UN with regional organisations such as the African Union and to clamp down more severely on abuses of human rights by peacekeepers. And then

thirdly we do need to carry forward a debate with those most dubious about the Responsibility to Protect so that we can break out of the present sterile caricaturing of that concept as simply a recipe for military intervention. We need to approach the operationalising of the Responsibility to Protect on the basis of the Secretary-General's recent report to the General Assembly, working up a whole toolbox of diplomatic and economic instruments designed to prevent countries slipping into a situation where the last resort of military intervention may be required. What we cannot afford to do, I would argue, is simply to wait helplessly for the next Rwanda or Srebrenica to come down the tracks.

I am all too conscious of the fact that I have failed to answer many questions about the legality of intervention, particularly in cases where neither an invitation nor Security Council sanction is forthcoming. I suspect that we are not likely any time soon to achieve agreement on clear-cut rules for the selection of cases which merit military intervention. Meanwhile we will have to live with criticism of double standards and also with imperfectly logical outcomes.