Legitimacy of Humanitarian Military Interventions

On Wednesday 21 December 2011, Lenka Eisenhamerova, successfully defended her PhD research entitled “Legitimacy of Humanitarian Military Interventions”. Her dissertation was multidisciplinary in nature, covering area’s of law, political science and economics.

Justifying the so-called ‘humanitarian military interventions’ (HMI’s) and defending the underlying concept in international debates are highly problematic undertakings. Despite the very poor and contested legal status of the very concept of HMI within the current international law, it is impossible to simply disregard the concept and define its related applications as not being justifiable. If HMI as a concept was accepted to be legitimate, it would have a power to challenge its presumed illegality. It would put pressure on the accepted norms and (gradually) lead to the acceptance of HMI within the framework of the international legal order in the future. Therefore, it is important to study whether the underlying virtue of morality of HMI and thus its legitimacy is not so robust that it could overcome the burden of its claimed illegality, providing the interveners with a legitimate right to intervene for the ‘humanitarian’ purposes despite the presumed illegality.
There are strong and valid arguments both supporting and condemning the HMI as a legitimate action, reflecting thus a tension between two moral perspectives. On one hand, it is argued that the respect of the ban on use of force in the international relations for the virtue of preserving peace and stability is an imperative and should make HMI not only illegal but also illegitimate. On the other hand, it is argued that guaranteeing international justice and protection of human rights provide interveners with the legitimate right to intervene for the ‘humanitarian’ purposes outside their own territory. Should the predominant concern be the respect for the political and territorial integrity and sovereignty of the nation states, or should the main concern be the preference of human rights? This basic question about the legitimacy of HMI has gained importance particularly since the end of Cold War when the system of collective UN security became revitalized and the ‘humanitarian’ interventionism started to be used more frequently in practice. Among the most debated events from this time period that greatly influenced the discourse of HMI and added controversy to its application belong the crises in Rwanda in 1994 and in Kosovo in 1999. On one hand, the international community failed to prevent the genocide in Rwanda. On the other hand, the NATO decided to bomb Kosovo to end the ethnic cleansing and other mass atrocities without receiving an authorization by the UN Security Council. In fact, HMI is controversial both when it happens and when it does not. When a particular HMI is launched, there are serious doubts and debates about its legitimacy; however, when the international community remains inactive in the light of ongoing massive human rights violations, it is accused of a moral failure. Due to the strong moral positions of both supporters and opponents of HMI, the question, whether the HMI can be justified as a tool of crisis management or whether its use forms merely an illegal act, leads to inevitable disagreements not only among lawyers, moralists, and political scientists, but also within the public opinion worldwide. The recent behavior and attitudes of the international actors seem to be increasingly inclined toward acceptance of legitimacy of the HMI and the acceptance of the underlying concept. The fact that the concept is frequently
used to justify military actions indicates that legal considerations are less predominant and that international law is often disregarded in the politically sensitive questions in favor of the moral arguments. In spite of the increasingly supportive attitudes towards legitimacy of HMI’s, unauthorized HMI’s have so far been just ‘silently’ tolerated and the countries intervening for the ‘humanitarian’ purposes act on an ad hoc basis without having any framework available to rely on. More recently, new legal developments try to fill the discrepancy between the existing legal doctrines and between what the states and international organizations defend as morally right and legitimate. The international community has been pushing interpretation and development of the existing legal doctrines regulating the HMI step-by-step further to catch up with the actual behavior of the countries. The most remarkable step in this respect has been the adoption of a ‘responsibility to protect’ at the UN level as a new concept encouraging the international community to act in cases when the nation states fail to prevent or to stop serious violations of human rights within their territories. In spite of the fact that the ‘responsibility to protect’ does not represent a legally binding prescription and that it is still labeled only as an ‘emerging legal norm’, the concept represents a significant tool of a moral pressure on the countries to react to the human rights violations abroad. These developments, however, do not imply that the relaxation of the principle of non-interventions continues without passionate debates. This is demonstrated by the fact that none of the attempts to restrict in a legally binding way the scope of the non-intervention norm embedded in the UN Charter or to enlarge the number of its allowed exceptions has so far managed to generate a consensus within the international community.

Lenka Eisenhamerova’s study proposes a radical departure from the difficult and sensitive moral and legal debates surrounding the HMI concept and its application. As an alternative to putting weights to a variety of moral claims defending or rejecting the legitimacy of HMI, this study intends to clarify the debate by empirically assessing the degree of ‘humanitarianism’ behind
cases of military interventions in the time period between 1946 and 2005. The novelty of this approach is based on a systematic evaluation of the ‘humanitarianism’ behind the ‘motives and means’ of military interventions on the one hand and of the ‘humanitarianism’ behind the ‘outcomes’ of military interventions on the other hand. Based on the empirical evidence, it assesses how much are the ‘humanitarian motives and means’ actually decisive for the achievement of the ‘humanitarian outcomes’ at the end; it proposes an empirically validated version of a ‘legitimate HMI’ and it filters out a resulting sample of historical cases of military interventions that represent potential candidates for receiving a label ‘legitimate HMI’. If the findings of this study discover that it is possible to improve the humanitarian situation in the target state by waging a military intervention for ‘humanitarian’ purposes, it would serve as an empirically supported illustration of an existing gap between legitimacy and legality of HMI, and it would provide an argument for claiming that the legal framework should catch up. If the results of this study, however, suggest that the military interventions - though intended to be ‘humanitarian’ - tend to make the humanitarian suffering even worse, it would be an indication that the moral arguments calling for the legalization of the right of HMI are blind toward the actual negative effects of such interventions on the target state and that the legal obstacle to such interventionism makes sense and should be legitimately kept. Taming this normative debate about legitimacy of HMI into a long-run empirical analysis assessing its actual applications on the ground represents a new perspective that could move the scientific community a step further while solving this dilemma. In spite of its novelty, the study builds on the insights provided by a limited number of earlier empirical studies.

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