

Safe Havens in Iraq: Marking the End of Non-Intervention

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Abstract

Despite the legal, political and practical ambiguities around it, the Safe Havens in Iraq may have marked the end of a long period of non-intervention that characterized the Cold War era. As for the first time in the 20th century, the international community tolerated a military intervention in another 'sovereign state' under the pretext of 'humanitarian intervention'. The case, with its shortcomings, marked a new era in the international relations that followed the collapse of the bipolar international system which, had been blamed for the enduring legacy of non-intervention even in the most appalling human rights violations of the time. Therefore, the Safe Havens marked a start of a new era of military intervention in the 1990s and later, whether successful or not, in Somalia (1992), Bosnia (1995), Kosovo (1999), East Timor (1999-2000) and others.

Keywords: Humanitarian intervention, Iraqi Kurd, Northern Iraq, human rights

Introduction

Pointing to two cases, where the International community failed to react to the suffering of humanity in some parts of the globe. At the United Nations General Assembly in 1999, and again in 2000, Secretary General Kofi Annan stated:

If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that affect every precept of our common humanity? (ICISS, 2001)

Generally speaking, the issue of humanitarian intervention has always been a three-folded challenge: Legal, Political and Ethical. The legal constraints codified in international law and customary law of nations, have so far (with a slight difference since the end of the Cold War era) made 'liberal nations', in Kantian terms, hesitate in positively taking action. The sovereignty has always been used as a shield by the affected authorities, whenever others raised concerns about the human rights situations in target countries. Also, whether the international community has any moral obligation to intervene when there

is perpetration of human rights abuse and whether it is possible, in any particular political context to do so, all these questions have, and still remain in place when even humanity witnessing appalling images of human suffering.

The ‘mass exodus’ or ‘Koraw’ in Kurdish that followed Operation the Desert Storm of 1991 and the appalling humanitarian conditions involved, was being broadcasted on western televisions and resulted in a shaken decision taken by some western states under the 688 UN Resolution that warranted the undertaking of a different military operation—different to those that had until then been taken at the international level. The operation was to alleviate the suffering of large number of the Kurdish population being driven to face their un-known fate in highly dangerous conditions following their apprising against the Ba’ath Regime in Spring 1991.

A strong argument might be offered as to the normative standing of humanitarian intervention such as that of Orford where he claims that it ‘draws its powerful appeal from the revolutionary discourse of human rights, which promises liberation from tyranny and a future built on something other than militarized and technocratic state interests (Orford, 2003). However, the core questions that may be asked can be formulated as such: how such act of humanitarian intervention is legitimate in both legal, political, and ethical terms? How far the international community was mandated and allowed to involve in actions of military intervention to protect the human rights of a particular people in any particular state? This article is a very modest attempt to discussing these questions.

The puzzle of sovereignty

Sovereignty seems to be the most significant and debated concept in the area of humanitarian intervention. The history of intervention in international relations indicates that the term sovereignty has been the most sensitive point to concerned states in any approach to intervention. It is worth here to mention the scepticism produced by Sir Elihu Lauterpacht when stating ‘sovereignty is at least to a large extent a mere idea, even a myth, which has much to do with emotion, but little or nothing to do with reality in the day-to-day life of typical present-day-government.’ (Jennings, 2002) Notwithstanding, sovereignty as a practice in the actual international relations is considerably influential and mostly taken for granted. To further grasp the impact of state sovereignty, we shall bring some common definitions of the term. In Oxford concise dictionary of Politics, the has been defined as follows:

Sovereignty is the claim to be the ultimate political authority, subject to no higher power as regards the making and enforcing of political decision. In the international system sovereignty

is the claim by the state to full self-government, and the mutual recognition of claims of sovereignty is the basis of international society. (MacLean & McMillan, 2003)

Accordingly, sovereignty could be perceived as a status given to states enabling them to ‘freely determine, without external interference to their political status and to pursue their economic, social and cultural development.’ (Teson, 1998) The mainstream conceptualisation of sovereignty offered so far, while giving ample choice to states in the monopoly of power, leave little room for external intervention under any conditions.

Humanitarian Intervention

It is the core concept of this article and seems to be one of the most controversial issues of contemporary international relations literature. The term has been defined as ‘entry into a country of the armed force of another country or international organization with the aim of protecting citizens from persecution or the violation of their human rights. (MacLean & McMillan, 2003) As it stands, the idea would go against the traditional discourse of the international relations prior to the end of the Cold War. Even two years after the collapse of the Soviet Union, namely in 1993, Noam Chomsky was so sceptical of the term as to argue whether such a category exists at all. (Chomsky, 1993-1993)

Before moving to our leading concept of humanitarian intervention we believe it is time to outline the contours of armed intervention, as its going to be discussed in relation to its legal use in defence of human rights. In his report published by The State’s Institution of Peace, namely the ‘Ethics of Armed Humanitarian Intervention’, C.A.J.Coady, producing his definition of Armed Intervention, defines it as:

An intentional act of one state or an international agency aimed at exercising overriding authority on what are normally the ‘internal’ policies or practices of another state or group of states. It is crucial here, therefore that the target state (...) does not consent to the intervention. (Coady, 2002)

Here we are confronting with a different kind of intervention which is, neither derived from the traditional international law, nor it is common within the current discourse of international relations. The intervention has nothing to do with states’ self-defence or defending one’s own citizens outside their borders. The intention here is rather to save people in a foreign country, from brutality they facing by their own governments, for the only purpose of so-called humanitarian reasons.

Generally speaking, since its foundation for 45 years, the dominant norm at the United Nations has been the principle of non-intervention. (Roberts, 2004) Traditionally, the main obstacles to any intention

of intervention in defence of human rights of 'foriegners' has been internal integrity of states even where there was considerable evidence of mass violation of human rights. However, changes happened to the discourse and practice of international relations. One could argue that those changes mostly happened during and after the end of the Cold War era and in respond to humanitarian crises that unfolded by then. For, the First Gulf war triggered 'mass migration of the kurds and Shi'ites in Iraq. The changes resulted in reassessment of the concept of sovereignty (mostly by scholars). Also, the legality of actions taken by foreign countries especially under the umbrella of international organizations such as the UN, and the NATO to intervene whenever and wherever humanity witnesses or there is founded concern on gross violations of human rights. In this respect, Fernando Teson, attempting to formulate a plausible definition of humanitarian intervention states:

Sovereignty, privilege or responsibility?

Is sovereignty, as a statue every independent state holds, is an absolute privilege, unrestrained by legal or moral constrains? This should be the crucial question put before the advocates of the doctrine of sovereignty. Although, 'the doctrine of sovereignty down the ages have differed from time to time for the very reason that they reflected the needs and problems of their own particular times and were designed to do so. (Kerjien, Brus , Duurasma, De Vos, & Dugard, 2002) Arguably, there exists a paradox when it comes to the relation between the concept of sovereignty and international law. While sovereignty has more to do with international law, it is the very sovereign states that make and enforce international law (Ibid)

There are obviously different approaches to state sovereignty in international law and international relations fields, most notably (realism and liberalism) but as this article is designed to discuss the legitimacy of humanitarian intervention, the focus will be on that issue and selectively will be involving mostly in arguments created by Fernardo Teson over his defence of humanitarian intervention which in turn, derives from questioning the limits and nature of a legitimate state or government.

In his book 'a philosophy of international law' Teson, starts with a defence of the moral philosophy of Emanuel Kant. By criticising the traditional international law as 'the dominant international law fails to recognize the normative importance of the individuals.' (Teson, 1998)

Mainstream international relations enterprise maintains that states, not individuals, are the basic subjects to international law and international relations and that state sovereignty is the basis upon

which international law properly rests. (Teson, 1998) The doctrine of international law maintains that all states are equally legitimate for international purposes provided they met these criterion:

- a- a permanent population.
- b- a defined territory.
- c- government and,
- d- capacity to enter in to relations with other states. (Teson, 1998)

Accordingly, international legitimacy and sovereignty are merely founded on the idea whether the government politically controls the population rather than whether the government justly represents its people. (Teson, 1998) Sceptical of such definition of a sovereign state, Tesson outlines his definition of a sovereign state by stating ‘a sovereign state is an institution created by men and women to protect themselves against injustice, and to facilitate mutually beneficial social cooperation. (Teson F. , 2003) While challenging the dominant view in traditional international law about the legitimacy of any state, Tesson emphasises on state’s legitimacy in relation to its nature and the way any government is shaped the sovereignty of the state is dependent on the states domestic legitimacy, therefore the principle of international justice must be congruent with the principle of domestic justice. (Teson F. , 1998) Freedom is a primary credential required from international community. (Teson F. , 1998)

Here, in Tesson’s evaluation of the Kantian thesis we will come out with a term called ‘conditioned sovereignty’. A government is legitimate when it genuinely represents the people and generally respects human rights. (Teson F. , 1998) Obviously, this position is in line with John Lock’s principle of a legitimate government, one that preserves the basic rights of citizens, without which even a revolution is justified. (Locke, 2003)

Therefore, for Tesson sovereignty is more to do with responsibility and accountability of states and governments towards their people. hence, democracy and protecting human rights internally are prerequisites for any state entering the ‘alliance of liberal states’ in Kantian terms. Sovereignty is under no circumstances a shield states can use in securing their political powers and to escape freely however they manipulate the power.

Humanitarian intervention a dilemma

As in discussing the ambiguous term of sovereignty, we mainly sought our theoretical tool from Fernando Tesson, we will continue in using his theoretical approach in discussing the legitimacy of an act of humanitarian intervention. Tesson, as it has been mentioned earlier postulates his theory on legitimacy of humanitarian intervention mainly on normative basis. It has been argued by others that ‘the moral issues raised by the question whether to wage humanitarian war, go to the heart of the

ethical justifications available for any form of humanitarian intervention. (Coady, 2002) in attempting to nullify the realist argument that ‘there is no such thing as justice or morality across borders’ (Teson F. , 1998), He argues that ‘liberal governments have a moral obligation to promote human rights internally and globally’ a democratic government has a three-fold international duty; (1) to defend its own just institutions. (2) to respect the rights of all persons at home and abroad. (3) to promote the preservation and expansion of human rights and democracy globally. (Teson F. , 1998)

However, a legitimate question may be asked: what is the moral reasoning of such obligations? Teson argues ‘the fact that persons are right-holders has normative consequences for others, we all have the obligation (1) to respect those rights. (2) to promote those obligations for all others persons. (3) to rescue victims of tyranny or anarchy. The obligation in (3) analytically entails, under appropriate circumstances, the right to rescue such victims, i.e. the right of humanitarian intervention. (Teson F. , 2003) That is, argued to be the only way to a secure peace. (Teson F. , 1998) and it is the moral obligation on others, with consideration to (when, by whom, and how) to intervene. If human beings are denied basic human rights and are, for that reason deprived of their capacity to pursue their autonomous projects, then others have a *prima facie* duty to help them. (Teson F. , 2003)

Another issue which has been mentioned and defined briefly, one that amounts to an increasingly important point in any objection to humanitarian intervention it is again the old story of ‘state sovereignty’. This issue has also been dealt with seriously by Teson, and he is therefore so doubtful with liability of any objection seeking its strength from the claim that the military intervention is a violation of state sovereignty. As it has been discussed earlier, for Teson, the primary value in both internal and international contexts is attached to individuals rather than the states, although he argues that ‘the legitimacy of governments is a necessary not sufficient for intervention. (Teson F. , 1998) Sovereignty can only be perceived as an instrument not an end in itself’ this is the liberal premise defended here, that the sovereignty of states and the inviolability of their borders are conditioned with the legitimacy of the social contract, and thus sovereignty and borders too, serve the liberal ends of respecting freedom and human rights (Teson F. , 2003). He goes further by stating that ‘an illegitimate government is not entitled to respect because by hypothesis if international law offered protection to this government, it could remain in power and oppress its people without fear of political pressure from international community. (Teson F. , 1998) This is more true when such a government involve in mass human rights abuse such as mass killing, genocide and ethnic cleansing. Accordingly, the gross violation of human rights is not only an obvious assault on the dignity of persons, but a betrayal of the principle of sovereignty itself.

Here we shall bring back the celebrated statement by Secretary-General Kofi Annan:

.... If humanitarian intervention is, indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica- to gross and systematic violations of human rights that affect every precept of our common humanity... (ICISS, 2001)

The case of 'Safe Haven' in Iraq

In its annual report in 1992 Human Rights Watch, regarding the situation of human rights in Iraq during 1991 wrote:

The manner in which, the Iraqi government suppressed the Shi'ite revolt in the south and the Kurds revolt in the north produced some of the most extensive and severe violations of human rights in 1991. Although HRW is highly critical of the role of the Bush administration with respect to these abuses we do not espouse the view that military intervention was required for humanitarian purposes. (HRW, 1992)

Considering the discourse in the above report that was produced by an organization, dedicated to human rights observation and promotion, taking into account the context in which the report was produced –two years after the end of the Cold War, one could imagine how state actors 'non-moral agents', in Chomskian terms (1993) were ever able to take action under the pretext of human rights.

Despite his earlier remarks encouraging revolt against Saddam Hussein, president Bush initially characterized the Kurdish and Shi'ite uprising and the brutal Iraqi retaliation as an 'internal matter' which did not warrant a US military respond. (Strometh, 1993). After taking control of large areas in the north, Kurdish fighters and civilians faced with Iraqi tanks and Air forces crashing both combatant and civilians alike. Having had experienced Iraqi forces brutality before, almost two million Kurds fled to the mountains on the borders with Turkey and Iran. It was estimated that 'between 400 and 100 were dying every day from Hypothermia, exhaustion and disease'. (Weiss, 1999) Despite all the facts, the then USA president George W. Bush declared this time that the situation in Iraq was a 'civil war' and further stated 'we are not going to get sucked into this by sending precious American lives into this battle. (cited in Wheeler, 2003)

In respond to concerns expressed by both Iran and Turkey (both with large Kurdish population), and also in respond to appalling images of desperate refugees who were stranded in the mountains without food, clothing, shelter and medicine, the French president Mitterrand took the lead in raising the issue stating before the Security Council that 'failure to protect the Kurds would severely affect the political and moral authority of the council'. (cited in Wheeler, 2003, p141).

More precisely, under concerns over ‘transboundary consequences of Iraqi repression as a threat to ‘international peace and security’ (cited in Wheeler, 2003, p142), a draft resolution submitted by France and Belgium co-sponsored by the UK and USA was adopted as ‘Resolution 688’ on 5th April 1991 (Ibid). The resolution entailed the following:

- 1- condemned Iraqi repression of its civilians.
- 2- characterized the refugee flows- a threat to international peace and security.
- 3- Demanded Iraq to stop repression.
- 4- expressed hope for an open dialogue to’ ensure that human and political rights of all Iraqi citizens are respected.
- 5- insisted that Iraq allow international humanitarian organizations immediate access.
- 6- requested the Security Council to pursue humanitarian effects in Iraq. (Strometh, 1993, p85)

Operation Provide Comfort

After the humanitarian situation was started to deteriorate even more, with Iraqi forces continued to repress the civilian, and the growing fear among the Kurds from going back to their homes, the media coverage of the suffering of the Kurds granted an intervention by western powers. Guarded by allied forces, a *de facto* safe haven was created starting in mid-April 1991. This followed the intrusion of small numbers of troops from the United States, Britain and France who established camps to shelter returning Kurdish population. The US-sanctioned no-fly-zone was in place in the Kurdish areas that effectively deterred military offensive by the Iraqi forces north of 36 parallel. While covering large areas in the north, major cities like Sulaymaniyah and Kirkuk were not covered under the NFZ.

Although, the resolution did not authorize any military intervention, western states legitimated their intervention as being in conformity with resolution 688. This triggered concerns expressed by the UN Secretary-General as to the legitimacy of this action. while the initial objective was to create protected area within confined zones³⁸, arguably, the decision consequently led to a substantial foot-on-ground for the US and its allies.

The operation and the creation of the safe havens especially, the one in the north had surrounded with ambiguity with significant limitations and shortcoming. Nevertheless, it provided real backing to the frightened population of the Iraqi Kurdistan at the crucial time. Moreover, the operation Provide Comfort and the Safe Havens, especially in the north, encouraged most of the Kurdish refugees to

³⁸ Some argue that the western countries were more concerned with the NFZ in the north than that in the south for considerations related to Iran and the Gulf countries as both held conflicting interests in Iraq as they may do now 27 years after that date. (Wheeler, 2003)

return to their homes in safety. Undoubtedly, this was only made possible by weakening the position of the Iraqi military in the north and ultimately led to their voluntary withdrawal along with substantial administrative facilities.

Conclusion

while the case of Safe Havens, especially the relatively successful one in the north of Iraq back in 1991, may not be presented on clear legal and ethical grounds, its practical effectiveness in saving the lives of millions of people should not be underestimated. In addition, what made the intervention in northern Iraq a unique practice was it posed an unprecedented challenge to the traditional international law and the mainstream international relations. For, up until that historical point, non-intervention was the dominant norm at the UN and the international community in general. More importantly, military intervention in a sovereign state under the pretext of preserving human rights was yet another significant shift in the ethics and the practice of international law. Arguably, besides its success in saving civilian lives, the case of the Safe Haven in northern Iraq, opened a new area in the international relations and formulated the contours of a new doctrine, later to be known as the 'doctrine of humanitarian intervention'.

As we travel through the troubled political environment of the post Cold War era, marked by the collapse of large blocks of states (the Soviet Union and Yugoslavia as main examples), the practical importance of humanitarian interventions emerges. With varying degree of success, the pioneering humanitarian intervention in Iraq followed by similar interventions in Somalia (1992), Bosnia (1995), Kosovo (1999), East Timor (1999-2000) and few others. The international commitment to intervene on humanitarian basis, later culminated in the formulation of the '*responsibility to protect*' approach that was endorsed by all members of the United Nations back in 2005. The founding principles of the approach, I would like to argue, sprung from the first international humanitarian intervention of its kind (i.e. the provision of the safe havens in Iraq).

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