FES-Focus

"Peacekeeping and Cooperative Security – New Ground Rules for Interventions?"

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To reinvigorate the UN's system of collective security, perhaps the greatest challenge is to reconstitute international rules governing the use of force. History shows that the great powers have always made up the rules as they have gone along, but recent trends in security affairs – including the US decision to attack Iraq without Security Council authorization, the debacles in Bosnia, Rwanda and Somalia, and the agonizing efforts to arrive at a clear and definitive course of action in the Darfur crisis – suggest a worryingly progressive dissolution of such rules. Against the backdrop of new debates on such ground rules in a number of regional organisations from the South, in the UN and the EU, the FES-working group "Security in a Globalized World" is exploring in publications and in a series of (regional) conferences the acceptance and essential limitations on interventions, along with the question of who are the legitimate actors, what are the legitimate means, and the different response to these issues in the regions of the South.

1 Introduction

Since the end of the Cold War the scope for international intervention in the affairs of states, which are in principle internal matters, has become the subject of broad-based political debate. The failed intervention in Somalia, the non-intervention in Rwanda, the hesitant conduct of UN troops in Bosnia-Herzegovina, NATO's intervention in Kosovo and the US-led attack on Iraq without Security Council authorizations, and currently the agonizing efforts to arrive at a clear and definitive course of action in the Darfur crisis triggered fierce controversy over the legitimacy of intervention, appropriate means to be used and the actors involved, as well as over the limits of state sovereignty. Here the central question is whether collective enforcement measures against states may be implemented only as a response to a threat to world peace or for the purpose of self-defence or whether they may also be taken to protect people who are in danger in the countries themselves. This debate will continue to gain importance, particularly in view of the increasing number of so-called "new wars". The rapid spread of internal conflicts to an entire region and the usually massive and systematic human rights violations as a crucial factor in these conflicts make it scarcely possible for neighbouring states or international institutions to simply sit back and wait – particularly since hesitant collective involvement often leads to states taking (undesirable) unilateral action and exacerbating the conflict.

Until the end of the 1980s, "international peace and security" was interpreted within the framework of the UN Charter in very narrow terms, i.e. as the preservation of an international order. The tension between state sovereignty, as one of the fundamental principles of international law, and the safeguarding of human rights, which has a prominent place in the preamble to the UN Charter, was for a long time resolved in favour of the former. However, the influence of various violent conflicts, new security concepts (human security) and the increasing significance of human rights in international law could change this. Since the beginning of the 1990s, serious human rights violations have repeatedly been interpreted as threats to "world peace and international security" that make enforcement measures permissible. However, if it is no longer countries but societal groups or individuals that are to be in the foreground as the objects of security this has consequences both for the definition of state sovereignty and for the scope of intervention. De facto it means that a third, very far-reaching possibility has been added to the two exceptions to the prohibition on the use of force prescribed by the UN Charter ("threats to peace", "right to self-defence"): "intervention on humanitarian grounds".

Against the backdrop of new debates on security in the UN (Report by the "UN-High Level Panel on Threats, Challenges and Change"), the EU ("Solana Strategy", "Human Security Doctrine for Europe") and a number of regional organisations from the South, the FES working group "Security in a Globalized World" is exploring in events and publications the acceptance, appropriate scope, central requirements and essential limitations on interventions, along with the question of who are the legitimate actors, what are the legitimate means, and the different response to these issues in the regions of the South.

2 Sovereignty and human rights

The different nature of the crises and conflicts that have emerged since the end of the Cold War has presented the international community with new challenges. One consequence of this is a rapid rise in the number of UN-led peace operations, and also the first regional missions and unilateral and non-mandated interventions ("coalitions of the willing") in the name of "humanitarian intervention."

In terms of foreign policy, the sovereignty of a state consists in the classic sense in the fact that external intervention is prohibited. The ban on intervention – originally an outcome of the Peace of Westphalia – was reinforced after the Second World War in the UN system in that the unlimited autonomy of states was accorded great significance and the principal respect for the sovereignty and equality of all Member States stressed. In view of the global imbalance of power, many developing countries – which are, of course, also potential targets of interventions – see their national sovereignty, which is usually still in its early days, as "[...] the last defence in an unequal world," as Algerian President Bouteflika said following Kofi Annan's address to the UN General Assembly in 1999. A softer concept of sovereignty, critics maintain,

would harbour serious risks for the international order. Questioning the sovereignty of a state could, as Joseph Nye pointed out, bring about a return to "natural law," in which might is right and any state could set itself up as "judge, jury and executioner."

However, in 1948 the Member States of the United Nations made a commitment to respect and protect human rights. Since then the declaration has been fleshed out by numerous conventions, so that today we can speak of a framework for protecting human rights that – controversial as it may be – is nevertheless legally binding under international law. However, what these protective regulations often lack are robust instruments to give them universal validity.

There is a tension between the two pillars upon which the United Nations' concept of peace rests. For a long time the "International Convention on Genocide" of 1948 was the only exception under which the international community accepted the legitimacy, and even the obligation, to ignore the sovereignty of a state for the sake of human rights. In the 1990s, the United Nations passed a whole series of resolutions, which similarly relativized national sovereignty: no state may threaten minorities (Resolution 688), carry out mass displacements (Resolution 1203) or allow a "human tragedy" of inconceivable magnitude (Resolution 794). In this the UN considers important criteria – in particular upholding minimum standards of human rights – as being no longer merely the internal matter of a state. In June 1998, the UN Secretary-General stated on this: "Our job is to intervene […] State frontiers […] should no longer be seen as a watertight protection of war criminals or mass murderers. The fact that a conflict is internal does not give the parties any right to disregard the most basic rules of human conduct." And at the UN General Assembly the following year he remarked that "[…] the core challenge to the Security Council and to the United Nations (is) to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand."

Sovereignty should no longer be (mis)understood as a protective screen for unrestricted autonomy behind which politicians can avoid any obligation to justify their actions. Against the background of a system of international law that is becoming increasingly value-oriented and an increasingly inter-dependent world, the question will now be asked whether a government that disregards the most basic rights of a section of its population does not in doing so forfeit its rights to full sovereignty.

The "International Commission on Intervention and State Sovereignty" (ICISS) set up by the Canadian government has tried to find a solution to the dilemma between sensitive issues of sovereignty on the one hand and the limited ability of elementary human rights to assert themselves on the other. In its highly acclaimed report the ICISS proposed that the question of sovereignty should no longer be discussed from the point of view of states or organisations that are considering intervention ("the right to intervene", "humanitarian intervention"), but from the point of view of the people in need of protection ("the responsibility to protect"). Under this approach, the main responsibility of the state is to protect groups of the population from massacres, women from systematic rape and children from starvation. Only if the state in question cannot, or will not, meet this obligation, or is even responsible for the problems, is it the responsibility of the international community to take action in this matter. This means that sovereignty also includes the responsibility and obligation to provide protection for and from groups and individuals within society.

The argumentation of the commission met with a great deal of approval. However, at the same time the debate over the ICISS report has shown that it primarily reflects a liberal internationalist discourse rather than a universal consensus on the problems and questions around intervention. It is also questionable whether reframing the concept of sovereignty within the discussions on reform of the United Nations will lead to a for-mal revision of the UN Charter. It seems to be more realistic that the "responsibility to protect" will develop into a principle of conduct for the international community of states. The UN Secu-rity Council has, in fact, already incorporated the principle into a number of new resolutions for peace missions. However, the war in Iraq is – according to the general assessment – a bitter

setback for the attempt to gain acceptance for the idea of "responsibility to protect."

If we look at the discussions in the regions clear differences can be identified: while the Western industrialised countries, along with sub-Saharan Africa and Latin America, have largely welcomed the report, the (South-)East Asian countries have been more hesitant in their response, Russia is keeping a very low profile on the issue and China has rejected the report. In the Middle East the discussion is to a great degree overlaid with the questions and consequences of unilateral interventions, pre-emptive strikes, etc. The main focus of the discussion is the problem of selectivity and double standards.

The report has received the most sympathetic reception in *Africa*. The African Union makes reference to the new concept of sovereignty in its "Solemn Declaration on a Common African Defence and Security Policy" of February 2004. The Charters of the AU and SADC both make explicit reference to the necessity of intervention in specific cases, which in part go beyond the canon set out in the ICISS report. That illustrates how many African states have developed in recent years from the most energetic advocates of state sovereignty and non-intervention into supporters of regional interventions on humanitarian grounds. In *Latin America* the principle of non-interference is still firmly anchored, but nevertheless there are examples – such as in Haiti in 1994 – of interventions being carried out to protect the population. Recently the OAS set down in the Inter-American Charter that collective intervention is permissible if democracy is under threat. And within MERCOSUR a cautious opening up to a less hermetic definition of sovereignty can be observed. In *Asia,* China has rejected the idea of "intervention on humanitarian grounds" but is nevertheless moving towards it – not least in the context of concepts of security currently being expanded by ASEAN. Formally unrestricted sovereignty is also the basis for working for regional cooperation for many other countries in the region. However, at the same time a number of states (e.g. India) have recognised the danger that "responsibility to protect" could open the way for developed countries to interfere in the internal affairs of developing countries and that they (the latter) have relatively little say in the matter. Neverthe-

less, within ASEAN there are deliberations on "constructive intervention" and "enhanced interaction" which do not provide for military intervention but nevertheless envisage other ways of exerting influence in the medium term. At the same time, an – admittedly still fragile – consensus is forming, at least within ASEAN, that mandated military intervention of external forces can be legitimate in exceptional cases.

Questions

- *What concepts exist for resolving the tension between sovereignty and protection of human rights?*

- *How are these concepts being received in the different regions?*

- *To what extent are they workable and are they already being politically implemented?*

3 Peacekeeping, peace-enforcing and "humanitarian interventions"

If the principle of "responsibility to protect" establishes itself, it will also mean that there will always be a "responsibility to respond" to situations in which it is imperative that people be protected. A discussion of procedural and substantive normative criteria, which decisions for or against an intervention can be based on, is thus inevitable. After all, no matter how pure the motives for an intervention on humanitarian grounds might be, any intervention, particularly if it involves the use of force, must be fundamentally accountable and subject to strict normative rules. Apart from legitimate grounds for intervention, the legitimate actors, legitimate means and long-term goals and conclusion of an intervention must be identified.

a) Legitimate grounds for intervention?

There is a great degree of agreement that enforcement measures on the part of the international community must be permissible in "extreme situations" if a state is unable or unwilling to remedy a problem. Enforcement measures can include political, economic or legal steps and – in an extreme emergency – military operations. But the question is: what constitutes an extreme situation?

Most concepts assume that legitimate grounds for intervention should be confined to massive human rights violations, an attitude that sets the bar for interventions at a very high level. These include, in particular, genocide, mass loss of human life as a result of war, chaos and failure to provide assistance in famine situations, and mass displacement for racist or other reasons. In its report, the ICISS distinguishes between two different situations:

In cases of human rights violations that are not unequivocally associated with killing or "ethnic cleansing" (e.g. systematic racial discrimination or political oppression) or the overthrow of democratic governments, it should still be possible to impose political, economic or military sanctions. In the opinion of the commission these are not situations that justify military action to protect human beings.

For military interventions the commission admits only two "threshold criteria" for a "just cause": "a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product of deliberate state action, or state neglect or inability to act or not, which is the product either of deliberate state action, or state neglect or inability to act or a failed state situation; b) large-scale "ethnic cleansing", actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape." These two threshold criteria were given a broad enough definition to include not only deliberately committed atrocities but also cases such as the collapse of states and the ensuing danger to the population due to famine and civil war.

This minimalist reading of human rights – human life and human freedom are at risk – seems to have achieved a substantive circumscription of the grounds for intervention, which can also be accepted beyond cultural borders. However, in practice there have been far more occasions to intervene under this definition than actual interventions. Above all, unilateral interventions or interventions that have not been mandated by the UN and that claim to be based on humanitarian grounds fall against this background under the suspicion of double standards and using humanitarian grounds as a cover up for individual power interests.

The lack of clear and consensus-based criteria has hampered a systematic debate on military intervention, including in the Security Council. The report of the UN-High-Level-Panel on Threats, Challenges, and Change, which was approved in December 2004, therefore proposes that the Security Council should discuss five criteria for legitimacy in all cases where it is considering the use of force under Chapter Seven of the Charter: seriousness of threat, proper purpose of the use of force, last resort, proportional means and balance of consequences. Whether this will better protect decisions from misuse of power and the whims of media attention and enable the UN to gradually strengthen its monopoly on the use of force once more will have to stand the test of actual conflicts.

Questions

- *What is an intervention?*

- *What grounds justify an intervention and when should sanctions be imposed on the grounds of human rights violations?*

- *What regional/organisation-specific differences needed to be taken into account here?*

- *Is there a danger of a "dam burst", i.e. an inflation of "humanitarian interventions"?*

- *How can a canon of criteria be worded in such a way as to preclude as far as possible individual power interests in an intervention?*

b) Legitimate actors – can peacekeeping be decentralised?

No humanitarian motivation for intervention, no matter how well intentioned, should undermine the provisions of international law to curb unilateral action. For that reason a great deal speaks in favour of granting legitimation to the United Nations only or one of its mandated regional organisations.

However, looking at political practice it becomes clear that a number of serious problems cannot be overlooked: a series of sufficiently well known examples illustrate that there is a danger of a blockade of the Security Council and urgent interventions not being carried out. And indeed the decision to carry out "humanitarian interventions" was in most cases taken by individual

states or regional organisations. Even if they did not have a mandate under international law, the interventions of India in East Bengal, Vietnam in Cambodia, Tanzania in Uganda or the Economic Community of West African States in Liberia, for example, do count as legitimate interventions on humanitarian grounds. Other cases, such as the NATO intervention in Kosovo, are admittedly considerably more open to dispute. And even if the United Nations is accepted as the legitimate authority, the problem still exists that the UN does not have a monopoly on the use of force – it does not have the resources for that – but only a monopoly to authorise it, which means that it is dependent on the interests of the individual states. In other cases, the regional organisation does have a mandate, but lacks support in the region. Thus, for example, the OAS has a remit to monitor and verify the demobilisation of the paramilitary in Columbia; however, due to the membership of the USA (and Canada), it has no legitimacy in the eyes of a number of Latin American countries.

Present considerations are aiming both at improved working structures in the Security Council in the context of the reform debate and also at exploring new sources of legitimation. For example, in the case of the Security Council being blocked, the procedure set out in the "Uniting for Peace" resolution (which was the basis for operations during the Korea crisis in 1950, in Egypt in 1956 and in the Congo in 1960) could be revived and the cases in question put before emergency sessions of the General Assembly. Many people see regional and sub-regional organisations intervening in areas within their jurisdiction as another possibility, as long as they apply for subsequent authorization by the Security Council, which is what happened in the case of the West African interventions in Liberia and Sierra Leone, for example.

In view of the regionalisation of security and security policy, the relationship between the (sub-)regional organisations and the UN will become more decisive in the future. The "Agenda for peace" (1992) already stressed that better integration of (sub-)regional organisations in strategies for conflict resolution could take pressure off the UN. In view of limited capacities and a number of failed operations, the Brahimi report reaffirmed that regional organisations or coalition of states should be mandated for robust missions. Cooperation between the UN and the (sub)regional organisations combines the two most important advantages the UN has – global legitimacy and the ability to mobilise resources – with those of regional organisations: greater motivation to resolve regional conflicts, better understanding of the dynamics of conflicts, and greater scope for "forcing" the countries to return to a regional peace policy.

A number of organisations already have experience with peacekeeping activities – first and foremost ECOWAS, but also the OAS with MICIVIH in Haiti. The problems involved are often the lack of training and equipment of troops and logistics capacities but also fundamental political factors. And although the OAS has concentrated on the defence, promotion and consolidation of democracy – in other words on central aspects of peacekeeping – it does not have a mandate to use force. The situation with the ARF in South-East Asia and its conversion into an Asian Security Community was similar. At the beginning of 2004, Indonesia proposed setting up a regional peacekeeping force within this framework, a suggestion that is admittedly the subject of vehement dispute.

Within the context of the Brahimi report (2000), a number of critical voices, particularly from countries in the South, have started to be heard, rejecting any move towards establishing a more robust mandate and pointing out that the actual core of the problem is the reform of the Security Council, because the legitimacy of its mandates is becoming more and more questionable due to its unrepresentative nature. Furthermore, they point out that peacekeeping must not becoming an exclusively regional matter. The Western states, they say, are increasingly unwilling to send their highly trained and well-equipped troops to high-risk crisis areas that have no direct relevance to their interests. The missions in Kosovo and Sierra Leone made it very clear that there are glaring differences both in terms of strength and quality of troops as well as supplies to the population and the sustainability of the mandate. This is a concern that is also shared by the UN, although they fear that the creation of EU crisis reaction forces, for example, would be at the expense of the European commitment to UN peace missions.

The question of the legitimate authority that can decide on interventions and also implement them is still unresolved. The moral and political problems that accompany this void will increase in the future.

Questions

- *Which actors are claiming the right to carry out "humanitarian interventions" and with what legitimation?*

- *What sources of legitimation exist and which actors are recognised by whom as legitimate actors?*

- *What role will "coalitions of the willing" play in the future?*

- *Can peacekeeping be decentralised?*

- *What sort of experiences have regional organisations gained and what specific methods and capacities for dealing with conflicts have they developed?*

- *Are there stages of conflict at which they are particularly effective?*

c) Legitimate means and aims?

A (military) intervention on humanitarian grounds must be proportionate. Military force is only legitimate if and when non-violent means have not been effective or will not be effective in time. The intervention must be preceded by a realistic assessment of the consequences and must have a clear and limited objective.

In recent decades the character and dynamics of UN peace missions have changed markedly. They have developed from the neutral missions of the "first generation" that aimed to separate the parties to the conflict and were intent on consensus and strict non-violence, to an extension of their remit (policing functions, preparation of elections, DDR, etc. – "second generation") through to "robust peacekeeping" ("third generation"), which establishes a safe environment for civil functions, using force if necessary. The experiences gained with this third generation were disillusioning and the large number of different kinds of operation rapidly began to overtax the UN organisations and their capacities. Often it was not possible to formulate a clear mandate for a mission and the rapid expansion

of the mandates (mission creep) was not followed up by any corresponding increase in resource provision.

It is not easy to name the purpose of an intervention: is it purely about protection of people or is it about removing the reason for their lack of safety? How radical should an intervention to eliminate these causes be and how should it be brought to a conclusion? Only in rare cases can the rule people like to postulate before an intervention of "in and out again quickly" really be adhered to. More often ongoing radical ethnic conflicts or disintegrating states, for example, mean that an intervention becomes a medium-term reconstruction project.

For that reason, peacekeeping and peacebuilding are now becoming more closely connected in the "fourth generation." More than ever it is becoming clear that there can be no uniform pattern for peace operations, but that every new mission has to be individually tailored.

Finally – and that should be noted here – an intervention doctrine justified by the need to protect human rights loses credibility if there is culpable neglect of the instruments of prevention and if support for the corresponding UN sub-organisations is minimized.

Questions

- What means of intervention exist?

- Which are used and what is the relationship between political and military enforcement measures?

- What aims should an intervention pursue?

- Who bears the cost?

- How can peacekeeping/peace-enforcing and peacebuilding be linked?

4 The aim of the programme

The aim of the Friedrich Ebert Foundation is to support the process of shaping and forming opinions in the field of security policy in the regions of the South and to link the positions and political developments back into the German/European debates and the UN process.

To do this the Friedrich Ebert Foundation organises a series of events both in the regions themselves as well as in Berlin, Brussels and New York.

The foundation provides information on this in its publications on current developments in security policy. An extensive pool of documents on security issues is also available on the website www.fes.de/globalization.

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More information is available on

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