

CHAPTER 5

HUMANITARIAN INTERVENTION IN BURMA

Led by Havel and Tutu, human right organizations called on the UN Security Council to adopt a resolution that would pave the way for non-military intervention in Burma. In the report, Havel and Tutu called on the Security Council to pass a resolution requiring Burma to work with the United Nations to achieve national reconciliation and restore a democratically elected government. The proposed resolution also called for the immediate release of pro-democracy leader Aung San Suu Kyi and 1,100 other political prisoners and urged Burma to give unhindered access to international aid workers so that they can deliver assistance in the impoverished country.⁷⁴ The UNSC's decision was finally made in response to the international community's concerns. The questions are whether the next step will possibly be developed to humanitarian intervention and what form of intervention will be.

Humanitarian intervention can be interpreted in a number of ways. The tradition approach to humanitarian intervention focuses on states and forcible intervention. Intervention is characterized by coercion, by a breach of sovereignty and is non-consensual.⁷⁵ Buchanan defined humanitarian intervention in the traditional way as the threat or use of force across state borders by a state aimed at preventing or eroding widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.⁷⁶

⁷⁴ "Tutu, Havel ask UN intervention in Myanmar," *Los Angeles Times*, October 21, 2005.

⁷⁵ Nicholas J. Wheeler and Alex J. Bellamy, "Humanitarian Intervention in World Politics," in *The Globalization of World Politics: An Introduction to International Relations*, 3rd ed., ed. John Baylis and Steve Smith (Oxford: Oxford University Press, 2005), p. 558.

⁷⁶ Allen Buchanan, "The Internal Legitimacy of Humanitarian Intervention," *Journal of Political Philosophy*, no. 7 (1999).

By contrast, non-forcible humanitarian intervention emphasizes the pacific activities of states, international organizations, and non-governmental organizations in delivering humanitarian aid and facilitating third party conflict resolution and reconstruction.⁷⁷ Humanitarian intervention also encompasses non-forcible methods such as the threat or use of economic, diplomatic or other sanctions. Humanitarian intervention can be simply understood as the interference in a sovereign state by another with the objective of ending or reducing suffering within the first state as a result of civil war, starvation or genocide.

The rationale behind such an intervention is the belief in a concomitant duty under certain circumstances to disregard a state's sovereignty to preserve our common humanity. Burma has become a test case for ascertaining the sovereignty of people to protect the human security in contradistinction to sovereignty of state that focuses only on the national security. The notion of the right of humanitarian intervention in the internal affairs of a state evolved in the modern world to deal with situations where it was deemed that domestic state's or government's rule over some or all of its citizens was perceived as barbaric.⁷⁸ The application of these principles is a kind of "responsibility to protect" that population.

The International Commission on Intervention and State Sovereignty (ICISS) published a report in December 2001 entitled "the Responsibility to Protect". This report commented on the emerging concept of human security and considered that the Westphalian model of sovereignty did not include the unlimited power of a state to do as it wished to its own people. It was generally acknowledged that the sovereignty implied a dual responsibility. This dual responsibility is, externally, to respect the sovereignty of other states and, internally, to respect the dignity and basic human rights of all the people within the state. The Commission considered that, in

⁷⁷ Wheeler and Bellamy, p. 58.

⁷⁸ B.K. Sen, "The Case for Humanitarian Intervention," *Legal Issues on Burma Journal*, no. 7, by Burma Lawyers' Council (December 2000).

international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood to encompass this dual responsibility.⁷⁹

The report makes a strong case for humanitarian intervention, where necessary, not just as a right but as an obligation or the responsibility to protect of whoever is capable of undertaking it. The report, thus, represents a further stage in what is the triumphant rise of humanitarian concerns to the forefront of the world's agenda. It is the latest expression of a new moral awareness of the responsibility of each for the human security of all, and of all for the human security of each.⁸⁰ The debate over the legitimacy of military to end humanitarian crises centers on the tension between two legally and ethically legitimate concepts -- the right of the state to enjoy sovereignty and the right enjoyed by individuals by virtue of human rights norms.⁸¹

Burma's regime asserts that human rights claims cannot encroach in the principles of cultural diversity and state sovereignty, thereby defecting a suggestion of international intervention and confirming that the issue is one that is best addressed locally, despite the illegitimacy of the regime.⁸² The cultural relativism argument questions the notion that human rights are premised on the principle of equality of all human beings and the natural claim of universal validity of these rights.⁸³ The notion of sovereignty and its corollary, the rule of non-intervention, is enshrined in customary international law and codified in Article 2 (7)⁸⁴ of the UN Charter.⁸⁵

⁷⁹ J.E. Linter, "Humanitarian Intervention: Legitimizing the Illegal?", *Defence Studies* 5, no.2 (June 2005), p. 271-274.

⁸⁰ Clifford Orwin, "Humanitarian Military Intervention: Wars for the End of History?", *Social Philosophy and Policy Foundation* 23 (2006), p. 196-217.

⁸¹ Edward R. McCleskey, "Sovereignty and Humanitarian Intervention: A Conflict between the Rights of States and Individuals," in *International Development and Assistance: Where Politics Meets Economy*, ed. Andrzej Bolesta (Warsaw: Leon Koźmiński Academy of Entrepreneurship and Management, 2004), p. 110.

⁸² Schairer-Vertannes, p. 95.

⁸³ Ibid, p. 97.

⁸⁴ Article 2 (7): Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the

The state has been a prime structural component of international action with three classic characteristics of territory, authority and population. From the Peace of Westphalia through the late twentieth century, the centrality of state sovereignty to international relations was never seriously challenged. In the post-war era, the centrality of the state in the international system was challenged by the emergence of non-state actors as subjects of international law. Moreover, provisions of some treaties or regional charters impinged on areas that were historically the prerogative of domestic authorities.

The last decades of the twentieth century, particularly after the Cold War, witnessed an increasing sense in the international community that human rights were a responsibility to all. There is the sense that the world is not at peace if the fundamental rights of individuals are being violated. Reisman claimed that, in the modern post Cold War era, it is the people's sovereignty rather than the sovereign's sovereignty that is protected by international law.⁸⁶ A complex network of international law and practice or so-called the international human rights regime has grown up around the idea that individuals possess rights simply by virtue of being human, of sharing in a common humanity.⁸⁷ This issue links to the situation in Burma where the rights of individuals should be protected, not to be ignored.

The junta's systematic violations of human rights, their flagrant disregard of 1990 democratic election results, and their failure to adopt a constitution demonstrate clear and unambiguous breaches of the UN Charter. The time has come for the intervention as a peaceful and responsible approach to save individuals in Burma. The matter is seemingly simple – civilians under military rule subjected to

present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

⁸⁵ Wheller and Bellamy, p. 59.

⁸⁶ M. Reisman, "Sovereignty and Human Rights in Contemporary International Law," *American Journal of International Law*, no. 84 (1990), p. 869.

⁸⁷ Chris Brown, "Human Rights," in *The Globalization of World Politics: An Introduction to International Relations*, 3rd ed., ed. John Baylis and Steve Smith (Oxford: Oxford University Press, 2005), p. 690.

brutal and inhuman suppression are entitled to immediate protection.⁸⁸ When states are unwilling or unable to do so, the international community has a moral right and duty to take over that responsibility as the state forfeited the right of sovereignty of people. From this, the ruling military junta is losing their internal sovereignty and those who urge a ‘duty to intervene’ seek to legitimize the humanitarian intervention for a common morality, upheld and supported by a civil and caring international society. This intervention is a hope for the human security in Burma.

“Human security” is referred to an emerging paradigm for understanding global vulnerabilities whose proponents challenge the traditional notion of national security by arguing that the proper referent for security should be the individual rather than the state. Human security holds that a people-centered view of security is necessary for national, regional and global stability. The application of human security is highly relevant within the area of humanitarian intervention, as it focuses on addressing the deep rooted and multi-factorial problems inherent in humanitarian crises, and offers more long term resolutions. Humanitarian intervention could also be viewed as a component of human security, in place to preserve or protect the basic needs and rights of individuals. The security of people includes their physical safety, their economic and social well-being, respect for their dignity, and the protection of their human rights.⁸⁹

The humanitarian security in Burma has long been discussed among international community particularly Human Rights Watch and Burma is now on the permanent agenda of the United Nations. Although the desirability of UN Security Council authorization for any intervention is widely accepted, there are difficulties about viewing such authorization as absolutely essential.⁹⁰ The problem is that the Security Council’s decision to intervene or not intervene in a particular conflict does

⁸⁸ Sen, p. 20.

⁸⁹ Taylor and Curtis, “The United Nations” in *The Globalization of World Politics: An Introduction to International Relations*, 3rd ed., ed. John Baylis & Steve Smith (Oxford: Oxford University Press, 2005), p. 420.

⁹⁰ Adam Roberts, “The United Nations and Humanitarian Intervention,” in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2004), p. 85.

not reflect internationally agreed objective criteria and legal norms, but the domestic and global imperatives of the Permanent Five.⁹¹ In the case of Burma, China and Russia have used their vetos to block the UNSC resolution on Burma.

A more comprehensive approach by the international community composed of carrots and sticks is needed to help facilitate a long-awaited democratic transition in Burma. Economic sanctions are frequently a response to the urgencies of the moment in international affairs. However, the sanctions are particularly unattractive in the case of Burma due to its low level of industrialization and its ability to continue to under-perform, and the fact that the country's neighbors have not joined the United States in imposing sanctions.⁹² The fact that sanctions have failed does not mean that pressure on the Burmese regime is inappropriate. Sanctions need to be made smarter and counterbalanced by a series of more prominent incentives.⁹³

Since the end of the Cold War, enforcement action under Article 41⁹⁴ of the UN Charter has become a common instrument of peace maintenance. Comprehensive economic embargoes, backed by military enforcement, appeared to be the most effective tool to force reluctant government to comply to the will of the international community. However, sanctions produced unintended humanitarian, social and economic consequences for the civilian population of the target country.

The problem with sanctions is best illustrated by the opportunity that was lost in the early 1990s, when a new generation of generals, eager for change, launched a series of reforms and opened up the economy to outside world. Hundreds of foreign companies set up shop. Rangoon was transformed, with new hotels, shopping centers and official buildings, traffic jams on previously empty roads, and the first real influx

⁹¹ Abbott, p. 5.

⁹² Rarick, p. 3.

⁹³ Stacey, p. 40.

⁹⁴ Article 41: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

of tourists in years. However, in the later 1990s, more formal sanctions as well as continued government mismanagement of the economy, Western firms began to pull out, leaving Burma in limbo.⁹⁵

In the past, sanctions were meant to suffocate the government, but on balance, they contribute to the economic misery of the common citizens. The ban on the imports from Burma, for example, was designed to cut the country off completely from the world market and to limit the foreign exchange available to ordinary citizens. It also led to significant unemployment and a spike in the number of economic migrants seeking illegal work outside the country. Worse, rather than isolating Burma, the sanctions worked to isolate the world from Burma and deprived it of influence over the country's development.⁹⁶

However, many proponents of sanctions maintain that the benefits outweigh the costs, and that the harm done is insignificant. This is a serious misreading of the situation. While it is certainly true that the macro-economic effects of the sanctions are overshadowed by the regime's own economic mismanagement, the sanctions have increased the sense of threat within the government and have thus directly contributed to the increased allocation of scarce resources for improved armaments and other security capabilities.⁹⁷

The international community was clearly unwilling to tolerate the unintended negative effects of comprehensive economic sanctions. Since the mid-1990s economic embargoes were used much more cautiously and in a more limited way, and attempts were made to develop 'targeted' or 'smart' sanctions. The purpose of targeted sanction is to modify the behavior of specific actors which have been determined by the Security Council to threaten international peace and security.⁹⁸

⁹⁵ Thant Myint-U, "What to do about Burma," *London Review of Books* 29, no. 3 (February 8, 2007).

⁹⁶ Pavin Chachavalpongpan, "Making sense of Myanmar: The Failure of Sanctions," *Opinion Asia*, November 22, 2006, <http://www.opinionasia.org>.

⁹⁷ Perderson, p. 280.

⁹⁸ Burma UN Service Office, p. 35.

Efforts to target sanctions more effectively so as to decrease the impact on innocent civilians and increase the impact on decision makers have been focused in three different areas – military, economic and diplomatic. The smart sanctions are practically placed on specific actors in a target state, including political organizations, military organization and other ruling elites, non-state actors, entities and individuals that support the primary targeted actors and the specific resourced used by these actors to advance their policies.⁹⁹

The Burma UN Service Office called the Security Council to impose a targeted sanctions regime. Targeted sanctions should include an arm embargo; an assets freeze on the junta, its militia, entities, and cronies who formulate, implement or benefit from policies that are impeding Burma’s transition to democracy, and their immediate family members; a ban on new investment, loans and grants from international financial institutions and imports; aviation and travel banks and a ban on diplomatic and other political representation.¹⁰⁰ If these approaches are put in place collectively by all member states of the United Nations, the military junta would be forced to the will of the international community, leading to the effectiveness of humanitarian consequences in the country.

The Burma Campaign UK also advocate for sanctions that target foreign investment and Burma’s larger scale formal economy industries such as teak, natural gas and gems, which is compatible with one that calls for carefully targeted economic sanction. The formal economy is in the main owned by the military establishment and their families. Negative consequences arising from sanctions will then have the greatest impact on the military and its close associates.¹⁰¹ The sanctions of this kind are aimed at minimizing impact on ordinary Burmese people and will not contribute negatively to Burma’s humanitarian crisis.

⁹⁹ Burma UN Service Office, p. 38.

¹⁰⁰ Ibid, p. 39.

¹⁰¹ Burma Campaign UK, “The European Union and Burma – the Case for Targeted Sanctions,” www.burmacampaign.org.uk/reports/targeted_sanctions.htm.