# The Thorny Issues Surrounding International Intervention

Tina Mavrikos-Adamou
*Hofstra University*

### Abstract

The contentious issue of international intervention has for centuries created both political and legal dilemmas for policymakers and political leaders, who find themselves in the position of having to make decisions that often have far-reaching consequences.  What distinguishes the present era from the past is that international lawyers as well as political leaders have been forced to address evolving political, economic, and moral questions surrounding international intervention as new civil conflicts occur.  Two main debates are currently raging surrounding international intervention. International lawyers as well as many political leaders maintain that international intervention is not legally justified under the current international legal framework, and that territorial integrity must remain paramount.  A counter argument is being articulated by those who believe international intervention is justified on humanitarian grounds, specifically when there are gross and systemic instances of human rights abuses occurring that jeopardise international security and peace.  This debate is affecting the classical notion of state sovereignty.  The increasing number of failed states and the growing number of instances of a claim to statehood are two auxiliary but intertwined additional concerns within the intervention vs. sovereignty debate that need to be considered.

### Policy Implications

- Debates surrounding international intervention are currently forcing a re-evaluation of the classical notion of state sovereignty.
- Structural and procedural changes need to occur within the United Nations system to be able to form a consensus position to address current civil/internal conflicts occurring around the world.
- As civil/internal conflicts are moving beyond their borders and affecting the international environment, so too does the decision-making process addressing these conflicts need to keep apace to meet the challenges posed to international peace and security.

### What is the debate over international military intervention all about?

Few would dispute that we live in a world of global uncertainty.  Whether you look towards the Middle East, Africa, Europe, or any other region on the map - economic, political, and often intrastate conflicts (and sometimes wars) abound.  Among the most controversial and contentious issues of the past several decades is that of international intervention, which, although has ancient roots, has taken on a new facade.  Policymakers and political leaders alike have been forced to turn their attention to the political, economic, and moral questions surrounding international intervention as new civil conflicts occur.   Perhaps one of the biggest problems is that there is little, if any consensus on the issue, even with how (or if) it

should be legally implemented. Political leaders and international lawyers alike lament that international intervention is not legally justified under the current international legal framework, and that there is a desperate need for much more specific and clearer guidelines to be articulated. They contend that ad hoc justifications for the use of force add to the confusion by increasing concerns of illegality and illegitimacy on the part of both the United Nations and other international organisations and actors (Chesterman, 2003). What is lacking is a comfort zone for states to work in that is legally grounded in international law and publicly accepted on the ground. There is general consensus that territorial integrity must remain paramount, but what happens when international security is jeopardised? Adhering to the UN Charter black-letter-of-the-law one can clearly take a non-interventionist stance: Article 2(4) states that 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.' (UN Charter, Chapter 1 Art. 2(4)). Others refer to Article (2)7 that states that '[n]othing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state …' (UN Charter, Chapter 1 Art. 2(7)). But if one wants to stick with a literal interpretation of the UN Charter, they can also claim that the UN Security Council can determine the existence of 'threats to the peace' and then decide 'what measures involving the use of armed force are to be employed.' (UN Charter, Chapter VII). The rebuttal is that the international community acts when it sees the conflict as one of strategic importance. The other big complaint is that intervention, which costs a lot of taxpayer dollars/euros, does not resolve what caused the conflict in the first place. In many cases, it does not prevent all-out civil war, nor does it ensure a permanent solution for long-term peace. And identifying who the 'good guys' (and gals) are in the conflict and what their true intentions are, has proven much more difficult than foreign policy-makers will admit. (Seybolt, 2007; Newman, 2009). However, the disputed legal question remains as to whether the UN Charter implicitly permits humanitarian intervention in cases like Kosovo,

East Timor, Libya, and now perhaps, Syria. If so, legal experts claim there must be a *modus operandi* and specific guidelines so that acute legal dilemmas do not arise.

On the other side of the fence are those who make claims that international intervention is justified on humanitarian grounds, specifically when there are gross and systemic instances of human rights abuses that jeopardise international security and peace. How can the international community stand by and idly watch a government turn against its own people and do nothing? In too many cases (i.e. Rwanda, Darfur) humanitarian catastrophes unfolded as the world watched them happen. (Lang, 2003; Keren and Sylvan, 2002). Those advocating humanitarian intervention often come back to rebut international lawyers pinpointing specific wording in the UN Charter to defend their position, citing UN Charter Articles 55 and 56 as proof that there is legal justification for international intervention on humanitarian grounds. The notion of *Responsibility to Protect* (R2P), they claim, is in keeping with both the intentions of the UN Charter and its principles (Evans, 2008). They contend that human rights violations constitute major breaches of 'international peace and security' since authoritarian leaders turn guns against their own people, leading to consequences that can spiral out of control. Embedded in their arguments are also moral issues, including the idea that intervention may be morally and politically justified in certain cases where human atrocities are blatant and widespread. In too many instances, international intervention is implemented only after genocide and ethnic cleansing have occurred. (Wheeler, 2001; Weiss, 2007). None the less, if and how to codify humanitarian intervention is tricky and contentious, although many claim that this might not be necessary since customary international law is producing a normative consensus based upon accumulated practice. More and more human rights are becoming universal values (Henkin, 1990).

## Revisiting the classical notion of state sovereignty

If in one arena a fight is taking place between the pro-interventionists and the non-interventionists, in

an adjacent arena wrangling is taking place over how all this is affecting the classical notion of state sovereignty (Ilgen 2003; Walker, 2003). The conundrum is this: under what specific circumstances is it legally justifiable for the international community (preferably acting multilaterally with the consent of the United Nations Security Council) to interfere in the national affairs of another state. National sovereignty and territorial integrity have been integral for the post-Westphalia era and one of the cornerstones of international relations in the modern era, yet it has become harder and harder to defend the classical notion of territorial integrity and non-interference from outsiders when authoritarian leaders are unwilling to step down under immense public outcry. If state leaders revert to killing their own people to maintain their waning power, and violence and chaos erupts, does that not give the international community the right (legal and/or moral) to intervene under specific circumstances to protect the lives of citizens who cannot do so on their own? In addition, there is the potential danger for violence to metastasise into neighbouring states, causing regional destabilisation, which can in turn create a real 'threat to international peace and stability.' Whether the traditional notion of sovereignty has become anachronistic or not, one point seems to be clear: re-conceptualisations of sovereignty are occurring and the verdict is still undecided as to what the final notion will encompass, and what direct effects this will have on the authority of the international order and on foreign policy-making. The notion of a state's responsibility to protect its citizens appears to be one of the evolving components finding its way into a 21st century re-conceptualisation of sovereignty (Holzgrefe and Keohane, 2003).

**Failed states and claims to statehood**

Entwined within the sovereignty vs. intervention debate are a number of other significant concerns, two of which are the increasing number of failed states that have occurred since the turn of the century, and the growing number of instances of a claim to statehood and the ensuing process of de jure recognition. Failed states pose an imminent danger to international peace and security as they often become breeding grounds for terrorist organisations and can become the point of transit for drug and arms trading. Somalia stands out as the case of a failed state par excellence and holds the ignominious position of being #1 in the 'Failed States Index' since 2008 (Fund for Peace, 2011). Somalia has been unable to form a stable and legitimate central government with control over its territory since the outbreak of civil war in 1991. Despite assistance from the international community, Somalia cannot provide basic public services for its people or a stable economic environment. The surge in the number of merchant sea vessels that have been attacked and hijacked by Somali pirates over the past decade is evidence that failed states are becoming more of an international threat. Chad follows close in the number two spot in the Index, followed by Sudan in the number three position, turning the spotlight on the continent of Africa as one which has witnessed the world's most unstable countries, and where the international community has failed miserably to end the violence and re-establish law and order. Adding to the continent's woes are now the Arab spring revolutions that have set ablaze the countries in the north of the continent, and whose attempts at successful democratic transformation remain to be seen.

Part of the problem is that the international community has yet to come up with a comprehensive approach to addressing failed states. So far, ad hoc international intervention has taken place in those states when those intervening feel that the crisis has reached a critical point. When to intervene, where, and the methods to be used vary widely, further fuelling criticism of what has been described as *intrusive* intervention (Bolton, 2008). Assisting failed states to re-establish state capacity when this is feasible exhausts both the human and financial resources of the UN and other intervening organisations and actors. What can realistically be accomplished to help failed states to rebuild and stabilise remains elusive. But the option to do nothing is likewise unacceptable. Not only due to the human costs suffered by these states, but also because of the potential deadly consequences for the international community, failed states cannot be ignored. Too often inaction results in security concerns which are

increasingly left well beyond the national borders of any one state at risk.

**The Case of Kosovo and South Ossetia**

Applying the aforementioned theoretical discussion to current examples, Kosovo is a country that has witnessed many of the pushes and pulls of the intervention vs. sovereignty debate. It experienced on its soil both international intervention on the basis of infringements of human rights and humanitarian law in 1999, and it unilaterally declared independence from Serbia in February of 2008. Although the International Court of Justice in July 2010 found that Kosovo's declaration of independence did not violate general international law (ICJ, 2010), controversy remains concerning the legitimacy of Kosovo's independence. Serb leaders, as well as several states including Russia and China, claim that Kosovo's independence challenged Serbian sovereignty and undermined international law. The United States and its European allies have claimed that the case of international intervention in Kosovo and its declaration of independence should be viewed as *sui generis*, and not a model of secession to be followed.

Despite the attempts of US leaders and western allies to minimise the possible fall-out from Kosovo's unilateral declaration of independence, six months later, in August of 2008, with tensions growing between Russia and Georgia across the South Ossetian border, the Georgian military decided to launch an attack on the capital of Tskhinvali. Their justification was that they were warding off what they described as a clear Russian invasion. In response, the Russians quickly and swiftly came back with a massive military response, and the Georgians were driven from the capital, having to give up their approaches to Abkhazia, and suffering some temporary loss of their own territory to the north. The Serbians were quick to claim that if there wasn't a 'Kosovo precedent', there would not have been a war in South Ossetia. Western powers insisted on the sovereignty of Georgia over its breakaway province, while Russia defended the separatist forces in Ossetia. Complaints about a 'double standard' in the United Nations were immediately heard. Others have

since maintained that the comparisons between Kosovo and South Ossetia are untenable and that there remain striking differences (in motives, rationale, and aftermath) between the two (*The Economist*, 2008; Oliker, 2008). Undeniably, all conflicts are context-specific and unique in many ways that do not allow comparability. But to say that Kosovo did not (or will not in the future) set a precedent (legal or otherwise) for other movements of secession is naïve (Richter and Halbach 2009; Berg 2009; Bing 2009). No matter which interpretation one takes, however, the same question arises: under what terms and conditions is the right to self-determination to be sought in a post-colonial age?

**Conclusions**

With the birth of the newest country, the Republic of South Sudan in July 2011, and a Palestinian move for UN legal recognition as an independent state in September 2011, the international community, like it or not, has been forced to make weighty political and legal decisions with potentially far-reaching consequences for the immediate actors involved, as well as for the credibility of the international community. Both of these country cases exemplify many of the dilemmas involved in self-determination and its legal recognition. The creation of the Republic of South Sudan breaking with its former colonial boundaries was far easier for the international community to legally grant under international law. This was partially due to the national referendum that was held in the country before independence, which gave legal credence to its creation. The move towards the creation of a Palestinian state and its recognition by the United Nations is politically controversial and legally convoluted. Some of the specific dilemmas involved in the Palestinian move to become a member of the United Nations are the continuing border altercations between Israel and the Palestinian authorities, the dispute over East Jerusalem that the Palestinian's want as their capital, as well as how Palestinian statehood would affect future security relations and negotiations towards peace with Israel. But beyond the country-specific difficulties of Palestinian independence lie the more general aforementioned concerns of various nations' claims to statehood in the post-

colonial era, and the conditions and circumstances under which the international community will grant de jure recognition.

Whether for or against, in favour or not, the disputes surrounding international intervention vs. sovereignty, and the continuous challenges presented by failed states and nations wanting to secede and declare independence, continue. Before we race to react to these and other labyrinthine issues with an erroneous quick fix, we need to first be sure we are asking the right questions, and have taken into account the complexities of the problem. There are no one-size-fits-all solutions to civil conflicts which vary in internal dynamics and consequences. Correspondingly, there cannot be an uncomplicated international legal framework to address such conflicts. The conundrum for both international lawyers and policymakers is how to make an international legal framework coherent yet flexible. A debate surrounding what is internationally legally permissible and what cries out for international action based on humanitarian concerns is inherently pugnacious. Additionally, political leaders as well as contemporary policymakers need to acknowledge that the current international environment is much more interconnected, interdependent, complex, and capricious than once thought, requiring much more contemplation and cooperation to meet its challenges. Local civil conflicts have had effects far beyond their borders, each resulting civil conflict with its own images, dynamics, and cast of characters. New doctrines of intervention are challenged to provide means to resolve these new conflicts that are arising, some of which appear to be hybrids of local or regional conflicts. A framework to react to these internal conflicts emerging cannot come from any one particular state or international organisation, but need to come from a variety of sources, involving many actors, both national and international, who are concerned with conflict resolution (Ramsbotham, Woodhouse and Miall, 2011).

Along with institutional and structural changes that need to occur within the United Nations system, there has to be further coordination among member states on foreign policy-making. The five permanent members of the UN Security Council have to make space at the table for other permanent members to join to ensure proper representation. A re-evaluation of the decision-making process likewise needs to take place. The recent failed attempt to pass a UN Security Council draft resolution submitted by Morocco and backed by the Arab League and the USA and its allies to stop the violence in Syria further reveals the need for review of UN procedures. With Russia and China vetoing the UN draft resolution, the UN effectively was unable to take collective action to protect Syrian citizens and bring an end to the violence in the country. While 13 of the 15 Security Council members voted in favour of the draft resolution, the veto by Russia and China prevented the UN from resolving the crisis, further undermining the international community's ability to speak with a unified voice. But changing the voting procedures of the UN Security Council will take political determination and recognition on the part of the existing permanent members that change needs to occur. As Thucydides asserted more than 2,400 years ago in the *History of the Peloponnesian Wars*, victory in any struggle requires innovative thinking, determination, and often change of character. We'd do well to heed his advice.

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