Book Reviews


Intervention by third states and NGOs for humanitarian purposes has become one of the prominent themes of the post-1990 world. The books reviewed here represent three very different perspectives upon a problem which appears to raise intractable tensions between the demands of legality, morality and realpolitik. Two of the books, those written by Chesterman and Tsagourias, are primarily concerned with the legal and legal-contextual dimensions of humanitarian intervention, while the third, by the Humanitarian Studies Unit of the University of Deusto, has a much broader appreciation of the nature of humanitarian action and its ramifications.

Despite the tantalizing title of Chesterman’s admirably thorough book, its major concern is with the legality or otherwise of humanitarian intervention under the UN Charter. The author does not seem overly concerned with justice, but rather with questions of law and policy. At the outset he leaves readers in no doubt as to where his sympathies lie, for on the second page he states that ‘as a legal concept it will be argued that humanitarian intervention is incoherent – any ‘right’ of humanitarian intervention amounts not to an asserted exception to the prohibition of the use of force, but to a lacuna in the enforceable content of international law’. This statement is not exactly a model of lucidity, but it suggests that arguments about a so-called right of humanitarian intervention arise because current international law is inadequately equipped to deal with ‘hard cases’. This interpretation is borne out by the remainder of Chesterman’s work.

The author begins by examining the origins of the right of intervention for humanitarian purposes in the writings of the scholastics and the decline of the doctrine with the rise of the nation-state and the corresponding theory of positivism which denied intervention in the affairs of other states for any purpose whatsoever. Despite this waning of the doctrine of humanitarian intervention within a strictly European context, it re-emerged during the nineteenth century as the ‘civilized’ Powers sought to extend their interests in the underbelly of the Ottoman Empire. With the adoption of the UN Charter, however, the use of force for any purpose other than the Charter-based exceptions of self-defence or Security Council enforcement action appeared to have been eliminated. Chesterman, however, examines the writings of jurists who suggest that a customary right of humanitarian intervention either
survived the entry into force of the Charter or that a loophole in the Charter regime itself allowed a continuation of the right. He finds none of these arguments convincing. Furthermore, he is not persuaded by writers who suggest that state practice since the entry into force of the Charter has led to a modification or a reinterpretation of the Charter regime. Such state practice as exists is, in his view, inconsistent and unsupported by the necessary *opinio juris* or sense of legal obligation which must underpin the emergence of any customary norm. This is so even in the case of Kosovo where the humanitarian imperative might be said to have been at the forefront of decision-makers’ deliberations.

Furthermore, while not constituting humanitarian intervention proper, it has been alleged by certain commentators, such as Michael Reisman, that there is an emerging right to pro-democratic intervention in states whose governments are not supported by popular democracy. Such regimes are, in the view of such writers, illegitimate and can therefore be overthrown by, to use Ian Brownlie’s term, ‘kind hearted gunmen’. Again, Chesterman finds that neither state practice nor *opinio juris* support such a norm.

The author’s examination of the ‘humanitarian’ endeavours of the Security Council in the post-1990 period considers the plasticity of the circumstances in which the Council has been willing to be engaged and the way in which it has been prepared to sanction coalitions of the willing to carry out its primary responsibilities for maintaining peace and security. The result of this, argues Chesterman, is that the Council has reduced its role from substantive to formal meaning and that its authorization has become merely one policy justification among others.

Chesterman concludes his study by arguing that the evidence which he has adduced suggests that international law does not sanction a right of humanitarian intervention. He further argues that what is most evident in arguments about the legitimacy of humanitarian intervention is the simple — not to say simplistic — moral equation that in the face of atrocities it is better to do something rather than nothing. In other words, as a matter of policy, the ends justify the means and that the concomitant of this is that law must necessarily follow morality. Chesterman is right when he suggests that this is a misleading equation. What is needed is not a justification for unilateral action but rather a sound policy which asserts strong multilateralism in dealing with problems of a humanitarian kind. While it is difficult to argue with Chesterman’s well-researched and articulate arguments, there remains the sneaking suspicion that there might be occasions when morally induced action might just have the edge over a more or less rigid principle of legality.

Tsagouras, on the other hand, does not eschew the moral dimension of humanitarian intervention. He does not, in fact, avoid any dimension — be it legal, moral, political, personal, human or psychological — raised by this alleged right. Tsagouras’s project is to provide a route map for resolving the problem in a post-modern world by reconceiving humanitarian intervention within the malleable and inter-subjective framework of human dignity. This is a bold project, but it is doubtful whether the author makes a convincing argument for it. As one might expect of a work which is, at its core, philosophical and speculative in nature, the language is often difficult and obscure and frequently
obfuscates rather than elucidates. The author also has a tendency to preach to his readers; a technique which may alienate some.

In pursuit of his project, Tsagouras examines what might be called the traditional approaches to the vexed question of humanitarian intervention. In so doing he treads much of the same ground, although in a more abbreviated form, as Chesterman. He examines humanitarian intervention through the prisms of natural law, positivism, the policy-oriented or New Haven school of international law and critical legal theory. Furthermore, he takes the view that the protection of nationals abroad should be seen as a species of humanitarian intervention (‘humanitarian intervention lato sensu’) and should not simply be sloughed off into a receptacle marked ‘self-defence’, an approach which he describes as ‘discriminatory and selfish’. This is all very well, but having examined the various approaches, what does Tsagouras offer us? In short, he offers a redescription of humanitarian intervention via a discursive model ofhuman dignity. This, of course, requires some a priori appreciation of what constitutes human dignity. It appears that this is something of an elusive concept but in Tsagouras’s model ‘human dignity as dignified human existence refers to the Greek words for life: zoe, the biological life, and bios, the life as lived.’ Dignity in this framework makes an appearance as ‘critical interest’. To identify human dignity as anything more concrete than this seems to be impossible, for as Tsagouras says, ‘human dignity cannot be the subject of a definite statement because in a discursive culture its content will be the subject of debate and the prospect of revision unleashes dynamics that are better served through an open concept.’ In other words, human dignity is a ‘will o’ the wisp’ phenomenon whose precise parameters cannot be determined with any certainty. What we do learn, however, is that human dignity relies on the self-reflective nature of human beings and their capacity for transformation.

The real test of Tsagouras’s hypothesis lies in its application to the exercise of the claimed right of humanitarian intervention in a variety of cases. The result, quite frankly, is disappointing. Perhaps I have badly misunderstood the project or perhaps my mind is insufficiently agile to grasp the subtlety of the argument, but what the final chapter of the book seems to end up with is simply a description of certain events without critical analysis. For an irredeemable realist (both in the realms of law and international relations) Tsagouras’s monograph offers no solutions, but that, perhaps, is its very point.

The final book in this trio, Reflections on Humanitarian Action, comprises a number of essays edited under the auspices of the Humanitarian Studies Unit of the University of Deusto. While the two previous books reviewed are concerned primarily with the question of the legality of humanitarian intervention in a narrow sense, that is, military intervention for the purposes of protecting minorities from the violence of majoritarian regimes, this work spreads its net much wider and has its roots in the moral imperative to assist those who find themselves afflicted by violence in failing states. Robert Adams opens the debate with a consideration of the place of humanitarian principles in international politics in the 1990s. In Adams’ view, the apparent triumph of liberalism after the Cold War has not provided a model of how to overcome armed conflict in failed states. Humanitarianism, he suggests, provides one answer, but it is difficult to see where this leads in states where deep ethnic or religious conflicts
exist. The best answer appears to be, in his view, that humanitarian principles advance on a case-by-case basis and must be assessed in that light.

Joana Abrisketa turns her attention to the legal basis for humanitarian aid, in particular the right of victims of armed conflict and other disasters to receive assistance to satisfy their needs. This is a sound analytical piece which examines existing international instruments and state practice in the field. Abrisketa concludes that the right of victims to receive aid is recognized in a 'very subtle manner', suggesting that the right is constructed via a variety of instruments not directly concerned with the issue. The ethical dimensions of humanitarian aid are examined by Xabier Etxeberria who suggests that four ethical principles ought to be evident in any humanitarian action: the satisfaction of basic needs; cultural respect and participation of those affected; impartiality and neutrality on the part of those providing assistance; and independence of aid-givers from governments. Although he identifies these principal ethical requirements, Etxeberria recognizes that there might sometimes be conflicts between them which will have to be resolved through an appreciation of the end to be achieved.

Of the remaining chapters, which are concerned with a variety of practical and theoretical issues associated with the activities of NGOs, it is that by Mariano Aguirre on the role of the media in humanitarian crises which deserves some attention. While he recognizes that the generation of a moral conscience in response to humanitarian crises owes much to the work of the media, he ultimately doubts whether the media are more powerful than states when decisions about humanitarian intervention have to be made. He also criticizes the tendency of the media to trivialize humanitarian crises because this encourages people to react in terms of emotion rather than rationality. There is clearly a complex mix here, and, of necessity, it is difficult to come to concrete conclusions about the cause and effect of media–state dialogue and action. Aguirre concludes with a model for dealing with local media to facilitate conciliation among the conflicting parties.

This is a wide-ranging and informative collection of essays which presents a more complete picture of the various practical, ethical and legal challenges associated with the broader reaches of humanitarian activity in contemporary international society. It is certainly worth a place on the bookshelves of those who are interested in these compelling issues.

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The authors make a useful contribution to the study of intergovernmental negotiation and state right at the beginning that Japan’s negotiating behaviour can well be analysed and described within the categories applied to other countries. The degree of generalization of the book’s research results for the understanding of Japanese negotiating behaviour is, however, somewhat limited,