



Limitations of Sovereignty: The Case of Kosovo and its Implications for Japan by Ralph A. Cossa

NATO's military campaign against Yugoslavia last year was illegal but legitimate. This was a generally (but not unanimously) agreed upon conclusion at a recent conference on the "Implications of the Kosovo Conflict on International Law," sponsored by the Institute for International Policy Studies in Tokyo. It was illegal because it did not have United Nations Security Council authorization. It was deemed to be legitimate, nonetheless, since UN approval was not a realistic option, thereby leaving NATO with only two choices (diplomacy and sanctions having already failed): do nothing in the face of blatant crimes against humanity, or intervene militarily. Of these two "evils," intervention was the lesser sin.

However, even if one agrees with this contention – and many, especially in China and Russia, do not – the fundamental question raised by the Kosovo intervention remains unanswered. How does the international community balance the moral (if not legal) obligation to respond effectively to crimes against humanity with legitimate concerns about national sovereignty and non-interference? As the Kosovo case pointed out, the United Nations is not always the answer. In fact, until common ground between these two conflicting principles can be found, the UN will become increasingly irrelevant. Yet neither side in the ongoing debate seems willing to seriously address the issue and many continue to take totally uncompromising positions that are simply not in touch with today's realities.

The view, seemingly espoused by some in the West, that implies that intervention is permissible whenever it suits the major powers is just as unacceptable as the view that no action, no matter how terrible, justifies violating another state's sovereignty. I would argue that common ground can be found between these two extremes, based on the following guidelines:

- As a general rule, the principle of non-interference in another states internal affairs should apply.
- There are instances, however, when a national government may take actions against its peoples that are so egregious that they cannot be ignored.
- In such instances, there may be a moral imperative for the international community to act.
- Objective verification of the crimes is a prerequisite, as is a determination that internal self-policing or self-correcting mechanisms are not available. This requires an impartial verification mechanism.

– Even in such instances, the use of military force, while not precluded, should not be the first or only option. Diplomacy is the first tool, along with political and economic external pressures as appropriate.

– Should all other means fail or if the human suffering intensifies, then military intervention cannot be ruled out. Such intervention should, if possible, be applied through the United Nations or, failing that, through regional organizations or an ad hoc grouping, preferably with UN backing.

The challenge is to get the proponents of the more extreme positions to sit down and discuss these or similar guidelines. Enter Japan! I believe that Japan is ideally suited to take a lead role in stimulating and hosting the debate on the humanitarian intervention versus non-interference issue. As a country possessing both pacifist and humanitarian tendencies, Japan can be a credible interlocutor in attempting to find middle ground positions on this thorny issue.

Japan can also take a lead role in discussing, before a crisis, the types of effective non-military responses that, if known in advance, might help deter a potential human rights violator from excessive actions. As one of the world's largest sources of foreign aid, overseas developmental assistance, and direct foreign investment, Japan can wave a large economic stick, especially if its actions are closely coordinated with other major powers in forums like the G-7/8 or APEC. I argued at the time of the drafting of the Comprehensive Test Ban Treaty (CTBT) that Japan should take the lead in developing a series of coordinated political and economic responses that would be applied against any nation that refused to respect the wishes of the overwhelming majority of the world's nations and conducted nuclear tests. One can only speculate if this would have helped to deter either India or Pakistan from entering the nuclear club in May of 1998 (or if a similar action today might preclude further tests or prevent either from operationally deploying nuclear weapons in the field). If national leaders were aware of the type of coordinated economic and political sanctions they were sure to face in response to internationally unacceptable behavior, this could serve as a powerful deterrent to such actions.

This is not to imply that Japanese sanctions alone would have the desired impact, any more than U.S. go-it-alone sanctions have ever done much good. To the contrary, unilateral sanctions are easily skirted. In addition, a tendency to overuse sanctions and to apply them for domestic political purposes, as the U.S. has often been inclined to do (even against its friends), not only makes

them increasingly ineffective but also makes it difficult to gain an international consensus in cases where they are appropriate. On the other hand, a unified approach can serve as an effective deterrent or as a tool to reverse bad behavior once it starts. Who better than Japan to initiate such an effort?

Whether or not Japan would be prepared to be involved in military operations either to deter inappropriate actions or to punish those actions once they occur is a subject that the Japanese public needs to debate. It is not clear how much Japan can or would do within the confines of its current constitution and enabling legislation, either to assist the U.S. in a crisis or to participate in UN or other types of multinational task forces. I would argue that even within the current constitution, there is considerable room for Japan to be a more active participant in international peacekeeping and even peace enforcement activities, at least in a non-combatant role, if not in a combat support or combat service support role (where forces are not engaged directly in fighting but are in harm's way). What is needed most is not constitutional revision or reinterpretation but the political courage to initiate the debate on Japan's collective defense responsibilities and capabilities.

Such a debate must be undertaken carefully and with an eye toward the reaction of Japan's neighbors. But, with a few notable exceptions (China and North Korea being the most prominent), most states in Asia appear open to the

idea of greater Japanese military participation in humanitarian operations and even to evacuation operations, reconnaissance, or sanction enforcement measures that would be combat-related. The 1997 revision of the U.S.-Japan Defense Guidelines was a modest step in the right direction but it was only a small first step. It should be seen as representing the floor, not the ceiling, of what Japan can do in the event of crises that demand an multinational response.

In sum, Japan's major contribution in the current debate over humanitarian intervention versus non-interference should be that of a moderator and facilitator. Japan can also help to outline measures that may contribute to discouraging similar type actions from taking place in the Asia-Pacific region. However, Kosovo clearly demonstrated that political and economic posturing and even the threat of force does not always redress the grievance. NATO's legitimate actions in Kosovo have at least raised the question as to what Japan's response would or could be in the event of a similar humanitarian crisis in Asia. This is an answer only Japanese leaders can provide.

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