BOOK REVIEW

Humanitarian Intervention:
An Inquiry Into Law and Morality
by
Fernando R Teson
(Transnational Publishers 272 pages)

Even though Fernando R Teson's book *Humanitarian Intervention: An Inquiry into Law and Morality* (hereinafter referred to as "Teson") was first published in 1988 it is eminently suitable for review nowadays due to a multiplicity of reasons. First, issues concerning the use of force and human rights have come to the fore, even more prominently in present times than it was in 1988.

Secondly, Teson's ambitious work tackles the issue of humanitarian intervention not only from the viewpoint of international and human rights law but also from a vantage of legal, moral, political and social philosophy which indeed is rare among scholarly works on the subject.

Thirdly, the on-going tragedy and carnage in Bosnia-Herzegovina and an urgent need for some form of "humanitarian intervention" to stop the atrocities there, could be analysed in the light of Teson's premises, arguments and "conclusions".

Last but not the least the United Nations Conference on Human Rights that was held in Vienna in June 1993 had raised issues concerning the universality of human rights and especially the relevance of certain civil and political rights to some societies of the Third World.[1] How does this assertion of "cultural rela-

---

[1]See for example the statement of UN Secretary-General Boutros Boutros-Ghali at the UN Conference on Human Rights as reported in "Human rights principles win the day" by Jonathan Power, *New Straits Times*, (Kuala Lumpur) June 26, 1993 at p 10. The Secretary-General says that "10 years ago virtually every State in the world accepted human rights as an appropriate area of international concern. Today this is no longer true. The idea of universal rights is under assault from strong cultural, political, religious and ethnic pressures". See also "Asia's Different Drum" and "Society vs. The Individual" (interview with Singapore's Senior Minister Lee Kuan Yew) in *Time*, June 14, 1993, at pp 16-21 and especially at p 21 where Lee Kuan Yew impliedly affirmed the statement of some Asian governments that "some ... rights like freedom of speech and assembly are not part of their [Asian] culture".

tivism"[2] relate to Teson's eloquent if at times idealistic, enthusiastic and perhaps unrealistic argument for an individual-centred rather than a state-centred philosophy of international law?

Teson's book is divided into two parts. The first part is entitled "A Philosophical Defense of Humanitarian Intervention" and mainly deals with political, legal and moral philosophy, rights theory and his proposed "philosophy of international law". The Chapter, "The International Legitimacy of Governments" in Part One should perhaps be of common interest to both philosophers and international lawyers[3] not to say political scientists.

Part Two of the book deals with "Humanitarian Intervention in International Law" and includes the author's analyses of it in the light of provisions of the United Nations Charter, State practice since 1945 and the judgment of the International Court of Justice in the *Nicaragua*[4] case.

In the first Chapter, Teson defines humanitarian intervention as the

> *proportionate transboundary help, including forcible help, provided by governments to individuals in another state who are being denied basic human rights and who themselves would be rationally willing to revolt against their oppressive governments.*[5]

---

[2]Apart from the references *supra* see the editorial ("A Matter of Perspective") *New Straits Times* (NST), June 22, 1993 at p 14. The editorial in part states "... one man's meat may be another's poison. The Asian countries can accept that the West are entitled to their own perception of democracy which pays homage to the individual's civil and political rights. In turn the West must understand that the world is much larger and much more diverse than they perceive it to be ... the reality is that each country is still delineated by their social, political, cultural, religious heritage". For a different perspective from a Third World scholar see "In Quest of Democracy" in Aung San Suu Kyi's *Freedom From Fear and Other Writings* (Viking, 1991) at pp 167-185.

Teson also categorically rejected the concept of "cultural relativism" of human rights in his book. See Teson at pp 31-42 and also at pp 45-51.

[3]The author is aware that parts of his book may appeal more to philosophers than international lawyers and vice versa. In the preface he recommends selected chapters for those who are "exclusively interested in philosophy" and other chapters to those who are "exclusively interested in international law".

[4]Case of Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua* v. *United States of America*) Merits, Judgment of June 27, 1986 *ICJ Rep* p 14.

[5]Teson p 5. (Emphasis in original).

Hence Teson's definition of humanitarian intervention is slightly more elaborate than the classical definition of Oppenheim viz: "When a state treats its own citizens in a manner that shocks the conscience of mankind intervention in the interest of humanity is permissible."[6]

It should be added that Teson "cautions" the reader of the scope of his inquiry which "will be limited to one type of humanitarian intervention: the forcible transboundary action undertaken for the purpose of protecting the rights of individuals against violations by their own governments".[7] Hence Teson's work specifically excludes the forcible protection of a state's own nationals in foreign countries.

Moreover, Teson's discussions and proposals concerning humanitarian intervention are limited to cases of *unilateral, military* (*"forcible"*) interventions by states without any United Nations authorization, far less involvement. This fact needs to be borne in mind in the light of the initially United States led "Operation Restore Hope" launched in December 1992 to save thousands of Somalis from starvation and sectarian political violence. Even though "Operation Restore Hope" had an exclusively humanitarian objective it is different from Teson's and for that matter the classical definition of humanitarian intervention as the American "rescue mission" in Somalia was made with the authorization and approval of the United Nations Security Council.

After outlining (his) philosophy of international law and asserting the relevance of moral theory in eliciting international custom, the author makes a concerted criticism of the "Assumptions of the Noninterventionist Model" in Chapter 2. In a section entitled "Relativism and Pluralism" Teson is emphatic in virtually denouncing the idea of "moral relativism" which "denies the existence of transboundary ethical values, and consequently of any universal human rights standard".

As if anticipating the vociferous protests from some Third World governments' spokesmen about "Western imposition of human rights" at the 1993 Vienna Conference on human rights,[8]

---

[6]Oppenheim, *International Law* (Vol 1) (H Lauterpacht ed 1955) p 312.

[7]Teson at p 5.

[8]See for example the NST editorial *supra* note 2 : "The West's attempts at genetic engineering ["in imposing human rights"] to clone their genes on to others is itself a violation of human rights".

Teson asserts: "[t]he contention that the West imposed human rights on the world and that 'poor peoples' do not care about freedom is simply a myth". The "imposition" theory of human rights is termed by the author as "conspiracy" theory. Teson refutes the "charge" that advocacy of human rights amounts to "moral imperialism". He also rejects the even more harsh accusations that "human rights [sic] are a Machiavellian creation of the West calculated to impair the economic development of the Third World".[9]

An interesting sidelight from Teson's "elitism" doctrine could perhaps be gleaned. Teson asserts that elitism can be discerned in the position "that citizens in countries that do not spring from a Western tradition somehow do not have the same moral entitlements as Westerners and therefore their governments are justified in not complying with the international law of human rights".[10] Teson asserts that this elitist theory is "fundamentally immoral and replete with racist overtones".[11]

But on the other hand couldn't one also argue that Teson's idea of "moral entitlements" is itself "elitist"? What one considers to be "entitlements" others may rightly or wrongly view as "imposition".[12] Elitism can be said to work both ways: the "traditional" one espoused by Teson that other cultures "does not deserve human rights" and the other is that "human rights" must be accorded in all countries as "entitlements" regardless of the populace's cultural beliefs. And a few Asian elites would probably argue that in Asian societies "moral duties" are more important than "moral entitlements".

The author's former supervisor Professor D'Amato, claims in the preface that Teson's "topic presents a frontal challenge to the theory and underlying philosophy of international law". Indeed. See for example Teson's claim that "[r]ights against the state, human rights, are the primary rights. Other types of rights, and particularly the right *to* a nation-state are derivative".[13] This

---

[9]Teson at p 43.
[10]*Ibid.*
[11]*Ibid* at 44.
[12]See for example NST editorial *supra* note 2 and accompanying text at *supra* note 8..
[13]Teson at p 50. (Emphasis in original).

"individualistic" notion of rights is also reflected in the author's discussion of the principle of self-determination.[14]

Teson dismisses the fact of the principle of self-determination being the only international law doctrine to be stated in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights by claiming that "internal self-determination is not a necessary condition for freedom".[15] He also, in effect rejects the view that "self-determination overrides the imperative respect for human rights".

One could perhaps argue that at least in international law (as contrast to legal philosophy) self-determination is primarily viewed as a collective right since the landmark United Nations General Assembly resolution on the Granting of Independence to Colonial Countries and Peoples[16] uses the word "peoples". Far from comprising "individuals" as the beneficiaries of the principle of self-determination, up till recently some commentators have stated that an overwhelming majority of states view that "'whole' territories or peoples are the focus of rights [self-determination] rather than ethnic groups".[17]

Moreover in two advisory opinions in which the International Court of Justice (ICJ) has had the opportunity to deal with the meaning and scope of self-determination it has, to the best of the reviewer's knowledge, neither expressed nor implied that individual rights will take priority over the principle of self-determination. Instead in both the *Namibia* advisory opinion[18] and the Western Sahara advisory opinion[19] the ICJ deals

---

[14]*Ibid* at pp 26-31.

[15]*Ibid* at p 30.

[16]GA Resn 1514 (XV). December 14, 1960. GAOR, 15th Sess, Supp16, p 66.

[17]P Thornberry "Self-determination, Minorities, Human Rights: A Review of International Instruments" (1989) 38 *International and Comparative Law Quarterly* p 877. See also A Cassese "The Helsinki Declaration and Self-Determination" in Human Rights, International Law and the Helsinki Accord (ed Thomas Burgenthal) (Universe Books, 1977) p 90. For the reviewer's submission that self-determination should not always be limited to colonial contexts only, see Myint Zan, "Self-determination: Rethink Needed" *New Straits Times*, November 13, 1991, p 9.

[18]*Legal Consequences For States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p 16.

[19]*Western Sahara Case*, Advisory Opinion, ICJ Reports 1975, p 12.

with collective rights and status of territories. It is therefore arguable that the ICJ implicitly rejects (by omission) the thesis of supremacy of individual rights over collective rights in the context of self-determination.

No doubt, the author's discussion of self-determination is mainly on a philosophical and "non-technical"[20] basis and comprises among others, a refutation of John Stuart Mill's views on self-determination. However Teson also briefly touches on the international law aspects of self-determination. Inasmuch as the author does not substantially take into account contrary views on the international law aspects of self-determination his treatment of the subject is not compelling enough to convince one to unequivocally agree with his contention that individual rights takes priority over the collective right of self-determination.

A common theme that can be discerned in the first part of the book is Teson's emphasis on individual rights and his attack on the traditional notion of state sovereignty. He classifies the idea of States "having rights *qua* states rights that are logically independent from the rights of individuals that populate the state"[21] as "The Hegelian Myth".[22]

Taking into account the vociferous assertions of state sovereignty and claims that states and societies' rights prevail over that of the individual by many Asian governments at the 1993 United Nations Conference in Vienna[23] "The Hegelian Myth" might as well be called "The Asian Myth". This is mentioned not to disparage Teson's creditable concern for the rights of the individual but to say that since there are considerable resistance to the idea of individual rights prevailing over that of "States' rights" (in fact the assertion from many Asian and Third World States is exactly the other way round) the "elevated" status of the individual at least to the level that the author has assigned may not constitute customary international law due to lack of *opinio juris*.

---

[20]Teson at pp 27-28.

[21]*Ibid* at p 53.

[22]*Ibid* Chapter 3 pp 53-94.

[23]See for example the report in *Asia Week* magazine June 30, 1993 at p 24 which in effect states that many Asian governments affirmed that they "would not support any document which fails to mention that States' and societies' rights prevail over that of the individual" at the Bangkok regional meeting (that was held before the Vienna Conference).

At times the author's preference and enthusiasm for individual rights may have led him to make slightly overextended statements that may not synchronize with historical facts. For example Teson claims that "... protection of human rights is the justification for having states in the first place".[24] If the phrase "in the first place" can be taken to mean the historical period when the nation-state arises around 1648 with the Treaty of Westphalia, then Professor Teson can be said to have a particularly rosy view of the origins of the nation-state.[25]

A few other statements made by Teson may also be subject to different interpretations. For example Teson opines that "[t]he most important pre-[United Nations] Charter precedent for humanitarian intervention, however, is the *Second World War itself* ".[26] This may be true but as Teson himself asks[27] what if "Nazi Germany had confined itself to exterminating the Jews, without engaging in foreign military aggression"[?].[28] And as Teson's former supervisor Professor D'Amato himself notes in the preface: "in the early 1930s [when] Stalin presided over the genocide of some ten million Russian farmers ... the world took very little note."[29] It is not possible to "second-guess" history but wouldn't it also be arguable that one of the causal, perhaps even main reasons for Britain and the Allies to plunge into war with Germany was Nazi Germany's aggression against other countries rather than the extermination of German Jews *within Germany itself* ? (Technically speaking the Allies declaration of war on Nazi Germany after Germany invaded Poland in September 1939 is more readily justifiable on collective self-defence rather than humanitarian intervention since an armed attack had taken place against Poland. It is realized that the terms "collective self-defence" and "armed attack" formally entered the lexicon of international law only after the emergence of the United Nations Charter in 1945. However, Article 51 of the UN

---

[24]Teson at p 93.

[25]See for example SP Sharma "Co-existence of the Old and New Models of the World Legal Order of Territoriality - Where Does the Primacy Lie?" (1991) 18 JMCL, p 1 at pp 5-6.

[26]*Ibid* at p 158. (Emphasis in original).

[27]*Ibid* at p 69.

[28]*Ibid*.

[29]*Ibid* at p viii.

Charter also mentions the right of collective self-defence against armed attack as an *inherent* right. Therefore the collective self-defence argument can be sustained even though the UN Charter has not emerged in 1939, on the ground that it is already part of pre-UN Charter customary international law.)[30]

Teson argues that in contemporary international law, humanitarian intervention is *not* only limited to "cases of genocide, enslavement and mass deportation".[31] He goes further and claims the legality of "pro-democratic invasion" where citizens who are being "permanently" denied "their right to participate in political affairs" by an "undemocratic government ... have a right to revolt; and so doing they have a right to request and receive foreign support".[32]

One should point out that if this version of "pro-democratic invasion" were to be considered under the rubric of humanitarian intervention then the "threshold" for "humanitarian intervention" has been lowered from that of Oppenheim whose criterion is that the target government's action must "shock the conscience of mankind".[33] For, beyond the transparent existence of genocide, enslavement and mass deportation, and a few others such as widespread official torture, with what criteria are we to decide whether a certain State's actions amount to a "permanent" denial of political participation to the populace? Talking strictly on a theoretical level, could the former Soviet Union be classified under that category? How about South Africa during

[30]Teson tries to equate the concept of self-defence and that of humanitarian intervention in several places of the book. (See for example at p 67). However if the Allies had militarily intervened in Nazi Germany on behalf of the Jews without other neighbouring countries of Germany being the victims of Nazi aggression then the Allies' action could have been justified solely under the customary international law doctrine of humanitarian intervention. However since the Allies in fact intervened after the Nazis' attack on neighbouring countries, their action can mainly be defended under the *pre-UN Charter customary international law of collective self-defence* rather than the doctrine of humanitarian intervention even though they might well have humanitarian considerations in mind as claimed by Teson. One could also argue that at least till about 1942 the Allies were fighting almost for their survival rather than for any humanitarian consideration towards peoples under Nazi rule both domestically and in foreign countries under Nazi occupation.

[31]Teson at p 118.

[32]*Ibid.*

[33]See text and reference accompanying *supra* note 6.

the time when apartheid was extensively and forcibly practiced? How about Grenada in October 1983?[34]

Contrast Teson's postulate that "egregious" violations of human rights which do not amount to genocide, mass deportation and enslavement and even "permanent" denial of political participation by an undemocratic government could give rise to military intervention (on humanitarian grounds) with that of many Asian and Third World states' claim that even linking human rights to conditions for aid is itself a violation of human rights.[35] Therefore how much more so would they oppose *military* intervention even in cases of human rights violations which reach genocidal proportions.[36] In mentioning this, the reviewer is not intimating that even in cases of genocidal violations of human rights there is or should be absolutely no intervention whatsoever by any other nation. The point is since there appears to be considerable opposition for linking aid and human rights, *a fortiori* there would be even more opposition by many nations of the world on the desirability and legality of forcible military intervention in cases of human rights violations especially when the target state's actions do not amount to genocide, enslavement or massive crimes against humanity.

The fact that the United Nations has relatively become more active in its own "humanitarian interventions" like that in Somalia should lessen the effectiveness concerning (in Teson's own words)

---

[34]Teson firmly thinks that the events in Grenada does justify "humanitarian intervention" by the United States: Teson at pp 188-198. It would have been enlightening if the author had compared with other cases which had had a roughly equivalent record of human rights or even much worse than Grenada where the United States or any other country had not intervened. This point is not that theoretical in the light of vociferous protests against the *lack of military intervention* by the European Community, the United States or the United Nations to stop the on-going genocide in Bosnia.

[35]See for example NST editorial *supra* note 2. "... the use of human rights as an issue by powerful countries to impose conditionalities and extort concessions from other countries does not speak well of the democracy being preached by them".

[36]See for example the comments of the delegate of Singapore concerning the Vietnamese intervention in Democratic Kampuchea in *United Nations Official Records*, 2108th meeting, 11 January 1979, *par tim*. It must be mentioned that Vietnam did not officially claim humanitarian intervention as a justification for its invasion of Democratic Kampuchea in December 1978. But compare Martin Dixon's statement in his *Textbook on International Law* (1990) at p 192 "...Vietnam *appears* to have claimed this justification [of humanitarian intervention] in respect of its intervention in Cambodia in 1978." (Emphasis added).

"[t]he problem of the [i]neffectiveness of [c]ollective [m]echanisms"[37] which would have warranted a *unilateral* military intervention from a state without proper United Nations' authorization.[38]

In Part Two of his book, Teson argues that even if there has not been compelling evidence of customary international law concerning humanitarian intervention in the pre-UN Charter period, a new doctrine of humanitarian intervention has developed after the adoption of the UN Charter. He cites the human rights provisions of the United Nations Charter as well as subsequent state practice and the individual-centred philosophy of international law which he had developed in Part One of the book to buttress his claim.

A pertinent though probably not compelling analogy between "Humanitarian Intervention and 'Wars of National Liberation'" is developed by Teson in a tone almost similar to the charge of "double standards" of which some Third World governments are wont to accuse the West.[39] If the international community can legitimately provide all "moral and material assistance" to peoples waging "wars of national liberation" against "colonial and racist regimes" as per (majority of) United Nations (members') verbal state practice, why shouldn't the same standard be applied to other equally oppressive if not worse regimes? Asks Teson eloquently and apparently with considerable moral indignation:

> Why should international law legitimize foreign material assistance *only* to peoples fighting racial discrimination, and not assistance to peoples fighting oppressive regimes generally? For racial discrimination, odious as it is, is certainly not the most egregious violation. Mass murder, torture, genocide, enslavement, and even arbitrary imprisonment, when practiced on a massive scale, are indeed more serious deprivations than *apartheid* schemes.[40]

---

[37]Teson at p 137.

[38]Teson probably realizes that this argument will be forthcoming. He writes that if customary international law recognizes a right of humanitarian intervention and if "a state is bound by customary law but not by the Charter, that state is not legally preempted from intervening for humanitarian purposes by the mechanisms of Chapter VII, *even if such mechanisms are functioning effectively*. (*Ibid* at p 140. Emphasis in original).

[39]See *ibid* at pp 142-146.

[40]*Ibid* at p 145. (Emphasis in original).

Adds Teson "... [the claim] that *apartheid* and racism are somehow unique human rights deprivations, the only ones that warrant armed assistance ... is an indefensible position".[41]

However, a *caveat* needs to be made here: can the right to provide foreign material assistance be fully equated with the doctrine of humanitarian intervention which more often than not involves not only the provision of "material assistance" but also the unilateral invasion[42] of another country, and at times overthrowing the allegedly oppressive government? Indeed in the four case-studies of (alleged) humanitarian intervention in modern times which Teson analyses in his book,[43] all of them resulted in the overthrow of the target states' governments.

No full-scale invasion of *apartheid* South Africa or other "racist regimes" had taken place to overthrow these "colonial or racist regimes" even if certain United Nations resolutions and verbal state practice would allow the provision of "all material assistance" to those struggling against them.

This brings forth a point of which Teson may have not paid much attention to: the role of power politics and indeed that of power in international relations and more relevantly in the application of international law.[44]

Third World states simply do not have the wherewithal or the resources to militarily and effectively intervene in South Africa or "other colonial and racist regimes". But Tanzania, France, India and the United States *had* in varying degrees the resources and the power to militarily intervene in Uganda, Central African Republic, East Pakistan and Grenada respectively (these are the cases of humanitarian intervention which Teson has analyzed) mainly because they were bigger and generally more powerful states than their neighbours whose target regimes were overthrown.

---

[41] *Ibid* at pp 145-146.

[42] See Fonteyne "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the UN Charter" (1974) *California Western International Law Journal* at p 203 for a definition of "unilateral humanitarian intervention".

[43] See Teson at pp 159-200.

[44] Teson takes a "Kantian conception" of international law. He writes "... all legal systems, including international law, are aimed at regulating human conduct in consonance with ethical ends." *Ibid* at p 147. Compare former US Secretary of State's Kissinger's view of ethics and power in international relations in W Isaacson *Kissinger: A Biography* (1992), (Simon &

Teson's first case study is about the Tanzanian intervention in Uganda in April 1979 where "the brutal rule of President Idi Amin of Uganda came to an end as a result of his overthrow by Ugandan troops".[45] Teson argues that the fact of the international community in general being "remarkably assertive in expressing the relief. ... [at] the fall of the Amin regime"[46] as one factor "supporting the legality of humanitarian intervention in appropriate cases."[47] He also asserts that " [w]ith few possible exceptions, the crimes committed by Amin probably have no parallel in modern history ... [r]eliable estimations put the tolls [sic] in human lives at 300,000."[48] This, together with the argument that the Tanzanian intervention cannot be justified on any other international legal arguments including that of self-defence, amounts to Tanzania legally exercising its right of humanitarian intervention in the Uganda case, avers the author.[49]

But is the acquiescence and perhaps even support of the international community to Tanzanian intervention based on moral or human rights grounds only? Are there other factors, such as the ubiquitous power and geopolitics that could have contributed to the international community's acquiescence of the Tanzanian action in Uganda? Does the international community act consistently in terms of response to other cases of supposed humanitarian interventions?

Compare, for example, the Ugandan-Tanzanian conflict of 1979 with the East Pakistan-India crisis of 1971. It is not a pleasant task nor is it always appropriate to compare the suffering of peoples but as Teson himself writes "[t]he Pakistani action [in East Pakistan in 1971] can legally be characterized as genocide."[50] To all extent and purposes it is arguable that the Pakistani repression in East Pakistan during 1971 was even worse

---

Schuster, 1992) pp 72-81 *par tim*. See also A Eban, *The New Diplomacy: International Affairs in the Modern Age* (1983) p iii and M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (1989) at pp 83-130.

[45] *Ibid* at p 159. (Footnote omitted).

[46] *Ibid* at p 165.

[47] *Ibid* at p 167.

[48] *Ibid* at p 163.

[49] *Ibid* at pp 165-174.

[50] *Ibid* at 181. (Footnote omitted).

than 8 years of "atrocities committed by the Idi Amin regime".[51] Yet it appears to the reviewer that the response of the international community was generally "cooler" to the Indian intervention in East Pakistan than it had been to the "humanitarian intervention" of Tanzania in Uganda. The United States, for one, was (unlike in the Tanzania-Uganda case) initially opposed to the Indian intervention and moreover tilted towards Pakistan during the Indo-Pakistani War of 1971.[52] And perhaps the remarks of U Thant the Secretary-General of the United Nations during the Indo-Pakistani conflict, may at least partly explain that India's motivation is not purely "humanitarian". U Thant writes: "India, which had a legitimate grievance [against Pakistan mainly due to the influx of millions of Bengali refugees into its territory], ... took two contradictory positions. On the one hand, it argued that the repression in East Pakistan was a threat to its security. On the other hand, it insisted that the problems of Pakistan were strictly an internal affair, not subject to UN intervention."[53]

Granted that the relative lack of censure by the international community had the effect of legalizing the Indian and Tanzanian interventions in East Pakistan and Uganda retrospectively,[54] would it be fair to say that there is *opinio juris* on the part of the international community that these interventions are legal because they are legitimate humanitarian interventions? Or can we equate the ostensible "acquiescence" and even support (in the case of Tanzanian intervention in Uganda) to these interventions with a variety of non-legal factors including geo-political reasons other than purely legal far less moral ones? This is further strengthened by the fact that both India and Tanzania did not exclusively and even primarily rely on humanitarian reasons

---

[51] *Ibid* at p 163. In F Chalk and K Jonasson, *The History and Sociology of Genocide* (Yale University Press, 1990) the authors claim that the genocide in East Pakistan costs 1 million lives. The authors do not indicate that the killings in Uganda reached such proportions.

[52] See *Kissinger supra* note 45 at pp 371-385.

[53] U Thant, *View From the UN*, (David & Charles, 1978) p 436. See also M Somarajah "Internal Colonialism and Humanitarian Intervention" (1981) 11 *Georgia Journal of International Law* 45, at pp 69-70.

[54] For an example of "retrospective legalization" of what *prima facie* would amount to unlawful intervention see Brownlie, "Thoughts on Kind-hearted Gunmen" in Lillich (ed) *Humanitarian Intervention and the United Nations* (1973) at p 146. Brownlie's article was written in 1973 after the Indian intervention in East Pakistan but before the Tanzanian intervention in Uganda.

as justification for their actions. The author may castigate this approach as "a persistent and deliberate failure to account for appropriate principles of morality"[55] but the "inçonvenient facts of (actual) State practice" also need to be looked into to discern whether there is *opinio juris* on the matter of humanitarian intervention. One submits that if states feel psychologically that what they are doing amount to permissible humanitarian intervention, then they would have unequivocally relied on this doctrine to justify their actions.[56]

In the reviewer's opinion, Teson does not significantly add to his cause of arguing for the permissibility and legality of humanitarian intervention by citing the case of the United States intervention in Grenada in October 1983. Teson acknowledges that the United States did not officially claim the doctrine of humanitarian intervention[57] to justify its military operations in Grenada. However he argues that even though "the rights violated by the deposed government [of Grenada which was overthrown as a result of US intervention] did not reach proportions of mass murder or genocide ... the conditions in Grenada were such that a very serious deprivation of human rights was imminent".[58] Hence the United States action is "pre-emptive humanitarian intervention". The grounds for humanitarian interventions appear to be increasing.

One is impelled to ask: why didn't the United States intervene in South American countries during the 70s and 80s where human rights violations were not only imminent but also ongoing and even worse than that of Grenada? Chile and Argentina (the author's homeland) under military rule readily come to mind.[59] President Ronald Reagan might have hinted an answer

---

[55]*Ibid* at p 169.

[56]Compare, Editorial Comment, "Human Rights in Law's Empire: The Jurisprudence War" (1991) *American Journal of International Law* 117 at p 122: "Three cases - India in East Pakistan, Tanzania in Uganda, Vietnam in Kampuchea, appears on every scholar's list because at the time of the invasion the target's regimes crimes were notorious. Hence all three invaders had solid ground on which to rest a claim of legitimate humanitarian intervention. Yet they ignored the doctrine, chose instead to claim self-defense from an armed attack, a claim not one of them could persuasively sustain. Their choice hardly suggests confidence in the exculpatory power of a humanitarian motive."

[57]*Ibid* at pp 192, 194.

[58]*Ibid* at p 197. (Footnote omitted).

[59]As for Argentina the author himself has stated the situation under military rule in pp 108-109.

to this when he said that the United States had acted "strongly and decisively to oppose a brutal gang of leftist thugs"[60] in Grenada. "Leftist thugs" are to be opposed if need be and if the political circumstances call for, overthrown by force (not only in Grenada but covertly also in Chile in 1973) but anti-communist right wing governments are to be defended and at worst given an occasional slap on the wrist. In other words, power politics again.

One wonders why the author does not include in his list the United States intervention in the Dominican Republic in 1965. After all, as in Grenada, a "democratic government" also came into power in the Dominican Republic as a result of the US intervention. The reviewer submits that the late UN Secretary-General U Thant's comment on the Dominican crisis can also be applied to Grenada:

> One harsh fact of the postwar era was the re-emergence of 'spheres of influence' in international politics. The United States staked out its area of special interest [in] ... Western Europe, Latin America. Washington has resisted the introduction of any form of political or social system foreign to its own ... in Latin America and the Western hemisphere].[61]

This reviewer has also been struck by the fact that the author does not mention the case of the Vietnamese intervention in Democratic Kampuchea in 1978 even though one scholar has said that the Vietnamese intervention in Kampuchea together with the Indian and Tanzanian interventions "appear on every scholar's list [of humanitarian intervention in modern times] because at the time of the invasions the target regimes' crimes were notorious."[62] Would it be that since both the target regime and invading regime in the Vietnam-Kampuchea crisis were Communists, no humanitarian motive could be imputed to Vietnam at all, notwithstanding the fact that the Khmer Rouge atrocities did stop after the Vietnamese invasion? (This statement is made without any prejudice to the motives of the Vietnamese for invading Kampuchea and the reviewer by no means claim that they were

---

[60] *Ibid* at p 192. (Footnote omitted).
[61] *View From the UN supra* n 53 at p 361.
[62] See *supra* note 57.

purely, largely, or even partly humanitarian.)[63] Does the author deliberately omit to mention it because the Vietnamese intervention unlike the others did not enjoy the support or acquiescence of the international community? Or that the Vietnamese stayed on for 10 years in the People's Republic of Kampuchea/ State of Cambodia?

The reviewer feels that the author could have discussed it even if the author does come to the conclusion that the Vietnamese intervention was *not* a humanitarian intervention.[64] In an election held more than 14 years after the Vietnamese intervention "the Vietnamese-installed government" of Hun Sen won 51 out of the 120 seats in the National Assembly. They do have considerable support of their country men compared to the Khmer Rouge who boycotted the May 1993 elections in Cambodia and whose threats not to vote in the election were defied *en masse* by the Cambodian people.

However, in the early days of the Vietnamese invasion many countries of the world were opposed to it and continued to recognise the Khmer Rouge as the legitimate government of Kampuchea notwithstanding its atrocious human rights records and even though the Khmer Rouge controlled only about 10% of Kampuchean territory.[65] Compare also the reaction of ASEAN (The Association of South East Asian Nations) with that of OAU (Organization of African Unity) in the Vietnam-Kampuchean and Tanzanian-Ugandan conflicts.[66]

---

[63]See Myint Zan,"Some International Law Issues and 'Lessons' From the Cambodian Past" [1992] 1 MLJ cxlv, at pp cliii-clix. Compare: "Despite ample validated reports of genocide in Kampuchea the [United Nations] organization largely ignored that atrocity, choosing instead to deplore Vietnamese intervention against the offending regime .. Yet [the] Vietnamese intervention relieved what in any nation's conception of justice, surely was recognizable intuitively as horrendous injustice": Franck and Hawkins "Justice in the International System" (1989) 10 *Michigan Journal of International Law* 127 at p 141. (Footnotes omitted).

[64]See for example, Bazyler "Re-examining the Doctrine of Humanitarian Intervention in Light of Atrocities in Kampuchea and Ethiopia" (1987) 23 *Stanford Journal of International Law* 547 at pp 607-611.

[65]For an examination of the recognition rival of Kampuchean governments from 1979 to 1982 - See Myint Zan *supra* note 63 at p clix to clxix.

[66]For a criticism of ASEAN's continued recognition (till 1982) and support of the Khmer Rouge in the early years of the Vietnamese invasion see H Hannum, "International Law and Cambodian Genocide: The Sounds of Silence" (1989) *Human Rights Quarterly* pp 82-138 *par tim.* Compare the reaction of the Organization of African Unity to the Tanzanian-Uganda crisis in Teson's book at 166.

One submits that even though the Vietnamese invasion of Kampuchea and the Tanzanian invasion of Uganda cannot be fully equated (the Vietnamese stayed on in Kampuchea for 10 years whereas the Tanzanians left Uganda after several months) the motives of the invaders, the claims, excuses and justifications given by the invaders (Teson acknowledges that the Tanzanian intervention in Uganda cannot be justified on grounds of self-defence[67]) the reaction of respective regional organizations and the international community, indeed the description of the invasions themselves cannot be explained solely on legal and moral terms. Regional, international and power politics have played and will continue to play a major if not pivotal role when one country invades another under whatever pretexts.

Perhaps the author should take heart from a heading of one of his former supervisor's (Professor D'Amato's) article, "Nicaragua and International Law: The 'Academic' and the Real".[68] Teson writes that his "case studies have demonstrated that the moral reality of international politics differs from the 'paper world' of the United Nations Charter".[69] If what had happened in the killing fields of Kampuchea and what *is* happening in Bosnia is a reflection of "moral (immoral?)" reality of international politics then lay men and international lawyers could have legitimate doubts about the humanitarian or moral aspects of international law at least in relation to how it is applied by some countries.

Why, but why, has the United States so far failed to intervene effectively and forcibly in Bosnia where-one hopes the author would agree with this statement-much worse violations of human rights than in Grenada (1983), the Dominican Republic (1965) and Nicaragua (1980s)[70] are still taking place? Answer: the United States' national interests are not directly involved there. Does this indicate that humanitarian intervention is an

---

[67]See *ibid* at p 167.

[68](1989) 79 *American Journal of International Law* p 657.

[69]Teson at p 202. But compare texts accompanying infra notes 83 & 87.

[70]The United States invaded the Dominican Republic and Grenada ostensibly for promotion of human rights and democracy. Even though the United States did not invade Nicaragua it had intervened in that country in many ways during the 1980s. The International Court of Justice has ruled the United States actions in and against Nicaragua is violative of international law. See Nicaragua decision *supra* note 4.

invalid principle? The author would certainly argue that it does not, but one again hopes that the author would give a passing acknowledgement that international relations are not solely based on Kantian principles of ethics and promotion of human rights.

Finally a comment on Teson's analysis and criticism of the land mark ruling of the International Court of Justice in *Case of Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua v United States*).[71]

The author infers that he will not discuss the "controversial argument of the Court rejecting the United States claim of self-defense to counter the help provided by the Sandinista regime to the Salvadoran rebels". His comments are limited to examining "the Court's views on the lawfulness of intervention to promote human rights". Teson takes the expected view that the United States have a right to demand Nicaragua's compliance with human rights. He castigates the International Court of Justice for finding "(mistakenly) that the United States did not have a right to request human rights compliance to Nicaragua".[72] One might add that even the word "demand" may be an understatement in the light of the United States actions against Nicaragua.[73] And even though he readily acknowledges that "it is at the very least doubtful that the contras are true pro-human rights forces("freedom fighters"),[74] he insists that "the mildest mean of action [the United States could have taken in implementing its "request" to Nicaragua to adhere to human rights] is political and moral support for pro-human rights forces".[75]

To this reviewer, the Contra rebels (whom Ronald Reagan once inanely called them as "the moral equivalent of the founding fathers") are - to paraphrase Reagan's description of the Grenadan government overthrown by the United States forces in October 1983 as "leftist thugs"[76] - no more than "rightist thugs".

---

[71]Merits, Judgment of June 27, 1986, *ICJ Reports* p 14. (Hereafter cited as the Nicaragua judgment.)

[72]Teson at p 238.

[73]Teson concedes this when he writes at p 242 that "acts like the mining of [Nicaraguan] harbors [by the United States] are incompatible with a humanitarian objective". He affirms that the United States' "efforts in Nicaragua do not seem to meet ... the requirements [of] necessity, proportionality and welcome by the population".

[74]*Ibid* at p 239.

[75]*Ibid* at p 228.

[76]See text accompanying *supra* note 60.

Did the United States violate its obligation towards Nicaragua by training, arming and encouraging these so-called "pro-human rights forces"? The majority of the International Court of Justice thinks so and it appears that Teson agrees at least partly with that aspect of the Court's ruling.[77]

Teson emphasises though that "[t]he *Nicaragua* ruling must be read narrowly, as bearing only on these particular facts".[78] He further writes that "[b]ecause the rebels are not clearly pro-human rights forces, and because the human rights violations do not seem grave enough, forcible methods to protect those rights are not justified *in this specific case* ...".[79]

However Teson was equally forceful in asserting that the International Court of Justice erred in adhering to the "Hegelian Myth" of "State Sovereignty"[80] and for espousing a "positivist and state-centred judicial philosophy" concerning human rights and non-intervention. Notwithstanding the provisions of Article 59 of the Statute of the International Court of Justice[81] what would have been the scenario if the Court had accepted Teson's contention and had held that there is an "across-the board" "right of coercive intervention, including military action, to stop actual or potential serious and widespread violations of human rights, whenever such action may be undertaken with reasonable chance of success and with the support of the population"?[82] Would the United States have "crowed" and claimed that it had earned a "moral victory" even if it had earlier withdrawn from the *Nicaragua* case? More relevantly would the Court's ruling (a-la-Teson) be of any moral, juridical or political help to relieve the plight of the helpless Bosnian Muslims in "pushing" the United States, the European Community and indeed the Organization of Islamic Countries to launch a "humanitarian intervention" with or without United Nations auspices? Professor Teson himself may have answered this when he writes that

---

[77]Teson at pp 242-243.
[78]*Ibid* at p 243.
[79]*Ibid.* Emphasis in original.
[80]*Ibid* at p 227.
[81]Article 59 of the Statute of International Court of Justice reads "The decision of the Court has no binding force except between the parties and in respect of that particular case". Expecting defeat in the *Nicaragua case* the United States withdrew from the compulsory jurisdiction of the International Court of Justice.
[82]Teson at pp 234-244.

"the Court did no more than reflect the moral impotence of international law as conventionally understood".[83]

When power politics and international law or morality clash it is usually the former which prevails. More than that, to a certain extent the contents and operation of international law may be based on power politics.

As an extension of this postulate one can claim that one's views of international law and international events are also largely based on one's political standpoint. Unlike the author, the reviewer sees the *Nicaragua* judgment in a positive light and with satisfaction mainly because the United States' attempts to bully a small neighbouring country on the pretext of promoting democracy has been juridically exposed.[84] Teson acknowledges his intellectual indebtedness to (among many others) Professors D'Amato and Dworkin.[85] As one who is not that familiar with Ronald Dworkin's political views one would pass commenting on the influence of Dworkin on Teson but Anthony D'Amato's political views are well known and the reviewer would venture to comment that great indeed is the influence of D'Amato on Teson.[86]

The learned author may have implicitly revealed that at least some if not most of his premises and conclusions are in the nature of *de lege ferenda* rather than *lex lata* when he writes that "it is time to abandon the Hegelian myth and *start rethinking* the law of nations in a fundamentally different way".[87]

In this regard one must give full credit to Professor Teson for his palpable sincerity and idealism with which he approaches the subject and which runs like a thread throughout the book. The demurrers and disagreements expressed in this review should not obscure the many points in which the reviewer agrees with him which cannot be fully mentioned here for reasons of space. Nor should these in any way distract the painstaking research, the able arguments and the general quality of the book which

---

[83] *Ibid* at p 244.

[84] See Myint Zan "World Court on the Rebound" in *The Star*, 30 May 1992, p 21.

[85] See Teson at xiii-xv.

[86] The admiration between the two is mutual. In the foreword D'Amato writes: "I could not be more proud of any book", *Ibid* at vii.

[87] *Ibid* at p 244. Emphasis added.

was first published in 1988 and which has even more relevance currently.[88]

In the light of the criticism levelled at some of the author's views it is perhaps pertinent to ask what the reviewer's view on humanitarian intervention is. The reviewer believes that when there are egregious and persistent violations of "core" human rights such as in Democratic Kampuchea during the mid-1970s and Bosnia starting from 1992, there should, ideally speaking, be not only a right but also a duty on the part of neighbouring States, regional organizations and the United Nations to effectively intervene on human rights grounds. However the reviewer differs with the author as regards the legality of "pro-democratic" invasion such as the 1983 United States mission to Grenada.[89] Even in cases of violations of human rights amounting to genocide the reviewer has been dismayed by the inconsistent stand and lack of action by the major powers and the international community in a few areas of the world, which are crying for humanitarian intervention. Such inconsistencies, motivated as it is by reasons of selfish interest, power and politics, raise doubts as to whether there is an established rule or *opinio juris* concerning the doctrine of humanitarian intervention. Nevertheless as the author earnestly points out, that does not mean that there should not be attempts to "wed" "international law ... to notions of legitimacy associated with human rights and political consent".[90]

Fernando R Teson is (as of 1992) an Associate Professor of Law at Arizona State University. He had also served for four years in the Argentine Foreign Service before embarking on his doctoral studies at the North Western University Law School in 1982. *Humanitarian Intervention: An Inquiry Into Law And Morality,* published by Transnational Publishers is an outgrowth of his doctoral dissertation.

---

[88]Prof D'Amato writes in 1987 (*ibid* at xi) that Teson's "book will have a life of its own, extending into the distant future". In the light of the events (and non-events such as the lack of humanitarian intervention in Bosnia) in Bosnia and Somalia, international lawyers would look forward to a perceptive update of the book.

[89]See text and notes accompanying *supra* notes 31-32; 57-61.

[90]*Ibid* at 244.

Even though one disagrees with some of the author's views, Professor Fernando Teson's impressive efforts and presentation are to be lauded. At the least, his work will constitute a challenge to all those who are interested in this controversial, difficult and intricate subject.

Myint Zan*

*Lecturer,
Faculty of Law,
Universiti Kebangsaan Malaysia.