IDENTIFICATION OF STATES' ATTITUDE TOWARD HUMANITARIAN INTERVENTION PRACTICES

Identifikasi Sikap Negara-Negara Mengenai Praktik Humanitarian Intervention

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INTISARI
Intervensi atas dasar kemanusiaan (humanitarian intervention) merupakan persoalan kontroversial di dalam hukum internasional selama paruh kedua abad kedua puluh. Ada pihak yang melihat humanitarian intervention sebagai alat yang memadai bagi legiun pendiri HAM, namun ada pula yang melihatnya sebagai sebuah amunan terhadap prinsip-prinsip mendasar dalam hukum internasional. Penelitian ini dilakukan sebagai upaya untuk mengidentifikasi dan menganalisa sikap negara-negara terhadap praktik humanitarian intervention. Identifikasi dari analisis terhadap topik ini dianggap penting karena bisa memberikan indikasi mengenai apakah humanitarian intervention bisa menunjang hukum internasional kebaikan dalam persoalan yang relevan ini atau kecenderungan tidak.


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INTRODUCTION

The principle of non-intervention requires that every state should refrain from getting involved in domestic matters of other sovereign states. The duty of non-intervention particularly refers to intervening actions involving forceful means (Istanto, 1998). Particularly after the end of the Cold War, the established international law principle of non-intervention has been challenged. The basic principle that has already protected the idea of equal independence among states has been questioned within the last decade. The challenge to this principle found a sound reason particularly when in the case of genocide in Rwanda international community could do nothing but stood idly by, due to the strict adherence to the non-intervention principle. Under this principle, many states are tempted to think that within the borders of any state, all things that happen is simply the affair of that state. As the time went by, the attitude of international community in the case of Rwanda has in fact resulted in the slaughter of tens of thousand Rwandans in a fierce civil war (Fixdal & Smitt, 2002). While strict adherence to the principle of non-intervention may be in conformity with international law principles, it is questionable from the moral, ethics and humanitarian point of view. Therefore, since the Rwandan tragedy, some international legal scholars have voiced alternative view that in particular cases intervention to give humanitarian assistance, including preventing genocide, may be legitimate (Ryniker, 2001).

In international law, norms can be formulated by states practices on particular things. The norm established through consistent states practice is categorized as "customary international law" and is a formal source of international law. However, to be qualified as customary international law, states practice must meet certain conditions. Firstly, a state practice must be general and constant, in terms that the practice must be adopted by a vast number of states and that there is no substantial change to the said practice. Secondly, the practice must be carried out for a relatively long period. Thirdly, states have to regard the practice as a legal obligation (opinio juris) (Brownlie, 1990).
This research was basically an effort to explore the attitude of states toward humanitarian intervention. Assuming that international law is a dynamic system, the possibility of humanitarian intervention to establish international legal norms is challenging (Pye, 2003). To examine the possibility, first of all, research to identify how states perceive humanitarian intervention must be performed.

METHOD OF RESEARCH

This normative research was performed in two steps. Firstly, selection of cases was made to distinguish humanitarian intervention cases from non-humanitarian intervention ones. Secondly, formal reaction of states in every single selected case would be identified. Official statements, communiqué, declarations or other reactions purported to express attitudes would be classified and examined thoroughly to see if there was a general and consistent practice among states regarding humanitarian intervention.

Needless to say, this research was a library research that relied heavily on documents and written materials. Therefore, materials relevant to this research ranged from media news on humanitarian interventions, articles and editorial opinions, papers, official documents to press releases.

RESULT AND ANALYSIS

Result

This first stage of this research revealed that there were 13 cases of humanitarian intervention during 1960 until 1999. All of the thirteen humanitarian intervention cases were classified as such based on the explicit intention expressed by the intervening state(s). A brief description of year commenced, intervening state(s) and target state of all the thirteen humanitarian intervention cases were presented in Table 1.

The researchers were fully aware that behind the explicit expression on the humanitarian reason for intervening lied implied political, economic or any other hidden reasons. However, it is worth noting that the criteria adopted in this research to distinguish humanitarian interventions from any other interventions worked well. In fact, not in all cases of intervention did the intervening state(s) explicitly argue that their actions were driven by humanitarian concerns. The case of the Soviet Union’s intervention in Afghanistan in 1979 provides a good example. Instead of referring to humanitarian concerns, the Soviet Union justified its intervening action by the reason that the government of Afghanistan had invited the Soviet Union to intervene (Diamos & Scheffer, 1991).
Intervention of Coalition Force following Iraq's invasion in Kuwait in 1990 implied the same thing. What had been emerging prior to the deployment of the Coalition Force was simply the reason that Iraq had launched the war of aggression and thus violated international law. Therefore, all the thirteen cases were treated as hard cases for humanitarian intervention.

Table 1. Humanitarian intervention during 1960 – 1999

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>Intervening state(s)</th>
<th>Target state</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>1960</td>
<td>Belgium</td>
<td>Congo</td>
</tr>
<tr>
<td>2.</td>
<td>1964</td>
<td>United States, Belgium</td>
<td>Congo</td>
</tr>
<tr>
<td>3.</td>
<td>1965</td>
<td>United States</td>
<td>Dominican Republic</td>
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<tr>
<td>4.</td>
<td>1971</td>
<td>India</td>
<td>Pakistan</td>
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<tr>
<td>5.</td>
<td>1978</td>
<td>Belgium, France</td>
<td>Zaïre</td>
</tr>
<tr>
<td>6.</td>
<td>1978</td>
<td>Vietnam</td>
<td>Cambodia</td>
</tr>
<tr>
<td>7.</td>
<td>1979</td>
<td>France</td>
<td>Central Africa</td>
</tr>
<tr>
<td>8.</td>
<td>1983</td>
<td>United States</td>
<td>Grenada</td>
</tr>
<tr>
<td>9.</td>
<td>1989</td>
<td>United States</td>
<td>Panama</td>
</tr>
<tr>
<td>10.</td>
<td>1990</td>
<td>ECOWAS countries</td>
<td>Liberia</td>
</tr>
<tr>
<td>11.</td>
<td>1991</td>
<td>United States, United Kingdom</td>
<td>(Northern) Iraq</td>
</tr>
<tr>
<td>12.</td>
<td>1992</td>
<td>United States</td>
<td>Somalia</td>
</tr>
<tr>
<td>13.</td>
<td>1999</td>
<td>NATO countries</td>
<td>Yugoslavia</td>
</tr>
</tbody>
</table>

Out of thirteen, three cases involved non-Western countries as the intervening party. Those three cases were intervention in Pakistan (1971, by India), in Cambodia (1978, by Vietnam) and in Liberia (1990, by ECOWAS countries). In two cases, two intervening parties were regional organizations i.e. ECOWAS in Liberia (1990) and NATO in Yugoslavia (1999). Among the target states, only one of them came from the Western hemisphere (Yugoslavia).

This research also found that in some cases, humanitarian concern became the only reason for intervening. In other cases, humanitarian concern had been used along with other reasons to justify intervention. When humanitarian concern had been used along with any other reason(s), humanitarian concern became either the predominant reason or the less significant reason.

When humanitarian concern served as the reason for intervening, there were two possibilities regarding the concerned object. Firstly, the object to which the concern addressed was the national of the intervening state(s). This category of reason was found in interventions by Bel-


The attitude of states toward each case of intervention may be summarized as follows. In the case of intervention by Belgium in Congo (1960), the response of international community was deeply split, Belgium’s allies in NATO supported the action, while communist states opposed the intervention. The UN implicitly stood against Belgium’s action (Weiss & Hubert, 2001). In the case of intervention by the US and Belgium in Congo (1965), communist countries as well as African and non-aligned movement countries stood against the action. Any country other than the intervening powers expressed no explicit support. The UN explicitly opposed the action.

The US intervention in Dominica (1965) also ignited the same reactions. Only (Nationalist) China strongly supported the US. Most communist countries and OAS countries opposed US unilateral action. Traditional allies of the US normally agreed with the US in terms of protection of US nationals, but they opposed the political agenda of preventing communist regime from entering in Dominica.

In the case of Indian intervention in Pakistan (1971), most countries were up against India (Weiss & Hubert, 2001). There were not many formal reactions expressed by countries following French and Belgium’s intervention in Zaire. This case has never been presented before the UN
Security Council.

A shift of reasons was adopted by Vietnam during the country's intervention in Cambodia (1978). At the beginning, Vietnam argued that its action was driven by the right of self-defense due to Cambodia's frequent attack at the border of the neighboring countries. Later on, humanitarian consideration was used by Vietnam to justify its military operation in Cambodia. In both cases, most of the members of the international community were against Vietnam. The case of Vietnam's intervention in Cambodia was particularly important, since this case confirmed the idea that intervention, even when performed for humanitarian reasons, was unacceptable.

The French intervention in Central Africa (1979) was only opposed by a small number of states. Many states were either holding back their opposition or simply avoided any comment about the issue. Among the cases analyzed, the US intervention in Grenada presented the most complete arguments. The US argued that the driving reasons behind its actions were the invitation by Grenadian government, prevention of human tragedy and establishment of a democratic regime. However, most of the states, including the US' traditional allies such as the Netherlands, France, Italy, Norway and Spain, were against this action. Explicit support came from El Salvador and Israel.

The case of the US intervention in Panama has posed the same reactions. Most of the countries went up against the US while support only came from a small number of states. Within the UN General Assembly, there were 20 states supporting the action, and 73 states opposing. The UN tacitly endorsed ECOWAS' intervention in Liberia (1990). However, this implied approval was given long after ECOWAS intervened Liberia. Later on, a more explicit endorsement was expressed. In the case of the US & UK intervention in (Northern) Iraq in 1991, most of the states could agree with the need insisted by the intervening powers to protect the Kurdish in Northern Iraq. Intervention in Somalia (1992) is the only humanitarian intervention explicitly done under the authorization of the United Nations. There was no other reason employed to justify this intervention other than pure humanitarian consideration. No country was openly against this action.

The most recent case of humanitarian intervention took place in Yugoslavia. This action was done by a regional defense organization (NATO). Interestingly, only a small number of countries stood against NATO's action. Belarus, India, Russian Federation, China and Namibia were the only countries openly opposing NATO's military campaign in
Yugoslavia. Most of the countries, including the third world countries and Islamic states supported the action.

Analysis

The data presented above indicate first of all that humanitarian intervention was a distinguished practice. It may be categorized as “intervention,” but it also has a particular nature in that its driving reason is humanitarian concern (Keddie, 2003). It is not easy however to decide whether a humanitarian intervention is purely humanitarian in itself. The cases analyzed show that in many occasions, the humanitarian consideration was often mixed up with other reasons, mostly political ones (Shank, 1999).

The data also implied that when a humanitarian intervention was performed under the UN Security Council (as in Somalia), it was more likely that the action would gain wider support. On the contrary, when a humanitarian intervention was launched unilaterally, it was less likely that there would be extensive support.

It seemed that there was no single consistent states response regarding humanitarian intervention. In some cases, even when humanitarian considerations were mixed up with other reasons that were seemingly more legitimate, opposition against this practice always existed. Traditionally, international law stipulates that use of force may be legal when performed as an act of self-defense. But even this reason could not justify Vietnam’s humanitarian intervention in Cambodia.

Kosovo intervened by NATO was quite interesting. In that case, there was relatively small number of states that opposed the action. Majority of the UN members either explicitly or tacitly support NATO’s campaign. However, this single case could not be a firm ground to conclude that humanitarian intervention was acceptable. Opposition from prominent members of the UN Security Council in a way or another was too important to be ignored. Moreover, the political flavor in the Kosovo case was quite strong. Many Islamic countries that traditionally criticized the US’ unilateral action were standing side by side with the US and NATO in Kosovo. But this was not necessarily mean that those countries had accepted humanitarian intervention as a legitimate practice, but rather because they saw the action as a kind of help needed by their religious kin.

From the description above, we could draw a conclusion that there was no consistent state practice regarding humanitarian intervention. In each and every case, both endorsement and opposition were present. A state’s attitude and response toward humanitarian intervention was always shaped by its political interest.
ways shaped by its political interest.

It is regrettable that the UN could not pay any bigger role in shaping a clear view. More often this organization was silent when an intervening state was a major power. The experience of Kosovo case had proved this assertion. Before the NATO launched air strike over Yugoslavia following the Kosovo crisis, the UN had strongly warned NATO that this defense organization did not have any justification to act beyond the UN system. However, there was no explicit condemnation when the military campaign was finally started.

The ICJ did not play any important role in clarifying the legality (or illegality) of the so-called humanitarian intervention. Following the air strike launched by the NATO, Yugoslavia filed suits against the NATO members before the ICJ in the Hague. Due to procedural problems, the substance of this suit was never been examined by this judicial organ. If humanitarian intervention was not yet a customary practice, then the principle of non-intervention must still be a strong norm.

Conclusion and recommendation

To conclude this description and analysis, it could be said that the time has not yet come for humanitarian intervention to be adopted as a form of customary international law. Let alone the opinio juris requirement, the general and consistent practice regarding humanitarian intervention could not be defended (Portela, 2000). States' attitude toward this practice varied from case to case, depending on the political interests of the relevant state.

International community faced a dilemma in dealing with humanitarian intervention issue. On the one hand, the tendency to uphold the principle of non-intervention could result in catastrophic humanitarian tragedy parallel with that in Rwanda. But on the other hand, the legalization of humanitarian intervention could create chaotic situation when, driven by their own interests, major countries launch humanitarian intervention in any other weaker countries.

It seemed that there was an urgent need to decide the legality (or illegality) of humanitarian intervention. Therefore, learning from past experience when no consistent practice was achieved, the legality (or illegality) of humanitarian intervention could not be handed over to the norms of international customary law. International community must try to create mechanism and conditions for a legal and legitimate humanitarian intervention to address humanitarian catastrophe.


