4. Berliner Colloquium zur Zeitgeschichte
Humanitarian Wars: Preconditions, Goals, Dangers
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Interview

Berliner Colloquien zur Zeitgeschichte: Iraq, Afghanistan, Libya—the world is supposed to have been made more peaceful through international deployments with humanitarian aspirations and supported by resolutions of the UN Security Council. And yet there is reason to critically discuss this approach and reflect on the possibilities and limits of any revision. Why?

Because this approach is characterized by a contradiction and a deficiency. First off, the contradiction. These days wars are waged, as is always asserted, to right injustice—international security is threatened, populations are oppressed, neighboring states are liable to be sucked into the maelstrom of destabilization. These can only be stemmed—be it the view of a majority of states or strong individual states—through force of arms exercised by a large coalition of states. The Iraq War, the war in Afghanistan, and the Libya conflict are examples of this. But that is only one side. The other side is that the goal of pacification in all of the aforementioned cases was not achieved. To the contrary—the situation clearly worsened. There existed a wide gap between aspirations and reality where the on-site situation contradicted the original assertions and justifications for the military deployment.

Now the deficiency. The international law of conflict, also known as international humanitarian law, which constitutes the framework for admissible actions during wartime permits too much violence. There are three main sets of regulations attached to the waging of war, also for humanitarian purposes, which are counterproductive in the sense that they do not lessen but increase violence: that applying to prisoners of war, that pertaining to troops of occupation, and the principle of proportionality in the exercise of military force. It is this manifest incompatibility of international humanitarian law with wars justified on humanitarian grounds that confirms the need for discussion. For how does one ultimately cope with this incompatibility? The colloquium offered the perfect

framework for pursuing this question together with experts in international law, historians, philosophers and military men.

BCZ: So the problem was discussed from various angles. What were the particular areas of focus?

The historical background could be briefly dealt with because it was a consensus in every respect. No one contested the fact that the ban on violence and the precept of non-intervention are central principles of international law. There was agreement that measures for reinstating peace and international security, according to chapter VII of the UN Charter, is a matter for collective action and must not be undertaken unilaterally. Military force, whose application chapter VII permits as well as the closely related principle of proportionality, entailed the thematic focus of further exchange. For this reason a discussion of the concept of the »responsibility to protect« faded a little into the background. Occupation law and perhaps the closely related violence-delimitation aspects might also have been given a more intensive hearing. But the common theme running through the entire discussion was the relationship between military necessity and protection of the uninvolved civilian populace. And that is precisely what should and must be of paramount concern if we are to adequately tackle this problem.

BCZ: What are the findings?

Ultimately one can bring the discussion back to two contradictory positions. The first position, which enjoyed numerical superiority in terms of its adherents, clings to the status quo with respect to international humanitarian law. Instead of speaking of »humanitarian wars,« they prefer the term »armed conflicts.« They also eschew any gradations in the intensity of force used in such conflicts. They take refuge in the »war is hell« precept and thus regard the legal instrument of de lege lata as sufficient. Its goal, finally, is to delimit violence, and the important thing is to fill out the legal provisions with increasingly precise content. This applies particularly to the principle of proportionality, which in this way—ever more narrowly conceived—increases the protection afforded uninvolved civilians. Moreover, in view of the reservations that states have against certain provisions of existing international humanitarian law, it is illusory to hope for its revision. According to them, this can be seen in the discussion regarding the question as to when a civilian can be considered as taking a direct part in the fighting and thus be perceived as a legitimate target of violence. And even if one recognizes the category of humanitarian war, the community of states would never consent to

codification of special rules for this type of conflict. That in sum is the first position.

Those holding the second position assert that these days military force is used to achieve other objectives than just a few decades ago. But they question whether the term »humanitarian wars« is a suitable one, the matter requiring further discussion. In view of the new situation this also means rethinking the import and scope of existing laws—first and foremost the principle of proportionality. The success of military measures that pursue humanitarian goals (for example the »responsibility to protect«) is crucially dependent on the weighting of military necessity in relation to humanitarian defense of the individual—that is to say, it is dependent on the principle of proportionality. Nevertheless the participants who tended toward this view did not want to commit themselves to ways in which the verified deficiency could be reduced or eliminated. Should the principle of proportionality be abandoned or curtailed? Is this at all possible, given that considerations of proportionality are a constant in law? And what is the status of law and human rights particularly in non-international armed conflicts and their effects on international humanitarian law? Does it make any sense to have penal sanctions for commanders in oder to enact greater protection for the non-involved civilian population? Question after question, which demonstrates one thing above all, namely the need for considerable discussion.

BCZ: And what now?

The subject remains topical. It is obvious that violence from the side of governments or non-state actors such as militia or warlords against civilians consistently causes acute humanitarian hardship—and it does not appear as if this will change in the future. But the ethical imperative of assistance is difficult to reconcile with the ethical prohibition of violence against the uninvolved. If international law does not react to this situation then it will be faced with problems of legitimacy and will fail to improve things, in fact worsening them, which in terms of the concrete consequences is far more dire.

But how can we reach a point where international law might be revised? As the colloquium has shown, the resistance among states is great and the reservations among scholars no less pronounced. Nevertheless there is pressure to act, as the colloquium likewise ascertained, and as can be once again seen in the current debate over the deployment of drones. Therefore, probably in spring 2014, the Hamburger Institut für Sozialforschung shall form a working group consisting of

scholars from the humanities and social sciences, jurists, and military personnel. Based on the observations and findings of the colloquium and informed by latest publications on the topic, this group shall come to terms with the potential for further development of international humanitarian law.