

### Crimes Against Humanity – Who has the Right to Intervene?

Giving judgment in the Pinochet case, Lord Phillips remarked that: 'There are some categories of crime of such gravity that they shock the consciousness of mankind and cannot be tolerated by the international community'. This passage encapsulates the interventionist spirit of the post-Kosovo world, where it is hoped that a clear line can henceforth be drawn between acceptable and unacceptable behaviour as judged by the shared moral imperatives of the new world order. Any country which finds itself on the wrong side of this line can expect to face the wrath of the international community. However, whilst it is true that there is a line in the sphere of human rights, it is drawn at a more fundamental level, dividing the practically possible from the idealistically desirable. The root tension is always between realpolitik and a desire to intervene motivated by moral indignation.

This necessarily uncertain situation leaves little room for guiding principles, and thus when discussing intervention the language of rights appears to be misplaced. Instead, each case has to be considered on its facts, and sometimes idealism must inevitably yield to insurmountable practical considerations.

Kosovo provides an illustration of this. In such potentially inflammatory situations the ideal is the achievement of an international consensus followed by concerted action on the basis of a UN mandate. This way it could be said that a right to intervene had been established. Before the wheels of the UN have begun to turn, however, it has often been overtaken by events. This is what happened in 1994, when internal UN wrangling left it impotent in the face of genocide in Rwanda. Hence in

Kosovo a more robust practical approach was adopted by those nations anxious to avert humanitarian catastrophe. A consequence of this was an effective sidelining of the UN.

Whilst Kosovo is an example of practicality conducing to intervention, more often it is considerations of a practical nature that serve to check an interventionist spirit. It is difficult to distinguish in principle the situation in Kosovo from that in Chechnya, Tibet or Kashmir. All four concern the oppression of an ethnic minority by a powerful majority. Yet whilst in Kosovo the intervening force was able to override Yugoslav appeals to respect for national sovereignty in favour of the ideal of human rights, they could not realistically ignore such powerful players on the world stage as Russia and China. This inevitably leads to the charge that human rights matter, but only up to a point.

The heavy shackle of practicality does not always appear in such an arresting form as the prospect of world war. Often it exercises its restraining tendencies in a much more subtle fashion, most importantly in the form of trade concerns. Despite the grandiose moral proclamations heard in relation to Kosovo, when human rights come face to face with economics, it is the latter that prevails. For example the importance of China as an emerging market is a constant factor in the West's reluctance to intervene in Tibet. Spain's foreign minister recently lamented that the Pinochet affair was damaging Spanish/Chilean economic relations, and this is undoubtedly a factor in the cooling of Spanish interest in this matter. The United States was similarly frank in explaining the reasons behind its reluctance to become involved in East Timor as resting on the fact that its national interest lies in an

economically and politically stable Indonesia, not in a secession that could prove contagious.

Of course the underlying reasons behind decisions of the international community not to intervene are rarely acknowledged. Instead, when practical restraints emerge victorious over interventionist idealism, the international community takes refuge behind the concept of national sovereignty, makes dubious distinctions between essentially similar cases and emphasises the need for consensus. The fact that certain members are prepared to bypass the UN when circumstances allow, such as in Kosovo, undermines these claims, and lends weight to the proposition that "rights" in this context cannot be given or claimed. Rather the ability to intervene emerges when the balance of idealistic instinct and hardheaded practical assessment comes to rest in favour of intervention.

The decision to intervene only ever tells half of the story. The other half is about the nature of the intervention. Again, a similar theme dominates. Ideally, once a decision has been taken to intervene, the priority should be to prevent the threat to human rights which prompted the intervention. Once more, however, this ideal has to be sacrificed to the extent that it is incompatible with overriding practical considerations. Foremost amongst these is the safety of the troops involved. Experience in Somalia taught us that as much as people might demand action to uphold human rights, they balk at the thought that this may have a cost. This is why the military campaign in Kosovo was subordinated to the aim of strenuously avoiding any allied casualties. So, even in those relatively few cases where practical

difficulties do not preclude intervention, the constraints within which any intervening force must operate work to seriously impair their effectiveness.

The language of rights is at home in internal situations where duties and the sanctions triggered by their breach are clearly defined. In the realm of international human rights law, however, this is not the case. Whatever rights the international community may claim, the world in which we live is such that those rights cannot be exercised without a rigorous and careful analysis of the practical considerations involved in each specific scenario.

Far from signalling a brave new world where crimes against humanity will not be tolerated, the Pinochet, Kosovo and East Timor cases are simply examples of situations where the practical constraints militating against intervention were not sufficient to override the idealistic intentions of the international community. But there are a depressing number of cases where this is not so. With regard to them, our capacity falls a long way short of our aspirations. But this does not mean that we do not have a duty to try to realise these aspirations. As Dag Hammarsjold has said: "The constant struggle to close the gap between aspiration and performance marks the difference between civilisation and chaos".