

Crimes against Humanity: Who has the right to intervene?

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Two traditions of modern western thought conflict to pose the problem 'who should intervene in crimes against humanity?' The first can be traced back to the treaty of Westphalia (1648) which formed the modern system of sovereign nation-states. The other tradition originates with the enlightenment thinkers who have espoused a universalist doctrine of human rights. The two traditions are incompatible. A system of sovereign nation-states presupposes no higher authority to fetter their sovereign rights, other than a respect for the sovereignty of others. The idea of universal human rights is anathema to this doctrine. It places them above the nation-state to form a quasi rule of law resting on normative assumptions. For centuries now the former principle has regulated international relations, adding consensus and predictability to international law.

Only in the wake of the Second World War did human rights begin to challenge the principles of state sovereignty. On one hand the memories of German aggression required respect for national sovereignty. The emerging evidence of the holocaust on the other hand suggested that respect for human rights should be given a higher priority than concern for national sovereignty.

The conflict is reflected in the charter of the United Nations. Article 2.4 obliged member states to engage in pacific international relations, and 2.7 upholds respect for matters which are essentially within the domestic jurisdiction of a member state. Yet the preamble seeks to 'reaffirm faith in fundamental human rights'. The dilemma was 'resolved' by the outbreak of the Cold War, as non-aggression once again became the watchword of international law.

Claims for self determination, frequently the cause of internal bloodshed, were largely ignored by the West during the Cold War. Sovereign states were allowed or even helped to quell attempted secession as in the Congo (Katanga) in 1960 and Nigeria (Biafra) in 1967. These events were essentially within the states' domestic competence. Mutual recognition by East and West of the inviolability of each others borders meant a blind eye being turned, and implicit recognition given, to the Soviet Union's right to repress social and ethnic groups within the frontiers of its satellite states.

The end of the Cold War has brought a change. A new world order has been inaugurated, we are told. The importance that human rights threatened to achieve before they were placed in cold storage by east/west rivalry has been reasserted. And international law has followed these trends. Classical doctrines of international law such as the inviolability of frontiers, the right to prevent secession, immunity from prosecution for heads of state and above all that aggression is the ultimate offence against another state has given way to a new

normative benchmark of acceptable international behaviour. Events in this past year show how there has been a departure from these classical doctrines. NATO has aggressively intervened in the affairs of a sovereign state and affected a de facto secession. Spain is attempting to try Senator Pinochet for his part in the torture and murder of Spanish citizens in Chile during his rule. The right to intervene in the affairs of another state was justified in these cases by the breach of fundamental human rights.

This is not to say that the new world order extends everywhere. Tibetan demonstrators in London have been silenced during Jiang Xemin's state visit. The citizens of Chechnya have been shelled and bombed with barely a whimper from the west. It appears that the new world order extends to particular areas only. Within certain spheres of influence, reminiscent of their 19th century predecessors, a new world order with a rule of law based upon normative assumptions exists. Yugoslavia is in such a sphere and so we bomb Serbia. Chechnya, Tibet, Burma, and Turkey are not. The criteria for assessing where the boundaries of these spheres lie are no less arbitrary. Media interest in the events, commercial considerations, geographical proximity and military capacity define their limits.

By intervening in the internal affairs of nations, however selectively, in the name human rights we are placing an international authority above that of the state and undermining predictability in international relations. An international legal order based upon human rights is fraught with difficulties.

Senior public officials will be wary of travelling abroad for fear of unfounded allegations emanating from states of a different political persuasion, as Lord Goff noted in the Pinochet case.

By placing human rights at the apex of the international system the West is open to criticisms of ethical imperialism. The human rights we espouse come from a western tradition of thought and seem alien to those from Confucian, Islamic or other cultures. Human rights are socially constructed phenomena and differ from culture to culture. The result is that consensus in international affairs is lost.

Above all, a state's domestic affairs will become the legitimate concern of all other states and provide a breeding ground for international conflicts that public opinion will find hard to ignore. Kosovo proved this. But how long before attention becomes focused upon, say, Northern Ireland. Traditional principles of international law offer predictability and consensus. This evolution of international law shatters the defining principle of international relations, and bodes ill for future peace and security. A normative rule of law in international relations offers none of the securities that Dicey would expect.

The continued ignorance of human rights abuses in areas outside immediate western interest implies a recognition of the uncomfortable consequences of the change in international law. It is clearly unpalatable for many decent minded people to ignore such human rights abuses. Endowing oneself with the right to intervene in crimes against humanity is the natural and

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understandable response to genocide that many Westerners demand. But
founding an international rule of law based upon human rights is a revolution in
international law and relations that states should be, and understandably are,
wary of.

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