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Humanitarian intervention has always played an important part in international relations. States intervene to promote justice, to advance their own interests, or both--but usually call on justice first in justifying their actions. Even the most extreme apostle of sovereignty, Jean Bodin, conceded that one sovereign may intervene to punish another who governs without regard to the public welfare, honor, or survival. (Jean Bodin, *Six livres de la République* (1583 edition) Book II, ch. 5, p. 609). Some level of interference by governments or individuals to prevent the human rights abuses of others must be tolerated in any case, whatever one's views, for the same reason that some interference with others must always be legitimate under any legal system: because it cannot be totally avoided. Any action by a state, individual, group of states or group of individuals will have an effect on others, and to that extent interfere with them. The question for lawyers and philosophers cannot be *whether* intervention is legitimate (because a total prohibition on interference would preclude all action) but rather *when* intervention is legitimate and when it is not. Law sets limits on how much one

person, group of persons, state or group of states may intervene to influence others, and establishes procedures to support official interventions (enforcement), or to prevent improper interventions (delicts or crimes). Some level of interference must be tolerated because all action is intervention, and total inaction would not be practical.

Philosophers and lawyers such as Jianming Shen who have sought to limit "intervention" by one person or state in the "internal affairs" of others are not engaged so much in promoting a prohibition as in drawing a line – the line between what will count as forbidden "intervention" and what will not. Those actions of a state that we view as "internal" (or "private", when speaking of individuals) will be protected from "intervention" or outside scrutiny. Those that we choose to count as "external" (or "public") will not. When the Charter of the United Nations discourages United Nations intervention "in matters which are essentially within the domestic jurisdiction of any State" (Art. 2.7), the protected zone extends only so far as our conception of the state's "domestic jurisdiction", however we choose to define it.

Theories of law provide definitions for terms such as "intervention" and "domestic jurisdiction" that practice and treaties leave vague. Like all law, international law claims to deserve obedience, which (like all law) international law actually deserves only to the extent that it is just, or at least more just than the available alternatives. Most legal systems have a legislature to make laws, courts to interpret them, and systems of enforcement to make their laws effective. But international law finds its content

primarily in considering what *would be* just, and its obedience primarily in convincing states that international law *is* just, and deserves to be obeyed. Drawing the line between a state's protected "domestic jurisdiction" and its unprotected "human rights violations" depends largely on what would be just, and which line captures justice best.

SOVEREIGNTY

The "sovereignty" of states, like the "liberty" of citizens, is the bundle of rights that all states deserve as members of the international community. The United Nations Charter (to give one recent example) begins with the fundamental principle of "sovereign equality" among its members (Art. 2.1). This implies that members shall settle their disputes by "peaceful means" (in accordance with justice) (Art. 2.3) and refrain from "the threat or use of force against the territorial integrity or political independence of any State" (Art. 2.4). Later United Nations documents such as the 1970 General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States reaffirm the basic importance of the sovereign equality of states, based on the principle of "equal rights and self-determination of peoples", as established by the Charter (Art. 1.2) and customary international law.

The Declaration on Friendly Relations illustrates the process by which governments justify their power under international law, by connecting their national "sovereignty" to indisputable moral truths. The Preamble to the Charter of the United Nations declares the "equal rights

of men and women and of nations large and small." All men and women deserve equal rights, and therefore so do the nations into which they have associated themselves. From this it follows that the "peoples" of these nations should develop mutually "friendly relations", on the basis of their "equal rights and self-determination". (U.N. Charter Art. 1.2). Peoples deserve equal rights because people deserve equal rights. The Declaration on Friendly Relations "bear[s] in mind" the values of "freedom, equality, justice, ... respect for fundamental human rights", and the "rule of law" (Preamble) while asserting a norm of non-intervention "in the affairs of any other state" (First "Convinced" clause). This juxtaposition is designed to imply that the two principles are inseparable.

The Declaration on Friendly Relations goes on to denounce any form of "coercion" aimed at the "political independence or territorial integrity" of any state, (Third "Recalling" clause) as being (by implication) contrary to the state's "sovereign equality" ("Reaffirming" clause). The Declaration strengthens the Charter's prohibition on the "use of force" by forbidding "political" or "economic" coercion. States should not be "coerced", because their peoples deserve "freedom and independence" (Declaration on Friendly Relations, explaining the First Principle). The Declaration on Friendly Relations properly criticizes "the subjection of peoples to alien subjugation, domination and exploitation" (Second "Convinced" clause), while prohibiting intervention "directly or indirectly, for any reason whatever, in the internal or external affairs of any other State" (explaining the Third Principle).

NON-INTERVENTION

The Declaration of Friendly Relations provides a useful starting point for discussing the international norm against intervention, because the Declaration on Friendly Relations constructs the most extreme recognized elaboration of the non-intervention norm. The Declaration prohibits even "indirect" intervention "for any reason whatever" in any "affairs" of state. Yet in order to justify this standard, and to secure compliance from states, even the Declaration on Friendly Relations must relate non-intervention to "liberty", to "justice", and to "fundamental human rights". The Declaration must condemn "subjugation, domination and exploitation" and maintain the "equal rights and self-determination of peoples". These qualifications help to clarify what will count as "intervention" and which are properly a state's own internal "affairs" for the purposes of international law. Violations of liberty, justice and fundamental human rights, or other subjugation, domination and exploitation of a people, or the denial of the rule of law or of a people's right to self-determination, cannot fall within the zone of a government's private affairs that are protected against inter-state "intervention", because sovereignty and self-determination themselves cannot be justified as law, without reference to the universal principles of non-domination and fundamental human rights.

The Institute of International Law recognized the borders of states' protected "affairs" and the limits of their inviolable "domestic jurisdiction" in its resolution on "La protection des droits de l'homme et le principe de non-intervention dans les affaires intérieures des Etats",

adopted on the thirteenth of September, 1989 at Santiago de Compostela. The Institute considered that human rights, having been given international protection in the Charter of the United Nations and other charters and constituent instruments of international organizations, and commonly understood as including the rights described in the United Nations General Assembly's Universal Declaration of Human Rights of December 10, 1948, are therefore legally subject to "international protection" and not "matters essentially within the domestic jurisdiction of states" (Preamble).

The resolution of the Institute of International Law is not important so much as an authoritative statement of international law (although it is very good evidence of widely-accepted principles), as it is as a clear illustration of the reasoning that supports the international legal order. Although "intervention" in a state's domestic "affairs" would be improper, "measures" taken in response to violations of international human rights law are perfectly acceptable and indeed sometimes required by each state's duty of international solidarity in defense of human dignity throughout the world. Under ordinary international law, as it has existed for centuries, states are entitled to take diplomatic, economic and other "measures", individually and collectively, against states that have violated their international obligations. Legitimate countermeasures in the form of retorsion or reprisals are not forbidden "intervention" under international law (Art. 2).

HUMANITARIAN INTERVENTION

Humanitarian "intervention" (to use the word in its ordinary sense) is not prohibited international "intervention" (in the legal sense) because it does not trespass on a state's protected "affairs". The Institute of International Law recognized human rights as a direct expression of the dignity of the human person, and therefore the subject of each state's *erga omnes* obligation to every other state, so that "every state has a legal interest in the protection of human rights" everywhere. The Institute referred to the "duty of solidarity among all states to ensure as rapidly as possible the effective protection of human rights throughout the world," (Art. 1) and noted that a "state acting in breach of its obligations in the sphere of human rights cannot evade its international responsibility by claiming that such matters are essentially within its domestic jurisdiction." (Art. 2)

Human rights violations cannot be considered as essentially within a state's domestic jurisdiction, because doing so would discredit the underlying concept of "domestic jurisdiction" in international law. States exist, according to the theory of international law advanced by the United Nations Charter, to secure economic, social and cultural advances, to guarantee human rights and fundamental freedoms, and to implement national self-determination (U.N. Charter, Art. 1). Releasing states from these obligations would undermine the foundations of their sovereignty, by discrediting the concepts of freedom and autonomy on which state sovereignty depends. Without individual rights there can be no states' rights. Govern-

ments deserve deference only to the extent that they serve the common good of all the citizens subject to their rule.

Humanitarian intercession cannot be prohibited "intervention" in a state's internal "affairs", because human rights violations are never wholly "internal" or "private" in the necessary sense of those words. This does not justify indiscriminate or excessive humanitarian countermeasures to correct all human rights violations, whatever the circumstances. Like all other international measures, humanitarian countermeasures must be proportionate to the gravity of the violation, taking into account the interests of individuals and of third states, and all of the relevant circumstances (Cf. Resolution of Santiago de Compostela, Articles 2 and 4). The proper limits on humanitarian intervention to enforce international law against human rights violations depend less on the limits of "intervention" and "domestic affairs" (since human rights are never purely domestic) than they do on questions of proportionality, objectivity and enforcement.

ENFORCEMENT

Measures or countermeasures against human rights violations may sometimes be justified as necessary for the enforcement of international law. But not all enforcement measures are justified. Different responses will be appropriate to different violations, and some violations will have to go unpunished when no appropriate remedy can be found. The International Law Commission's Draft Articles on State Responsibility suggest some of the limits to measures that states may take in response to

other states' violations of international law (or of obligations that "may be owed to another State, to several States, or to the international community as a whole" – Draft Art. 34). In their current form, the Draft Articles would preclude the threat or use of force in countermeasures "in a manner contrary to the Charter of the United Nations", or other measures in violation of fundamental human rights; in violation of humanitarian law; in violation of peremptory norms of general international law; or in violation of diplomatic inviolability (Draft Art. 52).

The Draft Articles on State Responsibility recognize that countermeasures "must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question". (Draft Article 52) This reflects the obvious truth that the punishment should fit the crime, but also raises pervasive problems of judgment in enforcing international law. Sanctions against human rights violations will have negative effects, not only on the governments that have violated international law, but also on the subjects that they rule. Military interventions will often hurt oppressed peoples. Economic sanctions almost always harm citizens far more than their oppressive governments. Indeed, rights-violating regimes often profit (as in Yugoslavia and Iraq) from economic sanctions, while their peoples starve.

The notion that subjects are in some sense collectively responsible for their government's violations of international law is particularly ill-considered in the case of human rights violations, when the citizens themselves are victims of the state. In such cases swift overwhelming

military interventions may be more justified than drawn-out economic sanctions, so long as military interventions act quickly to restore or to establish democratic institutions and respect for international law. The less democratic the government that violates human rights, the less appropriate economic sanctions will be for enforcing international law. Sanctions were more appropriate (for example) against Serbia, whose people were united in oppressing ethnic minorities, than against Iraq, whose dictator never enjoyed popular support.

OBJECTIVITY

The examples of Serbia and Iraq, whose governments suffered for violating international law, while other equally culpable governments in Russia and China (for example) did not, raise the question of objectivity in humanitarian interventions. Large powerful states that violate international law do not face the same levels of enforcement that smaller weaker states do. Small weak states can seldom act to prevent human rights violations from occurring elsewhere. Large powerful states sometimes intervene. This raises two problems of objectivity. First, the problem of impunity, because the large states are immune from serious punishment. Second, the problem of poor judgment, when powerful states act alone. Given the absence of any legitimate international government, enforcement of international law will necessarily be partial, uneven, and favor the strong.

Some scholars suggest that *de facto* impunity for strong governments justifies an equal impunity for the weak, but

this does not follow. Punishing weak oppressors establishes principles that also apply to the strong, and may sometimes be enforced against them. The problem of poor judgment raises greater difficulties. Powerful states may make mistakes, or use human rights as pretence to dominate their neighbors. Given the *erga omnes* nature of human rights violations (*Barcelona Traction*) and every state's right to respond proportionately to violations of international human rights law, states must be constrained so that they judge violations and impose their sanctions correctly.

The test of veracity in international law is consensus. The greater the consensus, the greater the likelihood of truth. Like other foundational doctrines of international law, this doctrine of legal epistemology rests on the enlightened premise that people (and peoples) everywhere possess reason. If international law consists of rules of conduct deduced by reason from the nature of the society of nations (Wheaton, *Elements* I § 14), then consensus clarifies the dictates of reason, and consent may modify them, in certain circumstances. This doctrine has two implications: first, that governments may act with greater certainty in enforcing international law when other governments agree with their judgments – multilateral decision-making is more accurate than unilateral action; second, that the views of non-democratic governments count for less in establishing the requirements of international law. Non-democracies speak only for their rulers, and not for the captive subjects of their power.

THE USE OF FORCE

"Intervention" in its strongest sense implies the use of force, which has a special status under the United Nations Charter. In Article 2, section 4 of the Charter, the members of the United Nations renounce "the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". This language would seem to imply that the use of force consistent with the purposes of the United Nations would be acceptable (Article I purposes include protecting human rights and the self-determination of peoples) but the Charter also puts the use of force into a special category, as being inherently threatening to international peace and security, and contrary to the principle that disputes should be settled by "peaceful means" (Article I § 1).

Reason and the nature of the society of nations indicate that force should be avoided as much as possible in resolving international disputes. The members of the Institute of International Law discouraged "the use of armed force in violation of the Charter of the United Nations" to enforce international human rights law (Resolution of Santiago de Compostela, Article 2). The Third Restatement of Foreign Relations Law endorses "all remedies generally available for violation of an international agreement" (§ 703 (1)), but limits its conception of human rights enforcement to states that have exhibited "a consistent pattern of gross violations" of international human rights (§ 702 (g)). The Draft Articles on State Responsibility restricts its discussion of *erga omnes* violations to "serious breaches" involving "gross or systematic" harm (Draft

article 41), and provides that countermeasures shall not involve any derogation from the "obligation to refrain from the threat or use of force as embodied in the Charter" (Draft Article 51 (1)(a)).

The United Nations Charter offers a mechanism through the Security Council for coordinating "measures" to be taken to maintain or to restore international peace and security (Article 39), which may extend to enforcing human rights norms, to the extent that such violations threaten international peace and security. The General Assembly of the United Nations also provides a vehicle through which states can reach consensus about the maintenance of international peace and security, and may make recommendations (Article 11 (1)), as the General Assembly did to encourage intervention against the "subjugation, domination and exploitation" of colonialism (*Declaration on Friendly Relations; Declaration on the Granting of Independence to Colonial Countries and Peoples*). Not all human rights violations necessarily threaten international peace and security, however, and the United Nations is not the only instrument for enforcing international law. The long-established practice of bilateral enforcement by military force remains available in response to serious and systematic violations of humans rights law, such as slavery and genocide.

HUMILITY

The guiding principle in determining the existence of and proper response to human rights violations under international law should be humility on the part of the

governments involved. Those with the power to intervene or take measures to enforce international law should act with humility, understanding the limits of their objectivity and judgment. The chance of mistake and the costs of intervention favor overlooking minor or anomalous violations of human rights law. Even serious or systematic violations should be studied with care, and due deference to the judgment of others. Sometimes the costs of humanitarian intervention will outweigh the benefits to those oppressed.

Humility in judging violations encourages democratic techniques in assessing the need for humanitarian interventions. Deference to the opinions of others requires consultation and real deliberation. The actual structure of existing international institutions, such as the United Nations and the International Court of Justice, gives undue weight to the views of repressive governments, including many human rights violators and non-democracies. Consultation and deliberation become difficult and less reliable when governments shut their peoples out from the discussion. Non-democratic governments have no way of judging or constraining their own judgments of illegality, and therefore no valid basis for engaging in humanitarian intervention, except in cooperation with democratic states. Democratic states should seek the views of other democracies, and above all the perceptions of those on whose behalf they seek to intervene, before taking action.

The actual views of those oppressed carry particular weight in contemplating the method of enforcement, whether by arms, economic sanctions, or simple criticism

of the oppressive regime. The enforcement of human rights law protects the interest in human dignity that all states owe to all others, but also shields particular individuals against particular harms. Humility requires not only that states should question their own judgments of harm, but also that they should measure their own interest in human dignity against the more direct sufferings of individual persons. When humanitarian intervention will harm its supposed beneficiaries too much, or against their wishes, it may no longer be justified.

CONCLUSION

States will act to prevent human rights violations for the same reasons that people have always acted against injustice. These include sympathy for the victims, fear of the perpetrators, and the general desire to establish just legal principles by enforcing them against violators. Legal action against human rights violations may be as trivial as verbal criticism, or as serious as armed intervention. The appropriate level of response depends on the circumstances. Nations deserve a zone of sovereignty or "domestic jurisdiction" within which to develop their own histories and cultures, but governments should never have and do not deserve a license to oppress or to exploit the peoples subject to their power. The sovereign rights of states derive from the human rights of individuals. Governments that deny human rights are violating international law.

The principle of non-intervention in the internal affairs of states does not extend to protect human rights viola-

tors, because human rights violations concern all human beings. To forbid humanitarian intervention would discredit international law, by denying the fundamental justice on which all law must rest. This does not mean that enforcement should be indiscriminate or disproportionate, but rather that transgressions should be punished as fairly and objectively as possible. Sometimes the use of force will be justified to put an end to serious breaches of human rights obligations, when gross and systematic violations such as slavery or genocide cannot be prevented in any other way, but all interference or intervention to enforce human rights should reflect international consensus after democratic deliberation, and due concern for the rights of others.

Humanitarian intervention is legitimate under international law whenever serious human rights violations can be prevented in no other way, so long as the states enforcing international law respect the territorial integrity and political independence of the peoples that they protect. All nations have the equal right to self-determination, so that the people themselves may decide who their rulers shall be. Governments that deny their peoples human rights and fundamental freedoms forfeit their right to rule. The limits of humanitarian intervention depend on the value of human dignity, the welfare of those oppressed, the objectivity of the enforcers, and their humility in the face of public opinion. As the framers of the United Nations Charter recognized: states must conform to the principles of justice and international law, or there will be no peace. (Cf. Art. 1.1).