Study Unit 8: International Relations and the Individual: Human Rights, Humanitarian Law and Humanitarian War.

Objectives

1. To explain the universal human rights.
2. To identify the rights and international law.
3. To explain humanitarian intervention.

Introduction

Up until now this book has been largely concerned with what could be called the structural factors of international relations: the state system, power, economics and war. This is in line with the progression of Inter- national Relations as an academic discipline. Both neorealism and neoliber- alism see the international system level as the most productive level of analysis – the only one that can generate succinct and useful insights into the most important issues that we study. Constructivists have shown a little more concern with 'agency' as opposed to 'structure', but tend to focus on the state as the most significant actor. This chapter, in common to some extent with the last, will look inside and across states at the individuals who populate them.

It is not easy to see at first why we should be concerned with individuals in International Relations. After all, there are many other disciplines that can provide insights about humans within political boundaries. Surely our concern is for how those aggregates of people – states – react to the con- straints of the international system and to each other? Indeed, if states were sovereign according to the traditional criteria then this argument would hold. However, the Westphalian system of legend may now be just that. States increasingly recognize legal superiors, so undermining their juridical sovereignty, plus the capacities of many if not all states are limited by the processes of globalization described in Chapter 9 and perhaps by the onset of empire as considered in Chapter 12. This leaves individuals both more vulnerable (they cannot rely on a

strong state to protect their interests) and potentially more powerful (they can demand certain rights not due to their status as citizen of a particular state but due to their identity as a human being). The most critical theoretical implication of this is the support the shift has given to normative thinking in IR. The dominant theories of International Relations, traced in Chapters 2 and 3, claim to be explanatory and value-free rather than normative. Theorizing about ethics in the international system has been seen as utopian or irrelevant. States in an anarchy make the decisions they must, based on national-interest calcula- tions and (for the neorealist) systemic imperatives. Morality exists only within the borders of the sovereign state, which protects and promotes the values of its citizens and thereby makes morality possible, and as such is of no concern to IR theorists. Post-positivist thinkers dispute the first claim – that the dominant theories are value-free – while normative theorists take on the second claim about the relationship between morality and state borders. As the Westphalian system is challenged, so the question of whether the state makes morality possible, or hinders it, becomes more relevant. The ethical relationships between individual and state, and between individuals across state borders, are being studied today with a new vigour and norma- tive theorists feel vindicated in their claim that it is as critical to study how agents should behave as how they do behave if we are to make sense of a fast changing world.

Is the individual really more consequential in contemporary international relations? In this chapter it will be argued that there was a shift in power distribution among actors in three linked areas during the 1990s: in the rapid expansion of the human rights regime, and in attempts to enforce these rights through law and through war.

Universal human rights

Following the collapse of the Berlin Wall, there was a surge of activity in the development of the human rights regime. The idea that individuals have rights as human beings which they ought to be able to claim against their own governments was established in the 1948 Universal Declaration on Human Rights, but little progress was made

towards claiming these rights for all people until relatively recently. During the Cold War, human rights were often treated as a strategic bargaining tool, to be used to gain conces- sions from or to embarrass the states of the East. After 1989, the political barriers to the universal spread of the notion of human rights came down, plus advances in technology enabled NGOs concerned with the promotion of human rights to exert more influence than ever before.

Perhaps the most concrete example of the increased activity is the number of states ratifying the six main human rights conventions and covenants, which has increased dramatically since 1990. Ratifications of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights grew from around 90 to nearly 150 over the decade. Broad support for the goals of the regime was also demonstrated by the participation of over 170 countries in the

1993 World Conference on Human Rights, which met in Vienna where the participants reaffirmed their commitment to protect human rights. This was the first time in 25 years that such a meeting had taken place. Following dis- cussions at the Conference, the UN General Assembly voted unanimously to create the post of UN High Commissioner for Human Rights, charged with coordinating the UN human rights programme and promoting univer- sal respect for human rights.

The 1990s also saw a considerable increase in the number of human rights activities in UN field operations, including the monitoring of human rights violations, education, training and other advisory services. This is in part due to prolonged pressure from NGOs promoting the 'mainstreaming' of human rights in UN operations, stemming from the belief that conflict prevention and reduction efforts need to be combined with measures aimed at reducing human rights abuses. Thus, UN missions in El Salvador, Cambodia, Guatemala, Haiti, Burundi, Rwanda, the former Yugoslavia and the Democratic Republic of the Congo have all prioritized establishing a framework of respect for human rights as an integral part of postconflict peace building.

NGOs have been a crucial factor in the 1990s spread of human rights ideas. The number of registered international NGOs grew through the decade to reach 37,000 by 2000, many claiming to act as a 'global con- science', representing broad human interests across state boundaries, and focusing on human rights issues. NGOs impact the human rights regime in various ways. Organizations such as the International Committee of the Red Cross (ICRC), Médecins Sans Frontières and Oxfam work directly in the field to relieve suffering, but they also campaign on behalf of those they treat to promote the observance of human rights treaties and humanitarian law. The work of organizations such as Human Rights Watch and Amnesty is principally to monitor the behaviour of governments and businesses and to publicize human rights abuses. They apply pressure by gaining media coverage (which they have been particularly adept at during the past decade, with media mentions for human rights NGOs growing exponentially) and have had a series of notable successes.

A key achievement has been to force private actors into the discourse of human rights: to make human rights the 'business of business'. Prior to the

1990s, MNCs asserted that their correct role in global trade was to stay neutral and avoid getting involved in the politics of the regimes of the states they were operating within. By the mid-1990s, major campaigns by Amnesty International in the UK and Human Rights Watch in the US were under way to persuade big business to assume economic and social responsibilities commensurate with their power and influence, especially in the field of human rights. These campaigns and the consumer pressure which accompanied them resulted in firms such as Gap, Nike, Reebok and Levi

Strauss drastically improving the working conditions in their overseas factories and incorporating internationally recognized human rights standards into their business practices. Pressure has also been exerted on oil firms, with more limited success. In 1993 the Movement for the Survival of the Ogoni People in Nigeria mobilized tens of thousands of people against Shell and succeeded through new technologies in making the situation an inter- national issue. They forced the world's leading oil company to

temporarily stop production; however, the Nigerian government responded by arresting, imprisoning and sometimes executing Ogoni activists. Campaigns have also highlighted the activities of British Petroleum in Colombia, Mobil Oil in Indonesia, Total and Unocal in Myanmar and Enron in India, all of which were said to be contributing to serious human rights abuses. These cam- paigns have resulted more often than not in a flurry of press releases from the firms concerned and some well orchestrated public relations exercises, but little substantive change. The most significant results were gained in the UK at the end of the decade, when a group of multinationals, including Shell, BP-Amoco and the Norwegian state oil company Statoil, announced policies that included a focus on human rights.

Other achievements for NGOs have involved pressurizing governments and intergovernmental organizations (IGOs). The International Campaign to Ban Land Mines, a coalition of more than 1,400 NGOs in 90 states that was awarded the Nobel Peace Prize in 1998, was instrumental in the Mine Ban Treaty of 1997. The Jubilee 2000 Campaign for developing world debt relief collected 25 million signatures across the world and influenced Western governments and international financial institutions so heavily that $30 billion of debt was cancelled. The Coalition for an International

Criminal Court was in large part responsible for the success of the 1998

Rome Conference and Treaty that established the International Criminal Court (ICC), covered in the next section of this chapter. Due to their success in galvanizing public opinion and applying pressure, human rights groups have won a leading role in influencing many IGO activities. They help to design and often to staff the human rights operations that now accompany UN missions, and monitor the implementation of peace agreements or UN Security Council resolutions in the field.

NGOs have also been the driving force behind the expansion of the idea of human rights to include both social and economic rights, and women's rights, but it is in these areas that the criticisms of the human rights regime are most eloquently expressed. The human rights regime is grounded on ideas of substantive justice, of what we can

claim from others and what we owe to others by virtue of our common humanity, but there is a tendency in Western theorizing about human rights to elevate civil and political rights above social and economic rights. This has been noted and criticized by socialist states, by the Asian leaders who signed the Bangkok

Declaration discussed in Chapter 10 and increasingly by Western NGOs and thinkers such as Henry Shue, Charles Beitz and Thomas Pogge, who question the separation of global distributive justice from the broader goal of global justice. Can human freedom be adequately promoted when so many of the world's people are desperately poor? Shue argues that only by having the essentials for a reasonably healthy and active life, such as unpolluted air and water, adequate food, clothing and shelter and some basic health care (or subsistence rights) can a person cannot enjoy any other rights. He contends that these economic rights are inherently necessary to the idea of rights – not an optional extra (Shue 1980). Similarly, both Beitz and Pogge argue that the distribution of material resources is significant for justice, and wealth differentials cannot be justified by morally arbitrary criteria such as the borders of nations. Thus the issue of global inequality should have a place in any discussion of human rights. This notion has met with a great deal of resistance in the West, partly due to the reasonable fear that if economic rights prove very difficult to achieve, then the entire human rights regime may suffer, and partly, one suspects, due to the much less defensible concern that to admit the importance of economic rights in achieving human flourishing would mean giving up some of the resources it has long enjoyed.

Critiques of the human rights regime are not limited to a discussion of the priority of particular rights; they are also concerned with the nature of the rights holder himself (with the gendered term being intentional here). The idea of a human right implies a kind of universal human identity that transcends the national, ethnic and religious identities focused on in the previous chapter. Supporters of human rights see individuals as having those rights simply by virtue of their humanity, and quite regardless of the community or nation of which they are members. This position is generally regarded as 'cosmopolitan', and is supported by the intuition that humans

have so much in common that what we share must be politically significant. A counter-argument, which motivates the criticisms of commentators from West and East, posits that humans have very little of consequence in com- mon qua humans. Rather, our identities stem from our embeddedness in social relations, and are not established prior to them. The idea of human rights on this account has no legitimate claim to universal validity.

This argument lies at the base of many feminist critiques of the universal human rights regime. The 1948 Universal Declaration was designed to cover the rights of all human beings, male and female, and stipulates in Article 2 that human rights apply to all equally 'without distinction of any kind such as race, colour, sex, language … or other status'. However, feminist critics charge that the conception of the individual at the heart of the regime is gendered: the archetypal rights holder is male, head of his family, and the principal wage earner. Jean Bethke Elshtain finds that the roots of this characterization of the rights holder can be traced back to the Classical Greek distinction between the private and the public realm (Elshtain 1981, 1987). The rights outlined in the Declaration are designed to protect the individual from arbitrary state interference while he acts in his public capacity as a citizen of the polity or a unit of labour, without impinging upon his activities in the private sphere. As women traditionally have been confined to the private sphere, where the protection they need is from other individuals rather than the state, their experiences of violation (justified by family, religion or culture) are not covered by the human rights regime. Rape within marriage, domestic violence and unequal property rights remain legal within many states, and too frequent in all. Even in the context of war, the public/private split seems to have had an effect. The Fourth Geneva Convention of 1949 does require that women be protected against any attack on their 'honour', including rape; however, sexual violence, enforced prostitution and trafficking in women have long been regarded as weapons, spoils or unavoidable consequences of conflict.

Feminist scholars and campaigners are divided on how best to promote the welfare of women within the international framework. Theorists such as Catherine MacKinnon

(1993) contend that the regime itself is so heavily gendered that minor adjustments around the edges will never be enough to properly incorporate the experiences of women. They argue that rights language has no resonance for many women as they are marginalized or excluded in the public sphere, or do not enjoy the social and economic conditions and freedom from the threat of violence that make meaningful the status of citizen. Concepts such as empowerment and a 'capabilities approach', supposedly more egalitarian and sensitive to the differing needs of individuals under divergent social structures, have been suggested to replace the idea of human rights entirely. Others, for instance Hilary Charlesworth (1994), argue that the current human rights regime can be (and to a large extent has been) altered to better reflect feminist concerns. They see a commitment to the idea of a universal humanity, and to the equal status of persons inherent within it, as necessary in order to change long held assumptions of the inferior status of women, and point to achieve ments such as the criminalization of gender and sexual violence in the Rome Statute and the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by 177 states up to March 2004 as examples of the human rights regime becoming genuinely gender neutral.

The remarkable number of states who have ratified international human rights instruments such as CEDAW and the Mine Ban Treaty (143 as of August 2004), combined with the dominance of human rights discourse in the day-to-day workings of not just the UN and its agencies, but international financial organizations such as the MNCs, the IMF and the World Bank, and the unprecedented spread of human rights-based NGOs, would suggest that a global consensus has emerged. Certainly the view of many states and international organizations at the end of the 1990s was that the human rights regime was unassailable. However, the attacks on the US on 9/11 have had effects which question that conclusion. Amnesty International reported in 2004 that human rights and international humanitarian law are under their most sustained attack in 50 years, due to violence by armed groups and to the responses to these groups by governments. The War on Terror has forced domestic security much higher on the

Bush Administration's agenda. The US, a prime mover in the advancement of human rights over the last sixty years, has been heavily criticized for its 'pick and choose' attitude to international humanitarian law. Cited as evidence are its treatment of 'enemy combatants' at the detention centre in Guantanamo Bay, abrogation of the Convention against Torture if necessary for national security, and turning a blind eye to abuses committed abroad in the name of anti-terrorism. The US, along with many other states, has introduced legislation since 2001 that allows the detention without charge of foreign terrorist suspects, extensive

'stop and search' and surveillance powers and significant limits to political and religious dissent. It is unlikely that these recent changes in law and policy will lead to a longer-term global rejection of human rights standards, and it should be noted that many of the new measures are being justified in terms of the (human) right to security. That said, playing fast and loose with inter- national standards may well have damaged goodwill towards the US to the extent that it will find it much harder in future to require particular standards of other states in the treatment of either their own citizens or American citizens and service personnel.

Rights and international law

The idea of human rights was made concrete in the 1948 Universal Declaration; the Preamble to the Declaration states that human rights should be protected by the rule of law, but it was not until the 1990s that major shifts towards the emergence of a legal regime genuinely capable of protecting those rights took place. The emerging regime concentrates on protecting civilians from the gross breaches of rights involved in genocide, crimes against humanity and war crimes, and consists in a variety of treaties, ad hoc tribunals, regional courts and the new International Criminal Court.

The human rights regime suggests that there may be some actions, such as torture, slavery and arbitrary detention, that are prohibited regardless of their status in domestic law, and regardless of the official status of the per- petrator. The enforcement of this

position is a severe challenge to the notion of the sovereign state and to the 'sovereign immunity' from prosecution conventionally enjoyed by Heads of State and other state officials. This is a challenge which is opposed by major powers including the US, Russia and China, yet the trial of Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia, for 66 counts of war crimes, crimes against humanity and genocide, is continuing as this book is being written – the first time in history that a former head of state has been prosecuted for such crimes. This section will trace critical developments in international law and ideas of responsibility through the twentieth century to understand how the seeming revolution of 1990s came about.

War crimes prosecutions themselves are not new. There are records of such trials dating back as far as Ancient Greece, but, until the twentieth cen- tury, suspected war criminals were tried under domestic law in national courts (meaning, in practice, that the perpetrators were safe from prosecu- tion if they held senior positions within the state). In 1872, Gustav Moynier, one of the founders of the International Committee of the Red Cross, called for the creation of a permanent international criminal court. The process of its creation took more than 100 years, and most moves towards it coincided with the end of important conflicts.

During both the First and Second World Wars there were calls for the international prosecution of leaders of belligerent states for acts of aggres- sion and gross violations of the laws of war. The 1919 Treaty of Versailles provided for an ad hoc international court to try the Kaiser and German military officials. No prosecutions ever took place as the Netherlands granted asylum for the Kaiser and Germany refused to hand over suspects, but the demand marked a shift in thinking in favour of holding individuals internationally responsible for war crimes. During the Second World War an international criminal court was proposed, but rejected by the Allies who instead established ad hoc International Military Tribunals at Nuremberg and Tokyo. These tribunals began the process of the international criminal- ization of acts constituting serious human rights violations, rejected the principle of sovereign immunity and began to target individuals as the rele- vant actors instead of states or groups.

The Cold War led to deep divisions in the UN and its various bodies, and work on international criminal law lay almost dormant for more than thirty years. Only after 1989 did demands for a permanent, centralized system grow again. Perhaps surprisingly, given the charges made by various scholars that the international institutional system is a tool of Western hegemony, it was not the West which instigated the campaign for an international criminal court, but Trinidad and Tobago, who were struggling to control activities related to the international drugs trade taking place on their soil and in

1989 requested that the UN reconvened the International Law Commission to establish a permanent institution.

Reports of ethnic cleansing in the former Yugoslavia overtook the work of the Commission: in 1993, the Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY). A year later, the International Criminal Tribunal for Rwanda (ICTR) was estab- lished, this time in response to the deaths of an estimated 800,000 Tutsis and moderate Hutus, also as a subsidiary organ of Security Council. Questions remain over whether the tribunals were an appropriate response to these atrocities or a more cynical, low-cost way of responding to the demand that 'something be done'. Still, the tribunals have set a number of important precedents in terms of both the situations and the people over which the jurisdiction of international criminal law extends. Previous war crimes trials had all been concerned with acts which took place in the con- text of interstate war; however, the ICTY has jurisdiction to prosecute persons responsible for crimes against humanity whether committed in an international or an internal armed conflict, while the ICTR Statute makes no reference to armed conflict at all, implying that these crimes can take place in peacetime, within a state. This is a highly significant step in terms of enforcing human rights but also in its challenge to state sovereignty. The trial of Milosevic at the ICTY is the first time in history that a former head of state has been prosecuted for international crimes, and the conviction of Jean Kambanda, former Prime Minister of Rwanda, marked the first time that a head of government was convicted for the crime of genocide.

Despite the will of the international community to bring the perpetrators of atrocities in Rwanda and the former Yugoslavia to justice, the tribunals soon demonstrated major drawbacks. Principal among these is the enor- mous cost and slow speed of the proceedings. The monies paid to the ICTY since 1993 total almost $700 million, while the ICTR has received more than $500 million since 1996; yet the number of trials completed is aston- ishingly low. These sums of money have paid for 51 trials in ten years at the ICTY and 19 trials in eight years at the ICTR.

The conflicts in former Yugoslavia and in Rwanda had two distinct contri- butions to make to the progress of the campaign for an ICC. They re-focused attention on large-scale human rights violations during times of conflict and they highlighted the significant practical difficulties encountered in setting up and running ad hoc tribunals, so showing the benefits to be gained from a permanent international body dedicated to the administration of criminal justice. Schabas argues that the tribunals provided a valuable 'laboratory' for international justice that drove the agenda for the creation of an ICC forward (Schabas 2001: vii).

In 1998, delegates from 160 states plus 33 IGOs and a coalition of

236 NGOs met in Rome at the UN Diplomatic Conference of the Plenipotentiaries on the Establishment of an International Criminal Court. A draft Statute was drawn up which was adopted by majority vote at the final session. Some 120 states voted in favour of the Rome Statute, 21 abstained (including India and a range of Islamic, Arab and Caribbean states) and seven voted against. The votes were not recorded, but the US, China, Israel, Libya, Iraq, Qatar and Yemen are widely reported to have voted against. After 60 states ratified the Statute, it entered into force on

1 July 2002. The Court is now up and running, with investigations taking place into war crimes in the Democratic Republic of Congo and atrocities committed in Northern Uganda.

The Rome Statute has established a Court with broad-ranging powers to prosecute acts of genocide, crimes against humanity, war crimes and, poten- tially, aggression (although the Court will only have jurisdiction over crimes of aggression if a definition can be agreed upon, which looks unlikely). The Court is an independent organization and not an arm of the UN. It is funded by State Parties (those states who have ratified the Rome Statute), voluntary contributions and the UN. The Court can prosecute for crimes committed after the Statute entered into force and committed either on the territory of a State Party, or by a national of a State Party. It follows the jurisprudence of the ICTY and ICTR in establishing that prosecutable geno- cide and crimes against humanity can take place in the context of internal armed conflict, and in times of peace. Prosecutable war crimes can also take place in internal armed conflict, but not in times of peace. Also following the tribunals, individuals are treated equally before the Court, and excep- tions are not made for persons who hold positions in the government, bureaucracy, parliament or military.

Cases can be brought before the court in three ways. They can be referred by State Parties or the Security Council, or instigated by the Prosecutor (non-State Parties, NGOs and individuals have access to the process by peti- tioning the Prosecutor to start an investigation). When a matter is referred by the Security Council, the territory of the offence and the nationality of the offender are irrelevant: the Court has jurisdiction due to the superior legal status of the Council. This final point is of particular concern to non- State Parties as it establishes automatic jurisdiction and no longer depends on state consent. Both non-State and State Parties do have the option to try cases in their domestic courts. Under the principle of complementarity, the Court will only exercise its jurisdiction when the states that would normally have national jurisdiction are either unable or unwilling to exercise it. If a national court is willing and able to exercise jurisdiction in a particular case, the ICC cannot intervene.

The role of the Security Council envisaged in the Rome Statute is highly controversial, and the relationship worked out between the Court and the Council may be the deciding factor in the success of Court. The UN Charter gives the Security Council primary

responsibility for the maintenance of international peace and security, and as such its decisions under Chapter VII of the UN Charter are binding and legally enforceable in all states. A critical concern at the Rome Conference was the ability of the Council to interfere with the work of the Court. States who were not Permanent Members of the Council did not want the international legal process to be politicized. Permanent Members argued that decisions over possible criminal prosecu- tions should not be taken at a time when negotiations to promote interna- tional peace and security, were under way. The compromise reached allows the Council to prevent the Court from exercising jurisdiction by passing a positive resolution, renewable annually, which has the effect of deferring investigations for a year at a time. The Council must be acting pursuant to Chapter VII in order to defer; crucially any member of the Permanent Five can veto a deferral, but not an investigation or prosecution. The relationship between the Court and the Council could in principle be mutually beneficial: the Court, through its role in investigating and prosecuting war criminals, could assist the Council in its task of maintaining international peace and security. The Council, in turn, could help the ICC to enforce international criminal law more broadly due to its ability to grant effective universal jurisdiction to the Court when it refers a case. The more likely scenario appears to be continual clashes, in large part due to the animosity towards the Court of the most powerful member of the Council: the US.

The US is not alone in its opposition to the ICC. Of the Permanent Five, only the UK and France – arguably the least powerful – have ratified the Rome Statue. Not one of the nuclear powers outside Europe has ratified the treaty and the Court is dominated by European, Latin American and African states. Still, though the US is not alone, its lack of support is the most worrying. Without the US it is very difficult to see how any major international institution can be a success. One only needs to think back to the fortunes of the League of Nations which collapsed in large part due to lack of US backing. In terms of international justice, US help was imper- ative in bringing Milosevic to trial: the US made the extradition of Milosevic a condition before Serbia could receive a significant economic aid package, and American intelligence technology

enabled his tracking and arrest. The American position on the Court is therefore worth examining in some detail.

From 1995 through to 2000, the US Government supported the estab- lishment of an ICC, but always argued for a Court which could be controlled through the Security Council, or that provided exemption from prosecution for US officials and nationals. On the final day of the Clinton Administration, the US signed the Rome Statute, signalling their desire to stay in the debate. At the time, President Clinton stated that the treaty was fundamentally flawed and would not be forwarded to the Senate for ratification. The Bush Administration took an altogether more aggressive approach. It renounced the US signature on the Statute and any legal implications which followed from it and since then has passed the American Servicemembers Protection Act which authorizes the president to take 'all means necessary' to free Americans taken into custody by the court, presumably including invading the Netherlands. It also states that US mili- tary assistance to ICC State Parties that do not sign bilateral immunity agree- ments (BIAs) with the US will be cut off. These agreements provide that neither party to the agreement will transfer the other's current or former government officials, military and other personnel or nationals to the juris- diction of the ICC. The US aims to get all states to sign BIAs and by June 2004 it was reported that 89 states had signed up. The US also threatened to veto all future peacekeeping operations in order to gain support for UN Security Council resolution 1422 which guaranteed that non-State Parties contributing to UN forces were exempt from the Court. This resolution was passed, and renewed in 2003, but the Abu Ghraib prisoner abuse scandal in 2004 resulted in insufficient support on the Council for a further renewal. The US is now relying on BIAs to prevent US personnel from prosecution.

So why is the US, a state known for its long-standing support for human rights and commitment to promoting them throughout the world, so vehe- mently opposed to the Court? There are two main aspects to their opposi- tion: pragmatic concern over risks to US military personnel and doubts over the scope and nature of international law. The pragmatic concerns focus on the fact that as the US is the world's sole remaining

superpower, it is expected to deploy its military to 'hot spots' more often than other coun- tries. This makes it more vulnerable to politically motivated accusations and prosecutions. This argument is well grounded, but does not explain why the US is not prepared to take the British position, which is to ratify the Statute but commit to investigating all accusations within its domestic court system, thus preventing its nationals appearing before the Court.

The most powerful aspect of the US position is more concerned with the emerging structure of international society. A 'new sovereigntist' critique, expounded by politicians – for instance, Jesse Helms (2000/01) – and lawyers – such as David B. Rivkin, Jr and Lee A. Casey (2000/01) – alike argues that the Court is a grave threat to state sovereignty due to its poten- tial jurisdiction over US nationals even if the US does not ratify the treaty, which is seen as fundamentally in breach of both customary treaty practice and UN Charter protections of national sovereignty. The critique also takes a position on global ethics, arguing that the move from state to individual responsibility is flawed and should be reversed as there is no world consen- sus on moral issues. Without such a consensus it is both illegitimate and an invasion of national sovereignty for an international body to usurp national legislatures and assign duties to individuals. This view is shared by China and India, who view the ICC as a Western project, dominated by Western moral understandings and Western state power.

These issues are not easily resolved. Supporters of the Court argue that the Statute is entirely in line with US law and the provisions of the US Constitution, but this is not the point. The US objects to losing its rights as sole legislator, bound only by law it consents to. The doubts over a global moral consensus are also widely appealing. The Court at present looks very much like a European project, supported by relatively minor players on the world stage from Canada, South America and Africa. If the Europeans push too fast to establish a dominant Court, the beginnings of a global consensus mentioned in the first part of this chapter could be destroyed, along with the idea that international relations can be managed within a legal framework. However, if the Court makes serious efforts to widen its geographical appeal, is willing to engage

with views of the US and other powerful discontents, and can build up a store of sensible judgements, it may be able to establish itself as a very valuable part of the system.

The US advocates strengthening domestic legal systems to prosecute for breaches of human rights under national laws, but another recent innova- tion in the field of rights protection is the exercise of 'universal jurisdiction' by domestic courts. The principle of universal jurisdiction is that every state has an interest in bringing to justice the perpetrators of the worst interna- tional crimes, no matter where the crimes were committed, and regardless of the nationality of the perpetrators or victims. Universality can come from either universal custom (that is, a principle or act accepted by general prac- tice to be law and established as binding the nation/s in question due to their past adherence to relevant international declarations, treaties and norms) or from an international treaty regime. In this case, only parties to the treaty will be bound to accept the universality of the crime unless and until the crime becomes sufficiently established in international law and custom to be regarded as genuinely universal. Since the end of the Second World War, the list of crimes giving rise to universal jurisdiction has grown to include slavery, piracy, genocide, torture, war crimes, apartheid, and other crimes against humanity. Under this principle, domestic courts can prosecute for crimes committed anywhere in the world as long as their legal system recognizes its authority to do so. Universal jurisdiction has rarely been exercised, so the 1999 decision of the British House of Lords to allow the extradition of former General Pinochet to Spain for trial on charges of state- sponsored murder and torture allegedly committed against Spanish nationals while he was Head of State in Chile is of huge significance to the prospects for the future protection of human rights.

There were many legal issues involved in the trial, but the most important for our purposes is the issue of whether the Westphalian norm of sovereign immunity applies in cases of alleged crimes against humanity; that is, does any court other than one in Chile have the right to try Pinochet for acts performed while he was Head of State in that country? Chile, which had granted Pinochet amnesty for life in 1978, argued

strongly that sovereign immunity should hold. The Spanish state, of which the alleged victims were nationals, was reluctant to be involved in the debate as it had not held trials of Franco-era offenders (the arrest warrant for Pinochet had been issued by a maverick Spanish magistrate). The British House of Lords took a different view and issued a very restrictive but positive decision. They ruled that immunity cannot be claimed in respect of acts which are both universal crimes and crimes in the UK, and took the view that sovereign immunity was intended to protect a Head of State acting properly and torture was not proper behaviour for such a person. Pinochet's extradition would have led to another first for international criminal law: the trial of a former Head of State in a foreign court for human rights abuses committed in peacetime against foreign nationals within the sovereign territory of his own state. In the event, Pinochet was deported to Chile on medical grounds in 2000 and, even though the Chilean Supreme Court stripped him of his immunity from domestic prosecution in August 2004, he is unlikely to face trial due to con- tinuing reports of ill health. However, the precedent has been set and human rights groups have been campaigning to bring prosecutions against other former dictators in exile such as Hissene Habre, former President of Chad, and Charles Taylor, former President of Liberia.

The implications of the Pinochet decision are mixed. Marc Weller argues that it is a major victory for the idea of the rule of (international) law, representing a shift in thinking about the bases of non-intervention and state sovereignty (Weller 1999). These mainstays of the Westphalian order can now be seen as international constitutional privileges, afforded to states only in so far as necessary to maintain stable international relations. The decision could also have a detrimental effect: the House of Lords ruled that if Pinochet were still Head of State, then he would still be entitled to immunity. Knowing that leaving office would automatically forfeit their immunity could prove to be an incentive to future dictators to hang on to their office as long as possible and at the cost of great suffering to the citizens of their states.

The institution which should perhaps be of most concern to sovereigntists is the European Court of Human Rights. This Court was set up to enforce the 1950 European

Convention for the Protection of Human Rights and Fundamental Freedoms, and is argued to be the world's most effective inter- national system for the protection of human rights. The Convention is formally and legally binding upon signatories (unlike the Universal Declaration, which is a resolution of the General Assembly, and as such not binding) and the jurisprudence of the Court, built from over 1,000 judgements and drawing both from the Convention and from international human rights law, has had a profound influence on the laws and practices of the 44 member states. During the 1990s, two factors caused the growth of the

Court. First, as the Cold War ended and the Council of Europe enlarged to the East, the Court gained jurisdiction over an increasing number of states, including Russia. Second, in 1994 the Council of Europe concluded an addi- tional protocol to the 1950 Convention which allowed individual applicants to bring cases before the Court. Prior to this, individuals only had access to the Commission, which produced non-binding reports. Now, individuals and non-state groups have access to the Court alongside states, and states found to have breached the Convention are required to take corrective action, usually by amending national law. There is little that can be done to enforce the decisions of the Court, but the carrot of EU membership and the stick of trade and commercial sanctions for states whose record at the Court is poor have produced a system where compliance is the norm.

Of course, the high level of integration in Europe is an exception rather than the rule in international politics, but the success of the European Court of Human Rights is almost impossible for the realist to explain. Why would self-interested actors in an international anarchy freely choose to give up sovereignty, bind themselves to international institutions and allow their citizens to become subject to laws which originate above the level of the nation-state? The same question can be asked of states who have ratified the Rome Statute, as the ICC has the potential to become every bit as powerful over its State Parties as the ECHR.

Even more challenging to the realist is explaining why states would risk their own resources and security to intervene militarily in the affairs of others when human rights are being abused. The final section of the chapter will examine the issue of humanitarian intervention.

Humanitarian intervention

As well as seeing changes in the promotion of human rights and their protection in international law, the 1990s also saw the birth of a new, more violent, phenomenon of rights protection: 'humanitarian intervention'. The decade started and finished with innovative international action: in 1991,

'Safe Areas' were created for Kurds in Northern Iraq and in 1999, NATO intervened in Kosovo. What are we to make of these actions? This section will examine whether humanitarian intervention was a temporary phenom- enon, made possible by the relative peace of the 1990s and now seen to be floundering after the second Gulf War, or whether it is a permanent fixture of twenty-first century international society.

Humanitarian intervention is a more comprehensive challenge to the sovereign state than either the idea of human rights or the expansion of international law, as it involves the invasion of sovereign territory using military force. According to English School and International Society theorists, the Westphalian system can only work if states recognize each other's sovereignty. Rulers understand that the only way they can enjoy the rights they wish to have, principally the right to sole jurisdiction within their territory, is to recognize those rights in others. Thus, one of the principal norms of the system is that of non-intervention. Each state must respect the borders of other states in order that its own borders remain secure. This is not to say that states do always respect borders: since the Peace of Westphalia in 1648, there have been countless invasions, incursions and threats to territorial borders. The point is, there is a 'settled norm' of non- intervention; that is, a principle that all members of international society agree is in force even if they do not apply it all of the time (Frost 1996). When the norm appears to be breached, the wrongdoers are called upon by

others to explain why they did not act according to the norm, or to show that they did. This norm is not an arcane remnant of an old system: it was reaffirmed as a principle of the international order, alongside universal self- determination and the promotion of human rights, in the UN Charter.

The norm was radically unsettled during the 1990s by the birth of humanitarian intervention – the forcible invasion of sovereign territory by one or more states, with or without the backing of international bodies, motivated supposedly by the intension to alleviate suffering within that state. Such action appears to be entirely in contradiction to the principles of the sovereign state system. Its emergence can be linked to the increasing strength of the human rights regime, particularly the regime's conception of legitimate state sovereignty as flowing from the rights of individuals.

The growth of the human rights regime in the 1990s meant states were held to new standards of legitimacy, based on their observance of interna- tional human rights laws and norms. State sovereignty and non-intervention began to be seen as privileges, conditional upon observance of international standards. A logical implication of the view that human rights rank higher than state rights to sovereignty is that intervention in support of human rights becomes legitimate and maybe even required. This view can be traced back to the 1960s, or perhaps earlier, but fear of superpower involvement and commitment to traditional views of sovereignty meant that interven- tions in Bangladesh, Cambodia and Uganda in the 1970s which could have been seen as humanitarian were not. The end of the Cold War simultane- ously removed the risk of superpower conflict, and created many more candidates for humanitarian action as protectorates collapsed and nationalism spread through ex-socialist states.

After the Second World War, the UN outlawed imperialism and decreed that all states should be self-governing as quickly as possible. The capacity of states to govern – what Robert Jackson would call their 'positive sovereignty' (Jackson 1990) – was not taken into account and states with- out sufficient capacity, but with strategic value, frequently became informal protectorates of the superpowers. When the Cold War

ended, these states were often abandoned by their sponsors and effectively became the well armed and volatile responsibility of the international community. This was not the case with the first humanitarian action of the 1990s in Northern Iraq (which was brought about partly by Western concerns about the perse- cution of the Shias and Kurds by the Iraqi force just defeated in Kuwait, but also by more traditional concerns about international peace and security) but was certainly the case with the second. Somalia had allied itself to the Soviet Union until 1977, then switched allegiance to the US in return for substantial military aid. In 1989, the US withdrew its support on the basis of human rights violations. Authority within the state collapsed, warlords took over control of food distribution, famine spread and UNISOM I, a small UN mission already on the ground, was unable to intervene. In December 1993, the UN Security Council approved the insertion into Somalia of a much bigger, US-led UN mission to assist in aid deliveries (UNITAF). This intervention was explicitly humanitarian, and did not have the approval of the target state (as the state had collapsed). The intervention appeared successful at first, but the scaling-down of the force in early 1993 and its replacement by UNISOM II, along with disagreement over mission objectives, frittered away this success and the advantage swung back to the warlords. After the murder of 24 Pakistani UN peacekeepers, UN/US forces engaged in fighting a more conventional war; 18 US Rangers were killed in October 1993 (along with hundreds of Somalis) in the famous 'Black Hawk Down' incident. The UN/US mission withdrew soon after, having learned the hard way that the international community did not have the requisite coordinated military strategy, intelligence, experience at nation-building or commitment from member-states to fulfil the goal it had set itself. More tragically, the failure in Somalia, and the casualty-aversion shown by the US when pursuing a mission not judged to be in its national interest, con- tributed to the inaction of the international community in the face of the genocide in Rwanda in 1994.

The international community did act in the case of the breakdown of former Yugoslavia. After the fall of communism, the institutions which had bound the six republics of Yugoslavia together as a state disappeared, and political elites began to

mobilize support along nationalist lines. Fear of the dominance of Serbia, under the leadership of Slobodan Milosevic, led to Slovenia, Croatia and Bosnia–Herzegovina declaring their independence. Serbia cared little for Slovenia, but had substantial Serb populations in the other republics, so resisted their secession and civil war broke out. Reports began to reach the international community about ethnic cleansing being carried out by Serb forces but the community was torn over how to react. The Security Council initially imposed an arms embargo on all parties, which perpetuated Serb dominance, but then the UN recognized the three republics as independent in June 1992 and began mediation efforts. Heeding calls for assistance from the recognized governments of Croatia and Bosnia, the Security Council established the UN force UNPROFOR in the same year, but its mandate was limited to protecting humanitarian aid. In 1993 this was extended to include the guarantee of 'safe areas' in Bosnia where Muslims could gather to be protected from Serb forces. This policy was a disaster, resulting most notoriously in the fall of Srebrenica and the murder of thousands of men and boys who had travelled there to gain UN protection. Again, the UN had acted on principle to alleviate suffering, but its actions may have led to greater harm due to its delayed response to the reported atrocities and its lack of commitment to using substantial military force.

The 1990s ended with the most controversial of all cases of humanitarian intervention – the NATO action in Kosovo. Kosovo was an autonomous region within the Republic of Serbia until Milosevic revoked its autonomy in 1989 in an attempt to defend Serbs who were being oppressed within the territory. Elements of the majority Kosovo Albanian population formed the Kosovo Liberation Army (KLA) which launched an extensive campaign against the Serbs in 1998. They succeeded in provoking Serbian atrocities, which led to the situation being debated in the Security Council. Council members were divided over how to deal with it, with Russia and China asserting that domestic oppression was not a threat to international peace and security, and as such the Council could not authorize an armed inter- vention against the wishes of the recognized government. NATO decided to act anyway, and began to bomb the Serbian army and

Serbian infrastructure in March 1999. The intervention was carried out without ground troops as NATO member-states were unwilling to risk casualties. The results of this decision were the deaths of an estimated 500 civilians due to the bombing, and the speeding up of the Serbian policy of ethnic cleansing. NATO did succeed in ending Serbian control of Kosovo and brought back many refugees, but has been forced to establish a long-term unofficial protec- torate in the province.

The international community is still deeply divided over whether NATO's actions in Kosovo were legal or just. Other 1999 interventions in Sierra Leone and East Timor were much less controversial (as the recognized Sierra Leonean government invited intervention to assist in their fight against rebels, and the UN had never recognized the Indonesian right to East Timor) and it is the action in Kosovo that remains the test case for the legitimacy of humanitarian action. Politicians from the US and UK spoke at the time of the emergence a new world order where foreign policy decisions are motivated by a fundamental belief in universal human rights. In a speech in April 1999 to the Chicago Economic Club, Tony Blair argued that that a new 'doctrine of the international community' was evolving, based on the idea of a 'just war': a war based not on any territorial ambitions but on stopping or preventing humanitarian disasters. Nicholas Wheeler (2000/01) supports this view, seeing a new solidarist norm of humanitarian intervention emerging after the Kosovo intervention, with NATO acting as 'norm entrepreneurs'. The Chinese and Russians reject this grand idea of a new type of 'just war', maintaining that NATO had no right to interfere in the affairs of a sovereign state and acted illegally in intervening without Security Council authorization. They argue that humanitarian intervention is a breach of the right of self-determination, motivated by a desire to impose Western standards on other states, and, perhaps, to covertly pursue Western interests.

The motives of interveners have received a great deal of attention in this debate. Many campaigners who oppose human rights abuses support the idea of humanitarian intervention, but by a force constituted and controlled by the UN, on the basis that states tend to act only when it is in their national interest to do so. Putting aside

the question of whether the UN, itself a coalition of states, is the benevolent body it is imagined to be by those who take this position, we should ask whether it is wrong for states to intervene for reasons of national interest. It may be that we would prefer they also intervene in situations of gross human rights violations when such interventions are not in their interest, for instance, in Rwanda, but it is not surprising that states are most willing to risk the lives of their troops in situations where they perceive some possible national gain. Besides, inter- national crises tend to be so complex and involve so many actors that motives to act are bound to be mixed. Some will be self-regarding, and others may be humanitarian, but if we prevent every state which may have some interest in the outcome from intervening in situations of atrocity, it is likely that there will be no interveners left.

Linked to this argument about motives are the problems of legitimacy and authority thrown up by intervention. Who should intervene, under whose orders and with what level of force? If the Security Council is not recognized as the final arbiter in such questions, then who has the authority to decide? Equally, if action can only be authorized by the Council, is it right that the protection of individuals is left to the whim of the veto-wielding Permanent Five?

A more problematic issue still is the fact that humanitarian interventions usually fail. A decade after the intervention, Somalia is still unstable and has become home to fundamentalist Islamic groups, making it a potential target in the War on Terror. NGOs regard the postconflict efforts in Bosnia as only just starting to make headway, and violence in the region of the former Yugoslavia is by no means over. By taking sides in the Kosovo struggle and backing the KLA, NATO effectively gave legitimacy and power to an orga- nization that has continued to promote anti-Serb violence. In March 2004,

NATO had to reinforce its troops in Kosovo after the worst clashes between Serbs and ethnic Albanians since 1999 took place in Mitrovica. Other inter- ventions in Sierra Leone and East Timor have had some success, but UN troops are still present in both states five years after they arrived. Humanitarian interventions are more problematic

to 'win' than traditional wars as the criteria for success include bringing about a stable peace. This requires long-term focus and resources as well as sufficient military force. Few of the world's militaries are structured to enable an easy transition from war-fighting to peacekeeping, and the nation-building which is neces- sary to prevent future atrocities is extremely difficult to do. The attention of interveners tends to quickly return to their national projects, leaving under- resourced UN/NGO teams to piece together states which may never be viable. These problems can also be seen after the recent conflicts in Afghanistan and Iraq, the implications of which will be considered at the end of this section.

The Chinese and Russian arguments against intervention do not turn on practical issues such as motivation, decision-making and likelihood of success. They are based on a different theoretical conception of the interna- tional system and reject the idea that a state's right to sovereignty stems from the rights of the individuals within it. On this view, the rights to sovereignty and national self-determination are necessary conditions of order in the inter- national system, and it is not the business of any other body to cast judge- ment on what happens within the borders of a recognized state. Universal human rights are rejected as a Western liberal project and the use of military might to force weaker states to behave according to subjective and self-serving standards is viewed as aggression. Realists argue a similar point. They see humanitarian intervention as either the pursuit of self-interest dressed up as ethical action, or as mistaken policy made possible by the temporary absence of a balance of power. Such intervention is regarded as dangerous because it threatens international order, plus it carries an inherent risk of escalation due to the conflict being justified using ideas of good and evil, thus legitimating disproportionate force to be used to combat 'evil'.

Some liberals have related concerns – they believe in the universal applic- ability of human rights, but argue that the principle of non-intervention is necessary either to support the right to liberty or to promote peace. The most prominent liberal theorist to support non-intervention is Michael Walzer – although, in recent years, his position has wavered somewhat (Walzer 2004). Like many supporters of humanitarian

intervention, he links state rights to individual rights, but his conclusions differ. He argues that states have a moral right to autonomy, which derives, via a social contract, from the rights of the individual citizens of a state. State rights to territorial integrity and political sovereignty can therefore be defended morally in the same way as the individual's rights to life and liberty. He sees humanitarian intervention as theoretically justifiable, but only in very rare cases when acts are taking place which 'shock the moral conscience of mankind'; sadly, he acknowledges that such cases may be becoming more frequent. In general, according to Walzer, we should assume that states do represent the interests of their citizens, and therefore respect their rights to autonomy. This differs markedly from proponents of intervention, who regard the state as a principal threat to the welfare of its citizens, and advocate intervention in any instance where basic human rights are not being respected.

For David Luban, the concept of sovereignty (and by extension the rights of states) is 'morally flaccid' as it is indifferent to the question of legitimacy, a point missed by Walzer as he confuses, according to Luban, the political community or nation (which may have a right of non-intervention derived from the rights of its members) with the state (Luban, in Beltz et al. 1985:

201). The existence of a nation does not prove the legitimacy of its corre- sponding state, and therefore interventions in support of an oppressed nation may be not just morally permissible, but morally required. This posi- tion, however, rests on notions of universal humanity rejected by the oppo- nents discussed above, so offers little to those not already disposed to reject absolute rights to non-intervention.

The preceding paragraphs outline the significant practical and theoretical obstacles faced by supporters of humanitarian intervention. But is the debate already dead? Since the terrorist attacks of 9/11, 'coalitions of the willing' have deposed regimes in Afghanistan and Iraq with far-reaching consequences. These wars were justified by the leaders of the coalitions first and foremost on grounds of national security, but humanitarian motives have been increasingly cited in post hoc defences of their actions.

The war to depose the Taliban was presented as an opportunity to support the human rights of the people of a failed state and particularly to benefit oppressed women. The US and UK have both justified the war in Iraq to some extent on the basis that removing Saddam Hussein's government and restoring democracy will benefit the Iraqi people, and the relative weight of these justifications has increased as more time has passed without finding the weapons of mass destruction which were the initial reason for war. This is perceived by many as cynical exploitation of the idea of humanitarian intervention, and the failure of the coalition to live up to their own standards evidenced at Guantanamo Bay and the Abu Ghraib prison in Iraq, alongside the shaky commitment of coalition forces to provide the troops and financing necessary to genuinely improve conditions in Afghanistan, are used to suggest that coalition members' support for human rights is nothing more than a cover for the pursuit of their own gain.

The coalitions recognized that being seen to act in a humanitarian way was necessary to earn or retain international support for their actions, and so engaged their militaries in the kind of reconstruction projects that the

UN and NGOs have traditionally been responsible for. This has had devastating and unforeseen effects. Military, UN and NGO activities are being confused by the populations they are aiming to assist, and aid organi- zations have lost the reputation for neutrality which kept them safe in combat zones. Humanitarian workers have increasingly become the target of violence, with the Baghdad headquarters of the UN and the ICRC being targeted by massive car bombs and more than 32 aid workers being killed in Afghanistan since March 2003. The UN and the ICRC were both forced to pull out of Iraq and MSF has recently announced that it will end its work in Afghanistan because the risk to its staff is too great. The 'good offices' function of the UN and organizations such as the Red Cross has been crucial to postconflict reconstruction in the past, and their perceived loss of neutrality makes them less able to fulfil those roles in the future. This, combined with the high cost and low success rates of past interventions and the profound loss of trust in Western motivation following the Iraq

war, could mean humanitarian intervention is no longer a viable option for the international community when faced with the kind of reports of atrocity coming out of Sudan in August 2004.

Conclusion

Have we come full circle, from the emergence of realism out of the ashes of pre-war liberal internationalism which marked the beginning of this disci- pline, to the triumph of liberal beliefs in universal values, human rights and the role of international law in making the world a better place? The evi- dence of this chapter would point in that direction, but such a conclusion would contradict many of the findings of Chapter 10 and the final chapter of this book, on the contemporary world order under US hegemony, should cause us to question the extent to which the progress made in the 1990s can survive in the twenty-first century.

The notion of human rights does have a central and seemingly secure place in contemporary debates on international relations. Certainly most states speak in the language of human rights, but whether they mean the same things by it, and the extent to which they prioritize the human rights of their own citizens and of foreigners, is up for debate. The increasing impor- tance of the individual in international relations is borne out both in increasing protection for individuals from their states and also in increasing individual accountability. As the legal regime for protecting human rights has grown, so accountability for gross breaches of human rights has shifted towards the individual. Prior to the wars of the twentieth century, states were accorded principal rights in controlling their territory, but also respon- sibility for violations of international law during wars. Now, individuals can make claims to courts beyond their national boundaries if they feel their rights have been breached, but the defences of 'superior orders' and position of state are no longer available to them if they participate in human rights abuses. Does this mean that states have lost power? The ICC, the European Court of Human Rights and the concept of universal jurisdiction are sub- stantial challenges to the sovereign state as they bind states and individuals in times of war and peace, for

their future actions as well as for what they have done in the past. Humanitarian intervention, should it survive into the twenty-first century, is a more direct breach of sovereignty still. However, the state is adapting and the final chapter of this book looks at the rise and rise of the state which is now most powerful of all: the US.

Universal Human rights.

The recognition of the inherent dignity and of the of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and these rights include;

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and concise and should act towards one another in a spirit of brotherhood.

Article 3

Everyone has the right to life, liberty and security of person.

Article 2

Everyone is entitled to all the rights and freedom set forth in this declaration without distinction of any kind, such as race, color, sex language, religion political or among others.

Article 4

No one shall be held in slavery or servitude slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to fortune or to cruel, in human or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All the equal before the law and are entitled without any discrimination to equal protection of the law. All are entitling to equal protection against any discrimination in violation of this declaration and against any incite to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligation and of any criminal charge

Article 11

Everyone charged with a penal offence has the right to be presumed innocent until Proved guilty according to law in a public trial at which he has the guarantee necessary for his defense.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offense, under national of international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each state.

The right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purpose and principle of the united nations.

Article 15

Everyone has the right to a nationality.

No on shall be arbitrarily, deprived of his nationality nor denied the right to change his nationality.

Rights and International laws.

International law is largely a misnomer, given that it primarily refers to a body of treaty agreements and their resulting rules, regulations and practices and not the codification of laws passed down by a centralized government or legislative body. II instead refers to the many and varied laws, rules and customs which govern, impact and deal with the legal interactions between different nations.

There are three main legal principles recognized in much of international law, Principle of comity in the instance where two nations share common public policy ideas, one of them submits to the laws and judicial decrees of the other.

Acts of state doctrine, respect that nation is sovereign in its own territory and its official domestic actions may not be questioned by the judicial bodies of another country. It dissuades courts from deciding ideas that would interfere with a country's foreign policy.

Doctrine of sovereign immunity, deals with actions brought in the court of one nation against another foreign nation and prevent the sovereign state from being tried in court without its Consent.

Rights are legal, social or ethical principles of freedom or entitled for human being.

Interdependent and indivisible

All human rights and indivisible, whether they are civil and political rights such as right to life among others. The improvement of one right facilitates advancement of others.

Equal and non-discretionary

This principle applies to everyone in relation to all human rights and freedom and prohibits discrimination on the basis of a list of non-exhaustive Categories such as sex, race etc. This principle of non-discrimination compliments the principle of equality which says. All human beings are born free and equal in dignity and rights.

Universal and inalienable.

It is the duty of states to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

Humanitarian intervention.

Has been defined as a state use of military force against another state when the chief publicity declared aim of that military action is ending human-rights violation being perpetrated hi the state against which it is directed.

Humanitarian intervention constitutes a calculated and uninvited breach of sovereignty in the name of humanity. Though humanitarian interventions do not necessary require the employment of military force.

Humanitarian intervention and state sovereignty

It has been the source of increased arguments for generations even centuries but the recent debate has its origins in the;

Cold war and was motivated by a number of controversial military actions. Three in particular standard, India's intervention in the Bangladesh war of 1971, Vietnam's intervention in Cambodia in 1978, which resulted in the overthrow of the genocidal Khmer Rouge regime and Tanzania's intervention in Uganda in 1979, which ousted the dictator Idi Amin.

In the past-cold war era however the conception of sovereignty as sacrosanct came under sustained attack. It was argued that despite leaders should not be able to hide the shield state of sovereignty and that the international community had an obligation to intervene to stop the widespread abuse of human rights.

Humanitarian intervention criticism

It represents a mode of liberal imperialism.

Humanitarian intervention has been censured for coercively imposing western ideas about rights onto other cultures. In particular, it is argued, the failure of the western powers to intervene during the 1994 genocide in Rwanda, where there were no obvious economic or political interests at stake, demonstrated their hypocrisy. For critics of intervention it proved that intervention was linked to self-interested.

Tutor Marked Assignment (TMA) study unit 8

a) Describe how universal human rights are promoted in your country.
b) With examples, discuss how non governmental organization have promoted human rights and international law in developing countries.

Study review question eight-study unit 8

a) With examples, explain how international law has helped to promote and safeguard businesses in the world.
b) State the challenges organizations face during humanitarian intervention.

Study review answer question eight-study unit 8

a)

- Promotes trade
- Promotes people's rights
- Establishes exclusive economic zones
- Universal trade laws
- Implementation of trade agreement
- Trade negotiation
- Peace
- Free movement of goods and services

b)

- Lack of enough logistics
- Hostile communities
- Language barrier
- Poor infrastructure
- Illiterate communities
- Poor communication
- Poor weather
- Wars
- Poor terrain

END