

# Luiss Seminar on

## Human Rights in Conflict – the role of civil society

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**Guido Lenzi:** HUMAN RIGHTS AND NATIONAL SOVEREIGNTY IN ‘HUMANITARIAN INTERVENTIONS’

*“It is well that war is so terrible, as we would grow too fond of it”*

(Gen. Robert E. Lee)

*“The old distinction maintained in civilized warfare between the civilian and combatant populations disappeared. Everyone who grew food, or who sewed a garment, everyone who felled a tree or repaired a house, every railway station and every warehouse was held to be fair game for destruction”*

(HGWells, A Short History of the World, 1922)

After two devastating intra-European civil wars, and a Cold War that resulted in the sclerotisation of the conscience of humanity, when we thought that all was back to normal, in this new century the Islamic fundamentalist challenge brought about a resumption of the debate about international Kantian ethics, the Hegelian arguments about the end of history, and the neverending dilemma between idealism and pragmatism, between freedom and justice.

The fall of the Berlin wall was greeted with the optimistic assumption that history would take care of itself, in Europe and by extension world-wide. That was not to be, neither in Europe (to this very day, in the Balkans and all along the belt of States that still separate an enlarged EU and a retracted Russia), nor world-wide. Dysfunctional States, ‘failed’ or ‘rogue’, have resulted in every continent, either unable or unwilling to resume in their international relations the cooperative mode that has inspired political philosophers ever since the Congress of Vienna, two centuries ago.

In the wake of a similar conclusion by Washingtonian analysts, the 2003 European Security Strategy, produced by EU’s High Representative Solana repeatedly refers to ‘state failure’ as “bad governance –corruption, abuse of power, weak institutions and lack of accountability” as the main concern of the Union’s Common Foreign and Security Policy should address, adding that “in failed states, military instruments may be needed to restore order, humanitarian means to tackle the immediate crisis”.

Additionally, the financial crisis has demonstrated how interconnected we all have all become, big or small, regardless of geopolitical distinctions. Yet, nationalism is back upon us, even among the EU 27, as an instinctive, albeit anachronistic, reflex. An abstract multipolar rearrangement of international relations is invoked, without any clear indication of how it could actually work. It is as

if, after the constraints of the Cold War, democratic pluralism had come back with a vengeance, even in international relations. A magma that has to be moulded, according to cosmopolitan principles and with the available instruments, that need to be revisited, more widely accepted and utilised.

The fact is, that the world cannot stop and ponder how best to restore a 'Concert of nations'. Decolonization at first, and now globalisation have transfigured the family of nations. A host of new protagonists, states and non-states, together with rising expectations, have emerged and spread throughout a world integrated in its economic, financial and media factors. 'The Economist' put its critical finger on the intervening "morass of moral equivalents". And yet the rules of the international game, developed over the centuries, established in Westphalia at the end of the Thirty Years war and refined ever since, should not be considered as having been superseded by contemporary events. On the contrary, we can finally revert to basics, "at the creation" of the UN multilateral cooperative security system.

The UN Charter was devised to restore equality among nations and transparency in international behavior, which constitute the premises for the maintenance of peace and security. Since the end of the bipolar system, twenty years have gone by without any attempt by an elusive 'world community' at establishing a road map, responding to emergencies as they occurred, instead of tackling critical situations preventively. It has basically been an experimental phase, tinkering with the letter of the San Francisco Charter instead of rekindling its spirit. The principles of national sovereignty and territorial integrity have given way to the right, the duty even (!), of 'humanitarian interventions'. Contradictions and many an unintended consequence have of course emerged, with respect both to the excesses in Irak, Afghanistan, even Kosovo, and the inaction in Darfur, Somalia. Some States dispute and openly challenge what they see as a 'Western arrogance', while the media stress the many civilian casualties. The narrative of what has been and should be happening must therefore improve, as to the motivations and intended results of international interference in the internal affairs of States.

Which involves the questions of whether and to what extent national states have become obsolete; where *auctoritas* resides; who should wield the monopoly of the use of force; how to establish a proper relationship between international legality and legitimacy; what the limits of 'democratic assistance' should be; how to frame the 'war on terror' (a premeditated, politically motivated violence against innocents, with no inner discipline and no clear interlocutor); how justice should consequently deal with "unlawful enemy combatants", and the relevant issues of 'habeas corpus', 'renditions', etc.; how to discriminate between 'collateral damage' and deliberate abuses; and finally, essentially, how to re-establish the distinction between military and civilian targets, when civilian populations have increasingly become the very object of conflicts. Which brings us back to Max Weber's fundamental arguments on the interplay between the ethics of conviction and of responsibility, and the related unintended consequences (a modern version of Aristotle's indication that human actions are influenced not only by *logos*, but also by *ethos* and *pathos*).

All of it against the comprehensive backdrop of the emerging concept of 'human security', which comprises the socio-economic causes of tension and strife. Indeed, for those who believe that 'the

West', for historical and philosophical reasons, bears a special responsibility to indicate the way, human rights have become the Ariadne's thread out of the maze of contemporary international politics. The right/duty to interfere in national sovereignties, with all the military hardware in tow, at first in the Balkans, then in more distant outreaches, has always been supported by the urge to protect civilian populations. 'Humanitarian interventions' in fact go further, providing for institution-building or rehabilitation of State structures pathologically disrupted. It is not as if every state was expected to conform to a single 'Western', democratic, pattern, but instead that their failure to provide basic public goods and services issues may bring about dramatic domestic consequences and international repercussions,.

A principle that art. 55 of the UN Charter addresses, enumerating among the prerequisites for stability and peace "conditions of economic and social progress", international cultural and educational cooperation", "universal respect for, and observance of, human rights and fundamental freedoms". Principles that were spelled out in the Universal Declaration of Human Rights and Fundamental Freedoms of 1948, and which the UN Millennium declaration labeled as a 'responsibility to protect' (R2P) The meaning of which remains for the concerned States to interpret according to their respective social contract, but the failure of which would authorize international interference.

That is why the political and operational approach should not be a matter of abstract, value-charged, principle, but instead result-oriented, utilitarian. Stressing that, in present international circumstances, cooperative security and political solidarity are in the interest of every State, and should therefore be considered the uppermost shared value. In that respect, the achievements in Europe of the EU and OSCE, rather than a moral high-ground where war has been conceptually removed, should be presented as a utilitarian model, demonstrably effective. An improved narrative of Euro-American intentions should be expressed, in order to enlist a corresponding response from the nations to which they are addressed, keeping in mind that Venus will continue to contend with Mars. As the use of force, even sheer violence, may continue pervade the mindset and behavior of many an international actor, a tortuous path therefore must be trodden, at both the national and international level, between upholding fundamental rights and addressing legitimate security concerns.

Asymmetric wars have blurred the applicability of international 'Conventions on the law of war. Yet the age-old *jus ad bellum* and *jus in bello* are still applicable as essential references. Indeed, if the duty to intervene is to become a new *jus ad bellum*, it must demonstrably adopt the principles of just war. The 'entry strategies' should not differ from the right-cause, last-resort, proportionality and improved-outcome criteria that Augustine and Thomas established ages ago, and that the Hague Convention enshrined in 1907. As for the *jus in bello*, the Geneva Conventions of 1949 with the relevant Additional Protocols, and the 1977 Conventions on wars within states, persist as the lode-star of humanitarian law. Instead, as experience demonstrates, it's the 'exit strategy', i.e. how to enlist a matching response from the domestic societies involved in terms of institution building, post-conflict healing and rehabilitation, that proves problematic (aware as we are that "the guerrilla wins if it does not lose", as both D.H.Lawrence and Kissinger admonished).

Any 'exit strategy' requires not a uniformity of behaviors, but rather their convergence; at least, the emergence of best practices. In other words, the committed involvement of the international community as a whole, in particular at a sub-regional level, in the Middle East, Afghanistan, Somalia and other similar situations. An accumulative consensus towards a collective 'end game' is what the intervening coalition of like-minded nations goes for, most certainly not a revamping of neo-colonialism, as some claim. The alternative to international interference may otherwise be indifference, and the resulting law of the jungle, contrary to the convergence towards shared goals that the United Nations system was designed to achieve. Which requires first and foremost undertaking the responsibilities that go with the membership of the Security Council (including those who aspire to it).

Any top-down international intervention should in any case be designed to elicit a corresponding bottom-up civil society response reaching up to it. Sixty years after the Declaration of Human Rights, more than two centuries after the American and French revolutions, the protection of human rights, in their widest sense, has become the silver thread for the maintenance of international peace and security. The relevant principles still stand, even if they may need to be revisited in order to be appropriately assimilated and applicable. The question of course remains: by whom and how.

Some sign-posts stimuli have already been set. International electoral observation, very intrusive as it is in the sacrosanct realm of national sovereignty, has acquired widespread acceptability, even if its results are more often than not hotly disputed. It constitutes an encouragement, not a substitute for the commitment of local political forces towards a pluralist, participatory society, the actual bedrock of any democracy. Furthermore, International Tribunals have been hailed by those who believe in morality in politics as the proof of the existence of One World. Significantly, the USA, Russia, China and the Arab States did not see it that way, and refuse to recognize their legal authority. In their case also, the purpose is not to substitute for national jurisdiction, but to expose, involve, enlist national authorities towards shared rules of behavior, in a more democratic, participatory, international order.

The wide-open international scene is exploited by those that Cicero already described as the enemies of mankind (*hostes humanae gentis*), the insurgents of the most various ilk, producing unrest, insurrections, secessions and outright terrorism. All of which reveal a syndrome that psychiatrists would describe as agoraphobia. A fine line must be followed between hard and soft security, between wielding sticks and carrots, disincentives and incentives, in other words the "speak softly and carry a big stick" of Teddy Roosevelt. No trade-offs between liberty and security are at stake. The awareness should instead spread that, as Michael Oakeshott put it, "in political activity, men sail a boundless and bottomless sea; there is neither harbor for shelter nor floor for anchorage, neither starting place nor appointed destination. The enterprise is to keep afloat on an even keel". The aim should therefore be to find the right combination for an 'ethical realism' (the title of an inspiring book by Anatol Lieven and John Hulsman, describing the American international liberalist tradition, from Woodrow Wilson to Reinhart Niebuhr, that the neo-cons may have squandered, but have not obliterated).

After forty years of cold war and twenty more years of transition since the fall of the Berlin wall, we should be able by now to realize that we are back to the 'square one' we were in 1945. Not in a haphazard game of 'snake and ladders', but because the necessary conditions propitious to the birth of a cooperative international system are once again before us, that the Charter of the United Nations, the heir to the political philosophy of the Enlightenment, the 'Concert of Europe', the 'League of Nations', has laid before an ever more diverse humanity. Borrowing from what Walter Lippmann said in 1917, with respect to the League of Nations, when America first started to get involved in European matters: "under that shelter, real work can perhaps begin;... there is a wide choice of instruments, once a morale exists". Harking back to good old Montesquieu, according to whom *"le droit des gens est naturellement fondé sur ce principe: que les diverses nations doivent se faire, dans la paix, le plus de bien et, dans la guerre, le moins de mal qu'il est possible, sans nuire à leurs véritables intérêts"*.