

## Morality and International Violence

Gilles Andréani and Pierre Hassner

In 2003, Pierre Hassner began conducting a seminar on ethics and international relations at the Centre d'Études et de Recherches Internationales (CERI). The object of the seminar, initiated by Gilles Andréani, then director of the Foreign Ministry's Centre d'Analyse et de Prévision, and supported by this organization and the German Marshall Fund, was to compare the views formulated by philosophers and intellectuals with those of practitioners with regard to the moral dilemmas emerging from new dimensions in international relations. The role of nuclear weapons had been the focus of similar analysis during the Cold War. The seminar attempted to examine the issues which have replaced dissuasion at the heart of moral dilemmas and international action: humanitarian intervention, the use of force, international sanctions and courts, the fight against terrorism and the world order. It sought to introduce a comparative perspective by examining the ways in which these issues fostered divisions or consensus between the United States and Europe at a time when the Iraq war was subjecting transatlantic relations to unprecedented tensions. The seminar gave rise to a collection of essays by contributors from France and elsewhere, including Stanley Hoffmann, Antoine Garapon, Pierre Buhler, Sir Adam Roberts, Christoph Bertram and Michael Glennon. Entitled *Justifier la guerre? De l'humanitaire au contre-terrorisme (Justified War? From Humanitarianism to Counter-Terrorism)*, it will be published in the autumn by Presses de Sciences Po. We are grateful to Pierre Hassner and Gilles Andréani for permission to print their introduction to the book in advance of publication.

### *The return of intervention*

International interventions have multiplied since the end of the Cold War. They have also evolved profoundly. Two consecutive interventions conducted in the early 1990s seem to provide good examples of this process. In 1991, the Gulf war was launched on the grounds of legitimate collective defence, although the concerted, multilateral character it acquired through the role of the United Nations and the considerable regional and global support it had aroused gave it the form of a collective security operation. This was followed in 1992 by the American humanitarian mission in Somalia, which was rapidly handed over to the United Nations. There are two distinct registers here, security and humanitarianism, but each case demonstrates a combination of American leadership and deference to the UN framework and international solidarity that makes it possible to speak of a 'new world order'.

For the ten years prior to September 11 2001, humanitarian intervention had been the dominant register, although its fortunes had followed a faltering curve. No less than eight major operations were conducted under the humanitarian banner (Somalia, Haiti, Bosnia-Herzegovina, Rwanda, Sierra Leone, Kosovo, East Timor and the Democratic Republic of Congo). As these operations unfolded, they exposed problems which differed from those usually associated with conventional peacekeeping operations: the protection of the forces intervening in an ongoing conflict, the gulf between their mandate and their means, their neutrality when faced with major violations of humanitarian law and their tendency to find themselves progressively confronted by a party to the conflict. Problems also arose over the post-conflict management of tasks such as the consolidation of civil peace and the economic rehabilitation and (re)construction of the

state (which led to talk of international 'protectorates' for Bosnia, Kosovo and East Timor and the need to define a new regime of international 'supervision').

From a clear distinction between humanitarian and security interests, we pass in Kosovo to the overt resort to force once reserved for the latter, although in this instance the reasons were humanitarian. As in Bosnia, relieving the plight of the victims led to taking sides and choosing camps; while this had been a gradual response to pressure in Bosnia, it was a calculated decision in Kosovo. In the latter case, the dilemma of whether or not to use force was exacerbated by new problems. Should force be used primarily to protect the victims or should it be directed against the aggressor? Where was the balance between the safety of the intervention forces and the risk of collateral damage? Given the politics of this type of operation, what degree of autonomy should be granted to the military?

The question of legality, or rather, as in the cases of Rwanda and Bosnia, of the duty to intervene when faced with genocide and massacres, a duty which the international community almost entirely failed to assume in the first instance and only partially assumed in the second, is compounded by the post-conflict responsibilities of the intervening parties. Intervention tends to seek its justification not only in the relationship between its human cost and the immediate suffering it brings to an end, but also in the final assessment of its results in terms of economic and institutional rehabilitation, and in the ability of formerly adversarial communities to (re)invent a life together. This is a complex assessment; its moment may never arrive, while yesterday's victim may become tomorrow's oppressor.

Despite the tendency of interventions to intensify and expand their ambitions, despite their mixed results and the ethical divisions they create between North and South and between the United States and its allies, there is still a fairly clear distinction between a war based on self-defence or the protection of national interests and an intervention, which is normally 'disinterested' and mandated by an international organization.

Everything changed after September 11. As in the Cold War, we are witnessing interventions led by the United States for reasons of national security, although the context is now that of a global war on terror. To be sure, the intervention in Afghanistan, which targeted a regime noted for its complicity with terrorists, generated a powerful regional and international consensus. It therefore differs in this respect from the 2003 Iraq war, which created divisions that amounted to an overt crisis, while its impact on international terrorism remains uncertain and controversial. But in both cases, the priority was security.

However, humanitarian discourse has returned; it is audible in the critiques of these operations and, more surprisingly, in their justification. The overthrow of the Taliban and Baathist regimes, the improvement this represented for the populations concerned and the hope that it would lead to greater changes in the Middle East region, was justification enough for many people. In the case of Iraq, such arguments have largely replaced the considerations of national and international security with which the United States had initially sought to justify its actions. There is a knock-on effect here, resulting from the collapse of security-based justifications (particularly the absence of weapons of mass destruction) and ideological concerns: Afghanistan and Iraq have thus been repositioned to fit into the vision of the United States' time-honoured battle against tyranny, which extends from the victory over Germany and Japan to the recent fraudulent elections in Georgia and Ukraine.

The mixture of humanitarian and security interests that characterizes interventions related to the war on terror – at least in terms of their justification – evokes, in all its contradictory aspects, one of the constant inspirations for American foreign policy: Wilsonism. It harks back to the imperialist president who intervened in Mexico in 1914 and to the idealist president who identified democracy with peace in his 14 Point Plan of 1918. From the experiment of the provisional international protectorates set up in the 1990s, we shift to a renewed interest in the imperial idea, although in a somewhat diluted version which suppresses the instincts for

grandeur and racial hierarchy and corresponds to the 'benign' view that Americans have of their hegemony.

But we are still left with the natural instinct of democracies, particularly the United States, to promote their model, as well as a widespread and sincere revulsion for the absurdity of the Taliban regime and the tyranny of Saddam Hussein. Moreover, we cannot ignore the existence of a fundamental issue: why should the 'responsibility to protect' apply only to overt humanitarian crises? Why should it not play a part, given the right circumstances, in the elimination of brutal regimes whose resort to violence over the long term has caused just as much suffering as humanitarian crises or wars? Who regrets the fall of Bokassa, Pol Pot or Idi Amin, all of whom were brought down by interventions which were hardly legal?

Humanitarianism, security, promotion of democracy: where do we draw the line? Perhaps at the point where massive breaches of the rules governing the use of force would inevitably invite chaos on an international scale. Perhaps it is more likely that the boundary would arise from practical concerns: the resistance of facts and human beings to simple solutions imported from elsewhere, the political and economic costs of operations that are hard to justify and may not even produce a desirable outcome. Perhaps the doctrinal expansion of intervention coincides with the end of a cycle of operations that began with the East-West thaw in the late 1980s. Perhaps the blurring of categories (peacekeeping/use of force, collective/national security initiatives) that occurred during this period will predominate once again, the limits being redefined as necessary. Perhaps, on the other hand, the ubiquity of threats and the convergence of different types of warfare will ensure both the continuation of intervention and the impossibility of its clarification.

### *The return of morality*

The relationship between morality and international politics has always been uneasy. In the international sphere, the state, that 'coldest of all cold monsters', seems concerned only with its interests and reasons of state. When examined from a starkly realistic angle, the notion of international morality is a contradiction in terms. It presupposes a community of states that share the same beliefs and values, an illusion the ideal of *Civitas Christiana* was unable to overcome. Morality is not absent from international debate: the USSR and its friends denounced the immorality of nuclear weapons, an argument taken up by Ronald Reagan to support the case for an anti-missile shield. In the ideological context of the Cold War, the enemy was denounced for its cynicism or immorality; the Soviet Union was the 'Empire of Evil', the American neutron bomb a 'cannibal weapon'. At the same time, pragmatism took precedence over moral intransigence and the occasional resort to malevolent rhetoric. The West had to deal with the Soviet Union; competition did not exclude the combining of interests and the search for compromise. While moral judgment was not suspended during the age of nuclear confrontation, caution remained the prime virtue.

Since the end of the Cold War, morality has occupied a very different place in international affairs. Its progress can be measured by several signs, including the ascendancy of international courts and a greater focus on observing the rules of engagement during international interventions. States now apologize to each other for the sins of the past. The constant invocation of morality is no longer confined to adversarial polemics, but sets the standard for one's own policies and those of one's allies. Clinton denounced the Vance-Owen plan for Bosnia-Herzegovina as immoral; Bush's war on terror is conducted in the interests of moral clarity. Opponents of the Iraq war also invoke morality and law. The behaviour of states has not improved to any great extent, but Montesquieu's observation that "Men, who are rogues individually, are in the mass very honourable people: they love morality" is also applicable here. To what can we attribute this sudden attraction, this unexpected combination of morality and

international politics? Certain aspects of the post-Cold War situation may help us to gain an insight. The first of these is the greater continuity between domestic and international political attitudes. Democracies have always found it difficult to accept the duality represented by the practice of domestic politics, defined as it is by the limitation and control of power, and the necessity of applying contrasting values in the international sphere. At worst, this results in the exaltation of power; at best, in submission to the restraints imposed by *realpolitik*. Duality may be justified by the exigencies of survival in a world without rules. But as democratic values gain increasing currency in a post-Cold War environment in which international security is no longer such a high-stakes game, at least not for the prosperous and peaceful democracies of the North, it is much less acceptable and indeed less necessary. We are now able to indulge in the luxury of 'moral' diplomacy or, to employ a more optimistic interpretation, a nation's behaviour on the international stage is more open to the influence of inherently democratic claims (transparency, justice and equality) now that the customary barriers imposed by reasons of state have ceased to exist. This view gains further credibility from the way that these claims seem to be converging at domestic and international level throughout the developed world, as reflected by the demand for an ethical approach, the rise of regulatory bodies and the influence of NGOs.

Insight may also be gleaned from the gulf between the international order and new forms of violence: whereas such violence stems principally from the dysfunctional nature or the disintegration of states, the international order was conceived to prevent inter-state wars. To this end, it resorts to principles such as sovereignty, non-interference and a prohibition on the use of force, all of which form a coherent whole. Any direct challenge to these principles by the inter-state international order would be both legally dubious and imprudent. Hence the resort to strategies of circumvention, in which morality has an important role to play. The 'illegal but legitimate' intervention in Kosovo, the revival of interest in the tradition of the 'just war' and François Mitterrand's famous statement that "non-interference stops at the point where it becomes failure to assist a people at risk" are all aspects of this *démarche*.

However, circumvention is a precarious business and carries its own risks. If we pit morality against the legal progress and accept that immanent 'moral' law is superior to positive law, are we not returning to the natural law doctrines of a previous era? Where is the borderline between a 'morally justified' armed intervention and a holy war? ("Virtue itself has need of limits", to quote Montesquieu once again.) If morality is to prevail over law, should it be anything other than an exceptional response to a crisis, an exemption that must allow for the resumption of positive law at the earliest opportunity?

### *Intervention and new threats*

The issues discussed in this book are located at the junction of two post-Cold War tendencies: the return of intervention and the return of morality. But we should not ignore a third tendency: the transformation of the threat. Mass terrorism and the proliferation of weapons, and especially the possible conjunction of the two phenomena, have added a new dimension to the dilemmas arising from intervention.

To begin with, the nature of the apocalyptic terrorism that emerged on September 11 2001 remains uncertain, as does the appropriate response to it. On September 11, terrorism revealed its ability to inflict upon a developed society the kind of wholesale destruction that had until then been monopolized by states. Has this event initiated an era of escalating terrorist violence, of violence which bears no relation to identifiable political goals and is disproportionate to the political audience of the organizations which use it? Clausewitz had suggested such a development, a war in which extreme violence, divorced from any political rationality, would become an end in itself. During the Cold War era, this vision took the form of a nuclear apocalypse. Today it could be identified with a nuclear al-Qaida.

Does this scenario reflect an existing convergence of terrorism and the proliferation of weapons of mass destruction? Even its mere likelihood would radically alter our view of the relationships between states, independent organizations and war. It would probably reverse the burden of proof in terms of prevention and the use of force, and would make the cost of inaction a determining factor of intervention.

We have not yet arrived at that stage. Current debate focuses on an American doctrine of pre-emption that justifies using force against states as a counter-proliferation measure; in other words, even before such a scenario becomes possible. It is also concerned with the advancement of this doctrine as one of the possible justifications for the Iraq war. Lastly, the arguments are based on a conception of the fight against terrorism which, designated as a 'war on terror', foresees a privatization of mass violence which may never occur, and therefore runs the risk of exaggerating the strategic significance of global jihadist terrorism while at the same time involuntarily increasing its political audience.

But the debate should be taken further: we are obliged to regard the threat that emerged on September 11 in the light of the lessons of past battles against terrorism, which were often more successful than is commonly believed. However, we cannot discount the possibility that the threat is new in qualitative terms, that September 11 marked the outbreak of a war in its fullest sense, and that what is open to question is the outcome of this war, not its reality. We should at least acknowledge the possibility that we have entered a conceptual interim period, and that neither the concepts and means of warfare nor the methods traditionally employed in the fight against crime are suited to the new type of conflict that broke out on September 11.

When confronted with a new danger, inaction and the refusal to adapt are often more reprehensible than the mistakes that may result from a resourceful approach and the learning curve of innovative responses.

### *Kosovo and Iraq*

Kosovo and Iraq currently constitute the two poles of the intervention debate, which seems to be largely a matter of contrasting one operation with the other. Kosovo stands for consensus (at least at the regional level), a relative clarity of intentions, a response to an imminent humanitarian crisis, a controlled and proportional use of violence, the peaceful overthrow of Milosevic, the stabilization of Kosovo itself and the absence of regional instability. Iraq, on the other hand, stands for a divided international community, an intervention based on dubious and partly erroneous reasons, the absence of a crisis, and legitimate concerns over the proportionality of the military response and the alleged offences committed in Iraq, a country which is now plagued by insecurity and faces an uncertain future.

However, the legal and moral problems that have arisen are more common to both cases than we might expect. These include the lack of explicit Security Council authorization, a tenuous relationship between the use of force and the alleged aims of the operation (military operations have afforded no direct protection for the Kosovar Albanians; the elimination of the Iraqi threat did not require the use of force), and post-conflict objectives (a multi-ethnic Kosovo, a unified and democratic Iraq) which may turn out to be unrealistic.

Assessing the international legitimacy of the use of force has proved to be more demanding and more complicated than a simple, instantaneous verification of the legality of the decision to intervene. Three series of questions are normally involved in this assessment; they are linked to the classic phases *jus ad bellum*, *jus in bello* and the return to peace.

The three phases no longer form a sequence of discrete problems but tend to interact closely from the outset: moderation and the existence of limited military options designed to minimize civilian losses have an impact on the legitimacy of the use of force. The post-conflict situation must also be envisaged at this stage: even when provided with a legitimate reason and a range of

measured military options, can one intervene without having planned for the post-war situation, which will involve taking charge of populations, ensuring their security and finding political solutions to the localized turmoil that even the most legitimate of wars will inevitably cause?

The legality of an operation does not lend itself to immediate assessment but is embedded in a political context which may lead to the envisaging of associated problems (the lack of Security Council authorization, for example) in a very different light. The NATO intervention was designed to force Serbian forces to stop their indiscriminate persecution of the Kosovar Albanians, which was what the Security Council had been calling for. The legal case for the Coalition's intervention in Iraq rests on the reactivation of an authorization to proceed against the Iraqi regime originally issued in 1991, the scope of which has since constantly divided the Council.

In other words, legitimacy increasingly depends upon a general assessment of the costs of intervention compared to those of non-intervention, an assessment which can only be made over time. But at the crucial moment when the decision to intervene is taken, its legitimacy should not simply rest on the anticipation of the consequences, but should also reflect previous efforts, made in good faith, to find alternatives and avoid resorting to this extreme measure.

### *Legitimacy and institutions*

There remains the ultimate political and legal question: *quis iudicabit?* Who decides upon the legitimacy of intervention or upon the methods employed to combat terrorism? Whether we refer to the notion of legitimate authority, a tenet of the 'just war' doctrine, or to Carl Schmitt's definition of sovereignty ("sovereign is he who decides on the exception"), the question of who is the arbiter or the holder of legitimacy in conflicts between states or between states and other international actors must be addressed now that we have moved beyond the primacy of bipolar relations.

As in the aftermath of every major twentieth-century war, the end of the Cold War brought renewed hope for collective security and, at long last, a central role for an international organization. The idea of the 'new world order' extolled by George Bush Senior and François Mitterrand in the early 1990s implied a renaissance of the UN and in particular a strengthening of its charter in areas such as security and the use of force. The experiences of Somalia and Yugoslavia were quick to expose the fragility of such hopes. Throughout this entire period the UN increased the number of missions but was plagued by a permanent, quasi-structural resistance from within and without. States and international bureaucrats bickered over who bore responsibility for the gap between the tasks assigned and their actual execution. The American 'hyperpower' resented UN obstructions to its freedom of action, while the states of the South resisted its effort to enlarge its authority to deal with human rights abuses, regarding it as an erosion of sovereignty.

Instead of submitting to Security Council procedures, states often prefer to form 'coalitions of the willing' or ad hoc institutions such as the G8, the Quartet (which drew up the 'road map' for peace in the Middle East), and the Contact Group for Bosnia and Kosovo. But it should be noted that the countries of the South are not mistaken in viewing these 'councils' and 'accords' as manifestations of a northern coalition which has decided to run the world and to intervene, directly or indirectly, in the affairs of poorer or less powerful countries. We should also note that this new North-South bipolarity, this distance between centre and periphery, is a much more complex affair given the unique role played by the United States, a sometimes reluctant and sometimes activist sheriff, and the ambiguous position of powers such as Russia, China and India. These states aspire to join the centre, the community of 'great' nations, although like smaller countries and, in a sense, the American 'superpower', they refuse to sacrifice anything of their sovereignty on the altar of multilateralism, and are even less willing to make sacrifices

on the altar of human rights.

Commission after commission has worked to overcome this opposition, producing plans for reform that is not confined to the UN's internal structures but also attempts to define the tasks of the international community – the 'responsibility to protect' for example – and to encompass, restrict and regulate linked issues such as pre-emption and prevention, a duty that new conflicts has forced us to confront.

The arguments over the legitimacy and future of the international system continue unabated. Behind the debates – bipolar or multipolar world, unilateral or multilateral action, the equality of states or the responsibility of great powers, national interests or a global vision – we can detect the traditional concepts of peace through empire or through law, through the balance of power or through cooperation. The necessity of transcending or combining such concepts is becoming increasingly urgent, but little has been achieved despite some limited though promising institutional innovations, notably in the field of international justice.

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## **Revue des revues de l'adpf, sélection de mai 2006**

Gilles ANDRÉANI et Pierre HASSNER: « Morale et violence internationale »  
article publié initialement dans la revue *Commentaire*, n°111, automne 2005.

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