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# Reading Humanitarian Intervention

Human Rights and the Use of Force in  
International Law



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corrupt state officials or even foreign development experts, rather than killing their ‘often equally poor Tutsi neighbours’?<sup>157</sup> Elite manipulation of racism takes us part of the way, but still fails to explain why there is such a willing audience for racist propaganda. The work of Slavoj Žižek suggests that one answer to this question lies in an understanding of the broader links between capitalism and violence. Žižek argues that such outbreaks of racist violence are in part a product of capitalism’s economy of desire. Capitalism operates by producing an excess, a vicious circle of desire – it satisfies more human needs than any other economy, but also creates more needs to be satisfied; creates more wealth but also more need to produce wealth. Thus Jacques Lacan called capitalism the ‘discourse of the hysteric: this vicious circle of a desire, whose apparent satisfaction only widens the gap of its dissatisfaction, is what defines hysteria’.<sup>158</sup> What is produced ‘to fill out the lack only widens the lack’.<sup>159</sup> Žižek argues that it is here that we should understand what Lacan calls the discourse of the Master – ‘its role is precisely to introduce balance, to regulate the excess’.<sup>160</sup> Prior to capitalism, societies could ‘dominate the structural imbalance proper to the superego insofar as their dominant discourse was that of the Master’ – this ethical system ‘aimed to prevent the excess proper to the human libidinal economy from exploding’.<sup>161</sup> With capitalism, this ethical system breaks down – ‘this function of the Master becomes suspended, and the vicious circle of the superego spins freely’.<sup>162</sup> Thus for Žižek, what is at stake in the new outbreaks of fascist or nationalist violence is precisely one kind of response to the excesses of capitalism. According to this reading, it should be no surprise that at those moments when shock economic restructuring is being imposed, the enjoyment of the other becomes most intolerable and racist violence results. Crises such as those that occurred in the former Yugoslavia or Rwanda suggest the need to rethink the ‘vicious circle of desire’ and the culture of control that are the conditions of possibility of this global economic system.

In conclusion, focusing on international law and international institutions that facilitate economic restructuring suggests that the opposition between collective humanitarian intervention and inactivity is a false one. The international community had already intervened on a large scale in Yugoslavia and Rwanda before the security crises erupted,

<sup>157</sup> *Ibid.*, p. 211.

<sup>158</sup> Slavoj Žižek, *Tarrying with the Negative: Kant, Hegel and the Critique of Ideology* (Durham, 1993), p. 209.

<sup>159</sup> *Ibid.*, p. 210.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

through the activities of international economic institutions and development agencies. The international community can be located inside, not outside, this space of violence. Inactivity is not the alternative to intervention. The international community is already profoundly engaged in shaping the structure of political, social, economic and cultural life in many states through the activities of international economic institutions.

### The place of the international in a globalized economy

I have argued so far that 'the international' played a role in contributing to the conditions that led to violence in the former Yugoslavia and Rwanda, thus unsettling the assumption that the absence of the international community is a contributing factor in the conditions that led to the outbreak of violence in each case. I want now to explore the extent to which this level of international involvement is symptomatic of the place of the international in the global economy. In other words, can we neatly separate out domestic politics from international technical design, or are the two interconnected? And can we accept the broader assumption underlying the pro-intervention approach, that international institutions are the bearers of progressive human rights and democratic values to a 'local' in need of those rights and values in the post-Cold War era? In order to consider these questions, I want to focus on one major project of international institutions – that of trade and financial liberalisation. While there is no paucity of literature now dealing with the human consequences of this process, there is real debate over the extent to which globalisation either threatens or promotes human rights.

Proponents of economic globalisation argue that trade and investment liberalisation lead to benefits in the fields of human rights and political freedom by creating the economic conditions that allow these freedoms to flourish. Walden Bello has dubbed this the 'compassionate globalization' message.<sup>163</sup> This is the approach espoused by sociologist Anthony Giddens in his 1999 BBC Reith lectures.<sup>164</sup> Giddens there presents the impact of globalisation as broadly positive. It fundamentally reshapes public and private institutions, spreading democracy and

<sup>163</sup> Walden Bello, 'Global Conspiracy or Capitalist Circus?', 'An All-American Show?', *Focus on Trade*, February 2000.

<sup>164</sup> The Reith lectures were revised and published as Anthony Giddens, *Runaway World: How Globalisation Is Reshaping our Lives* (London, 1999).

tolerance, liberating women and creating wealth.<sup>165</sup> Indeed, for Giddens, the 'battleground for the twenty-first century' will pit nationalism and fundamentalism against the cosmopolitan tolerance that is encouraged by globalisation.<sup>166</sup> Similarly, Frederick Abbott has argued that 'the success of the WTO is the success of democracy and the marketized economy that swept away the Berlin Wall'.<sup>167</sup> For such advocates of economic liberalisation, the key values to be promoted by globalisation are protection of private property, freedom to trade, the rule of law and formal equality.

International economic organisations increasingly portray their own actions in these terms. Official documents and speeches by representatives of the WTO speak of its role in providing the conditions that will lead to political liberalism and deepen democracy, while the World Bank speaks in the language of participation, good governance, anti-corruption and poverty alleviation.<sup>168</sup> For example, according to the former WTO Director-General Mike Moore, free trade and economic freedom are the conditions of political freedom. For Moore, the WTO has the 'opportunity to nurture and promote the core liberal values of justice and human progress... acting in the interests of all that is right and good'.<sup>169</sup>

The 'compassionate globalization' view is of course far from uncontroversial. A second view of economic globalisation suggests that it threatens human rights. Let me summarise some of the key features of that argument, by looking briefly at the activities of the IMF, the World Bank and the WTO.<sup>170</sup> The IMF and the World Bank have a significant effect on the policies of governments in those states seeking to make use of their resources through the imposition of conditions on access to credits and loans. Most people are by now familiar with the 'structural adjustment' conditions that have been attached to the use of IMF and World

<sup>165</sup> *Ibid.*, p. 5.      <sup>166</sup> *Ibid.*

<sup>167</sup> Frederick Abbott, 'Remarks' (2000) 94 *American Society of International Law Proceedings* 219.

<sup>168</sup> I should note that these organisations and the governments they represent have to date been careful to ensure that there is no linkage of these rhetorical statements to any of the human rights covenants negotiated under the auspices of the UN.

<sup>169</sup> Statement by Mike Moore to the 11th International Military Chiefs of Chaplains Conference, 9 February 2000, reprinted at <http://www.wto.org/wto/speeches/mm22.htm>, accessed 1 April 2000.

<sup>170</sup> See further Anne Orford, 'Locating the International: Military and Monetary Interventions after the Cold War' (1997) 38 *Harvard International Law Journal* 443; Anne Orford, 'Globalisation and the Right to Development' in Philip Alston (ed.), *Peoples' Rights* (Oxford, 2001), pp. 127-84.

Bank resources since the 1980s. Those conditions generally require countries to adopt policies of foreign investment deregulation, privatisation, cuts to government spending, labour market deregulation, lowering of minimum wages, and a focus on production of goods for export rather than domestic consumption. Equally controversial have been the so-called 'shock therapy' programmes discussed above and implemented since the late 1980s throughout Eastern Europe.

It can be argued that the imposition of such conditions threatens human rights in three broad ways. The first argument is that rights to political participation and self-determination are threatened in countries subject to IMF and World Bank conditions. Decision-making over ever larger areas of what was once considered to be central to popular sovereignty and substantive democracy is now treated as legitimately within the province of IMF and World Bank economists. People in such states are not free in any meaningful sense to choose forms of economic or social arrangements that differ from the models chosen by those who work for the IMF or the World Bank.

The second argument is that the model of development imposed by these institutions itself threatens the promotion and protection of economic, social and cultural rights. For example, structural adjustment conditions have resulted in the cutting of public expenditure on health and education, increased income disparity, greater unemployment and the marginalisation of women, the poor and rural populations. As the Committee on Economic, Social and Cultural Rights noted in 1998, rights such as the right to health or the right to adequate food are made significantly less relevant in states required to engage in those forms of economic restructuring.<sup>171</sup>

It may be that there has been something of a shift in the nature of the requirements imposed as part of structural adjustment programmes, as evidenced by the conditions attached to the use of resources by South-East Asian states since 1997. In Indonesia, for example, the IMF and the World Bank encouraged deficit budget spending to fund education projects and public sector job-creation programmes. While this was partly due to the way in which the IMF perceived the cause of economic problems there, this may also represent a trend away from the imposition of hard-line conditions in those areas. The World Bank also now uses the language of participation in its documents, although I have

<sup>171</sup> 'Globalisation and Economic, Social and Cultural Rights', Statement by the Committee on Economic, Social and Cultural Rights, May 1998.

elsewhere been critical of the limited meaning of that term in the Bank context.<sup>172</sup>

What has not changed, however, is the commitment of these institutions to imposing a particular capitalist model of market-driven development at any cost. Participation is only allowed within the framework determined by the institutions and their donor-states. This is summed up nicely by the following passage from the Bank's 1999 case progress report on Indonesia, written prior to the democratic elections in that country.

Today, Indonesians are understandably impatient for change. Calls for a "people's economy" and a redistribution of assets from the rich ... have acquired considerable popular support and need to be channelled in constructive ways, or else they could do considerable damage.<sup>173</sup>

This passage makes clear that the notion of a 'people's economy' premised on a real commitment to participation or proposals for the redistribution of assets are seen as dangerous, representing potential threats to the economic order that the Bank seeks to preserve or establish in Indonesia.

Third, the imposition of 'structural adjustment' and 'shock therapy' programmes also creates a climate in which abuses of civil and political rights such as the right to freedom from torture or the right to life are more likely to occur. Such programmes have too often led to increased levels of insecurity and political destabilisation in target states. The effect of IMF and World Bank policies has been to relieve many states of most of their functions, except maintaining law and order and facilitating private investment.<sup>174</sup> At the same time, the interests of investors are protected and secured. In situations where the state appears to address only the interests of international economic institutions and corporate investors, the insecurity, vulnerability and frustration of people increases. Violent protests, political destabilisation, attempted succession and populist nationalism have emerged as responses to governments that appear to be accountable only to foreign investors. This situation tends to be exacerbated by the refusal of the IMF and the World Bank to require cuts to military budgets.<sup>175</sup> The dangerous practice of imposing

<sup>172</sup> Anne Orford and Jennifer Beard, 'Making the State Safe for the Market: The World Bank's *World Development Report 1997*' (1998) 22 *Melbourne University Law Review* 196.

<sup>173</sup> World Bank, *Indonesia: Country Assistance Strategy – Progress Report*, 16 February 1999, 2.

<sup>174</sup> Hippler, 'Democratisation', p. 25.

<sup>175</sup> D. L. Budhoo, *Enough Is Enough: Dear Mr Camdessus ... Open Letter of Resignation to the Managing Director of the International Monetary Fund* (New York, 1990), pp. 69–72.

conditions that increase poverty, food scarcity, unemployment and insecurity, while failing to require cuts to military budgets, is a recipe for human rights abuses. When governments attempting to comply with IMF or World Bank programmes are faced with riots and protests, such protests have been too readily met with repressive state action.

Membership of the WTO poses another source of constraint on the choices open to peoples and governments. For many years the GATT (General Agreement on Tariffs and Trade) regime was the insulated and self-referential world of a 'specialized policy elite' of technocrats, officials and 'GATT-friendly academics'.<sup>176</sup> With the creation of the WTO at the completion of the Uruguay Round of GATT trade negotiations in 1995, the political nature of free trade decision-making has become increasingly visible. This is in part due to the significant expansion in the range of activities brought within the scope of the GATT/WTO regime. The regulatory harmonisation required of WTO Members extends to areas such as intellectual property protection, provision of services, foreign investment regulation, labelling, regulation of genetically modified foods and biotechnology, and public and animal health and safety laws. In addition, once a rule is agreed to as part of a trade negotiation it is very difficult to alter it, while the importance of the WTO for all its Members means that the costs of withdrawal are enormous. The resulting 'irreversibility' of rules agreed to at the WTO means that proposed agreements are increasingly subject to intense scrutiny by 'outsiders' to the regime, including human rights experts and NGOs.<sup>177</sup>

Some commentators have sought to respond to this political challenge by arguing that the trade regime is inherently protective of human rights. For example, Ernst-Ulrich Petersmann argues that trade liberalisation does operate to protect human rights through furthering the right to property, economic freedom and human dignity.<sup>178</sup> For Petersmann, 'liberal markets are a necessary complement of individual freedom and constitutional democracy'.<sup>179</sup> Petersmann seeks to legitimate the trading system by linking it with the moral authority of human rights.<sup>180</sup> In so doing, he draws on a tradition in which the holder of rights is imagined

<sup>176</sup> Robert Howse, 'From Politics to Technocracy – and Back Again: the Fate of the Multilateral Trading Regime' (2002) 96 *American Journal of International Law* 94, 98–9; J. H. H. Weiler, 'The Rule of Lawyers and the Ethos of Diplomats' (2001) 35 *Journal of World Trade* 191.

<sup>177</sup> Howse, 'From Politics to Technocracy', 107.

<sup>178</sup> Ernst-Ulrich Petersmann, 'The WTO Constitution and Human Rights' (2000) 3 *Journal of International Economic Law* 19.

<sup>179</sup> *Ibid.*, 23.      <sup>180</sup> *Ibid.*, 24.

as a property-owning subject.<sup>181</sup> The ownership of property has been central to liberal conceptions of what it is to be fully human.<sup>182</sup> For John Locke, 'every man has property in his own person'.<sup>183</sup> A man owns his own person and thus his own labour. He can also appropriate the external world through putting his own labour into it, mixing himself with it and earning the right to exclude the rest of humanity from its use and enjoyment. This link between property and personality in the liberal philosophical tradition forms one of the conceptual links between capitalism and modern liberal law.<sup>184</sup> In this sense, the WTO does promote a narrow range of 'human rights'.

Yet human rights have also been conceptualised outside the purely individualistic framework developed in relation to some civil and political rights. Rights to political participation are conceived of as rights that we exercise in community with others, while rights to health or education presuppose a public sphere in which claims for a share of collective goods can be made. Collective rights such as the right to development or the right of self-determination focus on control over territory and resources, and allow for the development of a social, political and economic order that does not simply maintain exploitation.<sup>185</sup> It is the less atomistic approach offered by these rights that provides a challenge to the corporatism of the trade regime. Trade and financial liberalisation threaten this broader range of human rights in a number of ways.

First, post-Uruguay Round trade agreements reflect a move away from non-discrimination as the foundational premise of GATT, towards the dream of a world of sameness, or to adopt the language of free trade, harmonisation. In theory, most forms of regulation can operate as 'non-tariff barriers to trade', in that the existence of differing regulatory standards means that corporations may be prevented from selling the same product everywhere in the world. According to free trade logic, states should not be able to make use of non-economic bases, such as protecting consumer safety or environmental protection, to justify restrictive policies that inhibit the capacity of foreign producers to maximise their access to global markets. Harmonisation can ensure that profits are

<sup>181</sup> *Ibid.*, 23.

<sup>182</sup> Margaret Davies, 'The Heterosexual Economy' (1995) 5 *Australian Feminist Law Journal* 27, 30.

<sup>183</sup> John Locke, *Second Treatise of Government* (Cambridge, 1970), ch. V, s. 27.

<sup>184</sup> For a critique of this inscription of the property-owning subject as the representative of man, see Karl Marx, 'On the Jewish Question' in Jeremy Waldron (ed.), *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London, 1987), pp. 137–50.

<sup>185</sup> See further Chapter 4 below.



maximised, entrepreneurialism is encouraged, and barriers to the sale of products are only created where the necessity of such regulations can be proved according to rational and rigorous scientific standards. In this imagined future, any national or indigenous differences, whether or not they are discriminatory, will be swept away in the march towards standardised regimes for intellectual property protection, health and safety regulations, foreign investment and provision of services.

The capacity to make decisions about what these harmonised standards should be is increasingly being removed from the democratic process, as trade agreements enshrine economics and science as privileged forms of knowledge. The 1994 Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) offers a good illustration of this process.<sup>186</sup> That Agreement sets out obligations and procedures relating to the use of sanitary and phytosanitary measures, or human or animal health and safety laws. Members of the WTO are obliged to ensure that no such measure is maintained without scientific evidence.<sup>187</sup> States parties to the SPS Agreement agree to pass laws or regulations that protect animal and human health and welfare only where there are recognised and agreed international scientific standards necessitating such protection. Where there are no such standards, Members agree to pass such laws or regulations affecting foreign producers only where they can provide scientific evidence proving that a new technology is dangerous when used in animal or plant development. Scientific experts are recognised by the Agreement as legitimate sources of authorised knowledge upon which government policies can be based without breaching trade agreements.

That basis for decision-making excludes, or at the least marginalises, other community concerns or other forms of knowledge from consideration. The requirement that states privilege the knowledge produced by scientists, who are often paid and employed by interested corporations, over the knowledge of local consumers, workers, industry groups or farmers, operates to limit the scope for contesting and debating particular policies and laws. By restricting the bases upon which states can introduce laws relating to consumer safety, animal health and welfare or sustainable farming practices, the right of people and communities to participate in and shape their economic and social development is constrained. To require states to frame their objections or concerns about

<sup>186</sup> For a more detailed analysis of the SPS Agreement and its effects, see Orford, 'Globalisation', pp. 158–67.

<sup>187</sup> SPS Agreement, Article 2.

particular processes or products in the language of science necessarily excludes some bases for making decisions. For example, it can be difficult to address concerns about sustainable farming practices, the effects of agribusiness on small farmers in developing countries, or animal welfare, in the language of science. Such an approach shuts out other questions or issues, for example the appropriateness of adopting a precautionary approach to the safety of new processes, products or technologies. The decision to use caution in the face of new technologies involves a judgment about the commitment of corporations to consumer protection rather than profit. This involves a political judgment that should be made by democratic processes. As Joseph Weiler argues, the regulatory state and the detail of international economic law should not be outside the normal processes of democracy.<sup>188</sup> Such judgments, however, are precluded by the operation of the SPS Agreement.

The WTO agreements also embody an ideological preference for the commodification of resources, and for private over public ownership of such commodities. For instance, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires WTO Members to have in place laws that recognise and protect a broad range of private intellectual and industrial property rights.<sup>189</sup> In addition, Members agree to provide the legal and administrative infrastructure necessary to ensure that intellectual property rights can effectively be enforced under domestic law, both by their own nationals and by foreign rights-holders.<sup>190</sup> For some cultures in which traditional, community-based knowledge about seeds and plants was not commodified, TRIPS has meant the 'enclosure' of a common resource and its transformation into private property.<sup>191</sup>

A similar privileging of private interests underpins the General Agreement on Trade in Services (GATS). While GATS does not require Members to privatise public services, once services in sectors covered by GATS are privatised, the market for such services must be opened to foreign investors. The effect of this agreement is to make it far more difficult to

<sup>188</sup> J. H. H. Weiler, 'Balancing National Regulatory Sovereignty with the Discipline of Free Trade', The Sir Kenneth Bailey Memorial Lecture, University of Melbourne, 15 August 2001.

<sup>189</sup> TRIPS Agreement, Part II.

<sup>190</sup> TRIPS Agreement, Part III. For an examination of the legal and administrative changes required by developing countries to provide protection for patents relating to pharmaceutical and agricultural chemical products under TRIPS, see Appellate Body Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, adopted 19 December 1997, WT/DS50/AB/R.

<sup>191</sup> John Frow, 'Information as Gift and Commodity' (1996) Sept/Oct *New Left Review* 89.

reverse failed privatisations and return services to public ownership.<sup>192</sup> As states around the world experiment with the privatisation of services such as banking, water supply, electricity, telecommunications and urban transport, this kind of built-in privileging of private ownership reduces the scope for democratic participation in assessing such experiments.<sup>193</sup>

As these examples indicate, free trade agreements shift the boundary between public good and private interest in favour of the private interests of corporations. This has profound implications for the utility of liberal concepts of democracy and human rights in the public sphere.<sup>194</sup> The idea underlying such notions – the guarantee to individuals of formally equal access to public goods and participation in public decision-making – is undermined by the twinned processes of privatisation and commodification. By facilitating, or requiring, the reconceptualisation of aspects of the public sphere as private and thus outside the realm of liberal democracy, agreements such as TRIPS limit the relevance of concepts which imply power-sharing, claims to resources and entitlements against the state. The redrawing of boundaries between public and private operates to confine egalitarianism to an ever declining public sphere.

States and peoples are increasingly limited by such agreements in their capacity to choose models of development that do not suit the interests of powerful states such as the USA. One of the assumptions of much discussion in the trade and development area is that states and peoples are free to choose the development model, and in particular the legal and administrative system, that they believe best suits their conditions. If the choice is a bad one, it will be punished by foreign markets or investors. Agreements like TRIPS fundamentally unsettle that assumption. There, a powerful state, the USA, was able to make use of its market power to ensure that other states signed on to a far-reaching agreement relating to a form of property that will be at the heart of economic development into the next century.<sup>195</sup> Indeed, when states like the USA began to push to have intellectual property added to the Uruguay Round agenda, many trade negotiators and the GATT Secretariat itself had little familiarity with intellectual property regimes, and saw a conceptual

<sup>192</sup> See the discussion of the operations of GATS Article XXI in Scott Sinclair and Jim Grieshaber-Otto, *Facing the Facts: a guide to the GATS Debate* (Canada, 2002), pp. 33–5.

<sup>193</sup> Howse, 'From Politics to Technocracy', 113. <sup>194</sup> Frow, 'Information', 105.

<sup>195</sup> Peter Drahos, 'Global Property Rights in Information: the story of TRIPS at the GATT' (1995) *Prometheus* 6.

tension between free trade and the monopoly privileges that intellectual property rights represent.<sup>196</sup> The USA was nevertheless able to make use of a process of economic coercion involving the threat and use of trade sanctions to ensure that the TRIPS Agreement was finally agreed to as part of the Uruguay Round of reforms.<sup>197</sup> That agreement goes further than perhaps any other international agreement to date in terms of stating in detail the kinds of laws and administrative systems that states must have in place, detailing not only the nature of the rights to be protected, but also the kinds of procedures and penalties that states must have in place to enforce these rights.<sup>198</sup>

Whatever view we adopt on the relationship between the activities of international economic institutions and human rights, we can say that it is not possible under such conditions to draw a firm line between national and international, domestic and foreign. Such distinctions are radically complicated by a globalised economy in which international organisations and agencies are intimately involved in making decisions that are far from technical. It is impossible to talk meaningfully about 'local' causes of conflict or 'local' threats to democracy and human rights in a world where the international community, through institutions like the IMF, the World Bank and the WTO, restructures the nature of daily life for most human beings.<sup>199</sup> Yet at present, 'the international'

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*, 14–15. Drahos reveals that the USA made use of a range of coercive trade mechanisms at the bilateral level to ensure that states complied with US negotiating objectives relating to intellectual property protection. In addition, the US government in concert with major US corporations made use of an 'information' campaign in various countries to instil the idea that inventions and ideas were 'property' and that their 'theft' was a serious issue. The outcome of the negotiations over TRIPS was particularly remarkable given that most countries other than the USA are net importers of technological and cultural information, and yet have agreed to pay more for that information under TRIPS.

<sup>198</sup> Part III deals with the enforcement of intellectual property rights in great detail. It provides that states must implement enforcement procedures that are fair and equitable, and which are not to be 'unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays' (Article 41:2). Decisions relating to intellectual property matters are preferably to be in writing with reasons, and rights of judicial review are to be provided in the case of judicial decisions (Articles 41:3 and 41:4). States are obliged to provide for criminal procedures and penalties, at least in the case of wilful trademark counterfeiting or copyright piracy on a commercial scale, and the remedies to be available under criminal procedures are to include 'imprisonment and/or monetary fines sufficient to provide a deterrent' (Article 61).

<sup>199</sup> Jim George, 'Quo Vadis Australia? Framing the Defence and Security Debate beyond the Cold War' in Graeme Cheeseman and Robert Bruce (eds.), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking after the Cold War* (St Leonards, 1996), pp. 10–48 at p. 33.

in pro-interventionist literature becomes that which major powers wish to claim or own – peace, democracy, security, liberty – while ‘the local’ becomes that for which major powers do not wish to take responsibility.

### Engaging with the international

Those arguing in favour of expanding the humanitarian role of the Security Council or NATO present an image of international institutions and international law as agents of democracy and human rights. That representation operates to reinforce the identity of international institutions and of major powers, particularly the USA, as in turn bearers of those progressive values. The UN and other post-World War II institutions have embodied the faith of many people in the ability of international institutions to protect ideals of universalism, humanitarianism, peace, security and human rights. Multilateralism has seemed to offer an escape from unrestrained self-interest and power politics. Yet by representing international intervention as essentially humanitarian, pro-interventionist literature forecloses a number of important debates.

First, the focus on the role of international institutions and international law in intervening for human rights and democracy obscures the role played by international institutions and laws in contributing to economic liberalisation. By focusing only on norms of international law that relate to public issues, international lawyers fail to make visible the norms and institutions that facilitate the making of a global market. That failure contributes to the sense that economic liberalisation is natural and inevitable. Global economic restructuring is a given, and our role as humane international lawyers is only to consider norms relating to intervention, or issues such as the limits of self-determination. Accordingly, the conduct of business as usual appears both natural and politically neutral. As David Kennedy argues:

In [the dominant legal] view, only international government must be made; the international market makes itself... Of course, as has been recognised since the last century, this approach dramatically obscures the process by which a market is constructed – the ongoing choices required to elaborate, enforce, and interpret the background norms of private law, and the financial and other service institutions which must be put in place. It not only makes the State seem too active, too able to *will* (as all international institutionalists insist), it also underestimates the politics of the private.<sup>200</sup>

<sup>200</sup> Kennedy, ‘A New World Order’, 372 (emphasis in original).

Second, by failing to evaluate the relationship of the activities of international institutions to security and humanitarian crises, international lawyers avoid assessing the threats posed to security, human rights, life, substantive democracy, health and justice by economic restructuring. While the activities of international economic institutions, US and European economic advisers and private banks have arguably contributed to security crises, and certainly have substantial effects upon sovereignty, self-determination, statehood, the right to democratic governance and the protection of human rights, little or no attention has been paid to assessing the relationship of the activities of those institutions to security and humanitarian crises. Those institutions and laws have emerged untouched from the reassessment of norms and re-evaluation of the adequacy of international institutions that have taken place in light of these crises.

In other words, the project of economic liberalisation, an enormous and influential area of international engagement and intervention, appears sacrosanct when it comes to considering how a new world order might better guarantee peace, security, human rights, respect for humanitarian norms, genocide prevention and democracy. In the case of the Yugoslav conflict, the failure to consider the possibility that the causes of the crisis might be related to the activities of international institutions or the influence of international law, has meant that, rather than examining the role played by the international community in contributing to this situation, outside actors continued to understand the causes of the conflict as 'ethnic' or 'nationalist' in a premodern sense. The principal lesson we should have learned from Yugoslavia or Rwanda was, in other words, not primarily that we need a UN rapid deployment force, but that intellectuals and activists concerned about democratic and human rights issues should lobby their government's representatives and directors to oppose support for this model of economic liberalisation and marketisation in Eastern Europe. By structuring the debate around the use of force, we never get around to talking about those other issues.

José Alvarez makes a similar point about the way in which international lawyers understand the Rwandan genocide.<sup>201</sup> Alvarez argues that for international lawyers, the problem of genocide is defined in 'state-centric' terms – the mass atrocities committed in Rwanda are seen to have resulted from the combination of actions of 'state actors who

<sup>201</sup> Alvarez, 'Crimes', 370.

violated fundamental norms of civilized behaviour' and 'the failure of other government actors to respond'.<sup>202</sup> The crimes committed in Rwanda, and by implication the causes of those crimes, are treated as 'aberrant or exceptional deviations from the norms of interstate behaviour'.<sup>203</sup> Alvarez argues that for international lawyers, the 'solution' to the Rwandan genocide flows from the definition of the problem. If the genocide resulted in part from the failure of states or international organisations to enforce 'the international rule of law against rogue state actors', the solution 'needs to be provided, in top-down fashion, by the international community's most reputable enforcer, namely the United Nations'.<sup>204</sup>

This way of understanding the problem of genocide in Rwanda and elsewhere is compelling. In contrast to those who blame extreme violence on ahistorical and apolitical factors such as ancient hatreds, evil forces, primitive irrationality or inherent human (or masculine) aggression, 'international lawyers are proactive and non-defeatist'.<sup>205</sup> Even in the face of the horror that was the one hundred days of slaughter in Rwanda, international lawyers assert that 'international intervention to encourage accountability is neither useless nor counterproductive' and that 'there is always *something to be done*'.<sup>206</sup> I do not want to be cavalier about the internationalist faith in the capacity of human beings to create a different future and to challenge the existing order in such circumstances. But I do want to question *what* it is that we are called to do by the texts of law. The use of force appears as a necessary response to security and humanitarian crises where such crises are understood to be caused purely by localised ethnic or nationalistic tensions. The international community depicted the Yugoslav and Rwandan conflicts principally in ethnic or nationalist terms, and ignored the role that international institutions and outside actors played in contributing to the causes of the conflict. The result of constructing the crises in those terms had significant results for policies of intervention. The lessons learned from the Yugoslav and Rwandan crises turned upon how early and to what extent force should be resorted to in such situations. The apparent focus on the use of force as a response to security and humanitarian crises is problematic, both because it ignores the role that international institutions and policies of, *inter alia*, the EC and the USA, played in creating the conditions that led to violence, and because it appears that US

<sup>202</sup> *Ibid.*, 370–1.      <sup>203</sup> *Ibid.*, 369.      <sup>204</sup> *Ibid.*, 371.      <sup>205</sup> *Ibid.*, 382.

<sup>206</sup> *Ibid.* (emphasis in original, citation omitted).

and other governments are in any case reluctant to commit troops for collective humanitarian purposes. For a variety of reasons, citizens of states like the USA may not be willing to support military intervention, and thus force may in any case no longer be reliably available to contain crises resulting from the destabilising and oppressive consequences of economic restructuring. Accordingly, it seems timely to consider other ways in which changes to the policies of international institutions might contribute to peace and security.

Despite the lessons that might have been learned about the nature of international engagement in Rwanda and the former Yugoslavia, international institutions continue to cling, albeit somewhat more grimly, to the agenda of economic liberalisation and facilitation of a global division of labour.<sup>207</sup> Little has been done to absorb these lessons about the possibility that rapid economic liberalisation contributes to the conditions that make acute violence possible. Instead, as I argue in Chapter 4, the capacity of the international community to entrench economic restructuring has been strengthened as part of the post-conflict peace process in Bosnia-Herzegovina and East Timor.

### The cartography of intervention

The representation of the conflicts in the former Yugoslavia and Rwanda as exacerbated by an absence of international involvement also serves to create a sense that the international community and those facing humanitarian or security crises are physically separate. As we have seen, there is little, if any, discussion of the presence of representatives of the international community in countries such as the former Yugoslavia or Rwanda prior to crises erupting. Edward Said described Orientalism as Europe's 'collective day-dream',<sup>208</sup> and texts such as those I have considered in this chapter indeed resemble a dream, in which an imaginative geography of the world is produced.<sup>209</sup> For Steve Pile, imaginative geographies function in such a daydream to: 'localize and distance the

<sup>207</sup> See Ana Stanič, 'Financial Aspects of State Succession: the Case of Yugoslavia' (2001) 12 *European Journal of International Law* 751; Cline, *International Debt*, p. 366 (discussing the fact that after the war, Yugoslav successor states cannot expect anything other than a modest amount of debt forgiveness, as debt indicators do not show particularly heavy indebtedness). See further the discussion of the economic programme for the internationally administered Bosnia-Herzegovina in Chapter 4 below.

<sup>208</sup> Said, *Orientalism*, p. 52.

<sup>209</sup> Steve Pile, 'Freud, Dreams and Imaginative Geographies' in Anthony Elliott (ed.), *Freud 2000* (Victoria, 1998), pp. 204–34 at p. 222.