

COSMOPOLITANISM

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COSMOPOLITANISM AND HUMANITARIAN MILITARY INTERVENTION

War, peace and human rights

This chapter addresses an uneasy question: the relation between cosmopolitanism and humanitarian military intervention.¹ The re-emergence of cosmopolitanism as a flourishing intellectual project has coincided with what Michael Ignatieff describes as a ‘new tide of interventionist internationalism’, whereby Western nations have become embroiled in various efforts to ‘put the world to rights’ (Ignatieff, 1999: 3). Perhaps the most contentious element of this interventionism has been the willingness to use military force for humanitarian ends. Prominent examples of allegedly humanitarian military interventions include US intervention, sanctioned by the United Nations, in Somalia between 1992 and 1994 and NATO’s air campaign, not officially sanctioned by the United Nations, in Kosovo and Serbia in 1999. Prior to the 1990s debate was provoked on this issue by India’s intervention into Bangladesh in 1971, Vietnam’s intervention into Cambodia in 1978–9 and Tanzania’s intervention into Uganda in 1979 (Wheeler 2000). In the first half of the 1990s the Security Council of the UN authorised peace-keeping interventions

in eight instances and military interventions in a further five. Today, there is extensive debate over the foibles and follies of the US/UK invasion of Iraq, the refusal of the UN to grant legitimacy to the military exercise and retrospective attempts to justify the invasion in humanitarian terms (McGoldrick 2004).

The practice of humanitarian military intervention goes to the heart of cosmopolitan aims to defend human rights and it raises searching questions about whether and how individuals can be safeguarded against the murderous actions of their own governments. Support for humanitarian military intervention is premised on the widespread feeling that the exercise of military force has been both possible and urgently needed to stop grave humanitarian crimes. It is also provoked by the consequences that have ensued from the failure of the international community to act effectively in the face of genocide in Rwanda in 1994 (Wheeler, 2000: 208–41) and ethnic cleansing in Bosnia throughout the 1990s (Bobbitt, 2002: 414–67). Today some observers say that crimes against humanity and possibly genocide are occurring among the African populations of Darfur and Zimbabwe and yet there has been till now little evidence that the international community is prepared to intervene with any significant show of military force (Reeves 2005).

The chapter is also triggered by the serious criticisms coming from both ends of the political spectrum on the damage humanitarian military intervention has done to the whole cosmopolitan project. Consider, for example, the comments of mainly leftist critics of cosmopolitanism in an interesting collection *Debating Cosmopolitics* (Archibugi 2004b). The sociologist Geoffrey Hawthorne re-affirms the continuing relevance of state formation in parts of the world where states are barely able to exercise control over their own territory or ensure the security of their own citizens. For Hawthorne, the key political question concerns how failed and failing states are to be re-formed. His article of faith is that states cannot be repaired through military interventions and he is particularly sceptical of liberals who claim the right to use force in the name of humanity. David Chandler declares that the NATO bombing of Yugoslavia was a clear breach of international law and more generally that cosmopolitan arguments which endorse the limitation of sovereignty for some states in effect grant the right to intervene at will to others. He maintains that the new interventionism is a throwback to a

time when state sovereignty was the privilege of the few and powerful states granted themselves the right to use force against the less powerful. According to Chandler, cosmopolitanism should be read as an attack on the principle of sovereign equality introduced after 1945. Similarly, Tim Brennan identifies cosmopolitanism with *Pax Americana* dressed up in the cloth of international law. He is dismissive of cosmopolitan concerns over crimes against humanity, referring to them as ‘fear-mongering cameos of “tribal” blood-letting in barbaric backlands’, and interprets the cosmopolitan attack on national sovereignty as an attack on the capacity of ‘indigenous peoples to draw a boundary between what is theirs and what lies beyond’ (Archibugi 2004a: 46). Peter Gowan argues that the formation of a supra-state authority, far from exercising jurisdiction over the US, is destined to become its lightly disguised instrument. For Gowan, the cosmopolitan dream of uniting humanity on the basis of a global citizenry and universal human rights is a self-deception, since no scheme for universal harmony can work which fails to confront the social relations of actually existing capitalism.

The gap between facts and norms leads some critics to conclude that the cosmopolitan outlook is either hopelessly naive or wilfully cynical (Zolo 2002; Chomsky 1999). Most of these writers reserve their severest criticism for the doctrine that there can be a right of intervention even without the formal authorisation of the UN. They see the appeal to ‘global justice’ as an umbrella under which an attack on international law is being launched by big powers and see cosmopolitanism as, naively or wilfully, justifying an imperial international order. Jacques Rancière argues that under a cosmopolitan register the rights of man have become the rights of victims: ‘of those unable to enact any rights or even any claim in their name, so that eventually their rights had to be upheld by others, at the cost of shattering the edifice of international law, in the name of a new right of humanitarian interference’ (Rancière 2006). He concludes that the rights of man or human rights (he equates the two) have been boiled down to a right of invasion, a right of war, which is in effect no right at all. He argues that since the invasion of Iraq the idea of humanitarian military intervention has become so deeply imbricated in a new imperialism as to drag the larger cosmopolitan project down with it.

These arguments are compelling but to my mind they leave

unanswered the question that gives rise to cosmopolitan thinking in the first place. If people are hunted out of their homes and threatened with ethnic slaughter, should there not be humanitarian military intervention if this is feasible? Is there not a responsibility attached to power not to remain inactive in the face of gross inhumanity? Why should our sense of responsibility stop at national boundaries? What does the slogan 'never again' mean if it excludes in principle military interventions designed to stop genocides? Should we really be nostalgic about the classical system of international law whose core principle was that of non-intervention under all circumstances, including the murderous abuse by the state of its own subjects, and whose practice allowed the US and the USSR to do as they willed in their own 'backyards'? Is there not a sense of self-serving cant in the claims of rulers that international action over their mistreatment of minorities is unwarranted interference in their internal affairs? Critics of cosmopolitanism must engage with the problem to which cosmopolitanism is a response: never again to be indifferent to the deliberate mass destruction of human lives simply because the perpetrators are ordained by a sovereign nation-state or because the victims are foreigners. In a world which now has experience of totalitarian terror and annihilation, the cosmopolitan imagination refuses to rule out the need for humanitarian military intervention. Instead, it seeks to establish a firm ethical and legal basis on which to decide under what circumstances humanitarian military intervention might be justified, through what institutions such interventions are to be authorised and by what means such interventions are to be conducted.

When people are subjected to ethnic cleansing, crimes against humanity or genocide at the hands of the authorities that rule them, the cosmopolitan intuition is that there must be a form of ethical life beyond that of their own state to which they have a right to appeal and from which they can have a realistic expectation of support. From this perspective humanitarian military intervention appears as one element in the construction of a sense of universal responsibility. While it does not address the big issues concerning the origins of totalitarian tendencies in our own world, the new cosmopolitanism enjoins us to think hard about the conditions of its legitimacy. The results are as interesting for what they reveal about the emerging

cosmopolitan paradigm as for what they offer to ongoing debates about military intervention.

DEALING WITH AMBIVALENCE

One of the main characteristics of cosmopolitanism in relation to humanitarian military intervention is equivocation in the face of competing pressures. On the one hand, cosmopolitan principles of human rights and global governance lend support to humanitarian military intervention if it is deemed necessary in order to protect the basic human rights of the most vulnerable. Humanitarian military intervention appears as an extension of the precedent set at Nuremberg: if evidence of crimes against humanity can serve as a basis for legal prosecution after the event, then it can also serve as a basis for military intervention to prevent or stop the crimes themselves. If ‘universal responsibility’ is to mean anything, it is the responsibility of those who have the power not to stand idly by when crimes against humanity are being committed and it is within their capacities to end them. On the other hand, cosmopolitanism is historically associated with the critique of militarism, the search for alternatives to war and the ideal of ‘perpetual peace’. Not for nothing did Kant call the contract he envisaged between nation-states *foedus pacificum* – the peace-making pact. The normative philosophy of Kantian cosmopolitanism endorses the categorical imperative to put an end to war. The new cosmopolitanism is suspicious of a humanitarian rhetoric that conceals the exercise of dominance on the part of powerful states and there are many who fear that the legitimisation of violence in terms of human rights can only delay the construction of a genuine universal human rights culture (Booth 2001: 314). Their credo is that the governance of international affairs through cosmopolitan norms requires non-violent processes of communicative interaction (Young 2007). The ambivalence of cosmopolitanism manifests itself in the fact that individuals who share similar cosmopolitan principles can and do come to opposite conclusions with regard both to the principle of humanitarian military interventions and its application to particular situations. The question the new cosmopolitanism faces is how to deal with ambivalence without denying either side of it and without being paralysed by it.

I shall consider what I take to be the prevailing strategy of the

new cosmopolitanism: it is to specify in precise terms the criteria of justification, authorisation and military conduct which humanitarian military intervention must meet if it is to be deemed legitimate. I consider this to be a necessary and productive strategy but one that can never do the work that is expected of it. The argument runs roughly as follows.

First, military action becomes justifiable only in the context of 'supreme humanitarian emergencies'. We have to distinguish between 'the ordinary routine abuse of human rights that tragically occurs on a daily basis and those extraordinary acts of killing and brutality that belong to the category of "crimes against humanity"' (Wheeler 2000: 34). In the latter category Nicholas Wheeler includes state-sponsored mass murder and mass population expulsions by force and genocide (Wheeler 2000: 34). Whilst no cosmopolitan writer claims to provide an unambiguous distinction between acceptable and unacceptable humanitarian crimes, most trade on the idea of crimes which 'shock the conscience of humanity' (Walzer 2000: 107). Daniele Archibugi, for example, makes the dubious contention that

whilst debate continues to rage over the acceptability of practices such as stoning adulterous wives . . . no one would dream of urging military intervention to foreign countries to ban these practices . . . it is quite plain and straightforward that military humanitarian intervention is necessary when and only when blatant collective violations of human rights are being perpetrated.
(Archibugi 2004c: 6)

According to Richard Falk, the moral and legal requirements for intervention are satisfied only if 'the governing process has collapsed or is widely perceived as engaged in massive and gross violations of human rights amounting to "crimes against humanity", especially if there is a genocidal element present' (Falk 1998: 96).

The universal emphasis on human rights violations to be found in the literature may be misplaced in that the only grounds for humanitarian military intervention actually given are not to do with violation of human rights as such but with the commission of serious crimes under international criminal law. Even so, military action is still only justified as *a means of last resort*, with much of the

debate over the Kosovo intervention revolving around whether or not the intervening powers were seriously committed to finding a diplomatic solution (Chomsky 1999: 22–3; Falk, 1999: 855). There must be some sort of *proportionality threshold* in the sense that military action has a reasonable chance of not causing more harm than it resolves (Wheeler 2000: 36–7; Archibugi 2004c: 11–13). And pre-emptive intervention is valid only if intervening parties are convinced that mass killings are imminent and that it makes no sense to wait for them to start (Wheeler 2000: 34–5). In Rwanda it is argued that speedy action *before* the genocide unfolded was possible, given that there had been clear and urgent warnings to the international community (Barnett 2003: 175).

Second, it is an important cosmopolitan principle that humanitarian military interventions must be given legal authorisation at the global level. States should not be able simply to appeal to their own interpretation of cosmopolitan principles to justify military interventions without being constrained by legal procedures for determining whether or not such an appeal is appropriate. This idea is central to the Habermasian rebuttal of the ‘Schmittian’ complaint that humanitarian military intervention constitutes a dangerous moralisation of warfare:

the establishment of the desired situation of world citizenship would not mean that violations of basic human rights are evaluated and fought off in an unmediated way according to philosophical *moral* standards, but instead are prosecuted as criminal acts within a state-ordained legal order.

(Habermas 1999a: 269)

Humanitarian military interventions are conceived not so much as a species of war but rather as *police actions* designed to enforce cosmopolitan laws (Kaldor 2003: 134). One can even imagine with Daniele Archibugi the establishment of a world court to act as a deliberative body or to determine publicly whether humanitarian crimes are serious enough to merit military intervention (Archibugi 2004c: 10). In addition, members of global civil society and regionally active civil society groups, aided by the world press, may have a significant role in forming public opinion and influencing the decision to intervene and this can be taken to the point of their being

granted some kind of formal institutional representation at the global level (Archibugi 2004c: 12; Kaldor 2001: 119–24). The aim in all cases is to maximise the role that genuine humanitarian concerns play in deliberation leading up to any decision over the use of force and to minimise the possibility of humanitarian concerns acting as a cover for other interests.

Third, cosmopolitan criteria must be established concerning the *conduct* of humanitarian military intervention. These include restrictions on military conduct familiar from international law: intervening states must not put innocent persons at risk in order to protect the lives of their own forces and the rights of enemy soldiers and non-combatants must be respected. Restrictions should be placed on the bombing of ‘dual-function’ facilities that have both military and civilian functions and are ‘vital to the minimal functioning of the society’, such as the infrastructure guaranteeing the provision of electricity, clean water, medical care and basic sanitation (Shue 2003: 108–9). In the face of the threat of ‘total war’ it is imperative to preserve ‘some minimal form of human society to continue during the war’ (Shue 2003: 102). Rawls puts it simply: ‘well-ordered peoples must respect, so far as possible, the human rights of the members of the other side, both civilians and soldiers’ (Rawls 1999: 96). The most distinctive contribution of cosmopolitanism lies in its account of changes in military strategy necessary if militaries are to respond to violations of humanitarian law in a humanitarian way. There is a commitment to training, equipping and motivating military forces to engage in civil rescue operations, humanitarian missions and reconstruction. ‘Cosmopolitan-minded militaries’ differ from conventional state-based militaries: ‘unlike war-fighting, in which the aim is to maximise casualties on the other side and to minimise casualties on your own side . . . cosmopolitan law-enforcement has to minimise casualties on all sides’ (Kaldor 2001: 129–30). The strategic imperative of cosmopolitan militaries is not primarily to win wars or overpower an enemy, but to see military victory as a means of securing the end of state-organised atrocities: ‘Whereas the soldier, as the legitimate bearer of arms, had to be prepared to die for his country, the international soldier/policeman risks his or her life for humanity’ (Kaldor 2001: 131). Military strategies must be designed to ‘protect citizens and stabilise war situations so that non-extremist tolerant politics has space to develop’ (Kaldor 2003:

134). The more optimistic cosmopolitan may look forward to a time when ‘military forces may move . . . to the forefront of the movement concerned with seeing in a more just, equitable and humane world, to become a kind of global social movement for peace and security, or a true “force for good”’ (Elliott and Cheeseman 2002: 55). In all cases the central challenge is to carve out a form of military intervention that can respond to the charge that any military response necessarily involves unacceptable destruction of human life and social infrastructure.

When we consider the rigorous criteria of justification, authorisation and military conduct that have to be met if a military intervention is to be legitimated in humanitarian terms, it becomes clear that the new cosmopolitanism intends to strike a balance between its commitment to the protection of human rights, by force if necessary, and its commitment to perpetual peace and the abolition of war. The concern that humanitarian military intervention enables imperial powers to intervene in the internal affairs of less powerful states is allayed by the high hurdles any intervention has to jump to warrant the label of humanitarian. This is as it should be. However, the very height of the hurdles creates its own problems. In the spirit of Rawls, the new cosmopolitanism offers a set of principles which prescribe how military action ought to be carried out in an ideal world in which states are motivated by cosmopolitan norms, international bodies exist to render an authoritative judgement about the need for intervention and military forces are trained and motivated to enforce cosmopolitan laws. Idealisations are injected into every stage of this theory. It describes how military action should be carried out in a more or less cosmopolitan world but says little about what happens in the face of the ‘non-ideal’ complexities of a world order in which powerful states have interests that conflict with cosmopolitan purposes, human rights law and international criminal law lack reliable enforcement mechanisms, and military forces are tied to the organising principle of the nation-state. When we factor in the ‘non-ideal’ conditions of the actual world order, its shifting hierarchy of powers and the passions, prejudices and particular interests of political life, the original sense of equivocation is destined to return. For in any particular case an actual ‘humanitarian military intervention’ is bound to fall short of the high ideals set out within the cosmopolitan framework.

Powerful states or groupings of states undoubtedly pursue geo-strategic interests in conflict with cosmopolitan norms. They not only have the greater capacity to intervene militarily but more influence than weaker states over the interpretation of international law and over the determination of what is and is not a 'supreme humanitarian emergency'. In the face of these considerations, cosmopolitans may focus less on the motives of intervening actors than on the consequences of their military actions. Nicholas Wheeler, for instance, is prepared to endorse distinctively non-humanitarian motivations on the part of intervening states if the interests of the victims are nonetheless met. The complaint that state actors might have ulterior motives for intervention 'is an objection to humanitarian intervention only if the non-humanitarian motives behind an intervention undermine its stated humanitarian purposes' (Wheeler 2000: 39). On the other hand, Richard Falk has argued that we cannot overlook the extent to which 'interventionary claims are exclusively mounted by powerful states that have often in the past put forward self-serving rationalizations for their questionable uses of force to coerce weaker countries with what appears to be an anti-humanitarian net-effect' (Falk 1998: 98). Faced with the coincidence of instrumental and ethical concerns among intervening powers, cosmopolitans may be forced to choose between endorsing humanitarian military intervention despite the motives of intervening powers (e.g. for geo-political advantage or for control of oil resources) or rejecting humanitarian military intervention despite the urgent plight of the victims of terror for fear of the advantages accruing to the powers that intervene.

The principle that humanitarian military interventions should be authorised by an appropriate international decision-making procedure should also address the unsatisfactory character of existing institutional arrangements. According to the Charter, the Security Council has the authority to determine whether or not a particular emergency calls for the use of military intervention to restore international peace and security. No mention is made of military intervention to enforce respect for fundamental human rights, though during the 1990s the Security Council has interpreted threats to international peace and security more widely to include humanitarian crimes under this register (Holzgrefe 2003: 41–3). The Security Council, however, retains the discretion to interpret its mandate as

it sees fit and the current arrangement, which allows humanitarian actions to be vetoed by one or more of the permanent members of the Security Council, makes the decision to enforce humanitarian law responsive to the political interests of a minority of powerful states (Archibugi 2004c). Faced with the absence of satisfactory international institutions, cosmopolitans may be forced to choose between endorsing illegal action by a particular state or coalition of states to protect human rights by force or staying loyal to an international legal authority which is incapable of offering an effective regime of rights enforcement but at least contains powerful states within the framework of international law.

Cosmopolitans clearly divide and are divided over this issue. In his discussion of NATO's unauthorised intervention in Kosovo, Jürgen Habermas makes allowances for 'emergency situations' that might entitle democratic states or regional alliances of democratic states to intervene without the formal authority of the United Nations. He reaches this conclusion as a consequence of the tension between legitimacy and effectiveness brought about by the low level of the institutionalisation of cosmopolitan law: 'the dilemma of having to act as though there were already a fully institutionalised global civil society . . . does not force us to accept the maxim that victims are to be left at the mercy of thugs' (Habermas 1999a: 271; see also Wheeler 2000: 41–4). Against this, Daniele Archibugi is circumspect about states or regional bodies acting outside existing frameworks of international law. He argues that 'the authority of the United Nations ought to be preferred to unilateral decisions taken by states or state alliances' and that discretion leads right back to a 'state of nature' where states decide on the basis of their own interests when and how to carry out acts of military intervention (Archibugi 2004c: 9). Chomsky puts the case bluntly. In the 'real world' there are only two options: on one side, 'some kind of framework of world order, perhaps the UN Charter, the International Court of Justice, and other existing institutions, or perhaps something better if it can be devised and broadly accepted'; on the other side, 'the powerful do as they wish, expecting to receive the accolades that are the prerogative of power' (Chomsky 1999: 154).

Finally, the obstacles to reforming military forces and strategic cultures to suit the imperatives of cosmopolitan law enforcement are stark. National military forces are often unable and unwilling to

conduct themselves in anything like a cosmopolitan fashion. They are trained and equipped for combat, not for rescue operations, and intervening powers are often unwilling to risk their own troops for the sake of saving strangers. Humanitarian missions may be carried out in circumstances where the distinction between combatants and non-combatants is blurred, so that military forces trained to fight clearly recognisable opponents struggle to adapt to demanding new conditions. Humanitarian missions require political skills such as winning the respect of the local populations in targeted regions and working with locally based civil society groups, and existing military forces are frequently unable or unwilling to carry out the basic functional requirements of this political purpose. In these circumstances it is possible reluctantly to endorse military intervention on the grounds that some kind of response is better than none in the face of humanitarian crimes; it is equally possible reluctantly to condemn military intervention because the proposed remedy does not live up to cosmopolitan criteria.

In all cases we are confronted with reluctance against reluctance: a reluctance to endorse a humanitarian military intervention that does not live up to cosmopolitan criteria versus a reluctance to absolve powerful states of their responsibility in the face of humanitarian catastrophes. Once the ideal character of this cosmopolitan approach is brought down to earth, we discover that equivocation returns. This is not a reason to dismiss it. Cosmopolitan theories of military intervention perform important functions: they clarify and systematise our convictions, they provide a framework for making judgements in particular situations; they act as a stimulus for legal and institutional reforms. However, specification of criteria does not resolve ambivalence; it lifts it to another level. The downside of the specification of criteria is the radical indeterminacy present in their application to concrete situations.

There have been various attempts to resolve the problem of radical indeterminacy. Consider, for example, the concept of 'responsibility to protect' which was formulated by the high-profile International Commission on Intervention and State Sovereignty set up by the Canadian government in 2001. It called for a fresh approach that looked at the problem from the victims' point of view and replaced what it saw as the atavistic terminology of sovereignty and human rights with the new language of 'responsibility to protect' (Bellamy

2005). It holds that the primary responsibility to protect lies with the host state. If the host state proves unwilling or unable to fulfil its responsibilities, then secondary responsibility lies with domestic authorities working in partnership with outside agencies. If both these levels fail, then a humanitarian emergency warrants outside intervention. At this level it accepts the view that legal authority for action is vested in the Security Council and that states should always seek its authorisation before using force. If the Security Council is deadlocked, then the potential intervener or interveners should approach the General Assembly. If that fails to produce a result, outside states should intervene if possible through regional alliances. The Commission supported the principle that, should the Security Council fail to fulfil its responsibility to protect because of a veto by one of its permanent members, then other states may take it upon themselves to act. It places on the Security Council two 'just cause thresholds' for intervention (large scale loss of life and ethnic cleansing) and four 'precautionary principles' (right intention, last resort, proportional means and reasonable prospects of success).

The report expressed a growing consensus in international law for the desirability of intervention in supreme humanitarian emergencies when authorised by the Security Council and perhaps a more contested acceptance that unauthorised interventions may be legitimate if the Security Council is deadlocked. This reformulation of the problem is illuminating in various ways but it does not and cannot resolve the initial ambivalence. As Alex Bellamy demonstrates in relation to Darfur, the language of 'responsibility to protect' can be mobilised to legitimate opposition to intervention in humanitarian emergencies as well as to support it (Bellamy 2005: 40). In Darfur, the responsibility to protect has generally been attached to the Sudanese host government, not with the Security Council, notwithstanding the charges of genocide laid against the host government.

DEBASING THE COINAGE

Equivocation cannot be resolved through the specification of ever more rigorous criteria or through its reformulation in terms of a new legal vocabulary. Its resolution always involves the exercise of political judgement (Ferrara 2007; Fine 2008 forthcoming). This can

be illustrated by considering the stance taken by Jürgen Habermas in relation to NATO's intervention in Kosovo and then the US-led invasion of Iraq (Smith 2007a). In general, Habermas endorses the argument that 'confronted with crimes against humanity, the international community must be able to act even with military force, if all other options are exhausted' (quoted in Postel 2002: 1–2). He is in no doubt that the legal doctrine of absolute sovereignty must be revised: 'since human rights would have to be implemented in many cases despite the opposition of national governments, international law's prohibition on intervention is in need of revision' (Habermas 1998: 182). With these principles in mind, he offers a cautious but nonetheless decided defence of NATO's intervention in Kosovo in 1999 and openly condemns the war in Iraq in 2003 (Habermas 2003; Habermas and Derrida 2003a; Smith 2007a).

Habermas attributes his own guarded support for the intervention in Kosovo partly to learning from the history of the UN's inability to protect Bosnian Muslims in the declared 'safe area' of Srebrenica in 1995. His basic case is that notwithstanding the absence of legal authorisation the intervention in Kosovo was right because of the urgency of stopping the ethnic cleansing then taking place. He endorsed the official characterisation of the intervention as an 'armed peace-keeping mission' triggered by an emerging humanitarian catastrophe (Habermas 1999a: 269). While he recognised that the campaign of ethnic cleansing intensified during the bombing, he did not see this as a reason to withdraw support for NATO's actions: 'even though Milosevic is using the NATO air war to force his policy to a bitter conclusion, depressing scenes from the refugee camp do not reverse the relations of causality' (Habermas 1999a: 264). The Kosovo intervention seemed to Habermas to constitute a reasonable attempt to pursue 'the politics of human rights' in the context of a drastically imperfect global order.

Habermas qualified his support by maintaining that the Kosovo intervention should not be treated as a precedent: 'NATO's self-authorization should not be allowed to become the general rule' (Habermas 1999a: 271). It should be seen rather as a stimulus to accelerate the transition from classical international law, based on state sovereignty, to a cosmopolitan legal order. Habermas was concerned over the lack of an explicit UN Security Council resolution to back the use of military force but regarded the situation so grave

that military intervention was justified *as an exception*. Whilst he placed great weight on the fact that the intervention was supported by a majority of *democratic* nations, he acknowledged that in a world in which human rights were more firmly embedded within an international legal framework such atrocities would be prosecuted as criminal acts within a legal order. He argued that the realisation of this vision of a cosmopolitan legal order would require sweeping reform of existing arrangements, including the reform of the Security Council and the establishment of the binding jurisprudence of the International Criminal Court and International Court of Justice (Habermas 1999a: 269; 2006: 173–4). As William Smith observes, ‘the absence of these institutional arrangements places the politics of human rights in the invidious position of being a mere “anticipation” of the prospective legal order it simultaneously tries to promote’ (Smith 2007a).

In 2003 the war in Iraq confirmed Habermas’s worst fears that the ‘state of exception’ was becoming the rule – precisely in the way that the followers of Carl Schmitt might predict (Agamben 2005). The apprehension he expressed during the Kosovo emergency appeared to be actualised in the Bush-Blair doctrine: ‘if the regime of international law fails, then the hegemonic imposition of a global liberal order is justified, even by means that are hostile to international law’ (Habermas 2003: 365). Habermas maintained that the US, with the support of the UK government, acted as a unilateral hegemon outside of international law and international institutions. There was no convincing authorisation for the war, no immediately pressing humanitarian emergency, no clear indication that the military intervention was a last resort and no efficiency threshold in terms of the harm the military action itself might create. There were deep divisions among democratic nations concerning the legitimacy of the invasion and rather than accelerate the transition from state-based international law to cosmopolitan law the effect of the war was to discredit the very idea of humanitarian military interventions (Roth 2004).

Habermas contrasts the ‘Anglo-American’ approach to international law, based on an unhealthy mix of strategic instrumentalism, moralism and withdrawal, with the ‘European’ orientation towards the establishment of a cosmopolitan legal order. A sense of disappointment inhabits the text: ‘For half a century the United States

could count as the pacemaker for progress on this cosmopolitan path. With the war in Iraq . . . the normative authority of the United States of America lies in ruins' (Habermas 2003a: 365). He views these opposing perspectives on international law as seriously dividing the West and making the development of a cosmopolitan approach within the European Union all the more urgent.

LAW AND JUDGEMENT

There is an admirable boldness to the manner in which Habermas attempts to resolve the ambivalences of the cosmopolitan thinking without losing sight of the cosmopolitan end.² He shows an awareness of the need for political judgement rather than rely exclusively on the application of more or less precise legal criteria. For the cosmopolitan to face up to the violence of the age, it is never just a question of mechanically applying pre-given principles to concrete instances; there is always a moment of judgement that mediates between the constitutional principles of international law and their application to particulars. Unlike Rawls, who seems to limit the role of judgement to the application of established principles to particular circumstances, Habermas leaves space for the reflexive elaboration of cosmopolitan principles in the light of our experience of actual interventions. He views experience as a learning process in which we learn to deal with the dangers of slippage, for example, from the making of an exception in international law to the treatment of the exception as the rule or from the judgement of states as outlaw states to the judgement of peoples as outlaw peoples.

Habermas confronts these difficulties but in so doing encounters new difficulties. There is something unsettling about his repeated argument that political judgement is necessary *only* because the constitutionalisation of international law is not yet complete. From this perspective, it might appear that when the transition from classical international law to cosmopolitan law is complete, then the role of political judgement can be surpassed. If this is a vision of finally overcoming political judgement through the procedures of international law, then it is not obviously desirable or plausible. The question is whether political judgement is a stop-gap measure necessary in the absence of clear, concise and authoritative criteria of justification, or rather an irreducible aspect of justifying,

authorising and monitoring military interventions. Habermas does not altogether neglect the role of global civil society in publicising the conditions which might make us wish to support or oppose humanitarian military interventions and in influencing those who make the decisions to intervene. The worldwide publicity over the massacre at Srebrenica and the worldwide demonstrations against the invasion of Iraq are cases in point. However, in his vision of the cosmopolitan order to come, deliberations conducted in the public sphere are channelled strictly into avenues of international law, legal judgement, law enforcement and police action.

One can understand the reasoning behind this move to re-position humanitarian military intervention within the confines of international law. It stems from a legitimate attempt to put an end to merely moral justifications of the use of force and to confront the danger of a political power using human rights talk as a spurious justification of military aggression or imperial conquest. The constitutionalisation of international law appears as the cosmopolitan answer to the Schmittian complaint: 'He who invokes humanity wants to cheat.' However, this defensive strategy transfers responsibility for making difficult judgements, in which the values of upholding human rights, seeking peaceful resolution of disputes and respecting national sovereignty are necessarily weighed against one another, from political argument to the legal system. This transfer of responsibility may appear as an attractive strategy in the face, for instance, of unconvincing attempts by the US and UK governments to use justifications of a humanitarian kind for military intervention in Iraq. The perception that this use of humanitarian justifications was in fact an abuse has not only discredited the capacity of the US and its allies to act as bearers of the humanitarian norm but has also cast doubt on the validity of the norm itself. In the face of this dispiriting conclusion the legalisation of the norm appears to have the advantage of rescuing the norm from its political critics by isolating it from the distortions of power.

The difficult question is whether the turn to international law can carry the weight the new cosmopolitanism puts on its shoulders and whether humanitarian military intervention has to be juridified to be justified. I do not wish to argue that Habermas and other cosmopolitans are wrong to defend juridical and procedural mechanisms for justifying, authorising and conducting interventions, only that

a *politics* of intervention would not disappear in a regime of 'cosmopolitan law enforcement'. The image that cosmopolitan law can substitute for cosmopolitan political argument forgets that one has to be angry about atrocities being committed somewhere else in the world to want to do something about them and to risk lives to stop them. The unkindest image I sometimes have of legal cosmopolitanism is that we can have the same politicians in power in Western states but that we would go to war for humanitarian reasons because a group of judges say we should.

There is also a residual state-centred quality to this kind of legal imagination. Cosmopolitanism does not have to be attached to the notion that only states, individually or in concert, have the responsibility to protect people against organised terror, expulsion and annihilation. The responsibility to protect has a more universal application within cosmopolitan thought. It might include, for instance, publicity and support for civil rights movements, free trade unions, women's equality movements and democratic political parties in atrocity-committing regimes, and safe havens for refugees in search of asylum from these regimes, rather than or in addition to state-based armed interventions. We should not forget that genocide in Rwanda was terminated neither by Western states nor by the UN but in this case by the Rwandese Patriotic Front and Army.

Finally, humanitarian military interventions are likely to give rise to reactive forms of resistance in the name of anti-imperialism. It is a matter of political judgement, however, whether such 'resistance' is justified. Today we see a resistance which increasingly glorifies violence, demonises its enemies and loses touch with the values of political democracy and post-traditional civil society. In these circumstances, cosmopolitanism involves not only an appeal to the constitutional principles of international law but a political critique of the world view which feeds the sheer negativity of this form of resistance.

- 4 I am thinking in part of the UN's interventions in Congo in the 1960s, Somalia, Cambodia, Rwanda and Bosnia in the 1990s, many of which failed but nonetheless offer a sobering reminder of why we need an international organisation. I am also thinking of the many UN sub-groups – UNESCO, UNICEF, WHO, UNRWA, UNHCR, UNCTAD, ICTY, ICC, etc. – which tend to do the 'soft' and routine tasks of international regulation and assistance.
- 5 It reveals, for instance, the one-sidedness of the 'American' argument that there is something deeply problematic about international law simply because of its lack of democratic legitimacy; for this draws a misleading parallel between constitutionalism at national and international levels. It also reveals the one-sidedness of the 'European' claim for the legitimacy of international law based exclusively on the substantive ground of its protection of human rights and the fair outcomes this generates.
- 6 Reference to the history of US commitment to an internationalist strategy has an element of truth to it. We only have to think of the impetus President Wilson gave to the formation of the League of Nations and the Kellogg-Briand Pact (proscribing wars of aggression) after the First World War and the establishment of the Nuremberg Charter and Tribunal, the UN and the Universal Declaration of Human Rights after the Second World War. Eleanor Roosevelt famously wrote in 1948: 'Taken as a whole, the Delegation of the United States believes that this a good document – even a great document – and we propose to give it our full support. [...] This Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere.' Even Ronald Reagan was moved to say in 1989 that 'For people of good will around the world, that document is more than just words: It's a global testament of humanity, a standard by which any humble person on Earth can stand in judgement of any government on Earth' (http://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights). Talcott Parsons, observing that the US involvement in the Second World War was a break from the isolationism that had often marked its history, pushed hard for more vigorous and international law-abiding US involvement in the world scene.
- 7 Consider Hannah Arendt's citation of Montesquieu's insight in *On Revolution*: 'only power arrests power'.

5 Cosmopolitanism and humanitarian military intervention

- 1 This paper arises out of joint research with William Smith. I am extremely grateful for his generous and wise collaboration. Our research was funded by the ESRC New Securities Programme, directed by Stuart Croft, and I am grateful to the ESRC for its support.
- 2 The virtue of Habermas's approach lies in the concreteness of his judgement and his own readiness to make a decision in the face of

ambivalence. We may or may not agree with his judgements but he does not shy away from making them. We may question, for example, the legitimacy of the contrast he draws between Anglo-American unilateralism and European multilateralism, but we know where he stands. There is an interesting contrast in this respect between Habermas and Derrida. In his dialogue with Habermas on *Philosophy in Terror* Derrida also looks on the violence of the world through a cosmopolitan gaze. He at once expresses support for the establishment of a UN army as an effective intervening force and articulates his own equivocation over this proposal:

I am not unaware of the utopic character of the horizon I'm sketching out here, that of an international institution of law and an international court of justice with their own autonomous force . . . this unity of force and law is not only utopic but aporetic . . . we would be reconstituting a new figure . . . of universal sovereignty, of absolute law with an effective autonomous force at its disposal.

(Habermas and Derrida 2003a: 114–15)

Ambivalence punctuates every dot and comma of Derrida's text:

The Progress of cosmopolitanism, yes . . . But cosmopolitanism . . . presupposes some form of state sovereignty, something like a world state . . . The state is . . . at once remedy and poison.

(Habermas and Derrida 2003a: 123–33)

I am less convinced than Derrida that we should pin our faith on the building of a UN army or that we can simply declare our ambivalence in general philosophical terms. Cosmopolitanism must be able to draw upon the resource of political actors capable of making complex and informed judgements on urgent questions of public deliberation. It has to *grapple* with ambivalence.

We seem to be increasingly haunted by the spectre of terrorism: images of 9/11 and 7/7, images of the beheading of hostages, images of the suicide bombing of many innocent civilians by the 'resistance' in Iraq. On the surface, much of this terrorism appears to have lost all rational connection with political instrumentality and appears distinct from the traditional terrorism that has marked national movements in, say, Algeria or Ireland, or even in Israel/Palestine. On the other side, it may well be the case that under current American leadership much of what is called the 'war on terror' works to 'regenerate the causes of the evil they claim to eradicate' (Habermas and Derrida 2003a: 100). The cosmopolitan outlook is a refusal to lose our sense of astonishment in the face of either form of violence and an understanding that we are not

defenceless. In seeking an alternative to the ill-defined ‘war on terror’, it declares that international law must be respected and made effective. In resisting terrorism, it reminds us that ‘those called “terrorists” are not in this context “others” whom we as “Westerners” can no longer understand. We must not forget that they were often recruited, trained, and even armed, and for a long time, in various Western ways by a Western world that itself . . . invented the word, the techniques and the politics of “terrorism”’ (Habermas and Derrida 2003a: 115).

Law and politics are the two sides of the cosmopolitan coin: they bring together institution and outlook, judgement and understanding. Were judgement split from understanding, law might revert to demonisation of the perpetrators. Conversely, were understanding split from judgement, politics might revert to mere justification of the perpetrators. The function of international law is not to demonise those who commit crimes but to hold them responsible for their actions and thereby to humanise them. The function of political understanding is not to justify the crimes such perpetrators commit – whether in the name of other crimes committed by the West or of higher motives projected onto the perpetrators themselves – but to confront the politics of subjectivity that celebrates terrorism as the method of choice.

6 Cosmopolitanism and punishment

- 1 I am thinking of intellectuals such as Albert Camus, Raymond Aron, Arthur Koestler and Hannah Arendt herself, and civil society groupings like the Bertrand Russell Tribunal. This tribunal was designed to investigate and publicise war crimes by American forces and its allies during the Vietnam War. It was constituted in November 1966 and conducted two sessions in 1967. Representatives of eighteen countries participated in the tribunal, which called itself the International War Crimes Tribunal. More than thirty individuals testified or provided information, among whom were military personnel from the United States and both sides in Vietnam (http://en.wikipedia.org/wiki/Russell_Tribunal).
- 2 In the 1963 Auschwitz trials in Frankfurt the West German authorities decided to use domestic rather than international law to handle the prosecution of personnel from the extermination camp. The leading prosecutor, Fritz Bauer, urged Germans ‘to understand their inner responsibility and not take the easy way out’. The defendants were accused of murder and to secure conviction the prosecution had to prove not that they were merely carrying out orders but that they were sadists who killed at whim and on their own individual initiative. The resulting press coverage turned into what Wittman called a ‘pornography of the Holocaust’ and allowed ordinary Germans to distance themselves from the crimes on display. Arendt points out in her account of the trial that the defence was based on the little-man theory that ‘the defendants had been forced to do what they did and