

Non-Interventionism - the Forgotten Doctrine

Speech at Rhodes Forum, 2014 on "Preventing World War through
Global Solidarity - 100 years on"

Plenary session on "World Order and the Politics of Regime Change"

John Laughland

Non-interventionism: the
forgotten doctrine

John Laughland
Director of Studies
Institute of Democracy and Cooperation
(Paris)

I would like to draw attention to a specific characteristic of Western-backed regime change as it has been practised in recent years and decades. In nearly all cases, regime change has been accompanied by criminal prosecution of the old regime. To take just the most recent cases, Western intervention in Ukraine¹ has been accompanied by a decision to put Ukraine under the jurisdiction of the International Criminal Court for the period 21 November 2013 - 22 February 2014.² This means that the ICC will be able to prosecute the old Yanukovich regime for war crimes but not the new government, even though the new regime has fighting a war since April whereas Yanukovich never fought one at all.

¹ On Western intervention in Ukraine, see Bernard-Henri Lévy's speech on Maidan Square, 9 February 2014. <https://www.youtube.com/watch?v=qRiJvLi6YKw> starting at 1.39, "Vous avez, ici même, à Kiev, dans les missions diplomatiques de Kiev, des hommes et des femmes qui pensent comme vous, qui travaillent avec vous ... ils savent que si vous perdez, ils perdront aussi." The published version of the speech is a little more colourful - and more explicit: " Vous avez, ici même, dans les missions diplomatiques européennes, des amis de l'ombre dont je puis vous dire qu'ils sont de cœur avec vous et qu'ils œuvrent en votre faveur." <http://laregledujeu.org/bhl/2014/02/11/bernard-henri-levy-«-nous-sommes-tous-des-ukrainiens-»/>. The purpose of Western intervention, as Lévy suggests, was to cause Ukraine to adopt a pro-Western geopolitical orientation. See also Victoria Nuland, Assistant Secretary of State, who approvingly quoted an unnamed Ukrainian businessman saying, "The Maidan Movement's greatest achievement is that it has proven that the people of Ukraine will no longer support any president -- this one or a future one -- who does not take them to Europe." Speech to US-Ukraine Foundation Conference, 16 December 2013, <http://iipdigital.usembassy.gov/st/english/texttrans/2013/12/20131216289031.html#axzz3DmPKwgzH>

² http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/pr999.aspx



By the same token, as you know, the NATO attack on Libya in 2011, the purpose of which was regime change³, was accompanied by an indictment of Colonel Gaddafi by the ICC, just as the Western intervention in Ivory Coast was accompanied by a prosecution of the then president, Laurent Gbagbo.

By the same token, the bombing campaign which has just started against the Islamic State is justified exclusively in terms of the alleged criminality of that regime, just as were the calls for regime change in Syria in the period 2011 - 2013.⁴ If we go back further in time we can all recall the trials of Slobodan Milosevic and Saddam Hussein, both forced from power by Western intervention, as well as the activities of the International Criminal Tribunal for Rwanda whose professional goal is to cement the regime change effected in 1994.

The punishment ethic in
international relations:
from 1914 to 2014

These examples show how what I have called "the punishment ethic" now dominated Western foreign policy. It is important that we understand that this is a new development. According to the traditional laws of war, an enemy is not a criminal: a soldier in uniform, and some categories of irregular fighters, are exempt from the normal criminal law, according to the old tradition that they are *iustus hostis*, justified enemies with a right to fight.⁵ A captured soldier is not usually tried for murder.

It so happens that we can date with precision the moment when this punishment ethic made its dramatic entrance onto the world stage. I believe that it has never left the stage since. It occurred on 23 July 1914, when the Austrian

³ Alain Juppé, then French Foreign Minister, admitted on Europe 1 on 21 October 2011, the day after Gaddafi was assassinated, that regime change had been the goal all along: L'opération militaire est terminée. L'ensemble du territoire libyen est sous le contrôle du Conseil national de transition et, sous réserve de quelques mesures transitoires, l'opération de l'Otan est arrivée à son terme. L'objectif qui était le nôtre, c'est-à-dire accompagner les forces du Conseil national de transition dans la libération de leur territoire, est maintenant atteint. Notre but était de le forcer (Kadhafi) à abandonner le pouvoir. »

⁴ President Obama has promised to "destroy" ISIS. See Statement by the President on ISIL, 10 September 2014: <http://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1>

⁵ This is the argument made in Carl SCHMITT's *Der Nomos der Erde*



government delivered its ultimatum to Serbia. The day before, the Austrian Foreign Minister, Count Berchtold, sent to other European powers explaining Vienna's position. The note contained this paragraph:

The Imperial and Royal Government is convinced that in taking this step it will find itself in full agreement with the sentiments of all civilized nations, who cannot permit regicide to become a weapon that can be employed with impunity ...⁶

The Austrian government wanted to end impunity.

Now, this slogan - "end impunity" - has been adopted in recent years by countless NGOs, lobbies and pressure groups, as well as by governments and international organisations like the United Nations and the European Union. We can see here on the slides just a few examples.



X 6

All these organisations believe themselves to be at the cutting edge of modern, progressive, fashionable and even post-modern politics. Yet the expression originates from the decidedly unfashionable and old-fashioned *k. und k.* government in Vienna.



⁶ Graf Berchtold to Herr von Mérey, Austrian ambassador to Italy, 22 July 1914.



The punishment ethic not only caused the outbreak of war; it also dictated the way the war was fought and the way it was concluded. The fighting was immediately seen almost uniquely through the prism of crime and punishment, good and evil. Suggestions of a negotiated peace were brushed aside for this reason - and also because of apocalyptic theorising about "a war that will end war"⁷. The British quickly compiled accounts of German war crimes in the notorious Bryce Report of May 1915⁸, while the Germans responded with *tu quoque* arguments and were convinced that the French were degenerate.⁹

The punishment ethic also brought the war to an end, with the famous guilt clause (Article 231) of the Treaty of Versailles and the punitive reparations imposed on Germany. Austria suffered even worse than Germany: she was dismembered as a state by the Allies and her emperor, Charles, was sent into ignominious exile where he died from a cold, aged 35, because he had no money to heat the house someone had lent him in Portugal.

Now, I do not want to place all the blame on Austria, not only because our panel is chaired by Professor Köchler, but also because numerous intellectual currents from the 19th century fed into it from across Europe. Among these were the notion of civilisational hierarchy between states, made respectable by liberal international lawyers who developed legal codes for the civilised world. Darwinism was also a big factor - the idea that, through struggle, humanity, like the rest of the world, evolved to ever higher stages. But it is clear that the Austrian ultimatum, with its assumption that one state had the right to punish another, and with the affirmation that the other states were criminally guilty¹⁰, put an end to the old concept of the sovereign equality of states.

This old understanding of sovereign equality was not a fiction. Since at least the 14th century, peace treaties in Europe had been concluded on the basis of amnesty clauses. All previous wrongs were explicitly erased from legal memory and prosecutions were forbidden for acts committed during the fighting. This practice was so central to tradition that the greatest theoreticians of international law in the 17th and 18th centuries, such as Hugo Grotius¹¹ and Emmerich de Vattel¹², agreed that amnesty was an inherent part of any peace treaty.

⁷ H G WELLS, *The War that will end War*, London: Frank and Cecil Palmer, 1914.

⁸ See Philip KNIGHTLEY, *The First Casualty, The War Correspondent as Hero and Myth-Maker from the Crimea to Kosovo*, (London: Prion Books, 2000)

⁹ Otto von STÜLPNAGEL, *Die Wahrheit über die deutschen Kriegsverbrechen* (Berlin: Staatspolitischer Verlag, 1921). Radhabinod Pal quotes a letter from the German Kaiser Wilhelm to his Austrian counterpart saying that the French are degenerate and need to be treated harshly. in his *Dissentien Judgment* at the ILT in Tokyo, p. 620.

¹⁰ <http://wk1.staatsarchiv.at/diplomatie-zwischen-krieg-und-frieden/oesterreich-ungarns-ultimatum-an-serbien-1914/#/?a=artefactgroup8>

¹¹ Hugo Grotius, *The Law of War and Peace* (1625), Book 3, Chapter 20, XV.

¹² Emmerich de Vattel, *The Law of Nations* (1758) Book IV Chapter 2, par. 20.



Emmerich de Vattel, *The Law of Nations* (1758)
Book IV Chapter 2, par. 20.

An amnesty is a perfect oblivion of the past;
and the end of peace being to extinguish all
subjects of discord, this should be the leading
article of the treaty ... But even if the treaty is
wholly silent on this subject, the amnesty, by
the very nature of peace, is necessarily
implied in it.

We can see this ethic represented visually Velazquez's great painting of the *Surrender of Breda* which shows the defeated Dutch prince, Justin of Nassau, to the Spanish Genoese general, Ambrogio Spinola.



The painting shows the reconciliation between the two military chiefs, the victor inclining himself gracefully towards the defeated man who symbolically hands over the key to the city.



Today, by contrast, we have got used to the idea that the defeated enemy is treated as a criminal.





War is no longer regarded as a conflict between conflicting rights and claims but instead in apocalyptic terms which make negotiation impossible: 18 September, the Ukrainian president, Petro Poroshenko, told the US Congress, to wild applause, that the conflict in his country was a conflict between "civilisation and barbarism".¹³ I am, incidentally, convinced, that the more the American constitution is destroyed from within by centralisation at the federal level, the more the old pre-Constitution ethic of America prevails, in particular the apocalyptic millenarianism of the original fundamentalist Pilgrim Fathers, expelled from England after the Restoration in 1660 because even the English Protestants regarded them as extremists.

The punishment ethic also dictated the war the Second World War was fought and ended. There was no peace treaty in 1945 but instead the Nuremberg and Tokyo trials. Paradoxically, however, the punishment ethic was used, this time, to try to restore the concept of the equality between states.



The chief prosecutor at Nuremberg, Robert Jackson, made the link between the trials and the new United Nations quite explicit in his opening speech to the court:

This trial is part of the great effort to make peace more secure. One step in this direction is the United Nations organization, which may take joint political action to prevent war if possible, and joint military action to insure that any nation which starts a war will lose it. This charter and this trial ... constitute another step in the same direction - juridical action of a kind to

¹³ <http://www.kyivpost.com/content/ukraine/full-text-of-poroshenkos-speech-to-joint-session-of-us-congress-365182.html>



ensure that those who start a war will pay for it personally.¹⁴

In the aftermath of Nuremberg, therefore, the new bodies created within the United Nations system were absolutely clear that no intervention was allowed in the internal affairs of other states. Article 2 of the UN Charter says,

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State ...

The very first case heard by the new International Court of Justice, the Corfu Channel Case ruled on in April 1949, explicitly ruled out a right to intervention:

The Court can only regard the alleged right of intervention as the manifestation of a policy of force ... (it) cannot find a place in international law.

In 1970, the General Assembly of the United Nations ruled that:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of another state.

In 1974, the General Assembly passed Resolution 3314 defining the concept of aggression and, in keeping with Nuremberg and Tokyo, explicitly stated that aggression is a crime.

No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression. A war of aggression is a crime against international peace.

In 1981, the General Assembly adopted a Resolution which rules out such interference "for any reason whatsoever" and specifically recalls

the duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States...

And the ICJ ruled in 1986, in a famous case opposing the USA and Nicaragua, there the court could not contemplate a rule allowing intervention by one state against another.¹⁵

¹⁴ The transcripts of the Nuremberg trials and many other key documents are available on the web page of the Avalon Project of Yale Law School, http://avalon.law.yale.edu/subject_menus/imt.asp.

¹⁵ Paragraph 268



**International Court of Justice, USA v. Nicaragua,
Judgment (27 June 1986)**

"The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system ... while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect."

These are excellent principles - and since the end of the Cold War, they have been totally perverted. The UN system is now unrecognisable. Since UN Security Council Resolution 688, passed in April 1991, which condemned Iraq for the repression of its Kurdish population and which was used by Britain and America as justification for its bombing campaign against that country, not only has the concept of the hierarchy of states once again become popular; worse, the United Nations itself now profiles itself as a supranational authority with the right to punish heads of state and intervene in the internal affairs of states.



The UN has created or helped create numerous international criminal tribunals, all of which incorporate part of the UN logo (the laurel wreath) into their own. The Security Council has obtained the right to refer situations to the Prosecutor of the International Criminal Court and it has used this power to impose supranational jurisdiction on states like Libya and Sudan which have never accepted it.



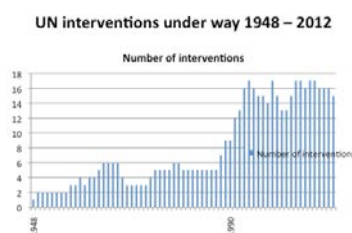
There is no more flagrant interference in the internal affairs of a state than to impose on it a treaty it has not signed; there is no more flagrant demonstration of



how the punishment ethic is based on the concept of the hierarchy of states than this.

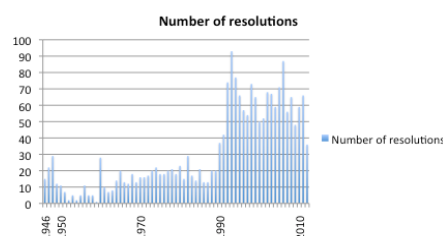
These developments have not only profoundly deformed the international system. They have also led to very serious abuses of due process - rules of evidence stacked against the defendant; false witnesses, trials in absentia, and intolerably long trials.

In parallel, the UN has also launched a host of new UN missions, or interventions, since 1990, the end of the Cold War.



This **graph** shows we see the number of UN current interventions under way in the years 1948 to 2012 . You can see the rapid increase from 1990 onwards. And in this **graph**

**UN Security Council resolutions, 1946 – 2012,
annual figure**



we can see the how the number of of UN Security Council resolutions has shot up since 1990. Indeed, the yearly average of Chapter VII resolutions since 1990 is higher than the total number of Chapter VII resolutions for the whole period 1946 - 1989.

This inflation has completely hollowed out the key concept of the UN system, that of "a threat to international peace and security". Only if there is such a threat can the Security Council invoke Chapter VII and use force. Previously, the phrase was understood to mean an attack by one state against another. Now, even a disputed election in a small African state can be declared to be a threat to international peace and security, which is clearly nonsense. Perhaps the worst abuse is the most recent: on 18 September, Thursday last week, the Security Council deemed that the outbreak



of the Ebola virus was a threat to international peace and security.¹⁶ This is simply ridiculous - and even if Ebola were such a threat, what on earth can the Security Council of the United Nations do about it? Send in NATO?

There are four conclusions we should draw from this.

First, we need to be lucid that the supranational United Nations system is not part of the solution. It is part of the problem. Not only has it failed to prevent wars of aggression, it has actively encouraged them by promoting the intoxicating view that the enemy in war is a criminal. People were lucid by 1936 that the League of Nations had failed; we need to be lucid now that the UN has failed - and for the same reasons.

Second - and these are the reasons - it has failed both institutionally and constitutionally: **institutionally** because it has itself become an instrument of unjustifiable interventionism, often based on the punishment ethic; and **constitutionally** because the sharp increase in the Chapter 7 powers of the Security Council shows the Council (and the UN generally) to be an armed organisation against which there is no possibility of redress. We have been told for decades how nation-states abuse their citizens but nation-states at least operate within a national state framework and regimes can be changed from within. By contrast, it is not possible to operate regime change against the Security Council or even to vote against it. As Edward Gibbon realised, a world power is a universal tyranny. We must liberate ourselves once and for all from the delusion that supranational organisations are more moral than national ones; they are not.

Third, abstract principles of normative international law are not sufficient to discourage interventionism. Instead, the case must be made against it on the basis of the facts. Intervention has many demerits - it can be very costly, both for the intervening state and for its target; it can make a conflict worse (the Kosovo intervention is a classic example of how to turn a small war into a big one); it can expose the intervening country to the charge of double standards; and it can of course produce unexpected or unintended consequences, of which the Islamic State in Syria is perhaps the most striking recent example.

Any enquiry into the facts of interventionism should, I believe, be inspired by the guiding principles of the Catechism of the Catholic Church on the right to self-defence. It is difficult to find better principles than these:

- **the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;**
- **all other means of putting an end to it must have been shown to be**

¹⁶ UNSC resolution 2177, 18 September 2014: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2177%20\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2177%20(2014))



impractical or ineffective;

- there must be serious prospects of success;

- the use of arms must not produce evils and disorders graver than the evil to be eliminated.¹⁷

Finally, it is this spirit that I have, with my friend David Hoile, created the Centre for the Study of Interventionism whose goal is to study not only the long legal tradition in favour of the doctrine of non-interventionism but also the track record on the ground of interventions present and past. I am convinced that the facts will help us to win the argument.

Centre for the Study of
Interventionism



¹⁷ Catechism of the Catholic Church, 2309

