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WMD: WHOSE MORAL DILEMMA?

— Shlomo Avineri

With the introduction of the concept of “Responsibility to Protect” (R2P), a new dimension has been added to the intellectual and diplomatic discourse regarding the treacherous twilight zone between international law and morality.

The 2005 World Summit and the 2006 Security Council Resolution 1674 reflected the almost universal feeling of shame that the international community stood by when genocide raged in Rwanda, and Sarajevo was under siege more than two years.

Only the massive massacre at Srebrenica, and then the threat of a near-genocidal Serbian campaign in Kosovo, pushed the US, after much hesitation, to act unilaterally, combining tough diplomacy and later the use of force to put an end to what the UN failed to prevent: Mass murder of citizens by a member state.

But even those who supported this humanitarian intervention were troubled by its unilateral nature and were trying to find an institutional formula that could legitimate it within international law.

This is what R2P tried to achieve: All former attempts to limit either the use of force or certain weapons were based on international treaties, and as such were premised on the Westphalian concept of national sovereignty.

The 1998 Rome Statute, setting up the International Criminal Court, tried overcoming this by making it possible to indict even nationals of countries which were not signatories to the treaty. But the political realities greatly limited its efficacy, and even in ideal circumstances the ICC always comes after the fact, and cannot stop atrocities while they occur.

R2P maintained that national sovereignty is not absolute. It set up the norm that “a state has a responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing,” and stipulates that if it fails to do so, “the international community has the responsibility to intervene”, including by military means “as a last option”.

While R2P is still fuzzy about implementation modalities, it is basically revolutionary, subsuming the Westphalian concept of national sovereignty under a moral umbrella and giving outside powers not only the right but also the responsibility to intervene.

Yet, if one would like to take R2P seriously and use it effectively, one has to be selective: It is here that moral choices come in, and despite the soaring universalism of Kant’s categorical imperative, it is concrete circumstances, historical memories, traumatic past experiences as well as realpolitik that inform such moral choices.

I propose to address two such choices: First, the distinction between the possession of different kinds of WMD, and then the nature and ideology of the country in question.

The Nuclear Non-Proliferation Treaty (NPT) has tried to limit the possession of nuclear weapons beyond those countries that had already possessed them when the treaty was signed (US, Soviet Union/Russia, UK, France and China). Obviously, it had limited success both in preventing nuclear proliferation as well as in monitoring signatories. Yet its aim is clear and limited: Prevention.

But when it comes to chemical and biological weapons, the challenge is not just prevention, but how to address cases in which such weapons have in fact been used. For historical reasons going back to World War I and the Holocaust, using poison gas has been universally viewed as absolutely unacceptable and the perpetrators considered punishable criminals.

The dismantling of Syria's chemical weapons, if carried out successfully, is an important sign that the use of poison gas is utterly beyond the pale. Yet to make the case absolutely clear, ultimately President Assad and the Syrian leadership have to be brought before the ICC in The Hague: There should never be absolution for the crime of using poison gas.

In retrospect, this – and not the other reasons given – should have provided the moral legitimacy for terminating Saddam's regime because of its use of poison gas against Iran as well as against his own Kurdish citizens.

In the case of Iran – where it is clear that the country has consistently lied to the IAEA, -- the question cannot be divorced from the stated political aims of the regime as repeatedly proclaimed by President Ahmedinejad when in office: The destruction of a member state of the UN.

The new Iranian President clearly uses a different rhetoric, but negotiations with Iran have to focus not only on the technicalities of nuclear develop-

ment, but clarify the political goals of the Islamic Republic. Given past threats, a clarification of its views about Israel – not its policies, but its very existence and legitimacy – would be helpful and indicative of how far the changes in Iran have been going.

In the 19th century, when international law was still in its infancy, an end was put to two abominations by a series of unilateral measures. The Royal Navy put an end to the slave trade, greatly enhancing the anti-slavery movement in the US; and the US Marines' action on the Barbary Coast helped terminate centuries-old North African piracy.

In both cases, these actions were certainly problematical in terms of respecting the rights of the countries involved. So were the 1976 Israeli Entebbe raid and the 1977 German Mogadishu raid, which rescued hi-jacked civilian passengers and created the international de facto norm that the fight against certain kinds of terrorism transcends national borders.

In both sets of cases, Westphalian notions of state sovereignty were infringed upon: Human morality was honored, respected and greatly enhanced.

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