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# Ironies of Intervention

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It is a rare privilege for me to be summoned to participate in this tribute to Professor Dean Rusk, whom I know personally as a gentle, intellectually powerful colleague. That this undertaking is both collegial and scholarly renders it a celebration especially fit for the subject honored.

Hearty thanks are due another valued colleague, Professor Gabriel Wilner, the self-effacing, persuasive organizer of this conference. His management of these affairs has been accomplished with the elegance that is characteristic of him, and I, like you, am in his debt.

Professor Wilner diplomatically suggested that I was free to say whatever I wished, but that he would be particularly grateful if I would be willing to summarize the comments of earlier speakers. It was his own form of prophylactic guidance. I am happy to comply and will do so in a highly abbreviated form.

I have detected in our deliberations this afternoon two ironies. The first is this: the dissentient receive more protection as enemies than as citizens. As we have heard today, there is greater opportunity for the assimilation of humanitarian law if the sides engaged in internal conflict are regarded as combatants and not as fellow citizens. With the application of the law of armed conflict comes the prospect that the opponents may observe some degree of mutual respect. Such dignity as the law accords thus becomes a function of formalized hostility rather than of civil affection, of open distrust rather than of assumed trust. It is an odd lesson for law to teach—better enemy than friend.

The second irony emerging from this afternoon's session is this: the opening to the civilizing influence of humanitarian law is also an opening to the uncivil involvement of other states. When internal struggles become the combat of enemies, they invite the assimilation of international humanitarian law of armed conflict. But then they also, at the same time, justify the intervention of states. With the intervention of other states comes the transformation

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and escalation of hostilities. Exactly opposing tendencies depend upon the same occasion of externalizing internal conflict.

These two ironies are markers along a path that our conversation might take: Cannot rights be vindicated without the prerequisite of formalized hostility and so without giving opportunity for legitimating the intervention of states?

I cannot escape the impression that Professors Clark and Sohn were right in directing us to consider a prophylactic or restraining rule rather than a rule of justification for the intervention of other states in internal conflicts. If the time has come—and I think that it has—when it no longer makes ethical sense to speak of "just wars," then it is also no longer appropriate to speak of "just interventions." I do not mean that there can be no grounds for intervention, only that there can be no such grounds in international law.

Negatively, a rule of non-intervention commends itself to us because the contrary rule so readily falls prey to cynical manipulation. Positively, a rule of non-intervention removes the cloak of law from suspect interventions and fitly lays upon intervenors a heavy burden of explanation and justificaton for their action.

At this point the logic of our conference agenda emerges. Just now we are encouraged to wonder whether the rights of the dissentient can draw legal protection without the necessity of declaring official enmity between the sides and so without inviting other states into the conflict. To raise the same issue in a slightly different way: Can the relation between governors and governed be internationalized while cooling, rather than heating, the role of states? The next item on the agenda is international and regional organizations. It is reasonable to suppose that hope for an answer to the question raised today lies in tomorrow's elaboration of the roles of international and regional organizations.

It seems to me axiomatic that the greater the association of humanitarian law with internal conflicts, the less need and legitimacy there is for associating states. International and regional organizations might help to fill with law the void left by the diminishing function of states. They might even help to demonstrate that—to revise and reclaim the notion with which we began this morning—the only kosher Brezhnev doctrine is one that provides for the intervention of law but not of states.