

V RIGHTS OR OBLIGATIONS TO INTERVENE?

- (i) Rights and obligations are correlative constructs and neither can exist without the other. One man's right to life is utterly meaningless unless it is matched by an obligation borne by all others not to kill him. Since the UN came into existence, the concept of human rights has developed apace because of an increasing belief in the existence of both human rights and the obligations that give essential meaning to them.
- (ii) However, in a responsible society, third parties will also have an obligation to prevent others violating those rights. Given that 'general principles of law recognised by civilised nations' are a source of international law, and given that domestic criminal legal codes invariably generate third party obligations, it is reasonable to assert that such obligations also exist in international law. It can therefore be argued that rights generate obligations not only to respect the rights of others but also to protect them from assault by third parties. Article 1 of the Genocide Convention contains such an obligation because it requires states to take action to prevent the crime being committed.
- (iii) Since rights and obligations are correlative terms, logically and in strict jurisprudential terms, a **right** by State A to intervene in State B cannot possibly exist if the basis for it is gross violations of other individual **rights** in State B. Those individual rights can only generate correlative obligations. A state has an obligation to respect the individual rights of its citizens and in general terms, particularly in relation to genocide. Any outside influence brought to bear must be regarded as a 'third party' in relation to that internal balance of rights and obligations. So the question is: do states generally have any legitimate reason for intervening to protect the rights of citizens within another state and to either prevent or punish others within that state for failing to meet the obligations that give meaning to them? If they do, that legitimacy must be based on some degree of obligation in relation to the individual rights being violated.
- (iv) This argument must be at its most powerful when the hypothetical obligation is based on a breach of a peremptory norm of international law – *jus cogens*.
- (v) Although the UN has legal personality, it is essentially its member states, individually or collectively, that have to meet their obligations resulting from international law. This is especially the case in relation to *jus cogens*. States cannot hide behind the inherent political shortcomings of an organisation that they themselves created, in order to avoid meeting their broader legal obligations. It is absurd to suggest that their willingness to meet an obligation must necessarily be thwarted by a single veto in the Security Council.⁶