

human rights as articulated the Preamble of the Charter and the Universal Declaration of Human Rights on the other. During the Cold War, territorial integrity was privileged; in the post-Cold War era, however, human rights law is gaining increasing prominence. The most recent shift is in part a response to two events: the genocides in Bosnia and Rwanda. From these events followed the implementation of the International War Crimes Tribunal, the push towards the formation of an International Criminal Court, and the British detention of General Pinochet.

A further key event in the shift towards the privileging of human rights is the intervention in Kosovo, as discussed above. Clearly NATO violated the norms of territorial integrity and non-intervention set out in Article 2 of the UN Charter. In addition, NATO rejected the terms of Article 53, that no enforcement action shall be taken under regional agencies without the authorization of the Security Council. It is significant that this intervention was justified on the basis of human rights.

There are several legal foundations for humanitarian intervention in international law, such as the Universal Declaration of Human Rights, a number of UN conventions, and the many regional declarations on human rights (particularly those articulated by the European community). In addition, there is a vast body of jurisprudence on human rights built up during the Cold War, as well as the contribution of ECOSOC during that time, and the ratification of treaties dealing with human rights. The human rights aspects of the UN Charter are gaining greater recognition and importance in the international community. Political change is 'catching up' with developments in international law, and intervention in support of these laws becomes possible in a way it was not during the Cold War. The culmination of all this activity is that the international community has come to accept human rights, even if it is still unsure about what these rights entail or how they should be implemented.

While there have been many positive developments in international human rights law, there remains ambiguity regarding the international legal right of forcible humanitarian intervention. That such a right exists is agreed upon by some and rejected by others. The jurisprudence in this area is mixed: take, for example, the advisory opinions of the International Court of Justice on the legality of nuclear weapons, in which the Court ruled that, with respect to weapons of mass destruction which do not distinguish between military and civilian populations, such weapons do not contravene international law where they are absolutely necessary for self-defense.<sup>10</sup> In this way, the Court reverted to the traditional state-centered value system, rather than the human rights of non-combatants.

Participants highlighted a tension between humanitarian intervention, international law and international society, and the conflicting obligations which each entails. This conflict is often resolved through state practice. Historically, the practice of the international

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<sup>10</sup> For a discussion of this case see: Peter H. F. Bekker, 'Advisory Opinions of the World Court on the Legality of Nuclear Weapons', *ASIL Insight*, American Society of International Law, No. 14, 1996.