



Review: [untitled]

Author(s): Allan Gerson

Reviewed work(s): *Enforcing Restraint: Collective Intervention in Internal Conflicts*. by Lori Fisler Damrosch

Source: *The American Journal of International Law*, Vol. 89, No. 1, (Jan., 1995), pp. 230-232

Published by: American Society of International Law

Stable URL: <http://www.jstor.org/stable/2203913>

Accessed: 14/07/2008 14:48

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=asil>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

---

JSTOR is a not-for-profit organization founded in 1995 to build trusted digital archives for scholarship. We work with the scholarly community to preserve their work and the materials they rely upon, and to build a common research platform that promotes the discovery and use of these resources. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

What first looks like inconsistency in these essays later appears as theoretical sophistication. In her interdisciplinary look at conceptions of power, Robin L. Teske uses quantum physics and chaos theory to argue against the dichotomous thought and rationalism implied in traditional legal rhetoric, from which complexity and paradox are barred. We must learn to live with ambiguity, she notes, and give up the illusion of externality from which the lawyer's particular objectivity has been constructed (pp. 236–51). Indeed, the essays warn against an understanding of feminism as a unitary method or ideology and take pride in the plurality of feminist outlooks. Moira McConnell even rejects speaking of feminism as a “theory,” inasmuch as that would marginalize it and imply a non-theory position (or practical truth) from which it could be assessed (p. 63). Yet, her claim that it conveys simply an accurate description of lived reality is of course vulnerable to the criticism of such description that the essays voice against standard doctrinal work.

The degree of the authors' awareness of the latest postmodern fashions, and their familiarity with main currents of contemporary sociological and philosophical thought, exceed by far those in mainstream writing, including mainstream theory. Their relative lack of interest in standard international law is perhaps a reflection of their frustration with what appears to them to be shallow theory and chauvinist practice. Unavoidably, however, this lack of interest makes the mainstream appear more unitary in conception and less fragmented and tentative than it in fact is. It is a rather stereotypical (and almost completely Anglo-American) audience of international lawyers that the authors have in mind. For an international lawyer not already committed to the truth of these essays, reading them is sometimes disappointing. Their sophistication seldom leads beyond a restatement of the ills of statehood and the public/private divide—issues well-known (though discussed in other terms) to mainstream lawyers. And, to the extent that it does lead further, it looks like just another reformism, undermined by its foundational critiques. The move to ad hoc justice and the acceptance of a fragmented (“polycentric”) legal world

are the stuff of every international lawyer in the 1990s.<sup>12</sup>

What most puzzles and appeals to me in these articles is their sense of immediacy, of speaking from lived or very close to lived experience, both personal and professional. Some of the essays are more academic or theoretical in style, some more angry and polemic. Yet all of them speak with a voice that startles, with its claim to be able to connect the authors' (who are all women) lived experience with issues of international law and policy, preferring the concrete to the abstract, the everyday to the diplomatic, and the lived to the learned. Aside from being a stylistically appealing choice, this openness is firmly embedded in postmodern theory.

Such a choice is also a means to collapse the private/public distinction; but does it open new terrain for engagement, or even dialogue? I wonder about the need to articulate the mainstream international lawyer's or diplomat's (indeed, my own) experience with comparable immediacy. Doing away with formalist fiction (such as “state”) and doctrinal continuity and aiming directly at “experience” may be a necessary, but *temporary*, strategy. We can reconceive international law every now and then, but not all the time. Our immediate fears and hopes do not necessarily match to produce the good society, as Hobbes well knew. At some point, we need distance from those fears and hopes—if not objective distance, then at least a partial, consensual, formal distance. That law makes this distance possible (if always only for a moment) is not a defect of law, but its most immediate benefit.

MARTTI KOSKENNIEMI  
*University of Helsinki*

*Enforcing Restraint: Collective Intervention in Internal Conflicts.* Edited by Lori Fisler Damrosch. New York: Council on Foreign Relations Press, 1993. Pp. xii, 388. Index. \$17.95.

*Enforcing Restraint* is a collection of essays by members of a study group on collec-

<sup>12</sup> See Martti Koskenniemi, *The Politics of International Law*, 1 EUR. J. INT'L L. 4, 27–32 (1990).

tive intervention and internal conflict convened under the auspices of the Council on Foreign Relations from May 1992 to February 1993. The result is an important book, less for any prescriptions it provides than for its readiness to tackle the problem it addresses—the proclivity by a not insignificant number of governing elites to violence against their own people. The focus is on restraint through collective intervention. The stakes, as Ambassador Max Kampelman points out in the foreword, are enormous—nothing less than whether the third effort in this century to create an international community based on the rule of law (that is, the call for a “new world order” after the end of the Cold War) will succeed.

Alas, the conclusions reached are sobering. As Domingo Acevedo states in his essay on Haiti: “Regardless of how clearly and categorically popular sovereignty may be expressed, general international law leaves little margin for effective multilateral assistance on behalf of the majority of people seeking vindication of their rights to political participation and to democratic, representative government.” He might as easily have been writing of general international *will*. For example, in the case of the Kurds in Iraq, as Jane Stromseth makes clear in her essay, *Iraq’s Repression of Its Civilian Population: Collective Responses and Continuing Challenges*, efforts to create a protected safe haven came up against “the legal reservations of the [UN] secretary-general and the opposition of Iraq” (p. 90). In Somalia, there was a collective effort—in no small part owing to the urging of the UN Secretary-General. Jeffrey Clarke concludes in his essay, *Debauch in Somalia: Failure of the Collective Response*, that Western donor governments had to be dragged along, and “African entities—in particular the Organization of African Unity (OAU)—contributed virtually nothing to avoid calamity. Only the nongovernmental relief organizations, all unprepared and ill-equipped for the roles forced upon them, survive scrutiny with honor intact” (p. 207).

Besides Haiti, Iraq and Somalia, three other case studies of collective intervention, or the failure of collective intervention, are examined: Yugoslavia, Liberia and Cambodia. In the most thoughtful examination of

the lot, the essay on international involvement in the Yugoslav conflict, James Steinberg admonishes that “it should come as no surprise that the solutions developed in the course of the crisis seem ambiguous and sometimes self-contradictory” (p. 69). The lack of decisive collective intervention merely reflects, he suggests, the realization that “without the threat of escalation to superpower confrontation, conflicts such as those in the former Yugoslavia, while tragic in their human toll, pose little danger to stability and are too intractable to be resolved by outside intervention” (p. 68).

With regard to Liberia and the role of ECOWAS, the Economic Community of West African States, in restraining the bloodshed in the breakdown of civil authority within Liberia in the summer of 1990, there is little that the essay by David Wippman has to teach us about the prospects for collective intervention. We are left in a state of limbo as to whether the ECOWAS effort will bear fruit or provides a useful model for bringing peace to Liberia, Wippman concludes.

That then leaves us with the case of Cambodia as an example of the UN role in “resurrecting fallen countries,” as Steven Ratner puts it in his essay, *The United Nations in Cambodia: A Model for Resolution of Internal Conflicts?* Ratner points out that the UN operation in Cambodia is expected to cost nearly \$2 billion during its duration of less than two years—a not unsizable figure for a cost-strapped UN. But then, as Ratner is the first to acknowledge, the mission in Cambodia is different from peacekeeping, refugee aid and humanitarian assistance in instances of ongoing conflict. Cambodia essentially represents a UN “conservatorship”—a nation-rebuilding effort undertaken as part of the implementation of the settlement of a conflict by the parties directly involved. In this way, it represents a different type of situation from those addressed by other essays in this volume.

With respect to the most pressing cases for collective intervention to preserve life, limb and some measure of liberty, the problem remains twofold: of law and of will. Of international law’s failure to provide clearly for collective humanitarian intervention,

Tom Farer has little lament. He writes: "The riptide of sentiment favoring action to combat unnatural disasters [he means mass murder and other human-caused disasters] has not yet breached the wall of opposition to unilateral measures" (p. 324). Farer dismisses those who seek to breach that wall by advocating the right to intervene unilaterally, if need be, when the Security Council is unable to undertake effective remedial measures. He brands them "a small covey of scholars, most of them from the United States, [who] rather than interpreting their way through the Charter's restraints circumnavigated them" (p. 320). Farer's fear is that if governments are "granted a license to intervene for allegedly humanitarian ends, they will abuse it as much through their acts as through their omissions" (p. 324). Still, Farer realizes that "it is not hard to imagine cases that will cry out for exceptional treatment" (p. 326). To meet such exigencies, he proposes not only that intervention without Security Council sanction must meet the tests of necessity to avoid imminent, irreparable harm and of minimal use of force, but also that "the intervenor state [must] immediately [report] the intervention to the Security Council" (p. 328) and any pertinent regional organization, and that it "be required to announce its acceptance of World Court jurisdiction over any challenge to its action, whether brought by the target government or by any other state" (*id.*).

Finally, there is Lori Damrosch's contribution. In addition to serving as editor, she contributes an essay on the impact of economic sanctions, offering concluding reflections and an epilogue. She makes prescient observations about the international will for the use of economic sanctions. Although often the weapon of convenience in instances that call for collective intervention, economic sanctions, she concludes, often "severely harm the very people they are intended to serve." To make more rational use of the sanctions option, Damrosch suggests several criteria for the employment of international sanctions, the most important being that they "not diminish the standard of living of a significant segment of society below the subsistence level" (p. 281). Conversely, they should "target those in whom a

*change in behavior is sought, and should either diminish their capacity to continue the wrongful behavior or penalize them so that they are induced to desist from the wrongful behavior"* (p. 282) (emphases in originals).

These principles may seem common-sensical. Still, they are principles that have scarcely been heeded in practice. Moreover, Damrosch argues against differentiating arms embargoes based on fault in the initiation of conflict. Largely on the basis of the experience in Yugoslavia, she suggests that such a methodology "does not seem either workable or wise" (p. 291). She explains that "the appeal of an arms embargo as a response to internal conflicts lies precisely in the fact that the technique can be seen as a nondiscriminatory attempt to define the conflict without taking sides in it" (p. 288). Of course, many in Congress would argue the opposite: that, for example, the evenhanded, "nondiscriminatory" continuation of the arms embargo on Bosnia-Herzegovina is morally unpardonable, precisely because it fails to distinguish the victim from the aggressor.

Damrosch, like many of the other contributors, raises serious questions. Although one may disagree with individual approaches to the increasingly volatile problem of internal violence, this volume is to be welcomed by scholars and diplomats alike.

ALLAN GERSON  
George Mason University  
International Institute

*Reducing Nuclear Danger. The Road Away from the Brink.* By McGeorge Bundy, William J. Crowe, Jr., and Sidney D. Drell. New York: Council on Foreign Relations Press, 1993. Pp. ix, 102. Index. \$14.95.

*Managing Non-Proliferation Regimes in the 1990's. Power, Politics, and New Policies.* By Peter van Ham. London, New York: The Royal Institute of International Affairs/Council on Foreign Relations Press, 1994. Pp. 112. \$14.95.

As signatories to the Non-Proliferation Treaty (NPT) begin to accelerate their preparations for the Treaty review conference in April 1995, several recent developments