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## Back to Biafra?: Defending Borders and Defending Human Rights in the Post-Cold War Environment

Paul Goble\*

\*Carnegie Endowment for International Peace

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# BACK TO BIAFRA?: DEFENDING BORDERS AND DEFENDING HUMAN RIGHTS IN THE POST-COLD WAR ENVIRONMENT

*Paul Goble\**

The international community is not ready to accept separation of states. Territorial integrity of states is a guiding principle. . . . There will be no change — on the contrary, there is a stronger will on the part of the international community not to tolerate separatism.<sup>1</sup>

-Edouard Brunner  
U.N. Mediator in Abkhazia

## INTRODUCTION

In the confusion of the post-Cold War world, few norms of international law enjoy more widespread acceptance than the principle that existing state borders must not be changed by force from without or within. As a proposition about relations between states, this norm contributes to peace and stability and is generally unexceptionable. But as a proposition about what a state may therefore legitimately do to populations within its borders, in order to preserve such borders, this norm is far more problematic. Indeed, an absolutist insistence on it would in fact simultaneously deny *a priori* to aggrieved groups in some states the ultimate means, either used or threatened, to defend their rights against the power of the state and allow states to cloak themselves with international respectability while engaging in the massive violation of human rights of their populations.

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\* Senior Associate, Carnegie Endowment for International Peace, Washington, D.C. Mr. Goble is currently working on the Problems of the Post-Soviet Successor States. Prior to joining the Endowment in January 1991, he had served as Special Advisor on Soviet Nationality Problems to the Assistant Secretary for European Affairs and Desk Officer for Estonia, Latvia, and Lithuania at the U.S. Department of State. Earlier he worked as Director of Research at Radio Liberty, Special Assistant for Soviet Nationalities in the State Department's Bureau of Intelligence and Research, and Soviet Affairs Analyst at the Central Intelligence Agency and the Foreign Broadcast Information Service.

1. See Stephanie Nebehay, *Abkhazians Give Up Independence Drive - UN Mediator*, Reuters World Service, Feb. 10, 1995, available in LEXIS, News Library, CURNWS File (statement made by Edouard Brunner, U.N. mediator to Abkhazia).

Until recently, the international community focused primarily on external challenges to existing borders without giving much thought to these internal challenges and to the human rights consequences of its position on the stability of borders. As recent events have shown, however, such challenges are likely to become an ever more prominent feature of the international landscape. Consequently, this second facet of the principle of the inviolability of borders deserves closer scrutiny. In this Essay, I would like to raise some of the issues arising from three of its aspects: the consequences of an absolutist position on border stability for states, their populations, and the international community; the consequences of the rejection of this position in the name of defense of human rights; and the ways in which the international community can act to maximize both the stability of borders and the defense of human rights.

Before turning to a discussion of these issues, a preliminary observation is in order. As the reader will have noticed, I juxtapose the question of border stability and of human rights rather than, as is more often done, between border stability and the right of nations to self-determination. I do so because the former is broader than the latter, because the former explicitly recognizes that groups may form and seek exit from states for other than ethno-national reasons, and because it allows for a discussion of the consequences of state-sponsored attacks on individuals and their response instead of limiting the issue to state attacks on groups.<sup>2</sup> While it is true that insistence of national self-determination will likely constitute the large number of cases in this category, it is important to distinguish in our discussions of border stability the related but different issues of human rights and national self-determination, especially since the latter has become the subject of so many polemical stacks that, intentionally or not, obscure the human rights issues involved.

### I. *DEFENDING BORDERS*

The attractions of an absolutist position on the defense of borders even from within are both many and obvious. They are rooted in the modern definition of the state as that institution

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2. See generally Paul A. Goble, *Federalism and Human Rights in the Soviet Union*, 23 *CORNELL INT'L L.J.* 399 (1990) (discussing competitive quality of defense of individual rights and defense of group rights within normal Western conception).

enjoying a monopoly on the legitimate use of force on a given territory. Moreover, such a position provides for international stability in most cases at least in the short run, except to the extent that such a position may generate potentially destabilizing refugee flows. And perhaps most significantly for purposes of this discussion, this proposition provides an important precondition for the stability of the state and hence for the only institution that can provide a routinized defense of the individual against a Hobbesian state of nature and hence a protection in most cases for the individual and group rights.

But if the arguments for an absolutist position on defending borders are clear, the difficulties are even greater if less obvious at least for those concerned with the defense of human rights. By adopting a position defending stability above everything else, we intentionally or not fall into the position of defending the status quo regardless of how unjust. We thus permit the state to violate the human rights of individuals and groups by using force while effectively denying these victims the right to respond with force.<sup>3</sup>

Even more problematic is the implicit assumption that current borders must be legitimized, especially if they enclose countries deemed to be democratic. That rests on an even more problematic assumption about how such borders came into being. One of the key problems with democratic theory is that it defines how a community should operate but does not define how that community should be defined or how it should come into existence. An absolutist position on borders would have precluded the independence of the United States, for example, a fact that is seldom acknowledged by the absolutist position.

Moreover, the absolutist position, by taking the international community off the hook and allowing it to dismiss actions of states inside their borders as being simply the latter's "internal affairs," is profoundly corrosive of human rights principles. Not only does it allow a Biafra or a Chechnya, but it inevitably gener-

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3. Even if this is defensible in most cases, there are real limits to it. For example, it is often said that secession from a state can be accomplished with only the agreement of that state. Not only is this a serious misreading of what actually happened in the former Yugoslavia and the former Soviet Union, but it effectively precludes secession in all but the most unusual circumstances. More to the point, by encouraging states to believe that their borders are sacred, this notion may lead them to behave in ways that will make the issue of secession more lively.

ates refugee flows, reduces the moral suasion of the international community, and thus undermines both the stability its proponents seek as well as the legitimacy of the states that adopt it.

## II. *DEFENDING HUMAN RIGHTS*

But if we concede that an absolutist position on the defense of borders is problematic, does that mean that an absolutist position in the defense of human rights, regardless of its consequences for borders, is a good substitute? While such a position may be morally attractive at one level, it can as easily become subversive of its own realization as can its opposite. First, such a position would introduce chaos into the international system by destroying the entities capable of protecting human rights. Second, it would only serve to intensify the competition between individual and group rights by tipping the existing balance toward the latter because only the latter could seek resolution under such a system. And third, by encouraging increasingly homogenous and in some cases more authoritarian states, it could also undermine human rights.

Moreover, the international community, based as it is on the existence of states, would subvert itself by adopting such a position. Its efforts to get involved to date have shown precisely the following limitations: (1) the relative selectivity in the defense of human rights depending on the power of the state involved; (2) the lack of any agreement on what such a defense would look like or how such a mechanism might be created; and (3) the fact that intervention by the international community may in many cases make things worse, at least for some people. This last point is especially critical. The intervention on behalf of ethnic Russians in the post-Soviet states by the Commission for Security and Cooperation in Europe ("CSCE") has often been counterproductive. On the one hand, it has led local Russians in these states to assume that they can use their ethnicity to make demands on these states. On the other hand, it has convinced at least some of the states that the ethnicization of politics by the Russians justifies a responsive ethnicization by these states.

To say all this is not to say that secession in the name of self-determination of defense of human rights is the only answer. A

variety of other means are available: consociational arrangements, federal power-sharing, and the establishment of alternative and more comprehensive identities upon which democratic citizenship can rest. But in an age when the state is becoming an even larger player in society, the question of who controls it becomes ever more important. And unless that state is to become less important, an unlikely development in most regions, secession must remain an option.

### III. *DEFENDING BOTH: CAN THESE TWO VALUES BE COMBINED?*

Recent experience suggests that the two values can be combined, as long as a number of exceptions are allowed. Most of the current justification for the stability of borders and for international concern about human rights flows from the same document, the Helsinki Final Act of 1975 ("Final Act"). It is perhaps useful to recall this dual fact: the Helsinki principles call for the observation of human rights and for the stability of borders, the latter to be changed only by agreement and not by force.

These two principles reflected a compromise at the time. The Soviet Union sought a declaration that existing borders in Europe could not be changed as a means to legitimate Stalin's redrawing of the map of Eastern Europe after World War II. The United States, and to a lesser extent the West European Nations, insisted on three qualifications of this principle. First, the West insisted on a clear statement about human rights. Second, the West demanded that the Final Act include a modification of inviolability so that the possibility that Germany could be reunified peacefully at some point would remain open. And third, the United States made it clear in the negotiating record that nothing in the Final Act should be construed as U.S. recognition of the forced incorporation of the Baltic States into the Soviet Union. Thus, even in that document, this conflict was reflected rather than resolved.

Ultimately, the balance between the two principles must reflect a judgment about the nature of a particular state, its behavior toward its own population, and the availability of remedies other than succession. It must also reflect the revolution in communications that gives smaller groups a chance to appear on the world stage and the changes in the world that make intervention

more difficult if not impossible. No one can come up with a cookbook answer.

### *CONCLUSION*

We can go only so far as to say that we are disposed to support the inviolability of borders from internal attack but are unwilling to absolutize it. By so doing, we will remain open to claims by aggrieved groups in some states. However unsatisfactory such a conclusion is, it is less morally and legally offensive than its alternatives. To do otherwise leads us back to Biafra, as Chechnya shows, to grant states a right to ride roughshod over human rights and thus to purchase an illusory stability at the cost of both human rights and our own moral position.