

Transcript of Seminar Six

Feb. 10, 2000

Discussion with Aryeh Neier

Aryeh Neier

[full text of HRW Annual report](#)

I want to read the first paragraph from the Human Rights Watch Annual Report. I have supported the trend it describes, but I also have some doubts, or at least I have some questions. I haven't resolved these in my own mind but I thought it might be worth raising the doubts. The paragraph reads: "Sovereignty loomed less large in 1999 as an obstacle to stopping and redressing crimes against humanity. Governmental leaders who committed these crimes face a greater chance of prosecution, and even military intervention. The lesson sent is that leaders risk their freedom and control of territory if they commit the most severe human rights abuses." Then it cites the things that one would expect to cite: the intervention in Kosovo, the intervention in East Timor, it discusses the establishment, or the attempt to establish the International Criminal Court, the progress of the Yugoslav Criminal Court, the indictment of Pinochet, the progress of the Rwandan Criminal Court. These are, as the report suggests, important developments indicating that sovereignty is not as powerful a limit on efforts to protect human rights as it was previously. I think one could say that this has been a trend of the entire decade of the 1990s.

If one goes back to the beginning of the decade, military intervention involved the creation of the security zone for the Kurds in Iraq; the intervention in Somalia; the intervention in Haiti. One could also cite the West African intervention in Liberia and, I suppose, also the intervention in Sierra Leone, the creation of the Yugoslav tribunal in 1993, the creation of the Rwanda tribunal in 1994. Now, what appears to be the success in getting Habre prosecuted in Senegal, is a further indication that the Pinochet precedent will be repeated. It is a further indication that sovereignty is less significant than it once was.

The question I have is whether there is anything lost in the ability to protect human rights through the reduction in sovereignty. The current examples that concern me are Indonesia and Nigeria. I'm concerned about them because they are both very large, very volatile countries, among the most dangerous places in the world. If I had to pick one place that seems to me right now the most dangerous in the world, I would say Indonesia. The possibility that the country will fragment and explode in violence is, I think, quite real. There is a great deal of violence underway. Nigeria is also very dangerous. These dangers in Indonesia and Nigeria come at a time when there are governments in place that are much more inclined to protect human rights than at any time previously. We now have the 'good guys' in office and we're in danger of the most severe abuses of human rights.

[full text of Holmes essay](#)

It's a phenomenon that Stephen Holmes has written about in his essay on "Weak State, Weak Liberties." We used to think of danger to human rights as primarily emanating from very powerful states. The state was too strong and one needed to devise a variety of restrictions on state power. But we have a phenomenon more recently of states that don't have the capacity to protect the rights of their citizens. Holmes was focused on Russia and he pointed out in that essay that Russia collects about 10% of GNP in taxes, whereas in the US it's about 30%, and in Western Europe it's about 45%. He wrote about the conditions of the million or so prisoners in Russia, arguing that the inability of the state even to collect taxes from a lot of people who have become very wealthy and have effectively stolen or privatized the assets of the state makes the state too weak and too poor to protect the million people that it has in the prisons. So something like the tuberculosis epidemic in the Russian prisons and the multi-drug resistant tuberculosis epidemic cannot be managed because the state lacks the resources to manage it. The state has so many people in prison in part because it doesn't have the procurators (or prosecutors) available to process cases. Therefore all it can do is to leave these people in prison in pre-trial detention. Holmes also cites a lot of other examples of this weak state phenomenon.

In Indonesia and Nigeria, but in Indonesia most dramatically, the weakness is principally in the civilian government. The armed forces were strong, but they aren't necessarily responsive to the civilian government. The armed forces may be arming the opposing sides in the violence in Ambon, and provoking violence, so that the military demonstrates that it is the only force that can maintain order. That way it can keep the civilian government weak. But it is also weak because there is a lack of the sense of solidarity or community at a national level that is required to maintain the strength of the state. That has been fragmented. Sovereignty is the embodiment of a sense of national unity. My concern is that if we damage sovereignty, we may undermine the capacity of such a state to maintain order and to protect rights.

I am talking about a variety of nationalism. We have come to think of nationalism as a very nasty and dangerous force. But there are different types of nationalism. There is nationalism that reflects a sense of belonging to the

tribe, to the ethnic group that seeks hegemony or seeks to protect itself against other nations. There is also a different kind of nationalism, that is, an identification with the broader state. This is the phenomenon that Eugen Weber describes in *Peasants into Frenchmen*. That is, the process that took place in France between 1870 and 1914, where individuals who identified with their particular village, their commune or their town, gradually began to identify with a larger state and think of themselves as Frenchmen. They achieved a sense of solidarity with all others who were Frenchmen. That way they created a nation. This can produce a state that is capable of maintaining order and of protecting rights.

As far as I know the idea of a state originates with Machiavelli. Machiavelli's idea of the state is that it is an entity which can preserve a sense of unity, not only when different governments are formed, when particular governments come and go, but even when the actual form of government is changed. That concept of a state, I think, is a very important one. It did not exist, in the Soviet Union at the time it fell apart. The change in the form of government also meant the fragmentation of the state. That concept of the state did not exist in Yugoslavia in the same period. There too, a change in the form of government was accompanied by the dissolution of the state.

I am concerned that countries like Indonesia and Nigeria, with their ethnic and religious conflicts, may not survive as states whose unity can be preserved during a period of a change in the form of government. Their fragmentation could be very dangerous to rights. If you think of the Indonesian case, it is not only the violence between Christians and Muslims in Ambon or Lombok. Aceh is an example of dangers to rights. Aceh's independence movement is fueled by resentment against human rights abuses, military repression. That movement has taken on a fundamentalist Islamic character. I think there are questions as to the degree that the Achenese independence movement represents the sentiments of the Achenese population as a whole. Today, women in Aceh, must wear hejab; it's not possible for a woman to walk on a street without being covered from head to toe. There is apparently quite a lot of resentment against this by the women of Aceh.

If the state of Indonesia had authority, it could protect the women of Aceh against the Acehnese independence movement. That movement would not be able to enforce hejab upon them. But it doesn't appear today that Indonesia can protect the women of Aceh.

The issue that concerns me is this: Is there a way to promote human rights as a limitation upon sovereignty when a government engages in severe human rights abuses - for example - as in Rwanda when the most severe abuses imaginable are committed - and at the same time not undermine the principle of sovereignty to the point where we lose the idea of the state as an essential guarantor of human rights. Maybe I am overstating the connection between intrusions on sovereignty by military intervention or by international criminal jurisdiction and the loss of the positive aspects of sovereignty in places such as Indonesia, Nigeria or Russia. Yet I am concerned that there may be a connection between the general decline in the idea of sovereignty and the declining ability of the state to protect rights.

In the Russian case, of course, we don't have a government at the center that is concerned about the protection of rights. But in Indonesia and Nigeria we have central governments that would like to protect rights. They lack the capacity, not only because of their lack of control over the military, but also because of the lack of a sense of community or solidarity in the country. I am suggesting that human rights advocates have to be concerned about ideas like community and solidarity because we still need states to protect rights. The state is not only the enemy of rights. The state also can be the guarantor of rights. That is the issue I want to raise.