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# Taking Down a Dictator: How to Legally Remove a Tyrant From Office

October 28, 2017

by Susan Imerman

What do Bashar al-Assad of Syria, Moammar Qaddafi of Libya, and Robert Mugabe of Zimbabwe all have in common? They are all dictators still in power causing mass terror and destruction to their suffering nations. [International law prohibits](#) genocide and acts of cruelty which tyrants regularly invoke against their citizens. Yet, despite the clear [violations](#) of international law, removing abusive leaders from power, or even orchestrating an arrest, poses a difficult task for the international legal community. Although international law forbids using force to intervene with other state actors, [exceptions](#) exist for instances of necessary humanitarian intervention.

The [1948 UN Genocide Convention](#) (Convention) was the first treaty to outline when a state may use force against a violent state-actor. Established in the aftermath of WWII, the Convention [defined](#) genocide as the “intentional killing, destruction, or extermination of groups or members of a group” and declared that member states “have a duty to not let genocide go unpunished.” The Convention [dictates](#) that states may intervene only by supplying peaceful humanitarian aid to victims, through an invitation from the host nation, or with the authorization of [The UN Security Council](#) (UNSC). [Article Two](#) of the UN Charter precludes states from sending in armed forces or supplying weapons or other forms of war materials by [defining](#) these acts as forms of unlawful aggression.

Despite the stringent restrictions and international debate, the UNSC authorized the use of force to prevent human rights abuse [numerous times](#) since its creation. In 1994, the UNSC worked alongside French forces to enact a large-scale military operation in response to the [genocide in Rwanda](#). During the [Korean War](#) in 1950, the UNSC, unable to authorize intervention due a member state’s veto, transferred its power over to the UN General Assembly (UNGA). The UNGA then stepped in to “recommend” collective action from South Korea and the US against North Korean aggressors. In the decades following the Korean War, Western nations frustrated by the slow-moving UNSC continued using the UNGA as a tool to circumvent the UNSC’s authority and justify acts of aggressive [humanitarian intervention](#). The shift in power caused an expansion of [Article 2, Chapter VII](#) of the UN Charter, which stipulates instances of permitted forceful humanitarian intervention.

Years after the 1948 Geneva Convention, the United States Congress passed [The Genocide Accountability Act of 2007](#) (GAA). The Act expanded the lawful prosecution of genocide and authorized US officials to apprehend any offender who “brought into, or found in the United States,” even if the violating conduct occurred outside of US territory. The GAA granted states the universal jurisdiction needed to bring violent criminals to justice. While US law dictates permissible instances of forceful intervention, the [Law of War](#) regulates the scope of the US’s attack and mandates all nations to use the “[principle of proportionality](#).” The principle holds that an intervening state “must not cause incidental loss of civilian life or destruction of civilian objects that is out of proportion to the direct and concrete military advantage.” Although the expansion of

US law served as a crucial step towards lawful intervention, international law still forbids its member states from using force or threatening another nation, except for certain exceptions that still remain highly contentious within the international community. [The Responsibility to Protect](#) (R2P) is reflected in [Article 2\(7\)](#)'s use of force exception that enables states to "use armed force to preserve or restore international peace and security" on the condition that [Article 41's](#) measures of diplomatic relations and economic sanctions prove ineffective. Accordingly, the Charter [stipulates](#) that when a state must intervene, "plans for the application of armed force must be made with the assistance of the Military Staff Committee." The UNSC's coordination with the Military Staff Committee is a laborious process, and often hinders a state's ability to act efficiently.

Ultimately, all international treaties, conventions, and declarations are motivated by the same overarching goal: maintaining global peace and security. Nevertheless, the path to maintaining this security, especially during instances of grave humanitarian abuse, is not a simple one. Both the [Responsibility to Protect](#) and [Article 2\(7\)](#) of the UN Charter aim to provide guidance to concerned nations seeking to defend the abused. Although the Charter grants states the right to intervene on behalf of international security, the use of force must be self-defense in response to imminent acts of aggression. The assassination of a brutal leader as a form of "anticipatory self-defense" is only permitted where the death "may actually prevent a nuclear or biological or other highly destructive form of warfare."

In the past two decades, the US has led forceful humanitarian interventions, bypassing the proper legal channels and carrying out attacks under the claim of preventing widespread violence. Working with local rebel forces, the US invaded and subsequently killed two tyrannical leaders: [Saddam Hussein](#) of Iraq and [Muammar Gaddafi](#) of Libya. In both instances, the US asserted R2P and acted without proper UNSC authorization in violation of international law. Although the US evaded punishment both times, the lack of repercussions was no indication of the legality. Further, while the past invasions were illegally implemented, provisions do exist which permit assassination and aggression as lawful means of enforcement. While exceptions to the use of force may be limited, international law allows for states to forcefully "take down" an abusive dictator when necessary.

# Is Operation Sovereign Borders Running Afoul of Australia's Refugee Commitments?

November 15, 2017

by Chris Rennie

Australia has one of the [strictest refugee policies](#) in the world. Although it is party to the [Convention and Protocol relating to the Status of Refugees](#), the Australian government pursued immigration policies throughout the last fifteen years that many international human rights lawyers consider violations of the Convention's refugee asylum requirements. The terms of the Convention are clear: "[no one shall expel or return a refugee against his or her will...to a territory where he or she fears threats to life or freedom.](#)" Government reforms implemented to deter seaborne asylum seekers, however, have potentially done just that by authorizing the Australian Border Force to [intercept boats carrying refugees and return](#) them back to transit states like [Indonesia](#) and [Sri Lanka](#).

The Australian government's position is that the policies, known collectively as [Operation Sovereign Borders](#), exist to combat illegal immigration. In the year before the program was instituted, [20,000 irregular migrants](#) attempted to reach Australia by sea. In 2014, a year later, that number dropped to 161. [Proponents](#) of the program argue that the program's success prevents deaths at sea and combats the mercenary trade of people smuggling. International law experts, however, note that the "[how, where, when, and why boats are being pushed back](#)" is unknown—the Australian government, citing national security concerns, will not disclose the details of the operation.

From a legal perspective, the details make all the difference. Migrants who assert formal claims for asylum become [eligible for refugee status](#). Refugees have special [rights](#), and the legality of Australia's Operation Sovereign Border hinges on whether its maritime operations violate one of the most essential afforded to them: the [right to non-refoulement](#). Migrants are only entitled to non-refoulement – the right that protects them from indiscriminate expulsion –[after pleading asylum](#), which begs the question: is the Australian government denying migrants due process when its Border Force turns boats of migrants away before they ever reach Australian shores?

The answer to that question depends on where and how the Border Force operates. [Interceptions that take place on the high sea](#), beyond Australian territorial waters, may not require the Australian government to exercise jurisdiction. This is the Australian government's [stance](#), as well as their defense against claims that the Border Force is violating Australia's commitment to the Convention. Simply put, the government feels it has no asylum obligations where it does not exercise sovereign control. This is a tricky position, as Article 8 of the [Draft Articles on the Responsibility of States for Internationally Wrongful Acts](#) defines the conduct of state agents acting under the direction of a state to be an act of the state itself. If agents of the Border Force are [taking control of boats](#), they could be exercising Australian jurisdiction and should therefore initiate immigration proceedings for any migrant who claims asylum.

Unfortunately, the Australian government's [lack of transparency](#) makes it almost impossible to determine whether the activities of the Border Force are in violation of Australia's international commitments. Even if more documentation existed, it would still be difficult to predict how the international community could hold the Australian government accountable. [The Articles on the Responsibility of States](#) is only a recommendation from the UN's International Law Commission, and high courts in other parts of the world have split decisions on the limits of non-refoulement.

In [Sale v. Haitian Centers Council, Inc.](#), the United States Supreme Court issued a verdict upholding an Executive Order to indiscriminately return all Haitian migrants intercepted on the high seas back to Haiti. The Inter-American Commission of Human Rights challenged this holding in [Haitian Centre for Human Rights v. United States](#), which found that state agents intercepting vessels at high sea extended state jurisdiction over those they detained. Concordant with *Haitian Centre*, the European Court of Human Rights [in Hirsi Jamaa and Others v. Italy](#) rejected Italy's claim that it did not exercise jurisdiction in intercepting migrants at high sea before returning them to Libya, holding that Italy violated its duty to initiate asylum proceedings under the 1967 [Protocol](#) relating to the Status of Refugees, even though the intercepted claimants only made informal pleas. The United Nations High Commissioner for Refugees is even less equivocal, stating "[the principle of non-refoulement does not imply any geographic limitation.](#)"

While Australia's reputation as a defender of global human rights is subject to international scrutiny, its current government, however, is not accountable to any legal authority but its own. Barring diplomatic pressure, the legality of Operation Sovereign Borders will remain in question until it is challenged, perhaps by a migrant in an Australian court, or, albeit less likely, through a claim filed at the [International Court of Justice](#) by a transit nation like Indonesia, which has been [critical](#) of the Australian solution.

# In the Wake of the 2014 Crimea Takeover, Russia is Persecuting the Tatars

November 16, 2017

by Matthew Bienstock

Despite continuing international criticism of Russia's 2014 takeover of Crimea, the Russian government has intensified its offense against [those who seek Crimea's reunification](#) with Ukraine. Tatars, who make up more than [ten percent](#) of the Crimean population, oppose the Russian annexation and have been the target of systemic [human rights violations](#), including [searches, arrests, sham trials, and detention](#). Most Crimean [Tatars](#) are Muslims, and they perceive the persecution to be both [religious and political](#). Russia has [imposed](#) the [legal framework](#) of the Russian Federation on Crimea and has used its criminal code to [intimidate](#), harass, and silence dissent. However, the imposition of Russian Federation law on Crimea should also carry with it the responsibility of the occupying authorities to follow international humanitarian law to which it is [obligated](#).

In February 2014, Russian armed forces seized control of and occupied Crimea and a month later, after a [sham referendum](#) that violated the Ukrainian constitution, announced that Crimea had become part of the Russian Federation. A month later, the [UN General Assembly](#) affirmed that Crimea was part of the Ukraine. Nonetheless, Russia continued religious and political intimidation of Crimean citizens who opposed its occupation. The Russian occupying authorities ordered all religious groups to register with the Russian government by January 1, 2016, or face losing their legal status. The authorities raided mosques, confiscated literature they deemed "extremist," and subjected the leadership of Crimean Muslim Tatars to [surveillance and intimidation](#).

In January 2015, Russia's Supreme Court [convicted four Tatars](#) of being members of *Hizb ut-Tahrir*, an Islamic group banned in Russia. Russia forcibly [transferred](#) the men out of Crimea to a North Caucasus district military court for their trials, in violation of their right to a fair trial. One of the four men, Ruslan [Zeytullaev](#), is on a hunger strike to [protest](#) the false accusations of terrorism. In January 2015, Russian authorities arrested Akhtem Chiygoz, deputy leader of the Crimean Mejlis legislature and a vocal critic of the annexation, by applying the [Criminal Code of the Russian Federation](#) retroactively to events which predated the occupation. [Chiygoz](#) spent fifteen months in pre-trial detention before a thirteen month long sham trial on charges of [organizing mass disturbances](#). In May 2016, Russian authorities [banned](#) the Mejlis and prohibited all the group's activities claiming it was an extremist organization. In June 2016, Russian authorities arrested [Ilmi Umerov](#), deputy chairman of the now-illegal Mejlis, on charges of separatism after he made public statements [opposing](#) the annexation. These are not one-off incidents. The U.S. State Department 2016 [Human Rights Report on Crimea](#) details the widespread campaign of the Russian authorities to deprive ethnic Crimean Tatars of fundamental civil liberties and to subject them to systematic discrimination. These are clear violations of human rights protected under long-standing international treaties.

Russia is a party and legally obligated to [three](#) key international treaties that have codified human rights: 1950 European Convention on Human Rights ([ECHR](#)); 1966 International Covenant on

Civil and Political Rights ([ICCPR](#)); and 1966 International Covenant on Economic, Social, and Cultural Rights ([ICESCR](#)). The ECHR specifically [protects](#) the rights to freedom of expression, religion, and fair trial. The ICCPR obligates its parties to [respect](#) the civil and political rights of individuals, including the right to freedom of speech, religion, assembly, due process, and a fair trial. The ICESCR includes the right of all people to non-discrimination based on religion, politics, national, or social origin.

All [three treaties](#) permit human rights restrictions for interests of national security. By using this pretext, Russia has persisted in subjugating the Tatars and repressing those who oppose annexation, despite [protests](#) from the U.S. Department of State. In 1997 the Ukraine ratified the [ECHR](#), thus allowing the Ukraine to bring its case before the European Court of Human Rights. In March 2014, the Court called upon both Russia and Ukraine to refrain from taking [measures](#) including military action that might violate civilian rights, and this interim measure remains in effect until the case is heard. Normally it takes years for the [Court](#) to hear cases, and interim measures indicate that the Court understood the [urgency](#) of remediation. While non-compliance with interim measures is a [breach](#) of the Convention, until the Court acts, it remains unclear if Russia will be held [accountable](#) for human rights violations in Crimea.