

The Maduro Case

Venezuela: international law in crisis for centuries

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The American intervention in Venezuela, involving the kidnapping of President Nicolás Maduro, has been widely viewed as a violation of international law. That is a framework of rules that were broken, with a perspective based solely on force imposed. Such

assessments suggest that the issue of international law needs to be explored in greater depth. Until the intervention of the 'Delta Force' in Caracas, it almost seems that international law was in perfect health, generally followed, and clear to everyone. However, common sense tells us that this was not the case, and that the erosion of international law had been taking place in practice for some time, as well as being theorised.

The crisis in international law is long-standing. Carl Schmitt discussed this in *The Nomos of the Earth* (1950), dealing precisely with the transformation of international law and the dissolution of '*jus publicum europaeum*'.

In the 17th century, Thomas Hobbes wrote that relations between states are like a war of all against all, reproducing the relationship that existed between men in their pre-social state of nature. According to him, law and order arise only when there is someone capable of punishing the transgressor. This person is the 'Leviathan', the absolute political power that emerges when people sign the '*pactum societatis*', based on the '*pactum subiectionis*'. However, such order and law only exist within individual states; they cease to exist in a supra-state dimension when states revert to behaving towards each other with pure force. In the state of nature, if a man has the strength to take possession of another's property or even their life, they are exercising their right, as Spinoza said, 'as much by right as by force'. The same is true between states.

However, Hobbes's vision makes international law impossible because it bases power on both convention (the pact) and force. While convention and force are effective, they lack truth and justice. This way of thinking is not unique to Hobbes, however, but to modern politics as a whole, which has added the element of conventional representation based on the liberal principle of majority rule. International law is now understood to mean an agreement between states based on the principle of majority rule, but this cannot be true law because it is not based on justice, but rather an interpretation of it. An intervention that infringes the legitimate sovereignty of a state would not be justified by international consensus alone. This consensus can be achieved in inconvenient ways, among other things. The UN is often referred to as the global authority capable of expressing international law. The war against Gaddafi's Libya that began in 2011 was authorised by the UN Security Council, but this was insufficient to justify it under international law.

Classical international law had an objective ethical and political foundation, and was not based on power or consensus in the modern sense — although neither were excluded. Rather, it was based on *jus gentium* — a natural order in which peoples

and nations were governed by an internal natural logic, like living organisms, and could not be subject to any other logic, even if based on power or some conventional consensus. It was based on custom, not practice. While the consent of sovereigns was necessary, it was not the foundation of international law. Sovereigns often broke its rules, but they were unable to destroy it precisely because their consent depended on it rather than the other way around.

This form of international law, an expression of natural law, prevailed as long as Christian society remained effective, despite the inevitable concrete exceptions. Its natural and objective ethical-political character was guaranteed, fortified, and disseminated in minds and laws by the Christian religion and the Catholic Church. Francisco de Vitoria attempted to bring it into the modern era, but the order it established was overwhelmed by the emergence and growth of modern states, finally ceasing to exist after the Peace of Westphalia in 1648 and the theories of Bodin and Hobbes.

Since then, there has been a progressive increase in the conventionalism of rules and centralisation of power as the foundation of international political life. Following the events in Caracas, there has been much discussion about international law, but many people are referring to modern conventional law — a fig leaf covering Hobbesian anarchy — when we should be referring to law based on natural law. The Catholic Church can therefore once again address the ethical and legal issues of international law doctrinally, rediscovering the foundations of its social doctrine.