CHAPTER SIX

CONCEPT OF NON-INTERVENTION
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The principle of non-intervention is one of the basic generally recognised principles of modern international law as laid down in Article 2(7) of the Charter of the United Nations which states:

"Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

This principle is one of those underlying the policy of peaceful co-existence among States with different social and political systems and of international détente. The principle was elaborated in detail in:

1. The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty adopted in 1965 by the twentieth session of the General Assembly of the United Nations;

2. The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations adopted in 1970 by the twenty-fifth session of the General Assembly of the United Nations; and,


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349 Now the Organisation of Security and Co-operation in Europe (OSCE).
As a matter of both history and principle the prohibition of intervention must be regarded primarily as a restriction which international law imposes upon States for the protection of the independence and sovereignty of other members of the international community. For this reason the notion and the prohibition of intervention cannot accurately extend to collective action undertaken in the general interest of States or for the collective enforcement of international law.\(^{350}\) This means that while prohibition of intervention is a limitation upon States acting in their individual capacity in pursuance of their particular interests, it does not properly apply to remedial or preventive action undertaken by or on behalf of the organs of international society.

The French revolutionaries in the late eighteenth century advocated non-intervention in the affairs of other States, the renunciation of wars of conquest, and national self-determination in form of plebiscites.

The successive affirmations on the part of American States of the prohibition of intervention refers to the intervention by States acting, apparently, in their individual capacity. The 1933 Convention on Rights and Duties of States signed at the Seventh International Conference of American States in Montevideo laid down that “no State has the right to intervene in the internal and external affairs of another”.\(^{351}\)

In the Additional Protocol Relative to Non-Intervention, adopted in 1936 at the Inter-American Conference for the Maintenance of Peace in Buenos Aires, the Parties declared “inadmissible the intervention of any of them...in the internal or external affairs of any other of the Parties.”\(^{352}\)

\(^{350}\) The issue of collective intervention and collective security are discussed in detail below, in Chapter 5.

\(^{351}\) Article 8.

\(^{352}\) Article 1.
In the Act of Chapultepec adopted on 3 March 1945, the American States reaffirmed their condemnation of intervention “by a State in the internal or external affairs of another”. At the same time, and perhaps contradictorily, the main purpose of the Act was to give expression to the principle and obligations of collective security in a manner which, but for its collective character, would be tantamount to intervention.

Although it is expressly laid down in the Charter of the United Nations that it does not authorise intervention “in matters which are essentially within the domestic jurisdiction of any State…”353, the non obstante clause of this Article does not exclude action, short of dictatorial interference, undertaken with the view to implementing the purpose of the Charter. Thus with regard to the protection of human rights and freedoms—a prominent feature of the Charter—the prohibition of intervention does not preclude study, discussion, investigation, and recommendation on the part of the various organs of the United Nations.

Apart from the above-mentioned principle of non-intervention with regard to matters of domestic jurisdiction, the system of the Charter is based on collective intervention in matters affecting international peace and security in relation both to Members and to non-Members of the United Nations.

A number of governments, especially in Latin America, hold that the “intervention” condemned is the arbitrary interference of an individual State or a group of States, not the collective action of the whole group in accordance with rules of law.

Sometimes by treaty, a State expressly excludes itself from intervention; e.g., Article 4 of the Treaty of 1929 between Italy and the Holy See:

353 Article 2 (7)
"The sovereignty and exclusive jurisdiction over the Vatican City which Italy recognises as appertaining to the Holy See precludes any intervention therein on the part of the Italian government...”.

The non-intervention norms themselves, and even more so the practices of States, have continued to reflect a continued ambivalence toward the traditionally accepted forms of intervention which has rendered traditional norms of limited utility. Thus, States which vehemently oppose intervention when it proceeds against their own interests, will, in another context, favour external assistance to a widely recognised government at its request (or alleged request), assistance to “national liberation movements” (which may be vaguely and selectively defined), or intervention for the purpose of preserving “socialist self-determination” or deterring communist-takeover.354 Aside from the obvious assertions of “special interest” lurking in many such inconsistent national positions, a fundamental difficulty remains that some interventions may, in fact, promote the common interest of the community while others (and probably most) do not.

Traditional rules, which included competing principles that prohibited external intervention in internal conflict and permitted assistance at the request of a widely recognised government—at least until some point at which “belligerency” was reached—did not meet the needs of providing clear criteria for separating interventions which promote common interests of the community from those which do not. More radical formulations, which would bar intervention except for “national liberation”, have been similarly deficient. In the 1960s, a variety of newer proposals had been advanced, including an imaginative suggestion that permissibility should turn on whether the intervention involves participation in tactical operations. Professor Tom Farer has suggested a “flat prohibition in tactical operations, either openly or through the medium of advisers or volunteers, as a single rule for the regulation of intervention.”355 Although

354 See discussion on Monroe Doctrine, infra.
neither this nor any other single test has yet been or is likely to be accepted, there is a discernible trend toward a narrowing of the issues by a general consensus that some forms of intervention are impermissible, *i.e.*, intervention at the request of a government to suppress a popular internal insurgency and intervention on behalf of insurgents aimed at the overthrow of a representative government. The 1998 controversy in Britain over arms supplies to the ousted government in Sierra Leone by a private arms supplier, SandLine, raised the issue whether arms and mercenaries could be supplied to the democratically-elected government overthrown in a military coup ostensibly to help it to return to power in violation of a United Nations arms embargo. It was argued by the government of President Ahmed Tejan Kabbah, which was the beneficiary of such assistance, that the U.N. arms embargo was applicable against the military junta that had ousted him from power and not to his ousted government which the U.N. embargo was intended to help. *Quaere*, whether the U.N. arms embargo attaches to the government or to the State. What cannot be gainsaid is that intervention did take place.

The development of an adequate theory for the regulation of intervention requires an explicit statement of values at stake in the decision to intervene, contextual differentiation of the variety of interventionary settings and claims, postulation of policy-responsive norms for regulation of similar groupings of claims, and continued testing and refinement of postulated norms by reference to the social effects of the decision.\(^\text{356}\)

But these postulations apply to intervention in the classical mould and will be inapplicable to intervention as re-defined in this work. This thesis tangentially argues that intervention is so multifarious and inevitable in a ‘globalized’ world

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structure that it is almost impossible to lay down any norms to regulate intervention in all its forms. It is, in this context, more logical to re-conceptualise sovereignty of States to accommodate a ‘globalized’ weltpolitik.

Richard Cobden

One writer and scholar whose name has become almost synonymous with the concept of non-intervention is Richard Cobden (1804-1865). An advocate of free trade, he led an agitation against the laws restricting import of corn; these were repealed in 1846. He himself was impoverished by his public work and was helped by subscription. His was a view situated between that which links the erosion of the State with the gradual appearance of international harmony, and the view of those who place their trust in the efficient working of a balance of power system.357

Cobden’s approach to international relations was not dissimilar to his view of economic policy. (He was basically an economist.) Non-intervention was the political counterpart of laissez-faire. He attacked writers like Lord Brougham and Gentz, the balance of power theorists, on the grounds that such a notion was inappropriate for the peaceful ordering of international affairs. Cobden argued that if States devote themselves to trade these contacts would bring peace. For this reason, he hoped to see Britain remain out of embroilments in China, the Crimea, and Denmark.

Cobden, more a polemicist than a philosopher, can be criticised for failing to examine the arguments of Gentz and de Vattel with great care. He too readily exaggerates their arguments, accusing them of seeing a ‘union’ of European States where this is not precisely the point made by the earlier writers. Their

'balance' is a more complex conception than the one criticised by Cobden. However, Cobden's was a typical nineteenth century position typical in England at least, and sceptical of those who saw international relations in a delicate 'balance', requiring constant vigilance and involvement in one another's affairs. International relations, in Cobden's opinion, were best conducted between nations and not governments, confined, that is, to commerce (and culture) and not to the politics of the 'State' system.

Cobdenism has come to denote 'a policy based on Free Trade, international co-operation, and retrenchment, peace, non-intervention, and opposition to Empire'.

**NON-INTERVENTION AND INTERNATIONAL SOCIETY**

The non-intervention norm, which prohibits States from intervening in each other's domestic affairs, is often described as the other side of the coin of sovereignty. This may be somewhat misleading, as can be seen by comparing the right to wage war, long regarded as constitutive of sovereignty (its outward manifestation) with the principle of non-intervention, also seen as constitutive of sovereignty, only this time a manifestation of its inner integrity. If the former gives rise to the image of Hobbes's anarchy, the latter suggests an entirely different image antithetical to it. This is usefully illustrated by the egg-box model, in which the value contained in each sovereign 'egg' is preserved only by virtue of the inviolability of its shell, itself protected only by the existence of the egg-box. The egg-box is the strange structure of voluntarily observed norms, practices and restraints, underpinned by more or less balance-of-power relations, which go to make up the non-intervention tradition. In other words, the non-intervention norm is, in this sense, a constraint on sovereignty.

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The non-intervention norm is constitutive of the collectivity of the international society of States. Without a non-intervention norm, some writers now believe, there could not be an international society. As Vincent shows in his study of “non-intervention and international order”, this was first clearly articulated in the eighteenth and nineteenth centuries. Hugo Grotius (1583-1645) in the seventeenth century had no conception of non-intervention, because he did not see an intermediate condition between peace and war, and because the “Grotian conception of international society” was “solidarist”, i.e., he envisaged a universal community of humankind in which natural law applied to individuals as well as to States. It was in the writings of Christian Wolff and Emerich de Vattel in the eighteenth century that “the principle of non-intervention finds its first explicit manifestation”, although not its technical definition. From then on, within the classic tradition, international law (as it soon came to be called) was seen to apply solely to States, not individuals, and as de Vattel put it, “the natural society of States cannot continue unless the rights which belong to each by nature are respected”.

The paradoxical nature of the resulting non-intervention norm is well brought out by Caroline Thomas: “What sovereignty really connotes in inter-State relations today is a claim to independence which is theoretically tempered by the recognition of an equal claim to this by all States, and by a duty and obligation not to intervene in the domestic affairs of other States.” The reference to ‘duty’ and ‘obligation’ shows that the norm is aspirational, if not fictional, resting as it does on the abstract notion of the juridical equality of States. In Christian Wolff’s words, “since the moral equality of men has no

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361 Vincent, *ibid*.
362 de Vattel, Emerich: *The Law of Nations; or, the Principles of the law of nature: applied to the conduct and the affairs of nations and sovereigns*, etc. (London: Newbery, 1759-60); (New York: AMS Press, 1982).
relation to the size of their bodies, the moral equality of nations has no relation to the number of men of which they are composed.\textsuperscript{364}

In short, the right to wage war and the non-intervention norm, both integral aspects of sovereignty, pull in opposite directions, leading by the end of the nineteenth century to the apparently paradoxical outcome that the greater threat to the integrity of States (waging war) was widely regarded as legitimate, but the lesser (intervention) was not.

In his last annual report in the autumn of 1991, the outgoing United Nations Secretary-General Javier Perez de Cueller wrote:

"It is now increasingly felt that the principle of non-interference within the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity. The fact that in diverse situations the United Nations has not been able to prevent atrocities cannot be accepted as an argument, legal or moral, against the necessary corrective action, especially when peace is threatened."\textsuperscript{365}

\textsuperscript{364} Quoted in Vincent, \textit{ibid.}
\textsuperscript{365} United Nations Documents A/46/1.