Chapter Three

INTERVENTION

DICTIONARY MEANING

The assertion of the principle of sovereignty is still the most clear-cut affirmation of the rights of States, even though what exactly sovereignty connotes is debatable, as we have already seen in the chapter concerned.

Bodin and Hobbes declared that a ruler could do as he pleased within his own lands and all entities within that land were subject to his sovereign power. Impliedly the most fundamental right of States was to order the lives of those within their border according to their own discretion. An application of the Kantian principle, "Act according to that maxim by which you will, at the same time hope that it becomes universal law."

The idea of sovereignty also had important implications for relations with other States. The independence of each State within its own borders implied that it had the right to be free of interference from others. This idea derived from the concept of peaceful co-existence: that each State is content to exercise sovereignty within its own borders, while allowing other States to do the same within theirs (one of the principles of Panchsheel). Even though this concept has existed for ages, and became one of the founding principles of the Non-Aligned Movement (NAM), States and before them rulers, were not always willing to accept this self-abnegating ordinance.
Hence, the 'right' of a State to intervene in other States has been debated throughout history and has been moulded to convenience. For the dominant power, intervention has been, and continues to be, in theory at least, a uni-directional valve. However, this thesis tries to establish otherwise basing its premise on globalisation. Even though every act of intervention might appear to be patently uni-directional, every such decision to intervene is latently influenced by a multitude of factors which in themselves are form of intervention, hitherto unrecognised or ignored as inconsequential to the idea of sovereignty.

It is virtually impossible to pinpoint the moment the idea of intervention came into being. It should suffice to say that it has been concomitant to organised society. The aim of this thesis is not to say whether intervention is a good or bad thing but that it exists in the modern world in so many different forms that it is inescapable. It might be appropriate to say that foreign intervention and globalisation are symbiotic and they are both parasitical on sovereignty. Hence, the need to re-define sovereignty to take into cognisance an omnipresent foreign interference, the protean forms of which I shall catch and illustrate later, in the life of a State. This will assist in reducing, if not removing, the tension that arises from a conflict between the ideas of sovereignty and intervention. States will still be able to assert their sovereignty at the domestic and international levels while admitting that such an assertion accommodates outside/foreign interference—albeit in blatant terms—and that the two are not always in opposition and able to selectively cohabit. Having said that, it cannot be gainsaid that there will be certain forms of intervention that will be unacceptable as gross and 'violative' of sovereignty but that issue is beyond the ambit of this thesis. The point is States will still be able to assert sovereignty which will remain a viable concept to keep an international order in existence.
Derived from the Latin *interventio*, the Concise Oxford Dictionary defines “Intervention” as “interference, especially by a State in another’s affairs”.  

Webster’s Dictionary notes as one of the several meanings of “intervention”, “… any interference that may affect the interests of others; as, the intervention of a foreign power”.  

Intervention is also described as the “forcible interference of one or several States into the internal affairs of another State or States, directed against their territorial integrity or political independence or otherwise incompatible with the aims and principles of the Charter of the United Nations. There are armed, economic, and diplomatic intervention. Armed intervention or aggression is most dangerous to the cause of peace and to the independence of a country which has become the object of encroachment”.  

Intervention is “interference in the domestic or external affairs of another State which violates that State’s independence. A State may justify an act of intervention where it has a treaty right to interfere in the external affairs of one of its protected States; where it interferes to protect one of its citizens; where it invades in self-defence; where it joins with other members of the United Nations to restrain a State which disturbs world peace by resorting to war; and in certain other cases. Unless there is some such justification any intervention is a breach of international law”.  

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Intervention is a word which is often used quite generally to denote almost any kind of interference by one State in the affairs of another; but in a more special sense it means dictatorial interference in the domestic or foreign affairs of another State which impairs that State's independence. The law of intervention suffered from the same defect as the law of reprisals in that its legality could always be put beyond criticism by the simple expedient of calling it war; the question of its legality was also sometimes obscured under the cloak of a political doctrine such as the Monroe Doctrine. Nevertheless, certain principles were fairly clear in customary law. "Intervention, being a violation of another State's independence, was recognised to be in principle contrary to international law, so that any act of intervention had to be justified as a legitimate case of reprisal, as authorised under a treaty with the State concerned." Apart from the case of special treaty right, therefore, intervention was not so much a right as a sanction against a wrong or threatened wrong."

"In strict theory the legality of an intervention by many States acting together had to be judged by the same tests as that of an intervention by a single State, but politically and morally the distinction might sometimes be vital. On many occasions in the nineteenth century, the Great Powers intervened, by action which technically and legally involved a usurpation of power, in order to impose the settlement of a question which threatened the peace of Europe. In the absence of an effective legislative procedure for altering international conditions, such extra-legal action was sometimes the only practicable alternative to war; but, lacking any constitutional authority, its basis was sheer power rather than law. Some support was, however, found among jurists for the view that humanitarian

92 Infra
93 e.g., the Treaty of Havana 1903 gave the United States the right to intervene in Cuba for the preservation of its independence, the maintenance of government adequate for the protection of life, liberty, and property, etc.; it was abrogated in 1934.
intervention by a number of Powers to prevent a State from committing atrocities against its own subjects or suppressing religious liberties, such as several times happened in the Turkish Empire in the nineteenth century, was recognised by international law.\textsuperscript{95} Whether this really was so is doubtful in view of the strength in that period of the principle that a State's treatment of its own subjects was a matter exclusively within its own domestic jurisdiction; and Lauterpacht, the great protagonist for the recognition of human rights, felt bound to concede that the doctrine of humanitarian intervention had "never become a fully acknowledged part of positive international law".\textsuperscript{96}

What J.L. Brierly is saying is that because of its illegality, intervention is often cloaked in a shroud of legality which is thought to justify it. Novel ways are often adopted to provide such justifications. Even the candidly aggressive Nazi regime in Germany felt obliged to prepare an elaborate facade, in the form of a State document purporting to prove that Poland was planning an invasion of the Third Reich, before mounting the invasion that touched off World War II. But invasion is an extreme form of intervention, so much so as to be \textit{sui generis}.

Intervention is the attempt by one State to affect the internal structure external behaviour of other States through various degrees of coercion, (and) has been prevalent in the history of the world politics right down to the present day.\textsuperscript{97} Intervention is one of the devices which may be expected to be used in any system of international relations which is competitive in nature. According to McLellan \textit{et al.}, intervention may not be pervasive throughout the system, but that it will exist in one form or another at some place at some time is almost a foregone conclusion.\textsuperscript{98} As this thesis will presently show this view needs to be revised to the extent that intervention is now all pervasive and exists in one or

\textsuperscript{95} Winfield, \textit{British Yearbook of International Law}, 1924, p.161, in Brierly, \textit{ibid.} p.403.
\textsuperscript{96} Lauterpacht, \textit{British Yearbook of International Law}, 1946, p.46.
\textsuperscript{97} Beloff, Max: "Reflections on Intervention", XXII \textit{Journal of International Affairs}, number 2, 1968, p.198.
more of its many forms throughout the international system and thereby in national systems thus impinging on national sovereignties.

In this regard, therefore, one should not be misled by the introductory provisions of the Charter of the United Nations, i.e., “the Organisation is based on the principle of the sovereign equality of all its members,” and that “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 shall require the Members to submit such matters to settlement under the present Charter...” to conclude that the concept of intervention in the affairs of one State by another is otiose. Rather, the reverse.

’Sovereignty’ is therefore a term of art rather than a legal expression capable of precise definition. An independent State enjoys certain rights, powers, and privileges at international law, and correlative to these are duties and obligations binding other States which enter into relation with it. “The rights, etc., and the correlative duties are the very substance of State independence.”

“Examples of rights, etc., associated with a State’s independence are

(a) the power exclusively to control its own domestic affairs;
(b) the power to admit and expel aliens;
(c) the privileges of its diplomats in other countries;
(d) the sole jurisdiction over crimes committed within its territory.

99 Article 2, paragraph 1.
100 Article 2, paragraph 7.
101 For a detailed discussion on this topic, see supra.
103 Ibid.
104 Ibid.
Examples of correlative duties or obligations binding States are

(i) the duty not to perform acts of sovereignty on the territory of another State;

(ii) the duty to abstain and prevent agents and subjects from committing acts constituting a violation of another State's independence or territorial supremacy;

(iii) the duty not to intervene in the affairs of another State.

As to (i), it is, for example, a breach of international law for a State to send its agents to the territory of another State to apprehend there persons accused of criminal offences against its laws. The same principle has been considered to apply even if the person irregularly arrested is charged with crimes against international law, such as crimes against peace or crimes against humanity. Thus, in June 1960, the United Nations Security Council adopted the view that the clandestine abduction from Argentina to Israel of Adolf Eichmann, a Nazi war criminal to be tried by Israeli courts, was an infringement of Argentina's sovereignty, and requested Israel to proceed to more adequate reparation.

Whether international law goes so far as to impose a duty on States to refrain from exercising jurisdiction over persons apprehended in violation of the territorial sovereignty of another State, in breach of international law, is not clear. In France v. Great Britain (Savarkar Case)106, the Permanent Court of Arbitration held that a country irregularly receiving back a fugitive (Savarkar, a British subject and political criminal, escaped from the British vessel Morea while she was docked in Marseilles, was seized by a French gendarme, who erroneously and without further formalities, reconducted him to the Morea) is under no obligation to return the prisoner to the country where he had been apprehended.”

105 ibid.
In *Adolf Eichmann v. Attorney-General of Israel*\(^{107}\), the Supreme Court of Israel, sitting as a Court of Appeal, relied in part upon the principle of universal jurisdiction in upholding the conviction by the Jerusalem District Court of Eichmann for war crimes and crimes against humanity under an Israeli Law of 1951, notwithstanding his irregular abduction from Argentina to Israel, and overruling objections that Eichmann's action occurred in Europe during World War II before the State of Israel was actually founded, and that his offence were committed against people who were not citizens of that State.

Other illustrative cases on the point are those of Maurice Papon (extradited from Argentina to France and tried before a court in Bordeaux for crimes against humanity during Vichy regime 1942-44—trial began October 1997), and of Ilyich Ramirez Sanchez aka Carlos the Jackal (extradited from Sudan to France—faced trial for terrorist activities—trial began 12 December 1997).

The decision of the International Court of Justice in the *Corfu Channel (Merits) Case*\(^{108}\) is illustrative of the principle of respect for a State's territorial sovereignty. The Court held that the British protective naval minesweeping operations in the Albanian territorial waters in the Corfu Channel on 12-13 November 1946\(^{109}\) without obtaining the consent of the Albanian government, three weeks after the damage to British destroyers Orion and Superb on 22 October 1946, and the loss of lives of 45 British soldiers through mines in the Channel, were a violation of Albanian sovereignty, notwithstanding Albania's negligence or dilatoriness subsequent to the explosions.\(^{110}\) The Court held that

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\(^{107}\) (1962)36 ILR 277 [Judgment of lower court reported in (1961) 36 ILR 5].

\(^{108}\) (1949) ICJ 4 (Judgment rendered 9 April 1949).

\(^{109}\) Operation Retail.

\(^{110}\) The Court awarded damages of £850,000 to Britain for the destruction of two of its ships to be paid by the Albanian government. Britain seized gold worth $18 million during World War II to compensate herself; the gold had fallen to Nazi Germany when it overran Albania, and the Allies took possession of the gold when the Nazis were defeated. In May 1992, Britain agreed to return the gold in return for a compensatory payment of $2 million (£1.1 million). Interestingly, Britain
“between independent States, respect for territorial sovereignty is an essential foundation of international relations.”

An illustration of (ii) is the duty on a State to prevent within its borders political terrorist activities directed against foreign States. Such a duty was expressed in the Draft Declaration on the Rights and Duties of States, prepared by the International Law Commission in 1949, and in wider and more general terms in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the United Nation Charter, adopted by the General Assembly of the United Nations in 1970. The duty was reaffirmed on 2 February 1971 in the Convention to Prevent and Punish Acts of Terrorism approved by the General Assembly of the Organisation of American States (OAS), and in the Helsinki Declaration adopted on 1 August 1975 by 30 European States, the Vatican, the United States of America, and Canada; the declaring States pledged themselves to “refrain from direct or indirect assistance to terrorist activities”.

A Convention for the Repression of International Terrorism brokered by the League of Nations in 1937 never came into force. There have been several attempts at the international level aimed at tackling and preventing terrorism. Among the most recent have been the international summit meeting at Sharm-al-Sheik in Egypt in 1996, and the Group of Seven (G7) meeting in Paris, France, on 30 July 1996, and the United States federal law, signed by President Clinton on 5 August 1996 sanctioning non-United States companies investing more than $40 million per year in gas and oil projects either in Iran or Libya, or violating existing United Nations sanctions against Libya; both Libya and Iran are accused by the United States of sponsoring international terrorist activities.\textsuperscript{111}

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 had hitherto maintained it would return the gold to Albania only when democracy is established there. \textit{Quaere}, whether such a demand is tantamount to intervention in Albania. \textsuperscript{111} The United States State Department releases an annual list of States Sponsoring Terrorism, which are banned from receiving aid in any form from the United States. 
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The duty not to intervene in the affairs both external and internal of another State (as in (iii) supra) is recognised in Article 1 and 3 of the Draft Declaration on the Rights and Duties of States, adopted in 1949, by the United Nations International Law Commission, and by the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the United Nations Charter, adopted by the United Nations General Assembly in 1970. The latter proclaims certain principles as to non-intervention. This Declaration also treats as intervention an interference with a State’s “inalienable right to choose its political, economic, social and cultural systems.” The United Nations General Assembly earlier adopted on 21 December 1965 a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, and the Protection of their Independence and Sovereignty.

To fall within the terms of prohibition, intervention must, generally speaking, be in opposition to the will of the particular State affected, and almost always, serving by design or implication to impair the political independence of that State. Semble, upon logical construction, where a State consents by treaty (casus foederis) to another State exercising a right to intervene this might, as a general rule, not be deemed inconsistent with international law.

The simple traditional scenario of intervention might run something like this. To begin with, State A may feel threatened by the possibility that certain aggressive elements within State B may assume leadership. So State A intervenes to insure the continuation of the friendly regime. But, given the openness and alacrity of modern-day communication, and the general dislike in other parts of the world for interference in the internal affairs of other countries, State A is circumspect enough to arrange an “invitation” from its neighbour’s government to

112 Semble, the detention by Britain of gold seized from Albania during World War II and making its return contingent upon the establishment of democracy in that country would amount to intervention. Cf. note 23 supra.
help it maintain its freedom and the status quo. If the government of State B has already been overturned, intervention by State A becomes the "liberation" of the people of State B from the usurpers of legitimate authority (which, in this case, means an authority which can be expected to respect the wishes of the intervening power). In the first instance, liberation need probably only involve "encouragement", but if that proved insufficient to the task to restoring the "legitimate" forces to power, military assistance could be provided. Only if this did not work would State A employ force.

But, what if State A merely involves itself in the affairs of State B without in any way appearing to coerce its leadership? Is this considered intervention or not? (Needless to say, it would be labelled as such by the leaders of State B). In endeavouring to find a definition of intervention which distinguishes between these and other closely related patterns of behaviour, Howard Wriggins, suggest a spectrum: influence is at one end, running through forms of involvement, finally becoming intervention at the other, with influence being the more "benign" of the extremes, and intervention connoting "action in another's territory". In what Wriggins calls the "clandestine" variety of influence, State A endeavours to direct the course of State B's policy without the latter's knowledge that this is being done (the most common and subtle form of intervention); so outraged do the leaders of State B become, once this form of intervention is laid bare, that they may well charge that some form of aggression has actually taken place, even if military force is not actually brought into play.

A distinction needs to be made here between the objective of intervention and the means employed to achieve it. Not only does intervention involve an attempt to influence or to manipulate the internal affairs of another State, but it also implies hostile action, or at least the threat of it, although normal diplomatic efforts to persuade may be called interventionist. The importance of this

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114 Wriggins, H: "Political Outcomes of Foreign Assistance: Influence, Involvement or Intervention?" XXII Journal of International Affairs, number 2, 1968, pp.217-218. Wriggins is a former member of the Policy Planning Council of the United States State Department.
distinction is readily seen in the attitude of a government’s opposition, which, either honestly or for purposes of domestic political advantage, tends to regard any degree of unusual involvement in its country by a foreign power as some form of intervention. This has often been particularly true when extensive foreign aid has been offered, especially to the extent that it becomes military or “interventionist” in nature. China goes up in arms when a western power doles out arms to Taiwan and calls it “interference in its internal affairs”. (China regards Taiwan as its renegade province). India cries “intervention” when the United States supplies its intransigent neighbour, Pakistan, with armaments.

It is the Marxist-Leninist assumption that intervention in the affairs of the less-developed countries by the capitalist powers is inevitable, implicit in what Vladimir Ilyich Lenin called the “highest state of capitalism”—imperialism. The communists and their sympathisers around the world hitherto saw capitalist foreign aid as but one more manifestation of what they regard as a historical process which will only end with a series of terrible wars between bourgeois States and the eventual triumph of the proletariat. They argue that what was admittedly imperialistic yesterday is today simply imperialism with a new face or in a new guise—intervention through economic assistance—and will probably become military control tomorrow. Even with the end of the Cold War all of such fears have not been allayed. They have been overcome pro tem, primarily in a Catch 22 situation, for economic reasons.

Revolution is often regarded as a form of intervention from the outside, though a revolution may very well occur simply as a result of widespread and acute dissatisfaction within the borders of a given country. Even when it is not intervention, it is usually so regarded by the government against which the revolution is so directed. At the same time, there can be little doubt that revolutions are aided and abetted by foreign powers; as President Richard Nixon of the United States observed in 1971, “As far as Castro is concerned, he has

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115 As to different forms of intervention, see infra.
already drawn the line. He is exporting revolution all over the hemisphere, still exporting it.\textsuperscript{116}

Depending upon the location and standing of the country within which an internal revolution takes place, there is bound to be a certain degree of international interest in the outcome. When the revolution occurs as a direct result of the activity of an outside power, however, the international system is instantly alerted and vitally affected, irrespective of the size and geographical location of the country involved. This is apparent from the upheavals in Rwanda, and Burundi, the tiny central African nations in the Rift Valley, from 1994 onward. In nations on the African continent and in a greater portion of South America, the military has been one of the main power brokers or power contenders in the political system. This might, however be an \textit{intra}-vention, arising from within the political system of a country and mostly sans outside support, than \textit{inter}-vention \textit{stricto sensu}. It could perhaps be called an “\textit{intra}-State authority war”.

Robert Putnam writes that “outside the North Atlantic areas, the armed forces are more likely than not to be among the most important power contenders in any political system, and military regimes are at least as widespread as either totalitarian or democratic ones. It is surprising, therefore, that until recently this phenomenon has attracted little attention from students of politics. Though there has been some speculation about the causes of military intervention, our actual knowledge of the subject is meagre indeed.”\textsuperscript{117}

Oppenheim\textsuperscript{118} takes a rather strict and restricted view on intervention laying emphasis merely on the dictatorial aspect and excluding all other forms it might take. He says that

\textsuperscript{117} Putnam, Robert: “Explaining Military Intervention in Latin American Affairs,” XX \textit{World Politics}, 20, number 1, 83 (1967).
\textsuperscript{118} Oppenheim: \textit{International Law}, p.305.
“intervention is dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual position of things. Such intervention can take place by right or without a right, but it always concerns the external independence or the territorial or personal supremacy of the State concerned, and the whole matter is therefore of great importance for the international position of States. That intervention is, as a rule, forbidden by International Law, which protects the international personality of States, there is no doubt. On the other hand, there is just as little doubt that this rule has exceptions, for there are interventions which take place by right,119 and there are others which, although they do not take place by right, are nevertheless permitted by International Law.

“Intervention can take place in the external as well as in the internal affairs of a State. It concerns, in the first place, the external independence, and in the second either the territorial or the personal supremacy. But it must be emphasized that intervention proper is always dictatorial interference, not interference pure and simple.120 Therefore, intervention must neither be confused with good offices, nor with mediation, nor with intercession, nor with cooperation, because none of these imply dictatorial interference. Thus, for example, in 1826, at the request of the Portuguese Government, Great Britain sent troops to Portugal in order to assist that Government against a threatening revolution on the part of the followers of Don Miguel; and in 1849, at the request of Austria, Russia sent troops into Hungary, to assist Austria in suppressing a Hungarian revolt.

“It is apparent that such interventions as take place by right must be distinguished from others. Wherever there is no right of intervention, an intervention violates either the external independence or the territorial or personal supremacy. But if an intervention takes place by right, it never

119 Emphasis mine.
120 This view has been distinguished by this writer, infra.
constitutes such a violation, because the right of intervention is always based on a legal restriction upon the independence or territorial or personal supremacy of the State concerned, and because the latter is in duty bound to submit to that intervention.”

It seems that Oppenheim’s theory derives from the views of John Stuart Mill who defended the right of a State to intervene in the affairs of another to prevent tyrannical or alien government or overthrow an unjust government.

Oppenheim, it appears from the reproduction of his thesis above, condoned all forms of intervention, especially the one that takes place by right, except dictatorial intervention. It is difficult to conceive of an intervention that would not be dictated in some form or the other, by some reason or the other. Even in case of an invitational intervention, as has been discussed above, the invitation is procured from the nation-State inviting intervention. More often than not, the issue of such an invitation can only be influenced by a more powerful nation.

Oppenheim goes on to enumerate seven reasons when a State may have a right of intervention against another State. These are:

1. A State which holds a protectorate has a right to intervene in all the external affairs of the protected State.
2. If an external affair of a State is at the same time by right an affair of another State, the latter has a right to intervene in case the former deals with an affair unilaterally.

An example is provided by the Bryan-Chamorro Treaty between the United States and Nicaragua of 5 August 1914, granting to the former an exclusive option to construct another inter-oceanic canal across the Nicaraguan territory, and a naval base in the Gulf of Fonseca, and ceding to the former Great Corn Island and Little Corn Island in the Caribbean Sea. The republics of Costa Rica, El Salvador, and Honduras protested against this Treaty on the ground that it violated treaty rights previously acquired by them. Costa Rica and El Salvador brought an action against Nicaragua before the Central American Court of Justice (established 1907, functioning till 1918, deciding ten cases) for the purpose of vindicating their rights, and the Court, on 30 September
3. If a State which is restricted by an international treaty in its external independence or its territorial or personal supremacy does not comply with the restrictions concerned, the other party or parties have a right to intervene.

Thus, the United States of America, in 1906, intervened in Cuba in conformity with Article 3 of the Treaty of Havana of 1903 (virtually abrogated by the Treaty of 29 May 1934) for the purpose of re-establishing order; and, in 1904 in Panama in conformity with Article 7 of the Treaty of 1903 (reiterated in Article 10 of the Treaty of 1936). Section 14 of the United States Act of 24 March 1934 providing for the independence of the Philippine Islands lays down that, during an interim period of ten years, the United States may intervene for the maintenance of the Government and for the protection of life and property and for other reasons. The United States thus intervened, inter alia, in Nicaragua in the years 1926-1930, and in Haiti in 1929 and 1930. The United States also entered into similar agreement allowing United States intervention with Greece (Agreements of 1941 and 1947) and Turkey (Agreement of 1947).

Britain, France and Russia, the guarantors of the independence of Greece, intervened in Greece during World War I in 1916 and 1917 for the purpose of re-establishing constitutional government in conformity with Article 3 of the Treaty of London of 1863. King Constantine had to abdicate, and his second son, Alexander, was installed as the King of Hellenes.

1916 and 9 March 1917, pronounced judgment Nicaragua, but, the United States of America, not being a party to the litigation, the Court declared its inability to declare the Treaty null and void.

Which provides that the two governments may, subject to consultation, take the necessary measures of prevention and defence in case of an international conflagration or the existence of a threat of aggression endangering the security of Panama or the neutrality or security of the Panama Canal.

Which provides that “Greece, under the sovereignty of Prince William of Denmark and the guarantee of the three Courts, forms a monarchical, independent, and constitutional State.”
4. If a State in time of peace or war violates such rules of the Law of Nations as are universally recognised by custom or are laid down in law-making treaties, other States have a right to intervene and to make the delinquent submit to the rules concerned. If, for instance, a State sought to extend its jurisdiction over the merchantmen of another State on the high seas, not only would this be an affair between the two States concerned, but all other States would have a right to intervene because the freedom of the open sea is a universally recognised principle. Or if a State which is a party to the Hague Regulations concerning Land Warfare were to violate one of these Regulations, all the other signatory Powers would have a right to intervene.

5. A State that has guaranteed by treaty the form of government of another State, or the reign of a certain dynasty over the same, has a right to intervene in case of a change in the form of government or of the dynasty, provided that the treaty of guarantee was concluded between the respective States and not between their monarchs personally.\(^{125}\)

6. The right of protection over citizens abroad, which a State holds, may cause an intervention by right to which the other party is legally bound to submit. And it matters not whether protection of the life, security, honour, or property of a citizen abroad is concerned.

7. Finally, the Covenant of the League of Nations provided, as does the Charter of the United Nations, for the collective intervention of the Member States for the purpose of restraining States which disturb the peace of the world by resorting to war or force generally or to threats of force in breach of the provisions of the

\(^{125}\) Such a right to intervene is not generally recognised. It is difficult to see how a foreign power can undertake by treaty obligation to retain a certain form of government or dynasty, when such choice is left to the will of the people. [It may be pointed out that here Oppenheim seems to be contradicting what he said before.]
Moreover, the Covenant contemplated collective intervention in certain events against States which were not members of the League (especially Articles 10, 11 and 17). The Charter of the United Nations imposes upon the Organisation the duty of ensuring that States which are not members shall act in accordance with its principles so far as this is necessary for the maintenance of international peace and security [Article 2(6)].

In contradistinction to intervention by right there are, according to Oppenheim, other kinds of intervention which cannot be considered illegal, although they violate the independence or the territorial or personal supremacy of the State concerned, and although such State has by no means a legal duty to submit patiently and suffer the intervention. Of such intervention in default of right there are two kinds, namely, such as is necessary in self-preservation and such as is necessary in the interest of the balance of power.

1. As regards intervention for the purpose of self-preservation, it is obvious that, if any necessary violation—committed in self-defence—of the international personality of other State is excused, such violation must also be excused as is involved in intervention. The question whether an act of self-help amounts to action in self-preservation is a matter of degree. In the Corfu Channel case, the International Court of Justice said: "The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organisation, find a place in International Law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be

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127 (1949) ICJ 4. Discussed supra. See also notes 21-23.
reserved for the most powerful States, and might easily lead to perverting the administration of international justice."

Notwithstanding the somewhat general language used by the Court, writes Oppenheim,\textsuperscript{128} the admissibility of intervention in clearly specified cases and in a manner not inconsistent with the Charter of the United Nations, must be regarded as a rule of International Law.

2. As regards intervention in the interest of balance of power, it was, in the absence of an international organisation of States such as the League of Nations or the United Nations, regarded as admissible. Since the Westphalian Peace of 1648\textsuperscript{129} the principle of the balance of power played a preponderant part in the history of Europe. It found express recognition in 1713 in the Treaty of Peace of Utrecht, it was the guiding star at the Vienna Congress in 1815, when the map of Europe was re-arranged, at the Congress of Paris in 1856, the Conference of London in 1867, the Congress of Berlin in 1878, and at the end of the Balkan War in 1913. Most of the interventions exercised in the Balkan Peninsula must, in so far as they are not based on treaty rights, be classified as interventions in the interest of the balance of power. Examples of this are supplied by collective interventions exercised by the Powers in 1886 for the purpose of preventing the outbreak of war between Greece and Turkey, in 1897 during the war between Greece and Turkey with regard to the Island of Crete, and in 1913, toward the end of the Balkan War, for the purpose of establishing the independent State of Albania.

\textsuperscript{128} Op. cit.

\textsuperscript{129} Which ended the Thirty Years' (religious) War (1618-48) in Europe and made the territorial State the cornerstone of the modern State system and clearly delineated the general pattern of international relations. As a result, the balance of power began to play and even greater role than before.
Collective intervention now would be by enforcement action under the authority of the United Nations Security Council, pursuant to Chapter VII of the Charter, or any action sanctioned by the General Assembly under the Uniting for Peace Resolution of 3 November 1950. Otherwise, the United Nations is prevented by Article 2, paragraph 7, of its Charter from intervening in matters “essentially within the domestic jurisdiction” of any State. Semble, the mere discussion by a United Nations organ of a matter on its agenda affecting the internal jurisdiction of any State is not an intervention in breach of this Article.

The thesis of Oppenheim, cited above, seems, on perusal, somewhat anachronistic. This is, however, not to deny the value or importance of the postulations. Oppenheim seems to allow for and condone intervention in a whole lot of instances. His thesis was perhaps more appreciable *ex proprio vigore* in the era of colonialism. But, times have changed. Independence of States and democracy are now *de riguer*. Intervention, then, *ideally*, is to be looked down upon except when it is necessitated to uphold International Law and restore and protect international peace and security. Ironically, in international relations today intervention has, in some form or the other, and it has assumed a variety of forms, as we shall see later, become inevitable.

States must subordinate the exercise of any such exceptional rights of intervention to their primary obligations under the Charter of United Nations, so that except where the Charter permits it, intervention must not go so far as the threat or use of force against the territorial integrity or political independence of any State (Article 2, paragraph 4).

Before the Spanish Civil War of 1936-38, the principle was generally approved that revolution or civil war or other grave emergency in another State, as already discussed, might be cause for intervention if the safety of the State desiring to intervene were affected by the conflict, or emergency, or if there were
serious interference with the exercise by it of some rights which should be respected.130

How far this principle remains valid today, particularly in the light of a State's obligations under the Charter of United Nations, is open to question. In 1936, the European Powers departed from the principle by agreeing not to intervene in the Spanish Civil War under any circumstances (even by certain kinds of trading with the contestants). Twenty years later, when in October-November 1956 Britain and France did jointly intervene by force against Egypt in the Suez Canal zone, ostensibly in the Israel-Egypt conflict, under claim of a threat to their ‘vital interests’—like the United States did in the case of Iraq-Kuwait crisis in 1990-91—the preponderant reaction of the rest of world, as expressed in the United Nations General Assembly, was to condemn this intervention as, inter alia, a breach of the Charter of the United Nations. It was maintained that, as Egypt had not been culpable of any actual armed attack within the meaning of Article 51 of the Charter, recourse to an alleged right of collective self-defence was not justified. For similar reason, namely, the absence of any actual armed attack, it has been claimed that the United States action in landing forces in Beirut in July 1958, on the invitation of the President of Lebanon, to assist that country against an alleged threat of insurrection stimulated and assisted from outside, and to protect American lives and property, was not stricto sensu a measure of self defence authorised by Article 51. Upon a similar argument, the landing of British troops in Jordan upon the invitation of the government of that country shortly after the Beirut landing has to be criticised. So has the United States intervention, inter alia, in Grenada in 1983131 and in Haiti132 in 1994; the

130 Hyde, International Law (1947).
131 On 25 October 1983, United States's forces under the orders of President Ronald Reagan invaded Grenada ostensibly to protect the lives of about one thousand Americans on the island, but actually because Grenada was seen as an arsenal for military action masterminded by the Cubans and by Soviet advisers there and elsewhere in the Caribbean. Questions were asked whether Cuban and Soviet activities had constituted a true threat to the status quo in the region.
132 During the first term of President William Jefferson (Bill) Clinton in September 1994.
latter was repeatedly referred to as “an invasion” in United States media. Such action on the part of the United States can be contrasted with the “Good Neighbour Policy” espoused by President Franklin Delano Roosevelt (1933-45). The Good Neighbour Policy has been substituted, it seems, with the policy of the “big stick”.

“The Beirut landing was, however, justified not only as an act of self-defence, but also on the ground that the legitimate government of Lebanon had consented to the intervention. The general rule in this connection is that, in the case of strife, which is primarily internal, and particularly where the outcome is uncertain, the mere invitation by either faction to an outside State to intervene does not legalise an otherwise improper intervention. Inasmuch as it is claimed that subsequent events showed that the conflict in Lebanon was purely of an internal character, the legality of the American intervention in Lebanon has been doubted. Moreover, the reports of the United Nations Observer Group in Lebanon did not support any theory of outside intervention on a large scale.”

Upon a study of the cases of intervention in modern history, Fenwick’s remark that “to intervene or not to intervene was a matter which each State decided for itself according to its military power and its national power” still seems to hold true. Jurists of old often described intervention as a summary procedure which “may sometimes snatch a remedy beyond the reach of law”.

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134 A phrase that President Franklin Roosevelt chose to characterise his policy, begun under President Herbert C Hoover’s administration (1929-30), of eschewing armed intervention (in Latin America) in favour of a programme of friendly co-operation.


Jurists have differed on the legal nature and moral justification of intervention. British and American jurists have shown a proclivity to defend intervention, perhaps because in most of the cases of intervention to date their countries have been, either directly or indirectly, 'involved'. Most Continental and Latin American writers have tended to reject the alleged 'right' or limited it sharply. The conflicting views of the jurists have been reflected in the lack of agreement upon the very definition of 'intervention'. In popular use of the term 'intervention' is included, as discussed above, the interference of a third State in a war between two States, the interference of foreign governments between parties to a civil war, and the interference of one government in the domestic or foreign affairs of another. To some writers interference is only intervention when unwarranted; and this broad and open-ended definition of intervention seems to be the most acceptable today. But, what might be justifiable interference in the eyes of one State might be unwarranted interference in the eyes of another.

However, if we are heading toward a 'world without borders'—as indeed we are—the comments of Roscoe Ralph Oglesby may be noteworthy:

"The realities of the world in which we live, and of the international system which presently prevails in that world invite participation by outside powers in situations of internal wars. Significant factors which make up the realities are mass communication, rapid transportation, economic interdependence, ideological commitments, and revolutionary parties which cut across national boundaries in their organisation and in their operations. The traditional system built up shields of state protection through the formula of sovereignty and non-

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138 Fenwick, ibid.
139 China often regards foreign criticism of its human rights record as an interference in its internal affairs.
140 Hyde, ibid., volume I of three volumes.
141 Taken from the book by the same name. Brown, Lester R: World Without Borders (New Delhi: Affiliated East West Press, 1972)

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intervention. This formula was based on neat spatial criteria. But spatial formulae no longer are completely valid in the modern world where functional criteria are apt to be over-riding. The functions of defence, of economic prosperity, of social interchange no longer are congruent to the territorial boundaries of states. It seems certain that in such an international ambience the old norm of non-intervention cannot be preserved."

In the modern international system interventions are to be expected in increasing numbers, preferably more at the sub-international or regional level than the truly international level. But, such a preference is wishful in an era of globalisation, and the experience of the 1990s proves this. The present international system is still a decentralised one—in spite of the attempts in some areas of the world to form ‘regional communities’—in which formal order and diversity arise from the activities of government carried on largely within territorial boundaries, notwithstanding the exceptional case of the European Union. Yet, intervention is an increasingly significant element of the domestic government of many countries of the world. Civil conflicts within a State, in particular, as we shall see later in greater detail, become the targets of interventionary activities. In recent times, assistance in men, material, in money, military training and materiel, in situations of civil strife has became the most common of all types of international activity, nay, intervention.

Though the causes of this increase in revolutionary and interventionary activity remain obscure, a variety of likely contributing factors have been identified. These include both motivational factors (or factors making for heightened motivation for revolution and intervention), and opportunity factors

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143 By the Civil War Project of the American Society of International Law Panel on the Role of International Law in Civil Wars, 1972.
Motivational factors:

1. Rising demands for self-determination, human rights, and modernisation, combined with a variety of intense ideological conflicts that centre around communist and non-communist political ideologies\(^\text{145}\);
2. Increasing complexity of social problems and bureaucratic organisation that results in concomitant difficulties in effective governance and temptations to authoritarian or revolutionary "solutions"\(^\text{146}\);
3. The demonstration effect inherent in a high frequency of revolutionary and interventionary activity\(^\text{147}\);
4. Residual problems, stemming from political settlements and global transformations that followed World War II, particularly the problem of Cold-War-divided nations; and
5. A pattern of formalised alliance systems which create pressures for external assistance.

Opportunity factors:

1. The great increase in newly independent nations, resulting from accelerated de-colonisation (from about 65 states immediately after World War II, the number has swelled to nearly 200);
2. The large number of weak governments and unstable national units resulting from the rapid increase in the number of new States and a sometimes haphazard process of de-colonisation;

\(^{145}\) This hold true even in the post-Cold War era despite the demise of the Soviet Union.
\(^{146}\) E.g., the rebellion by the Zapatista (EZLN) guerrillas in the Chiapas state of Mexico, 1994.
\(^{147}\) Again, the glib and smooth-talking Subcommandante Marcos, leader of the Zapatista guerrillas of Chiapas in Mexico, with his balaclava and sound bytes, became a hit with the western media.
3. The destabilising effect of accelerated social change caused by technological and population explosions;¹⁴⁸
4. A high and rising level of interaction among nations (this factor is simultaneously a significant motivational factor);
5. Constraints of a balance-of-power system and the unacceptability of nuclear exchange between the Super Powers that militate for limited and protracted conflicts and that deflect conflict to competitive interventions, covert operations and proxy wars by client states;¹⁴⁹
6. A relatively low level of effective global organisation for the control of revolutionary and interventionary violence;
7. Increased interventionary activities associated with governments which have recently come to power through revolution, coupled with the significant number and importance of such governments in the present international system; and
8. A rise in the number of private armies and ideological groupings transcending nation-State boundaries.

Since many of these factors are likely to be operative, if not accelerating, in the foreseeable future, it seems likely that revolutionary and interventionary violence will continue as principal world-order problems.¹⁵⁰

The central challenges posed by revolutionary and interventionary violence are, first, how to encourage persuasive rather than coercive strategies for achieving needed social change and, second, as long as violence continues, how

¹⁴⁸ Two things the Chinese Communist Party, for instance, is persistently worrying over, and especially since economic liberalisation was allowed through the “open window” by late senior leader Deng Xiaoping.
¹⁴⁹ This factor has marginally been attenuated by the end of the Cold War and the collapse of the Soviet Union, which have left the United States the dominant Power in weltpolitik.
to moderate and confine it to minimise its destructiveness. Law, or the flow of decisions regarded by the community as authoritative and controlling, has an important role to play in meeting both challenges. Despite the decentralised nature of the present international legal system and despite the well-known difficulties in ensuring compliance with community decisions, there is a functioning network of international institutions and norms specialised to the production and allocation of all values and to the control of unauthorised coercion. Although law as an instrument of social change must respond to the challenge by providing more effective community procedures for realisation of self-determination, human rights, and modernisation, the most immediate challenge has been to the institutions and norms concerned more directly with the management of conflict.

There are six principal strands to the international law of conflict management. Each was developed primarily in response to conventional warfare across national boundaries, and each is in need of revision or supplementation to become more relevant to the problems posed by revolutionary and interventionary violence.151 These are:

1. Normative standards for distinguishing permissible and impermissible resort to force;
2. Institutions, organisations, and procedures for collective security and community management of conflict;
3. Laws of war, or the rules and structures for regulating the conduct of hostilities;
4. Rules and structures for the control of armaments;
5. Standards and procedures for the ascription of personal responsibility for knowing violation of the major conflict-management rules. That is, standards and procedures for fixing criminal responsibility for the commission of crimes against peace, war crimes, or crimes against humanity; and

151 Moore, op.cit.
6. Rules and practice within national legal systems concerning the allocation of authority for the use of the armed forces abroad.

All this is fine. But, the point is that these strands of international law of conflict management are in themselves interventionary in nature and impinge on sovereignty of States. Some of these have come to be regarded by States as acceptable dilutions to their sovereign structure. In such a scenario the traditional Austinian mould of sovereignty, discussed in the last chapter, needs to be discarded and recast, and the "contracting out" of certain elements of sovereignty by the States to a cognizable and palpable international super-State accounted for in such redefinition and reconceptualisation.

CIVIL WARS AND INTERVENTION

Civil wars have become an all too common phenomenon. They raise a number of problems in international law. Civil wars of various kinds have recurred in different parts of the world ever since the genesis of political human societies. The reasons for this are many. Dissatisfaction among some portion of the population, with the prevailing conditions stands out as the fundamental and most common cause of the outbreak of civil war: where peaceful changes are denied, violence— even to the extent of severing connexions with the parent State—is the last recourse. According to Lauterpacht, civil wars will recur until such time as human rights are effectively safeguarded under international law. Civil war may also be caused by the ambition of a few individuals, or even one person. The origin may, again, lie in external intervention in the domestic affairs of a State. This type of

153 Chechnya is an example.
155 ibid.
156 An example of this is the civil war in Liberia which began as a result of the personal ambitions of Charles Taylor, now President of the country.
intervention is prohibited in international law. Since international wars are prohibited in the present international law, there have been attempts to disguise such conflicts as civil wars. Moral condemnation was possible even when international wars were considered lawful; in their place, other violent methods such as armed intervention, e.g., aiding an allegedly oppressed minority group, are used.

Even in old, established, independent States, the majority are not always satisfied, and violence is still largely accepted as a means of change. Many colonial countries achieved independence by civil war. A considerable number of States, especially the younger ones, have heterogeneous populations. This increases the likelihood of subversion, secession, and border problems. It would naturally be preferable if all disputes could be resolved peacefully, but neither international nor domestic measures have always been successful in this.

According to Castren, under municipal law, civil wars are prohibited. It is generally regarded as high treason or some comparable crime entailing severe punishment according to criminal law, to start or participate in civil war. Both, the judicial system of many nations and the juridical theory start from this assumption.

It seems obvious that from the point of view of municipal law, self-destructive activity of this kind must be prohibited so as to guarantee the maintenance of peace and law and order, and the integrity and sovereignty of the State. Understandably enough, even after the outbreak of a civil war, those in power strive to emphasise its illegality and that it is an internal matter in which external powers have to right to intervene by helping the insurgency. Ironically,

158 Greenspan: ibid.
159 Castren: id.
160 ibid., p.18.
161 ibid.
it may actually be due to external intervention that the insurgency or civil war took place in the first place. But, despite the law, civil wars do occur. Naturally, the risks are great. But, if the insurgents emerge victorious it is they who then form the ‘legitimate’ government. It may well be that at the conclusion of a successful civil war, the sides may be reversed.

Anent international law, and particularly its written rules, there are, as of now, no general conventions, or treaties between particular States, condemning civil war. The Covenant of the League of Nations contained no such stipulations. This is also true of the Charter of the United Nations. On the other hand, one of the main reasons for concluding the Holy Alliance during 1814-15163 was to protect some of the reigning families from domestic opposition. There may be stipulations in treaties forbidding one party from aiding insurgents in the country of the other party, or obliging the other State to aid the lawful government if an insurrection breaks out, but even here the insurrection and civil war are not declared illegal. Even the Protocol Additional II to the Geneva Convention of 1949 defines a non-international armed conflict as “an armed conflict which takes place on the territory of a State between its armed forces or other organised armed groups which, under authoritative command, exercise certain control over part of the State's territory.”

Customary international law has been unanimously interpreted as not prohibiting, but permitting civil war. It has even been said that international law actually favours civil war by presupposing that insurgents can be recognised as a belligerent party, thus placing them on the same footing as independent States. In the international sphere, conclusions contrary to those in municipal law have been drawn. As the expression itself suggests, civil war is generally to be regarded as an internal matter. Should a civil war acquire characteristics of an international dispute, and should foreign States show intentions of interviewing, primarily to

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163 The Holy Alliance was based upon three treaties: the treaty of Chaumont of 9 March 1814, the Quadruple Alliance of 20 November 1815, and the treaty of Holy Alliance of 26 September 1815, between Austria, Britain, Prussia, and Russia.
assist the insurgents, the United Nations acquires the right to apply the rules concerning international conflicts, even though civil war is not illegal under the Charter. Article 2, paragraph 7, of the Charter of the United Nations has a conditional non-intervention clause in matters which lie essentially within the domestic jurisdiction of a State. Should the dispute then be plainly internal, the prohibition against the intervention of third parties applies, unless, of course, the lawful government specifically requests help. This prohibition on intervention is derived from the principle of self-determination of peoples, accepted in principle by both the general international law and the Charter of the United Nations. In practice, however, it may be necessary to limit the self-determination of peoples since, carried to its logical conclusion, it could result in disorder and chaos.

There is a duty upon States to prevent the commission within their territory of acts injurious to foreign States, but this duty does not imply an obligation to suppress all such conduct on the part of private persons as is inimical to or critical of the regime or policy of a foreign State. Thus, there is no duty to suppress revolutionary propaganda on the part of private persons against a foreign government. So long as international law provides no remedy against abuses of governmental power, international society cannot be regarded as an institution for the mutual insurance of established governments. On the other hand, States are under a duty to prevent and suppress such subversive activity against foreign governments as assumes the form of armed hostile expeditions or attempts to commit common crimes against life and property. Moreover, while subversive activities against foreign States on the part of the private persons do not in principle engage the international responsibility of a State, such activities when emanating directly from the government itself or indirectly from organisation receiving from it financial or other assistance or closely associated with it by virtue of the constitution of the State concerned, amount to a breach of international law. The principle of independence and non-intervention enjoin

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164 The prohibition of intervention may be derived from the Pact of Paris of 1928 a.k.a. the Kellogg-Briand Pact.
165 Article 1, paragraph 2.
upon governments and States officials the duty of scrupulous abstention not only from active interference, but from criticism of foreign laws and institutions, which in the opinion of the this writer, is a form of intervention as already demonstrated above.

Article 1 of the Pan-American Convention of February 1928 on Duties and Rights of States in the event of Civil Strife—adopted by the Sixth International American Conference at Habana—obliges contracting parties to use all means at their disposal to prevent the inhabitants of their territories, nationals or aliens, from participating in, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil war. The same Article obliges the parties to forbid, so long as the belligerency of the rebels has not been recognised, the traffic in arms and war material, except when intended for the government. The same Convention provides that if the insurgent vessel arrives in the territory of a contracting party, the vessel must be handed over to the lawful authorities of the home State and that the members of the crew must be considered as political refugees. It has been held that contracts made with a view to promoting a hostile expedition against a foreign State are unenforceable.\textsuperscript{166}

The intervention of third States in the civil war in Spain in 1936 came close to precipitating a general conflict.\textsuperscript{167} Germany and Italy intervened on the side of General Franco, Russia on the side of the Loyalists, while Britain and France enacted embargo measures against both sides. A Non-Intervention Committee was set up in London, seeking to maintain neutrality between the two parties. The Council of the League of Nations adopted a resolution affirming the obligation of States to refrain from intervention in the internal affairs of another State; but no constructive rules of law were drawn up to govern similar cases in

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{166}] \textit{Florsheim v. Delgado}, decided by the Civil Tribunal of the Seine in July 1932, Annual Digest and Reports of Public International Law Cases 1931-32, Case no.9.
\item[\textsuperscript{167}] Padelford: \textit{ibid.}
\end{itemize}
\end{footnotesize}
the future. It remained uncertain whether aid to a de jure government could be said to be an illegal act, although its consequences might be aid by other States to the rebels and the danger of war.

A civil war would ipso facto be an internal conflict, one occurring within a State in which there is no ‘lawful’ involvement by another State in the sense of a breach of Article 2, paragraph 4, of the Charter of the United Nations. And, in this type of conflict there is, basically, no right of intervention for any outside power and no occasion for any exercise of a right of self-defence. This results from the basic proposition of the equality of States which, in effect, means that the internal politics and internal conflicts within State A are the concern of State A alone and give rise to no right on the part of State B.

There are, however, three categories of situations in which some would argue that a “right of intervention” exists:

i) Intervention by the consent of the established or “incumbent” government;

ii) Intervention to assist a struggle for self-determination;

iii) Humanitarian intervention.

Under (i) the premise is that consent legitimises what would otherwise be illegitimate. It is believed that, despite the frequency with which it has been invoked by intervening States, it is basically unsound. Its unsoundness stems from the subjectivity of recognition, since an intervening State is free to recognise as the “government” whichever faction in an internal struggle it wishes to support and which will request intervention. This, in effect, is what the Soviet Union did

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in intervening in Hungary in 1956. It also stems from the inevitable conflict which such a doctrine arouses with the principle of self-determination of peoples, regarded by many States as one of the most fundamental and “peremptory” norms of contemporary international law. And, indeed, once an internal conflict is politically motivated in the sense that the competing factions are in competition for governmental power over the whole or part of the territory, any outside intervention will prejudice the outcome of the internal struggle and, thus, impair the right of the people of that State to self-determination. Lastly, the unsoundness of the doctrine of intervention by consent stems from the fact that such intervention frequently induces counter-intervention by some other State, with a consequent escalation of the conflict and greater risk to international peace and security.

Such consent was invoked by the governments of Britain and the United States to justify intervention in Jordan and Lebanon in 1958. The “consent” to the intervention by the United States in Santo Domingo in 1965, given by Colonel Benoit, was of doubtful relevance, since the status of the military junta headed by Colonel Benoit was not that of a government. The notion that the intervention of the Soviet Union in Czechoslovakia in 1968 was with the consent of either the Czechoslovak government or people is a fiction which presumably even the Soviets did not believe; the National Assembly of Czechoslovakia made a forthright protest over the invasion in its Declaration of 22 August 1968.

If the doctrine of intervention by consent is to be rejected, as it should be, there yet remains the problem of lack of definition of unlawful intervention. Would this preclude all assistance to the incumbent government? In principle, assistance which can be used against the rival political force must be excluded: thus, direct military assistance, the supply of military advisers, weapons, and

equipment would be excluded. Farer\textsuperscript{173} argues that the prohibition ought to be restricted to tactical support, either by troops, advisers, or volunteers, and not extended to military equipment or other forms of aid. Moore's\textsuperscript{174} suggestion is to limit all forms of military aid to the level reached prior to the secession attempt. Other forms of technical or economic assistance which would have no direct bearing on the outcome of the political struggle and which are intended to benefit the State as a continuing entity rather than any particular incumbent government would not, in principle, be excluded. \textit{Semble}, it would be unlawful intervention to give military aid begun before the internal conflict started, when it is in being, and when it has reached a stage at which the right of self-determination is in issue.

Many States regard intervention under (ii) as legitimate. \textit{E.g.}, it is the basic justification adopted by the Arab States in their conflict with Israel; the subject of self-determination being the Palestinian people. Paragraph 6 of Resolution 2151 of 1965 of the United Nations General Assembly is ambiguous on this issue, and has been, and will be, construed by many States as excluding intervention for this purpose from the general prohibition. It reads:

"All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations."

The General Assembly Resolution 2625 (XXV) of 24 October 1970 further supports this "exception" from the prohibition by the phrase:

“In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”

Quaere, whether this “support” involves armed intervention.

This category is more difficult than the previous category, if only because whereas one may say that a State’s internal politics or political struggles are its own affair, at least if they pose no threat to international peace, one cannot say that the denial by a State of the right of self-determination is its own affair. The development of the right of self-determination has been such that its denial is now, manifestly, the concern of international society of States and, most States would argue, an international wrong. It is this difference which means that one cannot treat struggles for self-determination as just one other form of internal political struggle in which there may be no intervention of outside powers. A caveat may be sounded here. A distinction would have to be drawn, too, whether a claim to self-determination has any validity, legitimacy or basis in law. All claims to self-determination ipso facto cannot be treated as a right of course. There is frequent subjectivity in the decision that self-determination is involved in any particular protest or uprising against governmental authority.

A possible safeguard could be that intervention should remain permissible only where the denial of the right of self-determination has been confirmed by a competent organ of the world community, viz., the Security Council or the General Assembly of the United Nations, and intervention authorised by that organ or body. If this were to happen and be accepted ex proprio vigore as the only proper basis upon which intervention in support of self-determination is justified, it would in effect mean that this is not a true category of permissible intervention by States.
Intervention, under category (iii), for the protection of the intervening States' own nationals has traditionally been, and still is, a part of the customary right of self-defence.\textsuperscript{175} Its exercise must be subject to the normal requirements of self-defence, \textit{i.e.}, there must exist a failure in the territorial State to accord protection for aliens demanded by international law, there must be an actual or imminent danger requiring urgent action, and the action taken must be proportionate and limited to the necessities of extricating the national from danger.

What becomes suspect is the assertion of a right of intervention for aliens, based on purely humanitarian grounds, where it seems impossible, in the absence of the link of nationality, to regard this as a species of self-defence. The danger to aliens cannot be conceived of as a danger to the State, and the injury to aliens cannot be regarded as a breach of international law \textit{vis-à-vis} the State wishing to intervene. Traditionally, where the territorial State had created a threat to the “human rights” of its own nationals, it might have been said that there was no breach of international law at all. Given the development of the concept of human rights in international law in general, and under the Charter of the United Nations in particular, that position is no longer tenable.\textsuperscript{176}

For most writers and for most States, forceful intervention based simply on humanitarian grounds and unrelated to a threat to one's own nationals is illegal under the Charter of the United Nations, partly perhaps because the term “humanitarian” could be very broadly construed.

The thesis of a general right of “humanitarian” intervention on the basis of a right of self-help (as distinct from self-defence), which allegedly did not impair


\textsuperscript{176} The establishment by the Allied Forces in 1992 of a \textit{de facto} Kurdish state in Iraq, north of the 36\textsuperscript{th} parallel, is one recent example. See, in this regard, Resolution 688 adopted by the Security Council at its 2982\textsuperscript{nd} meeting on 5 April 1991.
“the territorial integrity or political independence” of any State, when advanced by Britain in the Corfu Channel Case\textsuperscript{177}, in connection with Operation Retail,\textsuperscript{178} to sweep mines in Albanian territorial waters, was rejected by the International Court of Justice in 1949.

Enlarging the right to protection into a more general right of humanitarian intervention would be to introduce a dangerous exception to the prohibition of Article 2(4) of the Charter of the United Nations and the general rule of non-intervention. Ironically, given that the United States presently dominates a Unipolar world, this is precisely what is happening. There are only two restraints which hold back an outright United States intervention in all conflict-crisis- or humanitarian situations: (a) resource crunch, and (b) fear of loss of lives of United States soldiers. An early example is the United States landings in Santo Domingo (capital of the Dominican Republic) in 1965 on the pretext of protection of its nationals; the United States later shifted the ground for its justification for the present of its forces to one of maintaining peace and security in the area at the request of the authorities in Santo Domingo.

Such intervention will, \textit{sembles}, be confined to intervention in small States which cannot oppose the intervening forces of a big power. It will be susceptible to use for ulterior motives, as in the past, \textit{i.e.}, it will be used as a cover for interference in the domestic, internal affairs of the State, notably to influence the outcome of an internal struggle. It may also encourage counter-intervention by other States, with the consequent risk of an escalation of conflict.

For these reasons, the recognition of a general right of humanitarian intervention is neither legally nor politically acceptable. But this would not exclude the possibility of an intervention authorised either by the Security Council\textsuperscript{179} or, possibly, the General Assembly, where it can be shown that the

\textsuperscript{177} (1949) ICJ 35, \textit{supra.}
\textsuperscript{178} Discussed above.
\textsuperscript{179} As in the case of northern Iraq, \textit{supra.}
situation presents a threat to international peace and security. *Semble*, an intervention authorised by a competent organ of the United Nations, whilst undoubtedly subject to a test of legality, will not be subject to the same test as unilateral action by States.

Ergo, one could conclude that, in relation to unilateral action by States, there is no place in contemporary international law for a *right* of intervention as opposed to a right of self-defence.180

**TABLE A**181

**INTERVENTION IN CIVIL WARS 1945-1967**

Type I: *Authority and Separatist Wars*

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NATION</th>
<th>NO INTERVENTION</th>
<th>ON BEHALF OF</th>
<th>ONBEHALF OF</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>INSURGENTS</td>
<td>INCUMBENTS</td>
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<tr>
<td>1946-58</td>
<td>Colombia</td>
<td>x</td>
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<tr>
<td>1947</td>
<td>Paraguay</td>
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</tr>
<tr>
<td>1948-54</td>
<td>Burma182(Karens &amp; Chinese Nationalists)</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1950-51</td>
<td>China (Tibet)</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1953-59</td>
<td>Cuba</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1957-59</td>
<td>Muscat &amp; Oman</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>Yemen</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>Sudan</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>Rwanda</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>Nigeria</td>
<td>x</td>
<td>x</td>
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</tbody>
</table>

180 Bowett, *op. cit.*
182 Now, Myanmar.
Type II: **Colonial Wars of Independence**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>COUNTRY</th>
<th>NO INTERVENTION OR COLONY</th>
<th>ON BEHALF OF INSURGENTS</th>
<th>ON BEHALF OF INCUMBENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945-49</td>
<td>Indonesia</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1945-46</td>
<td>Syria and Lebanon</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1945-46</td>
<td>Philippines</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1946-54</td>
<td>Indo-China</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1948-57</td>
<td>Malaya</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1952-56</td>
<td>Kenya (Mau-Mau)</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1954-59</td>
<td>Cyprus</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1954-61</td>
<td>Algeria</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1961-62</td>
<td>Angola</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>Rhodesia</td>
<td></td>
<td>x</td>
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</tr>
</tbody>
</table>

Type III: **Wars of Social Change**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>STATE</th>
<th>NO INTERVENTION</th>
<th>ON BEHALF OF INSURGENTS</th>
<th>ON BEHALF OF INCUMBENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945-49</td>
<td>Greece</td>
<td>x</td>
<td></td>
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<tr>
<td>1946-50</td>
<td>Philippines</td>
<td>x</td>
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<tr>
<td>1946-58</td>
<td>China</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1948-54</td>
<td>Burma (Communist)</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>1948-50</td>
<td>India</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1954</td>
<td>Guatemala</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1956</td>
<td>Hungary</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1957-60</td>
<td>Malaya</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>Lebanon</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1958-59</td>
<td>Indonesia</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1958-62</td>
<td>Cameroon</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1959-60</td>
<td>Laos</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1960-65</td>
<td>Congo</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1959</td>
<td>South Vietnam</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>Yemen</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>Venezuela</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>Dominican Republic</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>1968</td>
<td>Czechoslovakia</td>
<td></td>
<td></td>
<td>x</td>
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</tbody>
</table>
In Table A, supra, taken from Oglesby, the pattern in Type I wars (Authority and/or Separatist Wars) is clearly for third States to refrain from intervening. Of the ten conflicts in this category, there were no interventions in seven of them. There were two on behalf of the incumbents and one on behalf of the insurgents. Ergo, as Type I wars are generally not system-disturbing, pressures for intervention do not exist.

The Table of interventions in Type II wars (Colonial Wars of Independence) indicates a tendency of intervention on behalf of insurgents. Two interventions under Type II deviate from the normal pattern: that of United States support for France in the Indo-China wars, brought about because of the general United States policy of attempting to contain communism, and the United Nations authorisation for British intervention in Southern Rhodesia (now Zimbabwe).

There is now clearly a world consensus against colonialism. Colonialism went out of fashion after World War II. Way back in 1960 this consensus crystallised in the adoption of the General Assembly Resolution 1514 (XV) entitled “Granting of Independence to Colonial Countries and Peoples” adopted on 14 December 1960, and bolstered by Resolution 2311 (XXII) of 14 December 1967, which called on the Specialised Agencies of the United Nations to direct their efforts toward implementing the resolutions. In January 1969, the General Assembly adopted Resolution 2426 (XXIII) reiterating its position taken in earlier Resolutions, and calling upon the Specialised Agencies of the United Nations to work with the Organisation of African Unity (OAU), and “with the national liberation movements in Southern Rhodesia,185 and the Territories under

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183 ibid.
184 See discussion of Monroe Doctrine, supra.
185 Now, Zimbabwe.

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Portuguese domination” in achieving independence for these system-disturbing vestigial pockets of colonialism.\footnote{United Nations Document A/RES/2426 (XXIII of 8 January 1969).}

Given this mid- and late-twentieth century consensual (and politically-correct) aversion to colonialism, the marked proclivity toward unilateral interventions in support of colonial peoples was perhaps a natural upshot. But, unilateral interventions tend to be system-disturbing, fraught with danger to the peace and order of the world community. Thence, the trend of collective authorisation, through the United Nations, is welcome and safer.\footnote{See below for detailed treatment of this issue.} Interventions, whether unilateral or multilateral, sanctioned by the United Nations, have the considerable advantage of bringing the anti-colonial consensus to bear at the point where it is most representative of community interests, thus reducing counter-interventions, and, in the like manner, reducing the chances for self-serving national interventions undertaken under the specious guide of supporting the norm of anti-colonialism. However, since colonialism has almost vanished, the discussion here is of academic and historical interest only.

Type III conflicts (Wars of social and political transformations) thrived during Cold War years. The pattern is one of bloc interventions to prevent social and political alterations in the structure of the government which would result in a loss of that nation from the bloc.\footnote{Oglesby: \textit{op.cit.}} Since the major power bloc usually makes the decision to intervene, and bears the major share of military personnel and matériel, the interventions appears to be unilateral. These are sometimes called \textit{regional interventions}, or interventions under regional authority. Such conflicts are fraught with the perils of counter-intervention. Hence, these conflicts are often referred to as “wars by proxy” between the power blocs, or “surrogate wars”.

187 See below for detailed treatment of this issue.
188 Oglesby: \textit{op.cit.}}
Examples of Type III conflicts are the Soviet intervention in Czechoslovakia under the guise of the (now defunct) Warsaw Pact Policy, and the United States intervention in the Dominican Republic and Grenada under the cloak of interests of the Organisation of American States (OAS).

It is arguable whether or not bloc patterns contribute to international stability, order and peace. According to Oglesby, a nation within the geographical propinquity of a bloc but socially and politically disoriented from the other bloc nations constitutes a threat to the peace. Illustrations are the presence of Communist Cuba in the western hemisphere, and Israel in the area of Pan-Arab world.

Georg Schwarzenberger, writing under the shadow of Suez Crisis 1956, in a perceptive albeit debatable article entitled “Hegemonical Intervention” not only foresaw a bloc law of intervention, but justified it as system-serving, as a useful element of the peacekeeping operation. He argued that to classify bloc interventions (hegemonial) as purely self-serving was to take too narrow a view of the process and felt that there was at least a grain of truth in the assertion that interventions of such a nature were, in fact, in the interests of world peace.

\[^{189}\] ibid.
\[^{190}\] Yearbook of World Affairs, 1969, pp.236-265.