CHAPTER ONE

LAW OF INTERVENTION

Normally every state is deemed to possess independence and 'sovereignty' over its subjects and its affairs within its territorial limits. In the interests of the international community, every state has accepted restrictions on its liberty of actions. Therefore, it is probably more accurate today to say that the sovereignty of a state means the residuum of power which it possess within the confines laid down by international law. In reality, sovereignty is also largely a matter of degree. Some states enjoy more power and independence than other states. ‘Sovereignty’ is, therefore, a term of art rather than a legal expression capable of precise definition. ‘Sovereignty’ is the possession of supreme power unlimited by any other state resulting in autonomy within a state and independence in relation to other states. To Soviet scholars, sovereignty is "the independence of the state of any other state, this independence amounts to the right to decide freely and according to its own judgement all its domestic and foreign affairs without interference on the part of other states."

One of the oldest duties of states, enshrined both in customary international law and in numerous multilateral conventions, is the basic

obligation of a state to abstain from intervention in the internal and
eexternal affairs of any other state or in the relations between other states.\textsuperscript{4} International Law generally forbids such intervention, which in this
particular connection means something more than mere interference and
much stronger than mediation or diplomatic suggestion. According to
International Court of Justice (ICJ), an intervention is prohibited by
international law if (a) it impinges on matters as to which each state is
permitted to make decisions by itself freely; and (b) it involves interference
in regard to this freedom by methods of coercion, especially force.\textsuperscript{5} A
notable historical example of dictatorial intervention for which there was
ostensible justification—was the joint demarche in 1895 by Russia,
France & Germany to force Japan to return to China the territory of
Liaotung which she had extorted from the Chinese by the Treaty of
Shimonoseki. As a result of this intervention, Japan was obliged to
retrocede Liaotung to China, a fateful step which led ultimately to the
Russo-Japanese War of 1904-5.\textsuperscript{6}

In 1966 the General Assembly of the United Nations resolved that, no
state has the right to intervene, directly or indirectly, for any reason
whatever in the internal or external affairs of any other state. Consequently,

\textsuperscript{4} G.V. Glahn; Law Among Nations (2\textsuperscript{nd} ed.), 1970, p.162. This is recognised in arts 1 and 3 of
the Draft Declaration on the Rights and Duties of States adopted in 1949 by the UN Int. Law
Commission.

\textsuperscript{5} e.g. choice of its own political or economic system or adoption of its own foreign policy and
provision of indirect forms of support for subversive activities against the state subject of the
alleged intervention.

\textsuperscript{6} J.G. Starke; op. cit., p.104.
armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic or cultural elements are condemned⁷.

It means there may be interference with states not amounting to force and not directly connected with national territory, and that international law prohibits any coercion which indirectly subverts a state's legal competence or jurisdiction, including coercion applied by a state to its own nationals in order to instigate the families of those persons naturalised or resident in foreign countries to pursue a course of action. The United States protested in 1923 against the threatened confiscation by Greece of the property of Greek citizens whose sons, naturalised in America and did not return to Greece for military service⁸. It means: (i) A state must not coerce another by organising hostile expeditions upon its territory. (ii) Acts not involving force but which are calculated to impair the authority of another sovereign must equally be condemned by international law e.g. the undertaking or encouragement by the authorities of a state of activities calculated to foment civil strife in another state, or the toleration by the authorities of a state of organised activities calculated to foment civil strife in another state.

The undertaking or encouragement by the authorities of a state of terrorist

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activities in another state, or the toleration by the authorities of a state of organised activities calculated to carry out terrorist acts in another state. In connection with this formulation there is a resolution of the General Assembly on the Essentials of Peace, calling upon every nation “to refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any state, or at fomenting civil strife and subverting the will of the people in any state”.

(iii) A state also offends international law by allowing seditious elements from other states or its own residents to organise rebellion in friendly states. In 1934, the Council of the League of Nations resolved “that it is the duty of every state neither to encourage nor tolerate on its territory any terrorist activity with a political purpose; that every state must do all in its power to prevent and repress acts of this nature and must for this purpose lend its assistance to Govts. Which request it”.

**Interventions: Conflicting Views of Jurists**

Dictatorial interference in the affairs of another sovereign state is known as intervention. It means interference has got to be dictatorial in order to constitute intervention. If it is not dictatorial, it does not amount to intervention. There are two views on the meaning of this word “intervene” as used in Article 2 (7) of the UN Charter. One view is that it must be

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11. Such activities are crimes in both the United States and United Kingdom.
interpreted in the technical sense of international law to mean "dictatorial interference". The other view is that it is ordinary interference and it has been argued that only the Security Council has the capacity to act with legal effect, and hence to "interfere dictatorially" in the affairs of a state; action by any other organ, since it can not have direct legal effect, can not amount to "dictatorial interference". The last type of compulsive method is intervention. Being a compulsive method intervention must involve the use of force or compulsion by a state or states not party to the controversy. Intervention must mean the use of force or compulsion or dictatorial interference by a Third State. Intervention as a compulsive method always contains the element of dictates. Hence intervention on invitation can not be equated to intervention as a compulsive method. Intervention as a compulsive method is a kind of external intervention and may not be properly in operation in a case where the disputing parties are not two "states" but simply two sections of the same state.

"Intervention" is very vague term in international law. We are told that "intervention is a right; that it is a crime; that is the rule; that it is the exception; that it is never permissible at all". Intervention may be anything from a speech of Lord Palmerstone's in the House of Commons to the partition of Poland. This remark is really sufficient to indicate that

there is an element of chronic vagueness attached to the term 'intervention'.

There is complete lack of agreement among jurists as to the legal nature of intervention or its moral justifications. Some jurists approached it from the point of view of the state intervening as a measure of self-defense; others took the side of the state whose independence was being violated. British and American jurists showed a tendency to defend intervention while most continental and Latin American writers rejected it as a right.

The conflicting views of the jurists were reflected in the lack of agreement upon the very definition of intervention. In popular use the term "intervention" included the interference of a third state in a war between two states; the interference of foreign govt. between parties to a civil war, and the interference of one govt. in the domestic or foreign affairs of another. To some writers the interference was only intervention when unwarranted; and this is doubtless the accepted attitude towards intervention at the present day.\(^{15}\)

A number of govt. 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\textsuperscript{16}. Mere friendly advice and general political influence do not strictly come under this term as the essential requisite of intervention, viz., use of force or a threat to use force is lacking in them. The interference must take an imperative form——it should be forcible or backed by the threat of force. Intervention is, as a rule, forbidden by the law of Nations. International Law, however, permits intervention, as dictatorial interference by one state in the affairs of another state, "only as reaction of the former against a violation of its right by the latter". Such a doctrine is possible only if the bellum justum principle is recognised\textsuperscript{17}.

The majority of commentators agree that intervention under present day international law means ‘dictatorial’ interference by one state in the affairs of another state for the purpose of either maintaining or changing the existing order of things\textsuperscript{18}, rather than mere interference per se. Such intervention could take place by right and also without the existence of a right, but in any case, it concerns the independence, territory, or supremacy of the state involved.

There can not be any doubt that, as a rule, such intervention is prohibited by international law, for that law has been created, at least in part, to

\textsuperscript{16} Charles G. Fenwick, Int. Law (3\textsuperscript{rd} ed.), 1962, pp.243-44.
\textsuperscript{17} M P. Tondon, Shorter Int. Law (5\textsuperscript{th} ed.) 1975, p.80.
protect the international personality of the states of the world. However, there are exceptions to this principle, for some interventions take place by right and are thus lawful; and there are some forms of interventions which lack a right yet must be accorded lawful status\textsuperscript{19}.

As Anzilotti stated authoritatively in 1912: if states, in order to satisfy non-legal interests, can resort to war, i.e., attack the integrity and the very existence of international subjects, it is easily understandable that they are also allowed to impel—\textit{not} by war but by threat to wage a war—\textit{another} state to adopt a certain behaviour either within the ambit of its own authority or in its relations with other states. This is what called intervention\textsuperscript{20}.

By forcible interference in the internal or external affairs of another state, is meant compelling this state, by the threat or use of force, either to do something (for example, to change its govt., to enter into a treaty with a third state, to cede territory etc.) or to carry out actions in its territory in the interest of the intervening state.

Forcible intervention took the form of military occupation of the territory of another state, naval demonstration, naval blockade (that is to say the blocking of men-of-war of a portion of the coast of another state), seizure

\begin{itemize}
  \item \textsuperscript{19} G.V. Glaun; Law Among Nations (2\textsuperscript{nd} ed) 1970, p.163.
  \item \textsuperscript{20} D. Anzilotti; Corso di diritto internazionale, i (Rome, 1912-14), p.315. as cited in Antonio Cassese; Int. Law in a Divided World, 1986, p.145.
\end{itemize}
of assets belonging to the other state or its nationals, embargo (in the old sense, that is—the seizure of ships belonging to the other state or its nationals), arrest and detention of foreigners, expulsion of foreign diplomats, etc. International practice is replete with cases of armed intervention. So, for instance, after the down-fall of Napoleon, the Holy Alliance provided for military intervention in European countries menaced by revolutions—Austria sent troops to Italy; France both to Italy and Spain. Later on interventions were carried out by Great European Powers against Turkey and Egypt and in colonial territories of other states, and by the U.S. in Latin-American countries.

According to Kelsen, "The intervention prohibited by international law is usually defined as dictatorial interference by a state in the affairs of another state. A dictatorial interference is an interference by threat or use of force".

According to Hall, intervention takes place "when a state interferes in the relations of two other states without the consent of both or either of them or when it interferes in the domestic affairs of another state irrespective of the will of the latter for the purpose of either maintaining or altering the actual condition of things within it".

According to Jackson, intervention is the dictatorial or imperative violation by one state of the independence of another state. The essence of
Intervention is the force or the threat of force and it must be distinguished from such peaceful acts of interference as good offices, intercession, mediation and arbitration. According to Alf Ross, "Intervention means the dictatorial interference of a state in the internal or external affairs of another state".

Intervention is dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things\(^\text{21}\). 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 emphasised that intervention proper is always dictatorial interference, not interference pure and simple. Therefore, intervention must neither be confused with good offices, nor with mediation, nor with intercession, nor with co-operation, because none of these imply dictatorial interference.

**Kinds of Intervention:**

Prof. Winfield refers to three kinds of active, material interventions\(^\text{22}\) and these are internal, external and punitive intervention.

**i. Internal Intervention:** In this kind of intervention a state interferes

between the disputing sections of other state, in favour either of the legitimate government or of the insurgents. In 1936-38, during the Civil War in Spain, Germany and Italy intervened on the side of General Franco. Likewise, the Govt. of Red China intervened in the Korean War when the UN forces crossed the 38th parallel. Again, the Russian intervention in the uprising of Hungarian people in October 1956 was yet another instance of internal intervention.

ii. External Intervention: In this a state interferes in the relations—generally the hostile relations—of other states, as when Italy entered the Second World War on the side of Germany, and against Great Britain. It is in other words, an intervention in the foreign affairs of another state. This kind of intervention is tantamount to the declaration of war23.

iii. Punitive Intervention: This is the case of a reprisal, short of war, for an injury suffered at the hands of another state. It is in the nature of a retaliation against the guilty state. It is frequently carried out by stronger nations towards weaker nations. A pacific blockade to compel the observance of treaty engagements or to redress some breach of law affords an illustration of this type of intervention.

The term 'intervention' has also been used by some writers in the expression 'subversive intervention' to denote propaganda or other activity.

by one state with the intention of fomenting, for its own purposes, revolt or civil strife in another state. International Law prohibits such subversive intervention

Subversive Intervention by States:

According to Quincy Wright, one of the most difficult problems in this sphere is that dealing with “subversive intervention”. It has been generally recognised that there does exist an obligation or duty to abstain from subversive intervention, that is to say, from engaging in propaganda, official statements, or legislative action of any kind, with the intention of promoting rebellion, sedition, or treason against the govt. of another state.

The General Assembly of the United Nations unanimously adopted a resolution on November 3, 1947, condemning all forms of seditious propaganda, limiting itself, however, to propaganda likely to provoke threats to peace or an act of aggression. On December 1, 1949, the Assembly urged all states to refrain from, among other things, any threats or acts aimed at fomenting civil war or subverting the will of the people in any other state.

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24. The Declaration on Principles of Int. Law Concerning Friendly Relations & Co-operation among states in Accordance with the UN Charter, adopted by the General Assembly in 1970, proclaims that “no state shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state.”


27. Ibid., p.174.
foremost in condemning subversive intervention. The United States has been highly critical of the subversive activities promoted by the communist-bloc states labeling such efforts "indirect aggression".

The Soviet Union and its friends on the other hand, have continuously attacked every form of aid by non-communist countries as a manifestation of imperialist intervention, and became particularly incensed when President Eisenhower issued a proclamation, setting aside a third week of July, 1950, as "Captive Nations Week".

As President Eisenhower stated on April 16, 1953: Any nation's right to a form of govt. and an economic system of its own choosing is inalienable. Any nation's attempt to dictate to other nations their form of government is indefensible.

Subversive Intervention by Private Groups:

All discussion thus far has dealt with actions of govts. promoting some form of subversive intervention. When similar acts are undertaken by private individuals or groups, govts. have usually refused to accept responsibility of such acts. Obviously a state adversely affected by such propaganda emanating from private sources in a neighboring country will not only protest the act but will attempt to prevent the subversive propaganda from reaching its own citizens, by censorship, jamming of

broadcasts and telecasts, and so on. Such defensive measures appear to be the right of any government and can not be termed illegal.

If private individuals utter libelous statements, no responsibility devolves on their government. There are, however, a few democratic states which apparently are willing to prosecute their own citizens for libeling foreign govts. or the heads of the same, provided that reciprocity in this matter existed. On the other hand, if a public official engages in such acts, it appears to be the duty of his govt. to restrain him, to rebuke him, or even to punish him, if friendly relations with the govt. allegedly slanderous or libeled are to be preserved.

**Conditions during which Intervention is Justified:**

The fact that certain varieties of intervention have been justified by outstanding jurists reflects the growing perturbation on the part of writers in international law who would like to perpetuate a theoretical doctrine of absolute prohibition of intervention, yet who are drawn in the direction of approving some form of intervention because it strikes them as desirable from humanitarian considerations, from a political point of view, or, some times, because logic appears to dictate the correctness of a particular employment of intervention, despite the over all legal prohibition extant\(^30\). According to Prof. Brierly, the strictly legal occasions of an intervention

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\(^{30}\) G.V. Glahn; op. cit., p.164.
may be brought under three heads, viz., self-defence, reprisals and the exercise of a treaty right. 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.

According to Oppenheim and Starke, it is claimed that following are, broadly expressed, conditions in which a state has at International Law a legitimate right of intervention:

1. Enforcement of Treaty Rights
2. Self Defence or Right to Exist
3. Right Over Protectorate
4. Inpurusance of UN Charter
5. Inviolation of International Law
6. In protection of Persons and Property Abroad
7. On Humanitarian Ground
8. Intervention in Civil War.

1. Enforcement of Treaty Rights:

If a given state has been restricted by treaty either in its territorial supremacy or in its external independence and violates the restrictions imposed, the other party or parties to the agreement would possess a
lawful right of intervention. A state is justified in interfering in the affairs of another state if the provisions of any treaty oblige the former to preserve the independence or neutrality of the latter. Such intervention does not violate any right of independence because the state that suffers has conceded such liberty of interference by treaty. The Treaties of London of the years 1831 and 1839 guaranteed the integrity and neutrality of Belgium, but the invasion of Belgium by Germany in 1914 led to the intervention of Great Britain in pursuance of treaty right by declaring war on Germany. It was again in pursuance of Art. 3 of the Treaty of London of 1863 that France, Russia and Great Britain, who had guaranteed the independence of Greece, interfered in the affairs of Greece in 1916 and 1917 and re-established constitutional government. King Constantine had to abdicate, and his second son, Alexander, was installed as king of Hellences. Again by the Treaty of Havana, 1903, Cuba agreed that U.S. might intervene for the preservation of Cuban independence. In 1906, American intervened in the affairs of Cuba under the Art. 3 of the Havana Treaty of 1903. A similar treaty existed between U.S.A. and Panama under which U.S.A. intervened in Panama in 1904.

2. Self-Defence or Right to Exist:

The right of self-preservation is more sacred than the duty of respecting the independence of other states. A state has a right to interfere in the

31. 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’
affairs of another state where the security and immediate interests of the former are compromised. Interventions, therefore, in order to ward off imminent danger to the intervening state are justified by the force of circumstances. The danger must be direct and immediate, not contingent and remote. The leading case of the Caroline sets out the principles that govern the doctrine of self-preservation.

Since the beginning of international law, self-preservation has been considered as a sufficient justification for violation of the rights of other states. But there is no such thing as fundamental right of self-preservation. The doctrine, however, developed as corollary of the emphasis laid on the sovereignty of the state in the eighteenth and nineteenth centuries.

Violations of the rights of other states in the interests of self-preservation are not allowed, except rarely, in cases of necessity. Mr Webster, the American Secretary of State, defined the scope of "necessity" in the following words: "the danger must be instant, overwhelming, leaving no choice of means and no moment for deliberation, before a state can invoke

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32. During the revolt in Canada in 1837 preparations for subversive action against the British authorities were made in U.S. territory. In particular a U.S. arsenal at Buffalo was looted to obtain arms. The U.S. acted properly in taking measures against the organisation of armed forces upon its soil so that no breach of duty could be alleged against its authorities. However, the rebels in Upper Canada were being reinforced and provisioned by the Steamer Caroline from ports in the U.S. A British force from Canada entered the U.S. territory, seized the Caroline in the state of New York and destroyed her. In the action two U.S. citizens were killed. Great Britain justified its action on the ground of "self-defence" and "self-preservation" but the U.S. arrested one of the British force involved, named Alexander McLeod, a British subject, and charged him with murder and arson. Great Britain protested and the correspondence which followed is accepted as the classical formulation of the conditions upon which invasion of neighbouring territory can be justified under the conception of self-defence. There must be a "necessity of self-defence, instant, overwhelming, leaving no choice of means, and moment for deliberation", and the action taken must not be "unreasonable or excessive", and "limited by that necessity and kept clearly within it". The dispute ended with an apology by Great Britain. See Jennings, "The Caroline and McLeod Cases", A.J.I.L., Vol. 32 (1938). Cited in D. P. O'Connell, Int. law (2nd ed., 1970), vol. I, p. 316.
the doctrine of necessity of self-preservation”.

Intervention thus involved a conflict of two fundamental principles of international law, the right of self-govt. or “independence” on the part of the state against which the complaint was brought. For the solution of the conflict international law had, at the time, no acceptable remedy.

It was with the out break of the French Revolution that the conflict of the two principles of self-defence and independence began to take its modern shape. Austria and Russia saw in the revolution a threat to the peace of all Europe. They had the right, as they saw it, to intervene to prevent the spread of ideas which would incite all Europe to revolt and anarchy. On the basis of this principle Austria intervened to supress uprising in Italy in 1821, France intervened for a similar purpose in Spain in 1823, and plans were made to assist the Spanish govt. in recovering its rebellious colonies

Intervention now succeeded to intervention, and it is difficult to classify the numerous cases which fill the pages of history of Europe during the second and third quarters of the nineteenth century. To intervene or not to intervene was a matter which each state decided for itself according to its military power and its national interests.

33. It was in reaction against these plans that the Monroe Doctrine was proclaimed, a doctrine of ‘non-intervention’ to oppose the intervention of Triple Alliance in the relations between Spain and its rebellious colonies which had been recognised by the US as independent.
The right of intervention and the obligation of non-intervention fell within the field of political action, and jurists could do little more than find justification for what govts. were doing by referring to the necessity of a summary procedure which, as one jurist expressed it, "may sometimes snatch a remedy beyond the reach of law"\textsuperscript{34}.

**Examples of Self-Preservation:**

1. See the case of the American ship The Neptune (1795) which was seized and brought to a British Port with the Cargo consisting mainly of food stuff when there was a great famine in England.

2. To prevent France from seizing The Danish Fleet and using it against Great Britain, the latter shelled Copenhagen and seized the Danish Fleet in 1807 on Denmark's refusal to deliver up her fleet to Great Britain.

3. In 1904, Japan invaded Korea in this ground.

4. Japan sought to justify the invasion of Manchuria in 1931, by invoking the principles of self-preservation and self-defence. The Assembly of the League of Nation denied the validity of Japan's plea.

5. The Italian conquest of Abyssinia (1935) by Fascist Italy.

6. The British action in sinking the French Fleet at Oran during the Second World War in 1940 is a typical case of self-preservation.

\textsuperscript{34} Sir William Harcourt; Letters of Histonicus, p. 41. as cited in Charles G. Fenwick; Int. Law (3\textsuperscript{rd} ed.), 1952, p. 242.
Individual Self-defence:

Article 51 states that nothing in the United Nations Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the UN, until the Security Council has taken measures necessary to maintain international peace & security. The law has not traditionally required a state to wait until it is actually attacked before taking measures of self-defence. In traditional international law, measures of self-defence could in certain circumstances be taken, not only against a state which is threatening attack, but against a foreign territory which is being used as a base for attack by rebels of the threatened state. The power deployed in self-defence must be proportionate to the threat, and the right of self-defence may only be exercised until the Security Council has acted. If the Security Council fails to take action, self-defence must cease as soon as its purpose, that is, to repel the armed attack, has been achieved. In particular, they prohibit prolonged military occupation and annexation of territory belonging to the aggressor.

Collective Self-defence:

Article 51 refers to collective as well as individual self-defence. An attack on one member is not necessarily an attack on all; but neither must each
member wait before taking action until the coercion applied to another member constitutes an immediate threat to all. The group may act jointly if there is a proportionate relationship between the threat to one and the threat to all. A state is not precluded from seeking assistance from abroad and agreeing to join action in its territory on the part of interested states.

Article 51 grants any member state of the UN the right to use force in support of another state which has suffered an armed attack. But the Intervening state must not be itself a victim of the armed attack by the aggressor (in which case it would act by way of "individual" self-defence). Both the NATO treaty and the Treaty of the Warsaw Pact point in this direction. It is said, a state cannot use force against a country which has attacked another state, without the request or the previous consent of the latter. So for "Collective" Self-defence (that is intervention by one or more states in favour of the victim) has been invoked by the US in the case of Vietnam i.e. the US relied upon Article 51 for their military action in support of South Vietnam.


The Soviet Union has intervened militarily in two instances (Czechoslovakia in 1968, and Afghanistan in 1979) claiming that it was acting both at the request of the state concerned, and on the strength of Article 51, that is, 'Collective' self-defence, to repel an aggression against the state to whose territory it sent its troops. Now, it is clear that in fact no armed attack proper by a third state had been committed---one could at most speak (in the case of Afghanistan) of military aid of some sort by third countries to rebels. It is, indeed, no coincidence that in the UN the USSR never made it clear by which specific state the alleged aggression had been carried out, but simply spoke of "external interference in Czechoslovakia's internal affairs" and "subversive actions by external forces" in Afghanistan. It can therefore be said that according to the Soviet Union, the Article 51 also authorises collective self-defence in case of "indirect armed aggression".39

Abatement Theory:

Another reason advanced on occasion in justification of intervention is the "abatement" of an international nuisance. It could be argued that this was one of the reasons cited in the United states in 1898 in partial justification of armed action in Cuba. The argument was actually utilized by Japan in 1932 in defense of the invasion and conquest of Manchuria. It was also brought forward, in conjunction with the concept of debellatio, in 1939, in defense of Russian interference in the form of invasion followed by

annexation when the Polish State had crumbled under German Attack.\textsuperscript{40}

The abatement theory holds that when conditions in the territory of a neighboring state border on anarchy, with concurrent inability of the constituted authorities (if they still exist at the time) to restore order and to prevent a spilling over of the disturbance into one's own territory, then one has a duty to intervene---quite likely by armed force---to restore order along one's frontiers and to end the chaos next door.\textsuperscript{41} If no selfish aims are involved in the intervention in question, if no territorial aggrandizement or other gain is contemplated or realized, then it is difficult, in many instances, to deny a moral right, based on self-defense or self-preservation, to violate the ban on intervention for the sake of abating the nuisance at one's doorstep.

3. Right Over Protectorate

A state has a right to intervene in the affairs of a state over which it holds a protectorate. If protectorate acts and behaves in such a manner as to contravene against the interest of Protecting state, the protecting state has the right to intervene in the affairs of protectorate, e.g. The American intervention in and occupation of Haiti in 1915 was as assertion of a protectorate.

\textsuperscript{41} G. V. Glahn; op. cit., p.169.
4. Inpursuance of UN Charter:

The Covenant of the League of Nations as well as the Charter of the United Nations by its enforcement action under Chapter VII, have provided for the collective intervention of member states, for the purpose of restraining states which disturb the peace of the world. Moreover, the Covenant contemplated collective intervention in certain events against states which were not members of the League. The Charter of the UN imposes upon the organization 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.

Lawful intervention would occur in the case of collective action undertaken by an international organ on behalf of the community of nations or for the enforcement of the principles and rules of international law.

Some writers, notably, Richard A. Falk, have advocated or justified international (United Nations) intervention in civil wars, asserting correctly that such conflicts may easily escalate into international, regional, or even global wars. Yet the fact remains that United Nations intervention of any consequence could only take place if agreement prevailed among the Great Powers. And if such agreement should exist, then a given civil war would not be likely to constitute a danger to world

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42. See Article 10, 11 and 17 of the Covenants.
43. See Article 2(6) of the Charter of the United Nations.
peace calling for international intervention. Collective intervention took place under the authority of the UN to stop (a) the Korean War in 1950; (b) The Suez Canal crisis in 1956, (c) The Congo Crisis in 1960, and (d) The Gulf Crisis in 1991.

5. Inviolation of International Law:
If a state or a group of state violates international law; customary or conventional, the other states may intervene in the affairs of that state and may compel them to submit to the rules, to observe rules and to behave according to the rules. Thus, if a belligerent proceeded to violate rights of neutral states during a conflict, the neutrals would have rights of intervention against the violating belligerent state.

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 recognized principle.

6. In Protection of Persons and Property Abroad:
A state may intervene to protect the rights and interests and the personal safety of its citizens abroad. If the citizens of a state are mistreated in
another state, the former, it has been asserted, possesses a lawful right to intervene on behalf of its citizens after all available peaceful remedies have been exhausted.

This is a subject of much discussion and the most frequently cited instances are the interventions in Nicaraguan internal affairs on the part of the United States, beginning in 1909, on grounds of protecting American private interest and citizens in that republic, and the collective intervention in China in 1900 through the joint military and naval expedition sent there by Germany, France, Great Britain, Italy, Austria-Hungary, Russia, Japan, and the United States. The present writer cannot subscribe to the belief that such actions represent lawful intervention—they ought to be viewed as prohibited dictatorial interference\(^{46}\) in the affairs of other states.

A typical example of resort to force against alleged violations of international law by another state, is the decision on the part of a state to send armed troops abroad for the purpose of protecting its nationals. In such a case the justification normally invoked by the invading state was that the territorial state had failed to take all the precautionary and other measures necessary for safeguarding the life and property of foreigners, and it, therefore, proved imperative to substitute for this omission, and exercise the requisite measures of control. Plainly, this sort of justification lends itself to many abuses.

\(^{46}\) G.V. Glahn; op. cit., p.165
According to American writer Offutt\textsuperscript{47}, between 1813 and 1928, U.S. troops were sent abroad at least seventy times in order to protect U.S. nationals or 'U.S. interests'. Not expectedly, most military expeditions were effected by the US in Latin-American countries, but U.S. troops also landed in other countries, such as Japan (1853, 1854, 1863, 1864, 1868); China (1854, 1856, 1859, 1900); Egypt (1858 and 1882); in Kisembo (on the West Coast of Africa) in 1860; Farmosa (1867); and Korea (1871, 1888, 1894). During the same period, British forces landed in the Honduras in 1837 and in Nicaragua in 1895 and 1910, and German forces in Samoa in 1899.

In various instances states have used force for the purpose of protecting their nationals whose lives were in danger in foreign territory. In certain cases force has been used without the consent of the territorial state: Belgium intervened in the Cango in 1960; the U.S. in the Dominican Republic in 1965; Israel in Uganda in 1976; the U.S. in Iran in 1980, and in Grenada in 1983. In case of Grenada\textsuperscript{48}, independent reports disclosed that there was actually no imminent threat or danger to the lives of American citizens, and the fact that U.S. troops were stationed in the island after evacuating the American nationals confirmed that the ground for landing forces adduced by U.S. authorities was indeed a mere pretext for unlawful forcible intervention.

In four other cases military intervention was effected with the consent of


\textsuperscript{48} Antonio Cassese, op. cit., pp. 236-37.
the territorial state: the U.S. sent their troops to Lebanon in 1958;\textsuperscript{49} Belgium did the same, with help from U.S. in the Congo in 1964; the Federal Republic of Germany sent a commando to Mogadishu with the consent of Somalia in 1977, and, in 1978, French and Belgian troops intervened in the Shaba area at the request of Zaire.

One striking thing is that in cases of use of force to protect nationals, the intervening state is invariably a Western power, and the state on whose territory the military action is carried out is a Third World Country. The second remarkable thing is that only Western states have expressed the view that armed intervention for the protection of nationals is internationally lawful, being authorized either by Article 51 of the UN Charter or by a customary rule unaffected by the Charter.\textsuperscript{50} By contrast, developing and socialist countries have consistently opposed the legality of this class of resort to force and foreign intervention has consistently been attacked by Eastern European and Third World countries as contrary to international law. Thus, for instance, on the occasion of the armed action by the U.S. in Lebanon in 1958, Ethiopia stated in the General Assembly: Ethiopia strongly opposes any introduction or maintenance of troops by one country within the territory of another country under the

\textsuperscript{49} The principal grounds for American intervention adduced both by the U.S. and Lebanon were the request of the Lebanese Govt. as well as the applicability of Article 51 of the UN Charter. See the statement made in the S.C. by Lebanon on 15 July 1968, in S.C.O.R., 827\textsuperscript{th} Mtg., Para 84. The U.S. delegate to the S.C. also emphasized that the U.S. troops had been sent to Lebanon in order to protect American lives. See S.C.O.R., 827\textsuperscript{th} Mtg., Para 34 and 35.

\textsuperscript{50} The U.S. went so far as to adopt in 1948 national legislation laying down the right of the U.S. to use force abroad to protect 'the lives and property' of American citizens 'against arbitrary violence'.

pretext of protection of national interest, protection of lives of citizens or any other excuse. This is a recognized means of exerting pressure by stronger power against smaller ones for extorting advantages. Therefore, it must never be permitted.\textsuperscript{51}

On the same occasion Poland argued that the protection of nationals abroad constituted an "old pretext.\textsuperscript{52} in 1978, during French and Belgian military operation in Zaire, the Soviet official news agency Tass stated that ‘humanitarian intervention’ was merely ‘a fig leaf to cover up an undisguised interference in the international affairs of Zaire\textsuperscript{53}.

The reasons for the strong opposition of these two large groups of states are obvious. States fear that the protection of nationals may serve as a means of using leverage on developing countries; in other words, as a form of neo-colonialism. However, when the territorial state genuinely and spontaneously grants its consent and both the situation obtaining in its territory and the attitude of the intervening state are such as to rule out the possibility of a neo-colonialist intervention in disguise, the use of armed force can be considered lawful.

\textsuperscript{51} See GAOR, 3\textsuperscript{rd} Emergency Special Session, 742\textsuperscript{nd} Pl. Mtg., 20 August, 1958, Para.75.
\textsuperscript{52} Ibid., 740\textsuperscript{th} Pl. Mtg., 19 August 1958, Para. 84.
\textsuperscript{53} Antonio Cassese; op. cit, p. 238.
7. On Humanitarian Grounds:

Intervention in the interest of humanity is legally permissible. During the nineteenth century, numerous interventions took place upon "grounds of humanity". The Ottoman Empire, seeking to retain its hold over its rebellious vassal states and subjects, resorted to methods of suppression which shocked the conscience of Europe. In 1827, the Great Powers jointly intervened to secure the independence of Greece. In spite of the admission of the Ottoman Empire to participate in the public law and concert of Europe in 1856, intervention again took place in 1860 to protect the Christians of Mount Lebanon, in 1878 to secure the deliverance of the Balkan States, and in 1891-1896 following massacres in Armenia and in Crete. Jurists discussed at length the possible technical grounds in justification of these interventions, since they constituted an interference in the domestic government of the misbehaving state and a violation of its right of independence. But while differing as to the technical grounds of intervention jurists found no difficulty in responding to the higher appeal of a common humanity, and in conceding to a state the same right to protect the moral feelings of its people, shocked by the accounts of the massacres of their correligionists, that it had to protect their material interests.54

According to Grotius, Vattel, and Westlake, humanitarian intervention is legally valid when a state treated its people "in such a way as to deny their

fundamental human rights and to shock the conscience of mankind". Such interference in the affairs of other was defended by the argument that if certain practices or actions, revolting when judged by generally accepted standards of morality and decency continued to take place in a given state despite protests and objections by its neighbours, then humanitarian considerations outweighed the prohibition on intervention and justified a decision to interfere.

Humanitarian intervention has been carried out by individual countries (Russia in Turkey on behalf of Bulgarian nationalists in 1877; the United States in Cuba in 1898) or on a collective basis (the Great Powers in Turkey on behalf of Greece, in 1827; France in Syria in 1860, on the basis of an agreement among the major powers; the European Great Powers plus Japan in China in 1900, during the Boxer Rebellion).

In late November 1964, rebel forces in the eastern Congo had captured or isolated hundreds of white residents, increasing numbers of which were killed. The United States government agreed, for humanitarian reasons, to supply air transport for Belgian paratroopers and for the evacuation of white refugees. Within four days, this operation had been completed and two days later all paratroopers had also been removed from the Congo.

This intervention resulted in widespread criticism from African members.

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of the United Nations and an unsuccessful attempt was made by eighteen of them to have the Security Council condemn the rescue operation as "armed aggression". In retrospect, however, the episode presents one of the clearest modern instances of true humanitarian intervention and should be viewed as lawful in character, in view of the conditions then existing in the "target state" and of the total inability of the incumbent government to protect the refugees in question.

One of the most publicized recent instances of alleged humanitarian intervention was the landing of U.S. marines in the Dominican Republic on April 28, 1965. Initially this intervention was explained in terms of protecting American citizens residing in the Dominican Republic and said to be threatened by the outbreak of civil strife. Two days later, President Lyndon Johnson substituted self-defense (national security) as the reason, citing the threat of the establishment of communism in the Republic. After two more days, justification for the continuation of the presence of American forces was sought in terms of a stopgap measure until the Organization of American States could act effectively. And at all times, humanitarian intervention considerations intruded on more mundane reasons advanced for the armed intervention. Ultimately the United States forces were withdrawn and replaced by an Inter-American Peace Force (IAPF) established by the OAS.

The Charter of the United Nations reaffirms its faith in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. By recognizing the promotion of respect for fundamental human rights and freedoms, the UN Charter has elevated the principle of humanitarian intervention to a fundamental rule of international law. In short, it is the task of the UN to promote universal respect for, and observance of, human rights and fundamental freedoms for all.

8. Intervention in Civil War:

Before the Spanish Civil War (1936-38), the principle was generally approved that revolution or civil war or other grave emergency in another state might be cause for intervention if the safety of 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. But in 1936, the European Great Powers departed from the principle by agreeing not to intervene in the Spanish Civil War. In October-November 1956, after the signing of the United Nations Charter, Great Britain and France did jointly intervene by force against Egypt in the Suez Canal Zone in the Israeli-Egyptian conflict, under claim of a threat to their vital interests. This action was condemned by majority of the countries in

58. See Preamble and Articles 1(3), 55 (c), 68,76 (c), of the Charter. Lauterpacht’s Oppenheim, op. cit., p.313.
the UN General Assembly as a breach of the United Nations Charter. It was maintained that, as Egypt had not been guilty of any actual armed attack within the meaning of article 51 of the Charter\textsuperscript{60}, recourse to an alleged right of collective self-defense was not justified. For similar reasons, 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-defense authorized by article 51.\textsuperscript{61}

The Beirut landing was, however, justified not only as an act of self-defense, but also on the ground that the legitimate government of Lebanon has 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 legalize an otherwise improper intervention"\textsuperscript{62}. In as much as it is claimed that subsequent events showed that the strife in Lebanon was purely of an internal character, the legality of the American intervention in Lebanon has been doubted.

\textsuperscript{60} The Charter by article 51 recognizes an inherent right of individual and collective self-defense of member states against armed attack, pending enforcement action by the Security Council, and reserving to the Security Council full authority in the matter.

\textsuperscript{61} For reasons similar, British troops were landed in Jordan on the invitation of the government of that country shortly after the Beirut landing.

\textsuperscript{62} J.G. Starke; op. cit., p. 106.
In the period 1961-1972, the United States assisted militarily to South Vietnam, on the basis that the latter requested it, the justification among others being that South Vietnam was confronted with an insurrection directed and assisted from outside.

Intervention in time of civil war has formed the subject of numerous controversies. The Principle of the “Troppau Protocol of 1820”\(^{63}\) was used to justify the intervention of third states on the side of a ‘legitimate’ government based upon dynastic succession. It was in accordance with this Protocol that Austria intervened in Naples and Lombardy in 1821 and France intervened in Spain. This principle was condemned by Great Britain in the strongest possible terms. In 1928 the American republics, after long experience in intervention in time of civil war, adopted at Habana a convention setting forth the rights and duties of Third States in such cases\(^{64}\). It was agreed that third states should use all means at their disposal to prevent their inhabitants from participating in civil strife in neighboring states, that they should intern rebel forces crossing their boundaries and that they should forbid the traffic in arms except when intended for the government while the belligerency of the rebels had not been recognized.

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63. The Protocol provided thus: “States which have undergone a change of government due to revolution the results of which threaten other states, ipso facto cease to be members of the European Alliance and remain excluded from it until their situation gives guarantee for legal order and stability. If, owing to such alterations, immediate danger threatens other states, the Power bind themselves, to bring back the guilty state into the bosom of the Great Alliance”. Charles G. Fenwick, Int. Law (3rd ed.) 1952, p.244.

64. Ibid, p.144
The intervention of third states in the civil war in Spain in 1936 came close to precipitating a general conflict. Germany and Italy intervened on the side of General Franco, Russia on the side of the Loyalists, while Great Britain and France enacted embargo measures against both sides. 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 the future. It remained uncertain whether aid to a de jure government could be said to be an illegal act, although its consequences could be aid by other states to the rebels and the danger of war.

The Charter of the United Nation, clearly condemns the traditional forms of intervention as measures of self-help. Even the collective intervention of the UN as a body is prohibited, "in matters which are essentially within the domestic jurisdiction of any state", exception being made of enforcement measures taken by the Security Council in accordance with the provisions of Chapter VII of the Charter. The scope of this provision of Article 2 awaits interpretations in the light of changing conditions and new forms of intervention. In 1945, the Soviet Union intervened in Iran by giving support to rebels in Azerbaijan; and the case was referred to the Security Council, which did not regard itself as intervening in the domestic affairs of Iran. In 1946, Great Britain and in 1947, Yugoslavia, Albania and

65. Ibid, p. 245.
66. Ibid.
Bulgaria were alleged to have intervened in Greece, the former by assisting the government against guerillas and the latter by assisting guerillas against the government. The action of the United States in 1947 in making loans to Greece and Turkey was regarded by the Soviet delegate to the United Nations as a form of intervention. The United States and Great Britain regarded the support given by the Soviet Union in 1947 to the Communist Party in Hungary and other countries as an unwarranted interference in the domestic affairs of that state. In none of these cases would action by the Security Council in the interest of maintaining peace come within the condemnation of intervention in the domestic affairs of the particular state.67

The Reagan administration illegally intervened into the civil war in El Salvador by providing enormous amounts of military and economic assistance to the brutal dictatorship that used it to perpetrate a gross and consistent pattern of violations of the most basic human rights of the people of that country. The Reagan administration's illicit intervention in El Salvador's civil war contravened the international legal right of self-determination for the people of El Salvador as recognized by Article 1(2) of the UN Charter.

67. Ibid.
Those civil wars which have provoked intervention by foreign states differ from each other in many respects. Norms governing intervention in civil wars generally veer between two opposite approaches: One stresses the legitimacy of outside support for the incumbent government against either internal political rebellion or secession—an approach that has been described by one author as "Metternich legitimacy". The other stresses that "international law developed a stronger emphasis upon anti-intervention doctrine than upon doctrine favouring constitutional legitimacy". The former approach favours one-sided intervention, the latter neutrality.

For Corbett, unilateral intervention by foreign states in civil strife would be prohibited on behalf of either the incumbent govt. or the rebels or insurgents, and broad interventionary authority would be granted by the United Nations. Foreign states have used the traditional rule permitting aid to a widely recognised incumbent government prior to recognition of belligerency as the basis for intervention in Czechoslovakia, Hungary, the Dominican Republic, and Vietnam, to name only the most recent cases.

**Invitational Intervention:**

Invitational interventions are mostly found in civil strifes. In a purely local
strife between two or more hostile groups, the legal government should not seek foreign assistance. Thus, if a state intervenes in another state during civil strife between the local government and local revolting group or community, it would be termed as intervention even if it is at the invitation of the legal government. However, if the revolting group is basically helped by a foreign power, the other foreign power may justifiably help the legal government, if invited to do so\(^70\). e.g. Russian intervention in Czechoslovakia 1968 could not be permissible in international law because Dubcek government was not aided by any foreign power, even if Russia was claiming that it was invited by some Czech comrades which, of course, they equally failed to substantiate. Brezhnev's doctrine of limited sovereignty of socialist countries has no place in international law\(^71\).

Soviet Union again claimed intervention in Afghanistan in December, 1979 at the invitation of President Amin who was killed in the process. It was alleged by the Soviet Union that the Afghanistan was threatened by rebels who were being supported by Pakistan, China and the United States. If it is correct, Soviet action may be justified.

Intervention appears to be by right when it takes place at the genuine and explicit invitation of the lawful government of a state. A striking example of

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\(^70\) R.C. Hingorani; Modern Int. Law (2nd ed.), 1981, p.326.

\(^71\) According to the Brezhnev Doctrine, socialist countries can not go beyond the communist orbit. Therefore, if any socialist country wants to be independent of Soviet influence, other communist countries have a right to intervene. Soviet Land, December, 1968.
this kind of intervention was supplied by the landing of American Marines in Lebanon in 1958, and the sending of requested British troops to Jordan, following charges of United Arab Republic intervention in the internal affairs of Jordan. On January 25, 1964, British forces went into action in Tanganyika, Uganda, and Kenya, in each instance at the request of the respective government, in order to put down mutinies by African troops.\(^{72}\)

On the other hand, in the case of "invitational intervention" as in the case of all other forms of such action, the particular circumstances of a given instance determine whether the intervention did possess any legal merit at all. Thus the invasion of Austria by armed forces of Germany in 1938 did take place at the request of an Austrian government to be rare, but it was highly dubious whether the government in question could be regarded at the time as the lawful government of the Republic of Austria. In the particular case of intervention, the motives promoting the action adopted by the intervening state differed radically from the motives ascribable to the actions of the United States in the case of Lebanese landing.\(^{73}\)

Comparable in many respects with the Austrian situation, the military intervention by the Soviet Union in Hungary in 1956, represented, in American eyes, an illegal intervention, because the Kadar government which had asked for Soviet assistance under the terms of the Warsaw


\(^{73}\) G.V. Glahn, op. cit., p.165.
Pact did not represent a legitimate government in Hungary but rather a puppet regime established by the very state whose military aid and intervention were requested\textsuperscript{74}. Another example of invitational intervention was the temporary stationing of British Air Force units in the Republic of Zambia in early December, 1965.

Most important of all recent examples of this kind of intervention has been the involvement of the United States and other States in the Vietnamese conflict. G.V. Glahn believes that the United States intervention in that conflict has been a lawful intervention\textsuperscript{75}. Under generally accepted rules of international law, outside assistance cannot be requested by a government faced by a purely domestic civil war in which the outcome is in doubt, for such a government can not truly speak for its country. But if a civil war is aided and promoted from the outside, by agencies of another state----if, in other words subversive intervention has occurred----then the target government has a legal right to ask for assistance in its struggle to maintain itself. This appears to have been the situation in South Vietnam after the initial phases of civil war which began as a domestic uprising against the government in Saigon in 1957. Infiltration from the North appears to have started in early 1958, even though Northern military units did not penetrate the demilitarized zone until after the Gulf of Tonkin episodes in early August, 1964.

\textsuperscript{74} Whiteman; Vol. 5, pp. 667-702. cited in G.V. Glahn, op. cit., p.166.
Under the conditions described—that is, a civil war supported, on the rebel side, from the outside—third parties may assist the incumbent government regardless of a possible diminution of the control exercised by it over its national territory\(^76\).

The initial stages of Egyptian intervention in Yemen, in the fall of 1962, although made at the invitation of the Yemen Arab Republic, must be regarded as of dubious legality, in view of the limited control exercised from its beginning by the allegedly lawful government. Eventually, however, acknowledged support of the royalist faction in the struggle by Saudi Arabia appears to have provided a legitimate basis for Egyptian assistance to the republican faction\(^77\).

**Armed Intervention with the Consent of the Territorial State:**

In traditional international law this principle volenti-non-fit-injuria (an illegal act is no longer such if the party whose rights have been infringed previously consented thereto), was obviously in full force—each member being on a par with the others, there were no limits to the freedom of states and all rules could be derogated from. Thus each state was free to allow another to use force in any form on its own territory. Just as a state was able officially to sanction its own mutilation, dismemberment, or even its total extinction, so it could agree to allow another international subject

\(^76\). Ibid., p. 166.
\(^77\). Ibid., p. 167.
to use force on its own territory.

A close scrutiny of the Charter allows for only one conclusion: by explicit consent a state may authorise the use of force on its territory whenever, as the object of an 'armed attack' it resorts to individual self-defence (by giving its consent the state authorizes a form of collective self-defence).

In 1958, for instance, the British Foreign Secretary\(^78\) asserted: The structure of the Charter preserves the customary law by which aid may be given to a nation of the kind which I have described (in the face of civil strife fomented from abroad)-----I do not believe that either the spirit or the letter of the Charter takes away the customary traditional right------

However, in 1963 Brownlie\(^79\), the distinguished English Jurist, stated that one should tread very warily, especially in the case of civil war, and never lose sight of certain general principles which were emerging at that time within the international community, and which were tending to restrict the freedom of states.

Brownlie felt that, as a rule, it was necessary to ascertain that consent had not been vitiated by illegal pressure and to establish that it had been issued by the legitimate authorities. Once these preliminary enquiries were

\(^78\) Antonio Cassese; op. cit., p. 239.
completed, with specific reference to intervention in civil war or internal disorders, one ought to distinguish between three main hypotheses. First, that in which consent to the use of force was given by a state on whose territory an organised movement was not fighting the government 'with a general political object of replacing it; in this case the use of force was acceptable'. Second, that in which a substantial body of the population supported the insurrection 'and there is no question of foreign aid, moral or material, to the insurgents' in such a case the use of force by a third state in support of the government can provoke objections 'on consideration of principle' because it could conflict with the principles of self-determination and non-interference, or for reasons of policy (the danger that these internal disturbances could escalate into an international conflict). Third, that in which the rebels receive military aid from third states. According to Brownlie, under these circumstances, the use of force at the behest of the government is legitimate.

Certain states all too readily claim their own military intervention to be lawful. For example, the Soviet intervention in Hungary, that of the U.S. in Lebanon, and of the U.K. in Jordan, both in 1958, that of U.S. in the Dominican Republic in 1965, in Greneda in 1983, not to mention Soviet intervention in Czech in 1968 and in Afghanistan in 1979. Thus on more than one occasion, in cases of subversion in the territory of one state, other states have considered it quite legitimate to intervene, after a
request to do so, either because the rebels were said to receive aid from third states, or because the consenting state was said to be the object of an "armed attack" as laid down in Article 51. In fact, it would appear that many of these cases of so-called armed intervention were unlawful. Often the rebels were not in fact receiving any 'external' aid, and certainly not in the form of massive 'military assistance'; or else, the individuals requesting or authorising foreign intervention could not be regarded as the lawful authority of the 'inviting' state. Further more, whenever the intervening state justified the use of force by the need to repulse, in conformity with Article 51, an 'indirect aggression', the justification was based on a questionable interpretation of Article 51 because, it should not allow the use of force against that particular form of 'aggression'.

Clearly state practice makes extensive use of the consent exception, even though this practice hardly conforms with present day international law. The present legal system may be summarized as follows: First, consent must be freely given; it must be real as opposed to merely 'apparent', and it must have been given by the lawful government, that is, by the authority empowered thereto by the constitution. Second, consent can not validly legitimize the use of force when it is contrary to principles of jus-cogens, for example if its use tends to deny or to limit the right of peoples to self-determination, or if it turns out to be a case of interference in the domestic affairs of the state on whose territory force has been used.
Distinction between aid to de jure government and aid to rebels:

There is no rule in international law against civil wars. Article 2(4) of the United Nations Charter prohibits the use or threat of force in international relations only. That does not necessarily mean, however, that other states are at liberty to participate in the civil war by giving help to one or other of the sides.

As a general rule, foreign states are forbidden to give help to the insurgents in a civil war. For instance, General Assembly resolution 2131 (XX) declares that "no state shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state". An exception to this rule probably exists when the established authorities are receiving foreign help.

There are two views regarding help for the established authorities or de jure government to resist subversion or revolt. One view is that help given to the established authorities in a civil war is always legal. The theory underlying this argument is that the government is the agent of the state, and that therefore the government, until it is definitely overthrown, remains competent to invite foreign troops into the state's territory and to seek other

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80. See Yearbook of the United Nations, 1965, p.94; the resolution was passed by 109 votes to nil.
81. For instance, after the Soviet intervention in Afghanistan at the end of 1979, Egypt started providing military training and weapons for the Muslim insurgents against the Soviet backed government and Saudi Arabia gave money to the insurgents.
forms of foreign help, whatever the effect which that help may have on the political future of the state. It is also said that, the established government of a country is alone competent to exercise the sovereign rights there of, and among those sovereign rights is the right to maintain political order; an invitation to a foreign nation to assist in maintaining order is not an abrogation of sovereignty. Another view considers that interposition in pursuance of an invitation or treaty of guarantee is illegal because it influences the political destiny of another country, and thereby its sovereign right to determine its own political institutions. On the other hand, the above view, is open to abuse; for instance, during the Spanish civil war, Germany and Italy tried to legitimise their help to the nationalists (insurgents) by prematurely recognising the nationalists as the de jure government of Spain. Even apart from such obvious instances of abuse, there may be situations where it is genuinely hard to say who are the established authorities and who are the insurgents. Thus, shortly after the Congo became independent in 1960, the President (Kasavubu) and the Prime Minister (Lumumba) came into conflict with each other, and each purported to dismiss the other; in such circumstances it is dangerously easy for foreign states to argue that their own proteges are the established authorities, and that the other side are the insurgents.

One must be very careful, not to assist in subverting an established order by recognising a rebel organisation as the government de jure and then assisting it to overthrow the anterior regime. Such recognition would be premature, and thus ineffective to qualify a state for accepting an invitation to interfere on the rebel side in a civil war.

The idea that foreign states should not intervene on either side in a civil war is a wise one, otherwise help given by some states to the established authorities runs the risk of provoking other states into helping the insurgents i.e. counter-intervention. Non-intervention has received some support as a rule of law in subsequent state practice; in 1963 the United Kingdom stated that it 'considered that, if civil war broke out in a state and the insurgents did not receive outside help or support, it was unlawful for a foreign state to intervene, even on the invitation of the regime in power, to assist in maintaining law and order'.

The conclusion that “policy, not law, determines the actions of states with regard to intervention in civil wars” may come uncomfortably close to describing the present. It may be more accurate to say that law plays an undetermined but probably a very subordinate role in the establishment of policy with regard to intervention in civil wars.

The United Nations and Civil Wars:

International law, including the Charter has not been notably successful in controlling internal wars and external intervention in such wars; the influence of the organisation has also been less than decisive. In the absence of external intervention or the clear danger that an internal war will otherwise threaten international peace, the jurisdiction of the United Nations is open to question: it, too, is not supposed to intervene in strictly “domestic affairs”, and presumable the strictly civil war, contained within national boundaries, would be deemed “domestic”. It is hampered by lack of a clear Charter mandate and other uncertainties of law, and by uncertainties and disputes as to fact.

In any event, the United Nations can not prevent revolution; it can not readily provide peaceful solutions to prevent or end civil war. It may attempt to mediate or conciliate, but there are often issues not susceptible to accommodation or third-party settlement. In regard to external intervention, especially in the absence of an agreed Charter norm forbidding assistance to either side, the United Nations can not easily obtain agreement that there shall be none. Where big powers become involved, moreover, there is even less likelihood that the United Nations can act in a way that will defeat the interests of one of them (e.g. Vietnam). In internal wars, then, often it can only hope to help contain the

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86. UN Charter, Article 2 (7). There has not been agreement as to what matters are “essentially within the domestic jurisdiction” of a state, and some may question whether the United Nations would even in fact deny itself jurisdiction on this ground.
war in the territory of the country in question, to keep the internal war from becoming international.

Still there are internal wars and external wars, and in some the United Nations acted effectively in the cause of peace. It superceded "preventive intervention" by the United States in Lebanon in 1958. It has tried to continue its pacifying activities in Cyprus. It attempted to end intervention and civil war in Yemen in 1963. It was a major participant in the dramatic events of 1960 in the Congo to prevent a race of military interventions between the Soviet Union and the United States. Of course, the United Nations might contribute most if it promotes welfare and stability that render internal wars less likely. However, the United Nations General Assembly passed a resolution 2105 (XX), on December 21, 1965, by 74 votes to 6 with 27 abstentions, which recognises the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence and invites all states to provide material and moral assistance to the national liberation movements in colonial territories.

Conclusion:

Any such exceptional rights of intervention of states must be subordinated to their primary obligation under the United Nation Charter, so intervention must not go so far as the threat or use of force against the territorial integrity or political independence of any state.

No matter how moral or desirable or plausible some of the foregoing justifications of intervention may have appeared in specific instances, the fact remains that intervention per se is an act in violation of rights which should be inviolable, represents a hostile act, and may be taken to be an 'act rendered possible only because of the superior force of the intervening state'.

The past few years have witnessed other instances of armed intervention, surrounded in a number of cases by such a multitude of contributory and confusing issues that debate about them is still going no. The duty to abstain from armed intervention clearly means also that no state may permit the use of its territory for the staging of hostile expeditions against another state.

According to Lawrence, 'states should intervene very sparingly on the clearest grounds of justice and necessity and when they do so, they
should make it clear that their voice must be attended to and their wishes carried out\textsuperscript{91}.

In addition to intervention by right there are other kinds of intervention which cannot be considered illegal, although they violate the independence or the territorial or personal supremacy of the state concerned. These are of two kinds, namely, in self-preservation\textsuperscript{92} and in the interest of the balance of power\textsuperscript{93}.

\textsuperscript{91} V.D. Mahajan; Int. Law (1956), p. 174.
\textsuperscript{92} See Corfu Channel Case, decided in 1949 between the United Kingdom and Albania by Int. Court of Justice.
\textsuperscript{93} Most of the interventions exercised in the Balkan Peninsula must be classified as interventions in the interest of the balance of power. For examples, 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, for the purpose of establishing an independent state of Albania.