

*abolition of slavery, of slave trade, and of forced labour, for the protection of stateless persons and refugees, for safeguarding health and preventing abuses injurious to it, for securing humane conditions of work, and the like, have testified to the intimate connection between the interests of the individual and International Law. And although none of these developments have had the legal effect of incorporating the fundamental rights of man as part of the positive law of nations, they are not without significance for this aspect of International Law. It is probable that the Charter of the United Nations, with its repeated recognition of "human rights and fundamental freedoms," has inaugurated a new and decisive departure with regard to this abiding problem of law and government. In some instances—as, for example, in the European Convention on Human Rights—that development has assumed the complexion of explicit rules legally binding upon States.*

W. E. Hall

### A Treatise on International Law (1895)

International law professes to be concerned only with the relations of states to each other. Tyrannical conduct of a government towards its subjects, massacres and brutality in a civil war, or religious persecution, are acts which have nothing to do directly or indirectly with such relations. On what ground then can international law take cognizance of them? Apparently on one only, if indeed it be competent to take cognizance of them at all. It may be supposed to declare that acts of the kind mentioned are so inconsistent with the character of a moral being as to constitute a public scandal, which the body of states, or one or more states as representative of it, are competent to suppress. The supposition strains the fiction that states which are under international law form a kind of society to an extreme point, and some of the special grounds, upon which intervention effected under its sanction is based, are not easily distinguishable in principle from others which modern opinion has branded as unwarrantable. To some minds the excesses of a revolution would seem more scandalous than the tyranny of a sovereign. In strictness they ought, degree for degree, to be precisely equivalent in the eye of the law. While however it is settled that as a general rule a state must be allowed to work out its internal changes in its own fashion, so long as its struggles do not actually degenerate into internecine war, and intervention to put down a popular movement or the uprising of a subject race is wholly forbidden, intervention for the purpose of checking gross tyranny or of helping the efforts of a people

to free itself is very commonly regarded without disfavour. Again, religious oppression, short of a cruelty which would rank as tyranny, has ceased to be recognised as an independent ground of intervention, but it is still used as between Europe and the East as an accessory motive, which seems to be thought by many persons sufficiently praiseworthy to excuse the commission of acts in other respects grossly immoral. Not only in fact is the propriety or impropriety of an intervention directed against an alleged scandal judged by the popular mind upon considerations of sentiment to the exclusion of law, but sentiment has been allowed to influence the more deliberately formed opinions of jurists. That the latter should have taken place cannot be too much regretted. In giving their sanction to interventions of the kind in question jurists have imparted an aspect of legality to a species of intervention, which makes a deep inroad into one of the cardinal doctrines of international law; of which the principle is not even intended to be equally applied to the cases covered by it; and which by the readiness with which it lends itself to the uses of selfish ambition becomes as dangerous in practice as it is plausible in appearance.

It is unfortunate that publicists have not laid down broadly and unanimously that no intervention is legal, except for the purpose of self-preservation, unless a breach of the law as between states has taken place, or unless the whole body of civilised states have concurred in authorising it. Interventions, whether armed or diplomatic, undertaken either for the reason or upon the pretexts of cruelty, or oppression, or the horrors of a civil war, or whatever the reason put forward, supported in reality by the justification which such facts offer to the popular mind, would have had to justify themselves, when not authorised by the whole body of civilised states accustomed to act together for common purposes, as measures which, being confessedly illegal in themselves, could only be excused in rare and extreme cases in consideration of the unquestionably extraordinary character of the facts causing them, and of the evident purity of the motives and conduct of the intervening state. The record of the last hundred years might not have been much cleaner than it is; but evil-doing would have been at least sometimes compelled to show itself in its true colours; it would have found more difficulty in clothing itself in a generous disguise; and international law would in any case have been saved from complicity with it. . . .

A somewhat wider range of intervention than that which is possessed by individual states may perhaps be conceded to the body of states, or to some of them acting for the whole in good faith with sufficient warrant. In the general interests of Europe, for example, an end might be put to a civil war by the compulsory separation of the parties to it, or a particular family or a particular form of government might be

established and maintained in a country, if the interests to be guarded were strictly international, and if the maintenance of the state of things set up were a reasonable way of attaining the required object.

If a practice of this kind be permissible, its justification must rest solely upon the benefits which it secures. The body of states cannot be held to have a right of control, outside law, in virtue of the rudimentary social bond which connects them. More perfectly organised societies are contented with enforcing the laws that they have made; in doing this they consider themselves to have exhausted the powers which it is wise to assume; they do not go on to impose special arrangements or modes of life upon particular individuals; beyond the limits of law, direct compulsion does not take place; and evidently the community of states cannot in this respect have larger rights than a fully organised political society.

Is then such intervention justified by its probable or actual results? Certainly there must always be a likelihood that powers with divergent individual interests, acting in common, will prefer the general good to the selfish objects of a particular state. It is not improbable that this good may be better secured by their action than by free scope being given to natural forces. In one or two instances, as, for example, in that of the formation of Belgium, and in the recent one of the arrangements made by the Congress of Berlin, and of the minor interventions springing out of it, settlements have been arrived at, or collisions have been postponed, when without common action an era of disturbance might have been indefinitely prolonged, and its effects indefinitely extended. There is fair reason consequently for hoping that intervention by, or under the sanction of, the body of states on grounds forbidden to single states, may be useful and even beneficent. Still, from the point of view of law, it is always to be remembered that states so intervening are going beyond their legal powers. Their excuse or their justification can only be a moral one.

E. C. Stowell

### Intervention in International Law (1921)

Humanitarian intervention may be defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice.

Westlake states the basic idea of humanitarian intervention and at the same time refutes the sterile doctrine of absolute non-intervention: "In considering anarchy and misrule as a ground for intervention the view must not be confined to the physical consequences which they may have beyond the limits of the territory in which they rage. Those are often serious enough, such as the frontier raids in which anarchy often boils over, or the piracy that may arise in seas in which an enfeebled government can no longer maintain the rule of law. The moral effect on the neighboring populations is to be taken into the account. Where these include considerable numbers allied by religion, language or race to the populations suffering from misrule, to restrain the former from giving support to the latter in violation of the legal rights of the misruled state may be a task beyond the power of their government, or requiring it to resort to modes of constraint irksome to its subjects, and not necessary for their good order if they were not excited by the spectacle of miseries which they must feel acutely. It is idle to argue in such a case that the duty of the neighboring peoples is to look on quietly. Laws are made for men and not creatures of the imagination, and they must not create or tolerate for them situations which are beyond the endurance, we will not say of average human nature, since laws may fairly expect to raise the standard by their operation, but of the best human nature that at the time and place they can hope to meet with." . . .

The legality of humanitarian intervention has the support of many authorities. The author of the *Vindicae Contra Tyrannos*, published in 1579 at the time of the religious wars in France, justifies interference "in behalf of neighboring peoples who are oppressed on account of adherence to the true religion or by any obvious tyranny." Since that time, a host of authorities have incidentally touched upon humanitarian intervention and recorded their approval of it. Only one of these [Antoine Rougier], as far as I am aware, has made a thorough study of this important institution. The list of the authorities who recognize the legality of humanitarian intervention includes: Grotius, Wheaton, Heiberg, Woolsey, Bluntschli, Westlake, and many others.

In 1625 Hugo Grotius wrote: "There is also another question, whether a war for the subjects of another be just, for the purpose of defending them from injuries inflicted by their ruler. Certainly it is undoubted that ever since civil societies were formed, the rulers of each claimed some especial right over his own subjects. Euripides makes his characters say that they are sufficient to right wrongs in their own city. And Thucydides puts among the marks of empire, the supreme authority in judicial proceedings. And so Virgil, Ovid, and Euripides in the *Hippolytus*. This is, as Ambrose says, that *peoples may not run into wars by usurping the care for those who do not belong to them*. The Corinthi-