

home State's having a right to interfere, individuals appear here too as objects of the Law of Nations.

Section 291. If, as stated, individuals are never subjects but always objects of the Law of Nations, then nationality is the link between this law and individuals. It is through the medium of their nationality only that individuals can enjoy benefits from the existence of the Law of Nations. This is a fact which has its consequences over the whole area of International Law. Such individuals as do not possess any nationality enjoy no protection whatever, and if they are aggrieved by a State they have no way of redress, there being no State which would be competent to take their case in hand. As far as the Law of Nations is concerned, apart from morality, there is no restriction whatever to cause a State to abstain from maltreating to any extent such stateless individuals. On the other hand, if individuals who possess nationality are wronged abroad, it is their home State only and exclusively which has a right to ask for redress, and these individuals themselves have no such right. It is for this reason that the question of nationality is a very important one for the Law of Nations, and that individuals enjoy benefits from this law not as human beings but as subjects of such States as are members of the Family of Nations. . . .

Section 292. Several writers maintain that the Law of Nations guarantees to every individual at home and abroad the so-called rights of mankind, without regarding whether an individual be stateless or not, or whether he be a subject of a member-State of the Family of Nations or not. Such rights are said to comprise the right of existence, the right to protection of honour, life, health, liberty, and property, the right of practising any religion one likes, the right of emigration, and the like. But such rights do not in fact enjoy any guarantee whatever from the Law of Nations, and they cannot enjoy such guarantee, since the Law of Nations is a law between States, and since individuals cannot be subjects of this law. But there are certain facts which cannot be denied at the background of this erroneous opinion. The Law of Nations is a product of Christian civilisation and represents a legal order which binds States, chiefly Christian, into a community. It is therefore no wonder that ethical ideas which are some of them the basis of, others a development from, Christian morals, have a tendency to require the help of International Law for their realisation. When the Powers stipulated at the Berlin Congress of 1878 that the Balkan States should be recognised only under the condition that they did not impose any religious disabilities on their subjects, they lent their arm to the realisation of such an idea. Again, when the Powers after the beginning of the nineteenth century agreed to several international arrangements in the interest of the abolition of the slave trade, they fostered the realisation of another of these ideas. And the innumerable treaties between

the different States as regards extradition of criminals, commerce, navigation, copyright, and the like, are inspired by the idea of affording ample protection to life, health, and property of individuals. Lastly, there is no doubt that, should a State venture to treat its own subjects or a part thereof with such cruelty as would stagger humanity, public opinion of the rest of the world would call upon the Powers to exercise intervention for the purpose of compelling such State to establish a legal order of things within its boundaries sufficient to guarantee to its citizens an existence more adequate to the ideas of modern civilisation. However, a guarantee of the so-called rights of mankind cannot be found in all these and other facts. Nor do the actual conditions of life to which certain classes of subjects are forcibly submitted within certain States show that the Law of Nations really comprises such guarantee.

H. Lauterpacht

Revision of Oppenheim (1955)

Section 288. The individuals belonging to a State can, and do, come in various ways in contact with foreign States in time of peace as well as war. *Moreover, apart from being nationals of their States, individuals are the ultimate objects of International Law—as they are, indeed, of all law. These are the reasons why the individual is often the object of international regulation and protection.*

Section 289. Since the Law of Nations is *primarily* a law between States, States are, to *that* extent, the only subjects of the Law of Nations. How is it, then, that, although individuals are not *normally* subjects of the Law of Nations, they have certain rights and duties in conformity with, or according to, International Law? Have not monarchs and other Heads of States, diplomatic envoys, and even private citizens, certain rights according to the Law of Nations whilst on foreign territory? The answer to these questions is that, *as a rule*, what the Law of Nations really does concerning individuals is to impose upon all States the duty to grant certain privileges to such foreign Heads of States and diplomatic envoys, and certain rights to such foreign citizens, as are on their territory. And, as corresponding to this duty, every State has by the Law of Nations a right to demand that its Head, its diplomatic envoys, and its citizens be granted certain rights by

Lauterpacht's changes and additions are italicized.

foreign States when on their territory. Foreign States granting these rights to foreign individuals do this by their Municipal Laws, and these rights are, *to that extent*, not international rights but rights derived from Municipal Laws. International Law is indeed the background of these rights, in so far as the duty to grant them is imposed upon the several States by International Law. It is therefore quite correct to say that individuals have these rights in conformity with, or according to, International Law, provided it is remembered that, *as a rule, these rights would not be enforceable before national courts* had the several States not created them by their Municipal Law.

The same applies as regards special rights of individuals in foreign countries according to treaties between two or more States. Although such treaties generally speak of rights which individuals shall have as derived from the treaties themselves, this is, *as a rule, not the normal position under the municipal law of States*. In fact, such treaties do not normally create these rights, but they impose the duty upon the contracting States of calling these rights into existence by their Municipal Laws. Again, where States stipulate by international treaties certain benefits for individuals other than their own subjects, these individuals do not, *as a rule*, acquire any international rights under these treaties, but the State whose subjects they are has an obligation towards the other States of granting such favours by its Municipal Law. *But although this is the normal and most convenient procedure, States may, and occasionally do, confer upon individuals, whether their own subjects or aliens, international rights stricto sensu, i.e. rights which they acquire without the intervention of municipal legislation and which they can enforce in their own name before international tribunals. Moreover, the quality of individuals as subjects of International Law is apparent from the fact that, in various spheres, they are, as such, bound by duties which International Law imposes directly upon them. The various developments since the two World Wars no longer countenance the view that, as a matter of positive law, States are the only subjects of International Law. In proportion as the realisation of that fact gains ground, there must be an increasing disposition to treat individuals, within a limited sphere, as subjects of International Law.*

Section 290. But what is the normal position of individuals in International Law, if they are not regularly subjects thereof? The answer can only be that, generally speaking, they are objects of the Law of Nations. They appear as such from many different points of view. When, for instance, the recognised territorial supremacy of every State is seen to comprise certain powers over foreign subjects within its boundaries with the exercise of which their home State has no right to interfere, these individuals appear again as objects of the Law of Nations. *The same applies to those rights of aliens which the territorial State is bound to respect and which the home State is entitled to protect. However, the*

fact that individuals are normally the object of International Law does not mean that they are not, in certain cases, the direct subjects thereof.

Section 291. *To the extent to which individuals are not subjects but objects of the Law of Nations, nationality is the link between them and International Law. It is through the medium of their nationality that individuals can normally enjoy benefits from the existence of the Law of Nations. This is a fact which has consequences over the whole area of International Law. Such individuals as do not possess any nationality enjoy, in general, no protection whatever, and if they are aggrieved by a State they have no means of redress, since there is no State which is competent to take up their case. As far as the Law of Nations is concerned, there is, apart from restraints of morality or obligations expressly laid down by treaty—and in particular the general obligation, enshrined in the Charter of the United Nations, to respect human rights and fundamental freedoms—no restriction whatever to cause a State to abstain from maltreating to any extent such stateless individuals. On the other hand, if individuals who possess nationality are wronged abroad, it is, as a rule, their home State only and exclusively which has a right to ask for redress, and these individuals themselves have no such right. It is for this reason that the question of nationality is very important for the Law of Nations.*

Section 292. Writers have occasionally expressed the view that International Law guarantees to individuals, both at home and abroad and whether nationals of a State or stateless, certain fundamental rights usually referred to as rights of mankind. Such rights have been said to comprise the right of life, liberty, freedom of religion and conscience, and the like. *It is doubtful whether that view is expressive of the actual practice of States. For it is generally recognised that, apart from obligations undertaken by treaty, a State is entitled to treat both its own nationals and stateless persons at discretion and that the manner in which it treats them is not a matter with which International Law, as a rule, concerns itself.*

At the same time it cannot be said that the doctrine of the "rights of mankind" is altogether divorced from practice. In the first instance, it is clear that the State is bound to respect certain fundamental rights of aliens resident within its territory—although it is often said that the rights in question are not international rights of the aliens, but of their home State. Secondly, the principle and the practice of humanitarian intervention in defence of human rights ruthlessly trampled upon by the State have been frequently asserted and occasionally acted upon. Thirdly, the various treaties—such as those concluded at the Berlin Conference in 1878 or on the termination of the First World War—for the protection of religious and linguistic minorities signified the tendency to extend recognition, by means of international supervision and enforcement, to the elementary rights of at least some sections of the population of the State. Finally, an imposing array of treaties of a humanitarian character, such as those for the

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