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 soveriegn 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-

ans in Thucydides say that it is right that each state should punish its own subjects. And Perseus says that he will not plead in defense of what he did against the Dolopians, since they were under his authority and he had acted upon his right. But all this applies when the subjects have really violated their duty; and we may add, when the case is doubtful. For that distribution of power was introduced for that case.

"But the case is different if the wrong be manifest. If a tyrant like Busiris, Phalaris, Diomede of Thrace, practises atrocities towards his subjects, which no just man can approve, the right of human social connection is not cut off in such a case. So Constantine took arms against Maxentius and Licinius; and several of the Roman emperors took or threatened to take arms against the Persians, except they prevented the Christians being persecuted on account of their religion."

In a recent work by Professor Edwin M. Borchard, we find a clear and emphatic statement. Referring to the minimum of rights which individuals enjoy under international law, this author remarks: "This view, it would seem, is confirmed by the fact that where a state under exceptional circumstances disregards certain rights of its own citizens, over whom presumably it has absolute sovereignty, the other states of the family of nations are authorized by international law to intervene on the grounds of humanity. When these 'human' rights are habitually violated, one or more states may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled." . . .

Certain other publicists have, it is true, looked askance at humanitarian intervention, and even gone so far as to deny its legality. Starting from the premise of the independence of states, they fear to recognize the right of another state to step in as a policeman, even though a neighbor state should treat its nationals in a barbarous manner. Instead, they would proclaim as sacred and inviolable the right of every state to regulate its internal affairs and then condone as excusable violations of the law such corrective intervention as another state, urged on by public opinion, might undertake.

But why, we may ask, should the independence of a state be more sacred than the law which gives it that independence? Why adopt a system which makes it necessary to gloss over constant violations of the very principles which are declared to be most worthy of respect from all? If, where such intolerable abuses do occur, it be excusable to violate at one and the same time the independence of a neighbor and the law of nations, can such a precedent of disrespect for law prove less dangerous to international security than the recognition of the right, when circumstances justify, to ignore that independence which is the ordinary rule of state life? In any event, we find support for the view

we hold from the weighty authorities to whom we have referred, and we may feel still more certain of our ground after we have examined the various instances in which the powers have intervened to prevent a neighbor from continuing to commit such abuses as constituted a violation of the universally recognized and generally respected rules of decent state conduct. And when so acting, the intervening states have proclaimed the legality of their course.